

LCAPP Agent's Report

Long-Term Capacity Agreement Pilot Program

prepared for the

New Jersey Board of Public Utilities

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LIMITATION OF LIABILITY

This report has been prepared for the New Jersey Board of Public Utilities for the sole purpose of documenting the efforts of Levitan & Associates, Inc., the Long-Term Capacity Agreement Pilot Program (LCAPP) Agent, to solicit, evaluate, and recommend new base load and mid-merit generation in conformance with the LCAPP Law. The findings and conclusions contained herein depend on the assumptions identified in this report. While Levitan & Associates, Inc. believes these assumptions to be reasonable, there is no assurance that any specific assumption will actually occur and we make no assurances except those explicitly set forth herein. Levitan & Associates, Inc. does not make any warranty, expressed or implied, with respect to the use of information or methods disclosed in this report, and does not assume any liability with respect to the use of information or methods disclosed in this report.

GLOSSARY

AECO	Atlantic City Electric Company zone	DPL	Delmarva Power and Light Company zone
AEP	American Electric Power Company zone	DR	Demand Response
APS	Allegheny Power System zone	DUQ	Duquesne Light Company zone
ATSI	American Transmission Systems Inc.	EAS	Energy & Ancillary Services
BACT	Best Available Control Technology	EDC	Electric Distribution Company
Bill	Senate Bill No. 2381	EE	Energy Efficiency
Board	New Jersey Board of Public Utilities	EMAAC	Eastern Mid-Atlantic Area Council
BRA	Base Residual Auction	EMP	Energy Master Plan
CATR	Clean Air Transport Rule	EPA	Environmental Protection Agency
CC	Combined Cycle	EPC	Engineering, Procurement and Construction
CETL	Capacity Emergency Transfer Limit	EPT	Eastern Prevailing Time
CETO	Capacity Emergency Transfer Objective	FERC	Federal Energy Regulatory Commission
CO₂	Carbon Dioxide	FT	Firm Transportation
COD	Commercial Operation Date	FTE	Full Time Equivalent
COMED	Commonwealth Edison Company zone	FTWR	Firm Transmission Withdrawal Right
CONE	Cost of New Entry	GT	Gas Turbine
Con Ed	Consolidated Edison Company	GW	Gigawatt
CT	Combustion Turbine	HTP	Hudson Transmission Project
DAM	Day Ahead Market	IMM	Independent Market Monitor
DAY	Dayton Power & Light Company zone	ISDA	International Swaps and Derivatives Association
DOM	Dominion Virginia Power zone	JCPL	Jersey Central Power and Light Company
		kW	Kilowatt

LAER	Lowest Achievable Emission Rate	PILOT	Payment In Lieu Of Taxes
LAI	Levitan & Associates, Inc.	PJM	PJM Interconnection, Inc.
LC	Letter of Credit	PM	Particulate Matter
LCAPP	Long-Term Capacity Agreement Pilot Program	PPL	PPL Electric Utilities Corporation zone
LCAPP Law	P.L. 2011, c. 9	PSEG	Public Service Electric and Gas Company
LDA	Locational Deliverability Area	PV	Present Value
LMP	Locational Marginal Price	RCP	Resource Clearing Price
MAAC	Mid-Atlantic Area Council	RECO	Rockland Electric Company
MACT	Maximum Achievable Control Technology	RFC	Reliability First Corporation
MAPP	Mid-Atlantic Power Pathway	RPM	Reliability Pricing Model
MD PSC	Maryland Public Service Commission	RPS	Renewable Portfolio Standard
METED	Metropolitan Edison Company zone	RTEP	Regional Transmission Expansion Plan
MOPR	Minimum Offer Price Rule	RTM	Real Time Market
MW	Megawatt	RTO	Regional Transmission Organization
NERC	North American Electric Reliability Corporation	SCR	Selective Catalytic Reduction
NJDEP	New Jersey Department of Environmental Protection	SERC	SERC Reliability Corporation
NLC	Net Load Cost	SIS	System Impact Study
NO_x	Nitrogen Oxides	SO₂	Sulfur Dioxide
NYISO	New York Independent System Operator	SOCA	Standard Offer Capacity Agreement
NYPA	New York Power Authority	SOCP	Standard Offer Capacity Price
PATH	Potomac Appalachian Transmission Highline	TNLC	Total Net Load Cost
PECO	PECO Energy Company zone	TNW	Tangible Net Worth
Penelec	Pennsylvania Electric Company zone	TrAIL	Trans-Allegheny Interstate Line
		UCAP	Unforced Capacity

UNLC	Unit Net Load Cost
VACAR	Virginia and the Carolinas
VRR	Variable Resource Requirement
WACC	Weighted Average Cost of Capital

1 EXECUTIVE SUMMARY

1.1 LCAPP PROCESS

On January 28, 2011, Governor Christopher Christie signed into law P.L. 2011, c. 9, amending and supplementing P.L. 1999, c. 23 (LCAPP Law), establishing a Long-Term Capacity Agreement Pilot Program (LCAPP) to promote the construction of base load and mid-merit electric generation facilities for the benefit of New Jersey's electric consumers. On February 10, 2011, the New Jersey Board of Public Utilities (Board) issued an Order initiating a proceeding to implement the actions required by the LCAPP Law and selecting Levitan & Associates, Inc. (LAI) as the LCAPP Agent. In the role of LCAPP Agent, LAI has had the responsibility for assisting the Board with establishment of the LCAPP, prequalifying eligible generators, and submitting recommendations for the Board's consideration.

The primary activities undertaken by LAI acting as the Board's Agent have been fourfold:

- First, to coordinate with the Board in order to implement the goals of the LCAPP in an impartial, objective and transparent manner in strict accord with standards of professional excellence.
- Second, to develop the form of Standard Offer Capacity Agreement (SOCA) that achieves a fair and reasonable balance between the interests of generators and those of New Jersey's electric distribution companies (EDCs) and ratepayers.
- Third, to evaluate generators participating in the LCAPP through the eligibility, prequalification, and commercial proposal stages.
- Fourth, to formulate recommendations for Board consideration that select winning bids among the field of eligible and prequalified bidders based on the evaluation criteria set forth in the LCAPP Law.

Regarding the first objective, LCAPP implementation in an impartial, objective, and transparent manner, LAI has taken action to maximize bidder interest and participation. LAI has ensured that all bidders have access to the same information. LAI has considered proposals reflecting different technology types and locations, including resources outside New Jersey. LAI has applied the same qualitative and quantitative criteria in a consistent and objective manner. All communication with rival generators and EDCs has been administered through the LCAPP website.

Regarding the second objective, developing the SOCA, LAI has ensured that rival stakeholders have had reasonable opportunity to express their concerns about various commercial, regulatory, operational, and risk-related provisions affecting the allocation of risk and reward between seller and buyer. While milestone constraints set forth in the LCAPP Law necessitated expedited preparation of the contract, the SOCA development process was based on multiple rounds of SOCA drafts and stakeholder comments. In the Agent's view, the final SOCA achieved a fair and reasonable balance between the interests of the EDCs on behalf of New Jersey's ratepayers and generators. All SOCA development activities, including review of stakeholder comments

and preparation of Agent SOCA versions, including the final proposed form of SOCA, were undertaken by LAI in conjunction with Board Staff and Counsel.¹

Regarding the third objective, the evaluation of generators’ proposals through the eligibility, prequalification and commercial proposal stages, LAI has formulated a multi-stage evaluation process consistent with the LCAPP Law that is centered on the maximization of economic, environmental and community benefits from the standpoint of ratepayers in New Jersey. Applicants were first reviewed in light of the requirements in the LCAPP Law to be an eligible generator. Eligible generators were then further reviewed to determine whether they should be prequalified on the basis of showing environmental, economic and community benefits, and the demonstration of meeting the proposed in-service date with reasonable certainty. The evaluation of commercial proposals was completed in parallel with the prequalification review.

Regarding the fourth objective, the selection of winning bids, LAI has performed rigorous qualitative and quantitative analysis in order to identify those projects best positioned to confer economic, environmental, and community benefits in New Jersey. Consistent with the procurement guidelines, in particular, fairness and objectivity, LAI has evaluated the conforming Standard Offer Capacity Price (SOCP) bids from eligible generators. LAI identified three generation facilities to be recommended for SOCA awards. The total unforced capacity (UCAP) associated with the recommended SOCA awards is 1,948.5 MW, as shown in Table 1.

Table 1. Portfolio of Recommended SOCAs

	Newark Energy Center	Old Bridge Clean Energy Center	Woodbridge Energy Center
Sponsor	Hess Newark, LLC	New Jersey Power Development LLC	CPV Shore, LLC
Unforced Capacity	625.0 MW	660.1 MW	663.4 MW
Location	Newark, NJ	Old Bridge, NJ	Woodbridge, NJ
Technology Type	Combined Cycle	Combined Cycle	Combined Cycle
Fuel Type	Natural Gas	Natural Gas	Natural Gas
First SOCA Year	2016-2017	2015-2016	2015-2016
Selected Pricing Option ²	Option B	\$11 Initial Year then Tapered	Option #2, Gas-only
Term	15 years	15 years	15 years

1.2 ECONOMIC BENEFITS

LAI determined that the recommended SOCA portfolio of the Newark Energy Center, Old Bridge Clean Energy Center, and Woodbridge Energy Center offers substantial net economic

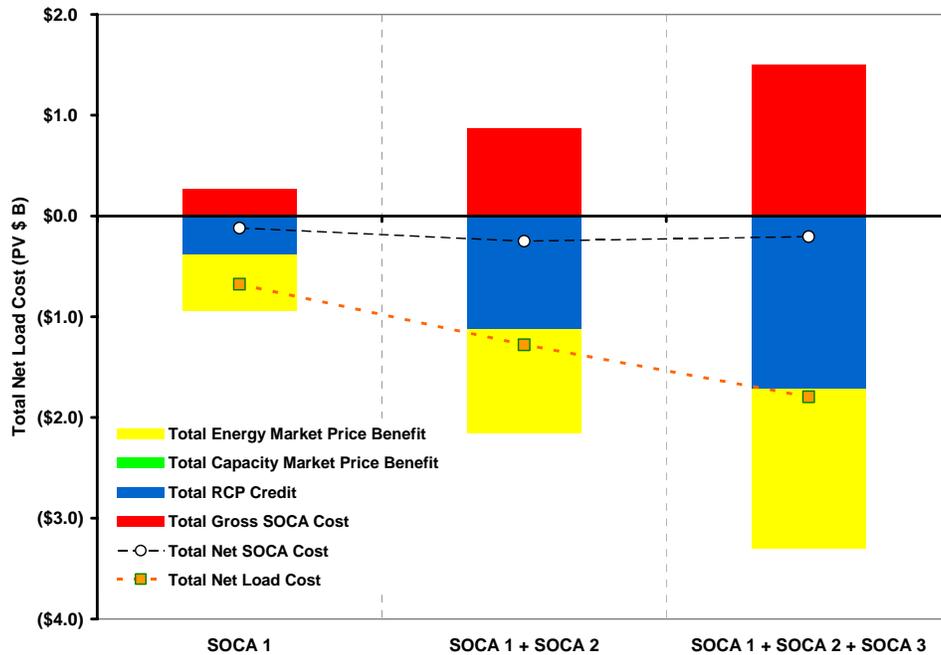
¹ “Counsel” as used throughout this report refers to Board Staff counsel and the assigned New Jersey Deputy Attorney General.

² Represents pricing option names as provided by bidders.

benefits on an expected value basis over the relevant planning horizon to New Jersey’s electric customers. These net economic benefits are ascribable to the expected value of the recommended SOCA portfolio in relation to the forecasted capacity market clearing price under PJM’s Base Residual Auction (BRA), as well as the reduction in wholesale energy prices in New Jersey, all other things being the same. Other economic benefits are also likely to be realized by benefited load and host communities in New Jersey, but have not been counted. The net economic benefits associated with the recommended SOCA portfolio are illustrated in Figure 1 on a present value (PV) basis. Figure 1 also indicates how the portfolio has been constructed, starting on the left with the lowest unit net cost SOCA, *i.e.*, the SOCA capacity cost net of market capacity prices, expressed in dollars per kilowatt (\$/kW), then adding the SOCA with the second lowest unit net cost, and, finally, adding the SOCA with the third lowest unit net cost. Formulation of the recommended portfolio on the right-hand side is bound by the target procurement of 2,000 MW, but is also constrained by the identification of additional SOCA that confer incremental economic benefits, *i.e.*, reduction in total net load cost.

In reviewing the results reported in Figure 1, the red segment above the x-axis represents the PV of the SOCA payments over the recommended 15-year SOCA term for the first SOCA, then the first and second SOCA, and, finally, on the right-hand side, the recommended portfolio. The blue segment below the x-axis represents the PV of the expected credits to ratepayers in New Jersey ascribable to the financial settlement of the SOCA capacity through PJM’s BRA over the 15-year SOCA term for each project. Finally, the yellow segment represents the PV of the energy price benefit over the 15-year SOCA term.³

Figure 1. Net Economic Benefits of Recommended SOCA Portfolio



³ For a variety of reasons, LAI has not counted any capacity market price benefits over the planning horizon. Therefore, there is no green segment acknowledged in this analysis.

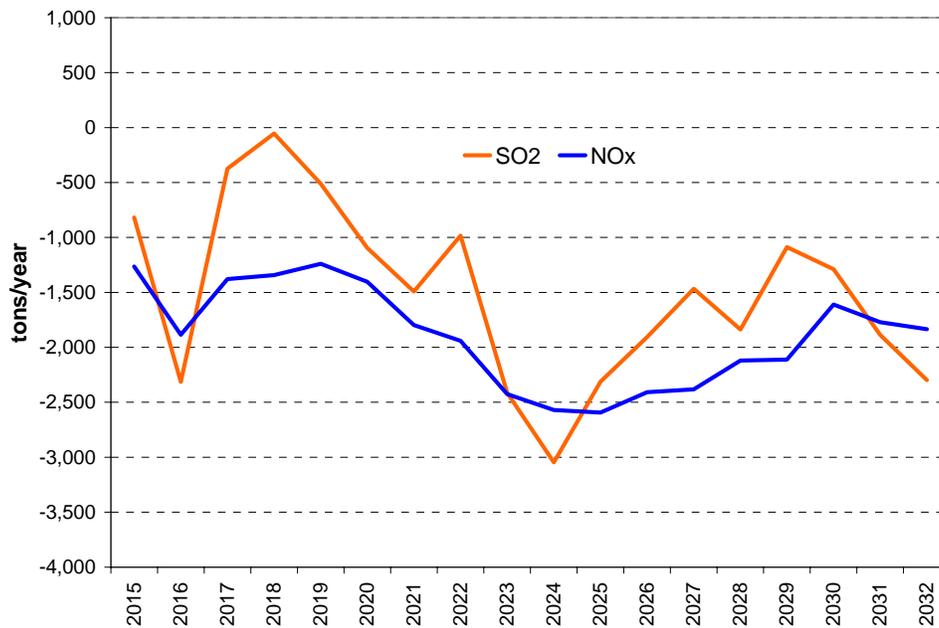
From the standpoint of ratepayers in New Jersey, the recommended SOCA portfolio is deep-in-the-black: on an expected value basis the PV of the net economic benefit over 15-years is \$1.8 billion.⁴

1.3 ENVIRONMENTAL BENEFITS

LAI has determined that the recommended SOCA portfolio offers significant environmental benefits to New Jersey’s electric customers. These environmental benefits are ascribable to the displacement of incumbent generation with a portfolio of cleaner, more efficient gas-fired generation. The average net annual reductions of these pollutants and greenhouse gases are significant. Overall, the annual reductions are equivalent, on an order-of-magnitude basis, to the annual emissions of roughly 250-MW of coal-fired generation at a 100% capacity factor.

As shown in Figure 2, this displacement will result in lower emissions of NO_x and SO₂ across the PJM region. Regional reductions in NO_x and SO₂ will contribute to cleaner air for New Jersey, since these pollutants are precursors in the formation of ozone and haze, which are transported from upwind states in PJM to New Jersey.

Figure 2. PJM Change in Annual Emissions of NO_x and SO₂ Associated with Recommended SOCA Portfolio⁵

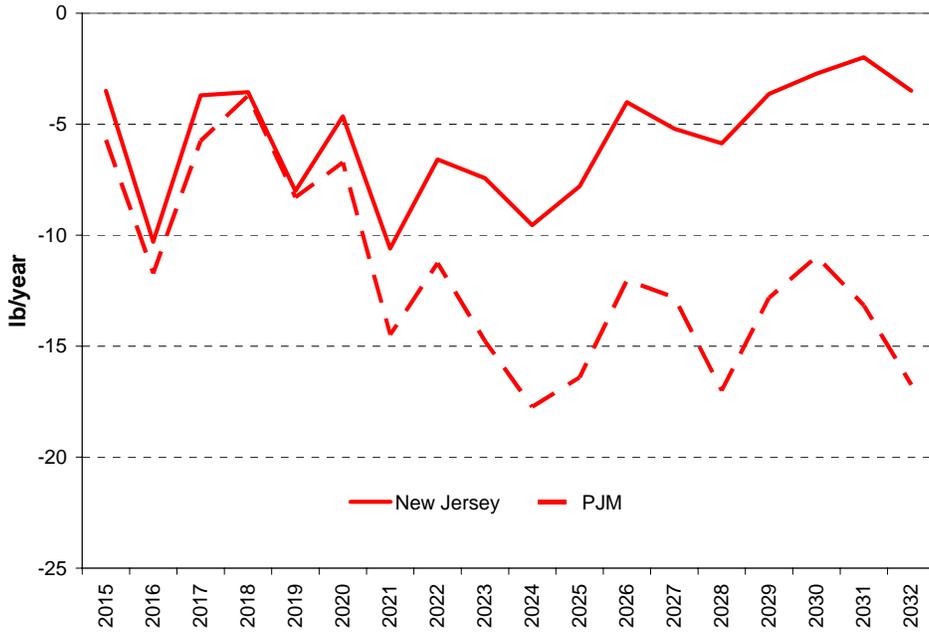


As shown in Figure 3, net emission of mercury will be reduced regionally as well as locally in New Jersey.

⁴ Other value enhancements ascribable to (1) environmental benefits, (2) the economic value associated with the construction and operation of the new generation facilities, and (3) host community benefits have not been included in the derivation of the \$1.8 billion benefit to load.

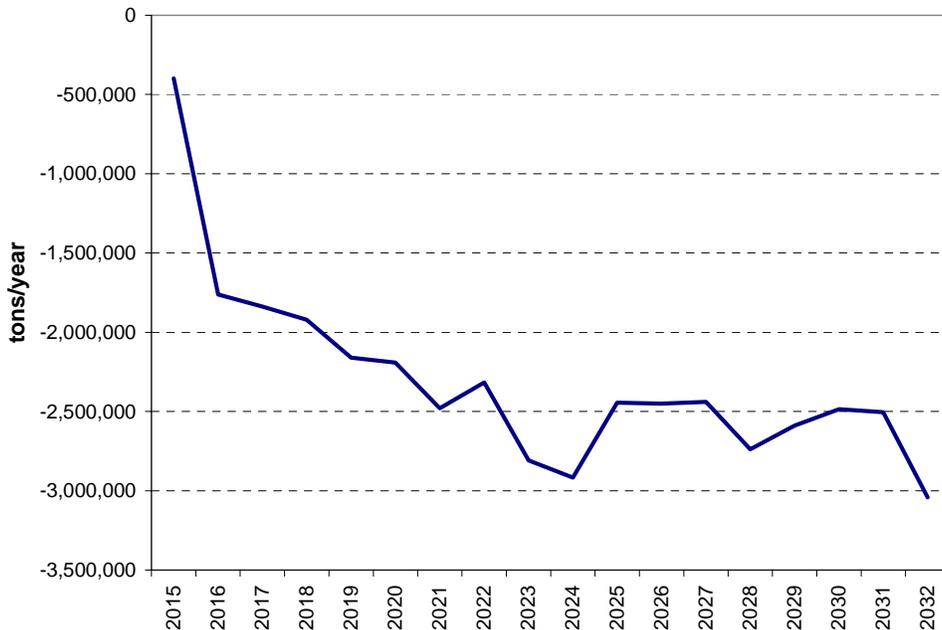
⁵ Figure 2, Figure 3, and Figure 4 are shown on a calendar year basis.

Figure 3. New Jersey and PJM Change in Annual Emissions of Mercury Associated with Recommended SOCA Portfolio



CO₂, the principal greenhouse gas, is a global environmental concern, and therefore must be viewed from the system-wide perspective across the entire modeled area, as shown in Figure 4. The recommended SOCA portfolio displaces more carbon-intensive oil or coal-fired generation and/or less efficient gas-fired generation across the modeled system, thereby giving rise to a net reduction in CO₂ emissions in each year of the forecast.

Figure 4. System-wide Change in Annual Emissions of CO₂ Associated with Recommended SOCA Portfolio



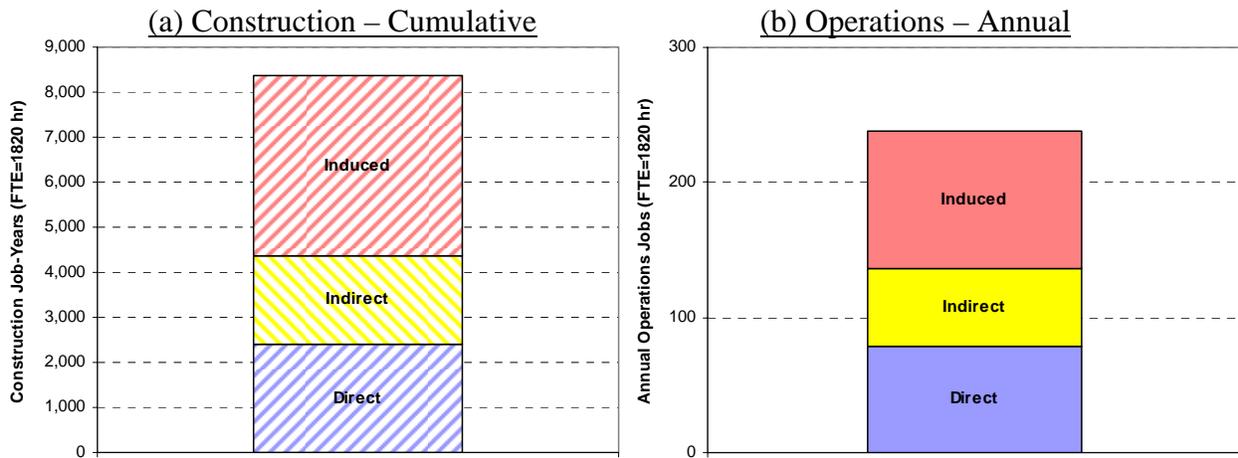
All of the recommended projects propose to use state-of-the-art evaporative cooling tower systems, minimizing the use and discharge of cooling water. In addition, two of the three projects, the Newark Energy Center and the Woodbridge Energy Center, will be located on brownfield sites. The beneficial reuse of formerly impaired properties represents a significant environmental benefit that may ultimately confer additional economic benefits as well.

1.4 COMMUNITY BENEFITS

LAI has determined that the recommended SOCA portfolio offers substantial socio-economic benefits to the State of New Jersey on an expected value basis. These benefits are primarily due to the expansion of direct employment for the duration of the associated construction phases of the projects and the new on-site permanent jobs associated with operation and maintenance of the new generation facilities during their operating lives. In addition, New Jersey employment and personal income and business revenues are expected to increase due to the indirect (supply chain) and induced (re-spending) impacts of increasing the demand for goods and services procured from New Jersey firms during the construction and operations phases. This dynamic is often referred to as an economic activity multiplier effect and belongs in the summarization of benefits despite the uncertainty associated with predicting construction and operational phase jobs, and income-related benefits. Estimates of (a) the temporary construction-related employment gains and (b) operations-related permanent jobs are shown in Figure 5. For all three facilities, based upon the data provided by the three recommended eligible generators, approximately 2,400 construction jobs over a three-year period would be created, and up to nearly 5,900 indirect plus induced job-years, also spanning about three years. During operation, the three facilities would directly provide nearly 80 full-time equivalent (FTE) workers, plus up to another 160 FTE New Jersey jobs via multiplier effects.⁶ However, in the current high unemployment setting, the multiplier effects during the construction period could be substantially less than indicated in Figure 5 if a large share of the jobs go to unemployed or underemployed workers, who may pay down debt and not make major purchases, such as buying homes. Later, by the time the facilities are in operation, lower forecast unemployment should allow most of the modeled multiplier effects to be realized. Though not quantified, an additional economic benefit to New Jersey's electric customers during the operational phase is the expected reduction in wholesale power costs which should be passed on to electric customers, thereby giving rise to increased spending on other goods and services.

⁶ These calculations are based on the definition that one FTE "job-year" is equivalent to 1,820 labor hours.

Figure 5. Potential Employment Effects of Recommended Portfolio⁷



The economic, environmental, and socio-economic results presented in the Agent’s Report represent LAI’s expected outcome over the 15-year SOCA term evaluated during the course of the LCAPP procurement process. Complex and dynamic market, regulatory, legislative and operating forces may result in significantly different economic, environmental and socio-economic outcomes. While the recommended SOCA portfolio is likely to confer large and robust net economic benefits to load, *i.e.*, ratepayers, in New Jersey, actual results may be significantly different.

⁷ Note that the y-axis scales for the two charts in Figure 5 are different.

2 PROCEDURAL BACKGROUND

2.1 LEGISLATIVE BACKGROUND

Senate Bill No. 2381 (Bill), the legislation creating the LCAPP, “establishes a long-term capacity agreement pilot program to promote construction of qualified electric generation facilities.” The Bill was originally introduced in the New Jersey Legislature on October 18, 2010, sponsored by Senator Bob Smith (District 17 – Middlesex and Somerset) and Senator Christopher “Kip” Bateman (District 16 – Morris and Somerset). As originally proposed, the Bill defined an eligible generator as “a developer of a new, natural gas fired, combined-cycle electric power generating facility with a net summer output rating of 100 megawatts or larger, that is physically located within the State of New Jersey, and that commences construction after the effective date of P.L. ___, c. ___ (C. ___) (pending before the legislature as this Bill).” The originally proposed minimum SOCA term was 15 years, the target volume to be procured was 500 to 1,500 MW, and generators were limited to a maximum SOCA volume of 900 MW.

On November 15, 2010, the Senate Environment and Energy Committee reported the Bill favorably with committee amendments. In addition to changes to the findings and declarations section and to certain of the added definitions, and technical corrections, these amendments made the following significant revisions:

- Reduced the maximum amount of capacity to be procured from 1,500 MW to 1,000 MW; and
- Deleted the limitation that no single generator could enter into more than 900 MW of SOCA's.

On December 13, 2010, the Assembly Telecommunications and Utilities Committee reported the Bill favorably with further committee amendments. In addition to changes to the findings and declarations section and to certain of the added definitions, and technical corrections, these amendments made the following significant revisions:

- Deleted the requirement for eligible generators to be new, natural gas fired, and combined cycle (CC);
- Added language requiring eligible generators to be base load generating facilities;
- Deleted the requirement for eligible generators to have net summer output ratings greater than 100 MW;
- Deleted the requirement for eligible generators to be physically located in the State of New Jersey;
- Reduced the maximum amount of capacity to be procured from 1,500 MW to 1,000 MW;
- Required that no single generator enter into more than 700 MW of SOCA's;

- Required the Board to retain an Agent to assist with development and implementation of the LCAPP; and
- Added language allowing the Board to suspend the LCAPP in the event of administrative or judicial challenges.

On January 6, 2011, an Assembly Floor Amendment proposed by Assemblyman Upendra J. Chivukula (District 17 – Middlesex and Somerset) was adopted. This amendment increased the amount of capacity to be procured from 1,000 MW to 2,000 MW.

On January 10, 2011, additional Assembly Floor Amendments proposed by Assemblyman Chivukula were adopted. In addition to technical corrections and changes to definitions, the amendments made the following significant revisions to the Bill:

- Deleted language excluding combustion turbine generation facilities directly interconnected with EDC transmission or distribution systems from the eligible generator definition;
- Added language including mid-merit resources in the eligible generator definition;
- Revised the SOCA definition to replace specific terms of years with a term to be determined by the Board not to exceed 15 years;
- Replaced specific procedural dates with timeframes;
- Eliminated the weighted preference for eligible generators located in areas in need of redevelopment or brownfield areas; and
- Provided a weighted preference for eligible generators that can enter commercial operation for delivery year 2015.

Following these final amendments, the Bill was passed by both the Assembly and the Senate on January 10, 2011, and was signed by Governor Christie on January 28, 2011.

2.2 BOARD SELECTION OF LAI AS AGENT

LAI submitted a proposal to serve as LCAPP Agent to the EDCs on February 4, 2011. The EDCs reviewed all proposals, and submitted a recommendation to the Board on February 7, 2011, to select LAI as the LCAPP Agent. Following this recommendation, a Notice for Solicitation of Comments was posted to the Board's website, with comments due by 12:00 noon EST on February 9, 2011. As stated in the February 10, 2011 Order (at p. 4), no comments were received. In the Order, the Board authorized the EDCs to retain LAI as LCAPP Agent and to reimburse the Agent for its work in connection with the LCAPP proceeding.

Following the EDCs' recommendation to the Board to select LAI as LCAPP Agent, no further direct communication took place between the Agent and representatives of the EDCs. All

communication thereafter was indirect, through the LCAPP website established by the Agent and email updates sent to all website subscribers.

The Agent is not “acting on behalf of the EDCs” in the LCAPP proceeding. Consistent with the LCAPP Law, LAI has been retained by the EDCs to work solely for the Board. According to the LCAPP Law, the Agent assists the Board in its LCAPP review process. The EDCs have no control over, influence, or communication with the Agent in this proceeding. LAI’s retention by the EDCs is an administrative arrangement whereby the EDCs can provide timely payments to LAI for work performed on behalf of the Board.⁸

2.3 BOARD ORDER

The Order instituting the LCAPP proceeding was issued on February 10, 2011.⁹ The Order provides background on the LCAPP Law and summarizes the responsibilities of the Agent and the Board in the LCAPP matter. The Order adopted the milestone schedule for the proceeding, shown in Table 2.

Table 2. Board Ordered LCAPP Milestone Schedule

Proposed SOCA Submission	2/14/2011
Application Data Sheets Issued by Agent	2/15/2011
Application Data Sheets Due	2/22/2011
Initial Comments to Proposed Form of SOCA	2/22/2011
Reply Comments to Proposed Form of SOCA	2/25/2011
Final Form of SOCA Issued	3/1/2011
Final SOCP Bids Due	3/7/2011
Initial Recommended SOCA Proposals	3/15/2011
Issue Agent’s Report Supporting Selection	3/21/2011
Public Comments on Agent’s Report	3/24/2011
Reissue Agent’s Report Supporting Selection	3/28/2011
Board Order on Recommended SOCA ¹⁰	3/29/2011

The Order further describes the types of information to be requested / submitted through the prequalification process, and states a requirement for participants to furnish additional information requested by the Agent within three business days. With regard to the SOCA preparation process, the Order lays out the commenting schedule and instructions for submitting binding SOCP bids based on the final form of SOCA. Aside from the SOCA written comment process, the public has had the opportunity to comment on the LCAPP at a series of Public

⁸ Source: <http://www.nj-lcapp.com/qa.html#q58>

⁹ The Board Order is available on the Board website at <http://www.state.nj.us/bpu/pdf/announcements/201102102elsa.pdf> and on the LCAPP website at http://www.nj-lcapp.com/Documents/Board_Order.pdf.

¹⁰ This date was moved from the original date of March 30, 2011.

Hearings held in the EDCs' respective service territories, and also via written comments to the Board.

2.4 SOCA AWARD AND BOARD APPROVAL

Following issuance of this report, including comments and revision, if necessary, the Board will issue an order on the Agent's recommendations and the form of SOCA on March 29, 2011. The LCAPP Law calls for the SOCA(s) resulting from the proceeding to be awarded and executed no later than 30 days after the approval of the form of the SOCA. The SOCA execution deadline is April 28, 2011.

3 COMMUNICATIONS

All communication with prospective bidders and other parties was handled electronically through the secure LCAPP website and email. All email communications were handled through a single address (agent@nj-lcapp.com) in order to maintain a complete record of communications with stakeholders.

3.1 WEBSITE

The LCAPP website was launched on February 10, 2011, at <http://www.nj-lcapp.com>. General categories of information available through the website are described in the following sections. All information on the website was publicly available, with all submission of generator-specific information, including Prequalification Applications and commercial proposals, handled through a secure upload protocol in order to maintain data security.

Bidder Information

The Bidder Information section of the website served as the central location of information relating to participation in the LCAPP, with four categories of materials: background documents, SOCA, prequalification, and bidding. The Background Documents section included links to the LCAPP Law and the Order.

In the SOCA section of the website, participants could submit their proposed SOCA forms, which were due by February 14, 2011. All submissions were posted to the website. Following the February 22, 2011 and February 25, 2011 comment submission deadlines, participant comments were also posted to the Bidder Information page for public review. Additional opportunities for comment were provided to participants, so this section of the website was expanded to include postings of Supplemental Reply Comments (due on March 1, 2011) and Technical Comments (unsolicited). The draft and final SOCAs, prepared by the Agent and Board Staff and Counsel were also posted on the website: the initial draft on February 23, 2011, the revised draft on February 28, 2011, and the final version on March 1, 2011.

Three separate Prequalification Application documents were posted to the website on February 14, 2011: the Application Data Sheets, Attachment 1 to Part A of the Application Data Sheets, and Attachments 2 through 6 to Part A of the Application Data Sheets.¹¹ Instructions for submitting these forms were also posted to the website, along with an upload point for submitting the completed forms to the LCAPP Agent.

The SOCP bid form, Letter of Credit (LC) form and instructions, and Officer Certification Form were posted to the website on February 23, 2011. Similarly to the prequalification materials, SOCP bids were submitted through a secure upload point on the website. LCs and Officer Certification Forms were submitted initially by email or fax, with originals subsequently delivered to the Agent.

¹¹ Attachment 1 was separated from Attachments 2-6 because generation projects with multiple sponsors were required to submit a separate Attachment 1 for each project sponsor.

Schedule

The milestone schedule shown in Table 2 is reproduced on the website, with minor additions and revisions including the change to the date of the Board Order on Recommended SOCAs (moved from March 30, 2011 to March 29, 2011) and the addition of interim SOCA postings and comment deadlines.

Questions from Participants

All participants had the opportunity to submit questions to the website via the “Submit a Question” feature. The Agent edited the questions, as necessary, to conceal the identity of the submitter prior to posting them on the website. The Agent endeavored to post responses in as timely a manner as possible. As of March 21, 2011, all submitted questions have been answered and posted to the website. Questions submitted by means other than the “Submit a Question” feature were answered by Agent as schedule permitted.

A total of 75 questions were posted to the website from the start of the LCAPP through March 21, 2011. The questions covered a broad range of topics, including clarification of the definition of an “eligible generator” in the LCAPP Law, timeline and procedural matters, confidentiality of submitted materials, and interpretation of SOCA language.¹² For procedural questions, the Agent generally prepared responses independently. More complex or interpretative questions were discussed with Board Staff and Counsel prior to posting answers. Answers to the majority of questions were posted within 24 hours of receipt, although in some cases questions requiring more in-depth consideration required more than 24 hours from receipt of the question to the posting of the response. In addition to questions submitted by participants, the Agent independently prepared additional questions and responses in order to clarify procedural aspects.

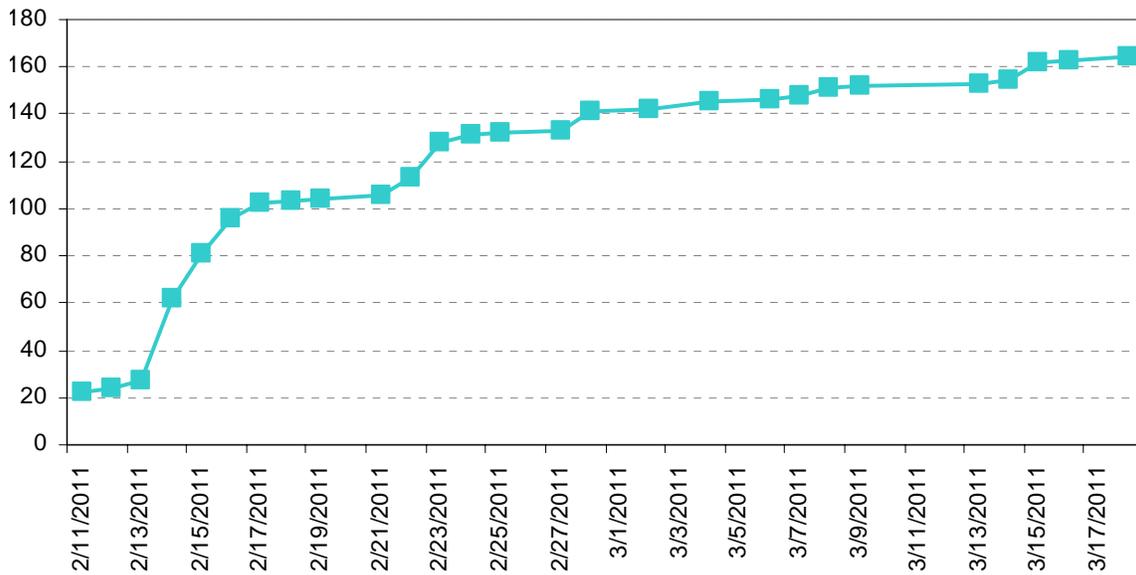
News

Each update to the website was listed on the “News” section of the website in order to alert visitors to access the latest available information. Updates included the posting of new materials for review, updated milestones, and new Q&As. The website was generally updated at least once each business day through March 18, 2011. On many days there were multiple updates as new information was made available.

Interested parties had the opportunity to complete a form on the home page of the website to subscribe to email updates of new postings. Regular updates were sent to the electronic subscription list. A refreshed list of new information was frequently posted on the website. As of March 21, 2011, 165 individual parties, representing approximately 87 entities, had subscribed to the website, cumulatively distributed as shown in Figure 6.

¹² A complete list of the answered questions can be found at: <http://www.nj-lcapp.com/qa.html>

Figure 6. Number of Total Website Subscribers by Day



Contact Information

Bidders were provided with links to the Board website, the LCAPP Agent’s email address, and the subscription and question submission features of the website.

3.2 ANNOUNCEMENTS AND PUBLICITY

The LCAPP launch was publicized in Platts’ *Megawatt Daily*. The half-page ad ran on the back page of the February 14, 2011, issue of *Megawatt Daily*, which was distributed electronically to subscribers on February 11, 2011. The ad was developed using a collaborative process between the LCAPP Agent and Board Staff, and included general information and selected milestones from the Board Order, along with a link to the LCAPP website.

In addition to the ad in *Megawatt Daily*, the Agent also publicized the launch of the LCAPP with a series of email transmissions or “blasts” to the PJM Members Committee roster. This roster is posted publicly on the PJM website, and includes contact information for approximately 1000 individuals.¹³ Email blasts were distributed on February 11, 2011, February 15, 2011, and February 18, 2011.

In addition to communications initiated by the LCAPP Agent, the Board Order was published on the Board website. The Order directed the EDCs to post the Order to their websites and distribute it to their respective Basic Generation Suppliers.

¹³ <http://pjm.com/~media/committees-groups/rosters/members-roster.ashx>

4 DEVELOPMENT OF FORM OF SOCA

The Agent solicited input from all website subscribers across multiple phases. First, interested parties were asked to submit draft forms of the SOCA by February 14, 2011. Initial comments on the draft forms of SOCA were subsequently due on February 22, 2011. The initial draft of the Agent's SOCA was issued on February 23, 2011. The Agent notified stakeholders that Reply Comments were due on February 25, 2011. A revised draft of the Agent's SOCA was posted on February 28, 2011. Stakeholders were given a final opportunity to submit Supplemental Reply Comments the next day by 12:30 pm Eastern Prevailing Time (EPT) on March 1, 2011 and the final SOCA was posted on the LCAPP website by the close of business of March 1, 2011.

4.1 STAKEHOLDER SUBMISSIONS OF PROPOSED SOCAS

Under the Order, stakeholders were requested to provide Proposed SOCAs by February 14, 2011.¹⁴ The LCAPP Law specifically refers to a "...long-term financially-settled SOCA for a term...not to exceed 15 years..." Three stakeholders submitted Proposed SOCAs, two stakeholders submitted comments with Proposed SOCAs, and one stakeholder submitted just comments, all by the February 14, 2011 deadline per the Order. One of the Proposed SOCAs submitted was specifically tailored for LCAPP, two used an International Swap and Derivatives Association (ISDA) form, and two used a financially-settled draft Contract for Differences that had been issued by the Maryland Public Service Commission (MD PSC).¹⁵ The six submittals were as follows:

- NJ EDCs Draft SOCA specifically tailored to LCAPP
- LS Power ISDA-type form with separate confirmation
- Exelon ISDA-type form with separate confirmation
- CPV Shore, LLC Comments with modified MD PSC draft contract
- Div. of Rate Counsel Comments with MD PSC draft contract as an example
- Hess Corp. Comments

The Agent reviewed, in detail, all of the information provided by these stakeholders. The Agent then reviewed the key terms and conditions with Board Staff and Counsel. Central focus was placed on three broad categories of commercial issues, as follows (in no particular order):

¹⁴ LAI posted this request for stakeholders and reiterated this request in the response to Question 1 on the LCAPP website.

¹⁵ The ISDA form is widely used for financial transactions between parties in different jurisdictions and involving different currencies. The ISDA Master Agreement specifies the overarching terms and conditions that cover all transactions, while specific transaction terms are specified in confirmations that are appended to the Master Agreement. It is not unusual for a Master Agreement between two parties to cover hundreds of confirmations. The draft Contract for Differences was issued by the MD PSC on December 29, 2010, pursuant to Case No. 9214.

- General Terms and conditions (contract form, effective date, representations and warranties, etc.);
- Risk Issues (Commercial Operation Date, or “COD,” delay, failure to bid or clear in a BRA, financial security, etc.); and
- Payment Issues (calculation methodology, price and quantity definitions, etc.).

General Terms and Conditions

Based on a review of the EDCs’ Proposed SOCA, LAI found that it had three distinct advantages compared to the other contractual forms: (i) it was tailored to the LCAPP solicitation, *i.e.* a financially-settled contract for capacity in which the generator bears the vast majority of risks and the EDC buyers do not actually purchase that capacity, (ii) it conformed to many of the specific provisions in the LCAPP Law, and (iii) it contained terms and conditions that are appropriate for regulated entities.

While an ISDA-type form is often used for financial transactions, including financially-settled transactions, in LAI’s view the ISDA-type form had certain disadvantages: (i) it is better suited to financial institutions and dealers than regulated entities that must consider utility and PJM market rules; and, (ii) it is better suited for multiple confirmations under a single Master Agreement as opposed to the single transaction envisioned under the LCAPP.

