

[First Reprint]

SENATE, No. 2381

STATE OF NEW JERSEY
214th LEGISLATURE

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Sponsored by:

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District 17 (Middlesex and Somerset)

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SYNOPSIS

Establishes a long-term capacity agreement pilot program to promote construction of qualified in-State electric generation facilities.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on November 15, 2010, with amendments.



1 AN ACT establishing a long-term capacity agreement pilot program
2 to promote construction of qualified in-State electric generation
3 facilities, amending and supplementing P.L.1999, c.23.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. The Legislature finds and declares:

9 a. In 2007, PJM Interconnection, L.L.C., the firm that manages
10 the regional electric power grid, changed the method of procuring
11 capacity in the wholesale electricity market with the
12 implementation of the reliability pricing model ¹[which, as
13 estimated by the Board of Public Utilities, costs New Jersey
14 ratepayers an additional \$1 billion per year for capacity]¹;

15 b. The PJM reliability pricing model ¹[created additional
16 barriers to entry for new, efficient generators, by imposing a one to
17 three year term requirement for contracts entered into by new
18 entrants. The maximum three-year term is insufficient to support
19 the project financing necessary to develop new, efficient generation
20 within the State] sought to create enhancements to the previously
21 ineffective capacity procurement mechanism which had resulted in
22 projected capacity deficiencies in New Jersey and other areas of the
23 regional power grid. While the reliability pricing model has
24 resulted in significant capacity additions in the form of new demand
25 response resources, new energy efficiency resources, reversals of
26 generation unit retirements, upgrades of existing generating units
27 and certain new peaking facilities in the State, the reliability pricing
28 model has not resulted in large additions of peaking facilities or any
29 additions of intermediate or base load resources in the State¹;

30 c. The PJM reliability pricing model ¹[continues to undergo
31 structural changes that make it unreliable as an indicator of the true
32 cost of capacity and therefore unreliable as an incentive for
33 developing new generation] could, through structural changes,
34 provide necessary incentives, such as the expansion of the “New
35 Entry Price Adjustment” mechanism, for the construction of new
36 capacity, including new intermediate and base load plants, by
37 allowing new resources to qualify and receive a guaranteed capacity
38 price for a longer period of time. However, the implementation of
39 similar structural changes were previously denied by FERC and any
40 future implementation is uncertain at this time¹;

41 d. To ¹[alleviate the cost burden and barriers to new entry
42 created by the PJM] address the lack of incentives under the¹
43 reliability pricing model, the construction of new, efficient, in-State

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted November 15, 2010.

1 generation must be fostered by State policy ¹‘[to avoid higher
2 electricity prices, higher congestion, and reliability concerns] that
3 assures that generation is constructed in the State in a timely and
4 orderly manner¹;

5 e. Due to PJM’s lack of authority to order new generation as a
6 means to mitigate local electrical system reliability concerns and
7 solve other issues related to the lack of local generation, and since
8 only PJM has the authority to order transmission system upgrades
9 and expansions to mitigate electrical system reliability concerns
10 caused by transmission system overloads or the lack of local
11 generation being developed, ¹‘[New Jersey continues to send] New
12 Jersey’s capacity deficit may result in the loss of¹ jobs and
13 investment ¹‘[out-of-state to] due to the necessity for the¹ upgrade
14 ¹‘of¹ the transmission system to the west of New Jersey to ensure a
15 reliable supply of electricity and capacity from generators located
16 outside of New Jersey;

17 f. As a result of a lack of new, efficient, in-State electric
18 generating facilities, New Jersey has become more reliant on out-
19 of-state coal-fired power plants;

20 g. The PJM State of the Market Report for 2009 by the PJM
21 Independent Market Monitor states that there over 11,000
22 megawatts (“MW”) of coal-fired units at risk of retirement due to
23 their inability to cover their avoided costs;

24 h. ¹‘[Many of New Jersey’s in-State generating facilities, as a
25 result of new emission reduction requirements, will need to have
26 installed new emissions control technology or retire them by April
27 30, 2015. In one instance, the rule will have a significant impact on
28 New Jersey’s in-State fleet of electric generation facilities, as the
29 rule imposes nitrogen oxide (“NOx”) emission limits that will likely
30 require the retirement of up to 102 combustion turbines,
31 representing approximately 2,800 MW, and five older New Jersey
32 steam electric generating units, representing approximately 800
33 MW, by April 30, 2015;

34 i. ¹‘[New Jersey’s in-State fleet of electric generation facilities
35 ¹‘[are] is¹ aging, with over 50 percent of these facilities being more
36 than 30 years old and over 70 percent being more than 20 years old;
37 and

