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Thank you, Mr. Chairman and Committee Members, for the opportunity to be here today to comment on the proposed legislation, Assembly Bill No. 3442, addressing the construction of new generating capacity in New Jersey. My name is Joseph Bowring. I am the Independent Market Monitor for the PJM markets, where my responsibility is to monitor, report on and recommend changes to the PJM markets in order to ensure competitive outcomes. I am independent of PJM and I do not speak for PJM.

New Jersey clearly has the right and the obligation to address its own reliability needs, if it does not think they are being adequately addressed through the PJM markets. However, there is no evidence that such is the case. It is also true that the capacity market rules in PJM are not perfect.

If New Jersey does not believe that PJM capacity markets are the most cost effective way to maintain reliability, the most direct option would be to opt out of RPM markets entirely via the FRR (fixed resource requirement) option. Under the FRR option, the choices that New Jersey makes would have a minimal impact on other participants in the RPM markets and would permit New Jersey to make its own decisions about how to reach required reliability levels. There is no guarantee that the FRR outcome would be lower cost than participating in the RPM markets.

If New Jersey does not believe that the PJM capacity markets are providing for reliability in New Jersey, another option would be to do some form of capacity procurement as set forth in the proposed legislation. Such a procurement could be designed to require the construction of a particular unit in a particular location. Such a procurement could also be designed to permit the BPU to run a competitive auction for New Jersey, designed to procure capacity of specific types and in specific locations most consistent with the efficient operation of wholesale power markets and the evolving needs of New Jersey.

If New Jersey remains part of the PJM capacity market, the winning offers in any procurement would then have to offer in to the RPM auction at the procurement clearing price without additional subsidies, to be consistent with the market rules. If the capacity is needed in order to maintain reliability, such offers would clear in the capacity market and would likely set the capacity market clearing price. Such an outcome would be entirely consistent with the PJM market design.

However, procuring capacity when it is not needed for reliability, requiring it to clear in the auction through an offer price below its costs and providing subsidies in the form of additional out of market revenue is not consistent with the PJM market design. The draft

legislation appears to do exactly that. In addition, such an outcome would not be consistent with a competitive outcome.

The result of such a subsidy by New Jersey ratepayers would be to artificially depress the RPM auction prices below the competitive level with the result that the revenues to generators both inside and outside of New Jersey would be affected as would the incentives to customers to manage load and to invest in cost effective demand management technologies.

Our analysis indicates that adding 1,000 MW of capacity in New Jersey, paying it through an out of market subsidy, and requiring it to offer at zero would result in a reduction in capacity market revenues to PJM suppliers of more than one billion dollars per year, including about 600 million dollars in EMAAC and about 400 million dollars in MAAC. The reduction in capacity payments to suppliers in New Jersey would be about 280 million dollars. I will provide the supporting study in writing.

This substantial reduction in revenue would affect the investment decisions of current owners of capacity and potential investors in capacity both in New Jersey and in areas outside of New Jersey. The likely result is less investment in capacity. Depressing the price in New Jersey would also mean that the required direct subsidy by New Jersey ratepayers would increase with perhaps significant unintended consequences for the business and residential customers who would have to pay the subsidy.

The primary purpose of the Minimum Offer Price Rule in the PJM capacity market tariff is to prevent market participants from submitting uneconomic offers based on the receipt of out of market payments which result in artificially depressing RPM auction prices. While it is unclear if the MOPR would apply to the offers that result from the proposed legislation, those offers are not consistent with the intent of the MOPR under current capacity market conditions. As a result, I expect that the results of the upcoming RPM Base Residual Auction would be challenged by stakeholders whether the MOPR is applied to offers under the proposed legislation or not. This could result in a lengthy delay in finalizing the auction results.

As indicated in the MMU and PJM joint letter to President Solomon of the NJBPU, I expect that the MMU and PJM will request that FERC clarify the applicability of the MOPR to this situation prior to the conduct of the next RPM Base Residual Auction so that market participants may have certainty and confidence in the auction results. We will assert that the MOPR should apply in this situation. If the MOPR were found to apply in this case, the generation resources would be required to offer at a competitive price for new entry, which would create risk that resources would not clear in the auction. I will also support the

modification of the New Entry Pricing Adjustment (NEPA) rules in the capacity market, to enhance the incentives for the construction of new generation.

If the proposed legislation were to pass, the outcome in the short term will be regulatory uncertainty and unintended consequences for New Jersey, for all owners of and investors in capacity in PJM and for all potential investors in capacity in New Jersey, as jurisdictional issues are addressed and the meaning of the market rules is resolved.

Thank you.