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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

In the Matter of the Verified Petition of the Retail Energy Supply Association for Board-Approved Mechanism for Third Party Providers to Recover Incremental Costs Incurred as a Result of PJM's Capacity Performance Proposal	)	**VERIFIED PETITION SEEKING FORMAL HEARING AND ORDER** Docket No. _____

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

1. This is a Verified Petition Seeking Formal Hearing and Order ("Petition") filed pursuant to N.J.A.C. § 14:1-1 *et seq.* under the rules of practice of the Board of Public Utilities ("Board") by the Retail Energy Supply Association[1] ("RESA" or "Petitioner"). RESA is a broad and diverse group of retail energy suppliers that share a common vision that competitive retail energy markets deliver more efficient, customer-oriented outcomes than do regulated utility providers. RESA members offer retail electric service to residential, commercial, and industrial customers in New Jersey, throughout PJM, and in other competitive markets across North

[1] RESA's members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

America.

2. On December 12, 2014, PJM filed an Updated Capacity Performance Proposal ("Capacity Performance") with the Federal Energy Regulatory Commission ("FERC"). If approved by the FERC, the Capacity Proposal would impose substantial, but not yet quantified[2], costs on Third Party Suppliers ("TPSs") and Basic Generation Service ("BGS") Providers, to fulfill existing customer contracts that extend through all or some portion of the PJM 2016/2017 and 2017/2018 Delivery Years. On December 18, 2014, PJM filed a separate proposal requesting that FERC allow PJM to obtain 2500 MW (or more) of capacity from existing generation units that would otherwise retire in the 2015/2016 Delivery Year or from generation units that could accelerate their operational date from Delivery Year 2016/2017 to Delivery Year 2015/2016 (together, with the Capacity Performance, the "Capacity Proposal"). In this later filing, PJM proposes to recover the out-of market costs to procure the extra capacity through the Reliability Must Run ("RMR") construct.

3. To address concerns that BGS Providers would be financially harmed from these significant cost increases to fulfill pre-existing contracts with the Electric Distribution Companies ("EDCs"), and, therefore, impose risk premiums in their bids or not participate in future BGS auctions, the Board provided that they could recover incremental costs for the 2015/2016 Delivery Year as a result of the Capacity Proposal in its November 21, 2014 Order regarding the 2015 BGS proceeding ("BGS Order").

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[2] The PJM Report regarding the Cost Impact of a previous version of the Capacity Proposal, released by PJM on October 23, 2014, estimates an incremental cost of $200 to $600 million during the 2015/2016 Delivery Year, $2.5 to 3.6 billion during the 2016/2017 Delivery Year and $3.1 to $4.2 Billion during the 2017/2018 Delivery Year. While the parameters and timing of the as filed proposal are different, TPS', like BGS Providers and other load serving entities, will be required to bear their proportional share of similar costs each year.

4. In the BGS Order, the Board acknowledged RESA's comments regarding how TPSs would also be financially harmed from the Capacity Proposal and, therefore, may similarly impose unforeseen costs and risk premiums in future contract pricing with customers or flee the New Jersey competitive energy marketplace altogether. However, rather than explicitly provide that TPSs be entitled to recover incremental costs due to the Capacity Proposal, the Board invited RESA to submit a filing detailing how they would be financially harmed.

5. In addition to detailing how they would be financially harmed, the Board asked RESA to present "several options that TPSs feel would resolve what they perceive as financial harms, as well as a verification mechanism to determine the actual costs a TPS is exposed to" as a result of the Capacity Proposal.[3] Accordingly, RESA submits this Petition to establish a proceeding to demonstrate how TPSs will be financially harmed and to propose several resolutions for Board approval, as well as a verification mechanism for TPSs to recover incremental costs incurred as a result of the Capacity Proposal.

6. For the same reasons BGS Providers would face financial harm from the Capacity Proposal unless they are allowed to recover associated costs, TPSs would face financial harm. Therefore, TPSs should be entitled to receive the same recovery for incremental costs as BGS Providers. The most fair and efficient way to ensure equity between TPSs and BGS Providers with respect to incremental Capacity Proposal costs is to permit recovery of such TPS capacity costs through a nonbypassable "wires" charge collected by the EDC. However, in response to the Board's request for the presentation of various options to address this issue, RESA outlines a

[3] BGS Order, p. 22.

less equitable alternative as further discussed below. Under this alternative to a non-bypassable recovery mechanism, the Board would approve recovery of incremental Capacity Proposal costs incurred by TPSs as a permissible charge under the "material change rule" of the Energy Competition Rules at N.J.A.C. § 14:4-7.6(1).