38 ¹‘[j.] i.¹ Fostering and incentivizing the development of ¹‘a
39 limited program for¹ new in-State electric generation facilities ¹‘,
40 while potential enhancements to the reliability pricing model and
41 other PJM mechanisms are under consideration,¹ will assist the
42 State’s economic development by creating ¹‘[numerous]¹
43 opportunities for employment in the energy sector while helping to
44 reduce the cost and volatility of electricity prices in New Jersey.
45

46 2. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
47 as follows:

1 3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

2 "Assignee" means a person to which an electric public utility or
3 another assignee assigns, sells or transfers, other than as security,
4 all or a portion of its right to or interest in bondable transition
5 property. Except as specifically provided in P.L.1999, c.23
6 (C.48:3-49 et al.), an assignee shall not be subject to the public
7 utility requirements of Title 48 or any rules or regulations adopted
8 pursuant thereto;

9 "Base residual auction" means the auction conducted by PJM, as
10 part of PJM's reliability pricing model, three years prior to the start of
11 the delivery year to secure electrical capacity as necessary to satisfy
12 the capacity requirements for that delivery year;

13 "Basic gas supply service" means gas supply service that is
14 provided to any customer that has not chosen an alternative gas
15 supplier, whether or not the customer has received offers as to
16 competitive supply options, including, but not limited to, any
17 customer that cannot obtain such service for any reason, including
18 non-payment for services. Basic gas supply service is not a
19 competitive service and shall be fully regulated by the board;

20 "Basic generation service" or "BGS" means electric generation
21 service that is provided, to any customer that has not chosen an
22 alternative electric power supplier, whether or not the customer has
23 received offers for competitive supply options, including, but not
24 limited to, any customer that cannot obtain such service from an
25 electric power supplier for any reason, including non-payment for
26 services. Basic generation service is not a competitive service and
27 shall be fully regulated by the board;

28 "Basic generation service provider" or "provider" means a
29 provider of basic generation service;

30 "Basic generation service transition costs" means the amount by
31 which the payments by an electric public utility for the procurement
32 of power for basic generation service and related ancillary and
33 administrative costs exceeds the net revenues from the basic
34 generation service charge established by the board pursuant to
35 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
36 together with interest on the balance at the board-approved rate, that
37 is reflected in a deferred balance account approved by the board in
38 an order addressing the electric public utility's unbundled rates,
39 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
40 (C.48:3-49 et al.). Basic generation service transition costs shall
41 include, but are not limited to, costs of purchases from the spot
42 market, bilateral contracts, contracts with non-utility generators,
43 parting contracts with the purchaser of the electric public utility's
44 divested generation assets, short-term advance purchases, and
45 financial instruments such as hedging, forward contracts, and
46 options. Basic generation service transition costs shall also include
47 the payments by an electric public utility pursuant to a competitive
48 procurement process for basic generation service supply during the

1 transition period, and costs of any such process used to procure the
2 basic generation service supply;

3 "Board" means the New Jersey Board of Public Utilities or any
4 successor agency;

5 "Bondable stranded costs" means any stranded costs or basic
6 generation service transition costs of an electric public utility
7 approved by the board for recovery pursuant to the provisions of
8 P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the
9 board: (1) the cost of retiring existing debt or equity capital of the
10 electric public utility, including accrued interest, premium and other
11 fees, costs and charges relating thereto, with the proceeds of the
12 financing of bondable transition property; (2) if requested by an
13 electric public utility in its application for a bondable stranded costs
14 rate order, federal, State and local tax liabilities associated with
15 stranded costs recovery or basic generation service transition cost
16 recovery or the transfer or financing of such property or both,
17 including taxes, whose recovery period is modified by the effect of
18 a stranded costs recovery order, a bondable stranded costs rate order
19 or both; and (3) the costs incurred to issue, service or refinance
20 transition bonds, including interest, acquisition or redemption
21 premium, and other financing costs, whether paid upon issuance or
22 over the life of the transition bonds, including, but not limited to,
23 credit enhancements, service charges, overcollateralization, interest
24 rate cap, swap or collar, yield maintenance, maturity guarantee or
25 other hedging agreements, equity investments, operating costs and
26 other related fees, costs and charges, or to assign, sell or otherwise
27 transfer bondable transition property;

28 "Bondable stranded costs rate order" means one or more
29 irrevocable written orders issued by the board pursuant to P.L.1999,
30 c.23 (C.48:3-49 et al.) which determines the amount of bondable
31 stranded costs and the initial amount of transition bond charges
32 authorized to be imposed to recover such bondable stranded costs,
33 including the costs to be financed from the proceeds of the
34 transition bonds, as well as on-going costs associated with servicing
35 and credit enhancing the transition bonds, and provides the electric
36 public utility specific authority to issue or cause to be issued,
37 directly or indirectly, transition bonds through a financing entity
38 and related matters as provided in P.L.1999, c.23, which order shall
39 become effective immediately upon the written consent of the
40 related electric public utility to such order as provided in P.L.1999,
41 c.23;