The MD PSC contract was designed as a Contract for Differences under which the Buyer makes payments to assure the Supplier of fixed capacity, energy, and ancillary services prices, but does not take title to the products.¹⁶ This is broader than the SOCA, a financially settled capacity-only product. Many Supplier provisions (referenced in footnote 16) are not required under the LCAPP, and thus are not appropriate for the SOCA. In addition, under the SOCA, LAI believes that the generators will have the necessary financial incentives to properly design, construct, and operate the facility.

Based on the forgoing review of SOCA forms, LAI found that the EDCs’ draft SOCA was preferable to an ISDA form or the MD PSC contract. After reviewing this suggestion with Board Staff and Counsel, LAI elected to adopt the EDCs’ proposed form of SOCA for purposes of drafting a contract form that would achieve a reasonable balance between buyer and seller interests in accord with the LCAPP Law. The specific changes that were suggested to the EDCs’ draft SOCA are described below, along with the rationale behind the incorporation of many changes to achieve a reasonable balance between the competing interests of the EDCs on behalf of New Jersey’s ratepayers and generators.

¹⁶ In addition, many risks are passed on to the buyer in the MD PSC contract, which consequently contains sundry provisions assuring the buyer of appropriate project design, construction, timing, operation, and performance, as well as monitoring mechanisms to safeguard buyer interest.

Risk Issues

Based on the LCAPP Law and discussions with Board Staff and Counsel, LAI's approach to resolving risk issues was based on the premise that the LCAPP was designed to place almost all risks on the generators with one notable exception, namely, the risk of market capacity prices set via annual BRAs. The LCAPP Law does not require operational or performance standards and is flexible concerning the timing of first capacity deliveries into the PJM market.

A threshold risk factor related to the possibility that generators selected with "winning" bids would not execute a SOCA. In order to dissuade winning generators from failing to enter into a SOCA, generators were required to submit Bid Security with their SOCP bids, in the form of an irrevocable standby LC or cash to be held in escrow, of \$10/kW up to a maximum of \$1 million.¹⁷

The LCAPP Law triggered responses from PJM, the PJM Independent Market Monitor (IMM), and generation companies concerned that the LCAPP Law will artificially depress Resource Clearing Prices (RCPs) set in the BRAs conducted each May by PJM. As discussed in the Minimum Offer Price Rule (MOPR) section of this Report, PJM and the PJM IMM jointly sent a letter to New Jersey Board President Solomon on December 3, 2010, expressing concern over LCAPP and suggesting that artificially low bids would be mitigated through the MOPR or a similar mechanism. A PJM generator group, referred to as P3, filed a complaint with the Federal Energy Regulatory Commission (FERC) on February 1, 2011 in which specific remedies to revise MOPR were proposed. On February 11, 2011, PJM submitted to FERC a Section 205 filing under the Federal Power Act. In this filing, PJM recommended a number of proposed MOPR revisions that would mitigate what was represented as artificially low capacity bid prices.¹⁸

In light of this additional risk, LAI re-examined the Proposed SOCA terms and conditions and recommended that LCAPP generators that fail to clear in a BRA not be unreasonably penalized. Through no fault of the generator, for example, PJM mitigation could reasonably cause the generator to delay construction until its bid clears the BRA. On the other hand, such a delay would deprive New Jersey ratepayers of economic, environmental, and community benefits. Working in consultation with Board Staff and Counsel, LAI determined that an unlimited delay would not be fair. Therefore, LAI suggested in the Proposed Form of SOCA that: (i) generators would have two years from the Awarded Commencement Date to achieve the date of first capacity deliveries, *i.e.*, the Commencement Date; (ii) once the Commencement Date is

¹⁷ The maximum Bid Security would be reached at 100 MW. Bid Security requirements and the Form of Bid LC were included in the Bid Submission Materials on the LCAPP web site and were addressed in the response to Questions 25, 30, 50, 53, 54, and 72. LAI informed eligible generators via email that cash to be held in escrow would be acceptable as Bid Security.

¹⁸ LAI reviewed the revisions proposed by PJM and P3, and while the P3 measures could be characterized as more aggressive than those proffered by PJM, LAI determined that if any of the proposed modifications to MOPR were approved by FERC, such modifications would constitute an additional and *previously unforeseen* risk that would materially threaten an LCAPP generator's ability to clear in a BRA. LAI determined that the overarching uncertainty associated with the potential action(s) taken by FERC to revise the present MOPR was beyond the control of LCAPP bidders.

achieved, the SOCA remains in effect without payments to the generator for Delivery Years in which the generator failed to clear in the associated BRA; and, (iii) the amount of Construction Period Security that might have to be forfeited in the Event of Default and Termination be reduced to a maximum of \$1 million.¹⁹ By significantly reducing the Construction Period Security, the Agent reasoned that the goals of the LCAPP Law would be encouraged by providing incentives to qualified generators to follow through with the development of worthwhile proposals in the LCAPP procurement in spite of the MOPR mitigation risks.²⁰

The EDC Proposed SOCA contained two provisions meant to protect themselves and ratepayers from risks in the event that rate recovery is denied and RPM is substantially modified, thereby impeding or preventing SOCA payments. The LCAPP Law expressly stated that “[n]either the Board nor any other governmental entity shall have the authority...to determine that the LCAPP charges or revenues to recover the LCAPP charges for such SOCAs are unjust or unreasonable.” Hence, LAI believed that the first EDC provision was unnecessary.²¹ Regarding modification to RPM, LAI reasoned that it would be preferable to have the EDCs and generators develop a replacement for the RCP, subject to Board approval, in order to avoid SOCA termination. LAI also suggested permitting mutually agreeable modifications to the SOCA, subject to Board approval.

The New Jersey Division of Rate Counsel (Rate Counsel) provided useful comments and suggestions regarding modifications to the Draft SOCA. LAI adopted Rate Counsel’s suggestion that the proposed facility be sufficiently defined to assure that any generator awarded a SOCA indeed constructs the proposed facility. However, LAI did not incorporate milestones and performance criteria in the SOCA. LAI also adopted Rate Counsel’s suggestions that: (i) capacity be measured as UCAP, the product that is purchased and sold in BRAs; (ii) the generator be required to competitively participate in the PJM energy and ancillary service (EAS) markets to assure that New Jersey ratepayers receive the benefits associated with the generator’s capacity; and (iii) some financial security be required in support of the generator’s contractual obligations.²²

Similar to Rate Counsel, CPV Shore, LLC recommended a “...reasonable and appropriate...” level of financial security be required. As explained above, LAI sought to strike a reasonable balance in setting separate amounts of financial security during the Construction Period (\$10/kW with a cap of \$1 million) and the Delivery Term (\$25/kW with no maximum, declining *pro rata* over the Delivery Term).²³ The MD PSC contract submitted by both Rate Counsel (as an

¹⁹ Any slippage would not delay the Conclusion Date, so that a generator with a 10-year SOCA that has its date of first capacity deliveries delayed for 2 years would effectively be left with an 8-year SOCA.

²⁰ These changes, including reducing the Construction Period Security that would be forfeited in the Event of Default and Termination, were agreed to by Board Staff and Counsel.

²¹ LAI notes that the EDCs filed a Motion for Reconsideration with the Board, dated February 24, 2011, to amend the Board’s February 10, 2011 LCAPP Order regarding recovery of all SOCA costs through a non-bypassable, irrevocable charge.

²² UCAP takes the generator’s availability into account, *e.g.* a 100 MW generator with 90% availability would be able to sell 90 MW of UCAP.

²³ See the response to Question 27.

example without modifications) and CPV (modified for LCAPP) contained various construction, operation, performance, and milestone requirements that LAI concluded were not appropriately includible in the SOCA, based on the LCAPP Law.

LS Power and Exelon provided ISDA-type SOCAs that had some useful terms and conditions that were adopted. Comments provided by Hess Corporation were also considered that addressed risk issues of failure to bid or clear in a BRA and potential modifications to RPM and the calculation of RCP. These risk issues are addressed throughout this section of the Report.

Payment Issues

The LCAPP Law requires SOCA payments based on the difference between the RCP and the generator's SOCP. Based on suggestions from the six stakeholders who submitted Proposed SOCAs, LAI recommended that both prices should be expressed in UCAP and that SOCA payments be suspended in any Delivery Year when the generator's UCAP does not clear the BRA.²⁴ LAI reasoned that this second provision struck a fair and reasonable balance between unfairly penalizing generators for PJM mitigation and protecting ratepayers who would only be charged for capacity actually delivered.

The EDCs' Proposed SOCA contained a Security Agreement that would protect the EDCs by attaching PJM payments to the generator if the RCP is greater than the SOCP. Lacking reciprocity, some stakeholders argued for the omission of this provision. In light of other financial security and contractual safeguards designed to protect ratepayers, LAI recommended eliminating the Security Agreement. Board Staff and Counsel concurred.

LAI notes that the EDCs have always had identical RCPs under RPM, starting with the first BRA for the 2007/08 Delivery Year. However, PJM considers each EDC's service territory potentially as a separate Locational Deliverability Area (LDA). Therefore, RCPs could in fact vary for each EDC, and LAI had to consider how best to calculate the RCP in the event of price separation by LDA. LAI considered three options: (i) the RCP of the LDA in which the generator is located, (ii) the RCP of the EDC making the SOCA payment, or (iii) a weighted average "New Jersey RCP" of the four EDCs using their load ratios as weights. LAI decided that the fairest approach, consistent with the LCAPP Law's intention of providing benefits to New Jersey, would be the third alternative where all ratepayers would make equal contributions consistent with the EDCs' load ratio.²⁵ LAI also provided for EDC load ratios to change over time, as calculated by PJM.

²⁴ LAI alerted stakeholders that the SOCP would be based on UCAP in the response to Question 26.

²⁵ As explained in Section 4.3 (Other Issues), LAI later decided to drop this calculation in favor of the RCP for the zone in which the generator is located.

4.2 STAKEHOLDER INITIAL COMMENTS ON THE PROPOSED FORMS OF SOCAS

The Order specified that Initial Comments on the Proposed SOCAs would be due by February 22, 2011.²⁶ Six stakeholders filed Initial Comments, and in some cases included edits to the EDCs' Proposed SOCA that was posted on February 14, 2011:

- NJ EDCs Comments and edited EDC SOCA
- Div. of Rate Counsel Comments and edited EDC SOCA
- LS Power Comments and edited EDC SOCA
- NRG Comments and edited EDC SOCA
- Hess Corp. Comments
- GenOn Energy Comments

The EDCs' comments reiterated their position that failure to bid or clear in a BRA should be an Event of Default. LAI agreed that generators must be required to *bid*, but believed that ceasing payments if the generator failed to *clear* sufficiently protects ratepayer interests. In reaching this determination, LAI considered the prospect of these and other developers in New Jersey and elsewhere in PJM building new CC plants, among other technologies, strictly on the basis of merchant price signals, *i.e.*, BRA prices and energy market clearing prices. In LAI's judgment, the likelihood of a new generation facility entering the wholesale market absent the SOCA was low. Hence, the ratepayer protection afforded by the provision in the LCAPP Law requiring such resources to bid in the BRA was deemed sufficient. The EDCs also explained their position that denial of recovery, substantial modification of RPM, or a requirement to clear payments on an exchange be deemed termination events. While LAI did not agree with these positions put forward by the EDCs, LAI did in fact agree with the EDCs' positions on a number of other issues, namely: (i) only cleared UCAP should be purchased under the SOCAs; (ii) a generator with a SOCA must offer the associated EAS into the PJM market; and, (iii) remedies must be made available to the EDCs if a generator fails to fulfill its obligations. Board Staff and Counsel agreed with LAI's recommendations.

Rate Counsel suggested the following: (i) clearly identifying the proposed facility; (ii) prohibitions against withholding energy or ancillary services from the PJM market; (iii) filing an annual report with the Board; (iv) full recovery of costs; and, (v) failure to clear a BRA should not be an Event of Default or Termination. LAI agreed with these suggestions and therefore incorporated them in the SOCA. However, LAI did not adopt Rate Counsel's suggested milestone and operational / performance requirements from the MD PSC contract, based on the rationale previously provided.

LS Power reiterated its belief that an ISDA-type form is more appropriate for the SOCA. While an ISDA-type form could be used, LAI remained convinced of the relative advantages associated with the EDCs' form of contract. LS Power also provided useful comments and suggested

²⁶ LAI was still in the process of preparing an initial draft SOCA that was not yet posted.

changes to the EDCs' Proposed SOCA, including, but not limited to: (i) the proposed Security Agreement; (ii) the proposed requirement to clear in the BRAs; and, (iii) termination triggered by denial of rate recovery, modification of RPM, and execution of clearing requirements.

NRG submitted comments and specific edits to the EDCs' Proposed SOCA highlighting NRG's concerns regarding: (i) the allocation of risks, (ii) generator rights, (iii) termination payments, and (iv) financing-related provisions. LAI largely addressed these concerns through the changes described above that eliminated unreasonable generator requirements and balanced the competing interests between generators and the EDCs.

Hess submitted comments that focused on the uncertainty of clearing capacity in the BRA given anticipated MOPR mitigation. Hess suggested that SOCA payments be made based on the available capacity as opposed to the amount of capacity that clears the BRA. In LAI's view, such a change would contravene the LCAPP Law and the Board's Order. Hence, it was determined that the suspension of payments while allowing the SOCA to continue if the generator's capacity does not clear in a Delivery Year constitutes a good balance between rival stakeholder interests. Hess also argued that the regulatory risks that were assigned to the generators under the EDCs' Draft SOCA should be more equitably apportioned. Working in consultation with Board Staff and Counsel, LAI endeavored to do so.

GenOn indicated that it is a party to a Complaint filed in the U.S. District Court to bar the implementation of the LCAPP Law. GenOn commented on two issues: (i) the lack of any provision in the EDCs' Proposed SOCA regarding potential MOPR mitigation of capacity bids and (ii) the lack of time to meaningfully participate in the LCAPP process. As explained above, LAI addressed MOPR mitigation by (i) providing for up to a two-year delay in first capacity deliveries, (ii) establishing a modest penalty in the form of Construction Period Security for termination prior to the Commencement Date, and (iii) permitting the SOCA to continue if the generator's capacity does not clear after achieving the Commencement Date. Regarding GenOn's second issue, lack of time, LAI recognized the time constraints, but could not alter the Order's implementation schedule.

4.3 STAKEHOLDER REPLY COMMENTS ON AGENT'S DRAFT SOCA (VERSION 1)

Based on the recommended positions described above, LAI posted the Agent's Proposed Draft SOCA (version 1) on February 23, 2011. Key changes made to the EDCs' draft can be summarized as follows:

- The EDCs' Security Agreement was replaced with the Construction Period Security and Delivery Term Security.
- The time for generators to achieve the Commencement Date from six months (proposed by the EDCs) was extended to two years after the Awarded Commencement Date.
- If a generator failed to clear in a BRA *prior* to achieving the Commencement Date then that generator would be liable for the Construction Period Security of \$10/kW up to a maximum of \$1 million.

- If a generator failed to clear *after* achieving the Commencement Date then any future failure to clear would cause SOCA payments to be suspended for that Delivery Year but the SOCA would continue in force, instead of triggering an Event of Default as in the EDC draft.
- If RPM is eliminated or substantially modified, or if the RCP is no longer calculated, that would no longer be a Termination Event per the EDC draft but would instead require both parties to resolve the issue as a Dispute.

LAI alerted stakeholders on February 22, 2011 that the Proposed Draft SOCA would be posted on February 23, 2011, and that Reply Comments would be due on February 25, 2011 (per the Order) in responses to Questions 16, 18, 19, and 22. Eight stakeholders filed Reply Comments and submitted documents by February 25, 2011 as follows:

- NJ EDCs Comments, edited SOCA, and financial security documents
- LS Power Comments and edited SOCA
- CPV Shore, LLC Comments and edited SOCA
- Hess Corp. Comments and edited SOCA
- NRG Comments and edited SOCA
- Div. of Rate Counsel Comments
- Exelon Generation Comments
- NextEra Energy Comments

Working in close consultation with Board Staff and Counsel, LAI reviewed these comments and suggestions and prepared a detailed matrix of stakeholder positions on various SOCA provisions. On February 27, 2011, LAI consulted with Board Staff and Counsel in order to evaluate the relative positions of the various interested parties on key contract issues affecting the allocation of risk and reward between generators and the EDCs on behalf of New Jersey ratepayers.

The most important provisions, along with positions of the interested parties and LAI's recommendations, were as follows:

Capacity Clearing Requirement

The EDCs argued that the LCAPP Law requires any SOCA to be terminated if a generator fails to clear in any BRA. Upon discussion with Board Staff and Counsel, LAI concluded that this was an unnecessarily strict interpretation that: (i) ignores the fact that ratepayers would bear no SOCP costs in any years that a generator fails to clear; (ii) would render projects unfinanceable in light of evolving PJM mitigation rules; and, (iii) would deprive ratepayers of future benefits by prematurely terminating SOCAs. LAI therefore maintained the previous position, as follows:

- In the event a generator with a signed SOCA bids in two successive BRAs and fails to clear (regardless of whether those bids were mitigated by PJM) and thus cannot achieve the Commencement Date within two years after the Awarded Commencement Date, this

would be an Event of Default under Section 7.1.7 (Failure to Achieve the Commencement Date) and the EDCs would be able to draw upon the generator's Construction Period Security, which has a maximum amount of \$1 million.

- In the event a project clears in a BRA and achieves the Commencement Date, and then bids in a succeeding BRA but fails to clear, SOCP payments would cease for that Delivery Year but the SOCA would continue in force.
- In either event, *i.e.*, the generator fails to clear in a BRA prior to or after the Commencement Date, the Awarded Commencement Date would not be extended.

Board Staff and Counsel agreed with LAI that this was a reasonable solution that equitably balanced risk and reward between generators and the EDCs' ratepayers.

Calculation of UCAP Amount to be Bid

LAI has sought to reasonably assure ratepayers of the full array of benefits from any project awarded a SOCA. Regarding the amount of UCAP that would be bid, cleared, and thus entitled to SOCP payments, LAI sought to encourage SOCA generators to provide as much UCAP as possible while also limiting the amount to the contract quantity. This way the LCAPP Law's limit of 2,000 MW would not be exceeded. In consultation and agreement with Board Staff and Counsel, LAI revised the UCAP bid quantity in 2.3.3(b) to "no less than the Awarded Capacity Amount." LAI noted that the definition of Available Capacity Amount (upon which SOCP payments are made) cannot be greater than the "Awarded Capacity Amount," thereby protecting ratepayers by limiting total SOCP payments to the 2,000 MW limit.

Energy and Ancillary Service Bid Prices

LAI had suggested requiring SOCA generators to bid the EAS associated with the Available Capacity Amount into the relevant PJM markets at "the lowest allowable price under PJM's Market Rules." Some generators opposed this language, protesting that a strict interpretation might require them to sell these products at a loss, or that the SOCA provisions be restricted to capacity. In order to provide the generators more leeway and still assure that ratepayers receive the full amount of associated energy price and ancillary service benefits estimated in the bid evaluation process, LAI modified this bidding requirement to "lowest commercially reasonable price under PJM's Market Rules" in Sections 2.3.3 (c) and (d) of the SOCA.²⁷ Board Staff and Counsel agreed with this modification. LAI also made "Associated Energy" and "Associated Ancillary Services" defined SOCA terms.

Rate Recovery

The EDCs requested that a Condition Precedent be added "...that the Board has issued an order authorizing Utility to recover from ratepayers through a non-bypassable irrevocable charge all payments under this Agreement..." LAI anticipates that the Board will in fact issue such an order when it approves the SOCA awards, therefore this Condition Precedent was inserted with

²⁷ Additional clarity regarding this terminology was provided on the LCAPP website as Question 63.

agreement by Board Staff and Counsel, omitting other provisions suggested by the EDCs that were found to be superfluous.

Other Issues

- In addition to the EDCs' annual reporting requirements, a provision was added that generators also submit annual reports to the Board certifying their compliance with SOCA bidding requirements. A provision requested by the EDCs clarifying that they have no monitoring or enforcement responsibilities was also added.
- The EDCs' suggested language clarifying provisions regarding the Construction Period Security and Delivery Term Security was added.
- A bankruptcy provision was removed, as well as an assignment provision that would have interfered with generator financing.
- A Force Majeure clause suggested by generators that could be applied toward the Commencement Date was added.
- Some minor limitations to the Representations and Warranties suggested by a generator were added. Generators were not provided with a Termination for Convenience clause because the penalty for termination prior to the Commencement Date, the amount of Construction Period Security, is limited to \$1 million and thus relatively small.
- Both the EDCs and generators suggested (for different reasons) that the weighted average New Jersey RCP not be utilized for payment calculations. LAI agreed and modified the SOCA to use the RCP for the generator's location. The EDCs will continue to divide SOCA revenues or costs by load share ratio.
- LAI retained Illegality and Invalidity as Termination Events, and kept elimination or modification of RPM events as Disputes to be resolved by the parties. If any RPM or RCP dispute cannot be so resolved, the Resolution process was changed from arbitration to submittal to the Board.
- A provision that both parties cooperate to preserve the SOCA provisions in the event payments must be executed or cleared on an exchange, *e.g.*, per Dodd-Frank legislation, was added. Contrary to the position set forth by the EDCs, LAI did not view such a requirement as reason to terminate the SOCA.

4.4 STAKEHOLDER SUPPLEMENTAL COMMENTS ON AGENT'S DRAFT SOCA (VERSION 2)

In order to provide stakeholders with as much opportunity as possible to provide comments and SOCA-related input to the drafting process, LAI posted a second version of the Proposed SOCA on February 28, 2011. Stakeholders largely reiterated previous comments with certain limited exceptions, and two generators submitted edited Agent Draft SOCAs.

The most important suggestion from LS Power was to add a Severability section that would seek to allow the SOCA to continue to the greatest extent possible in the event that any provision of the LCAPP Law was found to be invalid or unenforceable. LAI discussed this issue with Board Staff and Counsel and agreed to adopt the suggested language, but made any renegotiated SOCA

subject to Board approval. LS Power provided a letter from Union Bank, a subsidiary of Bank of Tokyo-Mitsubishi UFJ, which emphasized a number of financing considerations: (i) the importance of assuring revenue certainty, (ii) the ability of lenders to step in, (iii) default payments, (iv) generator liability, and (v) Force Majeure provisions. LAI considered LS Power's suggestions, including the concerns expressed by Union Bank. In some cases repeating prior recommendations, LS Power made a number of other suggestions, as follows:

- Requested that the Conclusion Date be extended if Force Majeure delays the Commencement Date. LAI had previously discussed this issue with Board Staff and Counsel and maintained the position that the Conclusion Date would not be extended.
- Requested language concerning changes to RPM and the Dodd-Frank Act. LAI had previously discussed these issues with Board Staff and Counsel and believed that the existing SOCA provisions were reasonable and complied with the LCAPP Law.
- Requested changes to the Bankruptcy provisions consistent with Union Bank's recommendation, which LAI agreed to accept.
- Requested that Illegality and Invalidity should not be Termination Events. LAI discussed this issue with Board Staff and Counsel and agreed that the Severability Clause would be a fair and reasonable compromise.
- Requested a different Early Termination Payment calculation that LAI and Board Staff and Counsel disputed.

NRG made many suggestions that it had previously made concerning termination rights, termination payments, and clearing requirements that LAI had previously discussed with Board Staff and Counsel disputed. In addition, NRG suggested termination payments due to an illegality or invalidity that were addressed by adding the Severability Clause as described above.

CPV Shore submitted comments that were intended, in CPV's opinion, to better facilitate generator financing. CPV Shore suggested that generators could bid lower amounts of UCAP, but LAI believed this would relieve generators from achieving, and then maintaining, high availability levels. CPV Shore also suggested that forward-looking termination payments were not balanced, especially if the New Jersey Legislature could effectively cancel the SOCA at any time, and that the payments should be based on a PV estimate of future market capacity prices. LAI reasoned that CPV Shore's suggested calculation would be too difficult to determine given financial uncertainties and market capacity price fluctuations.

Rate Counsel provided comments agreeing with the changes in the RCP definition, the removal of Suspension of Obligations, clarifying that the EDCs have no obligation to monitor generator performance, the provisions governing financial security, and replacing arbitration with Board resolution of disputes. LAI noted that Rate Counsel agreed with Agent on two important provisions:

- The interpretation that a SOCA (without payments) could continue if a generator fails to clear after the Commencement Date is reasonable and not precluded by the LCAPP Law.
- The EDCs are "sufficiently protected" with regard to rate recovery as a condition precedent and LAI adopted Rate Counsel's recommended compromise language.

Rate Counsel made additional recommendations:

- Accept only a single SOCP value for all years, which LAI and Board Staff and Counsel believed was unnecessarily restrictive.
- Allow generators flexibility to bid UCAP less than the Awarded Capacity, which LAI and Board Staff and Counsel believed would allow generators to avoid SOCA provisions in order to receive higher market capacity prices when the RCP was greater than the SOCP.
- Require UCAP to be bid at the “lowest allowable price,” which was similar to the language of “lowest commercially reasonable price.”
- Require higher Construction Period Security, which LAI and Board Staff and Counsel believed would not be reasonable given the generator’s risk of MOPR mitigation.
- Require generators to submit an annual report, with which LAI agreed.
- Allow generators only a one-year delay to achieve the Commencement Date unless the Board granted an extension, which LAI believed was not materially different from the two-year grace period already proposed.

The EDCs also submitted comments that reiterated their previous points and claimed to identify “fundamental concerns” that the Agent’s Draft SOCA “fails in material respects to comply with...the LCAPP Law” as follows:

- Generators should be required to clear in order for the SOCA to remain in force. LAI and Board Staff and Counsel agreed that ceasing payments but leaving the SOCA in force is a reasonable compromise.
- The SOCA should ensure rate recovery for EDCs, and the conditions precedent language suggested by Rate Counsel was added.
- A generator should not be allowed to miss its Awarded Commencement Date, but LAI believed that a two-year delay should be permitted given the risk of MOPR mitigation.
- The EDCs should not have to monitor generator performance, and LAI added a corresponding provision for generators to report annually on their performance to the Board.

4.5 AGENT'S FINAL PROPOSED FORM OF SOCA

LAI posted the Final Proposed Form of SOCA on the LCAPP website on March 1, 2011. In response, LAI received a question (posted as Question 69) to clarify the Final Proposed Form of SOCA’s provision for generators that failed to clear in the first two BRAs and thus would be in default under Section 7.1.7 Failure to Achieve the Commencement Date. In the response, it was stated that this would be an Event of Default in which case the EDCs could draw upon the Construction Period Security. The previous answer to a related question (Question 68) indicating that failure to clear a BRA after the generator achieves the Commencement Date would not be an Event of Default or Termination Event was also clarified.

4.6 LCAPP QUESTION 64 AND GENERATOR SUBMISSIONS OF MODIFIED SOCAS WITH BIDS

LAI indicated early in the SOCA drafting process (per the response to Question 15 posted on February 18, 2011) that "...all winning generators will use the same form of SOCA..." Board Staff and Counsel agreed with Agent's position. This position was reiterated in the response to Question 64 (posted March 4, 2011) that "[a]ny bid predicated on a substantive modification to the Final Proposed Form of SOCA dated March 1, 2011, will not be considered." Having all generators adhere to the Final Proposed Form of SOCA would assure that all bids were based on the same apportionment of risk and reward as well as other terms and conditions. Allowing generators to substantially modify the Final Proposed Form of SOCA would alter the apportionment of risk and reward between buyer and seller, thereby rendering infeasible, if not impossible, Agent's ability to fairly evaluate on an expedited basis the relative merits of competing bids. In the response to Question 64, respondents were notified that "[b]ids that identify technical corrections *merely for consistency sake* to the Final Proposed Form SOCA will be considered, however." (emphasis added)

After the Final Proposed Form SOCA was posted, the EDCs submitted technical corrections that focused on correcting Section numbers that are referenced within the document. LAI recommends that the Board adopt those corrections. The corrected Final Form SOCA, inclusive of the EDCs' technical corrections, is provided as Attachment 1 both in redline (Attachment 1A) and redline accepted (Attachment 1B) format.

5 PREQUALIFICATION EVALUATION PROCESS

The LCAPP Law required that one of the Agent’s tasks on behalf of the Board shall be:

“prequalifying eligible generators for participation in the LCAPP through a showing of environmental, economic, and community benefits, and through demonstration of reasonable certainty of completion of development, construction and permitting activities necessary to meet the desired in-service date...”

This task was completed in two phases: (i) determination of eligibility under the LCAPP Law definitions; and, (ii) prequalification review of eligible bidders.

5.1 ELIGIBILITY SCREENING METHOD

In accordance with the LCAPP Law, an “[e]ligible generator” is “a developer of a base load or mid-merit electric power generation facility, including but not limited to, an on-site generation facility that qualifies as a capacity resource under PJM criteria and that commences construction after the effective date of [the LCAPP Law]”. Based on this definition, as well as the finding by the Legislature that, “[f]ostering and incentivizing the development of a limited program for *new* electric generation facilities will help ensure sufficient capacity to stabilize power prices...” (P.L.2011, c.9, Sec.1.i., *emphasis added*), the Agent identified those proposals that satisfied all three eligibility conditions:

- Proposed project must be a base load or mid-merit electric power generation facility;
- Proposed project must qualify as a capacity resource under PJM criteria; and
- Proposed project must be a new electric generation facility that did not begin construction on or before January 28, 2011.

Proposed generation projects that did not satisfy all three eligibility conditions were not promoted to the prequalification review phase.

5.2 PREQUALIFICATION REVIEW METHOD

All generators that were deemed to be eligible were subsequently evaluated with respect to the prequalification criteria identified in the LCAPP Law, requiring “a showing of environmental, economic, and community benefits, and through demonstration of reasonable certainty of completion of development, construction and permitting activities necessary to meet the desired in-service date” (P.L.2011, c.9, Sec. 3.b.(2)). The Agent identified a set of factors that contribute to benefits or risks associated with each of the four LCAPP prequalification criteria. The Agent developed a matrix that defined the expectations and minimum requirements for each factor. For each eligible project, the Agent assigned a qualitative rating for each factor. The ratings were color-coded, as follows:

- Green – the project exceeds the minimum requirements or expectations
- Yellow – the project meets the minimum requirements or expectations

- Red – the project falls short of expectations (but is not critically deficient)
- Black – the project has significant deficiencies which could give rise to unacceptable risks for ratepayers or jeopardize the expected benefits

Each color rating was assigned a numerical value, and each factor was assigned a weighting. A weighted average score for each of the four LCAPP criteria was calculated based on the assigned ratings for each factor and the factor weightings. For each project, the percent of factors receiving a green or yellow rating was also calculated. Any project for which a black rating was assigned to any factor was considered to fail the prequalification phase. Projects failing the prequalification step of the due diligence were not carried forward to the quantitative analysis of net benefits phase.

In rating each project, LAI relied upon information provided in the Prequalification Application, supplemented by responses from bidders to Agent Question Sets and by publicly available information. In addition, the New Jersey Department of Environmental Protection (NJDEP), through the Office of Permit Coordination and Environmental Review, reviewed Prequalification Applications of all eligible projects.²⁸ For projects that have already initiated the permitting process, NJDEP validated the permit status reported by each applicant. For all projects, NJDEP reviewed the Prequalification Application and information in NJDEP files, commented on the reasonableness of the permitting plan, and provided any other information in NJDEP files relevant to the feasibility of the project meeting the desired in-service date. The NJDEP's review was not intended as a comprehensive analysis of permit requirements.

The following sections identify the factors contributing to each of the four LCAPP prequalification criteria, and define the color ratings for each factor. Note that this discussion is intended to define how the color ratings were to be assigned.

Environmental Benefits

LAI rated each eligible generator based on four factors contributing to the impact of the project on the environment. All factors related to this criterion were assessed on a qualitative basis.

Air Emissions

Projects were compared and rated based on the relative emissions of NO_x, SO₂, particulate matter (PM), mercury, and greenhouse gases, and the proposed emission control technologies. Gas-fired projects, with or without ultra-low sulfur distillate backup fuel, were considered to meet expectations and were rated yellow. Yellow-rated projects were also expected to propose, at a minimum, selective catalytic reduction (SCR) and other measures likely to meet NJDEP requirements for Best Available Control Technology (BACT) and/or Lowest Achievable Emission Rate (LAER).

²⁸ All projects determined to be eligible were located in New Jersey, so the Agent did not contact environmental agencies in other states.

Projects with no direct emissions from fuel combustion and other renewable fuel projects were considered to exceed expectations and were rated green. Projects fired primarily by coal or oil, which would meet BACT, LAER, and/or Maximum Achievable Control Technology (MACT) requirements, but would produce greenhouse gas emissions at a rate significantly above gas-fired projects, were considered to be below expectations and were rated red. Other fossil-fired projects with no emission controls specified, or with emission control technologies unlikely to meet BACT, LAER, and/or MACT, as applicable, were considered to have significant deficiencies and were rated black.

Condition of Site and Proximity to Sensitive Natural or Cultural Resources

Projects were rated based upon the potential to positively or negatively impact environmental conditions on or adjacent to the project site and associated electric and gas rights-of-way. Projects located on a brownfield site or other impaired property, or would otherwise improve the condition of natural or cultural resources, were rated green. Projects that resulted in no significant impact to the project site, either positive or negative, were rated yellow. Yellow-rated projects included construction of new units on existing power plant sites. Projects that would be constructed on greenfield sites or adjacent to sensitive natural or cultural resources were rated red. Projects that would have a material, negative impact on sensitive natural or cultural resources were rated black.

Water Use and Discharge

Projects were rated based on proposed quantity, source, and discharge point of cooling and makeup water. Projects that proposed to minimize water use for cooling systems by including some type of evaporative cooling system were rated green or yellow. These projects were differentiated based on the source of the water supply. Green-rated projects proposed use of water reclaimed from a local water treatment facility and discharged via the municipal or county sewer authority. Yellow-rated projects proposed to use municipal water with limited discharge to surface water. Projects utilizing groundwater were also rated yellow provided that no incremental water withdrawal rights, relative to existing on-site use, is required. Wind projects requiring no cooling water were also rated as green. Projects that are anticipated to have potential limiting conditions on groundwater withdrawal rights or discharge permits were rated red. Projects proposing to use significant quantities of water for once-through cooling and likely to encounter significant obstacles obtaining water permits were rated black.

Other Siting Issues

Projects were rated based on additional environmental benefits or siting risks not captured in any other factor. Projects offering additional environmental benefits, such as beneficial re-use of waste, were rated green. Projects with no significant additional risks or benefits were rated yellow. Projects with other siting issues, such as environmental justice concerns, were rated red or black depending on whether these concerns could be mitigated.

Economic Benefits

Each eligible generator's prequalification application was reviewed to ensure that information provided on the project description and operating data forms was adequate to allow economic

modeling of the proposed project. Eligible projects with adequate data in the original submission were awarded a green rating for this category. Those that met all requirements were awarded a yellow rating. If the necessary data were incomplete, but the data could be obtained from publicly available industry sources, a red rating was awarded. A black rating was assigned if the necessary data were incomplete and could not be derived from public industry sources. The quantitative assessment of economic benefits that drives the selection of bids is described in the Bid Evaluation section of this Report.

Community Benefits

The first qualitative factor in the area of community benefits was a determination of the level of demonstrated community support for the proposed generator. Active support by community and elected officials earned a green rating. Neutral community support earned a yellow rating. Mixed support and opposition from the community earned a red rating. Well-organized, demonstrated opposition combined with no evidence of support earned a black rating.

Financial contributions to the community, in the form of taxes or payments of lieu of taxes (PILOT), and grants or subsidies to the community were also evaluated as part of the demonstration of community benefits. For taxes / PILOT, ratings were determined by the expected level of contributions on a PV per MW basis, with above average contributions awarded a green rating, mid-range contributions awarded a yellow rating, and below average or unknown (to be determined) contributions awarded a red rating.²⁹ In the grants / subsidies category, facilities with specific community improvements or subsidies were awarded a green rating, and facilities that did not specify community improvements or upgrades were awarded a yellow rating.

The final categories in the community benefits area were based on employment estimates, with four specific criteria: (1) construction period direct NJ employment; (2) operating period annual direct NJ employment; (3) construction period total employment; and (4) operating period annual total employment.³⁰ All measures were evaluated on an FTE per MW basis, in order to fairly compare differently-sized generators. Green ratings in these four categories were awarded for above average FTE/MW ratios, yellow ratings were awarded for average FTE/MW ratios, and red ratings were awarded for below average FTE/MW ratios.

Certainty of Meeting In-Service Date

The Agent identified a set of factors which may potentially contribute to the risk of not achieving the proposed in-service date, thereby jeopardizing the value of benefits to ratepayers. These factors relate to the experience of the project sponsor, financeability and permitability of the

²⁹ No black rating was applied to any of the community benefits factors, except for the factor relating to the level of community support or opposition.

³⁰ Total employment includes direct, indirect and induced employment. Direct employment refers to construction or operations jobs at the generation facility. Indirect employment refers to jobs generated in businesses that supply goods and services to the generation facility. Induced employment refers to jobs created as a result of the directly and indirectly generated incomes being spent in the broader economy.

project, reasonableness of the development schedule and milestones, status of electric and gas interconnections, and fuel supply issues. A definition of the ratings for each of these factors is provided below.

Sponsor / EPC Contractor Experience

In the Prequalification Application, each project sponsor provided information regarding the relevant prior experience of the project team. Three relevant factors were evaluated: the experience of the project sponsor in successful development of similar projects, the experience of the engineering, procurement and construction (EPC) contractor, and any prior history of violations with respect to safety or environmental regulations during construction or operation of power plants.

In order to gauge the sponsor's experience in developing power projects similar to those proposed in this LCAPP solicitation, LAI reviewed general information about the sponsor (including cover letters and project descriptions or narratives) and specific development experience of the sponsor staff. Projects received a green rating if the project sponsor has been the lead in the development, construction, and operation of a base load or mid-merit plant. The project received a yellow rating if the project sponsor has had a key role in the development, construction, or operation of a central station power plant. The project received a red rating if the project sponsor exhibited only limited experience in the development, construction, or operation of a central station power plant. A project received a black rating if the project sponsor had no relevant experience.

LAI also requested and evaluated the prior experience of the firms providing EPC services. Projects received a green rating if the selected EPC contractor has extensive experience with projects utilizing the proposed technology. The project received a yellow rating if the selected EPC contractor has some demonstrated experience with projects utilizing the proposed technology. The project received a red rating if the selected EPC contractor has limited experience with projects utilizing the proposed technology. A project received a black rating if the selected EPC contractor has no experience with projects utilizing the proposed technology.

The project team's record of prior safety and/or environmental violations or felonies was also evaluated. Projects received a green rating for a record showing no violations of felonies in the past five years. The project received a yellow rating for a record showing only minor infractions or *de minimis* violations and no felonies in the past five years. The project received a red rating for a record showing one serious or willful violation or felony in the past five years. A project received a black rating for a record showing more than one serious or willful violation or felony in the past five years.

Financial Strength / Financing Plan

LAI evaluated the sponsors' ability to finance the proposed projects based on their (or their guarantor's) financial strength (including asset size and net current asset position), credit rating for unsecured long term senior debt, and ability to attract external funding as evidenced by any letters of interest / comfort provided by equity investors or lenders. In addition, LAI considered

the ability of the sponsor or guarantor to provide contingent equity in the event the project's SOCA payments are temporarily halted.

If the sponsor or guarantor has balance sheet strength to provide equity and lenders issued strong comfort letters, the project received a green rating. If the sponsor or guarantor has moderate balance sheet strength to provide equity and lenders provided comfort letters with conditions, the project was rated yellow. If the sponsor or guarantor has weak balance sheet strength to provide equity and debt funding was conditional, the project received a red rating. If neither the sponsor nor guarantor has balance sheet strength to provide equity and no debt funding indicated, the project received a black rating.

LAI also assigned colors to each project based on the credit rating of the sponsor or guarantor. Projects received a green rating if the sponsor has unsecured long-term debt with investment grade rating and significant tangible net worth (TNW). Projects received a yellow rating if the guarantor has unsecured long-term debt with investment grade credit rating and significant TNW. Projects received a red rating if the sponsor or guarantor was below investment grade, but with a Moody's, Fitch or Standard and Poors credit rating of at least "BB." Projects with a sponsor or guarantor below a "BB" rating or not rated were scored as black.

Schedule Risk

All bidders were required to submit a proposed project schedule and milestones with their Prequalification Application. The Agent reviewed each project schedule for completeness and feasibility. Project schedules that were detailed, complete, and included feasible timelines for permitting, engineering, procurement, construction, and start-up, thereby providing a high degree of assurance that the project will meet the proposed in-service date, were rated green. Project schedules that included sufficient detail to demonstrate the feasibility of achieving the proposed in-service date were rated yellow. Project schedules that lacked detail, or indicated significant risk of delay, were rated red. If the project sponsor did not provide a project schedule, or if the development timelines imposed a high likelihood of not achieving the proposed in-service date, the project was rated black.

Permit Status

All bidders were required to provide a permitting plan with their Prequalification Application. The Agent evaluated the feasibility of achieving the proposed in-service date based on the current status of environmental permits and site remediation (if applicable), the proposed permitting milestones, and the completeness of the permitting plan.

Projects which have obtained all major permits, in particular, the Prevention of Significant Deterioration air permit, Title V air permit, Water Quality Certification, and New Jersey Pollutant Discharge Elimination System permit, and have obtained a "no further action" determination with respect to site remediation if applicable, were rated green since they represent

negligible schedule risk.³¹ Projects that have not yet initiated the permit process with the NJDEP, or have recently participated in a pre-application meeting with NJDEP, but propose an in-service date no earlier than May 31, 2015 were rated yellow. To receive a yellow rating, the Prequalification Application must indicate that major permit applications will be filed by 2Q2011 and allow for at least one year to obtain final permits. Projects which indicate a permit timeline that would require a more accelerated turnaround by NJDEP, or where site remediation is ongoing and may require modification to site development, received a red rating. Prequalification Applications which present a timeline that is infeasible with the proposed in-service date, or provide incomplete permit information, or will require extensive site remediation potentially incompatible with the site development schedule, were rated black.

Electric Interconnection Status

All bidders were required to provide information regarding the status of the electric interconnection with their Prequalification Application. LAI evaluated the feasibility of achieving the proposed in-service date and eligibility to participate in the first proposed BRA based on the current status of the PJM interconnection process and the interconnection milestones. For Planned Generation Capacity Resources to be eligible to participate in a BRA for a given Delivery Year, at a minimum, an executed System Impact Study (SIS) Agreement must be in place by April of the year in which the BRA takes place.³² In the review of the interconnection milestones for each Bidder, LAI used the date for the signing of the SIS Agreement as a critical milestone which must be met. For projects with completed interconnection studies, the Agent reviewed the posted studies on the PJM website to see if there was any evidence of any fatal flaws with the injection that might hamper the project's development in the interconnection process.

