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SENATE, No. 2381

STATE OF NEW JERSEY
214th LEGISLATURE

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Sponsored by:

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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 Assembly Telecommunications and Utilities Committee on December 13, 2010, with amendments.



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

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

8
9 1. The Legislature finds and declares:

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

16 b. The PJM reliability pricing model ¹[created additional
17 barriers to entry for new, efficient generators, by imposing a one to
18 three year term requirement for contracts entered into by new
19 entrants. The maximum three-year term is insufficient to support
20 the project financing necessary to develop new, efficient generation
21 within the State] sought to create enhancements to the previously
22 ineffective capacity procurement mechanism which had resulted in
23 projected capacity deficiencies in New Jersey and other areas of the
24 regional power grid. While the reliability pricing model has
25 resulted in significant capacity additions in the form of new demand
26 response resources, new energy efficiency resources, reversals of
27 generation unit retirements, upgrades of existing generating units
28 and certain new peaking facilities ²[in] available to the region and²
29 the State, the reliability pricing model has not resulted in large
30 additions of peaking facilities or any additions of intermediate or
31 base load resources ²[in] available to the region and² the State¹;

32 c. The PJM reliability pricing model ¹[continues to undergo
33 structural changes that make it unreliable as an indicator of the true
34 cost of capacity and therefore unreliable as an incentive for
35 developing new generation] could, through structural changes,
36 provide necessary incentives, such as the expansion of the “New
37 Entry Price Adjustment” mechanism for the construction of new
38 capacity, including new intermediate and base load plants, by
39 allowing new resources to qualify and receive a guaranteed capacity
40 price for a longer period of time. However, the implementation of
41 similar structural changes ²[were] was² previously denied by
42 FERC and any future implementation is uncertain at this time¹;

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.

²Assembly ATU committee amendments adopted December 13, 2010.

1 d. To ¹‘[alleviate the cost burden and barriers to new entry
2 created by the PJM] address the lack of incentives under the¹
3 reliability pricing model, the construction of new, efficient ²‘[in-
4 State]’² generation must be fostered by State policy ¹‘[to avoid
5 higher electricity prices, higher congestion, and reliability
6 concerns] that ²‘[assures that] ensures sufficient² generation is
7 ²‘[constructed] available to the region, and thus the users² in the
8 State in a timely and orderly manner¹’;

9 e. Due to PJM’s lack of authority to order new generation as a
10 means to mitigate local electrical system reliability concerns and
11 solve other issues related to the lack of local generation, and since
12 only PJM has the authority to order transmission system upgrades
13 and expansions to mitigate electrical system reliability concerns
14 caused by transmission system overloads or the lack of local
15 generation being developed, ¹‘[New Jersey continues to send] New
16 ²‘[Jersey’s] Jersey is experiencing an electric power² capacity
17 deficit ²and high power prices that² may result in the loss of¹ jobs
18 and investment ¹‘[out-of-state to] due to the necessity for the¹
19 upgrade ¹‘of’ the transmission system to the west of New Jersey to
20 ensure a reliable supply of electricity and capacity from generators
21 located outside of New Jersey;

22 f. As a result of a lack of new, efficient ²‘[in-State]’² electric
23 ²‘[generating] generation² facilities, New Jersey has become more
24 reliant on ²‘[out-of-state]’² coal-fired power plants;

25 g. The PJM State of the Market Report for 2009 by the PJM
26 Independent Market Monitor states that there ²are² over 11,000
27 megawatts (“MW”) of coal-fired units at risk of retirement due to
28 their inability to cover their avoided costs;

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

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

43 ¹‘[j.] i.¹ Fostering and incentivizing the development of ¹‘a
44 limited program for¹ new ²‘[in-State]’² electric generation facilities
45 ²‘¹, while potential enhancements to the reliability pricing model
46 and other PJM mechanisms are under consideration,¹’² will ²help

1 ensure sufficient capacity to stabilize power prices to² assist the
2 State's economic development ²[by creating] and create²
3 '[numerous]'¹ opportunities for employment in the energy sector
4 while helping to reduce the cost and volatility of electricity prices in
5 New Jersey.