42 "Bondable transition property" means the property consisting of
43 the irrevocable right to charge, collect and receive, and be paid
44 from collections of, transition bond charges in the amount necessary
45 to provide for the full recovery of bondable stranded costs which
46 are determined to be recoverable in a bondable stranded costs rate
47 order, all rights of the related electric public utility under such
48 bondable stranded costs rate order including, without limitation, all

1 rights to obtain periodic adjustments of the related transition bond
2 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
3 (C.48:3-64), and all revenues, collections, payments, money and
4 proceeds arising under, or with respect to, all of the foregoing;

5 "British thermal unit" or "Btu" means the amount of heat
6 required to increase the temperature of one pound of water by one
7 degree Fahrenheit;

8 "Broker" means a duly licensed electric power supplier that
9 assumes the contractual and legal responsibility for the sale of
10 electric generation service, transmission or other services to end-use
11 retail customers, but does not take title to any of the power sold, or
12 a duly licensed gas supplier that assumes the contractual and legal
13 obligation to provide gas supply service to end-use retail customers,
14 but does not take title to the gas;

15 "Buydown" means an arrangement or arrangements involving the
16 buyer and seller in a given power purchase contract and, in some
17 cases third parties, for consideration to be given by the buyer in
18 order to effectuate a reduction in the pricing, or the restructuring of
19 other terms to reduce the overall cost of the power contract, for the
20 remaining succeeding period of the purchased power arrangement
21 or arrangements;

22 "Buyout" means an arrangement or arrangements involving the
23 buyer and seller in a given power purchase contract and, in some
24 cases third parties, for consideration to be given by the buyer in
25 order to effectuate a termination of such power purchase contract;

26 "Class I renewable energy" means electric energy produced from
27 solar technologies, photovoltaic technologies, wind energy, fuel
28 cells, geothermal technologies, wave or tidal action, and methane
29 gas from landfills or a biomass facility, provided that the biomass is
30 cultivated and harvested in a sustainable manner;

31 "Class II renewable energy" means electric energy produced at a
32 resource recovery facility or hydropower facility, provided that
33 such facility is located where retail competition is permitted and
34 provided further that the Commissioner of Environmental
35 Protection has determined that such facility meets the highest
36 environmental standards and minimizes any impacts to the
37 environment and local communities;

38 "Co-generation" means the sequential production of electricity
39 and steam or other forms of useful energy used for industrial or
40 commercial heating and cooling purposes;

41 "Combined heat and power facility" or "co-generation facility"
42 means a generation facility which produces electric energy, steam,
43 or other forms of useful energy such as heat, which are used for
44 industrial or commercial heating or cooling purposes. A combined
45 heat and power facility or co-generation facility shall not be
46 considered a public utility;

47 "Competitive service" means any service offered by an electric
48 public utility or a gas public utility that the board determines to be

1 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
2 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

3 "Commercial and industrial energy pricing class customer" or
4 "CIEP class customer" means that group of non-residential
5 customers with high peak demand, as determined by periodic board
6 order, which either is eligible or which would be eligible, as
7 determined by periodic board order, to receive funds from the Retail
8 Margin Fund established pursuant to section 9 of P.L.1999, c.23
9 (C.48:3-57) and for which basic generation service is hourly-priced;

10 "Comprehensive resource analysis" means an analysis including,
11 but not limited to, an assessment of existing market barriers to the
12 implementation of energy efficiency and renewable technologies
13 that are not or cannot be delivered to customers through a
14 competitive marketplace;

15 "Customer" means any person that is an end user and is
16 connected to any part of the transmission and distribution system
17 within an electric public utility's service territory or a gas public
18 utility's service territory within this State;

19 "Customer account service" means metering, billing, or such
20 other administrative activity associated with maintaining a customer
21 account;

22 "Delivery year" or "DY" means the 12-month period from June
23 1st through May 31st and shall be numbered according to the
24 calendar year in which it ends;

25 "Demand side management" means the management of customer
26 demand for energy service through the implementation of cost-
27 effective energy efficiency technologies, including, but not limited
28 to, installed conservation, load management and energy efficiency
29 measures on and in the residential, commercial, industrial,
30 institutional and governmental premises and facilities in this State;

31 "Electric generation service" means the provision of retail
32 electric energy and capacity which is generated off-site from the
33 location at which the consumption of such electric energy and
34 capacity is metered for retail billing purposes, including agreements
35 and arrangements related thereto;

36 "Electric power generator" means an entity that proposes to
37 construct, own, lease or operate, or currently owns, leases or
38 operates, an electric power production facility that will sell or does
39 sell at least 90 percent of its output, either directly or through a
40 marketer, to a customer or customers located at sites that are not on
41 or contiguous to the site on which the facility will be located or is
42 located. The designation of an entity as an electric power generator
43 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
44 and of itself, affect the entity's status as an exempt wholesale
45 generator under the Public Utility Holding Company Act of 1935,
46 15 U.S.C. s.79 et seq.;