With respect to electric interconnection, a project received a green rating if the project sponsor has essentially completed the interconnection process, representing negligible schedule risk. Green rated projects must have completed the PJM SIS process to the point of signing an Interconnection Service Agreement. Projects were rated yellow if they were well along the SIS process *i.e.* they had a signed SIS Agreement or the interconnection milestones facilitated timely signing of the SIS Agreement by the BRA deadline. Projects received a red rating if the project sponsor has not yet initiated the SIS process *i.e.*, the project was in the Feasibility Study phase with no intention of signing an SIS Agreement. Projects received a black rating if an Interconnection Request had not yet been submitted and the project Sponsor's interconnection plan was generally unresponsive regarding the interconnection milestones or the submitted interconnection milestones will not facilitate timely signing of an SIS Agreement by the BRA deadline.

³¹ Projects located on sites where groundwater remediation will continue during project development, but where such remediation is compatible with site development and project operation, would also be considered as representing negligible schedule risk.

³² For the 2013/2014 BRA the deadline was April 16th and for the 2014/2015 BRA the deadline is April 15th.

Gas Interconnection and Fuel Plan

The fuel supply criteria were evaluated separately for natural gas-fired and non-natural gas-fired plants. For natural gas-fired facilities, a green rating was assigned for a developed fuel supply plan that identifies a creditworthy fuel supplier(s) and experienced fuel manager while addressing all transportation, delivery and storage issues. Use of existing firm transportation entitlements or negotiations with a supplier/manager that has firm transportation entitlements on pipelines serving New Jersey were considered in a favorable light. A green rating also required an established right-of-way for local delivery, if applicable, and evidence of permits or local support for any on-site secondary fuel storage. LAI considered representations that secondary fuel would not be required to maintain requisite fuel assurance to the plant.

A yellow rating was assigned for a fuel supply plan that defines relevant supply, transportation, delivery, and storage issues, and identifies creditworthy fuel supplier(s)/manager that holds a portfolio of transportation arrangements including secondary firm entitlements that are available to the project. Right-of-way options for local fuel delivery are formulated and no significant risk factors have been identified with completion of these arrangements. A red rating was assigned for an inadequately developed fuel plan that does not fully define fuel supply and transportation issues, does not identify specific fuel suppliers or manager, and provides no specific evidence of transportation arrangements or plans to use non-firm transportation without evidence of permitting and local support for secondary fuel use and onsite storage. The red rating would also be applicable to a project for which significant barriers to the completion of local delivery arrangements have been identified. A black rating was assigned for an inadequate fuel plan that did not identify potential fuel suppliers, transportation and delivery arrangements, and did not provide an explanation of local delivery and interconnection plans.

For non-natural gas-fired plants, a green rating was assigned for having a complete fuel supply plan, including evidence of fully formulated supply, transportation, delivery and storage arrangements with a creditworthy supplier or manager, including defined commercial pricing provisions. In addition, the plan must provide demonstration that sufficient fuel resources or reserves are available to meet project fuel requirements over the term of the contract. A yellow fuel supply plan rating was assigned for projects with a complete fuel supply plan that do not have evidence of fuel supply, transportation, delivery and storage agreements in place or under negotiation. A red fuel supply plan rating was assigned for projects with poorly defined fuel arrangements, and a black rating was assigned to projects with no fuel supply plan identified.

Other Risk Factors

The Agent rated each project based on potential schedule risks not otherwise captured in any of the above factors. Projects were rated green if other potential schedule risks have been already addressed. Green-rated projects include those for which the EPC contractor has been identified and commercial terms are being negotiated. Projects were rated yellow if there were no other known schedule risks. Projects were rated red if there are potential other schedule risks, but such risks can be mitigated. Projects were rated black if there are other material projects risks which may not be mitigated, or if the sponsor has not yet achieved control of the project site through site ownership, a site lease, or an executed option on the site.

5.3 PREQUALIFICATION APPLICATIONS

Applicants submitted project information for prequalification in two ways: (1) by submitting Application Data Sheets and (2) by responding to Agent Question Sets.

Application Data Sheets

In keeping with the Board Order, the Application Data Sheets and Attachments thereto were posted to the LCAPP website on February 14, 2011. Applicants then had eight calendar days to respond, with submissions due at 5:00 pm EPT on February 22, 2011. The Application Data Sheets collected general project data and operating data, with Applicants completing either the dispatchable or variable energy worksheet, depending on the technology type. Additional qualitative and descriptive data was collected through the Application Data Sheet Attachments, which requested information on the facility's sponsor, financing plan, permitting plan, fuel plan, operating plan, and community benefits. The information received through these forms was then evaluated using the method described above. For a complete list of the information requested on the Application Data Sheets and Attachments, please see the copy of the blank forms which were posted on the LCAPP website in Attachment 2 to this report.

Prequalification Applications were submitted for 34 generation projects prior to the 5:00 pm EPT deadline on February 22, 2011. A list of these projects, including sponsor, capacity (in UCAP), and location, is shown in Table 3.

Table 3. List of Applicants Submitting Prequalification Packages

Applicant	Project Name	Location	UCAP³³ (MW)
Bayonne Plant Holding, L.L.C.	Bayonne Expansion Project	Bayonne, NJ	38.00
Camden Plant Holding, L.L.C.	Camden Expansion Project	Camden, NJ	38.00
CPV Shore LLC	Woodbridge Energy Center	Woodbridge, NJ	690.00
EverPower Wind Holdings, Inc.	Liberty Wind Farm	Jersey City, NJ	2.69
Exelon Generation Company, LLC	BR MUR Unit 1	Braceville, IL	16.61
Exelon Generation Company, LLC	BR MUR Unit 2	Braceville, IL	15.66
Exelon Generation Company, LLC	BY MUR Unit 1	Byron, IL	16.88
Exelon Generation Company, LLC	BY MUR Unit 2	Byron, IL	15.88
Exelon Generation Company, LLC	DR Retrofit Unit 2	Morris, IL	12.88
Exelon Generation Company, LLC	DR Retrofit Unit 3	Morris, IL	13.72
Exelon Generation Company, LLC	LI EPU Unit 1	Pottstown, PA	111.54
Exelon Generation Company, LLC	LI EPU Unit 2	Pottstown, PA	111.37
Exelon Generation Company, LLC	LI MUR Unit 2	Pottstown, PA	15.77
Exelon Generation Company, LLC	LS EPU Unit 1	Marseilles, IL	125.49
Exelon Generation Company, LLC	LS EPU Unit 2	Marseilles, IL	124.42
Exelon Generation Company, LLC	LS MUR Unit 2	Marseilles, IL	15.80
Exelon Generation Company, LLC	Muddy Run	Holtwood, PA	1,063.08
Exelon Generation Company, LLC	QC Retrofit Unit 1	Cordova, IL	20.67
Exelon Generation Company, LLC	Salem Units 1 & 2	Hancocks Bridge, NJ	954.15
Exelon Generation Company, LLC	PB Retrofit Unit 2	Delta, PA	1.50
Exelon Generation Company, LLC	PB EPU Unit 2	Delta, PA	51.91
Exelon Generation Company, LLC	PB Retrofit Unit 3	Delta, PA	1.50
Exelon Generation Company, LLC	PB EPU Unit 3	Delta, PA	51.92
Hess Corporation	Newark Energy Center	Newark, NJ	625.00
Middlesex Power Partners LLC	Sayreville Energy Center	Sayreville, NJ	430.00
New Jersey Power Development LLC	Old Bridge Clean Energy Center	Old Bridge, NJ	668.50
NRG Energy, Inc.	NRG Atlantic County Plasma Facility	Egg Harbor, NJ	31.00
PSEG	Peach Bottom 2 Extended Power Uprate	Delta, PA	51.90
PSEG	Peach Bottom 3 Extended Power Uprate	Delta, PA	51.90
PSEG Power LLC	Sewaren	Sewaren, NJ	596.94
PSEG Power LLC	Hudson	Jersey City, NJ	166.22
PSEG Power LLC	Kearny	Kearney, NJ	249.32
RC Cape May Holdings, LLC	BL England Generating Station	Beesley's Point, NJ	551.00
West Deptford Energy, LLC	West Deptford Energy Station	Paulsboro, NJ	620.00

³³ Eligible generators had the option to ultimately bid less UCAP than they were prequalified for; therefore, the SOCA award quantities do not necessarily match the values in this table.

Requests for Additional Information

Following the initial review of the submitted prequalification materials, Agent Question Sets, or data requests, were developed and sent to all project sponsors who submitted Prequalification Applications. These data requests covered a variety of topics, seeking additional information or clarification of application responses in order to enable LAI to complete a thorough review of each project before making a determination regarding prequalification. Project sponsors were given three business days to respond to requests. In one case, the project sponsor did not receive the data request document so it was resent and a one day extension was granted. Multiple rounds of Question Sets were distributed:

- The first round of data requests were sent on February 24, 2011, to two projects that were immediately identified as ineligible generators to verify that the capacity was already in place and there was no capacity expansion investment planned.
- The second round of data requests were sent on February 27, 2011, to all 32 remaining projects and included questions regarding technical aspects of the projects, environmental issues, permitting, credit issues, fuel and emissions, construction progress, and community benefits. One project declined to respond and verified that it was withdrawing its application.
- On March 3, 2011, a data request was sent to one project to clarify the project sponsor and affiliates and another was sent to a second project regarding its Target Commercial Operation Date and related data.
- On March 6, 2011, the final sets of clarifying questions were sent to projects. Responses were due after the deadline for bidding. Two projects declined to respond as they had not submitted commercial proposals.

5.4 RESULTS OF ELIGIBILITY SCREENING

All projects that submitted complete Prequalification Applications were subjected to an eligibility screen based on the criteria summarized above. Of the 34 submitted projects, nine were determined to satisfy the eligibility conditions, and 25 were determined to not satisfy one or more of the eligibility conditions. Of the 25 ineligible facilities, 21 were eliminated because they were tied to existing generation units and therefore did not meet the condition of being a new generation facility. Four projects were eliminated because they were categorized as peaking units, rather than exhibiting the base load or mid-merit operating regime required by the LCAPP Law. Bidders were notified on March 3, 2011, of their eligibility status. The lists of eligible and ineligible generators are shown in Table 4 and Table 5, respectively.

Table 4. Eligible Generators

Applicant	Project Name	UCAP (MW)
CPV Shore LLC	Woodbridge Energy Center	690.00
EverPower Wind Holdings, Inc.	Liberty Wind Farm	2.69
Hess Corporation	Newark Energy Center	625.00
Middlesex Power Partners LLC	Sayreville Energy Center	430.00
New Jersey Power Development LLC	Old Bridge Clean Energy Center	668.50
NRG Energy, Inc.	NRG Atlantic County Plasma Facility	31.00
PSEG Power LLC	Sewaren	596.94
RC Cape May Holdings, LLC	BL England Generating Station	551.00
West Deptford Energy, LLC	West Deptford Energy Station	620.00

Table 5. Ineligible Generators

Applicant	Project Name	UCAP (MW)	Reason
Bayonne Plant Holding, L.L.C.	Bayonne Expansion Project	38.00	Peaker
Camden Plant Holding, L.L.C.	Camden Expansion Project	38.00	Peaker
Exelon Generation Company, LLC	BR MUR Unit 1	16.61	Existing Facility
Exelon Generation Company, LLC	BR MUR Unit 2	15.66	Existing Facility
Exelon Generation Company, LLC	BY MUR Unit 1	16.88	Existing Facility
Exelon Generation Company, LLC	BY MUR Unit 2	15.88	Existing Facility
Exelon Generation Company, LLC	DR Retrofit Unit 2	12.88	Existing Facility
Exelon Generation Company, LLC	DR Retrofit Unit 3	13.72	Existing Facility
Exelon Generation Company, LLC	LI EPU Unit 1	111.54	Existing Facility
Exelon Generation Company, LLC	LI EPU Unit 2	111.37	Existing Facility
Exelon Generation Company, LLC	LI MUR Unit 2	15.77	Existing Facility
Exelon Generation Company, LLC	LS EPU Unit 1	125.49	Existing Facility
Exelon Generation Company, LLC	LS EPU Unit 2	124.42	Existing Facility
Exelon Generation Company, LLC	LS MUR Unit 2	15.80	Existing Facility
Exelon Generation Company, LLC	Muddy Run	1,063.08	Existing Facility
Exelon Generation Company, LLC	QC Retrofit Unit 1	20.67	Existing Facility
Exelon Generation Company, LLC	Salem Units 1 & 2	954.15	Existing Facility
Exelon Generation Company, LLC	PB Retrofit Unit 2	1.50	Existing Facility
Exelon Generation Company, LLC	PB EPU Unit 2	51.91	Existing Facility
Exelon Generation Company, LLC	PB Retrofit Unit 3	1.50	Existing Facility
Exelon Generation Company, LLC	PB EPU Unit 3	51.92	Existing Facility
PSEG	Peach Bottom 2 Extended Power Uprate	51.90	Existing Facility
PSEG	Peach Bottom 3 Extended Power Uprate	51.90	Existing Facility
PSEG Power LLC	Hudson	166.22	Peaker
PSEG Power LLC	Kearny	249.32	Peaker

5.5 RESULTS OF PREQUALIFICATION REVIEW

LAI evaluated the nine eligible generation facilities in accordance with the prequalification methodology described above. The Agent relied on information contained in the Prequalification Applications, responses to Agent Question Sets, feedback from the NJDEP, and publicly available information. Responses to the final Agent Question Sets were received on March 9, 2011, therefore, the prequalification review could not be finalized until after the SOCP Bids were received on March 7, 2011. No bidders were disqualified either before or after the SOCP bids were submitted.

The results of the prequalification review for the nine eligible generation facilities are shown in Table 6. Sponsors of projects listed as “Withdrawn” either declined to submit responses to an Agent Question Set and notified the Agent that they had decided not to continue the process, and/or did not submit SOCP Bids on March 7, 2011. Prequalification review of the three withdrawn projects was not completed.

All six remaining projects were deemed to be prequalified. All six projects received a red rating for at least one individual factor. None of the red scores indicated an obstacle to development or a material risk to ratepayers. Red scores indicated undefined aspects of the project that will be addressed through further project development, or less desirable site conditions that are counterbalanced by other project benefits. On a weighted average basis, all of the prequalified projects received ratings of yellow or green for all of the four criteria: environmental benefits, community benefits, economic benefits, and demonstration of reasonable certainty of meeting the desired in-service date. No prequalified project received a black score for any factor.

Table 6. Prequalification Review Results

Applicant	Project Name	UCAP (MW)	Prequalification Status
CPV Shore LLC	Woodbridge Energy Center	690.00	Prequalified
EverPower Wind Holdings, Inc.	Liberty Wind Farm	2.69	Withdrawn
Hess Corporation	Newark Energy Center	625.00	Prequalified
Middlesex Power Partners LLC	Sayreville Energy Center	430.00	Prequalified
New Jersey Power Development LLC	Old Bridge Clean Energy Center	668.50	Prequalified
NRG Energy, Inc.	NRG Atlantic County Plasma Facility	31.00	Withdrawn
PSEG Power LLC	Sewaren	596.94	Withdrawn
RC Cape May Holdings, LLC	BL England Generating Station	551.00	Prequalified
West Deptford Energy, LLC	West Deptford Energy Station	620.00	Prequalified

6 BID EVALUATION METHOD

The third phase of the selection process was evaluation of commercial proposals, which included pricing and term.

6.1 BID FORM AND SUPPORTING MATERIALS

Bidding instructions were posted to the LCAPP website on February 23, 2011. Applicants were instructed to submit three components in order to complete the bid package for a proposed generating facility, as described in the following sections.

SOCP Bid Form

The SOCP Bid Form was set up as an Excel file that was protected such that bidders could only enter data into selected cells. Bidders were instructed to complete a Bid Form for each Pricing Option they elected to offer into the LCAPP. The Bid Form required that bidders enter a term (not to exceed 15 years) for each Pricing Option. Bidders were then given the option to specify either a constant price for the entire selected term, or a different price for each year of the selected term.

Bid Security

Bidders were required to submit Bid Security to act as assurance that they would execute SOCAs with the EDCs if so Ordered by the Board. A standard LC that has been used in other procurements managed by the Agent was used, with modifications specific to the LCAPP. Bidders were given the option of submitting cash held in escrow as Bid Security in lieu of LCs, but no bidders selected this option.

Officer Certification Form

Bidders were required to submit a notarized copy of the Officer Certification Form attesting to the following certifications:³⁴

- The undersigned is an officer of the Applicant with legal authority to sign contracts and bind the Applicant to its Standard Offer Capacity Price and all other Bid Information submitted in the New Jersey Long-Term Capacity Agreement Pilot Program, pursuant to New Jersey Board of Public Utilities Order in Docket No. EO11010026, dated February 10, 2011 (“SOCP and Bid Information”).
- The undersigned certifies that the SOCP and Bid Information submitted by the Applicant on the Standard Offer Capacity Price Bid Form to Levitan & Associates, Inc., as Agent,

³⁴ The Officer Certification Form can be found on the LCAPP website at:
http://www.nj-lcapp.com/Documents/Officer_Certification_Form.doc

shall be firm, irrevocable, and binding upon the Applicant until April 30, 2011, 5:00 PM EPT.

- The undersigned certifies that all information provided in Applicant's Pre-Qualification Package and in subsequent communications with the Agent regarding the capacity offered by Applicant in the New Jersey Long-Term Capacity Pilot Program remains correct and valid.
- If the Applicant is notified that it has been chosen to enter into a Standard Offer Capacity Agreements ("SOCA") with each of the New Jersey Electric Distribution Companies ("EDCs"), and if the New Jersey Board of Public Utilities approves the form of the SOCA reflecting the SOCP and Bid Information, then the undersigned certifies that a duly authorized representative of the Applicant will execute the four SOCAs within thirty (30) days of being notified that the New Jersey Board of Public Utilities has approved the form of the SOCA.
- The Applicant is providing four Bid Letters of Credit to be drawn on by the four New Jersey EDCs in the event that the Applicant is selected as a winning bidder and fails to execute the SOCAs within thirty (30) days of being notified that the New Jersey Board of Public Utilities has approved the form of the SOCA.

6.2 SUMMARY OF BIDS RECEIVED

Of the nine generators determined to be eligible following the initial screening process, bids were received from six:

- BL England Generation Station
- Newark Energy Center
- Old Bridge Clean Energy Center
- Sayreville Energy Center
- West Deptford Energy Station
- Woodbridge Energy Center

A total of 18 pricing options were submitted by the six facilities. Of these, six pricing options were conditioned on substantial modifications to the Final Proposed Form of SOCA and were therefore eliminated for non-conformance:

- One bidder submitted four pricing options for its project, all of which were predicated on modifications that included deleting the Termination Events of Illegality and Invalidity (Sections 8.1.1. and 8.1.2) and inserting a substantially different calculation for Events of Default. Consistent with the explicit instructions to bidders, LAI rejected these four bids. Board Staff and Counsel concurred.
- Another bidder submitted four pricing options for its project, two of which were predicated on a substantial modification that would permit the generator to terminate the SOCA without penalty prior to the BRA associated with the second Delivery Year.

Consistent with the explicit instructions to bidders and with the agreement of Board Staff and Counsel, LAI rejected the two pricing options that included substantial SOCA modifications.

- Two additional pricing options from a third bidder were eliminated because they were based on a facility configuration that had not been submitted during the prequalification phase. One additional pricing option from this bidder was eliminated because it was for an incomplete project.

6.3 GROSS SOCA COST

Gross SOCA cost is the PV of the products of annual SOCP, the offered capacity and days per year over the proposed SOCA term. The annual values are discounted to the beginning of the 2014-2015 Delivery Year. This is a measure of the firm financial commitment of New Jersey ratepayers under the SOCAs, and can be expressed in unit terms (PV of \$/kW) or total terms (PV \$).

6.4 RCP CREDIT

RCP Credit is the present value of the products of the forecasted annual RCP, the offered capacity, and days per year over the SOCA term. The annual values are discounted to the beginning of the 2014-15 Delivery Year. This is a measure of the direct return to New Jersey ratepayers under the SOCAs as compensation for commitment to the firm SOCP string. RCP Credit can be expressed in unit terms (PV of \$/kW) or total terms (PV \$).

6.5 NET SOCA COST

Net SOCA Cost is calculated as Gross SOCA Cost less RCP Credit and represents the estimated PV of contract transaction payments under a proposed SOCA, as defined in Section 4.1 of the SOCA form. It consists of the PV over delivery years 2015 through 2032 of estimated net payments between the EDCs and the generator under the terms of the SOCA. Net SOCA Cost is a function of the proposed SOCP stream, the beginning Delivery Year, the number of Delivery Years in the proposed SOCA term, the proposed SOCA Capacity, and the series of future RCPs determined by LAI based on the market simulation and financial models used by Agent to represent the BRA. Net SOCA Cost is calculated as the PV of a stream of annual net costs applicable to each Delivery Year of the SOCA term. The cost each year is determined as the product of 365 days per year, the SOCA capacity in MW, and the difference (positive or negative) between the SOCP and forecasted RCP (expressed in \$/MW-day) for each year.

6.6 ECONOMIC BENEFITS TO NEW JERSEY RATEPAYERS

PJM Electricity Market

Wholesale energy prices in PJM are referred to as Locational Marginal Prices (LMPs) because energy prices across the market area vary by location. LMPs tend to be highest during summer months when demand is highest due to air conditioning load and lowest during the spring and

fall when demand is relatively low. Sometimes LMPs are high during the winter because of the high seasonal cost associated with delivered natural gas, one of the primary determinants of wholesale power prices in New Jersey. From a locational perspective, LMPs tend to be highest in urban areas due to transmission constraints and the need to rely on more expensive peaking generation plants to meet demand and to satisfy grid reliability objectives.

PJM administers the Day-Ahead Market (DAM) and the Real-Time Market (RTM). Both clear on an hourly basis. Prices in the DAM are calculated the day before delivery and are based on one day ahead load forecasts and generator bids. Prices in the RTM are established the day of delivery and are based on actual system conditions.³⁵ In PJM, the wide majority of energy transactions are cleared in the DAM.

For every hour, active generators submit bids into the energy market. These bids are sorted by PJM and formed into a “bid stack.” The highest bids are from the least efficient resources, in particular, peaking plants. The lowest bids are from base load units such as coal or nuclear facilities. “Mid-merit” facilities such as CC plants typically submit bids in the DAM or the RTM that are in-between those submitted by base load plants and peakers. PJM selects the lowest bids that are required to meet demand for a given hour. Of the units selected, the one with the highest bid sets the clearing price with adjustments for losses and congestion, *i.e.*, LMP. All units that clear the market receive their nodal LMP regardless of each unit’s respective bid price.

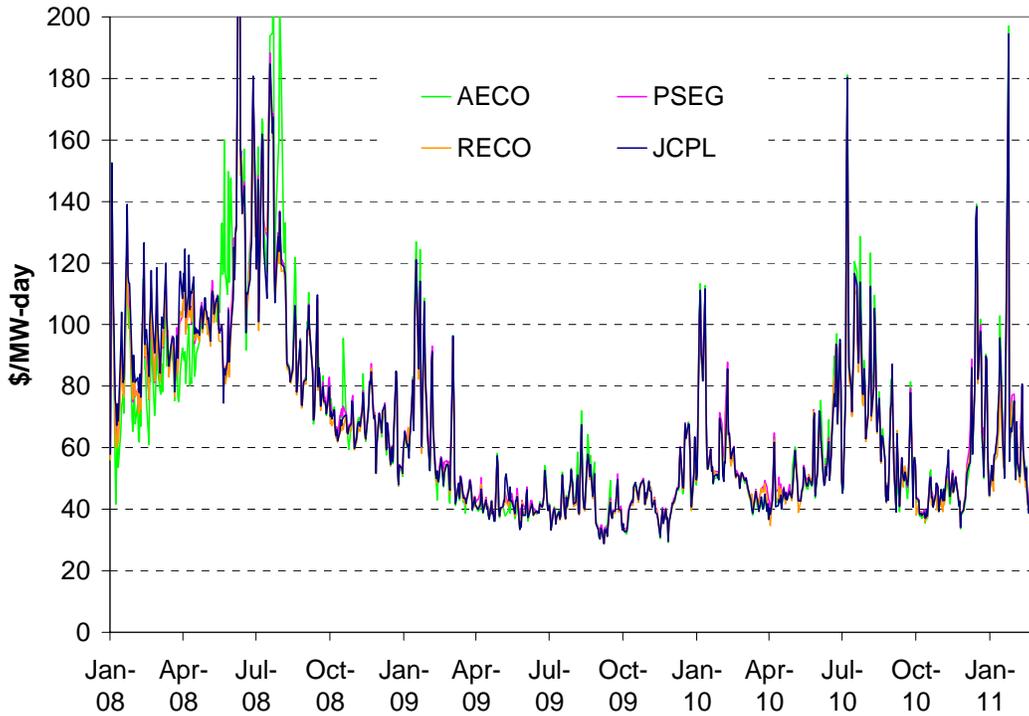
Generators are paid based on their location in PJM by node, at which prices for every hour are calculated for both the DAM and RTM. Load pays a zonal price, which is the load-weighted average price of all the generation nodes within a given zone. Zones are typically defined by utility service territories. There are 18 zones in PJM. For New Jersey ratepayers, the LMP zones of relevance are Atlantic City Electric Company (AECO), Rockland Electric Company (RECO), Jersey Central Power and Light Company (JCPL), and Public Service Electric and Gas Company (PSEG).

Historically, prices within the four New Jersey LMP zones have been nearly identical. Figure 7 shows average daily on-peak clearing prices for each of the four New Jersey zones since the beginning of 2008.³⁶

³⁵ The purpose of the RTM is to cover unanticipated system requirements associated with variances in the conditions that had been expected when DAM prices were established. For example, if load is greater the day of delivery than had been expected on the previous day when the DAM prices were set, load would be required to purchase additional energy in the RTM.

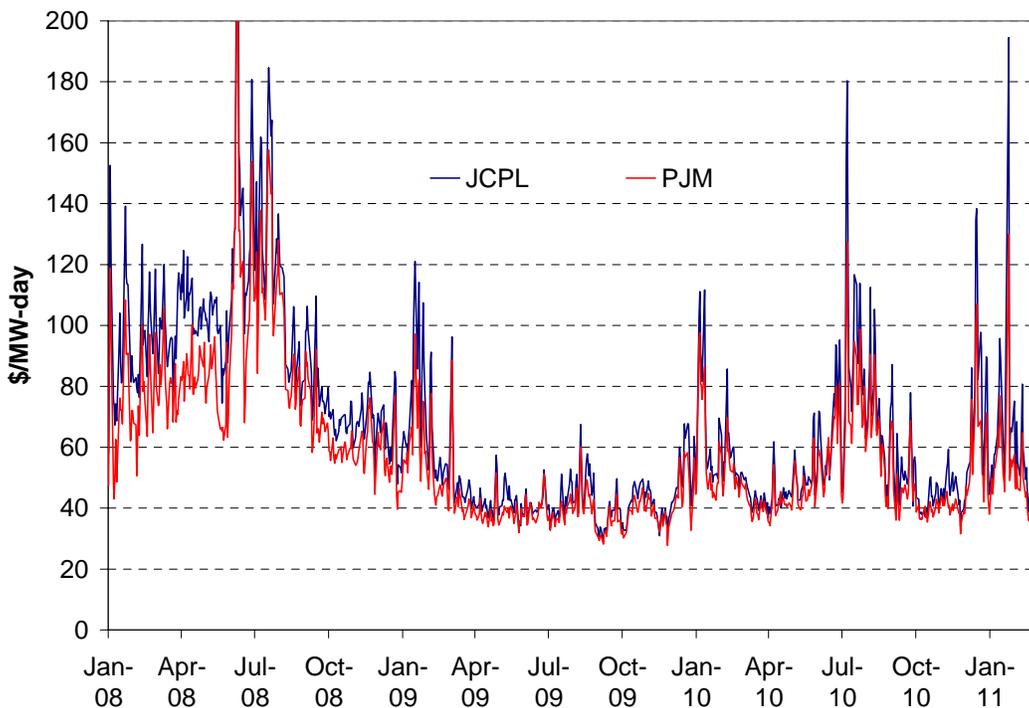
³⁶ On-Peak hours are the sixteen hours of each weekday beginning with the eighth and ending with the twenty-third hour of each day, excluding holidays.

Figure 7. Average Daily On-Peak LMPs in New Jersey



LMPs in PJM tend to be higher to the North and East than to the West and South. Wholesale prices in New Jersey are among the highest in the region. Figure 8, below, compares the JCPL LMP to the PJM load-weighted average LMP for the last several years.

Figure 8. Comparison of PJM and JCPL Average Daily On-Peak LMPs



There are multiple reasons why prices in New Jersey are high, but primary among them is the make-up of New Jersey's indigenous generation fleet. The state is heavily dependent on relatively inefficient gas turbines (GTs), which often set the LMP. Furthermore, delivered gas prices in New Jersey are relatively high compared to the rest of PJM. New Jersey's dependence on less efficient GTs creates an opportunity for the addition of more efficient resources to lower energy prices in and around New Jersey, while recouping margin from energy sales.³⁷

Reliability Pricing Model

Under the RPM, PJM conducts an annual BRA that establishes annual market-based RCPs for LDAs three years in advance of the actual Delivery Year. PJM also conducts Incremental Auctions to cover required variances in supply or demand that develop after a BRA, but prior to the relevant delivery year; however, the results of the Incremental Auctions do not affect payments under the SOCA.

Each EDC service territory can be treated as an LDA if it is expected to "bind", *i.e.*, if it does not have sufficient generation and import capability to meet its capacity requirements. Those requirements are determined by the forecasted peak load net of any demand-side reductions. Thus an LDA that is expected to be constrained could have a higher RCP compared to other LDAs. PJM calculates the Capacity Emergency Transfer Limit (CETL), the amount of capacity an LDA can import, and the Capacity Emergency Transfer Objective (CETO), the amount of capacity an LDA would be required to import, to determine if an LDA will be constrained.

LDAs are "nested" in PJM, so that the EDC LDAs are part of the Eastern Mid-Atlantic Area Council (EMAAC) LDA, which is part of the Mid-Atlantic Area Council (MAAC) LDA, which itself is part of the entire Regional Transmission Organization (RTO). Thus, New Jersey EDCs could have RCPs set by their individual LDA, by EMAAC, by MAAC, or by the RTO, depending on the balance between local demand, local capacity resources, and transmission capacity. Generally, PJM determines whether to model an LDA based on the ratio between its CETL and CETO. CETL is the amount of capacity an LDA can import under emergency conditions, and CETO is the amount of capacity an LDA would be required to import under emergency conditions after consideration of its peak demand and capacity resources.³⁸ Under PJM rules, EMAAC and MAAC will always be modeled as separate LDAs. The RCPs could be above (but never below) the RTO RCP.

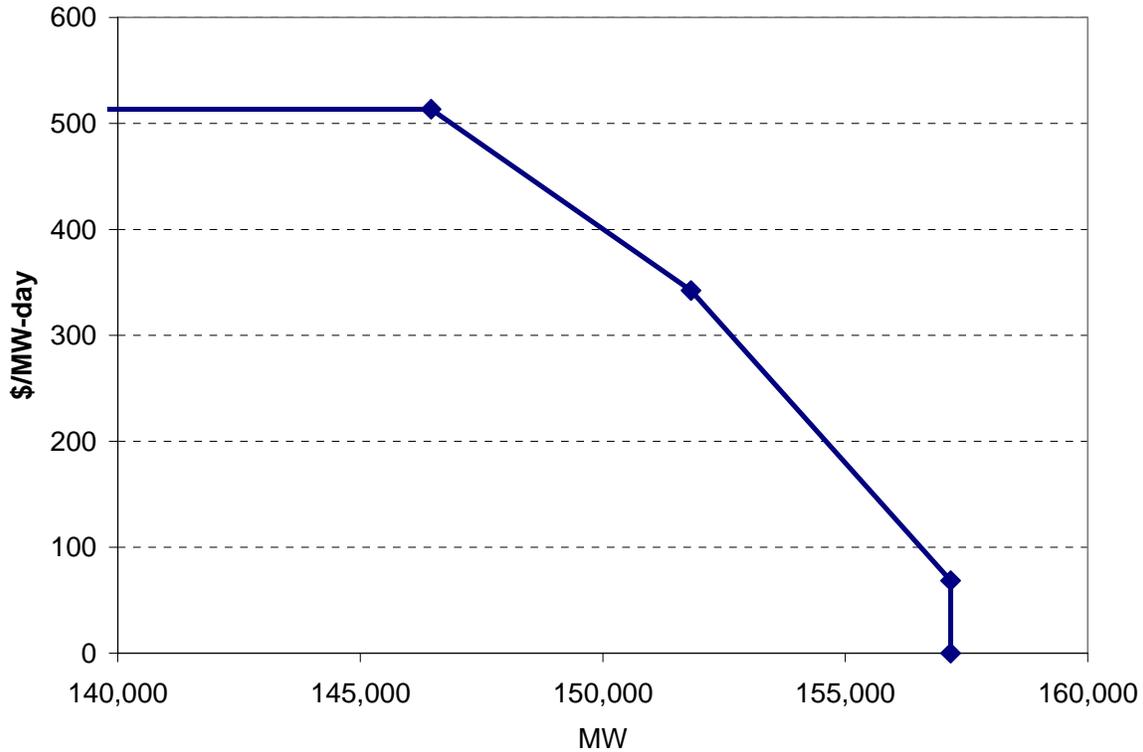
RCPs are set at the intersection of the supply curves comprised of resource bids and demand curve referred to as a Variable Resource Requirement (VRR) curve based on the forecasted peak load. The height of the VRR curve is determined by the Net Cost of New Entry (Net CONE). PJM estimates Gross CONE – the levelized capital cost and fixed operating expense for a

³⁷ As indicated by Figure 7, units selected by PJM to run in New Jersey in any hour receive similar LMPs differentiated somewhat by loss factors and congestion. A CC plant has much lower variable operating costs than a gas turbine. While a CC plant would receive the benefit of an LMP set by a less efficient resource, the addition of one or more CC plants in New Jersey is expected to reduce LMPs, thereby benefiting load throughout New Jersey.

³⁸ PJM models an LDA if its CETL / CETO ratio falls below 1.15, or if it previously exhibited price separation within the last three BRAs.

postulated gas turbine unit – by location prior to each BRA. Net CONE is equal to Gross CONE, adjusted for inflation and an offset for EAS. Its position along the x-axis is calculated as the reliability requirement for the relevant LDA (or RTO) multiplied by the 1.0 plus the Installed Reserve Margin (15% in the case of PJM) plus 1%, divided by 1.0 plus the IRM. The VRR curve to be used in the 2014/15 BRA for the RTO is illustrated in Figure 9.

Figure 9. Variable Resource Requirement Curve

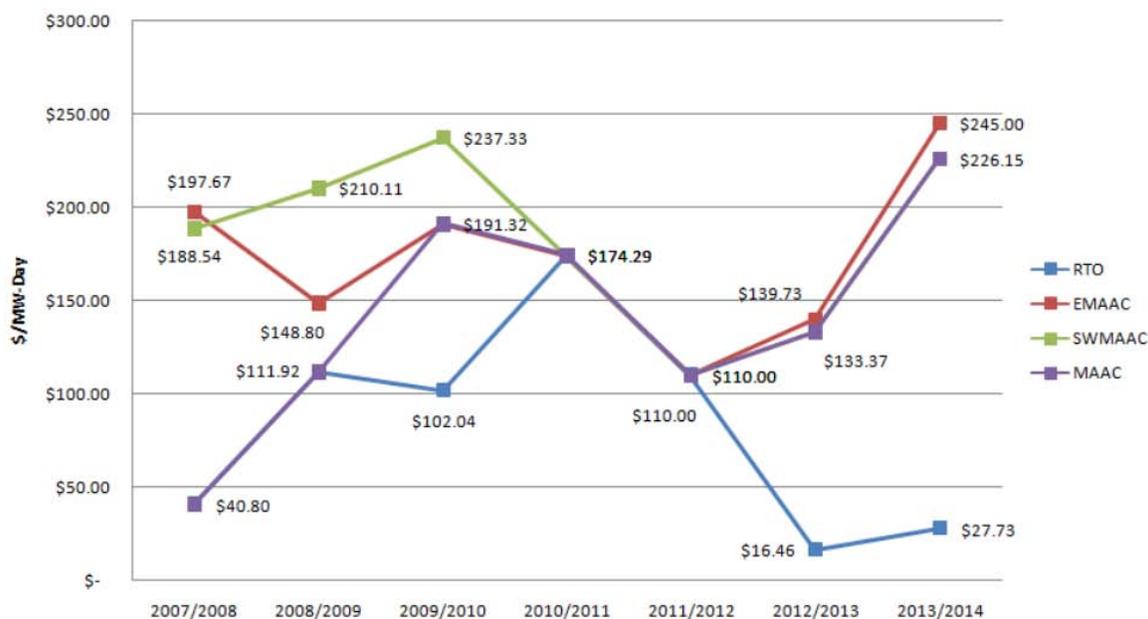


New Jersey Resource Clearing Prices

The first RPM BRA was held in April 2007 for capacity commitments starting on June 1, 2007, the beginning of the 2007/08 Delivery Year. Since then, six additional auctions have been held, with a wide range of price outcomes for ratepayers in New Jersey. New Jersey EDCs have always paid the same RCPs (with adjustments for Capacity Transfer Rights allocated by PJM to the EDCs). As illustrated in Figure 10 below, the New Jersey RCP was set by the EMAAC LDA (the red line) in most Delivery Years, but from 2009/10 to 2011/12 the New Jersey RCP was set by the MAAC LDA (the purple line).³⁹ PJM has approved a number of large, high voltage backbone transmission lines to alleviate these constraints, which should cause the RCPs to converge over time.

³⁹ In last year’s BRA, the EMAAC and MAAC RCPs were higher than the RTO because there was relatively more capacity outside of EMAAC and MAAC but there was insufficient transmission to deliver that capacity to those LDAs.

Figure 10. Historical RPM Clearing Prices⁴⁰



Energy Market Model

The long-term forecast of energy prices in PJM was performed using the MarketSym multi-area chronological dispatch simulation model. This section of the report highlights key elements that were customized specifically for this proceeding to reflect market dynamics across PJM and neighboring market areas.

Load Forecast

LAI utilized load shape data based on the most recent available ISO load data forecasts, including the PJM 2011 Load Forecast Report. A downward revision to the economic outlook for the PJM area has resulted in lower peak and energy forecasts compared to PJM's previous forecast. Summer peak load growth for PJM RTO is projected to average 1.3% per year over the next ten years, and 1.1% over the following 15 years. Winter peak load growth for PJM RTO is projected to average 1.1% per year over the next ten years and 0.9% over the following 15 years.

Generation Unit Retirements

Events at the Fukushima Daiichi Nuclear Power Station in Japan may have repercussions with respect to the relicensing or early retirement of nuclear units in New Jersey, elsewhere in PJM, and throughout neighboring market areas. Consistent with the Consent Order, LAI assumed the retirement of Oyster Creek in New Jersey in 2019. The only other nuclear retirement in PJM included in the retirement analysis is Dominion Energy's Surrey units. Importantly, LAI's model development was completed in February 2011, and therefore reflects the status of nuclear

⁴⁰ Source: <http://www.pjm.com/markets-and-operations/rpm/~media/markets-ops/rpm/rpm-auction-info/2013-2014-base-residual-auction-report.ashx>

units known prior to the March 11, 2011 earthquake. The commercial and safety implications associated with the Nuclear Regulatory Commission's and the Department of Energy's reviews of U.S. nuclear reactor performance and integrity is outside the scope of this LCAPP procurement.

Older fossil-fuel plants in PJM are coming under increasing economic pressure due to age, low energy prices, and environmental regulations. Energy and capacity revenues may be barely sufficient to cover ongoing operation and maintenance costs for aging plants. In many cases, the decision has been made to retire the plant or unit. Table 7 lists recent plant deactivations and pending deactivation requests in PJM as of January 20, 2011.

Table 7. Recent and Pending PJM Fossil Fuel Plant Deactivations⁴¹

Unit	Capacity	Age (Years)	Projected or Actual Deactivation Date
Howard M. Down (Vineland) Unit 8	11.0	53	6/5/2009
Indian River 2	89.0	48	5/1/2010
Hunlock 3	45.0	48	6/1/2010
North Branch	74.0	18	8/1/2010
Howard M. Down(Vineland) Unit 9	17.0	49	8/28/2010
INGENCO Richmond Plant	3.0	18	8/31/2010
Hall Branch (aka Altavista)	63.0	19	10/13/2010
Gorsuch	18.9	59	11/11/2010
Baleville Landfill	3.8	9	12/22/2010
Kingsland Landfill	2.8	11	12/22/2010
Will County 1	151.0	55	12/30/2010
Will County 2	148.0	55	12/30/2010
Hudson 1	383.0	39	9/1/2012
Chesapeake 8	17.5	41	4/19/2011
Chesapeake 9	16.9	41	4/19/2011
Chesapeake 10	16.9	41	4/19/2011
Kitty Hawk GT1	18.0	39	4/19/2011
Kitty Hawk GT2	16.0	39	4/19/2011
Indian River 1	90.0	50	5/1/2011
Cromby 1	144.0	55	5/31/2011
Eddystone 1	279.0	49	5/31/2011
Cromby Diesel	2.7	43	5/31/2011
Sporn 5	440.0	49	6/1/2011
Cromby 2	201.0	54	12/31/2011
Benning 15	275.0	39	5/31/2012
Benning 16	275.0	35	5/31/2012
Buzzard Point East Banks 1, 2, 4-8	112.0	39	5/31/2012
Buzzard Point West Banks 1-8	128.0	39	5/31/2012
Eddystone 2	309.0	49	6/1/2012
Kearny 10	122.0	39	6/1/2012
Kearny 11	128.0	40	6/1/2012
Chesapeake 7	16.0	40	7/28/2012
Ingenco Petersburg Plant	2.9	20	5/31/2013
Kearny 9	21.0	43	6/1/2013
Indian River 3	169.7	40	12/31/2013

In addition to the retirements in Table 7, LAI has assumed that an additional 9,315 MW of coal-fired capacity will be retired in PJM between 2014 and 2019. This consists almost entirely of small units (less than 200 MW) that are currently more than 40 years old and face a combination

⁴¹ The recent deactivations include those plants deactivated since January 1, 2009, which is the date of the existing generator list in PJM's most recent EIA 411 filing.

of environmental capital expenditures and/or tighter margins on energy sales. LAI has also assumed that 2,259 MW of oil/gas-fired plants will be retired during the same time frame.

The retirement of older fossil-fuel plants is likely to accelerate due to a number of environmental regulations proposed by the U.S. Environmental Protection Agency (EPA). These regulations could require that expensive retrofits to be installed in order to continue operating the facility. In many cases, the cost of the retrofit cannot be justified on the basis of going-forward earnings by the plant owner, and a decision will be made to retire the plant instead of undertaking the required retrofits.