7. RESA proposes that TPSs be directed to use a similar cost verification mechanism to the mechanism presented by the EDCs for BGS Providers in their compliance filings, which were submitted pursuant to the BGS Order. The actual filing that would be required by TPSs under RESA's proposed cost verification mechanism would contain an officer's certification that the incremental costs that the TPS is seeking to recover are accurate and are not otherwise being collected from the TPS' retail customers. This certification will address any concerns regarding the potential for duplicative recovery of capacity costs.

8. RESA further proposes that, if FERC approves the Capacity Proposal and the Board directs the EDCs to allow further recovery to BGS Providers beyond the 2015/2016 PJM delivery year, then it similarly allow TPSs to obtain further recovery in the same manner the Board previously approved pursuant to this Petition.

Financial Harm to TPSs from Capacity Proposal

9. As the Board recognized in the BGS Order, the Capacity Proposal "is an unforeseen and unhedgeable event that proposes structural changes to the rules governing capacity markets, having the potential to result in unknowable changes to the costs" of fulfilling existing BGS and TPS contracts to provide electricity to customers.[4] As PJM Load-Serving Entities, both BGS Providers and TPSs will be required to pay PJM their proportional share of the cost of the

[4] BGS Order, p. 20.

Capacity Proposal. These increased costs would equally impose financial harm on BGS Providers and TPSs who have already entered into contracts for all or any portion of the 2015/2016, 2016/2017 and 2017/2018 Delivery Years (the "Transition Years"), unless they are allowed to pass-through these costs to customers.

10. If not addressed through Board action, this financial harm would likely translate into significantly higher prices for New Jersey energy customers, as the Board recognized with regard to BGS Providers. In particular, the Board expressed concern that BGS Providers would include significant risk premiums in their upcoming auction bids, which would be reflected in higher customer pricing because the Capacity Proposal "introduces high levels of market uncertainty that could lead to higher wholesale risk premiums." These risk premiums would "reflect the potential imposition of unforeseeable or unhedgeable costs that may or may not be imposed during the period of the contract." In addition, the Board expressed concern that BGS Providers would refrain from bidding in future BGS auctions, which "could undermine the structural integrity of the Auction process and increase BGS costs to ratepayers."[5]

11. The Capacity Proposal similarly exposes TPSs to market uncertainty, which would similarly cause them to impose risk premiums on customers to address unforeseeable and unhedgeable costs in the future or exit the New Jersey marketplace, unless the Board allows TPSs to recover these costs. Just as the BGS procurement process "works best and leads to the lowest reasonable prices when potential suppliers are not exposed to future costs" that they cannot influence, control or hedge,[6] the TPS procurement process works best and

[5] BGS Order, p. 21.

[6] BGS Order, p. 21.

leads to better prices for TPS customers, when TPSs are not exposed to future costs that they cannot influence, control or hedge.

12. While it is true that TPSs (and BGS Providers) are excellent and efficient risk managers, risk management efficiency is affected by the ability of a market participant to influence, control or hedge a particular pricing component. Unknowable, retroactively applied policy changes do not encourage efficient risk management—on the contrary, such changes decrease risk management efficiency. For example, TPSs enter into financial forward fixed price energy hedges, manage hourly scheduling and settlement statements with PJM based on weather and other variables, and follow the forward markets for energy in order to efficiently price offers to customers. However, TPSs' proclivity to manage risks is somewhat limited with regard to federal and PJM-imposed changes due to the decreased transparency and/or jurisdictional separation (due to jurisdictional issues between retail and wholesale markets) inherent in federal and PJM actions.

13. Without a recovery mechanism for the cost of the Capacity Proposal, TPSs would be prone to manage customer risk by including premiums for the nearly infinite array of rule changes that *might* be implemented by FERC, PJM, or the legislative or regulatory bodies in New Jersey. As a result, New Jersey customers would pay the ultimate price through higher energy costs, instability in New Jersey's marketplace and less choice of energy products.

14. By the same logic with which it provided BGS Providers with an explicit cost recovery mechanism in the BGS Order, the Board should similarly allow TPSs an explicit cost recovery mechanism.[7] Given the projected magnitude of cost of the Capacity Proposal,

[7] It is important to note that under normal circumstances, RESA believes that capacity charges, as a generation component, should be assumed by TPS and BGS Providers and reflected in their market-based contract prices (in

inequitable treatment between BGS Providers and TPSs cannot be justified. RESA believes that such Board action would violate principles of a well-functioning market and fundamental fairness because there exists no rational basis for differentiating between BGS Providers and TPSs with respect to this cost.

