



Agenda Date: 6/15/11
Agenda Item: 2I

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE LONG-TERM CAPACITY) ORDER
AGREEMENT PILOT PROGRAM)
) DOCKET NO. EO11010026

Parties of Record:

Richard Levitan, President, Levitan & Associates, Inc.
Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Philip J. Passanante, Esq., Atlantic City Electric Company
Margaret Comes, Esq., Rockland Electric Company
Marc B. Lasky, Esq. Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power and Light Company
Tamara L. Linde, Esq., Public Service Electric and Gas Company

BY THE BOARD:

On January 28, 2011, Governor Christopher Christie signed into law P.L. 2011, c.9, amending and supplementing P.L. 1999, c. 23, which established a long-term capacity agreement pilot program ("LCAPP") to promote the construction of qualified electric generation facilities, hereinafter referred to as the LCAPP Law.¹ Pursuant to the LCAPP Law, on February 10, 2011, the New Jersey Board of Public Utilities ("Board") initiated this proceeding and also approved the retention, of the agent ("LCAPP Agent") recommended by the electric distribution utilities ("EDCs") to assist the Board in this proceeding.²

BACKGROUND

The LCAPP Law mandated that the Board immediately commence a proceeding to establish an LCAPP.³ The LCAPP was intended to seek offers for financially-settled Standard Offer Capacity Agreements ("SOCAs") with eligible generators.⁴

¹ The provisions of the LCAPP Law have been codified in the following sections of the New Jersey Statutes: N.J.S.A. 48:3-51, 48:3-60.1, 48:3-98.3—98.4.

² N.J.S.A. 48:3-98.3(b).

³ N.J.S.A. 48:3-98.3(a).

⁴ "Eligible generator" means 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 1/28/2011. N.J.S.A. 48:3-51.

The LCAPP Law further required the Board to approve the retention of an agent, recommended by the EDCs, to assist the Board in administering the LCAPP.⁵ The LCAPP Agent, retained by the EDCs in accordance with the LCAPP Law,⁶ to act on behalf of the Board, was responsible for:

- (1) Assisting the Board with the establishment of the LCAPP that allows for developing and offering financially-settled SOCAs for the purpose of facilitating the development of eligible generators;
- (2) Pre-qualifying 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; and
- (3) Recommending to the Board its selection of winning eligible generators based on the net benefit to ratepayers of each pre-qualified eligible generator's offer price and term. Eligible generators that can enter commercial operation for energy delivery year 2015 are to be provided with a weighted preference in addition to the net benefit ratepayer test. Eligible generators shall also indicate the amount of capacity they are offering in the LCAPP.⁷

Accordingly, the Board, at its February 10, 2011 Agenda Meeting, initiated the instant proceeding to fulfill the requirements of the LCAPP Law ("February 10 Order"). At that Agenda Meeting, the Board adopted a schedule and also approved the LCAPP Agent, Levitan & Associates, Inc., as recommended by the EDCs.

Pursuant to the February 10 Order, on March 1, 2011, the EDCs collectively submitted a letter to the Board's Secretary, addressing, among other things, the allocation of direct costs associated with the LCAPP. Specifically, the EDCs stated that, "All costs prior to the first SOCA delivery period (energy year 2015, which is June 2014 to May 2015) will be allocated to each utility based upon the latest available corresponding peak load share for energy year 2015."⁸

Thereafter, the EDCs submitted a letter to Board Staff dated May 25, 2011 regarding certain issues associated with the LCAPP Agent's fees.⁹ Specifically, the EDCs stated that on May 23, 2011, the EDCs received LCAPP Agent invoices for services performed by the LCAPP Agent in February, March and April 2011 related to the LCAPP Agent's work in the LCAPP proceeding. The LCAPP Agent submitted three invoices for approval and processing. (LCAPP Agent Invoice 001, dated March 7, 2011, for \$393,316.07; LCAPP Agent Invoice 002, dated April 6, 2011, for \$430,110.59; and LCAPP Agent Invoice 003, dated May 10, 2011, for \$20,338.75). The total outstanding balance is \$843,765.41.¹⁰

⁵ N.J.S.A. 48:3-98.3(b).

⁶ Id.

⁷ N.J.S.A. 48:3-98.3(b)1-3.

⁸ Joint EDC letter to Kristi Izzo, Board Secretary at p. 2 (March 1, 2011).

⁹ Joint EDC letter to Andrew Dembia, Legal Special, Office of Chief Counsel at p. 1 (May 25, 2011).

¹⁰ Id.

The EDCs state that "The Board retained [the LCAPP Agent] at its February 10, 2011 agenda meeting and authorized the EDCs to pay [the LCAPP Agent]."¹¹ According to the EDCs, however, at that time, as set out in the LCAPP Agent's February 4, 2011 proposal, the LCAPP Agent's proposal was a "Not-to-Exceed price of \$440,000."¹² The EDCs note that the LCAPP Agent's current balance is almost twice that amount. The EDCs further state that "...the February 10 order did not provide specific direction regarding payment procedures, and as of this date, none of the EDCs has entered into a retainer agreement with [the LCAPP Agent]."¹³

According to the EDCs, they "...had no involvement in the performance of work by [the LCAPP Agent], which was subject only to the supervision by Board members and staff, and have not been provided access to much of [the LCAPP Agent's] work product."¹⁴ The EDCs state that they are unable to evaluate the reasonableness of the LCAPP Agent's invoices in light of the requirements of the LCAPP legislation, and do not know if the EDCs are authorized to pay these invoices. The EDCs further state that it is unclear to the EDCs whether they will be receiving any additional invoices from the LCAPP Agent for LCAPP-related services, and whether they are authorized to pay future invoices.¹⁵

Based upon the foregoing, the EDCs believe they require assurances that the Board considers these costs incurred by the LCAPP Agent to have been reasonable and prudent. The EDCs request that the Board issue an Order 1) directing the EDCs to pay the three LCAPP Agent invoices referenced above, and 2) establishing procedures for the payment of future LCAPP Agent invoices. Further, in order to process these invoices for payment, the EDCs state that they need specific direction from the Board as to the amounts that each of the EDCs should pay to the LCAPP Agent.