47 "Electric power supplier" means a person or entity that is duly
48 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et

1 al.) to offer and to assume the contractual and legal responsibility to
2 provide electric generation service to retail customers, and includes
3 load serving entities, marketers and brokers that offer or provide
4 electric generation service to retail customers. The term excludes an
5 electric public utility that provides electric generation service only
6 as a basic generation service pursuant to section 9 of P.L.1999, c.23
7 (C.48:3-57);

8 "Electric public utility" means a public utility, as that term is
9 defined in R.S.48:2-13, that transmits and distributes electricity to
10 end users within this State;

11 "Electric related service" means a service that is directly related
12 to the consumption of electricity by an end user, including, but not
13 limited to, the installation of demand side management measures at
14 the end user's premises, the maintenance, repair or replacement of
15 appliances, lighting, motors or other energy-consuming devices at
16 the end user's premises, and the provision of energy consumption
17 measurement and billing services;

18 "Electronic signature" means an electronic sound, symbol or
19 process, attached to, or logically associated with, a contract or other
20 record, and executed or adopted by a person with the intent to sign
21 the record;

22 "Eligible generator" means a developer of a new, natural gas
23 fired, combined-cycle electric power generating facility with a net
24 summer output rating of 100 megawatts or larger, that is physically
25 located within the State of New Jersey, and that commences
26 construction after the effective date of P.L. , c. (C.)
27 (pending before the Legislature as this bill);

28 "Energy agent" means a person that is duly registered pursuant to
29 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the
30 sale of retail electricity or electric related services or retail gas
31 supply or gas related services between government aggregators or
32 private aggregators and electric power suppliers or gas suppliers,
33 but does not take title to the electric or gas sold;

34 "Energy consumer" means a business or residential consumer of
35 electric generation service or gas supply service located within the
36 territorial jurisdiction of a government aggregator;

37 "Energy efficiency portfolio standard" means a requirement to
38 procure a specified amount of energy efficiency or demand side
39 management resources as a means of managing and reducing energy
40 usage and demand by customers;

41 "Energy year" or "EY" means the 12-month period from June 1st
42 through May 31st and shall be numbered according to the calendar
43 year in which it ends;

44 "Federal Energy Regulatory Commission" or "FERC" means the
45 federal agency established pursuant to 42 U.S.C. s.7171 et seq. to
46 regulate the interstate transmission of electricity, natural gas, and
47 oil;

1 "Financing entity" means an electric public utility, a special
2 purpose entity, or any other assignee of bondable transition
3 property, which issues transition bonds. Except as specifically
4 provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity
5 which is not itself an electric public utility shall not be subject to
6 the public utility requirements of Title 48 or any rules or regulations
7 adopted pursuant thereto;

8 "Gas public utility" means a public utility, as that term is defined
9 in R.S.48:2-13, that distributes gas to end users within this State;

10 "Gas related service" means a service that is directly related to
11 the consumption of gas by an end user, including, but not limited to,
12 the installation of demand side management measures at the end
13 user's premises, the maintenance, repair or replacement of
14 appliances or other energy-consuming devices at the end user's
15 premises, and the provision of energy consumption measurement
16 and billing services;

17 "Gas supplier" means a person that is duly licensed pursuant to
18 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
19 assume the contractual and legal obligation to provide gas supply
20 service to retail customers, and includes, but is not limited to,
21 marketers and brokers. A non-public utility affiliate of a public
22 utility holding company may be a gas supplier, but a gas public
23 utility or any subsidiary of a gas utility is not a gas supplier. In the
24 event that a gas public utility is not part of a holding company legal
25 structure, a related competitive business segment of that gas public
26 utility may be a gas supplier, provided that related competitive
27 business segment is structurally separated from the gas public
28 utility, and provided that the interactions between the gas public
29 utility and the related competitive business segment are subject to
30 the affiliate relations standards adopted by the board pursuant to
31 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

32 "Gas supply service" means the provision to customers of the
33 retail commodity of gas, but does not include any regulated
34 distribution service;

35 "Government aggregator" means any government entity subject
36 to the requirements of the "Local Public Contracts Law," P.L.1971,
37 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
38 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
39 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
40 contract with a licensed electric power supplier or a licensed gas
41 supplier for: (1) the provision of electric generation service, electric
42 related service, gas supply service, or gas related service for its own
43 use or the use of other government aggregators; or (2) if a
44 municipal or county government, the provision of electric
45 generation service or gas supply service on behalf of business or
46 residential customers within its territorial jurisdiction;