Regulations that are expected to have the greatest impact on plant retirement in the near future are as follows:

- Section 316(b) of the Clean Water Act – Regulates cooling water intake structures. Revised rulemaking to be issued shortly may require elimination of once-through cooling and its replacement with closed-loop cooling systems.
- Title I of the Clean Air Act – Provides regulatory authority for National Emission Standards for Hazardous Air Pollutants for the electric power industry. In a proposed rulemaking issued on March 16, 2011, EPA set MACT standards for mercury, acid gases, heavy metals and organics for coal- and oil-fired power plants.⁴² This may require the retrofit of significant additional emissions control equipment.
- Clean Air Transport Rule (CATR) – Proposed program issued July 6, 2010 would sharply reduce emissions of sulfur dioxide and nitrogen oxide from power plants in 31 states in the eastern half of the U.S. and the District of Columbia. The need to retrofit for additional emissions controls is likely depending on which of three different program options is adopted.
- Coal Combustion Residuals – Pending regulations under the Resource Conservation and Recovery Act will reduce available options for and increase the cost of coal ash disposal.

At this time, none of these regulations is final. However, all of them are expected to be finalized by mid 2012 and then fully implemented by 2018. The impact of these rules on existing generating facilities is uncertain until the rules are finalized, but it will be significant. Several recent studies have examined the potential impact of these rules. The North American Electric Reliability Corporation (NERC) projects a loss of between 46 GW and 76 GW due to derates and retirements of coal- and oil/gas-fired steam units nationwide by 2018, with the variation depending on whether the final rules can be considered moderate or strict.⁴³ The Brattle Group, looking only at coal-fired plants, projected the retirement of between 50 GW and 65 GW by

⁴² Note that New Jersey, as well as other states in PJM, including Maryland and Delaware, has already promulgated regulations limiting mercury emissions from coal-fired power plants that are at least as stringent as the proposed EPA limits.

⁴³ North American Electric Reliability Corporation, 2010 Special Reliability Assessment: Resource Adequacy Impacts of Potential U.S Environmental Regulations, October 2010.

2020.⁴⁴ ICF International also looked only at coal-fired plants, and included the potential impact from federal regulation of greenhouse gas emissions under a cap-and-trade program. ICF found that 75 GW of coal-fired generation is at risk of retirement by 2018, driven primarily by the high cost of installation for scrubbers and fabric filters to meet MACT requirements.⁴⁵ Credit Suisse considered only the impact of clean air regulations (MACT and CATR) on coal-fired plants in the U.S. Based on the plant sizes and existing emissions controls, Credit Suisse identified 60 GW at risk in their base case, with high and low cases of 100 GW and 35 GW, respectively.⁴⁶

Focusing attention on PJM, Brattle Group concluded that 12 GW to 19 GW of coal-fired generation was at risk of retirement by 2020. Credit Suisse found that 25% of coal-fired capacity in PJM (19,553 MW) lacked both scrubbers and SCR. Much of that capacity is at larger plants, where economies of scale will help justify the necessary environmental capital expenditure to keep the plant operational. But roughly half of that capacity, 9,841 MW, is at plants with capacities of 300 MW or less, nearly all of which are between 40 and 60 years old. The economic conditions at these plants are much more likely to favor a decision to retire. In addition, 4,865 MW is at small coal-fired plants that currently have SCR but lack scrubbers. These plants will also be at significant risk of retirement. In its base case, Credit Suisse assumed that 12,274 MW of coal-fired generation in PJM would retire between 2013 and 2017.

The results of the NERC study are not directly comparable to those of Credit Suisse or Brattle Group. NERC organized its results according to reliability areas. PJM is located within the Reliability First Corporation (RFC) area, which includes portions of several Midwestern states that are outside PJM. Furthermore, Dominion, a member of PJM, is located in the SERC Reliability Corporation (SERC) area. The NERC study includes Dominion in the Virginia and the Carolinas (VACAR) sub-region of SERC. Since PJM has nearly 80 GW of coal-fired capacity compared to 97 GW for RFC as a whole, the impact reported for RFC in the NERC study will be broadly indicative of the expected impact on PJM.

Looking first at the coal-fired plants, NERC determined that the combined impact of the four environmental regulation areas listed above would be 5,250 MW for the moderate case (1,965 MW of derates and 3,285 MW of retirements.) The corresponding value for the strict case was 13,154 MW (2,266 MW of derates and 10,888 MW of retirements.) These values are in addition to the retirements that have already been committed or announced. Within the VACAR sub-region of SERC, the impacts are 2,111 MW for the moderate case (453 MW derates and 1,658 MW retirements) and 5,126 MW for the strict case (492 MW derates and 4,634 MW retirements.)

As mentioned above, the NERC study also looked at the impact of environmental regulations on oil/gas-fired steam units. The results of NERC's analysis was identical for both the moderate

⁴⁴ M. Celebi, F. Graves, G. Bathla and L. Bressan (Brattle Group), Potential Coal Plant Retirements Under Emerging Environmental Regulations, December 8, 2010.

⁴⁵ J. Bluestein and S. Fine (ICF International), Implication of New EPA Regulation of Industrial and Power Facilities, webinar presentation, October 12, 2010.

⁴⁶ D. Eggers, K. Cole, Y. Y. Song and L. Sun (Credit Suisse), Growth from Subtraction, Impact of EPA Rules on Power Markets, September 23, 2010.

and strict cases, with a projected impact of 4,563 MW in RFC (all retirements) and 431 MW in VACAR (23 MW derate and 408 MW retirements.)

Transmission

The transmission infrastructure into and within New Jersey affects the energy and capacity prices of relevance in the determination of Net SOCA cost and total net benefits for New Jersey's ratepayers. Model inputs reflected the existing transmission infrastructure and upgrades that will likely improve transfer capabilities into the EMAAC and MAAC zones. For simulation purposes, LAI included the following high-voltage backbone transmission projects that have received PJM Board approval.

Trans-Allegheny Interstate Line (TrAIL)

TrAIL is a 500-kV transmission line that will extend 218 miles from the 502 Junction substation in PA to the Loudon substation in VA. Based on the PJM analysis of 2011, the TrAIL project is required to resolve reliability criteria violations starting June 1, 2011. The project is currently under construction and LAI's simulation analysis assumes an in-service date of June 1, 2011.

Susquehanna-Roseland

Susquehanna-Roseland is a 130-mile, 500-kV transmission line, with a path from Susquehanna (PA) to Lackawanna (PA) to Hopatcong (NJ) to Roseland (NJ). The project's developing Transmission Owners are PPL, responsible for the Pennsylvania portion, and PSE&G, responsible for the New Jersey portion. The project will provide a high voltage link between north-central PA and EMAAC. Based on the PJM 2012 analysis, the Susquehanna-to-Roseland project is required to resolve reliability criteria violations starting June 1, 2012; however, the project's in-service date has been subject to permitting delays. As a result, the Roseland-to-Hopatcong portion of the Project is currently expected to be in-service by June 2014. The remainder of the Project is anticipated to be completed by June 2015. LAI's simulation analysis assumes that the complete project will be in-service by 2015.

Potomac Appalachian Transmission Highline (PATH)

In its current configuration, PATH will consist of a 276-mile 765-kV transmission line to be constructed from the existing Amos substation in West Virginia to the proposed Kempton substation in northern Maryland. The need for PATH was first identified as part of PJM's 2007 Regional Transmission Expansion Plan (RTEP). At that time PATH's planned in-service date was June 2012; since then the project's configuration has changed and the in-service date has also changed a number of times, most recently to June 2015 as part of the 2010 RTEP studies. Because of a lower than expected 2011 load forecast, PJM has since suspended the project and so it is expected that its in-service date will be delayed by several years.

Mid-Atlantic Power Pathway (MAPP)

The MAPP project, as currently designed, will consist of 152 miles of new overhead, underground, and underwater transmission lines and cables that will connect southern MD with the Delmarva Peninsula. The need for MAPP was first identified as part of the 2007 PJM RTEP,

with an original planned in-service date in June 2013. The configuration and in-service were subsequently revised, and in 2010 PJM re-affirmed the need for the revised project with a delayed in-service date of June 1, 2015. As with PATH, it is also expected that the in-service date of MAPP will be delayed.

Hudson Transmission Project

LAI did not include the Hudson Transmission Project (HTP) in the transmission topology linking PJM with the New York Independent System Operator (NYISO). The reason HTP was not included in the resource mix is due to uncertainty about the project's status, in particular, the existence of executed transmission contracts between HTP and entitlement holders, *i.e.*, the New York Power Authority (NYPA) and Consolidated Edison Co. (Con Ed).⁴⁷ HTP is a 660-MW (net capacity) HVDC controllable transmission line that is designed to run approximately 8 miles from the Bergen Substation in Ridgefield, New Jersey to the Con Ed West 49th Street Substation in New York City. HTP is designed to include a back-to-back AC/DC/AC converter station in Ridgefield, New Jersey that provides controllability and scheduling capability to the flow of energy between PJM and the NYISO.⁴⁸

Several years ago NYPA selected HTP to provide transmission capacity through its open and competitive RFP process. Pursuant to NYPA's RFP process, HTP and NYPA have reached agreement, subject to NYPA Board approval, on a long-term contract under which NYPA would purchase 75% of HTP's transmission capacity for 20 years. Hudson has announced an in-service date of summer 2013, but there have been a number of project delays over the years.

HTP's Interconnection Service Agreement facilitates the interconnection of 320 MW of Firm Transmission Withdrawal Rights (FTWRs) and 353 MW of Non-Firm Transmission Withdrawal Rights. To support its FTWR allotment from PJM, HTP is responsible for funding \$172 million in network upgrades to the PJM transmission system.

Renewable Portfolio Standards

The majority of states comprising PJM have Renewable Portfolio Standard (RPS) requirements. LAI's simulation model incorporates the expected build-out of renewable resources across the study area, as described below. The current Class I (or Tier 1) requirements in each state are shown in Table 8. In addition to the Class I requirements, New Jersey, DC, Illinois, Maryland, Ohio, and Pennsylvania also have a solar RPS. In some states it is a carve-out of the Class I requirement, and in some states it is incremental to the Class I requirement.

⁴⁷ To the extent HTP is commercialized, the cable loading factor between New Jersey and midtown Manhattan may put upward pressure on LMPs in New Jersey, a market scenario that has not been tested by Agent in the derivation of net energy benefits ascribable to the recommended SOCA portfolio.

⁴⁸ The AC transmission line coming out of the HVDC back-to-back converter station is to be installed underground and under the Hudson River.

Table 8. Class I or Tier 1 Renewable Portfolio Standards for PJM States
(RPS as %)

Year	NJ	DE	DC	MD	OH	PA	WV	VA
2011	5.492	6.80	4.00	4.96	0.97	3.47	0	4
2012	6.320	8.10	5.00	6.44	1.44	3.95	0	4
2013	7.143	9.40	6.50	8.10	1.91	4.42	0	4
2014	7.977	10.70	8.00	10.15	2.38	4.86	0	4
2015	8.807	12.00	9.50	10.25	3.35	5.25	10	4
2016	9.649	13.25	11.50	12.35	4.32	5.71	10	7
2017	10.485	14.50	13.50	12.55	5.28	6.16	10	7
2018	12.325	15.75	15.50	14.90	6.24	6.61	10	7
2019	14.175	17.00	17.50	16.20	7.20	7.06	10	7
2020	16.029	17.75	20.00	16.50	8.16	7.50	15	7
2021	17.880	18.50	20.00	16.85	9.12	7.50	15	7
2022	17.880	19.25	20.00	18.00	10.08	7.50	15	12
2023	17.880	20.00	20.00	18.00	11.04	7.50	15	12
2024	17.880	20.75	20.00	18.00	12.00	7.50	15	12
2025	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2026	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2027	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2028	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2029	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2030	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2031	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2032	17.880	21.50	20.00	18.00	12.00	7.50	25	15
2033	17.880	21.50	20.00	18.00	12.00	7.50	25	15

Our capacity expansion projection for renewable resources across PJM will be in accordance with the following assumptions:

- A portion of the aggregate PJM Class I requirement will continue to be met by existing biomass and landfill gas (methane), but no new biomass or landfill gas resources will be added except to offset the declining production of existing resources.
- Solar photovoltaic resources are built out in each zone such that each state’s respective solar carve-out is fully met, with a two-year delay.
- Wind resources in the PJM interconnection queue that are listed as “partially in service” or “under construction” were added to the model at the start of the calendar year following the expected in-service date stated in the queue.
- Generic off-shore wind projects are modeled with generation ramp-up beginning in 2017; early years are based on “known” project capacity under contract and state legislative mandates.
- All of the incremental renewable capacity to meet the aggregate PJM RPS Class I requirement in each year will consist of generic on-shore wind projects; the incremental

resources needed to maintain this percentage are added in zones in proportion to the relative distribution in the PJM queue.

- Power production data for onshore and offshore wind plants is based on available meteorological data for each specific region.⁴⁹

Demand-Side Management

Goal No. 1 established in the 2008 New Jersey Energy Master Plan (EMP) is maximizing energy conservation and energy efficiency (EE). More specifically, the EMP requires reducing energy consumption at least 20% by 2020, which would yield electricity savings of nearly 20,000 GWh per year.⁵⁰ Goal No. 2 of the EMP is to reduce peak electricity demand by 5,700 MW by 2020.⁵¹ Similarly aggressive demand-side management programs exist in other states of the region, e.g., in Maryland.⁵²

LAI notes that demand-side participation in the PJM Capacity Market has increased dramatically since the inception of RPM in the 2007/08 Delivery Year. Demand-side participation includes active demand response (DR) resources and, starting from the 2012/13 Delivery Year, EE resources. Table 9 below illustrates DR and EE participation by zone in the recent BRA for the 2013/14 Delivery Year.

⁴⁹ Most wind data used by LAI is from the National Oceanic and Atmospheric Administration's National Data Buoy Center or other public sources of wind data. Some wind data are from special studies such as the EWITS study and actual plant performance data.

⁵⁰ The 2008 New Jersey Energy Master Plan at 11.

⁵¹ Id.

⁵² Maryland's EmPOWER initiative, otherwise referred to as the "15 by 15" initiative.

Table 9. Demand Response and Energy Efficiency Resources in the 2013/14 BRA (UCAP)

Constrained LDA	Zone	Offered MW			Cleared MW		
		DR	EE	Total	DR	EE	Total
EMAAC	AECO	122.1	3.1	125.2	122.1	3.1	125.2
EMAAC	DPL	245.7	3.4	249.1	245.7	3.4	249.1
EMAAC	JCPL	283.7	4.4	288.1	283.7	4.4	288.1
EMAAC	PECO	658.2	5.6	663.8	658.2	5.6	663.8
EMAAC	PSEG	1,119.2	7.4	1,126.6	1,119.2	7.4	1,126.6
EMAAC	RECO	32.4	0.0	32.4	32.4	0.0	32.4
EMAAC Sub Total		2,461.3	23.9	2,485.2	2,461.3	23.9	2,485.2
PEPCO	PEPCO	547.3	35.8	583.1	547.3	35.8	583.1
MAAC	BGE	1,102.5	74.8	1,177.3	1,102.5	74.8	1,177.3
MAAC	METED	318.1	7.2	325.3	318.1	7.2	325.3
MAAC	Penelec	420.7	8.0	428.7	420.7	8.0	428.7
MAAC	PPL	1,021.2	2.3	1,023.5	1,021.2	2.3	1,023.5
MAAC Sub Total		5,871.1	152.0	6,023.1	5,871.1	152	6,023.1
RTO	AEP	1,513.1	5.9	1,519.0	823.9	3.8	827.7
RTO	APS	721.9	3.7	725.6	523.2	2.5	525.7
RTO	ATSI	1,384.8	3.0	1,387.8	394.3	3.0	397.3
RTO	COMED	1,521.1	513.7	2,034.8	851.9	511.8	1,363.7
RTO	DAY	277.1	17.2	294.3	42.5	1.1	43.6
RTO	DOM	1,435	60.6	1,495.6	632.7	4.7	637.4
RTO	DUQ	228.6	0.7	229.3	142.3	0.5	142.8
Grand Total		1,2952.7	756.8	13,709.5	9,281.9	679.4	9,961.3

DR and EE are part of the *Reference Case*. As a starting point in the modeling assumptions, LAI relied on the results of the 2013/14 BRA. From 2014 to 2020, a phased demand side management case which is a combination of the energy efficiency / conservation and active DR was included. The penetration level of EE and DR resources is consistent with the objectives of the New Jersey EMP, and other states in EMAAC that have sought to implement aggressive DR and EE programs. From 2020 to 2030, the level of incremental DR and EE penetration will be adequate to offset a significant share of the load and energy consumption growth in EMAAC.

EMAAC Consolidation

As previously discussed, there is little day-ahead or real-time energy price separation across the individual load zones within EMAAC. Hence, LAI has modeled EMAAC as a single zone. LAI has verified this by comparing average LMPs for the individual EMAAC load zones against the simple average LMP for PJM as a whole. The data in Table 10 indicates that LMPs in the individual load zones within EMAAC were tightly clustered relative to MAAC LMPs for the Pennsylvania Electric Company (Penelec) and PPL Electric Utilities Corporation (PPL) zones. The color-coding demonstrates the clustering on EMAAC LMPs relative to the average PJM price, and is adjusted from 2008 to 2009 to reflect the tightened LMPs in 2009 as LMPs generally declined. LAI's treatment of modeling EMAAC as a single zone will significantly

facilitate quantification of energy price effects over the study horizon by eliminating the need to estimate transfer limits dynamics among the individual EMAAC zones. Figure 7 and Figure 8 in Section 6.6 show graphical representations of these relationships.

Table 10. EDC Energy Prices Relative to PJM Average Energy Price

	<u>2008</u>		<u>2009</u>	
	Day-Ahead	Real Time	Day-Ahead	Real Time
PJM Average LMP	\$ 66.12	\$ 66.40	\$ 37.00	\$ 37.08
EMAAC EDCs				
AECO	119%	122%	112%	110%
DPL	118%	116%	113%	111%
JCPL	121%	119%	112%	110%
PECO	115%	113%	110%	108%
PSEG	121%	119%	113%	111%
RECO	118%	117%	111%	109%
Other MAAC EDCs				
Penelec	98%	95%	100%	99%
PPL	112%	110%	108%	106%

Capacity Market Model

In order to forecast RCPs, LAI utilized a proprietary model that replicates the functionality of the RPM.⁵³ The model generates a VRR curve for each study year based on a forecast of Net CONE and peak load. PJM's Net CONE calculations for the 2014/15 BRA in EMAAC, MAAC, and RTO are shown in Table 11, below. The last line expresses Net CONE in terms of \$/MW-day of UCAP, the standard PJM convention, assuming a system average equivalent availability of 93.75%.

⁵³ UCAP takes into account the rating of any supply-side or demand-side capacity resource under PJM rules, adjusted for unit availability. UCAP is sold by capacity resources and purchased by both EDCs and load serving entities.

Table 11. Net CONE Calculations for 2014/15 Base Residual Auction
(\$/MW-yr unless otherwise noted)

	EMAAC	MAAC	RTO
Gross CONE	\$138,646	\$128,226	\$128,226
Net Energy Revenue Offset	\$42,339	\$43,247	\$8,920
<u>Ancillary Services Offset</u>	<u>\$2,199</u>	<u>\$2,199</u>	<u>\$2,199</u>
Net CONE	\$94,108	\$82,780	\$117,107
<i>(\$/MW-Day, UCAP)</i>	<i>\$275.02</i>	<i>\$241.91</i>	<i>\$342.23</i>

LAI has no reason to expect RCPs for the New Jersey EDCs to diverge in the future. Hence, LAI estimated the changes in CETO and CETL for EMAAC and MAAC in order to ascertain which LDAs would set the RCPs for the New Jersey EDCs as well as to locate the VRR curves along the x-axis. LAI expects that the PJM backbone transmission lines discussed in the section above on Transmission inputs to the energy market model will increase CETL for both EMAAC and MAAC over the forecast horizon.

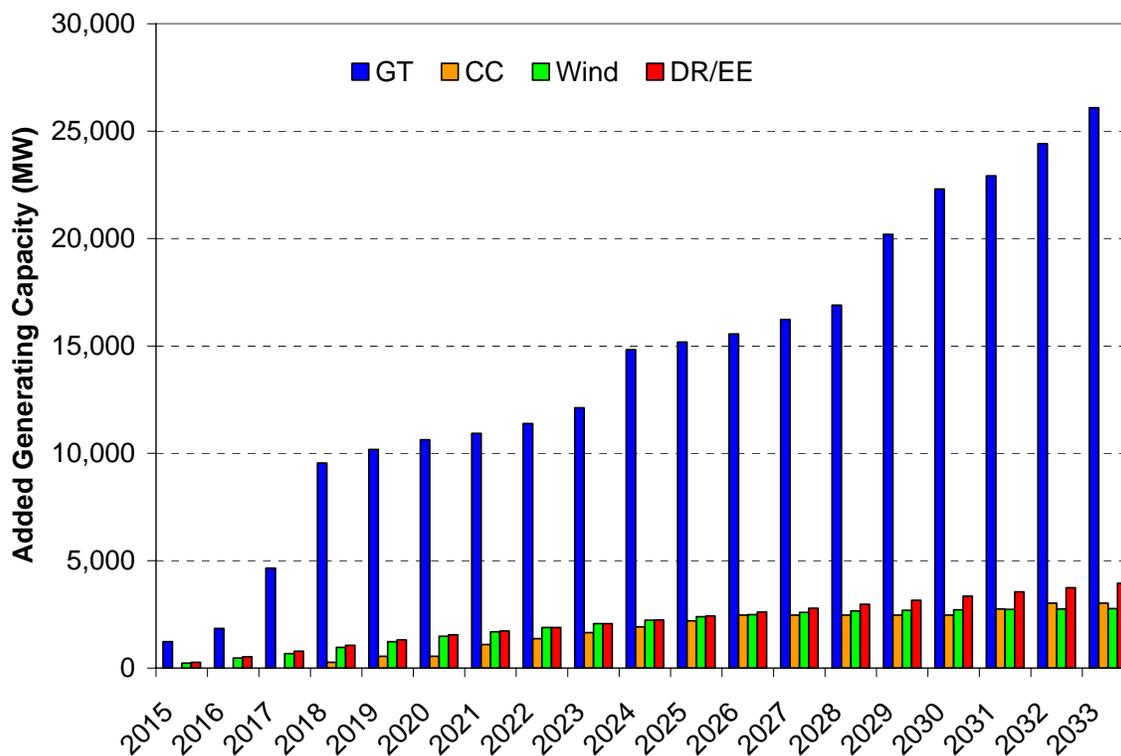
Once LAI established the VRR curves for each year of the study period, RCPs were forecasted based on the supply of capacity resources available with the LDAs. For example, the RTO cleared in the 2013/14 BRA with a significant amount of excess capacity – above a 20% reserve margin. Simply put, there was more capacity than needed to meet reliability requirements, which resulted in a low RCP. In subsequent years, as that excess supply is reduced by load growth and retirements, the model forecasts higher RCPs.

Reference Case

Over the course of the *Reference Case* forecast, the amount of capacity available to meet reliability requirements in PJM increases by about 23,000 MW. This amount is net of the retirements described in above. About 12,000 MW is assumed to be retired between 2014 and 2019. An additional 4,000 MW retires after 2029. Between 2014/15 and 2033/34, about 39,000 MW of new capacity is added, representing a net increase of about 23,000 MW across the market area.

The majority of new resources added to the supply mix over the forecast period are simple-cycle GTs, along with some DR/EE, wind and CC plants. Solar, biomass, and other resource types are also added to the generation mix in comparatively small amounts. Figure 11, below, shows the addition of GT, wind, CC, DR/EE resources over the study period.

Figure 11. Cumulative Additions of Generation Capacity in PJM



Resources are not added to the generation mix in uniform increments. Rather, they are periodically added in large blocks in response to the perception of tightening market conditions. For example, excess supply and reserve margins in PJM are projected to decrease through 2017 due to load growth and plant retirements. As a result, LAI assumed the market adds several thousand MW of new supply, primarily GTs, as indicated in Figure 11. Consistent with actions taken or contemplated by states, power authorities, and vertically integrated utilities, LAI believes that there is a societal preference for a cushion of extra capacity over the forecast period rather than a steady state equilibrium condition where total installed capacity exactly meets the installed capability requirement, no more, no less. The forecasted length of the supply curve therefore reflects periodic large blocks of new generation additions over the forecast period that occasionally leads to excess generation supplies.

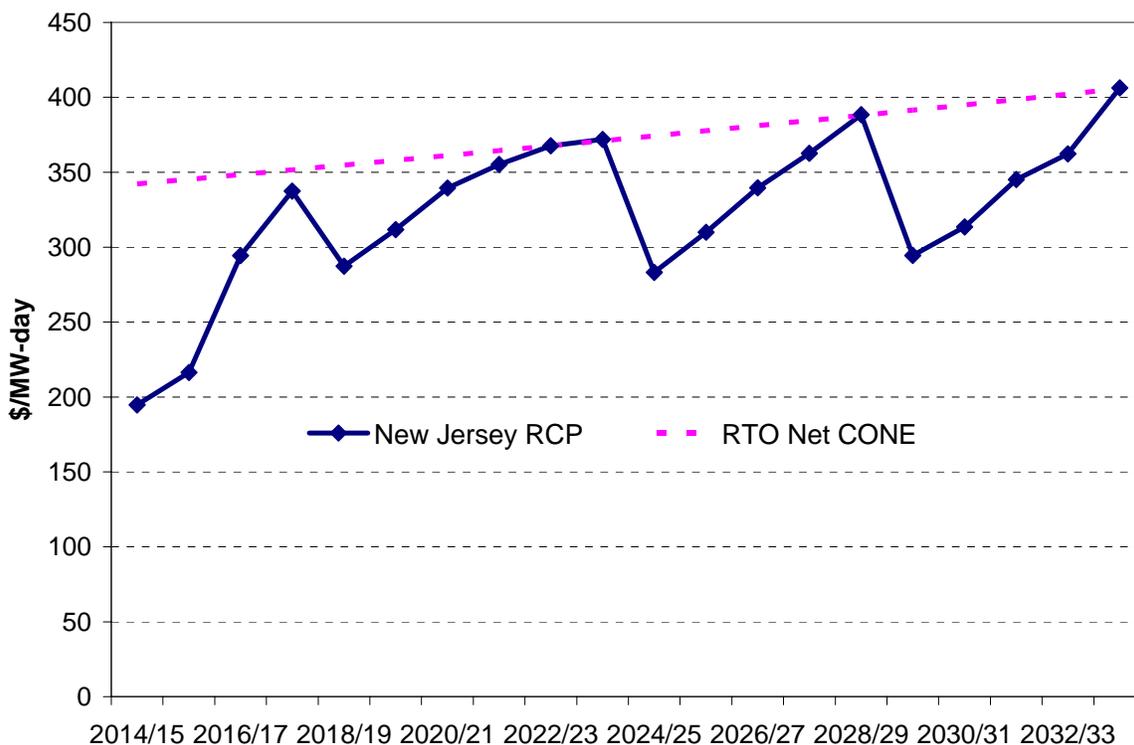
Offsetting this increase in capacity is load growth of approximately 25,000 MW over the study period, so that the PJM capacity market periodically tightens and RCPs rise toward Net CONE. While RCPs may converge on Net CONE, in LAI’s view of the wholesale pricing dynamic, the BRA price effect does not converge on Net CONE for long. As a result, a “saw-tooth” pattern characterizes the LAI forecast of RCPs as market equilibrium is transient, followed by a drop in prices as new capacity is commercialized. This trend is repeated over the forecast period.

Our projection of Net CONE for the *Reference Case* is based on the 2014/15 Net CONE calculated by PJM, which LAI has escalated by 0.9% each year, one-half of LAI’s general inflation rate of 1.8%. The lower escalation rate is used to account for expected technology progress over the forecast period, thereby reducing the cost of constructing a GT peaking plant over the study period in real terms.

Under this scenario, New Jersey RCPs will be set by the RTO for most years in the study period. However, LAI expects that 2014/15 RCPs will be set by MAAC because that LDA will be “tighter” with higher RCPs than EMAAC or the RTO. LAI also expects the 2018/19 RCPs to be set by EMAAC, as that LDA will temporarily be tighter than MAAC or the RTO. The RTO sets New Jersey RCPs in the remainder of the years, primarily because GTs are expected to earn much lower net energy revenues, leading to higher Net CONE values, consistent with Table 11. Thus, when all three LDAs are at or near equilibrium conditions – thereby clearing at or near Net CONE – the RTO will set the New Jersey RCP.⁵⁴

Our forecast of New Jersey RCPs is shown in Figure 12.

Figure 12. New Jersey Resource Clearing Price Forecast



6.7 MINIMUM OFFER PRICE RULE

Procedural Matters and Chronology

On December 3, 2010, Messrs. Ott of PJM and Bowring of Monitoring Analytics, PJM’s IMM, sent a letter to President Solomon of the Board, expressing concern over the LCAPP Law, particularly the requirement that selected capacity resources must offer and clear in the BRA conducted annually under the RPM rules. Concern was expressed over the possibility that capacity awarded under the LCAPP may participate in the May 2011 BRA for Delivery Year

⁵⁴ Under FERC-approved rules, RCPs in an LDA cannot be lower than RCPs for the RTO as a whole.

2014/15. Messrs. Ott and Bowring noted that the primary purpose of the RPM MOPR was to prevent new capacity resources from submitting "...uneconomic offers based on the receipt of out of market payments to artificially depress RPM auction prices." PJM concluded that the LCAPP Law's requirement to clear the BRA equated to requiring SOCA capacity resources to submit a zero (or equivalent) bid offer. According to PJM and the IMM, such an offer would violate the intent of the MOPR, and thus they "...will assert that MOPR should apply to this situation," in which case the selected capacity resource would be at risk of not clearing in the BRA.

As previously discussed, on February 1, 2011, P3 filed a Complaint and Request for Clarification requesting fast track processing at FERC, Docket EL11-20-000.⁵⁵ According to P3, MOPR is flawed because it can allow uneconomic entry of subsidized resources that artificially suppress capacity market clearing prices. The P3 Complaint proposed specific modifications to the MOPR and requested fast-track treatment, indicating that the schedule of the upcoming BRA requires market rule revisions to be in place by mid-April 2011.

On February 4, 2011, FERC issued its Notice of the Complaint and requested PJM's answer and any other interventions, comments, or protests by February 22, 2011. On February 9, 2011, PJM held a teleconference with more than 270 attendees to explain its position on MOPR. While PJM agreed with P3 that the current MOPR is inadequate and needs to be revised, PJM noted that it did not fully agree with all the remedies proposed in the P3 Complaint. PJM explained that it would file a Section 205 filing in response to the Complaint and would include an alternative approach to addressing the concerns raised in the Complaint. On February 11, 2011, PJM submitted its Filing with its MOPR revision proposal docketed under ER11-2875-000. PJM requested that the proposed tariff changes become effective on April 13, 2011.

On February 14, 2011, the MD PSC, an intervener, filed a motion to consolidate the two proceedings (Dockets Nos. EL11-20-000 and ER11-2875-000) and establish a paper hearing with a 120-day schedule for initial and reply briefs. The MD PSC requested that FERC allow at least 60 days from its hearing order for interested parties to analyze both P3's and PJM's MOPR proposals and prepare initial briefs, supported with the testimony of expert witnesses, and at least 60 days to analyze interveners' positions and prepare reply briefs and testimony.

On February 15, 2011, FERC issued an Order in Docket EL11-20-000 extending the comment date in that proceeding, *i.e.*, P3's Complaint, to March 4, 2011, and denying the MD PSC's request to extend the comment period for 60 days.

On February 16, 2011, PJM filed an Answer to Motions for Consolidation and for Establishing of Paper Hearing Procedures. In its Answer, PJM supported consolidation of the two proceedings and opposed establishing an extended schedule for the paper hearings as requested by the MD PSC.

⁵⁵ P3 has 12 members with more than 80,000 MW in PJM. In the Complaint, P3 raised concerns regarding the effectiveness of the existing MOPR to mitigate buyer's market power under the RPM, pointing specifically to New Jersey's and Maryland's programs to facilitate new generation investment.

On February 22, 2011, the Board intervened in Docket EL11-20-000, and two days later the Board intervened in Docket ER11-2875-000. On March 4, 2011, many parties who intervened in the proceedings filed Comments and, in some cases, Protests, including the Board and MD PSC.

PJM's Proposed Changes

Updated Reference Values and Percentage Factor

Under MOPR, PJM calculates Net Asset Class Cost of New Entry CONE values to establish a price screen for mitigating BRA bids by new entrants. In its Section 205 filing, PJM proposed three changes to the calculation methodology: (i) update the calculation of Net Asset Class CONE values to make them consistent with Net CONE values used in the RPM process; (ii) use consistent levelization calculations for the Net Asset Class CONE and Net CONE; and, (iii) adjust the percentage factor by which the mitigation screen is applied.⁵⁶

- The first change would align the Net Asset Class CONE values used for the MOPR with the Net CONE values used in RPM. At present, the Net Asset Class Cost CONE values used for the MOPR are below the Net CONE values used in the VRR curves and, thus, the Net Asset Class CONE values would be raised. PJM proposes to use the same underlying construction cost index for both MOPR and Net CONE purposes.
- The second change would eliminate levelization differences between the MOPR and Net CONE calculations, which had the effect of understating the MOPR cost estimates for combustion turbines (CTs) and CCs. According to PJM's filing, the current MOPR is ambiguous with respect to the determination of the EAS revenue offset.⁵⁷ PJM also proposed locational variability in the Net Asset Class CONE calculations that recognize differences in capital cost and EAS revenues associated with new entry.
- The third change would apply a higher percentage factor to set the MOPR screen at 90% of the Net Asset Class CONE. PJM estimated that applying the 90% factor would result in a MOPR screen in CONE Area 1 (which includes NJ) of \$247.52/MW-day for a CT and \$184.86/MW-day for a CC. Under PJM's proposal, any new resource offered into the BRA, starting in May 2011, below these screens would be subject to the revised MOPR mitigation and, accordingly, less likely to clear in the first BRA and, perhaps, subsequent BRAs.

Elimination of "Net Short" Criterion

Previously, mitigation under MOPR applied only to net buyers of capacity, *i.e.*, parties who would gain from an artificial depression of capacity market clearing prices. If the Net Short

⁵⁶ In the RPM process, Net CONE is equal to Gross CONE less net EAS revenues, *i.e.*, after fuel and variable operation and maintenance costs, for a hypothetical simple cycle CT unit. Net CONE is an input in developing the VRR demand curves.

⁵⁷ The revised calculation for CTs would be identical, with some minor caveats for CC calculations.

criterion is eliminated as proposed by PJM, all new resources will be screened and subject to MOPR; net sellers would not be able to circumvent MOPR.⁵⁸

Elimination of Impact Test

Currently, MOPR is only applied if a new entrant would significantly (defined as 20%-30%, depending on the location) reduce clearing prices. PJM proposes to eliminate this MOPR condition. If this provision is accepted by FERC, there would be no way to justify a below-CONE-cost offer on the basis that the out-of-market resource does not materially impact RPM prices.

Time Period for MOPR Application

Under the existing MOPR, a new SOCA resource would be mitigated for one year only and capacity price impact benefits could materialize starting in the second year. If PJM's proposed revision is accepted by FERC, new capacity would be mitigated until it cleared a BRA and then subsequently for two BRAs thereafter.

Application of MOPR by Resource Type

PJM proposed to keep the existing MOPR's tolerance of a zero-price offer for nuclear, coal, hydro, and integrated gasification CC facilities. In addition, PJM proposed to add wind and solar facilities to the zero-price tolerance list. However, PJM proposed to eliminate the zero-price exception for "any upgrade or addition to an existing capacity resource" and also clarified that "self-supply" offers are not exempt from MOPR.

Obtaining FERC Approval of Bids for Mitigated Resources

PJM clarified that mitigated resources would have to obtain a determination from FERC on the acceptability of their offers. In effect, any mitigated resource would have to show that the MOPR screen is unjust and unreasonable as applied to its specific costs and revenue expectations. PJM further notes that the sufficiency of state policy justifications is a matter much better addressed to FERC.⁵⁹

On February 22, 2011, LS Power requested FERC's determination if its West Deptford CC facility can be allowed to offer in the May 2011 BRA at a price lower than what PJM has proposed to be a reasonable competitive offer price under the revised MOPR. The matter was docketed under ER11-2936-000. In support of its application, LS Power submitted competitively sensitive cost-related information. On March 14, 2011, FERC ordered LS Power

⁵⁸ It appears that closing this loophole was undertaken specifically in response to the Board's current initiative because it was envisioned that the pool of bidders in the LCAPP program would include not just net buyers, but net sellers as well.

⁵⁹ The nature of the evidentiary burden before FERC is a complex issue warranting the advice of counsel.

to provide all the materials earlier presented to FERC to the interveners under Protective Agreement. The next day LS Power withdrew its February 22, 2011 application.⁶⁰

MOPR Analysis and Risk Assessment in the Context of LCAPP

The outcome of the MOPR-related proceedings at FERC is unclear at this time. In any event, the LCAPP Law places the risk of clearing in BRAs on generators; hence MOPR mitigation will be felt first and foremost by generators with SOCA.⁶¹ If a SOCA generator clears a BRA, it is uncertain if the resulting New Jersey RCP will be lowered so that ratepayers would realize the capacity market benefits. Many of PJM's proposed MOPR modifications would either reduce or preclude the realization of this particular ratepayer benefit. Based on LAI's review of PJM's proposed changes, LAI believes that the combined effect of the proposed MOPR adjustments promulgated by PJM may make it more likely, but not certain, that a seller with a SOCA will be mitigated. Such mitigation would jeopardize the generator's ability to clear in a BRA unless the capacity market is sufficiently tight for a mitigated bid to clear. Therefore, LAI conservatively assumed that awarding SOCA to generators through the LCAPP process will not affect RCPs in New Jersey.

6.8 PRICE IMPACT ANALYSIS

The addition of new capacity to the generation mix in PJM can have an effect on future market energy and capacity prices that can benefit New Jersey electric ratepayers over time. If more capacity is added in EMAAC (New Jersey, Delaware, the Delmarva Peninsula, and parts of southeastern Pennsylvania) than would have been added without the LCAPP, capacity prices affecting the New Jersey LDCs could be reduced. If the capacity added is more efficient than that which it might replace, it can have a lasting impact on average energy prices in EMAAC as well. LAI used a suite of licensed and proprietary models to simulate the effects of each proposal against a *Reference Case* over an evaluation period running from June of 2014 through May of 2033. The same models were used to simulate combinations of proposals as well.

Energy Price Impact Analysis

Each energy market simulation produced a table of hourly LMPs for each zone, including EMAAC. These hourly LMPs were multiplied by the corresponding hourly loads for the New Jersey EDC areas (estimated as a % of total EMAAC load from historical data). These hourly products were summed for each month and adjusted for actual days in the month, since the model actually simulates one week per month. The monthly sums of price-load products were aggregated into totals for each Delivery Year (June-May).

⁶⁰ LAI believes that the outcome of this proceeding is a good indicator of the efficacy of appeal to FERC on the MOPR applicability. In LAI's view, it appears evident that a generator that desires special consideration of the MOPR applicability at FERC would have to be prepared to overcome scrutiny and disclose sensitive information to its competitors with no guarantee of success.

⁶¹ As discussed in Section 4 of this report, generators will not be able to receive SOCA payments in Delivery Years for which capacity did not clear, but the SOCA will be permitted to remain in force.

Energy Market Price Benefit was determined for each proposal case and for each portfolio case as the PV of the annual differences between the *Reference Case* and the case in question.

Unit Energy Market Price Benefit was determined for each eligible generator case as the Energy Market Price Benefit, divided by the proposed SOCA Capacity of the generator.

Capacity Price Impact Analysis

It is difficult to derive capacity market price impacts ascribable to LCAPP and the consequential addition of up to 2,000 MW (UCAP). This is because RCPs under the RPM mechanism are sensitive to small changes in capacity supply.⁶² Moreover, as discussed in the previous section, the anticipated implementation of mitigation procedures under revisions to MOPR renders speculative recognition of capacity price impacts in the quantification of expected benefits. Therefore, LAI decided to exclude any potential capacity price benefits realized by ratepayers in New Jersey as a result of the addition of LCAPP supply.

6.9 PREFERENCE WEIGHT FOR COD PRIOR TO 2015 DELIVERY YEAR

According to the LCAPP Law, eligible generators with credible claims to a first Delivery Year of 2015 are to be awarded a “weighted preference in addition to the net benefit ratepayer test” (P.L. 2011, c. 9, 3.b.(3)). The method for calculating the net benefit ratepayer test uses the PV method with a fixed present date and a fixed (18-year) duration, regardless of the bidder's project expected COD or first SOCA Delivery Year. The PV method implicitly provides a time-weighted preference for projects that commence operation earlier. In addition, a pre-specified PV credit (in \$/kW of SOCA Capacity) was available to eligible generators expected to achieve a COD before June 1, 2014. The amount of the credit was determined by LAI to be a materially significant preference, as required by the LCAPP Law, without unnecessarily distorting the economic benefits of the facility in relation to projects that submitted a later expected COD. Eligible generators expected to enter commercial operation in later delivery years would all be treated equally, other than for the earlier preference implicit in the PV calculation.

6.10 NET LOAD COST

Net Load Cost (NLC) is the measure of economic performance used to rank eligible generators and to compare different portfolios of eligible generators that were considered. NLC combines the direct costs of each proposed generator (the Net SOCA Cost), the Energy and Capacity Market Price Benefits, and, if applicable, the preference weight for 2015 Delivery Year projects.

- Unit Net Load Cost (UNLC) is determined separately for each eligible generator as Unit Net SOCA Cost, less the Unit Energy Market Price Benefit, less the Unit Capacity Market Price Benefit, and less any applicable 2015 Delivery Year preference weight. UNLC is expressed in present value \$/kW of SOCA Capacity.

⁶² Energy prices are much less sensitive due to changes in capacity supplies.

- Total Net Load Cost (TNLC) for each eligible generator is the product of UNLC and proposed SOCA Capacity and is expressed in millions of PV dollars. TNLC is also calculated for each portfolio of Capacity Facilities considered, as the sum Total Gross SOCA Cost for all included Capacity Facilities, the Total RCP Credit based on the annual total capacity and the resultant RCP price forecast for each year, the Energy Market Price Benefit for the portfolio, and the Capacity Market Price Benefit for the portfolio.
- Cumulative Total Net Load Cost is a preliminary determination of the aggregated TNLC for a portfolio of eligible generators, ignoring any non-linearity in market effects. Applied to a set of eligible generators ranked by increasing UNLC, the cumulative TNLC shows the point at which either diminishing returns or positive total costs are obtained as additional eligible generators are added to a portfolio.

6.11 RANKING AND SELECTION PROCESS

Present Value Calculations

All financial calculations were performed in nominal dollars for each Delivery Year and discounted to a PV reference point at the beginning of the 2014/15 Delivery Year. The 8.37% discount rate used is the peak-load weighted average of the Weighted Cost of Capital (WACC) rates for the EDCs. The calculation is summarized in Table 12.