DISCUSSION AND FINDING

As cited above, the LCAPP Law allows the utilities to recover the costs of the LCAPP Agent retained pursuant to N.J.S.A. 48:3-98.3b from ratepayers through a non-bypassable, irrevocable charge.¹⁶ Furthermore, the Board, in its February 10 Order authorized the EDCs to pay the LCAPP Agent. The LCAPP Agent solely assisted the Board and its Staff with the establishment of the LCAPP; pre-qualifying eligible generators for participation in the LCAPP; and recommending to the Board its selection of winning eligible generators.¹⁷ While the original LCAPP proposal to the EDCs was a "not to exceed" amount of \$440,000, given the scope of work, and the complexity of the issues encountered, the Board believes that the additional work performed by the LCAPP Agent was necessary in order for the LCAPP Agent to fulfill its obligations as described in the LCAPP Law. Therefore, based upon the Board's review of the LCAPP Agent's three invoices and based on its prior review of the LCAPP Agent's report dated March 21, 2001 and supporting information, the Board **HEREBY FINDS** the LCAPP Agent's

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. pp.1-2.

¹⁵ Id.

¹⁶ N.J.S.A. 48:3-98.3(d).

¹⁷ N.J.S.A. 48:3-98.3(b)1-3.

fees incurred to date to be reasonable and prudent and **HEREBY APPROVES** the LCAPP Agent's invoices totaling \$843,765.41.

Regarding the allocation of the LCAPP Agent fees among the four EDCs, as stated in the March 1, 2011 correspondence from PSE&G on behalf of the EDC's, the costs associated with the LCAPP Agent will be allocated based on the peak load demand for 2014/2015. The following Table sets forth the percent of peak load demand and each EDC's portion of the LCAPP Agent's three invoices totaling \$843,765.41.

EDC	Forecasted Peak Demand	LCAPP AGENT Costs Incurred to date	
	2014/2015	\$	
Atlantic City Electric	13.40%	\$	113,064.56
JCP&L	31.70%	\$	267,473.63
Public Service Electric & Gas	52.80%	\$	445,508.14
RECO	2.10%	\$	17,719.07
			843,765.41

The Board **HEREBY DETERMINES** that the LCAPP Agent's fees of \$843,765.41 shall be allocated to each EDC based on the peak load demand for each EDC for 2014/2015, as shown in the above chart based on the information provided by the EDCs in their March 1, 2011 letter. The Board **HEREBY ORDERS** each EDC to enter into a retainer agreement with the LCAPP Agent within three (3) business days of receipt of this Order and **FURTHER ORDERS** each EDC to issue payment to the LCAPP Agent for the EDC's respective portion of the LCAPP Agent fees. Said payment shall be made within three (3) business days from the date of the executed retainer agreement with the LCAPP Agent.


Regarding procedures going forward for payment by the EDCs of any prospective LCAPP Agent fees, the Board **HEREBY DIRECTS** the LCAPP Agent to simultaneously submit, both electronically and by hard copy, any future invoice(s) to the Secretary of the Board and to each of the EDCs. The Board **HEREBY AUTHORIZES** Staff to review any prospective LCAPP Agent invoice(s), and if the invoice or a series of invoices over a three-month period is under \$250,000.00 and determined to be reasonable and prudent by Staff, Staff shall notify the Board's Secretary and the Board Secretary is **HEREBY AUTHORIZED** to issue a letter to each of the EDCs authorizing payment by the EDCs to the LCAPP Agent. Each EDC shall be responsible for its percentage (allocated based on the peak load demand for 2014/2015) of the total amount of the prospective invoice(s) as set forth herein, and payment must be issued by the EDC to the LCAPP Agent within three (3) business days after receipt of the Board Secretary's letter authorizing payment. Should Board Staff take issue with all or a portion of a prospective LCAPP Agent invoice, Board Staff shall bring the matter to the Board for its consideration. Any future LCAPP Agent invoice over \$250,000.00, either as a single invoice or a series of invoices within a three-month period, will be brought to the Board for its consideration. Additionally, the Board **HEREBY DIRECTS** Staff to provide the Board with quarterly reports describing the services rendered and fees requested by the LCAPP Agent during that period.

Pursuant to the Board's March 29, 2011 Order in this Docket, each EDC shall defer its allocation of the LCAPP Agent's costs for future recovery. An EDC may seek recovery of its respective portion of the LCAPP Agent's costs either through the EDC's SOCA rate recovery mechanism or may seek recovery in the EDC's next distribution base rate proceeding. Also, as set forth in the

Board's March 29, 2011 Order, this deferred accounting treatment shall include carrying costs at a rate of interest based on two year Treasury notes plus 60 basis points. The carrying charges shall begin to accrue as of July 1, 2011 or the date payment is made to the LCAPP Agent, if payment is made after July 1, 2011.

DATED: 6/15/11

BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



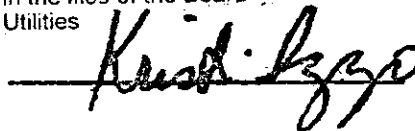
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ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**LONG-TERM CAPACITY AGREEMENT PILOT PROGRAM (LCAPP)
BPU DOCKET NO.: EO11010026**

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