47 "Government energy aggregation program" means a program and
48 procedure pursuant to which a government aggregator enters into a

1 written contract for the provision of electric generation service or
2 gas supply service on behalf of business or residential customers
3 within its territorial jurisdiction;

4 "Governmental entity" means any federal, state, municipal, local
5 or other governmental department, commission, board, agency,
6 court, authority or instrumentality having competent jurisdiction;

7 "Greenhouse gas emissions portfolio standard" means a
8 requirement that addresses or limits the amount of carbon dioxide
9 emissions indirectly resulting from the use of electricity as applied
10 to any electric power suppliers and basic generation service
11 providers of electricity;

12 "Leakage" means an increase in greenhouse gas emissions
13 related to generation sources located outside of the State that are not
14 subject to a state, interstate or regional greenhouse gas emissions
15 cap or standard that applies to generation sources located within the
16 State;

17 "Long-term capacity agreement pilot program" or "LCAPP"
18 means a one-time pilot program established by the board that is
19 limited to participation by eligible generators, to seek offers no later
20 than February 4, 2011, for financially-settled standard offer
21 capacity agreements that extend for a term of not less than 15 years,
22 to quickly and safely construct new, natural gas fired, combined-
23 cycle electric power generating facilities with a net summer output
24 rating of 100 megawatts or larger within the State;

25 "Market transition charge" means a charge imposed pursuant to
26 section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public
27 utility, at a level determined by the board, on the electric public
28 utility customers for a limited duration transition period to recover
29 stranded costs created as a result of the introduction of electric
30 power supply competition pursuant to the provisions of P.L.1999,
31 c.23 (C.48:3-49 et al.);

32 "Marketer" means a duly licensed electric power supplier that
33 takes title to electric energy and capacity, transmission and other
34 services from electric power generators and other wholesale
35 suppliers and then assumes the contractual and legal obligation to
36 provide electric generation service, and may include transmission
37 and other services, to an end-use retail customer or customers, or a
38 duly licensed gas supplier that takes title to gas and then assumes
39 the contractual and legal obligation to provide gas supply service to
40 an end-use customer or customers;

41 "Net proceeds" means proceeds less transaction and other related
42 costs as determined by the board;

43 "Net revenues" means revenues less related expenses, including
44 applicable taxes, as determined by the board;

45 "Offshore wind energy" means electric energy produced by a
46 qualified offshore wind project;

47 "Offshore wind renewable energy certificate" or "OREC" means
48 a certificate, issued by the board or its designee, representing the

1 environmental attributes of one megawatt hour of electric
2 generation from a qualified offshore wind project;

3 "Off-site end use thermal energy services customer" means an
4 end use customer that purchases thermal energy services from an
5 on-site generation facility, combined heat and power facility, or co-
6 generation facility, and that is located on property that is separated
7 from the property on which the on-site generation facility,
8 combined heat and power facility, or co-generation facility is
9 located by more than one easement, public thoroughfare, or
10 transportation or utility-owned right-of-way;

11 "On-site generation facility" means a generation facility, and
12 equipment and services appurtenant to electric sales by such facility
13 to the end use customer located on the property or on property
14 contiguous to the property on which the end user is located. An on-
15 site generation facility shall not be considered a public utility. The
16 property of the end use customer and the property on which the on-
17 site generation facility is located shall be considered contiguous if
18 they are geographically located next to each other, but may be
19 otherwise separated by an easement, public thoroughfare,
20 transportation or utility-owned right-of-way, or if the end use
21 customer is purchasing thermal energy services produced by the on-
22 site generation facility, for use for heating or cooling, or both,
23 regardless of whether the customer is located on property that is
24 separated from the property on which the on-site generation facility
25 is located by more than one easement, public thoroughfare, or
26 transportation or utility-owned right-of-way;

27 "Person" means an individual, partnership, corporation,
28 association, trust, limited liability company, governmental entity or
29 other legal entity;

30 "PJM Interconnection, L.L.C." or "PJM" means the privately-
31 held, limited liability corporation that is a FERC-approved Regional
32 Transmission Organization that manages the regional, high-voltage
33 electricity grid serving all or parts of 13 states including New Jersey
34 and the District of Columbia, operates the regional competitive
35 wholesale electric market, manages the regional transmission
36 planning process, and establishes systems and rules to ensure that
37 the regional and in-State energy markets operate fairly and
38 efficiently;

39 "Private aggregator" means a non-government aggregator that is
40 a duly-organized business or non-profit organization authorized to
41 do business in this State that enters into a contract with a duly
42 licensed electric power supplier for the purchase of electric energy
43 and capacity, or with a duly licensed gas supplier for the purchase
44 of gas supply service, on behalf of multiple end-use customers by
45 combining the loads of those customers;