15. Further, it is possible that Board action that widens the existing competitive disparities between BGS and TPS supply will incent existing TPS customers to "reverse migrate" back to BGS supply in unprecedented numbers that may create significant risks to BGS Supply and BGS Providers. Such reverse migration trends may be gradual for typical TPS contracts where customers individually decide whether to return to BGS Supply. However, with large blocks of customers served through government aggregation contracts in New Jersey, there is a significant potential for en masse reverse migration.

16. TPSs who serve customers in New Jersey are already penalized on a number of fronts compared to BGS Providers with regard to how certain costs are assessed on them. For instance, the Board allows the EDCs to pass through to BGS customers, but not TPS customers, PJM-imposed "non-market based" charges, including charges related to Network Integration Transmission Service ("NITS"), Transmission Enhancement Charges ("TECs") and RMR charges. Thus, BGS service already has a significant competitive advantage over TPSs who have two choices when confronted with these circumstances; 1) attempt to predict these non-market based costs and account for them in their product offerings to customers before they are incurred, resulting in higher prices to TPS customers than would otherwise be the case and causing a competitive disadvantage to TPSs; or 2) take the chance that these costs will not be

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the case of TPSs) and bid-prices (in the case of BGS Providers). However, under the unique terms of the PJM Capacity Proposal, RESA believes a universal wires charge in this specific case is appropriate.

incurred during the term of their contracts and lose money on Fixed Price contracts if and when the TPS actually incurs these costs. In either case, the TPS is treated unfairly compared to BGS Providers with regard to the economic impact of these non-market based charges.

17. As RESA has argued in the BGS proceedings, TPS and BGS customers alike would be best served if charges related to NITS, TECs, and RMR, were handled by the EDCs as part of a nonbypassable charge. However, absent a change in the Board's policy to provide for EDC pass-through of these transmission and generation deactivation charges for TPS customers, the Board should not act to further distort the playing field between how TPS customers and BGS customers are treated in New Jersey with regard to certain PJM costs. Rather, to best promote stability in New Jersey's energy marketplace, the Board should provide that the EDCs will pass through costs related to the "Transition Years" of the Capacity Proposal to TPS customers.

18. Indeed, if the Board had adopted RESA's suggestions regarding cost recovery for these non-market based charges, some of the concerns regarding equitable treatment for incremental Capacity Proposal costs for TPSs would already have been addressed. In its current iteration, PJM's Capacity Proposal, at least for the first year of the transition, would procure an incremental 2500 MWs of capacity through RMR contracts. If RMR costs were recovered by the EDCs for TPSs as they are for BGS Providers there would already be an equitable cost recovery mechanism in place to handle the first year of the incremental capacity costs. It should be noted that several Pennsylvania utilities have already adopted such a cost recovery approach to RMR costs. The Pennsylvania Public Utility Commission has approved default service plans for PECO and First Energy that would require those EDCs to assume RMR costs on behalf of all load serving entities, including retail suppliers.

Proposed Board Resolutions to Address Financial Harm Imposed on TPSs

19. The EDCs are best suited to collect the costs imposed by the Capacity Proposal for TPSs for the same reasons the Board recognized that the EDCs should collect them for BGS Providers; namely, as compared to BGS Providers and TPSs, the EDCs have more customer contact and leverage due to their disconnect authority. Specifically, the EDCs issue bills to all TPS customers for the delivery portion of their electricity. Moreover, only the EDCs can disconnect customers for failure to remit payment.

20. Therefore, RESA urges the Board to require the EDCs to assess costs associated with the "Transition Years" of the PJM Capacity Proposal on TPS customers as a reconcilable and nonbypassable charge in the same manner as they are being assessed on BGS customers. [8]

21. RESA acknowledges that, while many TPS contracts structurally resemble the BGS product, TPSs may structure their contracts in a number of ways to include a variety of components. Therefore, any Board resolution to address the financial harm imposed on TPSs by the Capacity Proposal must only provide TPSs with cost recovery for Capacity Proposal costs that were actually incurred by the TPS in fulfilling existing contracts, and not costs otherwise recovered from customers.