Table 12. Weighted Average Cost of Capital Calculation

Utility	2014 Peak Load	% of Total	WACC	Wtd WACC
PSE&G	10,901	52.8%	8.21%	4.335%
RECO	433	2.1%	8.50%	0.172%
JCP&L	6,539	31.7%	8.21%	2.692%
AEC	2,773	13.4%	8.69%	1.177%
Total	20,646	100.0%		8.37%

The WACC values for the utilities are based on debt interest rates, preferred stock dividend rates, and common equity return rates provided to LAI by Board Staff, without consideration for tax effects.⁶³

Consideration of Alternative SOCA Price Options

The nine SOCA pricing options which survived the eligibility and qualification process represent five different generators. Four of these generators offered two valid pricing options. One of the five offered only one valid pricing option. Since only a single pricing option can be selected for

⁶³ If after-tax WACC values had been used, the combined rate would have been about 7%, while if before-tax WACC values had been used, the combined rate would have been about 11.8%. Use of either of these rates would not have changed the selection of recommended generators, but it would have changed the magnitude of present values presented.

any generator, the first step in the ranking and selection process was to compare the alternative options offered for each generator and select one for use in ranking the generators.

Two generators offered options with the same SOCA term (first Delivery Year, number of Delivery Years offered). The options were compared based on the PV of the SOCP schedule and the option with the lowest such PV sum was selected for each generator.

One generator offered options with and without dual fuel capability. The SOCP for “gas-only” was slightly less than for “dual-fuel” in each year, resulting in a small but significant difference in PV of payments. Since the energy and capacity market analysis was not designed to capture any differential price effects associated with the dual fuel capability, it was determined that the “gas-only” pricing should be selected. If the sponsor finds that dual fuel capability would enhance the project economics at the “gas-only” SOCP level, such capability could be added without additional ratepayer support vis-à-vis higher SOCA payments over the 15-year SOCA term. On this basis LAI recommends the selection of the gas-only SOCP level. Board Staff and Counsel concur.

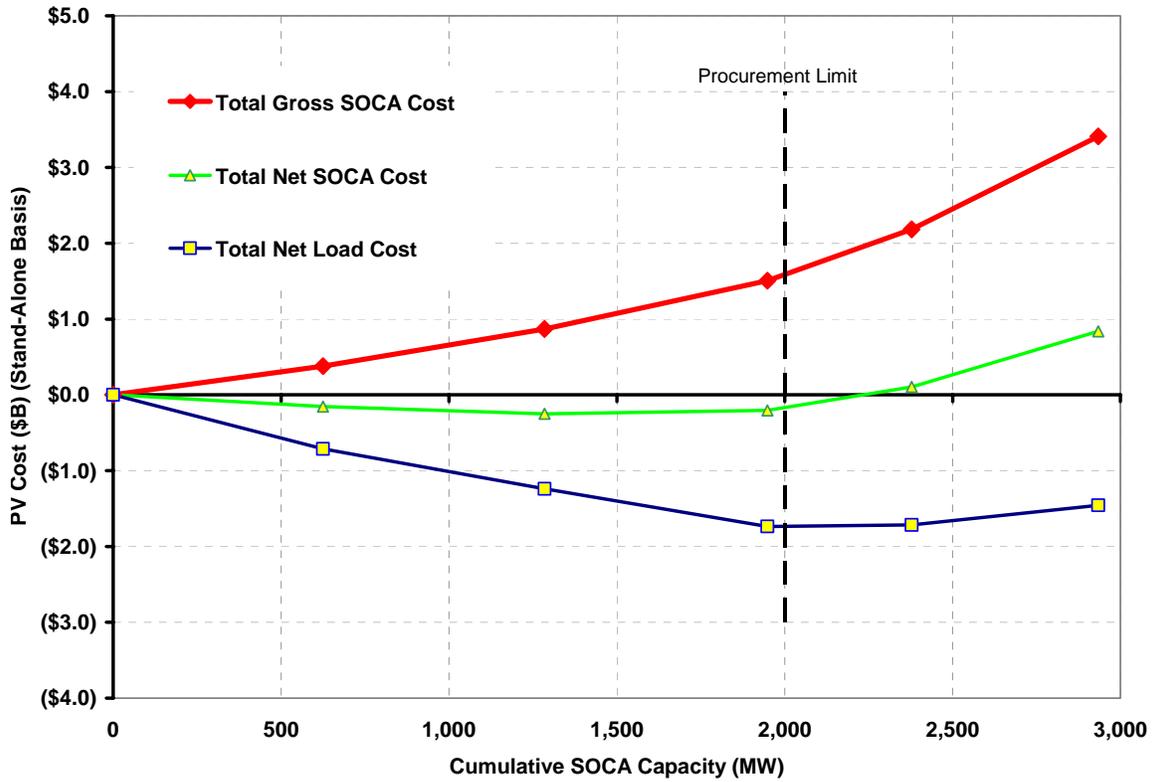
One generator offered options for 9-year and 15-year SOCA terms. With the RCP price forecast for the case, Unit Net SOCA Cost for the generator would be slightly higher with the 9-year option, since the forecast RCPs are slightly higher than the SOCP series for years 10 through 15 of the SOCA term. LAI observed that the 9-year term was beneficially priced insofar as the SOCA price did not appear to incorporate a risk premium to account for the project’s market exposure to uncertain BRA clearing prices in years 10 through 15 of the SOCA term. In terms of the total LCAPP portfolio recommended by Agent, LAI noted that there are portfolio benefits associated with the 9-year option rather than the 15-year SOCA term. Nevertheless, on an expected value basis LAI determined it is sensible to select the 15-year SOCA term rather than the 9-year term. Although the value of the fixed-for-variable swap on capacity price for years 10 through 15 of the SOCA term is inherently subject to measurement error, there is also the potential for significant financial upside if capacity prices appreciate relative to the forecast of BRA clearing prices in the last six years over the planning horizon. Through the technical lens of incremental benefit versus incremental cost, LAI reports that the benefit-to-cost ratio for the last six years remains greater than 1.0 from a ratepayer perspective on an expected value basis. For these reasons, LAI recommends the 15-year term for this generator rather than the 9-year term. Board Staff and Counsel concur.

Ranking of Generators based on Selected Price Options

UNLC was calculated for each of the five eligible generators using the selected pricing options, where applicable. The list was then sorted by increasing UNLC to provide a “supply curve” of generators. Plotted in Figure 13 are cumulative Total Gross SOCA Cost, Total Net SOCA Cost, and Total Net Load Cost against cumulative SOCA Capacity. The total eligible Capacity from five generators is just under 3,000 MW. The first three generators total 1,948 MW, slightly less than the 2,000 MW procurement limit. The Gross SOCA Cost curve shows that each sequential generator has a higher Unit Gross SOCA Cost, represented by the slope of each segment. The Net SOCA Cost curve shows that the first two generators have negative Net SOCA Costs, while the third generator has a slightly positive Net SOCA Cost. The remaining two generators have significantly positive Net SOCA Cost. When Energy Market Price Benefit is included, as shown

by the Net Load Cost curve, cumulative cost decreases through the first three generators, is roughly level with the fourth, and then increases significantly with the fifth.

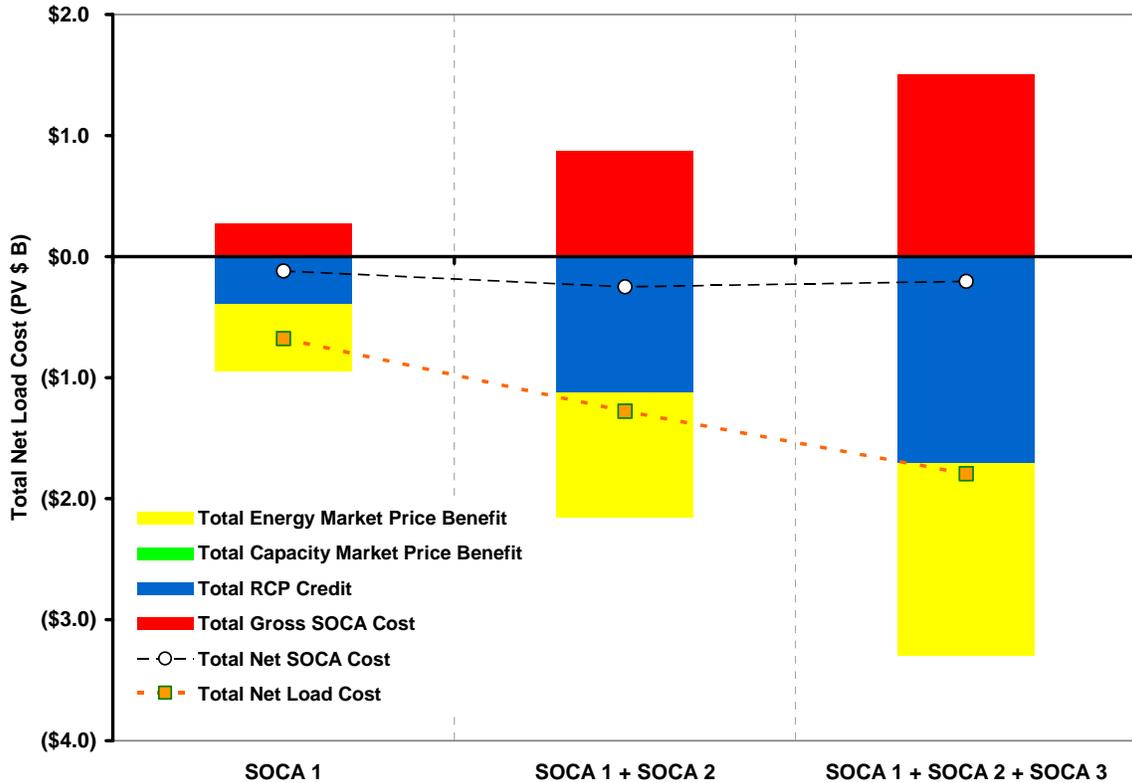
Figure 13. Cumulative Cost v. Cumulative Capacity



Evaluation of Generator Portfolios

In order to capture any non-linearity in energy market effects when combining more than one generator, two portfolio cases were evaluated. The first case includes the two lowest UNLC generators and the second case includes the three lowest UNLC generators. Based on concerns regarding the potential applicability of MOPR, LAI has zeroed out any potential Capacity Market Price Benefit for individual generators or for portfolio cases. A MarketSym simulation was performed for each of the two portfolio cases to determine Total Energy Market Price Benefit. These were combined with the sums of the relevant generator Total Gross SOCA Costs and Total Net SOCA Costs to obtain portfolio TNLC. Figure 14 below shows the breakout of TNLC for the “best” generator alone and for portfolios adding the second and then the third lowest UNLC generators to reach a total SOCA capacity of less than 2,000 MW. The TNLC for the recommended portfolio of three SOCA yields a benefit of \$1.8 billion. Notably, Figure 13 underscores the important point that the energy market effects are roughly additive when the second and third eligible generators are combined in the recommended portfolio.

Figure 14. Total Net Load Cost for Generator Portfolios



Each generator selected adds to the ratepayer fixed payment burden, as shown by the red bars, but provides a credit in terms of expected market capacity price offsets within the SOCA settlement mechanism. The value of the credit ascribable to the administration of the SOCA against capacity market clearing prices in PJM’s BRA is greater than the PV of the cost obligation set forth in the recommended SOCA portfolio. Based on LAI’s forecast of BRA capacity prices of relevance to New Jersey, the SOCAs provide a no-cost hedge on capacity prices over the 15-year term of each SOCA. The Energy Market Price Benefit can be considered a dividend payout on New Jersey’s investment in LCAPP. Based on the results of this procurement, LAI notes that a hypothetical portfolio greater than the 2,000 MW procurement limit set forth in the LCAPP Law would result in higher fixed payment obligations that are not offset by RCP credits and potential energy market benefits. More to the point, the three-generator portfolio recommended by Agent is advantageous relative to the two-generator portfolio.

7 RECOMMENDATIONS

7.1 RECOMMENDED WINNERS

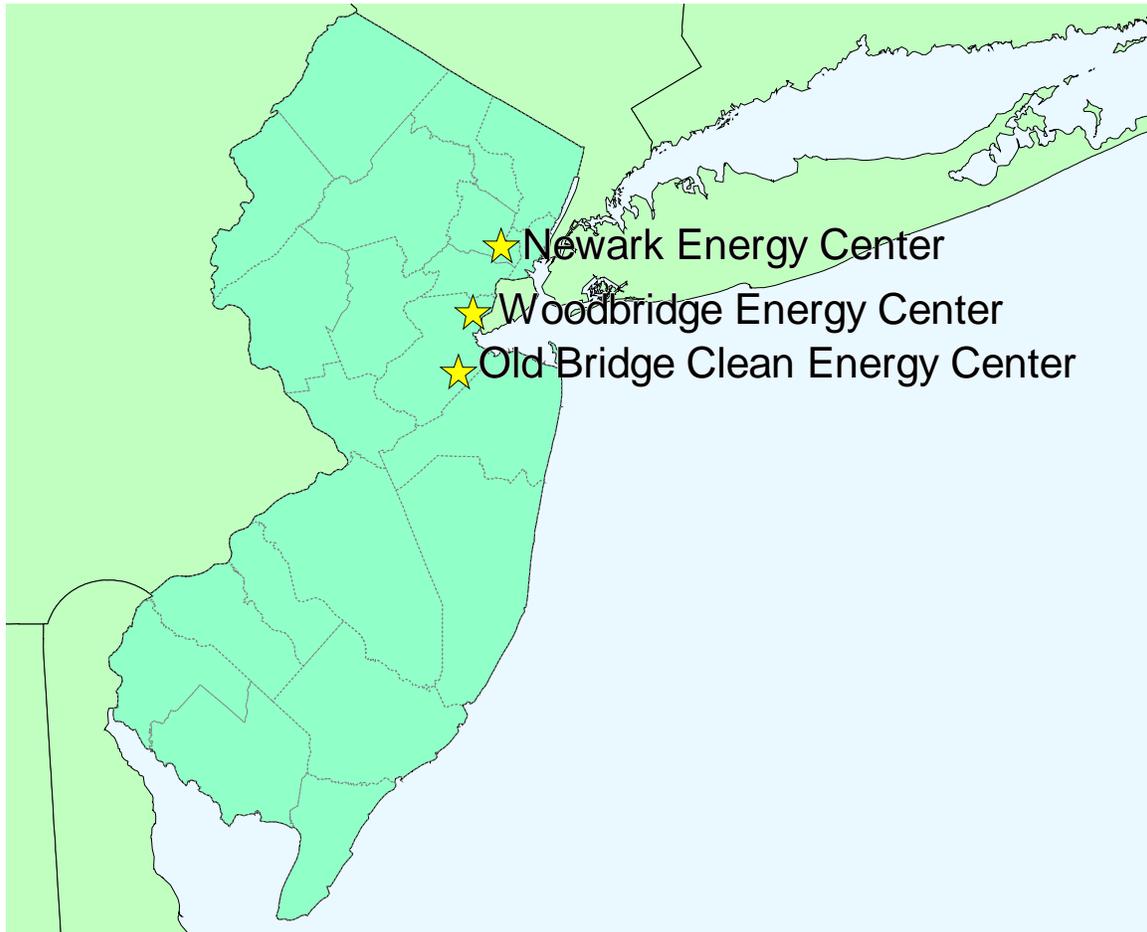
After evaluating the conforming SOCP bids, the Agent has identified three eligible generators to be recommended for SOCA awards, with a total UCAP of 1,948.5 MW, as listed in Table 13. The locations of these generators are shown in Figure 15.

Table 13. Recommended SOCA Awards

	Newark Energy Center	Old Bridge Clean Energy Center	Woodbridge Energy Center
Sponsor	Hess Newark, LLC	New Jersey Power Development LLC	CPV Shore, LLC
Unforced Capacity	625.0 MW	660.1 MW	663.4 MW
Location	Newark, NJ	Old Bridge, NJ	Woodbridge, NJ
Technology Type	Combined Cycle	Combined Cycle	Combined Cycle
Fuel Type	Natural Gas	Natural Gas	Natural Gas
First SOCA Year	2016-2017	2015-2016	2015-2016
Selected Pricing Option ⁶⁴	Option B	\$11 Initial Year then tapered	Option #2, Gas- only
Term	15 years	15 years	15 years

⁶⁴ Represents pricing option names as provided by bidders.

Figure 15. Locations of Recommended Eligible Generators



7.2 PORTFOLIO BENEFITS SUPPORTING SELECTION

Ratepayer Economic Benefits

Even without a requirement to procure 2,000 MW of UCAP from new base load or mid-merit generators, the incremental net ratepayer economic benefits are positive up to the 1,948.5 MW (UCAP) provided by the three recommended SOCA awards. Irrespective of the 2,000 MW LCAPP limit, the other eligible generators offered capacity that would result in disbenefits, *i.e.*, be dilutive.

Environmental Benefits

The development of nearly 2,000 MW (UCAP) of efficient, gas-fired CC projects in New Jersey will, in the aggregate, reduce net emissions of air pollutants by displacing existing generation which has higher emission rates of NO_x, SO₂, mercury, and greenhouse gases.⁶⁵ The average net

⁶⁵ We expect that PM emissions will also be reduced, but the Agent did not have access to a reliable and readily available database of PM emission rates for existing generation.

annual reductions of these pollutants and greenhouse gases are significant. The reductions are equivalent, on an order-of-magnitude basis, to the annual emissions of roughly 250-MW of coal-fired generation at a 100% capacity factor. The MarketSym model used to simulate the energy market also tracks emissions of SO₂, NO_x, and CO₂ on a unit-specific basis. Mercury is accounted for in a post-processor using fuel consumption for each coal-fired plant in the system and the unit emission rate on a lb per fuel input basis.⁶⁶ The net impact on air emissions ascribable to the construction of the recommended gas-fired CC plants was computed by deducting the total annual emissions of each pollutant in the *Reference Case* from the Recommended SOCA Portfolio Case.

With respect to NO_x and SO₂, LAI's modeling indicates that commercialization of the recommended SOCA portfolio will have a net impact of reducing emissions across the PJM portion of the study area, as shown in Figure 16. Negative values signify a *reduction* in annual emissions ascribable to the recommended portfolio, relative to the *Reference Case*. All figures showing annual emissions are on a calendar year and not Delivery Year basis. Future regulatory-driven reductions in SO₂ and NO_x emissions may not have not been fully captured in this model. It is likely that the benefits shown in this figure would be somewhat reduced as coal- and oil-fired plants that do not now currently have SCR will invest in upgraded control systems to comply with future federal requirements under the proposed EPA Transport Rule.⁶⁷

If the comparison is performed for only fossil-fueled plants located within the State of New Jersey, the impact on local emissions of SO₂ emissions is limited to the first two years of the forecast, before the expected retirement of B.L. England. Thereafter, the impact on SO₂ emissions from sources within New Jersey is negligible, as shown in Figure 17. With respect to NO_x, the emissions from sources within the State of New Jersey are forecasted to *increase* slightly when the three new gas-fired CC plants are commercialized. The increase in local NO_x emissions but decrease in regional emissions indicates that a significant amount of the generation that would be displaced by the recommended new gas-fired capacity in New Jersey is located in PJM states *outside* of New Jersey. Nonetheless, New Jersey residents will still experience cleaner air as a result of the commercialization of the recommended portfolio. Numerous studies conducted by regional air planning groups indicate that under typical climatic conditions, New Jersey is downwind of other PJM states. Pollutants from electric generation that contribute to high ozone concentrations and haze in New Jersey – NO_x and SO₂ – are transported from upwind states.⁶⁸

⁶⁶ Emission rates in MarketSym are based on Continuous Emission Monitoring System data submitted by generators to the EPA. The mercury emission rates for the coal-fired plants were derived from eGRID, an EPA database, available at: <http://www.epa.gov/cleanenergy/energy-resources/egrid/index.html>, eGRID emission rates were adjusted to reflect more stringent state emission limits and the expected reductions mandated by proposed federal Utility MACT rules beginning in 2016. For those units that exceed the proposed Utility MACT emission limits, the eGRID emission rate was replaced with the proposed limit under Utility MACT, 0.001 lb/GBtu, starting in the proposed first compliance year.

⁶⁷ Plants that can not rationalize new investment for environmental upgrades are assumed to retire in all cases.

⁶⁸ See for example, information provided by NJDEP at: <http://www.state.nj.us/dep/baqp/model.html> and Ozone Transport Commission, "The Nature of the Ozone Air Quality Problem in the Ozone Transport Region: A Conceptual Description," October 2006, revised August 2010., available at:

Figure 16. PJM Change in Annual Emissions of NO_x and SO₂ Associated with Recommended SOCA Portfolio

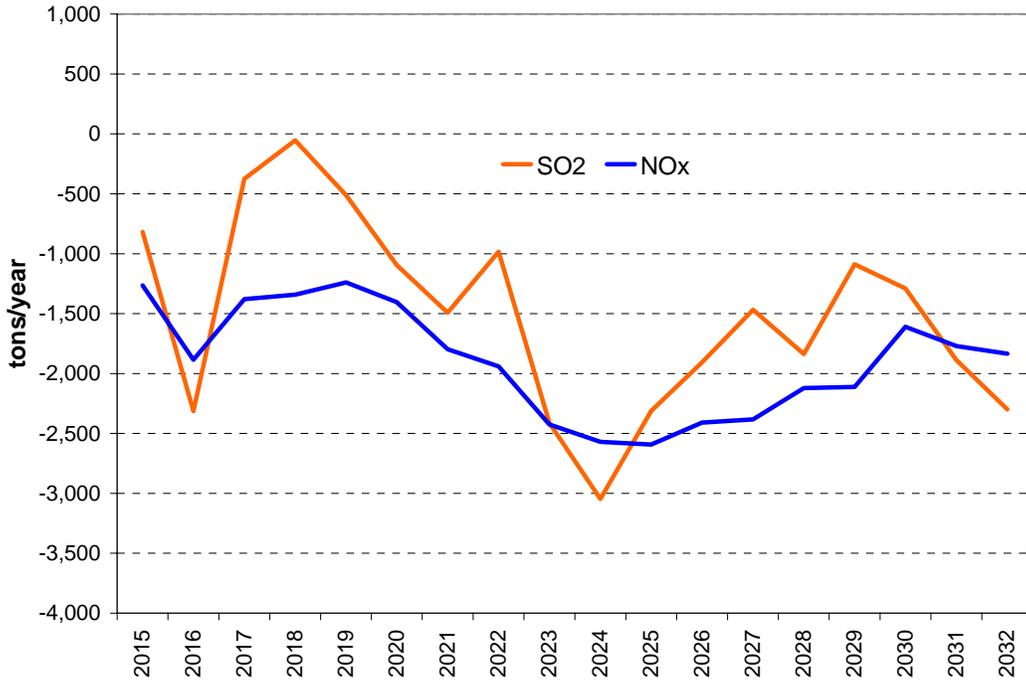
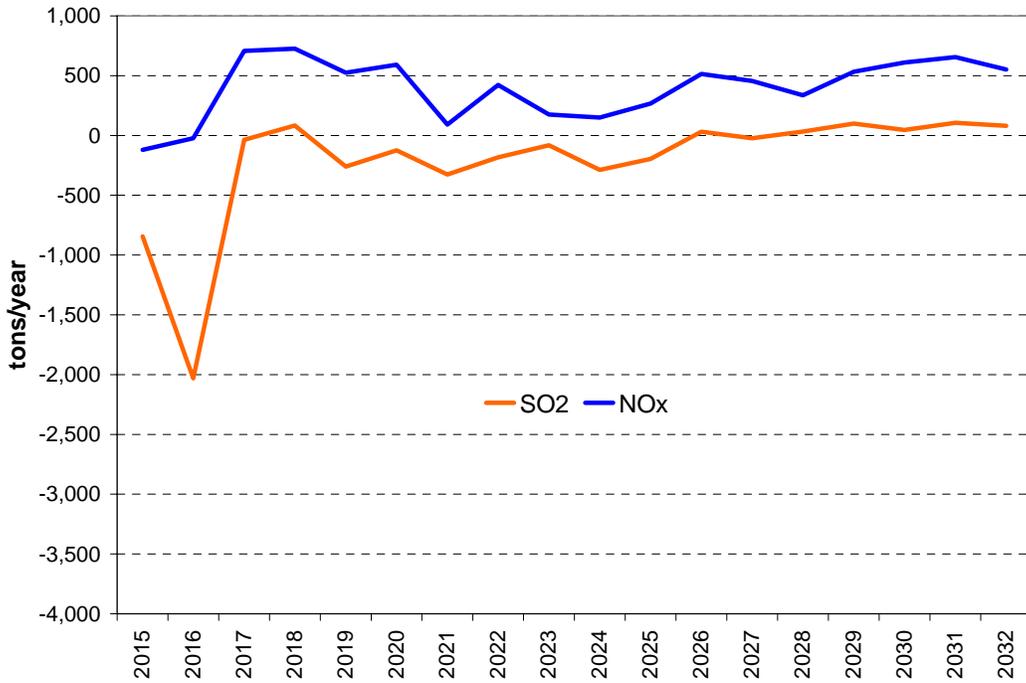


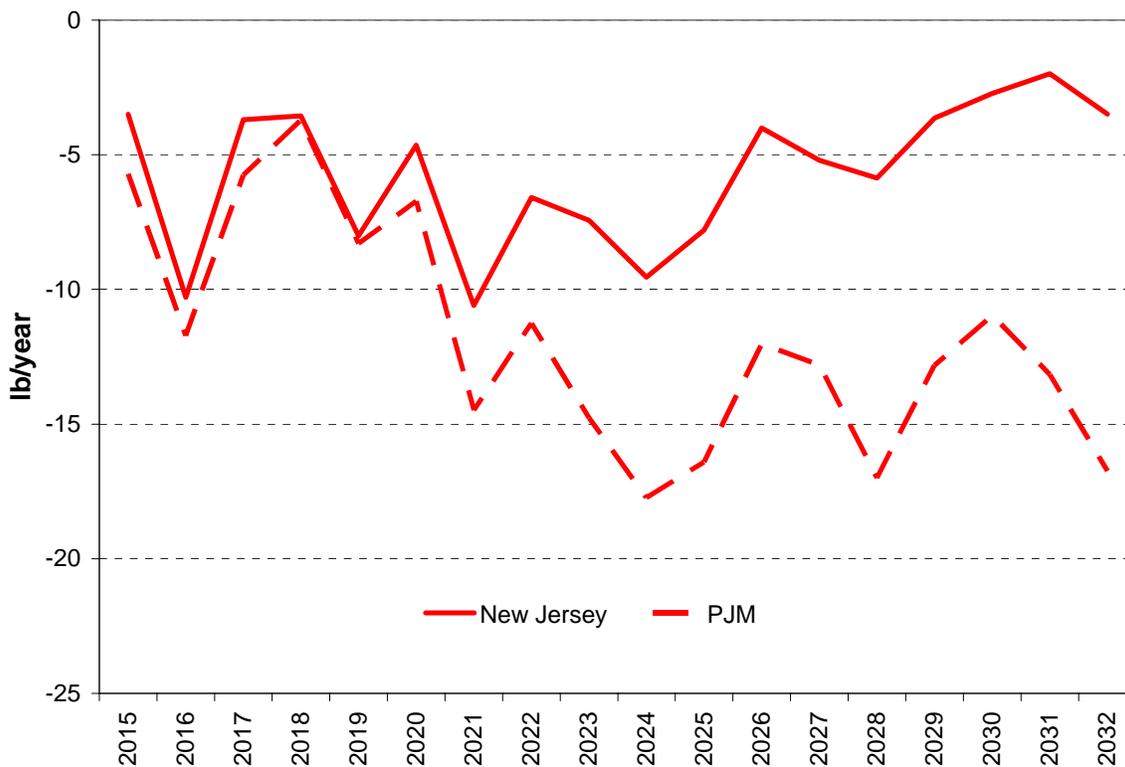
Figure 17. New Jersey Change in Annual Emissions of NO_x and SO₂ Associated with Recommended SOCA Portfolio



With respect to mercury, a similar reduction in mercury emissions across the PJM portion of the study area can be seen in Figure 18. Local emission reductions within only New Jersey are also expected. The state-wide air quality benefits are important in the case of mercury. Mercury emissions from point sources, such as coal-fired power plants, have been shown to create a local “hot spot,” although there are also regional and global contributions.⁶⁹

Within the PJM portion of the study area, New Jersey, Maryland and Delaware have promulgated regulations limiting mercury emissions from coal-fired plants. Based on the compliance date of these regulations, operating coal plants in these states will have complied with the new state-wide limits prior to the in-service date of the recommended portfolio. All remaining states within the study area will become subject to federal Utility MACT rules by 2016, assuming that the rules proposed by EPA on March 16, 2011 are finalized. Absent the investment in environmental upgrades mandated by these rules, the avoided mercury emissions ascribable to the recommended portfolio would have been greater.

Figure 18. New Jersey and PJM Change in Annual Emissions of Mercury Associated with Recommended SOCA Portfolio

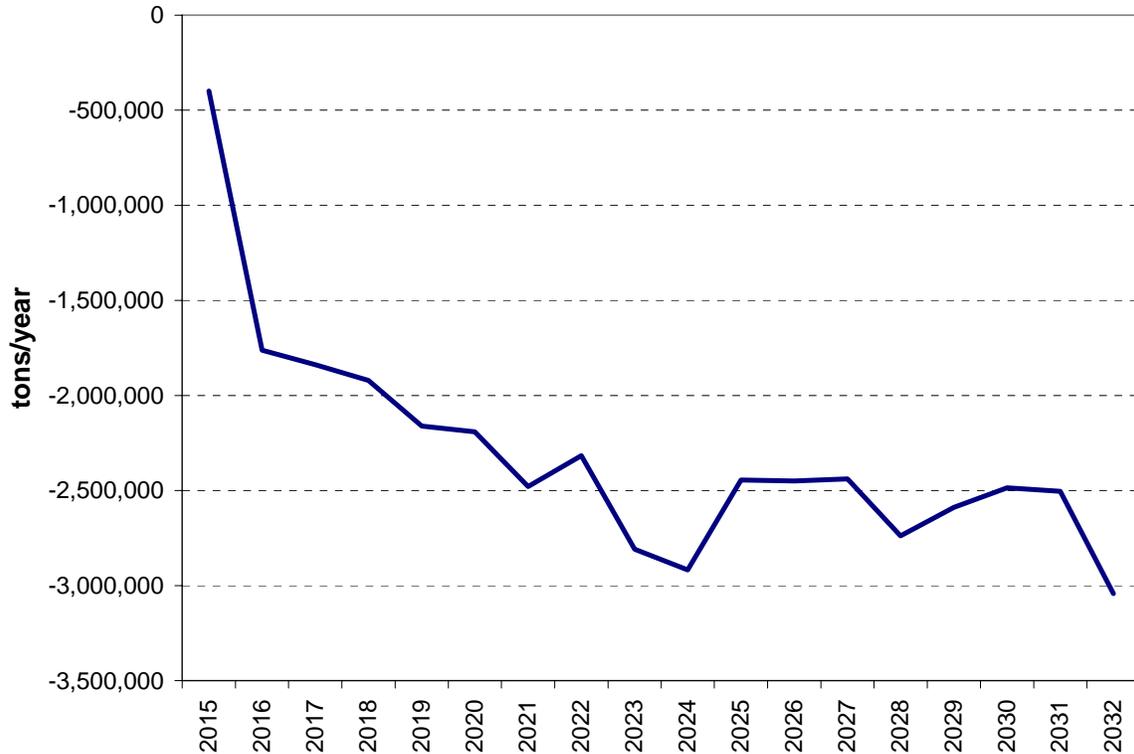


CO₂, the principal greenhouse gas, is a global environmental concern, and therefore must be viewed from the model system-wide perspective. Figure 19 shows the change in annual CO₂ emissions across the entire modeled system, when the recommended portfolio is compared to the

⁶⁹ See, for example, NESCAUM, “Modeling Mercury in the Northeast United States,” October, 2007, available at: <http://www.nescaum.org/topics/mercury>

Reference Case. Gas-fired plants produce about 117 lbs of CO₂ for each MMBtu of fuel combusted.⁷⁰ In the case of residual fuel oil and coal, the emission rates are approximately 173 and 210 lbs per MMBtu, respectively. Modeling indicates that the recommended efficient gas-fired CC plants will displace more carbon-intensive oil- and coal-fired generation and/or less efficient gas-fired generation across in the system, thereby reducing net CO₂ emissions. Results of this comparison are presented in Figure 19.

Figure 19. System-wide Change in CO₂ Annual Emissions of CO₂ Associated with Recommended SOCA Portfolio



All of the recommended projects propose to use state-of-the-art evaporative cooling tower systems, minimizing the use and discharge of cooling water. In addition, two of the three generators, the Newark Energy Center and the Woodbridge Energy Center, will be located on remediated brownfield sites. The beneficial reuse of formerly impaired properties represents a significant environmental benefit that may ultimately confer additional economic benefits as well.

Community Benefits

All three recommended generators appear to have community support, evidenced by one or more letters from local government officials, businesses, and labor unions, and no known opposition.

⁷⁰ Energy Information Agency, Fuel and Energy Source Codes and Emission Coefficients, available at: <http://www.eia.doe.gov/oiaf/1605/coefficients.html>

Each recommended generator is in the process of negotiating a PILOT or Host Community Benefit package, so local property tax or other community payments cannot be quantified at this time.⁷¹

Based on information provided by the applicants plus other information on generic CC facility construction costs and operations costs, the potential employment impacts of the three projects was estimated with use of a standard regional economic input-output model, IMPLAN.⁷² The three applicants provided similar information regarding the amount of direct construction labor and the type of expenditures expected to be procured from local New Jersey firms. The vast majority of construction labor is expected to be provided by New Jersey residents, and all of the on-site operations and maintenance positions are expected to be filled by workers living in New Jersey. Based on information regarding the numbers of construction and operations jobs, and the New Jersey shares of expenditures by type of materials and components, approximate gross employment creation impacts were estimated.⁷³ The IMPLAN model calculated the “indirect” employment gain to New Jersey from the supply chain effects of additional business activity throughout New Jersey resulting from the direct expenditures for labor services and materials, and the “induced” employment gain from households having additional income from wages, salaries, and proprietors’ earnings.

The results of the employment impact analysis is shown in Figure 20(a) for construction activity impacts and in Figure 20(b) for permanent operations activity impacts. For consistency with employment impacts reported by all New Jersey state agencies, one full-time equivalent (FTE) job-year is defined as 1,820 hours. In actuality, many construction workers and some operations workers would work more than 1,820 hours per year, so a smaller number of positions would be filled.⁷⁴ In FTEs, the three recommended facilities would directly create about 2,400 job-years during a construction period spanning two to three years, followed by about 80 permanent annual FTEs during operations over the facilities' lives of 30 years or more.

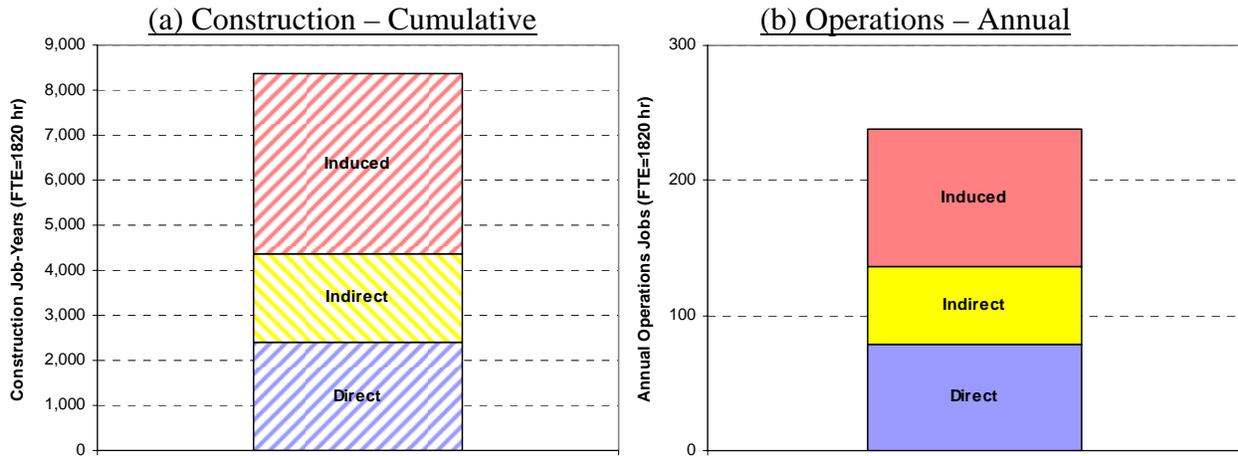
⁷¹ For a typical level of PILOT for a generation facility of the size of the recommended projects, the local employment and income benefits could be substantial if the additional community revenue is used to expand services. Alternatively, the additional revenue could induce further local economic benefits to the extent it is used to minimize local property taxes.

⁷² The IMPLAN model and the latest available (2009) database for the state of New Jersey were licensed by LAI from MIG, Inc., the developer of the IMPLAN software and associated regional database products.

⁷³ LAI used publicly-available information on typical construction cost and operations costs breakdowns for a CC facility located in New Jersey to allocate the total labor and non-labor expenditure information provided by the applicants into IMPLAN industries. LAI also made specific assumptions regarding the portion of materials and services expenditures that would likely be procured from New Jersey providers. For example, none of the power island costs were assumed to be provided by New Jersey firms, while all of the concrete and a portion of the fabricated steel products were assumed to be made by New Jersey firms.

⁷⁴ For example, one publicly-available engineering estimate of operations labor specifies 23 positions, a 2,080 hour work year, and certain overtime factors for the technical specialists. This information is equivalent to 27 FTEs defined as an 1,820 hour work year.

Figure 20. Potential Employment Effects of Recommended Portfolio



In addition, indirect and induced employment ripple effects of the construction and operations expenditures on materials and services provided by New Jersey firms as well as the wages and salaries received by workers directly engaged in construction and operations may create more jobs than the direct employment effects. However, the IMPLAN model used implicitly assumes the local economy has full employment, so that new jobs attract workers to the area and part of their income is spent on major items such as housing and autos. Given the current high unemployment and underemployment rates in New Jersey, some of the additional income during the near-term construction period, ending by early 2016, may instead be used to pay down household debt and for smaller expenditures on goods and services produced by New Jersey businesses, and under-utilized businesses may not hire as many additional workers in response to higher sales, resulting in less of a local multiplier effect than shown in Figure 20(a). Later, by the time the facilities begin operations, the unemployment rate is expected to be closer to the normal rate, so that more of the modeled multiplier effects during the operational years would be realized, closer to the level shown in Figure 20(b).

Attachment 1

Form of Standard Offer Capacity Agreement

Attachment 1A

Redline Showing Technical Changes

STANDARD OFFER CAPACITY AGREEMENT

STANDARD OFFER CAPACITY AGREEMENT

This STANDARD OFFER CAPACITY AGREEMENT (“Agreement”), dated as of [] (“Effective Date”), is entered into by and between [UTILITY], a corporation organized under the law of the state of New Jersey (“Utility”) and [CAPACITY SELLER], a corporation organized under the law of [] (“Generator”).

WHEREAS, the State of New Jersey has established the Long-Term Capacity Agreement Pilot Program (“LCAPP”) to promote construction of qualified electric generation facilities pursuant to P.L. 2011 c. 9 (the “Act”);

WHEREAS, the Act requires that each Electric Public Utility enter into a standard offer capacity agreement as described in the Act and in a form approved by the New Jersey Board of Public Utilities (“Board”) with eligible generators approved by the Board;

WHEREAS, under the Act, this Agreement shall be irrevocable once the Board issues an order approving this Agreement;

WHEREAS, under the Act, neither the Board nor any other governmental agency of New Jersey shall have the authority (i) to rescind, alter, modify, or repeal this Agreement or an order approving rate recovery of LCAPP costs, (ii) to revalue, re-evaluate, or revise the amount of the LCAPP costs, or (iii) to determine that the LCAPP costs or the revenues to recover the LCAPP costs are unjust or unreasonable;

WHEREAS, Generator has not commenced, and intends to commence, construction of an [] megawatt (“MW”) electric generation facility, as described in Attachment A, after January 28, 2011 (the “Capacity Facility”);

WHEREAS, Generator is willing to commit to offer and clear Unforced Capacity of the Capacity Facility into each Base Residual Auction conducted by the PJM Interconnection, L.L.C. (“PJM”) for all Delivery Years through the Conclusion Date;

WHEREAS, Generator is willing to commit to offer all the electric energy output and ancillary services of the Capacity Facility into the PJM markets during the Delivery Term;

WHEREAS, Generator’s eligibility and selection to participate in the LCAPP have been approved by the Board;

WHEREAS, this Agreement is in the form approved by the Board;

WHEREAS, Utility is an Electric Public Utility; and

WHEREAS, Generator has caused Construction Period Security to be provided to Utility, dated as of the date hereof , in support of Generator’s obligations under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual terms and conditions set forth herein, and for further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1
DEFINITIONS; RULES OF INTERPRETATION

1.1. Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

“Act” means the New Jersey P.L. 2011 c. 9 that establishes the LCAPP.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” means this Standard Offer Capacity Agreement dated as of [], 2011 by and between Utility and Generator..

“Annual Forecasted Peak Demand” means in the case of Utility, its forecasted peak demand and, in the case of another Electric Public Utility, the forecasted peak demand of such other Electric Public Utility, for a given Delivery Year as determined by PJM and published in the most recent PJM Load Forecast Report issued before the start of the Delivery Year.

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the LCAPP or any one or both of the parties to this Agreement or the terms hereof.

“Associated Ancillary Services” means the quantity of ancillary services, generally used by PJM to support the reliable operation of its transmission system, associated with the Available Capacity Amount.

“Associated Energy” means the quantity of electrical energy, generally used by PJM to satisfy its load requirements, associated with the Available Capacity Amount

“Automated Clearing House” or “ACH” means an electronic network for financial transactions administered by NACHA-The Electronic Payments Association.

“Available Capacity Amount” means the lesser of: (i) the quantity of Unforced Capacity from the Capacity Facility that is offered by Generator and cleared by PJM in the relevant Base Residual Auction, and (ii) the Awarded Capacity Amount.

**Board / LCAPP Agent
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“Awarded Capacity Amount” means [] MW, the amount of Unforced Capacity for which the Board has approved Generator to enter into standard offer capacity agreements with the Electric Public Utilities pursuant to the Act.

“Awarded Commencement Date” means the first day of the first Delivery Year for which the Board has approved Generator to receive or make payments under standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which date is June 1, [].

“Base Residual Auction” means the primary auction conducted by PJM as part of PJM’s Reliability Pricing Model to secure electrical capacity as necessary to satisfy the capacity requirements imposed under the PJM Reliability Assurance Agreement for the Delivery Year.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Calculation Dispute” is defined in Section 12.2.1.