46 "Public utility holding company" means: (1) any company that,
47 directly or indirectly, owns, controls, or holds with power to vote,
48 ten percent or more of the outstanding voting securities of an

1 electric public utility or a gas public utility or of a company which
2 is a public utility holding company by virtue of this definition,
3 unless the Securities and Exchange Commission, or its successor,
4 by order declares such company not to be a public utility holding
5 company under the Public Utility Holding Company Act of 1935,
6 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
7 Securities and Exchange Commission, or its successor, determines,
8 after notice and opportunity for hearing, directly or indirectly, to
9 exercise, either alone or pursuant to an arrangement or
10 understanding with one or more other persons, such a controlling
11 influence over the management or policies of an electric public
12 utility or a gas public utility or public utility holding company as to
13 make it necessary or appropriate in the public interest or for the
14 protection of investors or consumers that such person be subject to
15 the obligations, duties, and liabilities imposed in the Public Utility
16 Holding Company Act of 1935 or its successor;

17 "Qualified offshore wind project" means a wind turbine
18 electricity generation facility in the Atlantic Ocean and connected
19 to the electric transmission system in this State, and includes the
20 associated transmission-related interconnection facilities and
21 equipment, and approved by the board pursuant to section 3 of
22 P.L.2010, c.57 (C.48:3-87.1);

23 "Regulatory asset" means an asset recorded on the books of an
24 electric public utility or gas public utility pursuant to the Statement
25 of Financial Accounting Standards, No. 71, entitled "Accounting for
26 the Effects of Certain Types of Regulation," or any successor
27 standard and as deemed recoverable by the board;

28 "Related competitive business segment of an electric public
29 utility or gas public utility" means any business venture of an
30 electric public utility or gas public utility including, but not limited
31 to, functionally separate business units, joint ventures, and
32 partnerships, that offers to provide or provides competitive services;

33 "Related competitive business segment of a public utility holding
34 company" means any business venture of a public utility holding
35 company, including, but not limited to, functionally separate
36 business units, joint ventures, and partnerships and subsidiaries, that
37 offers to provide or provides competitive services, but does not
38 include any related competitive business segments of an electric
39 public utility or gas public utility;

40 "Reliability pricing model" or "RPM" means PJM's capacity-
41 market model, and its successors, that secures capacity on behalf of
42 electric load serving entities to satisfy load obligations not satisfied
43 through the output of electric generation facilities owned by those
44 entities 'or otherwise secured by those entities through bilateral
45 contracts' ;

46 "Renewable energy certificate" or "REC" means a certificate
47 representing the environmental benefits or attributes of one
48 megawatt-hour of generation from a generating facility that

1 produces Class I or Class II renewable energy, but shall not include
2 a solar renewable energy certificate or an offshore wind renewable
3 energy certificate;

4 "Resource clearing price" or "RCP" means the clearing price
5 established for the applicable locational deliverability area by the
6 base residual auction 'or incremental auction' conducted by PJM
7 as part of PJM's reliability pricing model;

8 "Resource recovery facility" means a solid waste facility
9 constructed and operated for the incineration of solid waste for
10 energy production and the recovery of metals and other materials
11 for reuse;

12 "Restructuring related costs" means reasonably incurred costs
13 directly related to the restructuring of the electric power industry,
14 including the closure, sale, functional separation and divestiture of
15 generation and other competitive utility assets by a public utility, or
16 the provision of competitive services as such costs are determined
17 by the board, and which are not stranded costs as defined in
18 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited
19 to, investments in management information systems, and which
20 shall include expenses related to employees affected by
21 restructuring which result in efficiencies and which result in
22 benefits to ratepayers, such as training or retraining at the level
23 equivalent to one year's training at a vocational or technical school
24 or county community college, the provision of severance pay of two
25 weeks of base pay for each year of full-time employment, and a
26 maximum of 24 months' continued health care coverage. Except as
27 to expenses related to employees affected by restructuring,
28 "restructuring related costs" shall not include going forward costs;

29 "Retail choice" means the ability of retail customers to shop for
30 electric generation or gas supply service from electric power or gas
31 suppliers, or opt to receive basic generation service or basic gas
32 service, and the ability of an electric power or gas supplier to offer
33 electric generation service or gas supply service to retail customers,
34 consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

35 "Retail margin" means an amount, reflecting differences in
36 prices that electric power suppliers and electric public utilities may
37 charge in providing electric generation service and basic generation
38 service, respectively, to retail customers, excluding residential
39 customers, which the board may authorize to be charged to
40 categories of basic generation service customers of electric public
41 utilities in this State, other than residential customers, under the
42 board's continuing regulation of basic generation service pursuant to
43 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the
44 purpose of promoting a competitive retail market for the supply of
45 electricity;

46 "Shopping credit" means an amount deducted from the bill of an
47 electric public utility customer to reflect the fact that such customer