6
7 2. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read
8 as follows:

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

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

17 ²"Base load electric power generation facility" means an electric
18 power generation facility intended to be operated at a greater than
19 50 percent capacity factor including, but not limited to, a combined
20 cycle power facility and a combined heat and power facility.²

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

25 "Basic gas supply service" means gas supply service that is
26 provided to any customer that has not chosen an alternative gas
27 supplier, whether or not the customer has received offers as to
28 competitive supply options, including, but not limited to, any
29 customer that cannot obtain such service for any reason, including
30 non-payment for services. Basic gas supply service is not a
31 competitive service and shall be fully regulated by the board;

32 "Basic generation service" or "BGS" means electric generation
33 service that is provided, to any customer that has not chosen an
34 alternative electric power supplier, whether or not the customer has
35 received offers for competitive supply options, including, but not
36 limited to, any customer that cannot obtain such service from an
37 electric power supplier for any reason, including non-payment for
38 services. Basic generation service is not a competitive service and
39 shall be fully regulated by the board;

40 "Basic generation service provider" or "provider" means a
41 provider of basic generation service;

42 "Basic generation service transition costs" means the amount by
43 which the payments by an electric public utility for the procurement
44 of power for basic generation service and related ancillary and
45 administrative costs exceeds the net revenues from the basic
46 generation service charge established by the board pursuant to
47 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,
48 together with interest on the balance at the board-approved rate, that

1 is reflected in a deferred balance account approved by the board in
2 an order addressing the electric public utility's unbundled rates,
3 stranded costs, and restructuring filings pursuant to P.L.1999, c.23
4 (C.48:3-49 et al.). Basic generation service transition costs shall
5 include, but are not limited to, costs of purchases from the spot
6 market, bilateral contracts, contracts with non-utility generators,
7 parting contracts with the purchaser of the electric public utility's
8 divested generation assets, short-term advance purchases, and
9 financial instruments such as hedging, forward contracts, and
10 options. Basic generation service transition costs shall also include
11 the payments by an electric public utility pursuant to a competitive
12 procurement process for basic generation service supply during the
13 transition period, and costs of any such process used to procure the
14 basic generation service supply;

15 "Board" means the New Jersey Board of Public Utilities or any
16 successor agency;

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

40 "Bondable stranded costs rate order" means one or more
41 irrevocable written orders issued by the board pursuant to P.L.1999,
42 c.23 (C.48:3-49 et al.) which determines the amount of bondable
43 stranded costs and the initial amount of transition bond charges
44 authorized to be imposed to recover such bondable stranded costs,
45 including the costs to be financed from the proceeds of the
46 transition bonds, as well as on-going costs associated with servicing
47 and credit enhancing the transition bonds, and provides the electric
48 public utility specific authority to issue or cause to be issued,

1 directly or indirectly, transition bonds through a financing entity
2 and related matters as provided in P.L.1999, c.23, which order shall
3 become effective immediately upon the written consent of the
4 related electric public utility to such order as provided in P.L.1999,
5 c.23;

6 "Bondable transition property" means the property consisting of
7 the irrevocable right to charge, collect and receive, and be paid
8 from collections of, transition bond charges in the amount necessary
9 to provide for the full recovery of bondable stranded costs which
10 are determined to be recoverable in a bondable stranded costs rate
11 order, all rights of the related electric public utility under such
12 bondable stranded costs rate order including, without limitation, all
13 rights to obtain periodic adjustments of the related transition bond
14 charges pursuant to subsection b. of section 15 of P.L.1999, c.23
15 (C.48:3-64), and all revenues, collections, payments, money and
16 proceeds arising under, or with respect to, all of the foregoing;

17 "British thermal unit" or "Btu" means the amount of heat
18 required to increase the temperature of one pound of water by one
19 degree Fahrenheit;

20 "Broker" means a duly licensed electric power supplier that
21 assumes the contractual and legal responsibility for the sale of
22 electric generation service, transmission or other services to end-use
23 retail customers, but does not take title to any of the power sold, or
24 a duly licensed gas supplier that assumes the contractual and legal
25 obligation to provide gas supply service to end-use retail customers,
26 but does not take title to the gas;

27 "Buydown" means an arrangement or arrangements involving the
28 buyer and seller in a given power purchase contract and, in some
29 cases third parties, for consideration to be given by the buyer in
30 order to effectuate a reduction in the pricing, or the restructuring of
31 other terms to reduce the overall cost of the power contract, for the
32 remaining succeeding period of the purchased power arrangement
33 or arrangements;