“Capacity Facility” means the [] MW electric generation facility to be constructed by Generator as further defined in Attachment A.

“Cash” means cash in United States Dollars and any investment of such cash held in escrow.

“Cash Escrow Agreement” means an agreement providing for the receipt, holding (in the United States), investment and disbursement of Cash held in escrow by a Qualified Bank, to provide either Construction Period Security or Delivery Term Security.

“Commencement Date” means the last to occur of: (i) the Awarded Commencement Date; and (ii) the date the Capacity Facility first provides Unforced Capacity to PJM by having previously cleared in a Base Residual Auction.

“Conclusion Date” means May 31, [], which date shall not be altered by any delay or change in the Commencement Date or other provision under this Agreement.

“Construction Period” means the period commencing on the Effective Date and concluding on the date the Generator first provides Unforced Capacity to PJM by having previously cleared in a Base Residual Auction.

“Construction Period Security” means (i) a Letter of Credit, substantially in the form of Attachment B, to be provided to the Utility or (ii) Cash held in escrow for the Utility under a Cash Escrow Agreement, substantially in the form of Attachment C to be mutually agreed between the Utility and Generator, in support of the Generator’s obligations during the Construction Period in an amount defined in section 2.3.43.

“Defaulting Party” is defined in Section 9.1.1.

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“Delivery Year” means each 12-month period from June 1st through May 31st numbered according to the calendar year in which it ends beginning on the Commencement Date and concluding on the Conclusion Date.

“Delivery Term” means the period commencing with the Commencement Date and concluding on the Conclusion Date.

“Delivery Term Security” means (i) a Letter of Credit, substantially in the form of Attachment D, to be provided to the Utility or (ii) Cash held in escrow for the Utility under a Cash Escrow Agreement, substantially in the form of Attachment E to be mutually agreed between the Utility and Generator, in support of the Generator’s obligations during the Delivery Term in an amount defined in Section 2.3.53.

“Dispute” is defined in Section 12.1.

“Early Termination Date” means the date determined in accordance with Section 9.1.

“Effective Date” is defined in the Preamble hereof.

“EFORD” means a measure calculated by PJM of the probability that an electric power generating unit will not be available due to a forced outage or forced derating when there is a demand on the unit to generate.

“Electric Public Utility” means the four (4) electric public utilities under the jurisdiction of the Board, specifically Public Service Electric and Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company.

“Event of Default” is defined in Section 7.1.

“Facility Lender” means (i) any lender providing construction, interim, long-term, or refinancing debt or equity funds to Generator for the Capacity Facility, (ii) any trustee or agent acting on their behalf, and (iii) any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

“Force Majeure” means an event or circumstance, such as natural catastrophes, terrorism, war, riots, or acts of God, that (i) prevents one party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the claiming party; and, (iii) by the exercise of due diligence, the claiming party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing, none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Generator’s fuel supply, except when caused by Force Majeure; (b) the breakdown of Generator’s plant and/or equipment, except when caused by Force Majeure; and (c) an occurrence or an event that causes an economic hardship to a party.

“Generator” means a developer of an electric power generating facility that the Board has determined to qualify as eligible pursuant to the Act and is named in the Preamble hereof.

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“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity with jurisdiction over any party hereto, this Agreement, the LCAPP, or PJM, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Interest Rate” means for any date, the per annum rate of interest equal to the yield on Two-Year U.S. Treasury Notes as may be published in *The Wall Street Journal* on such day (or if not published on such day the most recent preceding day on which published) plus sixty (60) basis points.

“Illegality” is defined in Section 8.1.1.

“Invalidity of the Act” is defined in Section 8.1.2.

“Letter of Credit” means an irrevocable standby letter of credit provided by a Qualified Bank to provide either Construction Period Security or Delivery Term Security.

“Locational Deliverability Area” or “LDA” means the PJM sub-regions used to calculate Resource Clearing Prices as part of the Reliability Pricing Model.

“Long-Term Capacity Agreement Pilot Program” or “LCAPP” is the program established by P.L. 2011 c. 9 to promote construction of qualified electric generation facilities.

“Month” means a calendar month commencing on the first day of such month and ending on the last day of such month.

“MW” means megawatt.

“NACHA Operating Rules” means the rules issued by NACHA – The Electronic Payments Association for the administration of the Automated Clearing House.

“Non-Defaulting Party” is defined in Section 9.1.1.

“Payment Date” is defined in Section 2.2.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“PJM Interconnection, L.L.C.” or “PJM” means the Regional Transmission Organization that manages the regional, high-voltage electricity grid serving New Jersey and all or parts of other states and, among other things, administers the Reliability Pricing Model, and any successor.

“PJM Market Rules” means the rules, standards, procedures, and practices set forth in the PJM Tariff, PJM Operating Agreements, PJM Reliability Assurance Agreement, PJM Consolidated Transmission Owners Agreement, PJM Manuals, PJM Regional Practices

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Document, PJM-Midwest Independent Transmission System Operator Joint Operating Agreement, and other documents setting forth market rules.

“PJM Markets” means the capacity, energy, and ancillary services markets administered by PJM.

“Qualified Bank” means a United States commercial bank or similar financial institution that has assets of at least \$5 billion and a senior long-term unsecured debt rating of at least “A” by Standard & Poor’s, “A2” by Moody’s Investors Service, or “A” by Fitch Ratings.

“Reliability Pricing Model” or “RPM” means PJM’s capacity-market model that secures capacity on behalf of electric load serving entities to satisfy load obligations not satisfied through the output of electric generation facilities owned by those entities or otherwise secured by those entities through bilateral contracts.

“Resource Clearing Price” or “RCP” means the clearing price expressed in \$/MW-day for Unforced Capacity established by the Base Residual Auction for the LDA in which the Capacity facility is located and the applicable Delivery Year as posted by PJM.

“RPM Rules” means the provisions of PJM’s tariffs and agreements accepted by the Federal Energy Regulatory Commission and the provisions of PJM’s manuals governing the Reliability Pricing Model, as in effect from time to time during the term of this Agreement.

“Standard Offer Capacity Price” or “SOCPP” means the price for each Delivery Year at which the Board has approved Generator to enter into this Agreement with the Utility pursuant to the Act, which price is listed in Attachment F to this Agreement.

“Termination Date” means the earlier to occur of (i) the Conclusion Date or (ii) the Early Termination Date.

“Termination Event” is defined in Section 8.1.

“Total Annual Forecasted Peak Demand” for a given Delivery Year means the sum of the Annual Forecasted Peak Demands for each Electric Public Utility for such Delivery Year.

“Transaction” means the calculations, payments and payment obligations under Section 4.1 and the related provisions of this Agreement (including without limitation Section 2.1).

“Unforced Capacity” means the capacity of a capacity resource that accounts for the EFORd of that capacity resource and as periodically determined by PJM.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the amounts that became payable to such party under Section 2.1 in respect of the Transaction on or prior to such Early Termination Date (including amounts not paid by the other party on the ground of the occurrence of an Event of Default, in accordance with Section 2.5) and which remain unpaid as at such Early Termination Date, together with (to the extent permitted under Applicable Law) interest from (and including) the date such amounts were to have been paid to (but excluding) such Early Termination Date, at the Interest Rate. Such amounts of interest will

be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed.

“Utility” is defined in the Preamble hereof.

“Utility’s Load Ratio” means the percentage derived by dividing Utility’s Annual Forecasted Peak Demand by Total Annual Forecasted Peak Demand, both for a given Delivery Year, such that the sum of the Utility Load Ratios for the Electric Public Utilities shall always equal 100%.

1.2. Rules of Interpretation

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity or gas market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Section or subsection hereof; (e) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (f) the masculine includes the feminine and neuter and vice versa; (g) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined; (h) “including” means “including, without limitation” or “including, but not limited to”; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof will be construed simply according to its fair meaning and not strictly for or against either party. No term hereof will be construed against a party on the ground that the party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and will in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Rounding. All calculations, including but not limited to RCP, ~~New Jersey RCP~~, Available Capacity Amount, and Utility Load Ratios, will be rounded to the nearest third decimal place.

SECTION 2
OBLIGATIONS

2.1. General Conditions. Each party will make each payment specified herein to be made by it, including without limitation the payments under Section 2.2, subject to Section 2.5 and the other provisions hereof.

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2.2. Calculation and Payment of Transaction Amounts. In the case of the first Delivery Year, no less than thirty (30) calendar days prior to the Awarded Commencement Date and, in the case of each subsequent Delivery Year, no less than thirty (30) calendar days prior to the commencement of such Delivery Year, Utility will provide a statement to Generator of the result of the calculation under Section 4.1 for the Delivery Year, specifying the party obligated to make payments with respect to such Delivery Year, and the monthly amount of such payments, including any correction made under Section 2.190. The party obligated to make payments will make such payments with respect to each Month on or before the last Business Day of the subsequent Month (the "Payment Date") to the account specified herein in freely transferable funds via electronic funds transfer through a system that provides for final credit no later than one business day after transfer. The system for making such electronic funds transfers may be the ACH, in which case the paying party will originate the ACH credit for receipt the following Business Day. Each party agrees to be bound by the NACHA Operating Rules in connection with payments made via ACH and agrees that the origination of all ACH transactions will comply with applicable provisions of U.S. law. Whenever payments are made via ACH, the receiving party hereby authorizes the paying party to initiate credit entries to the account of the receiving party at the receiving party's financial institution as set forth in Section 2.6. This authorization will remain in full force and effect until a party has received prior written notice from the other party of its termination, such notice to be provided in such time and in such manner as to afford the party receiving such notice a reasonable opportunity to act on it.

2.3. Obligations of Generator.

2.3.1. Generator shall use all commercially reasonable efforts to cause the Capacity Facility to qualify under the RPM Rules as a capacity resource in an amount no less than the Awarded Capacity Amount for the Base Residual Auction associated with each Delivery Year during the term of this Agreement, commencing upon the Awarded Commencement Date.

2.3.2. Generator shall use all commercially reasonable efforts to cause the Capacity Facility to achieve commercial operation no later than the Commencement Date.

2.3.3. Throughout the Delivery Term, Generator shall:

(a) Cause the Capacity Facility to comply with all obligations of a capacity resource under the RPM Rules, including without limitation the obligations relating to the submission of offers to supply electric energy and ancillary services in PJM markets, and Generator shall bear all costs associated with such compliance, including without limitation all fees and penalties imposed by PJM;

(b) Submit supply offers for an amount of Unforced Capacity no less than the Awarded Capacity Amount from the Capacity Facility in accordance with the RPM Rules in the Base Residual Auction associated with each Delivery Year during the term of this Agreement, such that the Unforced Capacity shall be offered at the lowest commercially reasonable price under the RPM rules;

(c) Submit supply offers from the Capacity Facility for the maximum amount of Associated Energy that the Capacity Facility can provide in the PJM day-ahead energy market

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in accordance with PJM Market Rules throughout the Delivery Term, such that the Associated Energy shall be offered at the lowest commercially reasonable price under PJM's Market Rules;

(d) Submit supply offers from the Capacity Facility for the maximum amount of Associated Ancillary Services that the Capacity Facility can provide in the PJM ancillary services markets in accordance with PJM Market Rules throughout the Delivery Term, such that the Associated Ancillary Services shall be offered at the lowest commercially reasonable price under PJM's Market Rules;

(e) Neither physically nor financially withhold any Unforced Capacity up to the amount of Awarded Capacity, or Associated Energy and Associated Ancillary Services, from the Capacity Facility;

(f) Provide on a timely basis (which, in the case of documentation provided to Generator by PJM, shall mean within five (5) Business Days of Generator's receipt of such documentation) all documentation required by Utility to make the calculations and notifications required by Sections 2.2 and 4.1, including without limitation: (i) documentation provided to Generator by PJM after the conclusion of each Base Residual Auction showing the amount of Unforced Capacity offered from the Capacity Facility and cleared by PJM in such Base Residual Auction; (ii) documentation provided to Generator by PJM in advance of each Delivery Year showing the all EFORD measurements for the Capacity Facility for the Delivery Year; (iii) the result of any capability test of the Capacity Facility conducted by PJM; (iv) documentation provided to Generator by PJM in advance of each Delivery Year showing the Available Capacity Amount for the Delivery Year or required to calculate the Available Capacity Amount for the Delivery Year; and (v) documentation notifying Generator of any correction to an input to a calculation, as provided in Section 2.9; provided that Generator may redact from any such documentation data that do not relate to the Capacity Facility;

(g) Provide on a timely basis all documentation reasonably requested by Utility to demonstrate Generator's compliance with all of its obligations as set forth in this Section 2.3 and affirmative covenants as set forth in Section 6. Utility shall have the right, upon reasonable notice to Generator, to request such information once each year and, in addition, upon the occurrence of any event or upon Utility's receipt of information that gives Utility reasonable grounds for concern in good faith as to Generator's compliance with one or more such obligations;

(h) Prepare and file an annual certification to the Board within thirty (30) calendar days after the end of each Delivery Year describing the Generator's compliance with Section 2.3.3 (b) through Section 2.3.3 (e) and any material actions taken by the Generator under this Agreement.

2.3.4. Cause to be provided to the Utility throughout the Construction Period, Construction Period Security in an amount to be calculated annually equal to the product of \$10,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio, but in no case more than the product of \$1 million, and the Utility's Load Ratio. Such Construction Period Security shall be in the form of a Letter of Credit or Cash held in escrow by the Utility, which shall have the right to draw upon the Construction Period Security as provided in Section 9.4. In

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the event of the application of any such Construction Period Security toward any amount owed hereunder to Generator the Generator shall have no obligation to increase the amount of the Construction Period Security beyond the initial amount provided.

2.3.5. Cause to be provided to the Utility throughout the Delivery Term, Delivery Term Security in an amount to be calculated annually equal to the product of \$25,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio with the amount of Delivery Term Security declining *pro rata* at the conclusion of each Delivery Year over any remaining term of this Agreement. Such Delivery Period Security shall be in the form of a Letter of Credit or Cash held in escrow by the Utility, which shall have the right to draw upon the Delivery Term Security as provided in Section 9.4. In the event of the application of any such Delivery Term Security toward any amount owed hereunder to Generator the Generator shall have no obligation to increase the amount of the Delivery Term Security beyond the initial amount provided.

2.3.6. Fulfill all Generator's obligations under, and otherwise comply with all terms of, the Construction Period Security and Delivery Term Security.

2.4. Obligations of the Utility. The Utility shall prepare and file an annual report to the Board within thirty (30) calendar days after the end of each Delivery Year describing (i) the status of this Agreement, (ii) the amount of Unforced Capacity and cost of associated Transactions made under this Agreement, (iii) the performance of the Generator in supplying Unforced Capacity and Associated Energy and Associated Ancillary Services under this Agreement, and (iv) any material actions taken by the Generator or the Utility under this Agreement. Nothing in this Agreement imposes upon Utility the obligation to monitor, enforce, or declare an Event of Default with respect to the price of Unforced Capacity, or the price or amount of Associated Energy or Associated Ancillary Services, which Generator offers in or supplies to any PJM Market.

2.5. Conditions Precedent to Obligations. Each obligation of each party under this Agreement is subject to (i) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing, (ii) the condition precedent that no Early Termination Date has occurred or been effectively designated, and (iii) the Board has found that this Agreement is reasonable and that the Utility will be allowed full rate recovery of all prudent and reasonably incurred costs associated with this Agreement.

2.6. Accounts; Change of Account

2.6.1. Payments are to be made to the following accounts:

Generator:

Pay:

For the Account of:

Account Number:

Fed. ABA Number:

Utility:

Pay:
For the Account of:
Account Number:
Fed. ABA Number:

2.6.2. Either party may change its account for receiving a payment by giving written notice to the other party, which notice will be effective for the next payment date that is at least five Business Days after the effective date of such notice unless such other party gives timely notice of a reasonable objection to such change.

2.6.3. The parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be considered by the parties as conclusive evidence of receipt.

2.7. Default Interest; Other Amounts. Prior to the occurrence or effective designation of an Early Termination Date, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 9.3.3, be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Interest Rate. Such interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed. Each payment will be made in U.S. Dollars in freely transferable funds via electronic funds transfer, as set forth in Section 2.2, on the relevant Payment Date (or if that date is not a Business Day, on the next Business Day).

2.8. Calculations. Utility shall make all calculations of payments due under Sections 2.2 and 4.1 in accordance with the terms of this Agreement, in good faith and with commercial reasonableness, and its determinations and calculations will be binding, subject to the resolution of any Calculation Dispute. Inaccuracy in any calculation shall not be an Event of Default. The sole remedy of the parties with respect to any inaccuracy of a calculation will be the right (but not the obligation), to commence a Calculation Dispute.

2.9. Corrections to Input to Transaction Payment. If PJM revises to correct any of the inputs required for Utility to calculate any payment required under Section 4.1 within the time permitted by PJM's applicable tariff rate or rate schedule for the revision of PJM charges, Utility will reflect the amount (if any) that is payable as a result of that correction (including without limitation interest on such amount payable from the date of original payment under Section 4.1 through the date of payment under this Section 2.9 at the Interest Rate) in the calculation of payment of payments due for the Delivery Year after Utility receives notice of the revision. Utility shall calculate the correction so as to place the parties in the same economic position after such payment as they would have been had the correct input been employed initially.

2.10. Substitution Return and Handling of Credit Support

2.10.1. Election to Change Form of Credit Support. With respect to the Construction Period Security or the Delivery Term Security, the Generator may, at any time and

from time to time, replace (i) a Letter of Credit with Cash held under a Cash Escrow Agreement, (ii) Cash held under a Cash Escrow Agreement with a Letter of Credit, or (iii) a Letter of Credit with a different Letter of Credit, provided that any such substitute Cash and Cash Escrow Agreement or substitute Letter of Credit (as the case may be) meets the requirements for Construction Period Security or Delivery Term Security, as applicable, whereupon the Utility shall cooperate with the Generator in obtaining the concurrent release, termination or return of the Letter of Credit or Cash and Cash Escrow Agreement (as the case may be) being replaced.

2.10.2. Return of Original Credit Support Documents. Without limitation to the generality of the foregoing, the Utility shall return to the Generator all original Credit Support Documents, and all amendment, extension and other documents related thereto, within twenty (20) calendar days of the termination, cancellation or replacement thereof.

2.10.3. Handling of Cash Collateral. If any collateral in the form of Cash is expected to be or is received by the Utility pursuant to this Agreement, whether following a Letter of Credit drawing due to failure on the part of the issuer of the Letter of Credit to renew or extend the Letter of Credit or otherwise, the parties shall cooperate to cause such collateral in the form of Cash to be delivered as soon as practicable to a custodian to be held pursuant to a Cash Escrow Agreement. Any collateral in the form of Cash that is received and held by the Utility pending delivery to a custodian shall be segregated by the Utility from its other property and held exclusively in accounts with Qualified Banks.

**SECTION 3
TERM AND TERMINATION**

This Agreement is effective as of the Effective Date and will remain in effect until the later to occur of the Termination Date or the fulfillment by the parties of all obligations hereunder.

**SECTION 4
TRANSACTIONS**

4.1. Transactions.

4.1.1. If, for a Delivery Year, the SOCP is greater than the RCP then, subject to Section 2.5, Utility will pay Generator each Month during the Delivery Year one-twelfth of the product of (i) the difference between the SOCP and the RCP, (ii) the Available Capacity Amount, (iii) the number of days in the Delivery Year; and (iv) Utility Load Ratio, each for the applicable Delivery Year.

~~4.1.2.~~ If, for a Delivery Year, the RCP is greater than the SOCP then, subject to Section 2.5, Generator will pay Utility each Month an amount equal to one-twelfth of the product of (i) the difference between the RCP and the SOCP, (ii) the Available Capacity Amount, (iii)

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the number of days in the Delivery Year, and (iv) Utility Load Ratio, each for the applicable Delivery Year.

~~4.1.3. New Jersey RCP shall be calculated for each Delivery Year as the weighted average of the RCPs for the Electric Public Utilities, using the Utility Load Ratios as weights.~~

4.1.2. :

4.2. Structure of Transaction. Nothing in this Agreement shall entitle or obligate Utility to purchase, or take title to or delivery of, capacity, electric energy, or ancillary services from the Capacity Facility.

SECTION 5
REPRESENTATIONS AND WARRANTIES

5.1. Mutual Representations and Warranties. Each party represents to the other party, from the Effective Date, and, except as specified below, continuing throughout the Delivery Term, that:

5.1.1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

5.1.2. It has the power (i) to execute this Agreement, the Construction Period Security, Delivery Term Security and any other documentation relating hereto or thereto, (ii) to deliver this Agreement and cause to be delivered the Construction Period Security, Delivery Term Security and any other documentation that it is required by this Agreement to deliver and (iii) to perform its obligations hereunder or thereunder and has taken all necessary action to authorize such execution, delivery and performance.

5.1.3. As of the Effective Date, such execution, delivery and performance do not violate or conflict with any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

5.1.4. Its obligations under this Agreement, the Construction Period Security, and Delivery Term Security constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

5.1.5. As of the Effective Date, all governmental and other consents that are required to have been obtained by it with respect to this Agreement, the Construction Period Security, and the Delivery Term Security are in full force and effect and all conditions of any such consents have been complied with.

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5.1.6. As of the Effective Date, no Event of Default or event which, with notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations hereunder or under the Construction Period Security or Delivery Term Security.

5.1.7. All applicable information that is furnished in writing by or on behalf of it to the other party required by Section 6.1 is, as of the date of the information, true, accurate and complete in every material respect.

5.1.8. It is an “eligible contract participant” within the meaning of Section 1(a)18 of the Commodities Exchange Act, as amended.

5.1.9. In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement; (iv) the other party has not given to it (directly or indirectly through any other Person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) hereof; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own decision to enter into the Transaction based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; and (vii) it is entering into this Agreement with a full understanding of all the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks.

5.1.10. It is a “United States person” (within the meaning of section 7701(a)(30) of the Internal Revenue Code of 1986, as amended, and is exempt from backup withholding under Internal Revenue Code section 3406 and relevant U.S. Department of the Treasury regulations.

5.2. Generator’s Representations and Warranties. Generator hereby represents and warrants to Utility as of the Effective Date that:

5.2.1. Generator’s selection to participate in the LCAPP has been approved by the Board.

5.2.2. Generator is approved by the Board pursuant to the Act as eligible to enter into standard offer capacity agreements with the Electric Public Utilities for the Awarded Capacity Amount at the SOCP.

5.2.3. Generator will not, either alone or in combination with any Affiliate of Generator that is eligible to participate in the LCAPP, enter into financially-settled standard offer capacity agreements for more than 700 MW of Unforced Capacity pursuant to the LCAPP.

**SECTION 6
AFFIRMATIVE COVENANTS**

Each party agrees with the other that, so long as either party has or may have any obligation hereunder:

6.1. Furnish Specified Information.

6.1.1. Each party will deliver to the other party such proof of the names, true signatures and authority of Persons signing this Agreement on its behalf as the other party may reasonably request upon execution hereof;

6.1.2. Generator will deliver to Utility on a timely basis:

(a) All information required by the Utility to perform the calculations specified in Sections 2.2 and 4.1, including without limitation information supplied to Generator by PJM;

(b) All documents, including all written notifications and other communications from PJM, related to Generator's compliance or non-compliance with the RPM Rules;

(c) All additional documents required for Utility to provide an annual report to the Board as specified in Section 2.4.

6.2. Maintain Authorizations. Each party will use all reasonable efforts, including the maintenance of records and provision of notices, to maintain in full force and effect all consents, licenses or approvals of PJM and of any Governmental Authority or other authority that are required to be obtained by it with respect to this Agreement, the Construction Period Security, and the Delivery Term Security Agreement and its obligations hereunder and thereunder and will use all reasonable efforts to obtain any that may become necessary in the future.

6.3. Comply with Laws and RPM Rules. Each party will comply in all material respects with all Applicable Laws and orders and all RPM Rules to which it may be subject if failure so to comply would materially impair its ability to perform its obligations hereunder or under the Construction Period Security or Delivery Term Security.

6.4. Reporting Requirements. Generator shall be responsible for any recordkeeping, reporting and other requirements applicable to this Agreement under the Commodity Exchange Act, as amended, and the regulations of the Commodity Futures Trading Commission.

**SECTION 7
EVENTS OF DEFAULT**

7.1. Events of Default. The occurrence at any time with respect to a party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:

7.1.1. Failure to Pay. Failure by the party to make, when due, any payment under this Agreement required to be made by it if such failure is not remedied on or before the third (3rd) Business Day after notice of such failure is given to the party.

7.1.2. Failure to Provide Information. Failure by Generator to provide to Utility such information or documentation required by Section 2.3.3 or Section 6.1.2 if such failure is not remedied on or before the fifth (5th) Business Day after notice of such failure is given to Generator by Utility.

7.1.3. Breach of Agreement. Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or to provide information or documentation) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth (30th) calendar day after notice of such failure is given to the party, or, in the case of a failure to comply with any applicable provision of the RPM Rules, within the time (if any) provided in the RPM Rules to remedy such failure.

7.1.4. Misrepresentation. A representation made or repeated by the party in this Agreement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated, and such misrepresentation is not cured within thirty (30) calendar days after such misrepresentation is made or repeated;

7.1.5. Bankruptcy. The party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within fifteen (15) calendar days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vi)

(inclusive); or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

7.1.6. Merger Without Assumption. The party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such party hereunder or under the Construction Period Security or Delivery Term Security Agreement.

7.1.7. Failure to Achieve the Commencement Date. Generator fails to cause the Capacity Facility to achieve the Commencement Date by no later than two (2) years after the Awarded Commencement Date, except if an event of Force Majeure causes additional delays.

7.1.8. Failure to Participate in a PJM Market. Generator fails to submit a supply offer, consistent with Section 2.3.3 for its Unforced Capacity and the Associated Energy and Associated Ancillary Services from the Capacity Facility. Any Capacity Facility shall be required to bid no less than the Awarded Capacity Amount beginning with the Base Residual Auction associated with the Awarded Commencement Date and continuing through the Delivery Term, except if an event of Force Majeure delays the Commencement Date.

7.1.9. Security Default. With respect to Generator: (i) failure by Generator to comply with any provision of, or to perform any of its obligations under, either the Construction Period Security or the Delivery Term Security if such failure is continuing after any applicable grace period has elapsed; (ii) the expiration of, termination of, or failure to replace in accordance with Section 2.104 within five (5) Business Days after Utility has delivered notice to Generator of such failure, as appropriate, either the Construction Period Security or the Delivery Term Security prior to its intended expiration date; (iii) the failing or ceasing of either the Construction Period Security or the Delivery Term Security to be in full force and effect for its intended term; (iv) Generator disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Construction Period Security or the Delivery Term Security; or (v) a default or event of default, howsoever characterized, occurs under the Construction Period Security or the Delivery Term Security.

SECTION 8 TERMINATION EVENTS

8.1. Termination Events. The occurrence at any time of any of the following events constitutes a Termination Event (a "Termination Event").

8.1.1. Illegality. Due to the adoption of, or any change in, any Applicable Law after the Effective Date, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any Applicable Law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 6.2) for a party:

- (1) to perform any absolute or contingent obligation to make a payment or to receive a payment in respect of the Transaction or to comply with any other material provision of this Agreement;
- (2) to perform any contingent or other obligation which the party has or any other material provision of this Agreement; or
- (3) to provide or perform its obligations under the Construction Period Security or the Delivery Period Security.

8.1.2. Invalidity of the Act. If a court invalidates or declares unconstitutional the Act or portion thereof requiring or specifying some performance, right, or obligation of Utility or Generator.

SECTION 9 **REMEDIES**

9.1. Right to Terminate Following Event of Default or Termination Event.

9.1.1. If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, then the other party (the “Non-Defaulting Party”) may, by not more than twenty (20) calendar days notice in writing to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than five (5) Business Days after such notice is effective as an Early Termination Date.

9.1.2. If at any time a Termination Event has occurred and is then continuing, then either party in the case of an Illegality or an Invalidity of the Act, may, by not more than twenty (20) calendar days notice in writing to the other party specifying the relevant Termination Event, designate a day not earlier than five (5) Business days after such notice is effective as an Early Termination Date.

9.2. Effect of Designation.

9.2.1. If notice designating an Early Termination Date is given, the Defaulting Party shall have five (5) Business Days to cure any Event of Default. If after such five (5) Business Days the Event of Default or Termination Event is continuing, then the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

9.2.2. Upon the occurrence or effective designation of an Early Termination Date, no further payments under Section 2.1 or 2.7 will be required to be made, and this Agreement shall be null and avoid, except with respect to the provisions hereof required to effect payments of the amounts, if any, payable in respect of an Early Termination Date, which amounts shall be determined and paid pursuant to Section 9.3.

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9.3. Payments on Early Termination. If an Early Termination Date occurs, the following provisions will apply.

9.3.1. Events of Default. If the Early Termination Date results from an Event of Default, the Defaulting Party will pay the Non-Defaulting Party: (i) all Unpaid Amounts owing to the Non-Defaulting Party; (ii) all expenses payable under Section 9.5: and (iii), in the case of an Event of Default relating to participating in a Base Residual Auction, an amount equal to the product of (a) the amount, if any, by which the RCP for such Base Residual Auction exceeds the SOCP, (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); (d) the Utility Load Ratio, and (e) the number of Delivery Years remaining in the Delivery Term starting with and including the Delivery Year associated with such Base Residual Auction.

9.3.2. Termination Events. If an Early Termination Date results from Section 8.1.1 (an Illegality) or Section 8.1.2 (an Invalidity of the Act), each party shall pay to the other all Unpaid Amounts owing pursuant to the terms of this Agreement.

9.3.3. Notice and Payment. The party designating an Early Termination Date shall provide notice of such Early Termination Date to the other party. Upon Utility's issuance or receipt of such notice, Utility shall, as soon as practicable, calculate the amounts payable under Section 9.3.1 or 9.3.2, as applicable, and shall provide the calculation to the parties, specifying the party who is obligated to pay and the amount of such payment. An amount calculated as being due in respect of an Unpaid Amount will be payable, as applicable: (i) on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default); or (ii) on the day which is two (2) Business Days after the date on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under Applicable Law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Interest Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

9.4. Rights Under Construction Period Security and Delivery Term Security

9.4.1. Parties' Rights and Remedies. If at any time an Early Termination Date has occurred as the result of an Event of Default or a Termination Event with respect to the Generator, then, unless the Generator has paid in full all of its obligations under this Agreement that are then due, the Utility may exercise one or more of the following rights and remedies:

(a) All rights and remedies available to the Utility under the terms of the applicable Letter of Credit or Cash Escrow Agreement, including without limitation the right to draw on such Letter of Credit and Cash held under such Cash Escrow Agreement;

(b) All other rights and remedies available to the Utility under applicable law as the beneficiary in the case of a letter of credit or secured party in the case of Cash held in escrow; and

(c) The right to set-off any amounts payable by the Generator with respect to any obligations under this Agreement against any Cash held on behalf of the Utility under any Cash Escrow Agreement.

9.4.2. Deficiencies and Excess Proceeds. The Utility will return to the Generator any Letter of Credit or Cash held on behalf of the Utility under a Cash Escrow Agreement remaining after liquidation, set-off and/or application under Section 9.4.1 after satisfaction in full of all amounts payable by the Generator with respect to any of its obligations under the Agreement. The Generator in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under such Section 9.4.1.

9.5. Expenses. A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights hereunder or under the Construction Period Security, the Delivery Term Security, or by reason of the early termination of the Transaction, including, but not limited to, costs of collection.

9.6. LIMITATION OF LIABILITY. NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT HERETO ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT HERETO IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

SECTION 10 **TRANSFER**

10.1. Restriction of Assignments. Except as otherwise provided in this Section 10, neither party may assign this Agreement without (i) the other party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld, it being understood that refusal to consent to the assignment of the Agreement to a Person that does not own or control the operation of the Capacity Facility shall not be deemed to be unreasonable, and (ii) the prior approval of the Board. Any assignment in violation of this provision shall be void.

10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and with notice to the Board, and subject to the last sentence of this Section 10.2, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Generator; or (ii) in connection with the grant of a security interest to any Facility Lender, provided that such security interest does not interfere with the rights of obligations of any party under the Construction Period Security or Delivery Term Security, (iii) in connection with a merger of

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Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator. The foregoing shall be subject to the provisions that such purchaser, Facility Lender, or the Person surviving such merger, as applicable, (i) agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility, (ii) shall not under any circumstances have equity or ownership rights to more than 700 MW of Unforced Capacity from electric generation facilities with standard offer capacity agreements, and (iii) shall provide or maintain Construction Period Security and Delivery Term Security as required under this Agreement. In connection with any assignment of this Agreement by the Generator under this Section, the Generator may transfer, sell, pledge, encumber or collaterally assign its rights under this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, and shall provide notice of such assignment to the Board. Utility agrees to reasonably cooperate with Generator with respect to any such financing and other financial arrangements, including but not limited to entering into with the Facility Lender a customary lender consent agreement, which shall include, but not be limited to, customary terms regarding notice to the Facility Lender of any potential Event of Default hereunder and standstill periods with respect to the exercise of remedies hereunder.

10.3. Utility's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Utility may, without the prior written consent of Generator and with notice to the Board, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Utility; or (iii) in connection with a merger of Utility with another Person or any other transaction resulting in a change of control of Utility; provided that such purchaser, Affiliate or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement.

10.4. Assumption by Assignee; No Release from Liabilities. Any permitted assignee or transferee of a party's interest in this Agreement shall assume all existing and future obligations of such party to be performed under this Agreement. Whether or not prior written consent to an assignment is required hereunder, the assignor shall give notice to the other party and to the Board promptly after a permitted assignment of this Agreement. Unless otherwise agreed to by the parties and except as set forth in Sections 10.2 and 10.3 above, upon any permitted assignment of this Agreement to an assignee and such assignee's written assumption of this Agreement, the assigning party shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption; provided, however, that in all other cases, the assigning party shall continue to be bound by this Agreement unless the parties otherwise agree.

**SECTION 11
NOTICES**

11.1. Effectiveness. Any notice or other communication in respect hereof may be given in any manner set forth below (except that a notice or other communication under Section 7, 8 or

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9 will not be effective if given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided and will be deemed effective as indicated: (i) if in writing and delivered in person or by courier, on the date it is delivered; (ii) if sent by telex, on the date the recipient's answerback is received; (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or (v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

11.2. Addresses for Notices.

11.2.1. Addresses for notices or communications to Generator:

Address:

11.2.2. Address for notices or communications to Utility:

Address:

11.2.3. Change of Addresses. Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

SECTION 12

RESOLUTION OF DISPUTES

12.1. Notice of Dispute.

12.1.1. In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the parties (a "Dispute"), a party may declare a Dispute by delivering to the other party a written notice identifying the disputed issue.

12.1.2. If PJM's RPM is eliminated, then a Dispute shall be deemed to have occurred and both parties shall attempt to develop a replacement for the RCP as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.1.3. If PJM's RPM is modified in a material manner such that it adversely affects the performance, calculation or payment of the Transaction, then a party may declare a Dispute and both parties shall attempt to develop a replacement for the RCP as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.2. Resolution by the Parties

12.2.1. If the Dispute relates to the accuracy of Utility's calculation of any payment required to be made under this Agreement (a "Calculation Dispute"), then Generator must provide written notice of the Dispute to Utility within ten (10) Business Days of Generator's receipt of Utility's calculation of the payment pursuant to Section 2.2., which notice must state the nature of Generator's disagreement with Utility's calculation and include all documentation upon which Generator bases its disagreement. Within ten (10) Business Days of Utility's receipt of a written notice claiming a Calculation Dispute, Utility shall either: (a) notify Generator that Utility agrees the initial calculation was in error and provide a revised calculation of the payment that is the subject of the Calculation Dispute; or (b) provide Generator with the basis of Utility's determination that the calculation was correct, including all documentation upon which Utility relies. If Generator does not accept Utility's revised calculation or Utility's explanation of the original calculation, then, within ten (10) Business Days, executives of both parties shall meet at a mutually agreeable time and place and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

12.2.2. If the Dispute is not a Calculation Dispute, then upon receipt of a written notice claiming a Dispute, executives of both parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a party shall have the right to designate as confidential any information that such party offers. No confidential information exchanged in

such meetings for the purpose of resolving a Dispute may be used by a party in litigation against the other party.

12.2.3. Any correction to a calculation upon which the parties agree to resolve the Calculation Dispute, shall be payable within ten (10) Business Days of such resolution plus interest at the Interest Rate. .

12.2.4. If the parties are unable to resolve a Dispute between themselves pursuant to Section 12.2, then the Dispute will be submitted to the Board for resolution.

12.3. Effect of Dispute

The pendency of a Dispute shall not suspend, either: (a) the obligation of the parties to perform their obligations under this Agreement, including the obligation to make payments, prior to a Termination Date; or (b) the effectiveness of a notice of an Event of Default under Section 9.1.1 or a notice designating an Early Termination Date under Section 9.1.2.

**SECTION 13
MISCELLANEOUS**

13.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

13.2. Amendments. No amendment, modification or waiver in respect hereof will be effective unless (i) in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system and (ii) until approved by the Board.

13.3. Remedies Cumulative. Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

13.4. Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

13.5. Execution of Clearing Requirement. In the event the Transaction is determined to be subject to any requirement that it be executed or cleared pursuant to the Commodities Futures Trading Commission or similar exchange or multiparty platform, the parties agree to (i) cooperate to preserve and enforce the provisions of this Agreement and (ii) consent to any commercially reasonable margin or other requirements.

13.6. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect hereof will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or

further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

13.7. Relationship of the Parties. The parties acknowledge that the relationship between Utility and Generator is an independent contractual relationship and nothing in this Agreement shall create any joint venture, partnership or principal/agent relationship between Utility and Generator. Neither Utility nor Generator shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other party in any way.

13.8. Governing Law and Jurisdiction

13.8.1. Governing Law. This Agreement will be governed by and construed in accordance with the substantive law of the State of New Jersey, without regard to the application of such state's laws relating to conflicts of laws.

13.8.2. Jurisdiction. With respect to any suit, action or proceedings relating hereto ("Proceedings"), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of New Jersey; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence.

13.9. Waiver of Immunities. Each party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Applicable Law, that it will not claim any such immunity in any Proceedings.

13.10. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to applicable law, preserving to the greatest extent the intent of the parties to create such rights and duties as set out herein. If necessary to preserve the intent of the parties hereto and the prevailing economic balance between the parties at the Effective Date, the parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision that is legally binding and enforceable for the one deemed invalid or unenforceable, provided that such amended Agreement shall be subject to Board approval.

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13.11. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER HEREINTO BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

By: _____
Name: _____
Title: _____
Company: _____

By: _____
Name: _____
Title: _____
Company: _____

ATTACHMENT A

DESCRIPTION OF THE CAPACITY FACILITY

General Technology (such as combined cycle, steam cycle, integrated gasification combined cycle, nuclear, wind, etc.): _____

Size (net MW of installed capacity): _____

Full Load Heat Rate (BTU/kWh, HHV, summer rating): _____

Primary Fuel (such as coal, gas, residual oil, distillate oil): _____

Secondary Fuel (if applicable): _____

Number and Configuration of Prime Movers (such as two industrial frame gas turbines plus one steam turbine generator, single pulverized fuel boiler plus steam turbine generator, two circulating fluidized bed boiler plus steam turbine generator, nuclear plant uprate, twenty onshore wind turbines): _____

Location (town or city, county, state): _____

Owner(s) and Ownership Percentage(s): _____

ATTACHMENT B

FORM OF CONSTRUCTION PERIOD SECURITY LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number: _____ Date: _____

AMOUNT:USD _____

EXPIRY: _____

BENEFICIARY:

APPLICANT:

[UTILITY]

[GENERATOR]

[ADDRESS OF UTILITY]

[ADDRESS OF GENERATOR]

Ladies and Gentlemen:

[BANK] (“we” or the “Bank”) hereby establish our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this “Letter of Credit”) in your favor in the amount of XXX AND XX/100 Dollars (\$) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next [preceding] [succeeding] Business Day (the “Expiration Date”); provided, however, that this Letter of Credit shall automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 days prior to the then current Expiration Date. For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on the Bank of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Exhibit A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the

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case of a drawing pursuant to paragraph 1.A, 1.B, 1.C or 1.D thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received, provided, however, that the original documents referenced in paragraphs 1 and 2 above and the sight draft referenced above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the third Business Day following receipt of such facsimile transmittal.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that the Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than Section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

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AUTHORIZED SIGNATURE for Issuer

(Name)

Title:

EXHIBIT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

The undersigned executive officer or director of [UTILITY] (the "Beneficiary"), hereby certifies under penalty of perjury to [ISSUING BANK NAME] (the "Bank"), and [GENERATOR] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. _____, dated _____ (the Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to \$_____ under that certain Standard Offer Capacity Agreement between Applicant and Beneficiary dated as of _____, 20__ (the "Agreement") for the following reason(s) [check applicable provision]:

[]A. An "Early Termination Date" (as defined in the Agreement) has occurred or been designated as a result of an "Event of Default" (as defined in the Agreement) or Termination Event for which the Applicant owes a termination payment, and the true calculation of such payment amount is set forth in detail in the attached Statement of Damages.

[]B. (i) (A) The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof or (B) the Letter of Credit will expire in fewer than 30 days from the date hereof, and (ii) the Applicant is required to but has not provided Beneficiary alternative Construction Period Security (as defined in the Agreement). The Applicant will hold the proceeds of the Letter of

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Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.\$____), which amount does not exceed (i) the amount set forth in paragraph 1 above and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered, [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this ____ day of _____, _____.

Beneficiary: [UTILITY]

By: _____

Name: _____

Title: _____

Copy to:

[GENERATOR]

[ADDRESS OF GENERATOR]

[ATTACH STATEMENT OF DAMAGES, IF APPLICABLE]

STATEMENT OF DAMAGES

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that \$ _____ (or a greater amount) is presently due and owing to Beneficiary on account of [a continuing "Event of Default"] [a Termination Event] [an "Early Termination Date"] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Sections 2.3.4 and 9 of the Agreement.

[INSERT DETAILED CALCULATION OF DAMAGES]

ATTACHMENT C

FORM OF CASH ESCROW AGREEMENT FOR CONSTRUCTION PERIOD
SECURITY

Pursuant to this Escrow Agreement (“*Agreement*”) dated [____], [UTILITY] (the “*Secured Party*”) and [GENERATOR] (the “*Depositor*”) hereby establish an Escrow Account (the “*Account*”) with _____ (the “*Agent*”) (the Secured Party, Depositor and Agent hereafter referred to individually as a “*Party*” and collectively as the “*Parties*”), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the “Cash Deposit”) will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by the Secured Party and the Depositor, as their escrow agent, to hold, deal with and dispose of the Cash Deposit as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject to and in accordance with, however, the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

Terms not defined but used herein and in Schedules I, II, III and IV hereto will have the meanings given to them in the Standard Offer Capacity Agreement (the “*SOCA*”), dated as of [____], 20__ between Secured Party and Depositor.