1 has switched to an electric power supplier and no longer takes basic
2 generation service from the electric public utility;

3 "Social program" means a program implemented with board
4 approval to provide assistance to a group of disadvantaged
5 customers, to provide protection to consumers, or to accomplish a
6 particular societal goal, and includes, but is not limited to, the
7 winter moratorium program, utility practices concerning "bad debt"
8 customers, low income assistance, deferred payment plans,
9 weatherization programs, and late payment and deposit policies, but
10 does not include any demand side management program or any
11 environmental requirements or controls;

12 "Societal benefits charge" means a charge imposed by an electric
13 public utility, at a level determined by the board, pursuant to, and in
14 accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

15 "Solar alternative compliance payment" or "SACP" means a
16 payment of a certain dollar amount per megawatt hour (MWh)
17 which an electric power supplier or provider may submit to the
18 board in order to comply with the solar electric generation
19 requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

20 "Solar renewable energy certificate" or "SREC" means a
21 certificate issued by the board or its designee, representing one
22 megawatt hour (MWh) of solar energy that is generated by a facility
23 connected to the distribution system in this State and has value
24 based upon, and driven by, the energy market;

25 "Standard offer capacity agreement" or "SOCA" means a
26 financially-settled transaction agreement, approved by board order,
27 that provides for '[an]' eligible '[generator] generators: (1)' to
28 receive a payment from one or more electric public utilities, in the
29 event the SOCP is greater than the 'base residual auction' RCP for
30 any applicable delivery year, 'and' that '[provides for]' such
31 payment '[to be]' is' equal to the difference between the SOCP and
32 the 'base residual auction' RCP multiplied by the contract capacity
33 '[, that provides] ; and (2) to remit a payment to one or more
34 electric public utilities for the benefit of ratepayers, in the event the
35 base residual auction RCP is greater than \$290 per megawatt day
36 for any applicable delivery year, and that such payment is equal to
37 the result of the difference between the base residual auction RCP
38 and \$290 per megawatt day for the applicable delivery year
39 multiplied by the contract capacity. The SOCA shall provide' for a
40 defined amount of electric capacity for the term of the transaction
41 of not less than 15 years, and '[that provides]' for '[such
42 payment]' payments made pursuant to paragraph (1)' to be a fully
43 non-bypassable charge, with such an order, once issued, being
44 irrevocable;

45 "Standard offer capacity price" or "SOCP" means the capacity
46 price that is fixed for the term of the SOCA and is the minimum

1 price to be received by '[an]' eligible '[generator] generators'
2 under a board-approved SOCA;

3 "Stranded cost" means the amount by which the net cost of an
4 electric public utility's electric generating assets or electric power
5 purchase commitments, as determined by the board consistent with
6 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
7 market value of those assets or contractual commitments in a
8 competitive supply marketplace and the costs of buydowns or
9 buyouts of power purchase contracts;

10 "Stranded costs recovery order" means each order issued by the
11 board in accordance with subsection c. of section 13 of P.L.1999,
12 c.23 (C.48:3-61) which sets forth the amount of stranded costs, if
13 any, the board has determined an electric public utility is eligible to
14 recover and collect in accordance with the standards set forth in
15 section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery
16 mechanisms therefor;

17 "Thermal efficiency" means the useful electric energy output of a
18 facility, plus the useful thermal energy output of the facility,
19 expressed as a percentage of the total energy input to the facility;

20 "Transition bond charge" means a charge, expressed as an
21 amount per kilowatt hour, that is authorized by and imposed on
22 electric public utility ratepayers pursuant to a bondable stranded
23 costs rate order, as modified at any time pursuant to the provisions
24 of P.L.1999, c.23 (C.48:3-49 et al.);

25 "Transition bonds" means bonds, notes, certificates of
26 participation or beneficial interest or other evidences of
27 indebtedness or ownership issued pursuant to an indenture, contract
28 or other agreement of an electric public utility or a financing entity,
29 the proceeds of which are used, directly or indirectly, to recover,
30 finance or refinance bondable stranded costs and which are, directly
31 or indirectly, secured by or payable from bondable transition
32 property. References in P.L.1999, c.23 (C.48:3-49 et al.) to
33 principal, interest, and acquisition or redemption premium with
34 respect to transition bonds which are issued in the form of
35 certificates of participation or beneficial interest or other evidences
36 of ownership shall refer to the comparable payments on such
37 securities;

38 "Transition period" means the period from August 1, 1999
39 through July 31, 2003;

40 "Transmission and distribution system" means, with respect to an
41 electric public utility, any facility or equipment that is used for the
42 transmission, distribution or delivery of electricity to the customers
43 of the electric public utility including, but not limited to, the land,
44 structures, meters, lines, switches and all other appurtenances
45 thereof and thereto, owned or controlled by the electric public
46 utility within this State; and