22. Accordingly, RESA proposes that the Board direct TPSs to use a similar cost verification mechanism to present their increased costs from the Capacity Proposal to the mechanism for BGS Providers that the EDCs presented in their compliance filings pursuant to the BGS Order. TPSs would submit officer-certified filings detailing both price and volumes

[8] It is important to note that under normal circumstances, RESA believes that capacity charges, as a generation component, should be assumed by TPS and BGS Providers and reflected in their market-based contract prices (in the case of TPSs) and bid-prices (in the case of BGS Providers). However, under the unique terms of the PJM Capacity Proposal, RESA believes a universal wires charge in this specific case is appropriate.

for the 2015/2016 delivery year, and would also attest that these incremental costs are not otherwise being recovered from customers.

23. RESA further proposes that, if FERC approves the Capacity Proposal and the Board directs the EDCs to allow further recovery to BGS Providers in later PJM delivery years, then it similarly allow TPSs to obtain further recovery in the same manner the Board previously approved pursuant to this Petition.

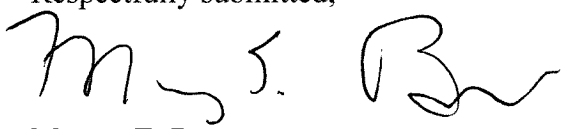
24. If the Board does not order the EDCs to include these costs as a nonbypassable, reconcilable charge, then RESA believes the Board should explicitly provide that the Capacity Proposal constitutes a "change required by the operation of law" under the Energy Competition Rules at N.J.A.C. § 14:4-7.6(1). Recognizing the Capacity Proposal as a "change in law" would allow TPSs to recover costs associated with the Capacity Proposal pursuant to the material change provision in their contracts.

25. In RESA's view, this course of action is inferior to imposing the increased cost as an EDC-collected nonbypassable charge, because it would lead to customer dissatisfaction and cast the retail market in a negative light as opposed to BGS. To pass through such costs, TPSs would need to provide notices to customers calling attention to the fact that the customer will be subject to additional charges. In addition, TPSs who utilize the EDCs' billing system would need to provide a separate bill in order to collect the charges. BGS customers, on the other hand, will merely see the additional charges reflected in their bills and many customers may never realize that BGS costs are also increasing. As described in more detail above, a TPS does not have the same collection leverage as the EDC, thereby making it more difficult for the TPS to recover these costs. Nevertheless, in RESA's view, explicitly recognizing the Capacity Proposal as a "change in law" under the Material Change Rule is preferable to no Board action

at all.

Therefore, RESA respectfully requests an Order from the Board directing the State's EDCs to assess increased costs associated with the "Transition Years" of the PJM Capacity Proposal on TPS customers as reconcilable and nonbypassable charges. RESA further requests that the Board approve a similar cost recovery mechanism for TPSs to recover their incremental costs as it previously provided to BGS Providers. Finally, RESA requests that the Board provide that if BGS Providers are allowed cost recovery for any additional PJM Delivery Years pursuant to the Capacity Proposal, then TPSs will also be allowed cost recovery in the same manner as the Board permits for the 2015/2016 Delivery Year.

Respectfully submitted,



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Date: January 20, 2015

cc: Attached service list

VERIFICATION

STATE OF Pennsylvania :

CITY OF West Grove Borough

I, Stephen Bennett, hereby state that I am the New Jersey Chairman of the RETAIL ENERGY SUPPLY ASSOCIATION, the Petitioner in the foregoing Petition; that I am authorized to make this Verification on behalf of the RETAIL ENERGY SUPPLY ASSOCIATION, that the foregoing Petition was prepared under my direction and supervision; and that the statements in the foregoing Petition are true and correct to the best of my knowledge, information, and belief.

Stephen Bennett
New Jersey Chairman
RETAIL ENERGY SUPPLY ASSOCIATION

SWORN TO AND SUBSCRIBED before me on the 16th day of January , 2015.

Patricia Ann Conway
Notary Public

My commission expires: July 25, 2015

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Patricia Ann Conway, Notary Public
West Grove Boro, Chester County
My Commission Expires July 25, 2015
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

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CERTIFICATION

Pursuant to R. 1:4-4(c), I, an attorney-at-law duly admitted to practice in the State of New Jersey, certify that Stephen Bennett has acknowledged that the signature on the electronic transmission is his signature. I further certify that the document bearing Mr. Bennett's original signature will be filed if requested by the Board or any party to this proceeding.

Elizabeth M. McKeever

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Dated: January 20, 2015