1. Agent’s Duties. Agent’s duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other persons, even though reference thereto may be made herein; *provided, however*, this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including, without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent’s discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Cash Deposit or this Agreement, without determination by the Agent of such court’s jurisdiction in the matter. If any part of the Cash Deposit are at any time attached,

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garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to either the Secured Party or the Depositor or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from the Secured Party or the Depositor in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Cash Deposit at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to the Cash Deposit if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Cash Deposit deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Cash Deposit in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Cash Deposit in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

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6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in Schedule III. The shares of the funds are not deposits or obligations of, or guaranteed by any bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Cash Deposit shall [become part of the Cash Deposit] [be disbursed pursuant to Schedule III]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from the Secured Party or the Depositor, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Cash Deposit, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each of the Secured Party and the Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between the Secured Party and the Depositor and/or any third parties, relating to or arising in connection with the Account, the Cash Deposit or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Cash Deposit then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Secured Party and the Depositor and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to the Secured Party or the Depositor shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Party (or to such other address as said Party may have theretofore substituted therefore by written notification to Agent), by United States certified or registered mail, postage prepaid, by reputable overnight courier service, or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Party to whom it was mailed on the third (3rd) business day after the time it is deposited in the United

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States mail by Agent, properly addressed and with postage prepaid, whether or not such Party thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule IV attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Secured Party and the Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor will pay all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Secured Party and the Depositor, Agent may sell such portion of the Cash Deposit held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled; or if Agent renders any service not provided for in this Agreement; or if the Secured Party and the Depositor request a substantial modification of its terms; or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees (including reasonably allocated costs of in-house counsel), and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid. The Depositor promise to pay these sums upon demand. The Depositor and its respective successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Cash Deposit for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Secured Party and the Depositor. Within thirty (30) days after receiving the aforesaid notice, the Secured Party and the Depositor agree to appoint a successor escrow agent to which Agent may transfer the Cash Deposit then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty (30) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by the Secured Party and the Depositor.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [_____], as provided in Schedule II, at which time the Cash

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Deposit then held in the Account, less Agent's unpaid fees, costs and expenses shall be distributed in the following manner:

[_____]

14. Governing Law. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of [New Jersey].

15. Automatic Succession. Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the Successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. Disclosure: The Parties hereby agree not to use the name of *[insert name of Agent]* to imply an association with the transaction other than that of a legal escrow agent.

17. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Cash Deposit at any time deposited to the Account in accordance with the foregoing Agreement.

[Signature page follows]

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IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III and IV, which are incorporated by reference.

SECURED PARTY: _____

By: _____
Its: _____

(Address)

(City, State and Zip Code)

(Telephone)

(Facsimile Number)

Tax I.D.

DEPOSITOR: _____

By: _____
Its: _____

(Address)

(City, State and Zip Code)

(Telephone)

(Facsimile Number)

Tax I.D.

as Agent

By: _____
Its: _____

Notices to Agent shall be sent to:

[Name]
[Address]
[City, State, Zip]

With Fax Copy to:
[Name]
[Facsimile Number]

**SCHEDULE I
TO CASH ESCROW AGREEMENT**

PURPOSE AND MANNER OF DEPOSITS

Credit Support provided by Depositor in the form of Cash under the SOCA, all investments of such Cash, and all proceeds of such investments.

All Credit Support in the form of Cash provided by the Depositor shall be deposited in the Account promptly upon receipt by the Agent.

Instructions for transfer of funds into the Account:

**SCHEDULE II
TO CASH ESCROW AGREEMENT
INSTRUCTIONS OF DEPOSITORS**

1. Upon written notice signed by the Secured Party to the Agent that one or more of the following events has occurred, Agent shall withdraw Cash in the amount specified in such notice from the Account (as described on Schedule I) and shall transfer such Cash in accordance with the Secured Party's instructions.

(d) An Early Termination Date (as defined in the SOCA) has occurred or been designated as a result of an Event of Default or a Termination Event (as defined in the Agreement) and a specified amount of the Termination Payment (as defined in the SOCA) owed by the Depositor to the Secured Party remains outstanding.

2. Upon written notice signed by both the Secured Party and the Depositor that the Depositor has replaced a specified amount of Cash in the Account with a Letter of Credit (as defined in the SOCA), the Agent shall withdraw such amount of Cash from Depositor's Subaccount and transfer such Cash in accordance with the Depositor's instructions.

3. The Agent shall liquidate such Cash Deposit from the Account as may be necessary to meet the withdrawal instructions under paragraphs 1 through 2 of this Schedule II.

7. Authorized persons referred to in Sections 1 and 7 of the Agreement are as specified below, as such names may be amended from time to time by notice to the Agent:

For Depositor:

For Secured Party:

**SCHEDULE III
TO CASH ESCROW AGREEMENT
PERMITTED INVESTMENTS**

**SCHEDULE IV
TO CASH ESCROW AGREEMENT
SCHEDULE OF FEES FOR SERVICES
AS ESCROW AGENT**

ATTACHMENT D

FORM OF DELIVERY TERM SECURITY LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number: _____ Date: _____

AMOUNT:USD _____

EXPIRY: _____

BENEFICIARY:

APPLICANT:

[UTILITY]

[GENERATOR]

[ADDRESS OF UTILITY]

[ADDRESS OF GENERATOR]

Ladies and Gentlemen:

[BANK] (“we” or the “Bank”) hereby establish our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this “Letter of Credit”) in your favor in the amount of XXX AND XX/100 Dollars (\$) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next [preceding] [succeeding] Business Day (the “Expiration Date”); provided, however, that this Letter of Credit shall automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 days prior to the then current Expiration Date. For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on the Bank of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the

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case of a drawing pursuant to paragraph 1.A, 1.B or 1.C thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received, provided, however, that the original documents referenced in paragraphs 1 and 2 above and the sight draft referenced above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the third Business Day following receipt of such facsimile transmittal.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that the Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than Section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

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AUTHORIZED SIGNATURE for Issuer

(Name)

Title:

EXHIBIT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

The undersigned executive officer or director of [UTILITY] (the "Beneficiary"), hereby certifies under penalty of perjury to [ISSUING BANK NAME] (the "Bank"), and [GENERATOR] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. _____, dated _____ (the Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to \$_____ under that certain Standard Offer Capacity Agreement between Applicant and Beneficiary dated as of _____, 20__ (the "Agreement") for the following reason(s) [check applicable provision]:

[]A. The Payment Date under Section 2.2 of the Agreement has occurred with respect to such amount, and such amount is presently due and owing under Section 4.1.2 of the Agreement.

[]B. An "Early Termination Date" (as defined in the Agreement) has occurred or been designated as a result of an "Event of Default" (as defined in the Agreement) or Termination Event for which the Applicant owes a termination payment, and the true calculation of such payment amount is set forth in detail in the attached Statement of Damages.

[]C. (i) (A) The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof or

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(B) the Letter of Credit will expire in fewer than 30 days from the date hereof, and (ii) the Applicant is required to but has not provided Beneficiary alternative Delivery Term Security (as defined in the Agreement). The Applicant will hold the proceeds of the Letter of Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered, [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this ____ day of _____, ____.

Beneficiary: [UTILITY]

By: _____

Name: _____

Title: _____

Copy to:

[GENERATOR]

[ADDRESS OF GENERATOR]

[ATTACH STATEMENT OF DAMAGES, IF APPLICABLE]

STATEMENT OF DAMAGES

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that \$ _____ (or a greater amount) is presently due and owing to Beneficiary on account of [a failure to make a payment under Section 4.1.2 of the Agreement] [an “Early Termination Date”] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Sections [2.3.4 and 9 of the Agreement].

[INSERT DETAILED CALCULATION OF DAMAGES]

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ATTACHMENT E

FORM OF CASH ESCROW AGREEMENT FOR DELIVERY TERM SECURITY

Pursuant to this Escrow Agreement (“*Agreement*”) dated [____], [UTILITY] (the “*Secured Party*”) and [GENERATOR] (the “*Depositor*”) hereby establish an Escrow Account (the “*Account*”) with _____ (the “*Agent*”) (the Secured Party, Depositor and Agent hereafter referred to individually as a “*Party*” and collectively as the “*Parties*”), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the “Cash Deposit”) will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by the Secured Party and the Depositor, as their escrow agent, to hold, deal with and dispose of the Cash Deposit as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject to and in accordance with, however, the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

Terms not defined but used herein and in Schedules I, II, III and IV hereto will have the meanings given to them in the Standard Offer Capacity Agreement (the “*SOCA*”), dated as of [____], 20__ between the Secured Party and Depositor.

1. Agent’s Duties. Agent’s duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other persons, even though reference thereto may be made herein; *provided, however*, this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including, without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent’s discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Cash Deposit or this Agreement, without determination by the Agent of such

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court's jurisdiction in the matter. If any Cash Deposit are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to either the Secured Party or the Depositor or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from the Secured Party or the Depositor in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Cash Deposit at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to any of the Cash Deposit if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Cash Deposit deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Cash Deposit in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Cash Deposit in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

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6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in Schedule III. The shares of the funds are not deposits or obligations of, or guaranteed by any bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Cash Deposit shall [become part of the Cash Deposit] [be disbursed pursuant to Schedule III]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from the Secured Party or the Depositor, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Cash Deposit, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each of the Secured Party and the Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between the Secured Party and the Depositor and/or any third parties, relating to or arising in connection with the Account, the Cash Deposit or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Cash Deposit then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Secured Party and the Depositor and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to the Secured Party or the Depositor shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Party (or to such other address as said Party may have theretofore substituted therefor by written notification to Agent), by United States certified or registered mail, postage prepaid, by reputable overnight courier service, or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Party to whom it was mailed on the third (3rd) business day after the time it is deposited in the United

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States mail by Agent, properly addressed and with postage prepaid, whether or not such Party thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule IV attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Secured Party and the Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor will pay all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Secured Party and the Depositor, Agent may sell such portion of the Cash Deposit held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled; or if Agent renders any service not provided for in this Agreement; or if the Secured Party and the Depositor request a substantial modification of its terms; or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees (including reasonably allocated costs of in-house counsel), and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid. The Depositor promise to pay these sums upon demand. The Depositor and its respective successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Cash Deposit for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Secured Party and the Depositor. Within thirty (30) days after receiving the aforesaid notice, the Secured Party and the Depositor agree to appoint a successor escrow agent to which Agent may transfer the Cash Deposit then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty (30) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by the Secured Party and the Depositor.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [_____], as provided in Schedule II, at which time the Cash

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Deposit then held in the Account, less Agent's unpaid fees, costs and expenses shall be distributed in the following manner:
[_____]

14. Governing Law. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of [New Jersey].

15. Automatic Succession. Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the Successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. Disclosure: The Parties hereby agree not to use the name of *[insert name of Agent]* to imply an association with the transaction other than that of a legal escrow agent.

17. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Cash Deposit at any time deposited to the Account in accordance with the foregoing Agreement.

[Signature page follows]

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IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III and IV, which are incorporated by reference.

<u>SECURED PARTY:</u>	<u>DEPOSITOR:</u>
<u>By:</u>	<u>By:</u>
<u>Its:</u>	<u>Its:</u>
<u>(Address)</u>	<u>(Address)</u>
<u>(City, State and Zip Code)</u>	<u>(City, State and Zip Code)</u>
<u>(Telephone)</u>	<u>(Telephone)</u>
<u>(Facsimile Number)</u>	<u>(Facsimile Number)</u>
<u>Tax I.D.</u>	<u>Tax I.D.</u>
	<u>as Agent</u>
	<u>By:</u>
	<u>Its:</u>

Notices to Agent shall be sent to:

[Name]

[Address]

[City, State, Zip]

With Fax Copy to:

[Name]

[Facsimile Number]

**SCHEDULE I
TO CASH ESCROW AGREEMENT**

PURPOSE AND MANNER OF DEPOSITS

Credit Support provided by Depositor in the form of Cash under the SOCA, all investments of such Cash, and all proceeds of such investments.

All Credit Support in the form of Cash provided by the Depositor shall be deposited in the Account promptly upon receipt by the Agent.

Instructions for transfer of funds into the Account:

**SCHEDULE II
TO CASH ESCROW AGREEMENT
INSTRUCTIONS OF DEPOSITORS**

1. Upon written notice signed by the Secured Party to the Agent that one or more of the following events has occurred, Agent shall withdraw Cash in the amount specified in such notice from the Account (as described on Schedule I) and shall transfer such Cash in accordance with the Secured Party's instructions.

- (a) The Depositor has failed to pay an amount presently due and owing under Section 4.1.2 of the Agreement, which amount remains outstanding.
- (b) An Event of Default (as defined in the SOCA) or a Termination Event (as defined in the SOCA) with respect to the Depositor has occurred and is continuing, and the Depositor owes the Secured Party a specified amount in respect of such Event of Default, which amount remains outstanding.
- (c) An Early Termination Date (as defined in the SOCA) has occurred or been designated as a result of an Event of Default or a Termination Event (as defined in the Agreement) and a specified amount of the Termination Payment (as defined in the SOCA) owed by the Depositor to the Secured Party remains outstanding.

2. Upon written notice signed by both the Secured Party and the Depositor that the Depositor has replaced a specified amount of Cash in the Account with a Letter of Credit (as defined in the SOCA), the Agent shall withdraw such amount of Cash from Depositor's Subaccount and transfer such Cash in accordance with the Depositor's instructions.

3. The Agent shall liquidate such Cash Deposit from the Account as may be necessary to meet the withdrawal instructions under paragraphs 1 through 2 of this Schedule II.

7. Authorized persons referred to in Sections 1 and 7 of the Agreement are as specified below, as such names may be amended from time to time by notice to the Agent:

For Depositor:

For Secured Party:

**SCHEDULE III
TO CASH ESCROW AGREEMENT
PERMITTED INVESTMENTS**

**SCHEDULE IV
TO CASH ESCROW AGREEMENT**

ATTACHMENT F

SCHEDULE OF APPROVED STANDARD OFFER CAPACITY PRICES

Delivery Year (ending May 31 st)	Standard Offer Capacity Price (\$/MW-day)
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	

Attachment 1B

Technical Changes Accepted

STANDARD OFFER CAPACITY AGREEMENT

STANDARD OFFER CAPACITY AGREEMENT

This STANDARD OFFER CAPACITY AGREEMENT (“Agreement”), dated as of [] (“Effective Date”), is entered into by and between [UTILITY], a corporation organized under the law of the state of New Jersey (“Utility”) and [CAPACITY SELLER], a corporation organized under the law of [] (“Generator”).

WHEREAS, the State of New Jersey has established the Long-Term Capacity Agreement Pilot Program (“LCAPP”) to promote construction of qualified electric generation facilities pursuant to P.L. 2011 c. 9 (the “Act”);

WHEREAS, the Act requires that each Electric Public Utility enter into a standard offer capacity agreement as described in the Act and in a form approved by the New Jersey Board of Public Utilities (“Board”) with eligible generators approved by the Board;

WHEREAS, under the Act, this Agreement shall be irrevocable once the Board issues an order approving this Agreement;

WHEREAS, under the Act, neither the Board nor any other governmental agency of New Jersey shall have the authority (i) to rescind, alter, modify, or repeal this Agreement or an order approving rate recovery of LCAPP costs, (ii) to revalue, re-evaluate, or revise the amount of the LCAPP costs, or (iii) to determine that the LCAPP costs or the revenues to recover the LCAPP costs are unjust or unreasonable;

WHEREAS, Generator has not commenced, and intends to commence, construction of an [] megawatt (“MW”) electric generation facility, as described in Attachment A, after January 28, 2011 (the “Capacity Facility”);

WHEREAS, Generator is willing to commit to offer and clear Unforced Capacity of the Capacity Facility into each Base Residual Auction conducted by the PJM Interconnection, L.L.C. (“PJM”) for all Delivery Years through the Conclusion Date;

WHEREAS, Generator is willing to commit to offer all the electric energy output and ancillary services of the Capacity Facility into the PJM markets during the Delivery Term;

WHEREAS, Generator’s eligibility and selection to participate in the LCAPP have been approved by the Board;

WHEREAS, this Agreement is in the form approved by the Board;

WHEREAS, Utility is an Electric Public Utility; and

WHEREAS, Generator has caused Construction Period Security to be provided to Utility, dated as of the date hereof , in support of Generator’s obligations under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual terms and conditions set forth herein, and for further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**SECTION 1
DEFINITIONS; RULES OF INTERPRETATION**

1.1. Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

“Act” means the New Jersey P.L. 2011 c. 9 that establishes the LCAPP.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” means this Standard Offer Capacity Agreement dated as of [], 2011 by and between Utility and Generator..

“Annual Forecasted Peak Demand” means in the case of Utility, its forecasted peak demand and, in the case of another Electric Public Utility, the forecasted peak demand of such other Electric Public Utility, for a given Delivery Year as determined by PJM and published in the most recent PJM Load Forecast Report issued before the start of the Delivery Year.

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the LCAPP or any one or both of the parties to this Agreement or the terms hereof.

“Associated Ancillary Services” means the quantity of ancillary services, generally used by PJM to support the reliable operation of its transmission system, associated with the Available Capacity Amount.

“Associated Energy” means the quantity of electrical energy, generally used by PJM to satisfy its load requirements, associated with the Available Capacity Amount

“Automated Clearing House” or “ACH” means an electronic network for financial transactions administered by NACHA-The Electronic Payments Association.

“Available Capacity Amount” means the lesser of: (i) the quantity of Unforced Capacity from the Capacity Facility that is offered by Generator and cleared by PJM in the relevant Base Residual Auction, and (ii) the Awarded Capacity Amount.

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“Awarded Capacity Amount” means [] MW, the amount of Unforced Capacity for which the Board has approved Generator to enter into standard offer capacity agreements with the Electric Public Utilities pursuant to the Act.

“Awarded Commencement Date” means the first day of the first Delivery Year for which the Board has approved Generator to receive or make payments under standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which date is June 1, [].

“Base Residual Auction” means the primary auction conducted by PJM as part of PJM’s Reliability Pricing Model to secure electrical capacity as necessary to satisfy the capacity requirements imposed under the PJM Reliability Assurance Agreement for the Delivery Year.

“Board” means the New Jersey Board of Public Utilities or any successor agency.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Calculation Dispute” is defined in Section 12.2.1.

“Capacity Facility” means the [] MW electric generation facility to be constructed by Generator as further defined in Attachment A.

“Cash” means cash in United States Dollars and any investment of such cash held in escrow.

“Cash Escrow Agreement” means an agreement providing for the receipt, holding (in the United States), investment and disbursement of Cash held in escrow by a Qualified Bank, to provide either Construction Period Security or Delivery Term Security.

“Commencement Date” means the last to occur of: (i) the Awarded Commencement Date; and (ii) the date the Capacity Facility first provides Unforced Capacity to PJM by having previously cleared in a Base Residual Auction.

“Conclusion Date” means May 31, [], which date shall not be altered by any delay or change in the Commencement Date or other provision under this Agreement.

“Construction Period” means the period commencing on the Effective Date and concluding on the date the Generator first provides Unforced Capacity to PJM by having previously cleared in a Base Residual Auction.

“Construction Period Security” means (i) a Letter of Credit, substantially in the form of Attachment B, to be provided to the Utility or (ii) Cash held in escrow for the Utility under a Cash Escrow Agreement, substantially in the form of Attachment C to be mutually agreed between the Utility and Generator, in support of the Generator’s obligations during the Construction Period in an amount defined in section 2.3.4.

“Defaulting Party” is defined in Section 9.1.1.

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“Delivery Year” means each 12-month period from June 1st through May 31st numbered according to the calendar year in which it ends beginning on the Commencement Date and concluding on the Conclusion Date.

“Delivery Term” means the period commencing with the Commencement Date and concluding on the Conclusion Date.

“Delivery Term Security” means (i) a Letter of Credit, substantially in the form of Attachment D, to be provided to the Utility or (ii) Cash held in escrow for the Utility under a Cash Escrow Agreement, substantially in the form of Attachment E to be mutually agreed between the Utility and Generator, in support of the Generator’s obligations during the Delivery Term in an amount defined in Section 2.3.5.

“Dispute” is defined in Section 12.1.

“Early Termination Date” means the date determined in accordance with Section 9.1.

“Effective Date” is defined in the Preamble hereof.

“EFORD” means a measure calculated by PJM of the probability that an electric power generating unit will not be available due to a forced outage or forced derating when there is a demand on the unit to generate.

“Electric Public Utility” means the four (4) electric public utilities under the jurisdiction of the Board, specifically Public Service Electric and Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company.

“Event of Default” is defined in Section 7.1.

“Facility Lender” means (i) any lender providing construction, interim, long-term, or refinancing debt or equity funds to Generator for the Capacity Facility, (ii) any trustee or agent acting on their behalf, and (iii) any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

“Force Majeure” means an event or circumstance, such as natural catastrophes, terrorism, war, riots, or acts of God, that (i) prevents one party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the claiming party; and, (iii) by the exercise of due diligence, the claiming party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing, none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Generator’s fuel supply, except when caused by Force Majeure; (b) the breakdown of Generator’s plant and/or equipment, except when caused by Force Majeure; and (c) an occurrence or an event that causes an economic hardship to a party.

“Generator” means a developer of an electric power generating facility that the Board has determined to qualify as eligible pursuant to the Act and is named in the Preamble hereof.

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“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity with jurisdiction over any party hereto, this Agreement, the LCAPP, or PJM, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Interest Rate” means for any date, the per annum rate of interest equal to the yield on Two-Year U.S. Treasury Notes as may be published in *The Wall Street Journal* on such day (or if not published on such day the most recent preceding day on which published) plus sixty (60) basis points.

“Illegality” is defined in Section 8.1.1.

“Invalidity of the Act” is defined in Section 8.1.2.

“Letter of Credit” means an irrevocable standby letter of credit provided by a Qualified Bank to provide either Construction Period Security or Delivery Term Security.

“Locational Deliverability Area” or “LDA” means the PJM sub-regions used to calculate Resource Clearing Prices as part of the Reliability Pricing Model.

“Long-Term Capacity Agreement Pilot Program” or “LCAPP” is the program established by P.L. 2011 c. 9 to promote construction of qualified electric generation facilities.

“Month” means a calendar month commencing on the first day of such month and ending on the last day of such month.

“MW” means megawatt.

“NACHA Operating Rules” means the rules issued by NACHA – The Electronic Payments Association for the administration of the Automated Clearing House.

“Non-Defaulting Party” is defined in Section 9.1.1.

“Payment Date” is defined in Section 2.2.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“PJM Interconnection, L.L.C.” or “PJM” means the Regional Transmission Organization that manages the regional, high-voltage electricity grid serving New Jersey and all or parts of other states and, among other things, administers the Reliability Pricing Model, and any successor.

“PJM Market Rules” means the rules, standards, procedures, and practices set forth in the PJM Tariff, PJM Operating Agreements, PJM Reliability Assurance Agreement, PJM Consolidated Transmission Owners Agreement, PJM Manuals, PJM Regional Practices

Document, PJM-Midwest Independent Transmission System Operator Joint Operating Agreement, and other documents setting forth market rules.

“PJM Markets” means the capacity, energy, and ancillary services markets administered by PJM.

“Qualified Bank” means a United States commercial bank or similar financial institution that has assets of at least \$5 billion and a senior long-term unsecured debt rating of at least “A” by Standard & Poor’s, “A2” by Moody’s Investors Service, or “A” by Fitch Ratings.

“Reliability Pricing Model” or “RPM” means PJM’s capacity-market model that secures capacity on behalf of electric load serving entities to satisfy load obligations not satisfied through the output of electric generation facilities owned by those entities or otherwise secured by those entities through bilateral contracts.

“Resource Clearing Price” or “RCP” means the clearing price expressed in \$/MW-day for Unforced Capacity established by the Base Residual Auction for the LDA in which the Capacity facility is located and the applicable Delivery Year as posted by PJM.

“RPM Rules” means the provisions of PJM’s tariffs and agreements accepted by the Federal Energy Regulatory Commission and the provisions of PJM’s manuals governing the Reliability Pricing Model, as in effect from time to time during the term of this Agreement.

“Standard Offer Capacity Price” or “SOCP” means the price for each Delivery Year at which the Board has approved Generator to enter into this Agreement with the Utility pursuant to the Act, which price is listed in Attachment F to this Agreement.

“Termination Date” means the earlier to occur of (i) the Conclusion Date or (ii) the Early Termination Date.

“Termination Event” is defined in Section 8.1.

“Total Annual Forecasted Peak Demand” for a given Delivery Year means the sum of the Annual Forecasted Peak Demands for each Electric Public Utility for such Delivery Year.

“Transaction” means the calculations, payments and payment obligations under Section 4.1 and the related provisions of this Agreement (including without limitation Section 2.1).

“Unforced Capacity” means the capacity of a capacity resource that accounts for the EFORd of that capacity resource and as periodically determined by PJM.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the amounts that became payable to such party under Section 2.1 in respect of the Transaction on or prior to such Early Termination Date (including amounts not paid by the other party on the ground of the occurrence of an Event of Default, in accordance with Section 2.5) and which remain unpaid as at such Early Termination Date, together with (to the extent permitted under Applicable Law) interest from (and including) the date such amounts were to have been paid to (but excluding) such Early Termination Date, at the Interest Rate. Such amounts of interest will

be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed.

“Utility” is defined in the Preamble hereof.

“Utility’s Load Ratio” means the percentage derived by dividing Utility’s Annual Forecasted Peak Demand by Total Annual Forecasted Peak Demand, both for a given Delivery Year, such that the sum of the Utility Load Ratios for the Electric Public Utilities shall always equal 100%.

1.2. Rules of Interpretation

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity or gas market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Section or subsection hereof; (e) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (f) the masculine includes the feminine and neuter and vice versa; (g) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined; (h) “including” means “including, without limitation” or “including, but not limited to”; and (i) the word “or” is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof will be construed simply according to its fair meaning and not strictly for or against either party. No term hereof will be construed against a party on the ground that the party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and will in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Rounding. All calculations, including but not limited to RCP, Available Capacity Amount, and Utility Load Ratios, will be rounded to the nearest third decimal place.

**SECTION 2
OBLIGATIONS**

2.1. General Conditions. Each party will make each payment specified herein to be made by it, including without limitation the payments under Section 2.2, subject to Section 2.5 and the other provisions hereof.

2.2. Calculation and Payment of Transaction Amounts. In the case of the first Delivery Year, no less than thirty (30) calendar days prior to the Awarded Commencement Date and, in the case of each subsequent Delivery Year, no less than thirty (30) calendar days prior to the commencement of such Delivery Year, Utility will provide a statement to Generator of the result of the calculation under Section 4.1 for the Delivery Year, specifying the party obligated to make payments with respect to such Delivery Year, and the monthly amount of such payments, including any correction made under Section 2.19. The party obligated to make payments will make such payments with respect to each Month on or before the last Business Day of the subsequent Month (the "Payment Date") to the account specified herein in freely transferable funds via electronic funds transfer through a system that provides for final credit no later than one business day after transfer. The system for making such electronic funds transfers may be the ACH, in which case the paying party will originate the ACH credit for receipt the following Business Day. Each party agrees to be bound by the NACHA Operating Rules in connection with payments made via ACH and agrees that the origination of all ACH transactions will comply with applicable provisions of U.S. law. Whenever payments are made via ACH, the receiving party hereby authorizes the paying party to initiate credit entries to the account of the receiving party at the receiving party's financial institution as set forth in Section 2.6. This authorization will remain in full force and effect until a party has received prior written notice from the other party of its termination, such notice to be provided in such time and in such manner as to afford the party receiving such notice a reasonable opportunity to act on it.

2.3. Obligations of Generator.

2.3.1. Generator shall use all commercially reasonable efforts to cause the Capacity Facility to qualify under the RPM Rules as a capacity resource in an amount no less than the Awarded Capacity Amount for the Base Residual Auction associated with each Delivery Year during the term of this Agreement, commencing upon the Awarded Commencement Date.

2.3.2. Generator shall use all commercially reasonable efforts to cause the Capacity Facility to achieve commercial operation no later than the Commencement Date.

2.3.3. Throughout the Delivery Term, Generator shall:

(a) Cause the Capacity Facility to comply with all obligations of a capacity resource under the RPM Rules, including without limitation the obligations relating to the submission of offers to supply electric energy and ancillary services in PJM markets, and Generator shall bear all costs associated with such compliance, including without limitation all fees and penalties imposed by PJM;

(b) Submit supply offers for an amount of Unforced Capacity no less than the Awarded Capacity Amount from the Capacity Facility in accordance with the RPM Rules in the Base Residual Auction associated with each Delivery Year during the term of this Agreement, such that the Unforced Capacity shall be offered at the lowest commercially reasonable price under the RPM rules;

(c) Submit supply offers from the Capacity Facility for the maximum amount of Associated Energy that the Capacity Facility can provide in the PJM day-ahead energy market

in accordance with PJM Market Rules throughout the Delivery Term, such that the Associated Energy shall be offered at the lowest commercially reasonable price under PJM's Market Rules;

(d) Submit supply offers from the Capacity Facility for the maximum amount of Associated Ancillary Services that the Capacity Facility can provide in the PJM ancillary services markets in accordance with PJM Market Rules throughout the Delivery Term, such that the Associated Ancillary Services shall be offered at the lowest commercially reasonable price under PJM's Market Rules;

(e) Neither physically nor financially withhold any Unforced Capacity up to the amount of Awarded Capacity, or Associated Energy and Associated Ancillary Services, from the Capacity Facility;

(f) Provide on a timely basis (which, in the case of documentation provided to Generator by PJM, shall mean within five (5) Business Days of Generator's receipt of such documentation) all documentation required by Utility to make the calculations and notifications required by Sections 2.2 and 4.1, including without limitation: (i) documentation provided to Generator by PJM after the conclusion of each Base Residual Auction showing the amount of Unforced Capacity offered from the Capacity Facility and cleared by PJM in such Base Residual Auction; (ii) documentation provided to Generator by PJM in advance of each Delivery Year showing the all EFORD measurements for the Capacity Facility for the Delivery Year; (iii) the result of any capability test of the Capacity Facility conducted by PJM; (iv) documentation provided to Generator by PJM in advance of each Delivery Year showing the Available Capacity Amount for the Delivery Year or required to calculate the Available Capacity Amount for the Delivery Year; and (v) documentation notifying Generator of any correction to an input to a calculation, as provided in Section 2.9; provided that Generator may redact from any such documentation data that do not relate to the Capacity Facility;

(g) Provide on a timely basis all documentation reasonably requested by Utility to demonstrate Generator's compliance with all of its obligations as set forth in this Section 2.3 and affirmative covenants as set forth in Section 6. Utility shall have the right, upon reasonable notice to Generator, to request such information once each year and, in addition, upon the occurrence of any event or upon Utility's receipt of information that gives Utility reasonable grounds for concern in good faith as to Generator's compliance with one or more such obligations;

(h) Prepare and file an annual certification to the Board within thirty (30) calendar days after the end of each Delivery Year describing the Generator's compliance with Section 2.3.3 (b) through Section 2.3.3 (e) and any material actions taken by the Generator under this Agreement.

2.3.4. Cause to be provided to the Utility throughout the Construction Period, Construction Period Security in an amount to be calculated annually equal to the product of \$10,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio, but in no case more than the product of \$1 million, and the Utility's Load Ratio. Such Construction Period Security shall be in the form of a Letter of Credit or Cash held in escrow by the Utility, which shall have the right to draw upon the Construction Period Security as provided in Section 9.4. In

the event of the application of any such Construction Period Security toward any amount owed hereunder to Generator the Generator shall have no obligation to increase the amount of the Construction Period Security beyond the initial amount provided.

2.3.5. Cause to be provided to the Utility throughout the Delivery Term, Delivery Term Security in an amount to be calculated annually equal to the product of \$25,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio with the amount of Delivery Term Security declining *pro rata* at the conclusion of each Delivery Year over any remaining term of this Agreement. Such Delivery Period Security shall be in the form of a Letter of Credit or Cash held in escrow by the Utility, which shall have the right to draw upon the Delivery Term Security as provided in Section 9.4. In the event of the application of any such Delivery Term Security toward any amount owed hereunder to Generator the Generator shall have no obligation to increase the amount of the Delivery Term Security beyond the initial amount provided.

2.3.6. Fulfill all Generator's obligations under, and otherwise comply with all terms of, the Construction Period Security and Delivery Term Security.

2.4. Obligations of the Utility. The Utility shall prepare and file an annual report to the Board within thirty (30) calendar days after the end of each Delivery Year describing (i) the status of this Agreement, (ii) the amount of Unforced Capacity and cost of associated Transactions made under this Agreement, (iii) the performance of the Generator in supplying Unforced Capacity and Associated Energy and Associated Ancillary Services under this Agreement, and (iv) any material actions taken by the Generator or the Utility under this Agreement. Nothing in this Agreement imposes upon Utility the obligation to monitor, enforce, or declare an Event of Default with respect to the price of Unforced Capacity, or the price or amount of Associated Energy or Associated Ancillary Services, which Generator offers in or supplies to any PJM Market.

2.5. Conditions Precedent to Obligations. Each obligation of each party under this Agreement is subject to (i) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing, (ii) the condition precedent that no Early Termination Date has occurred or been effectively designated, and (iii) the Board has found that this Agreement is reasonable and that the Utility will be allowed full rate recovery of all prudent and reasonably incurred costs associated with this Agreement.

2.6. Accounts; Change of Account

2.6.1. Payments are to be made to the following accounts:

Generator:

Pay:

For the Account of:

Account Number:

Fed. ABA Number:

Utility:

Pay:
For the Account of:
Account Number:
Fed. ABA Number:

2.6.2. Either party may change its account for receiving a payment by giving written notice to the other party, which notice will be effective for the next payment date that is at least five Business Days after the effective date of such notice unless such other party gives timely notice of a reasonable objection to such change.

2.6.3. The parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be considered by the parties as conclusive evidence of receipt.

2.7. Default Interest; Other Amounts. Prior to the occurrence or effective designation of an Early Termination Date, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 9.3.3, be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Interest Rate. Such interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed. Each payment will be made in U.S. Dollars in freely transferable funds via electronic funds transfer, as set forth in Section 2.2, on the relevant Payment Date (or if that date is not a Business Day, on the next Business Day).

2.8. Calculations. Utility shall make all calculations of payments due under Sections 2.2 and 4.1 in accordance with the terms of this Agreement, in good faith and with commercial reasonableness, and its determinations and calculations will be binding, subject to the resolution of any Calculation Dispute. Inaccuracy in any calculation shall not be an Event of Default. The sole remedy of the parties with respect to any inaccuracy of a calculation will be the right (but not the obligation), to commence a Calculation Dispute.

2.9. Corrections to Input to Transaction Payment. If PJM revises to correct any of the inputs required for Utility to calculate any payment required under Section 4.1 within the time permitted by PJM's applicable tariff rate or rate schedule for the revision of PJM charges, Utility will reflect the amount (if any) that is payable as a result of that correction (including without limitation interest on such amount payable from the date of original payment under Section 4.1 through the date of payment under this Section 2.9 at the Interest Rate) in the calculation of payment of payments due for the Delivery Year after Utility receives notice of the revision. Utility shall calculate the correction so as to place the parties in the same economic position after such payment as they would have been had the correct input been employed initially.

2.10. Substitution Return and Handling of Credit Support

2.10.1. Election to Change Form of Credit Support. With respect to the Construction Period Security or the Delivery Term Security, the Generator may, at any time and

from time to time, replace (i) a Letter of Credit with Cash held under a Cash Escrow Agreement, (ii) Cash held under a Cash Escrow Agreement with a Letter of Credit, or (iii) a Letter of Credit with a different Letter of Credit, provided that any such substitute Cash and Cash Escrow Agreement or substitute Letter of Credit (as the case may be) meets the requirements for Construction Period Security or Delivery Term Security, as applicable, whereupon the Utility shall cooperate with the Generator in obtaining the concurrent release, termination or return of the Letter of Credit or Cash and Cash Escrow Agreement (as the case may be) being replaced.

2.10.2. Return of Original Credit Support Documents. Without limitation to the generality of the foregoing, the Utility shall return to the Generator all original Credit Support Documents, and all amendment, extension and other documents related thereto, within twenty (20) calendar days of the termination, cancellation or replacement thereof.

2.10.3. Handling of Cash Collateral. If any collateral in the form of Cash is expected to be or is received by the Utility pursuant to this Agreement, whether following a Letter of Credit drawing due to failure on the part of the issuer of the Letter of Credit to renew or extend the Letter of Credit or otherwise, the parties shall cooperate to cause such collateral in the form of Cash to be delivered as soon as practicable to a custodian to be held pursuant to a Cash Escrow Agreement. Any collateral in the form of Cash that is received and held by the Utility pending delivery to a custodian shall be segregated by the Utility from its other property and held exclusively in accounts with Qualified Banks.

SECTION 3 TERM AND TERMINATION

This Agreement is effective as of the Effective Date and will remain in effect until the later to occur of the Termination Date or the fulfillment by the parties of all obligations hereunder.

SECTION 4 TRANSACTIONS

4.1. Transactions.

4.1.1. If, for a Delivery Year, the SOCP is greater than the RCP then, subject to Section 2.5, Utility will pay Generator each Month during the Delivery Year one-twelfth of the product of (i) the difference between the SOCP and the RCP, (ii) the Available Capacity Amount, (iii) the number of days in the Delivery Year; and (iv) Utility Load Ratio, each for the applicable Delivery Year.

4.1.2. If, for a Delivery Year, the RCP is greater than the SOCP then, subject to Section 2.5, Generator will pay Utility each Month an amount equal to one-twelfth of the product of (i) the difference between the RCP and the SOCP, (ii) the Available Capacity

Amount, (iii) the number of days in the Delivery Year, and (iv) Utility Load Ratio, each for the applicable Delivery Year.

4.2. Structure of Transaction. Nothing in this Agreement shall entitle or obligate Utility to purchase, or take title to or delivery of, capacity, electric energy, or ancillary services from the Capacity Facility.

SECTION 5 REPRESENTATIONS AND WARRANTIES

5.1. Mutual Representations and Warranties. Each party represents to the other party, from the Effective Date, and, except as specified below, continuing throughout the Delivery Term, that:

5.1.1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

5.1.2. It has the power (i) to execute this Agreement, the Construction Period Security, Delivery Term Security and any other documentation relating hereto or thereto, (ii) to deliver this Agreement and cause to be delivered the Construction Period Security, Delivery Term Security and any other documentation that it is required by this Agreement to deliver and (iii) to perform its obligations hereunder or thereunder and has taken all necessary action to authorize such execution, delivery and performance.

5.1.3. As of the Effective Date, such execution, delivery and performance do not violate or conflict with any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

5.1.4. Its obligations under this Agreement, the Construction Period Security, and Delivery Term Security constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

5.1.5. As of the Effective Date, all governmental and other consents that are required to have been obtained by it with respect to this Agreement, the Construction Period Security, and the Delivery Term Security are in full force and effect and all conditions of any such consents have been complied with.

5.1.6. As of the Effective Date, no Event of Default or event which, with notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or

performing its obligations hereunder or under the Construction Period Security or Delivery Term Security.

5.1.7. All applicable information that is furnished in writing by or on behalf of it to the other party required by Section 6.1 is, as of the date of the information, true, accurate and complete in every material respect.

5.1.8. It is an “eligible contract participant” within the meaning of Section 1(a)18 of the Commodities Exchange Act, as amended.

5.1.9. In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement; (iv) the other party has not given to it (directly or indirectly through any other Person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) hereof; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own decision to enter into the Transaction based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; and (vii) it is entering into this Agreement with a full understanding of all the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks.

5.1.10. It is a “United States person” (within the meaning of section 7701(a)(30) of the Internal Revenue Code of 1986, as amended, and is exempt from backup withholding under Internal Revenue Code section 3406 and relevant U.S. Department of the Treasury regulations.

5.2. Generator’s Representations and Warranties. Generator hereby represents and warrants to Utility as of the Effective Date that:

5.2.1. Generator’s selection to participate in the LCAPP has been approved by the Board.

5.2.2. Generator is approved by the Board pursuant to the Act as eligible to enter into standard offer capacity agreements with the Electric Public Utilities for the Awarded Capacity Amount at the SOCP.

5.2.3. Generator will not, either alone or in combination with any Affiliate of Generator that is eligible to participate in the LCAPP, enter into financially-settled standard offer capacity agreements for more than 700 MW of Unforced Capacity pursuant to the LCAPP.

**SECTION 6
AFFIRMATIVE COVENANTS**

Each party agrees with the other that, so long as either party has or may have any obligation hereunder:

6.1. Furnish Specified Information.

6.1.1. Each party will deliver to the other party such proof of the names, true signatures and authority of Persons signing this Agreement on its behalf as the other party may reasonably request upon execution hereof;

6.1.2. Generator will deliver to Utility on a timely basis:

(a) All information required by the Utility to perform the calculations specified in Sections 2.2 and 4.1, including without limitation information supplied to Generator by PJM;

(b) All documents, including all written notifications and other communications from PJM, related to Generator's compliance or non-compliance with the RPM Rules;

(c) All additional documents required for Utility to provide an annual report to the Board as specified in Section 2.4.

6.2. Maintain Authorizations. Each party will use all reasonable efforts, including the maintenance of records and provision of notices, to maintain in full force and effect all consents, licenses or approvals of PJM and of any Governmental Authority or other authority that are required to be obtained by it with respect to this Agreement, the Construction Period Security, and the Delivery Term Security and its obligations hereunder and thereunder and will use all reasonable efforts to obtain any that may become necessary in the future.

6.3. Comply with Laws and RPM Rules. Each party will comply in all material respects with all Applicable Laws and orders and all RPM Rules to which it may be subject if failure so to comply would materially impair its ability to perform its obligations hereunder or under the Construction Period Security or Delivery Term Security.

6.4. Reporting Requirements. Generator shall be responsible for any recordkeeping, reporting and other requirements applicable to this Agreement under the Commodity Exchange Act, as amended, and the regulations of the Commodity Futures Trading Commission.

**SECTION 7
EVENTS OF DEFAULT**

7.1. Events of Default. The occurrence at any time with respect to a party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:

7.1.1. Failure to Pay. Failure by the party to make, when due, any payment under this Agreement required to be made by it if such failure is not remedied on or before the third (3rd) Business Day after notice of such failure is given to the party.

7.1.2. Failure to Provide Information. Failure by Generator to provide to Utility such information or documentation required by Section 2.3.3 or Section 6.1.2 if such failure is not remedied on or before the fifth (5th) Business Day after notice of such failure is given to Generator by Utility.

7.1.3. Breach of Agreement. Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or to provide information or documentation) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth (30th) calendar day after notice of such failure is given to the party, or, in the case of a failure to comply with any applicable provision of the RPM Rules, within the time (if any) provided in the RPM Rules to remedy such failure.

7.1.4. Misrepresentation. A representation made or repeated by the party in this Agreement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated, and such misrepresentation is not cured within thirty (30) calendar days after such misrepresentation is made or repeated;

7.1.5. Bankruptcy. The party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within fifteen (15) calendar days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vi)

(inclusive); or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

7.1.6. Merger Without Assumption. The party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such party hereunder or under the Construction Period Security or Delivery Term Security.