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

38 "Class I renewable energy" means electric energy produced from
39 solar technologies, photovoltaic technologies, wind energy, fuel
40 cells, geothermal technologies, wave or tidal action, and methane
41 gas from landfills or a biomass facility, provided that the biomass is
42 cultivated and harvested in a sustainable manner;

43 "Class II renewable energy" means electric energy produced at a
44 resource recovery facility or hydropower facility, provided that
45 such facility is located where retail competition is permitted and
46 provided further that the Commissioner of Environmental
47 Protection has determined that such facility meets the highest

1 environmental standards and minimizes any impacts to the
2 environment and local communities;

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

6 ²"Combined cycle power facility" means a generation facility
7 that combines two or more thermodynamic cycles, by producing
8 electric power via the combustion of fuel and then routing the
9 resulting waste heat by-product to a conventional boiler or to a heat
10 recovery steam generator for use by a steam turbine to produce
11 electric power, thereby increasing the overall efficiency of the
12 generating facility;²

13 "Combined heat and power facility" or "co-generation facility"
14 means a generation facility which produces electric energy, steam,
15 or other forms of useful energy such as heat, which are used for
16 industrial or commercial heating or cooling purposes. A combined
17 heat and power facility or co-generation facility shall not be
18 considered a public utility;

19 "Competitive service" means any service offered by an electric
20 public utility or a gas public utility that the board determines to be
21 competitive pursuant to section 8 or section 10 of P.L.1999, c.23
22 (C.48:3-56 or C.48:3-58) or that is not regulated by the board;

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

30 "Comprehensive resource analysis" means an analysis including,
31 but not limited to, an assessment of existing market barriers to the
32 implementation of energy efficiency and renewable technologies
33 that are not or cannot be delivered to customers through a
34 competitive marketplace;

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

39 "Customer account service" means metering, billing, or such
40 other administrative activity associated with maintaining a customer
41 account;

42 "Delivery year" or "DY" means the 12-month period from June
43 1st through May 31st ²[and shall be] , ² numbered according to the
44 calendar year in which it ends;

45 "Demand side management" means the management of customer
46 demand for energy service through the implementation of cost-
47 effective energy efficiency technologies, including, but not limited
48 to, installed conservation, load management and energy efficiency

1 measures on and in the residential, commercial, industrial,
2 institutional and governmental premises and facilities in this State;

3 "Electric generation service" means the provision of retail
4 electric energy and capacity which is generated off-site from the
5 location at which the consumption of such electric energy and
6 capacity is metered for retail billing purposes, including agreements
7 and arrangements related thereto;

8 "Electric power generator" means an entity that proposes to
9 construct, own, lease or operate, or currently owns, leases or
10 operates, an electric power production facility that will sell or does
11 sell at least 90 percent of its output, either directly or through a
12 marketer, to a customer or customers located at sites that are not on
13 or contiguous to the site on which the facility will be located or is
14 located. The designation of an entity as an electric power generator
15 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in
16 and of itself, affect the entity's status as an exempt wholesale
17 generator under the Public Utility Holding Company Act of 1935,
18 15 U.S.C. s.79 et seq.;

19 "Electric power supplier" means a person or entity that is duly
20 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et
21 al.) to offer and to assume the contractual and legal responsibility to
22 provide electric generation service to retail customers, and includes
23 load serving entities, marketers and brokers that offer or provide
24 electric generation service to retail customers. The term excludes an
25 electric public utility that provides electric generation service only
26 as a basic generation service pursuant to section 9 of P.L.1999, c.23
27 (C.48:3-57);

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

31 "Electric related service" means a service that is directly related
32 to the consumption of electricity by an end user, including, but not
33 limited to, the installation of demand side management measures at
34 the end user's premises, the maintenance, repair or replacement of
35 appliances, lighting, motors or other energy-consuming devices at
36 the end user's premises, and the provision of energy consumption
37 measurement and billing services;

38 "Electronic signature" means an electronic sound, symbol or
39 process, attached to, or logically associated with, a contract or other
40 record, and executed or adopted by a person with the intent to sign
41 the record;