1 "Universal service" means any service approved by the board
2 with the purpose of assisting low-income residential customers in
3 obtaining or retaining electric generation or delivery service.
4 (cf: P.L.2010, c.57, s.1)

5
6 3. (New section) Notwithstanding any provisions of the
7 "Administrative Procedure Act," P. L. 1968, c.410 (C.52:14B-1 et
8 seq.) to the contrary, the board shall, within 10 days of the effective
9 date of P.L. , c. (C.) (pending before the Legislature as this
10 bill), initiate a proceeding on the schedule set forth in this section
11 allowing such proceeding to be completed to support the
12 commencement of the LCAPP no later than January 31, 2011, and
13 shall adopt, after notice, the opportunity for comment, and public
14 hearing on the schedule set forth in this section, the following
15 requirements for the LCAPP:

16 a. the establishment of the LCAPP that allows for offering
17 financially-settled SOCAs for the purpose of facilitating the
18 development of eligible generators;

19 b. the establishment of the LCAAP on the following schedule:

20 (1) the board shall complete the process to develop the
21 SOCA no later than January 1, 2011; and

22 (2) SOCAs resulting from this process shall be awarded,
23 executed and approved by the board with a written board order no
24 later than February 25, 2011;

25 c. the participation of selected eligible generators with board
26 approved, executed SOCAs in and clearing of the base residual
27 auction conducted by PJM and scheduled to commence on May 2,
28 2011, as part of PJM's reliability pricing model for the delivery
29 year 2015;

30 d. that it be limited to eligible generators in order to maximize
31 economic benefits and job creation in the State;

32 e. that electric public utilities shall procure at least 500
33 megawatts and not more than '~~1500~~ 1,000' megawatts of
34 financially-settled SOCAs from the eligible generators;

35 f. '~~that no single eligible generator or its affiliate may enter~~
36 into more than 900 megawatts of financially-settled standard offer
37 capacity agreements;

38 g. that eligible generators participating in the LCAPP shall be
39 required to offer the maximum quantity, in megawatts, of the SOCA
40 at the standard offer 'capacity' price of \$232.75 per megawatt per
41 day, which represents a discount to the most recent clearing price
42 established by the base residual auction conducted by the PJM in
43 May, 2010 as part of the PJM's reliability pricing model;

44 '~~h.~~ g.' that the board select '~~an~~' eligible '~~generator~~
45 generators' from among the eligible generators participating in the
46 LCAPP for the award of a board-approved long-term financially-
47 settled SOCA for a term of not less than 15 years; '~~.~~'

1 '[i.] h.' that the selection of winning eligible generators give
2 preference to those eligible generators located in "areas in need of
3 redevelopment" in accordance with the "Local Redevelopment and
4 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), that based on
5 the board's determination, can provide the greatest environmental,
6 economic, and community benefits, and can demonstrate certainty
7 of completion of development and permitting activities necessary to
8 meet the desired in-service date;

9 '[j.] i.' that '[an]' eligible '[generator] generators' selected
10 by the board, enter into a SOCA with each of the State's four
11 electric public utilities provided that each electric public utility
12 shall pay '[a] an annually calculated' load-ratio share of the
13 SOCA price based upon each electric public utility's annual
14 forecasted peak demand as determined by PJM;

15 '[k.] j.' that the resulting SOCA shall bind the electric public
16 utilities to the board approved SOCAs with '[a]' selected eligible
17 '[generator] generators' for not less than 15 years;

18 '[l.] k.' that the selected eligible generators with executed
19 SOCAs shall offer the capacity, electricity, and ancillary services
20 into the PJM wholesale markets as required by the PJM market
21 rules;

22 '[m.] l.' that selected eligible generators with executed SOCAs
23 shall participate in and clear the annual base residual auction
24 conducted by the PJM as part of PJM's reliability pricing model for
25 each delivery year of the entire term of the agreement;

26 '[n.] m.' that the board shall order the full recovery of all costs
27 associated with the electric public utilities' resulting SOCAs from
28 ratepayers through a non-bypassable, irrevocable charge;

29 (1) notwithstanding any other provision of law, each LCAPP
30 standard offer capacity agreement shall become irrevocable upon
31 the issuance of such order; and

32 (2) neither the board or any other governmental entity shall
33 have the authority, directly or indirectly, legally or equitably, to
34 rescind, alter, repeal, modify or amend an LCAPP cost rate order, to
35 revalue, re-evaluate or revise the amount of LCAPP costs, or to
36 determine that the LCAPP charges or the revenues to recover the
37 LCAPP charges for such SOCAs are unjust or unreasonable; and

38 '[o.] n.' that the board shall have complete discretion to
39 approve any and all SOCAs resulting from the LCAPP.

40

41 4. This act shall take effect immediately.