7.1.7. Failure to Achieve the Commencement Date. Generator fails to cause the Capacity Facility to achieve the Commencement Date by no later than two (2) years after the Awarded Commencement Date, except if an event of Force Majeure causes additional delays.

7.1.8. Failure to Participate in a PJM Market. Generator fails to submit a supply offer, consistent with Section 2.3.3 for its Unforced Capacity and the Associated Energy and Associated Ancillary Services from the Capacity Facility. Any Capacity Facility shall be required to bid no less than the Awarded Capacity Amount beginning with the Base Residual Auction associated with the Awarded Commencement Date and continuing through the Delivery Term, except if an event of Force Majeure delays the Commencement Date.

7.1.9. Security Default. With respect to Generator: (i) failure by Generator to comply with any provision of, or to perform any of its obligations under, either the Construction Period Security or the Delivery Term Security if such failure is continuing after any applicable grace period has elapsed; (ii) the expiration of, termination of, or failure to replace in accordance with Section 2.10 within five (5) Business Days after Utility has delivered notice to Generator of such failure, as appropriate, either the Construction Period Security or the Delivery Term Security prior to its intended expiration date; (iii) the failing or ceasing of either the Construction Period Security or the Delivery Term Security to be in full force and effect for its intended term; (iv) Generator disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Construction Period Security or the Delivery Term Security; or (v) a default or event of default, howsoever characterized, occurs under the Construction Period Security or the Delivery Term Security.

SECTION 8 TERMINATION EVENTS

8.1. Termination Events. The occurrence at any time of any of the following events constitutes a Termination Event (a “Termination Event”).

8.1.1. Illegality. Due to the adoption of, or any change in, any Applicable Law after the Effective Date, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any Applicable Law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 6.2) for a party:

- (1) to perform any absolute or contingent obligation to make a payment or to receive a payment in respect of the Transaction or to comply with any other material provision of this Agreement;
- (2) to perform any contingent or other obligation which the party has or any other material provision of this Agreement; or
- (3) to provide or perform its obligations under the Construction Period Security or the Delivery Period Security.

8.1.2. Invalidity of the Act. If a court invalidates or declares unconstitutional the Act or portion thereof requiring or specifying some performance, right, or obligation of Utility or Generator.

SECTION 9 **REMEDIES**

9.1. Right to Terminate Following Event of Default or Termination Event.

9.1.1. If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, then the other party (the “Non-Defaulting Party”) may, by not more than twenty (20) calendar days notice in writing to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than five (5) Business Days after such notice is effective as an Early Termination Date.

9.1.2. If at any time a Termination Event has occurred and is then continuing, then either party in the case of an Illegality or an Invalidity of the Act, may, by not more than twenty (20) calendar days notice in writing to the other party specifying the relevant Termination Event, designate a day not earlier than five (5) Business days after such notice is effective as an Early Termination Date.

9.2. Effect of Designation.

9.2.1. If notice designating an Early Termination Date is given, the Defaulting Party shall have five (5) Business Days to cure any Event of Default. If after such five (5) Business Days the Event of Default or Termination Event is continuing, then the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

9.2.2. Upon the occurrence or effective designation of an Early Termination Date, no further payments under Section 2.1 or 2.7 will be required to be made, and this Agreement shall be null and void, except with respect to the provisions hereof required to effect payments of the amounts, if any, payable in respect of an Early Termination Date, which amounts shall be determined and paid pursuant to Section 9.3.

9.3. Payments on Early Termination. If an Early Termination Date occurs, the following provisions will apply.

9.3.1. Events of Default. If the Early Termination Date results from an Event of Default, the Defaulting Party will pay the Non-Defaulting Party: (i) all Unpaid Amounts owing to the Non-Defaulting Party; (ii) all expenses payable under Section 9.5: and (iii), in the case of an Event of Default relating to participating in a Base Residual Auction, an amount equal to the product of (a) the amount, if any, by which the RCP for such Base Residual Auction exceeds the SOCP, (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); (d) the Utility Load Ratio, and (e) the number of Delivery Years remaining in the Delivery Term starting with and including the Delivery Year associated with such Base Residual Auction.

9.3.2. Termination Events. If an Early Termination Date results from Section 8.1.1 (an Illegality) or Section 8.1.2 (an Invalidity of the Act), each party shall pay to the other all Unpaid Amounts owing pursuant to the terms of this Agreement.

9.3.3. Notice and Payment. The party designating an Early Termination Date shall provide notice of such Early Termination Date to the other party. Upon Utility's issuance or receipt of such notice, Utility shall, as soon as practicable, calculate the amounts payable under Section 9.3.1 or 9.3.2, as applicable, and shall provide the calculation to the parties, specifying the party who is obligated to pay and the amount of such payment. An amount calculated as being due in respect of an Unpaid Amount will be payable, as applicable: (i) on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default); or (ii) on the day which is two (2) Business Days after the date on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under Applicable Law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Interest Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

9.4. Rights Under Construction Period Security and Delivery Term Security

9.4.1. Parties' Rights and Remedies. If at any time an Early Termination Date has occurred as the result of an Event of Default or a Termination Event with respect to the Generator, then, unless the Generator has paid in full all of its obligations under this Agreement that are then due, the Utility may exercise one or more of the following rights and remedies:

(a) All rights and remedies available to the Utility under the terms of the applicable Letter of Credit or Cash Escrow Agreement, including without limitation the right to draw on such Letter of Credit and Cash held under such Cash Escrow Agreement;

(b) All other rights and remedies available to the Utility under applicable law as the beneficiary in the case of a letter of credit or secured party in the case of Cash held in escrow; and

(c) The right to set-off any amounts payable by the Generator with respect to any obligations under this Agreement against any Cash held on behalf of the Utility under any Cash Escrow Agreement.

9.4.2. Deficiencies and Excess Proceeds. The Utility will return to the Generator any Letter of Credit or Cash held on behalf of the Utility under a Cash Escrow Agreement remaining after liquidation, set-off and/or application under Section 9.4.1 after satisfaction in full of all amounts payable by the Generator with respect to any of its obligations under the Agreement. The Generator in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under such Section 9.4.1.

9.5. Expenses. A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights hereunder or under the Construction Period Security, the Delivery Term Security, or by reason of the early termination of the Transaction, including, but not limited to, costs of collection.

9.6. LIMITATION OF LIABILITY. NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT HERETO ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT HERETO IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

SECTION 10 **TRANSFER**

10.1. Restriction of Assignments. Except as otherwise provided in this Section 10, neither party may assign this Agreement without (i) the other party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld, it being understood that refusal to consent to the assignment of the Agreement to a Person that does not own or control the operation of the Capacity Facility shall not be deemed to be unreasonable, and (ii) the prior approval of the Board. Any assignment in violation of this provision shall be void.

10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and with notice to the Board, and subject to the last sentence of this Section 10.2, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Generator; or (ii) in connection with the grant of a security interest to any Facility Lender, provided that such security interest does not interfere with the rights of obligations of any party under the Construction Period Security or Delivery Term Security, (iii) in connection with a merger of

Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator. The foregoing shall be subject to the provisions that such purchaser, Facility Lender, or the Person surviving such merger, as applicable, (i) agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility, (ii) shall not under any circumstances have equity or ownership rights to more than 700 MW of Unforced Capacity from electric generation facilities with standard offer capacity agreements, and (iii) shall provide or maintain Construction Period Security and Delivery Term Security as required under this Agreement. In connection with any assignment of this Agreement by the Generator under this Section, the Generator may transfer, sell, pledge, encumber or collaterally assign its rights under this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, and shall provide notice of such assignment to the Board. Utility agrees to reasonably cooperate with Generator with respect to any such financing and other financial arrangements, including but not limited to entering into with the Facility Lender a customary lender consent agreement, which shall include, but not be limited to, customary terms regarding notice to the Facility Lender of any potential Event of Default hereunder and standstill periods with respect to the exercise of remedies hereunder.

10.3. Utility's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Utility may, without the prior written consent of Generator and with notice to the Board, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Utility; or (ii) in connection with a merger of Utility with another Person or any other transaction resulting in a change of control of Utility; provided that such purchaser, Affiliate or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement.

10.4. Assumption by Assignee; No Release from Liabilities. Any permitted assignee or transferee of a party's interest in this Agreement shall assume all existing and future obligations of such party to be performed under this Agreement. Whether or not prior written consent to an assignment is required hereunder, the assignor shall give notice to the other party and to the Board promptly after a permitted assignment of this Agreement. Unless otherwise agreed to by the parties and except as set forth in Sections 10.2 and 10.3 above, upon any permitted assignment of this Agreement to an assignee and such assignee's written assumption of this Agreement, the assigning party shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption; provided, however, that in all other cases, the assigning party shall continue to be bound by this Agreement unless the parties otherwise agree.

SECTION 11 **NOTICES**

11.1. Effectiveness. Any notice or other communication in respect hereof may be given in any manner set forth below (except that a notice or other communication under Section 7, 8 or

9 will not be effective if given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided and will be deemed effective as indicated: (i) if in writing and delivered in person or by courier, on the date it is delivered; (ii) if sent by telex, on the date the recipient's answerback is received; (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or (v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

11.2. Addresses for Notices.

11.2.1. Addresses for notices or communications to Generator:

Address:

11.2.2. Address for notices or communications to Utility:

Address:

11.2.3. Change of Addresses. Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

SECTION 12

RESOLUTION OF DISPUTES

12.1. Notice of Dispute.

12.1.1. In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the parties (a “Dispute”), a party may declare a Dispute by delivering to the other party a written notice identifying the disputed issue.

12.1.2. If PJM’s RPM is eliminated, then a Dispute shall be deemed to have occurred and both parties shall attempt to develop a replacement for the RCP as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.1.3. If PJM’s RPM is modified in a material manner such that it adversely affects the performance, calculation or payment of the Transaction, then a party may declare a Dispute and both parties shall attempt to develop a replacement for the RCP as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.2. Resolution by the Parties

12.2.1. If the Dispute relates to the accuracy of Utility’s calculation of any payment required to be made under this Agreement (a “Calculation Dispute”), then Generator must provide written notice of the Dispute to Utility within ten (10) Business Days of Generator’s receipt of Utility’s calculation of the payment pursuant to Section 2.2., which notice must state the nature of Generator’s disagreement with Utility’s calculation and include all documentation upon which Generator bases its disagreement. Within ten (10) Business Days of Utility’s receipt of a written notice claiming a Calculation Dispute, Utility shall either: (a) notify Generator that Utility agrees the initial calculation was in error and provide a revised calculation of the payment that is the subject of the Calculation Dispute; or (b) provide Generator with the basis of Utility’s determination that the calculation was correct, including all documentation upon which Utility relies. If Generator does not accept Utility’s revised calculation or Utility’s explanation of the original calculation, then, within ten (10) Business Days, executives of both parties shall meet at a mutually agreeable time and place and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

12.2.2. If the Dispute is not a Calculation Dispute, then upon receipt of a written notice claiming a Dispute, executives of both parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a party shall have the right to designate as confidential any information that such party offers. No confidential information exchanged in

such meetings for the purpose of resolving a Dispute may be used by a party in litigation against the other party.

12.2.3. Any correction to a calculation upon which the parties agree to resolve the Calculation Dispute, shall be payable within ten (10) Business Days of such resolution plus interest at the Interest Rate. .

12.2.4. If the parties are unable to resolve a Dispute between themselves pursuant to Section 12.2, then the Dispute will be submitted to the Board for resolution.

12.3. Effect of Dispute

The pendency of a Dispute shall not suspend, either: (a) the obligation of the parties to perform their obligations under this Agreement, including the obligation to make payments, prior to a Termination Date; or (b) the effectiveness of a notice of an Event of Default under Section 9.1.1 or a notice designating an Early Termination Date under Section 9.1.2.

**SECTION 13
MISCELLANEOUS**

13.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

13.2. Amendments. No amendment, modification or waiver in respect hereof will be effective unless (i) in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system and (ii) until approved by the Board.

13.3. Remedies Cumulative. Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

13.4. Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

13.5. Execution of Clearing Requirement. In the event the Transaction is determined to be subject to any requirement that it be executed or cleared pursuant to the Commodities Futures Trading Commission or similar exchange or multiparty platform, the parties agree to (i) cooperate to preserve and enforce the provisions of this Agreement and (ii) consent to any commercially reasonable margin or other requirements.

13.6. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect hereof will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or

further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

13.7. Relationship of the Parties. The parties acknowledge that the relationship between Utility and Generator is an independent contractual relationship and nothing in this Agreement shall create any joint venture, partnership or principal/agent relationship between Utility and Generator. Neither Utility nor Generator shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other party in any way.

13.8. Governing Law and Jurisdiction

13.8.1. Governing Law. This Agreement will be governed by and construed in accordance with the substantive law of the State of New Jersey, without regard to the application of such state's laws relating to conflicts of laws.

13.8.2. Jurisdiction. With respect to any suit, action or proceedings relating hereto ("Proceedings"), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of New Jersey; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence.

13.9. Waiver of Immunities. Each party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Applicable Law, that it will not claim any such immunity in any Proceedings.

13.10. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to applicable law, preserving to the greatest extent the intent of the parties to create such rights and duties as set out herein. If necessary to preserve the intent of the parties hereto and the prevailing economic balance between the parties at the Effective Date, the parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision that is legally binding and enforceable for the one deemed invalid or unenforceable, provided that such amended Agreement shall be subject to Board approval.

13.11. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER HEREINTO BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

By: _____
Name: _____
Title: _____
Company: _____

By: _____
Name: _____
Title: _____
Company: _____

ATTACHMENT A

DESCRIPTION OF THE CAPACITY FACILITY

General Technology (such as combined cycle, steam cycle, integrated gasification combined cycle, nuclear, wind, etc.): _____

Size (net MW of installed capacity): _____

Full Load Heat Rate (BTU/kWh, HHV, summer rating): _____

Primary Fuel (such as coal, gas, residual oil, distillate oil): _____

Secondary Fuel (if applicable): _____

Number and Configuration of Prime Movers (such as two industrial frame gas turbines plus one steam turbine generator, single pulverized fuel boiler plus steam turbine generator, two circulating fluidized bed boiler plus steam turbine generator, nuclear plant uprate, twenty onshore wind turbines): _____

Location (town or city, county, state): _____

Owner(s) and Ownership Percentage(s): _____

ATTACHMENT B

FORM OF CONSTRUCTION PERIOD SECURITY LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number: _____ Date: _____

AMOUNT:USD _____

EXPIRY: _____

BENEFICIARY:

APPLICANT:

[UTILITY]

[GENERATOR]

[ADDRESS OF UTILITY]

[ADDRESS OF GENERATOR]

Ladies and Gentlemen:

[BANK] (“we” or the “Bank”) hereby establish our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this “Letter of Credit”) in your favor in the amount of XXX AND XX/100 Dollars (\$) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next [preceding] [succeeding] Business Day (the “Expiration Date”); provided, however, that this Letter of Credit shall automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 days prior to the then current Expiration Date. For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on the Bank of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Exhibit A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the

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case of a drawing pursuant to paragraph 1.A, 1.B, 1.C or 1.D thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received, provided, however, that the original documents referenced in paragraphs 1 and 2 above and the sight draft referenced above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the third Business Day following receipt of such facsimile transmittal.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that the Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than Section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

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AUTHORIZED SIGNATURE for Issuer

(Name)

Title:

EXHIBIT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

The undersigned executive officer or director of [UTILITY] (the “Beneficiary”), hereby certifies under penalty of perjury to [ISSUING BANK NAME] (the “Bank”), and [GENERATOR] (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. _____, dated _____ (the Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to \$_____ under that certain Standard Offer Capacity Agreement between Applicant and Beneficiary dated as of _____, 20__ (the “Agreement”) for the following reason(s) [check applicable provision]:

[]A. An “Early Termination Date” (as defined in the Agreement) has occurred or been designated as a result of an “Event of Default” (as defined in the Agreement) or Termination Event for which the Applicant owes a termination payment, and the true calculation of such payment amount is set forth in detail in the attached Statement of Damages.

[]B. (i) (A) The Bank has heretofore provided written notice to the Beneficiary of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date thereof or (B) the Letter of Credit will expire in fewer than 30 days from the date hereof, and (ii) the Applicant is required to but has not provided Beneficiary alternative Construction Period Security (as defined in the Agreement). The Applicant will hold the proceeds of the Letter of

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Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered, [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this ____ day of _____, _____.

Beneficiary: [UTILITY]

By: _____
Name: _____
Title: _____

Copy to:

[GENERATOR]

[ADDRESS OF GENERATOR]

[ATTACH STATEMENT OF DAMAGES, IF APPLICABLE]

STATEMENT OF DAMAGES

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that \$ _____ (or a greater amount) is presently due and owing to Beneficiary on account of [a continuing “Event of Default”] [a Termination Event] [an “Early Termination Date”] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Sections 2.3.4 and 9 of the Agreement.

[INSERT DETAILED CALCULATION OF DAMAGES]

ATTACHMENT C

FORM OF CASH ESCROW AGREEMENT FOR CONSTRUCTION PERIOD
SECURITY

Pursuant to this Escrow Agreement (“*Agreement*”) dated [_____], [UTILITY] (the “*Secured Party*”) and [GENERATOR] (the “*Depositor*”) hereby establish an Escrow Account (the “*Account*”) with _____ (the “*Agent*”) (the Secured Party, Depositor and Agent hereafter referred to individually as a “*Party*” and collectively as the “*Parties*”), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the “Cash Deposit”) will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by the Secured Party and the Depositor, as their escrow agent, to hold, deal with and dispose of the Cash Deposit as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject to and in accordance with, however, the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

Terms not defined but used herein and in Schedules I, II, III and IV hereto will have the meanings given to them in the Standard Offer Capacity Agreement (the “*SOCA*”), dated as of [_____], 20__ between Secured Party and Depositor.

1. Agent’s Duties. Agent’s duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other persons, even though reference thereto may be made herein; *provided, however*, this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including, without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent’s discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Cash Deposit or this Agreement, without determination by the Agent of such court’s jurisdiction in the matter. If any part of the Cash Deposit are at any time attached,

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garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to either the Secured Party or the Depositor or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from the Secured Party or the Depositor in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Cash Deposit at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to the Cash Deposit if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Cash Deposit deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Cash Deposit in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Cash Deposit in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

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6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in Schedule III. The shares of the funds are not deposits or obligations of, or guaranteed by any bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Cash Deposit shall [become part of the Cash Deposit] [be disbursed pursuant to Schedule III]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from the Secured Party or the Depositor, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Cash Deposit, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each of the Secured Party and the Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between the Secured Party and the Depositor and/or any third parties, relating to or arising in connection with the Account, the Cash Deposit or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Cash Deposit then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Secured Party and the Depositor and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to the Secured Party or the Depositor shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Party (or to such other address as said Party may have theretofore substituted therefore by written notification to Agent), by United States certified or registered mail, postage prepaid, by reputable overnight courier service, or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Party to whom it was mailed on the third (3rd) business day after the time it is deposited in the United

States mail by Agent, properly addressed and with postage prepaid, whether or not such Party thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule IV attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Secured Party and the Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor will pay all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Secured Party and the Depositor, Agent may sell such portion of the Cash Deposit held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled; or if Agent renders any service not provided for in this Agreement; or if the Secured Party and the Depositor request a substantial modification of its terms; or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees (including reasonably allocated costs of in-house counsel), and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid. The Depositor promise to pay these sums upon demand. The Depositor and its respective successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Cash Deposit for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Secured Party and the Depositor. Within thirty (30) days after receiving the aforesaid notice, the Secured Party and the Depositor agree to appoint a successor escrow agent to which Agent may transfer the Cash Deposit then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty (30) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by the Secured Party and the Depositor.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [_____], as provided in Schedule II, at which time the Cash

Deposit then held in the Account, less Agent's unpaid fees, costs and expenses shall be distributed in the following manner:

[_____]

14. **Governing Law.** This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of [New Jersey].

15. **Automatic Succession.** Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the Successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. **Disclosure:** The Parties hereby agree not to use the name of *[insert name of Agent]* to imply an association with the transaction other than that of a legal escrow agent.

17. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Cash Deposit at any time deposited to the Account in accordance with the foregoing Agreement.

[Signature page follows]

**Board / LCAPP Agent
Final Proposed Form SOCA**

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III and IV, which are incorporated by reference.

SECURED PARTY:

By:

Its:

(Address)

(City, State and Zip Code)

(Telephone)

(Facsimile Number)

Tax I.D.

DEPOSITOR:

By:

Its:

(Address)

(City, State and Zip Code)

(Telephone)

(Facsimile Number)

Tax I.D.

as Agent

By:

Its:

Notices to Agent shall be sent to:

[Name]

[Address]

[City, State, Zip]

With Fax Copy to:

[Name]

[Facsimile Number]

**SCHEDULE I
TO CASH ESCROW AGREEMENT**

PURPOSE AND MANNER OF DEPOSITS

Credit Support provided by Depositor in the form of Cash under the SOCA, all investments of such Cash, and all proceeds of such investments.

All Credit Support in the form of Cash provided by the Depositor shall be deposited in the Account promptly upon receipt by the Agent.

Instructions for transfer of funds into the Account:

**SCHEDULE II
TO CASH ESCROW AGREEMENT
INSTRUCTIONS OF DEPOSITORS**

1. Upon written notice signed by the Secured Party to the Agent that one or more of the following events has occurred, Agent shall withdraw Cash in the amount specified in such notice from the Account (as described on Schedule I) and shall transfer such Cash in accordance with the Secured Party's instructions.

- (d) An Early Termination Date (as defined in the SOCA) has occurred or been designated as a result of an Event of Default or a Termination Event (as defined in the Agreement) and a specified amount of the Termination Payment (as defined in the SOCA) owed by the Depositor to the Secured Party remains outstanding.

2. Upon written notice signed by both the Secured Party and the Depositor that the Depositor has replaced a specified amount of Cash in the Account with a Letter of Credit (as defined in the SOCA), the Agent shall withdraw such amount of Cash from Depositor's Subaccount and transfer such Cash in accordance with the Depositor's instructions.

3. The Agent shall liquidate such Cash Deposit from the Account as may be necessary to meet the withdrawal instructions under paragraphs 1 through 2 of this Schedule II.

7. Authorized persons referred to in Sections 1 and 7 of the Agreement are as specified below, as such names may be amended from time to time by notice to the Agent:

For Depositor:

For Secured Party:

**SCHEDULE III
TO CASH ESCROW AGREEMENT
PERMITTED INVESTMENTS**

**SCHEDULE IV
TO CASH ESCROW AGREEMENT
SCHEDULE OF FEES FOR SERVICES
AS ESCROW AGENT**

ATTACHMENT D

FORM OF DELIVERY TERM SECURITY LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number: _____ Date: _____

AMOUNT:USD _____

EXPIRY: _____

BENEFICIARY:

APPLICANT:

[UTILITY]

[GENERATOR]

[ADDRESS OF UTILITY]

[ADDRESS OF GENERATOR]

Ladies and Gentlemen:

[BANK] (“we” or the “Bank”) hereby establish our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this “Letter of Credit”) in your favor in the amount of XXX AND XX/100 Dollars (\$) (the “Available Amount”), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next [preceding] [succeeding] Business Day (the “Expiration Date”); provided, however, that this Letter of Credit shall automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 days prior to the then current Expiration Date. For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on the Bank of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the

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case of a drawing pursuant to paragraph 1.A, 1.B or 1.C thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received, provided, however, that the original documents referenced in paragraphs 1 and 2 above and the sight draft referenced above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the third Business Day following receipt of such facsimile transmittal.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that the Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than Section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

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AUTHORIZED SIGNATURE for Issuer

(Name)

Title:

EXHIBIT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

The undersigned executive officer or director of [UTILITY] (the “Beneficiary”), hereby certifies under penalty of perjury to [ISSUING BANK NAME] (the “Bank”), and [GENERATOR] (the “Applicant”), with reference to Irrevocable Nontransferable Standby Letter of Credit No. _____, dated _____ (the Letter of Credit”), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to \$_____ under that certain Standard Offer Capacity Agreement between Applicant and Beneficiary dated as of _____, 20__ (the “Agreement”) for the following reason(s) [check applicable provision]:

[]A. The Payment Date under Section 2.2 of the Agreement has occurred with respect to such amount, and such amount is presently due and owing under Section 4.1.2 of the Agreement.

[]B. An “Early Termination Date” (as defined in the Agreement) has occurred or been designated as a result of an “Event of Default” (as defined in the Agreement) or Termination Event for which the Applicant owes a termination payment, and the true calculation of such payment amount is set forth in detail in the attached Statement of Damages.

[]C. (i) (A) The Bank has heretofore provided written notice to the Beneficiary of the Bank’s intent not to renew the Letter of Credit following the present Expiration Date thereof or

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(B) the Letter of Credit will expire in fewer than 30 days from the date hereof, and (ii) the Applicant is required to but has not provided Beneficiary alternative Delivery Term Security (as defined in the Agreement). The Applicant will hold the proceeds of the Letter of Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered, [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this ____ day of _____, _____.

Beneficiary: [UTILITY]

By: _____

Name: _____

Title: _____

Copy to:

[GENERATOR]

[ADDRESS OF GENERATOR]

[ATTACH STATEMENT OF DAMAGES, IF APPLICABLE]

STATEMENT OF DAMAGES

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that \$ _____ (or a greater amount) is presently due and owing to Beneficiary on account of [a failure to make a payment under Section 4.1.2 of the Agreement] [an “Early Termination Date”] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Sections [2.3.4 and 9 of the Agreement].

[INSERT DETAILED CALCULATION OF DAMAGES]

ATTACHMENT E

FORM OF CASH ESCROW AGREEMENT FOR DELIVERY TERM SECURITY

Pursuant to this Escrow Agreement (“*Agreement*”) dated [_____], [UTILITY] (the “*Secured Party*”) and [GENERATOR] (the “*Depositor*”) hereby establish an Escrow Account (the “*Account*”) with _____ (the “*Agent*”) (the Secured Party, Depositor and Agent hereafter referred to individually as a “*Party*” and collectively as the “*Parties*”), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the “Cash Deposit”) will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by the Secured Party and the Depositor, as their escrow agent, to hold, deal with and dispose of the Cash Deposit as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject to and in accordance with, however, the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

Terms not defined but used herein and in Schedules I, II, III and IV hereto will have the meanings given to them in the Standard Offer Capacity Agreement (the “*SOCA*”), dated as of [_____], 20__ between the Secured Party and Depositor.

1. Agent’s Duties. Agent’s duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other persons, even though reference thereto may be made herein; *provided, however*, this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including, without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent’s discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Cash Deposit or this Agreement, without determination by the Agent of such

court's jurisdiction in the matter. If any Cash Deposit are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to either the Secured Party or the Depositor or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from the Secured Party or the Depositor in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Cash Deposit at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to any of the Cash Deposit if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Cash Deposit deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Cash Deposit in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Cash Deposit in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

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Final Proposed Form SOCA**

6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in Schedule III. The shares of the funds are not deposits or obligations of, or guaranteed by any bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Cash Deposit shall [become part of the Cash Deposit] [be disbursed pursuant to Schedule III]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from the Secured Party or the Depositor, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Cash Deposit, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each of the Secured Party and the Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between the Secured Party and the Depositor and/or any third parties, relating to or arising in connection with the Account, the Cash Deposit or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Cash Deposit then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Secured Party and the Depositor and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to the Secured Party or the Depositor shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Party (or to such other address as said Party may have theretofore substituted therefor by written notification to Agent), by United States certified or registered mail, postage prepaid, by reputable overnight courier service, or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Party to whom it was mailed on the third (3rd) business day after the time it is deposited in the United

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States mail by Agent, properly addressed and with postage prepaid, whether or not such Party thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule IV attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Secured Party and the Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor will pay all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Secured Party and the Depositor, Agent may sell such portion of the Cash Deposit held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled; or if Agent renders any service not provided for in this Agreement; or if the Secured Party and the Depositor request a substantial modification of its terms; or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees (including reasonably allocated costs of in-house counsel), and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid. The Depositor promise to pay these sums upon demand. The Depositor and its respective successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Cash Deposit for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Secured Party and the Depositor. Within thirty (30) days after receiving the aforesaid notice, the Secured Party and the Depositor agree to appoint a successor escrow agent to which Agent may transfer the Cash Deposit then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty (30) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by the Secured Party and the Depositor.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [_____], as provided in Schedule II, at which time the Cash

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Deposit then held in the Account, less Agent's unpaid fees, costs and expenses shall be distributed _____ in _____ the _____ following _____ manner:
[_____]

14. **Governing Law.** This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of [New Jersey].

15. **Automatic Succession.** Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the Successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. **Disclosure:** The Parties hereby agree not to use the name of *[insert name of Agent]* to imply an association with the transaction other than that of a legal escrow agent.

17. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Cash Deposit at any time deposited to the Account in accordance with the foregoing Agreement.

[Signature page follows]

**Board / LCAPP Agent
Final Proposed Form SOCA**

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III and IV, which are incorporated by reference.

<u>SECURED PARTY:</u>	<u>DEPOSITOR:</u>
By: _____	By: _____
Its: _____	Its: _____
_____ <u>(Address)</u>	_____ <u>(Address)</u>
_____ <u>(City, State and Zip Code)</u>	_____ <u>(City, State and Zip Code)</u>
_____ <u>(Telephone)</u>	_____ <u>(Telephone)</u>
_____ <u>(Facsimile Number)</u>	_____ <u>(Facsimile Number)</u>
Tax I.D. _____	Tax I.D. _____
	_____ <u>as Agent</u>
	By: _____
	Its: _____

Notices to Agent shall be sent to:

[Name]
[Address]
[City, State, Zip]

With Fax Copy to:
[Name]
[Facsimile Number]

**SCHEDULE I
TO CASH ESCROW AGREEMENT**

PURPOSE AND MANNER OF DEPOSITS

Credit Support provided by Depositor in the form of Cash under the SOCA, all investments of such Cash, and all proceeds of such investments.

All Credit Support in the form of Cash provided by the Depositor shall be deposited in the Account promptly upon receipt by the Agent.

Instructions for transfer of funds into the Account:

**SCHEDULE II
TO CASH ESCROW AGREEMENT
INSTRUCTIONS OF DEPOSITORS**

1. Upon written notice signed by the Secured Party to the Agent that one or more of the following events has occurred, Agent shall withdraw Cash in the amount specified in such notice from the Account (as described on Schedule I) and shall transfer such Cash in accordance with the Secured Party's instructions.

- (a) The Depositor has failed to pay an amount presently due and owing under Section 4.1.2 of the Agreement, which amount remains outstanding.
- (b) An Event of Default (as defined in the SOCA) or a Termination Event (as defined in the SOCA) with respect to the Depositor has occurred and is continuing, and the Depositor owes the Secured Party a specified amount in respect of such Event of Default, which amount remains outstanding.
- (c) An Early Termination Date (as defined in the SOCA) has occurred or been designated as a result of an Event of Default or a Termination Event (as defined in the Agreement) and a specified amount of the Termination Payment (as defined in the SOCA) owed by the Depositor to the Secured Party remains outstanding.

2. Upon written notice signed by both the Secured Party and the Depositor that the Depositor has replaced a specified amount of Cash in the Account with a Letter of Credit (as defined in the SOCA), the Agent shall withdraw such amount of Cash from Depositor's Subaccount and transfer such Cash in accordance with the Depositor's instructions.

3. The Agent shall liquidate such Cash Deposit from the Account as may be necessary to meet the withdrawal instructions under paragraphs 1 through 2 of this Schedule II.

7. Authorized persons referred to in Sections 1 and 7 of the Agreement are as specified below, as such names may be amended from time to time by notice to the Agent:

For Depositor:

For Secured Party:

**SCHEDULE III
TO CASH ESCROW AGREEMENT
PERMITTED INVESTMENTS**

**SCHEDULE IV
TO CASH ESCROW AGREEMENT**

ATTACHMENT F

SCHEDULE OF APPROVED STANDARD OFFER CAPACITY PRICES

Delivery Year (ending May 31 st)	Standard Offer Capacity Price (\$/MW-day)
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	

Attachment 2

Prequalification Application Materials

**Pre-Qualification Application
Part A. Applicant General Project Data**

Yellow shaded cells are input cells.

Applicant:	
Project Name:	
Project Sponsor(s): <i>List sponsors in space provided here. For each sponsor listed, attach a copy of Attachment 1 with contact information, disclosures, etc.</i>	
Primary Contact:	
Name	
Title	
Company	
Postal Address	
Phone	
FAX	
E-Mail	
Financing Plan: <i>Using the form of Attachment 2, provide a narrative of how the project will be financed, including contracting legal entity structure, sources of debt, and key supporting agreements.</i>	
Team Members: <i>Identify the entity that will provide the indicated scope.</i>	
Engineering	
Environmental Permitting	
Major Equipment Supplier(s)	
Construction Management	
Construction	
Operator	
Other (specify role)	
Permitting Plan: <i>Using the form of Attachment 3, provide a narrative of how the environmental and other permits will be managed.</i>	
Fuel Plan: <i>Using the form of Attachment 4, provide a narrative of how the fuel will be supplied and delivered.</i>	
Operating Plan: <i>Using the form of Attachment 5, provide a narrative of how the project will be operated and maintained.</i>	
Community and Economic Benefits: <i>Using the form of Attachment 6, provide a narrative of the project's local and statewide community and economic benefits.</i>	
Project Unforced Capacity (UCAP) in MW (SOCA capacity expected to clear in Base Residual Auction (BRA))	
Project Installed Capacity in MW (Nameplate Rating)	
Target Commercial Operation Date	
<i>Attach a supporting Project Schedule with Milestones</i>	
Year of Planned First BRA Offer (e.g., 2011 for delivery year ending May 31, 2015)	
Street Address of Project: <i>(Also, attach a map showing site location and boundaries)</i>	
Point of Electric Interconnect and Substation Owner	
PJM Interconnection Queue Number	
Status of Electrical Interconnection Process	
Expected Date of Execution of Interconnection Service Agreement	
Source of Cooling and Makeup Water	
Water Discharge Point(s)	
Technology:	
Generation Type (CCGT, SCGT, STG, etc.)	
Primary Fuel Type (e.g., natural gas, wind, wood chips)	
Secondary Fuel Type (if applicable)	
Natural Gas Pipeline Connection (if applicable)	
On-Site fuel storage capacity (if applicable)	
Emissions Control Type(s)	
Resource Category (1=Dispatchable, 2=Variable Energy)	Category Unspecified
For Dispatchable Resources: Complete worksheet "DispatchableOpData"	
For Variable Energy Resources: Complete worksheet "VariableEnergyOpData"	

**Pre-Qualification Application
Part B1. Operating Data Sheet for Dispatchable Resource**

Resource Category not specified on AppData worksheet

Yellow shaded cells are input cells.

Applicant:	Specify on AppData Sheet
Project Name:	Specify on AppData Sheet
Generation Type (CCGT, SCGT, STG, etc.)	
Primary Fuel Type	
Secondary Fuel Type	
Natural Gas Pipeline Connection (if applicable)	
Heat Rejection Type (e.g., Evap. Clg. Twr., Air Cooled Cndnsr.)	
Water Intake Rate (Mil. Gal./Day)	
Water Discharge Rate (Mil. Gal./Day)	
Prime Mover (GT or Engine) Model	
Configuration (e.g., 2 x 1 for CCGT with 2 GTs, 1 ST)	
Number of Dispatchable Units	
Nominal Capacity per Dispatchable Unit (MW)	
Installed Capacity (MW) from AppData worksheet	
Total Net Summer Capacity (MW) (New and clean)	
Total Net Winter Capacity (MW) (New and clean)	
Expected Variable Operating Cost (\$/MWh) (in 2011 dollars)	
Minimum Down Time (Hrs)	
Minimum Run Time (Hrs)	
Hot Start-up Time (Min)	
Cold Start-up Time (Hrs) (if applicable)	
Cold Start Minimum Down Time (Hrs)	
Fuel per unit start on primary fuel (MMBtu)	
Fuel per unit start on secondary fuel (MMBtu)	
Shut-down Time (Min)	
Ramp-up rate (MW/Minute)	
Ramp-down rate (MW/Minute)	
Black Start Capability (Yes or No)	
Automatic Generation Control Capability (Range in MW)	
Type of Fuel in On-Site Fuel Storage, units. (if applicable, e.g., ULSD, gal.)	
On-Site Fuel Storage Capacity (units as specified above)	
Limitations on Secondary Fuel use (if applicable)	
Expected Forced Outage Rate	
Summer Period: June - September (%)	
Winter Period: October - May (%)	
Planned Outage Time (average days per year)	

Pre-Qualification Application
Part B1. Operating Data Sheet for Dispatchable Resource

Resource Category not specified on AppData worksheet

Yellow shaded cells are input cells.

Applicant:	Specify on AppData Sheet
Project Name:	Specify on AppData Sheet

Heat Rates to be specified as new and clean

Unit Operating Set Points - Summer 90°F, Primary Fuel	Net Output (MW)	Net Plant Heat Rate (BTU/kwh)	NOx (lb/MMBtu)	SO2 (lb/MMBtu)	CO2 (lb/MMBtu)
Full Load 90°F (100%)					
Part Load 90°F ()					
Part Load 90°F ()					
Part Load 90°F ()					
Part Load 90°F ()					
Minimum Load 90°F					

Unit Operating Set Points - Winter 20°F, Primary Fuel	Net Output (MW)	Net Plant Heat Rate (BTU/kwh)	NOx (lb/MMBtu)	SO2 (lb/MMBtu)	CO2 (lb/MMBtu)
Full Load 20°F (100%)					
Part Load 20°F ()					
Part Load 20°F ()					
Part Load 20°F ()					
Part Load 20°F ()					
Minimum Load 20°F					

Unit Operating Set Points - ISO Conditions, Primary Fuel	Net Output (MW)	Net Plant Heat Rate (BTU/kwh)	NOx (lb/MMBtu)	SO2 (lb/MMBtu)	CO2 (lb/MMBtu)
Full Load 59°F (100%)					
Part Load 59°F ()					
Part Load 59°F ()					
Part Load 59°F ()					
Part Load 59°F ()					
Minimum Load 59°F					

Heat Rates to be specified as new and clean

Unit Operating Set Points - Summer 90°F, Secondary Fuel	Net Output (MW)	Net Plant Heat Rate (BTU/kwh)	NOx (lb/MMBtu)	SO2 (lb/MMBtu)	CO2 (lb/MMBtu)
Full Load 90°F (100%)					
Part Load 90°F ()					
Part Load 90°F ()					
Part Load 90°F ()					
Part Load 90°F ()					
Minimum Load 90°F					

Unit Operating Set Points - Winter 20°F, Secondary Fuel	Net Output (MW)	Net Plant Heat Rate (BTU/kwh)	NOx (lb/MMBtu)	SO2 (lb/MMBtu)	CO2 (lb/MMBtu)
Full Load 20°F (100%)					
Part Load 20°F ()					
Part Load 20°F ()					
Part Load 20°F ()					
Part Load 20°F ()					
Minimum Load 20°F					

Unit Operating Set Points - ISO Conditions, Secondary Fuel	Net Output (MW)	Net Plant Heat Rate (BTU/kwh)	NOx (lb/MMBtu)	SO2 (lb/MMBtu)	CO2 (lb/MMBtu)
Full Load 59°F (100%)					
Part Load 59°F ()					
Part Load 59°F ()					
Part Load 59°F ()					
Part Load 59°F ()					
Minimum Load 59°F					

**Pre-Qualification Application
Attachment 1 to Part A – Project Sponsor Data**

Applicant:	
Project Name:	
Sponsor Name	
Legal Form of Sponsor	
State of Registration	
Sponsor Contact	
Name	
Title	
Postal Address	
Phone	
Email Address	
Sponsor Officers, Directors, Partners	
Project Development Experience	
Other Generation Assets (indicate % ownership)	
Under development	
Under construction	
In operation	
Guarantor (if applicable)	
Long-term unsecured debt credit rating of sponsor or guarantor	
Disclosure of any instance in which sponsor, its officers, directors, or partners have been convicted of any crime related to the sale or purchase of power, generating assets, transmission, or other energy products or services.	
Disclosure of any instance in which sponsor or its parent company has incurred US EPA or NJ DEP environmental regulation violations.	
Disclosure of any instance in which sponsor or its parent company has incurred US OSHA workplace safety or health violations.	
Attach most recent audited financial statements. Indicate here period covered.	

**Pre-Qualification Application
Attachment 2 to Part A – Financing Plan**

Applicant:	
Project Name:	
Proposed Contracting Entity	
Legal Form of Entity	
State of Registration	
Ownership Structure	
Sources of Debt	
Key Supporting Agreements	
Identify here and attach any letters showing interest from lenders and equity participants	
Other Relevant Information	

Pre-Qualification Application
Attachment 3 to Part A – Permitting Plan

Applicant:	
Project Name:	
Site Control (describe status)	
List of all permits and achieved or expected approval dates	
Description of any environmental benefits attributable to Project	

**Pre-Qualification Application
Attachment 4 to Part A – Fuel Plan**

Applicant:	
Project Name:	
Primary Fuel Type	
Source of Fuel, Arrangements	
Transportation Arrangements	
Local Delivery Arrangements (if applicable)	
Estimated delivery charges	
Secondary Fuel Type (if applicable)	
Storage capacity (liquids)	
Delivery arrangements	

Pre-Qualification Application
Attachment 5 to Part A – Operating Plan

Applicant:	
Project Name:	
Proposed Operator	
Relevant experience	
Scope of responsibility	
PJM energy market participation experience	
PJM capacity market (RPM/BRA) participation experience	

**Pre-Qualification Application
Attachment 6 to Part A – Community and Economic Benefits**

Applicant:	
Project Name:	
Location of Project	
Property tax rates and plant assessed value for first three operating years, OR Schedule of Payments in Lieu of Taxes for duration of PILOT	
Describe and quantify any upfront community grants or infrastructure improvements that will be paid for as part of project development	
Identify here and attach any letters of support from community leaders	
Describe and quantify the approximate on-site construction budget for materials, supplies, and services (\$ million, by construction year)	
Describe any plans for maximizing the shares of locally-procured (i.e., within the community and New Jersey) construction materials, supplies, or services, and local construction-related workers	
Construction period (months)	
Estimated construction payroll (\$ million, by construction year)	
Estimated construction jobs (FTE), by construction year ¹	
Estimated portion of construction workers who live locally (daily commuters)	
Estimated operations payroll (\$ million for first operating year)	
Estimated operations jobs (FTE) ²	

¹ One full-time equivalent (FTE) construction-related job is defined as 1,820 hours per year.

² One full-time equivalent (FTE) operations job is defined as 1,820 hours per year.

Pre-Qualification Application
Attachment 6 to Part A – Community and Economic Benefits

Estimated portion of operations jobs to be filled by workers who live locally (daily commuters)	
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