42 "Eligible generator" means a developer of a ²[new, natural gas
43 fired, combined-cycle] base load² electric power ²[generating]
44 generation² facility ²[with a net summer output rating of 100
45 megawatts or larger, that is physically located within the State of
46 New Jersey,] including, but not limited to, an on-site generation
47 facility that qualifies as a capacity resource under PJM criteria but
48 exclusive of a combustion turbine generation facility that is directly

1 interconnected with the electric public utilities' transmission or
2 distribution system,² and that commences construction ²of new
3 generation² after the effective date of P.L. , c. (C.)
4 (pending before the Legislature as this bill);

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

11 "Energy consumer" means a business or residential consumer of
12 electric generation service or gas supply service located within the
13 territorial jurisdiction of a government aggregator;

14 "Energy efficiency portfolio standard" means a requirement to
15 procure a specified amount of energy efficiency or demand side
16 management resources as a means of managing and reducing energy
17 usage and demand by customers;

18 "Energy year" or "EY" means the 12-month period from June 1st
19 through May 31st ²[and shall be] ², numbered according to the
20 calendar year in which it ends;

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

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

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

34 "Gas related service" means a service that is directly related to
35 the consumption of gas by an end user, including, but not limited to,
36 the installation of demand side management measures at the end
37 user's premises, the maintenance, repair or replacement of
38 appliances or other energy-consuming devices at the end user's
39 premises, and the provision of energy consumption measurement
40 and billing services;

41 "Gas supplier" means a person that is duly licensed pursuant to
42 the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and
43 assume the contractual and legal obligation to provide gas supply
44 service to retail customers, and includes, but is not limited to,
45 marketers and brokers. A non-public utility affiliate of a public
46 utility holding company may be a gas supplier, but a gas public
47 utility or any subsidiary of a gas utility is not a gas supplier. In the
48 event that a gas public utility is not part of a holding company legal

1 structure, a related competitive business segment of that gas public
2 utility may be a gas supplier, provided that related competitive
3 business segment is structurally separated from the gas public
4 utility, and provided that the interactions between the gas public
5 utility and the related competitive business segment are subject to
6 the affiliate relations standards adopted by the board pursuant to
7 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

8 "Gas supply service" means the provision to customers of the
9 retail commodity of gas, but does not include any regulated
10 distribution service;

11 "Government aggregator" means any government entity subject
12 to the requirements of the "Local Public Contracts Law," P.L.1971,
13 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
14 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
15 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
16 contract with a licensed electric power supplier or a licensed gas
17 supplier for: (1) the provision of electric generation service, electric
18 related service, gas supply service, or gas related service for its own
19 use or the use of other government aggregators; or (2) if a
20 municipal or county government, the provision of electric
21 generation service or gas supply service on behalf of business or
22 residential customers within its territorial jurisdiction;

23 "Government energy aggregation program" means a program and
24 procedure pursuant to which a government aggregator enters into a
25 written contract for the provision of electric generation service or
26 gas supply service on behalf of business or residential customers
27 within its territorial jurisdiction;

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

31 "Greenhouse gas emissions portfolio standard" means a
32 requirement that addresses or limits the amount of carbon dioxide
33 emissions indirectly resulting from the use of electricity as applied
34 to any electric power suppliers and basic generation service
35 providers of electricity;

36 ²"Incremental auction" means an auction conducted by PJM, as
37 part of PJM's reliability pricing model, prior to the start of the
38 delivery year to secure electric capacity as necessary to satisfy the
39 capacity requirements for that delivery year, that is not otherwise
40 provided for in the base residual auction;²

41 "Leakage" means an increase in greenhouse gas emissions
42 related to generation sources located outside of the State that are not
43 subject to a state, interstate or regional greenhouse gas emissions
44 cap or standard that applies to generation sources located within the
45 State;

46 ²"Locational deliverability area" or "LDA" means one or more of
47 the zones within the PJM region which are used to evaluate area
48 transmission constraints and reliability issues including electric

1 public utility company zones, sub-zones, and combinations of
2 zones.²

3 “Long-term capacity agreement pilot program” or “LCAPP”
4 means a ²[one-time]² pilot program established by the board that is
5 limited to participation by eligible generators, to seek offers ²[no
6 later than February 4, 2011,]² for financially-settled standard offer
7 capacity agreements ²[that extend for a term of not less than 15
8 years, to quickly and safely construct new, natural gas fired,
9 combined-cycle electric power generating facilities with a net
10 summer output rating of 100 megawatts or larger within the State]
11 with eligible generators pursuant to the provisions of P.L. , c. (C.
12)(pending before the Legislature as this bill)²:

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

20 "Marketer" means a duly licensed electric power supplier that
21 takes title to electric energy and capacity, transmission and other
22 services from electric power generators and other wholesale
23 suppliers and then assumes the contractual and legal obligation to
24 provide electric generation service, and may include transmission
25 and other services, to an end-use retail customer or customers, or a
26 duly licensed gas supplier that takes title to gas and then assumes
27 the contractual and legal obligation to provide gas supply service to
28 an end-use customer or customers;

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

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

33 "Offshore wind energy" means electric energy produced by a
34 qualified offshore wind project;

35 "Offshore wind renewable energy certificate" or "OREC" means
36 a certificate, issued by the board or its designee, representing the
37 environmental attributes of one megawatt hour of electric
38 generation from a qualified offshore wind project;

39 "Off-site end use thermal energy services customer" means an
40 end use customer that purchases thermal energy services from an
41 on-site generation facility, combined heat and power facility, or co-
42 generation facility, and that is located on property that is separated
43 from the property on which the on-site generation facility,
44 combined heat and power facility, or co-generation facility is
45 located by more than one easement, public thoroughfare, or
46 transportation or utility-owned right-of-way;

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

17 "Person" means an individual, partnership, corporation,
18 association, trust, limited liability company, governmental entity or
19 other legal entity;

20 "PJM Interconnection, L.L.C." or "PJM" means the privately-
21 held, limited liability corporation that is a FERC-approved Regional
22 Transmission Organization ², or its successor,² that manages the
23 regional, high-voltage electricity grid serving all or parts of 13
24 states including New Jersey and the District of Columbia, operates
25 the regional competitive wholesale electric market, manages the
26 regional transmission planning process, and establishes systems and
27 rules to ensure that the regional and in-State energy markets operate
28 fairly and efficiently;

29 "Private aggregator" means a non-government aggregator that is
30 a duly-organized business or non-profit organization authorized to
31 do business in this State that enters into a contract with a duly
32 licensed electric power supplier for the purchase of electric energy
33 and capacity, or with a duly licensed gas supplier for the purchase
34 of gas supply service, on behalf of multiple end-use customers by
35 combining the loads of those customers;

36 "Public utility holding company" means: (1) any company that,
37 directly or indirectly, owns, controls, or holds with power to vote,
38 ten percent or more of the outstanding voting securities of an
39 electric public utility or a gas public utility or of a company which
40 is a public utility holding company by virtue of this definition,
41 unless the Securities and Exchange Commission, or its successor,
42 by order declares such company not to be a public utility holding
43 company under the Public Utility Holding Company Act of 1935,
44 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
45 Securities and Exchange Commission, or its successor, determines,
46 after notice and opportunity for hearing, directly or indirectly, to
47 exercise, either alone or pursuant to an arrangement or
48 understanding with one or more other persons, such a controlling

1 influence over the management or policies of an electric public
2 utility or a gas public utility or public utility holding company as to
3 make it necessary or appropriate in the public interest or for the
4 protection of investors or consumers that such person be subject to
5 the obligations, duties, and liabilities imposed in the Public Utility
6 Holding Company Act of 1935 or its successor;

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

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

18 "Related competitive business segment of an electric public
19 utility or gas public utility" means any business venture of an
20 electric public utility or gas public utility including, but not limited
21 to, functionally separate business units, joint ventures, and
22 partnerships, that offers to provide or provides competitive services;

23 "Related competitive business segment of a public utility holding
24 company" means any business venture of a public utility holding
25 company, including, but not limited to, functionally separate
26 business units, joint ventures, and partnerships and subsidiaries, that
27 offers to provide or provides competitive services, but does not
28 include any related competitive business segments of an electric
29 public utility or gas public utility;

30 "Reliability pricing model" or "RPM" means PJM's capacity-
31 market model, and its successors, that secures capacity on behalf of
32 electric load serving entities to satisfy load obligations not satisfied
33 through the output of electric generation facilities owned by those
34 entities^{2, 2} or otherwise secured by those entities through bilateral
35 contracts¹ ;

36 "Renewable energy certificate" or "REC" means a certificate
37 representing the environmental benefits or attributes of one
38 megawatt-hour of generation from a generating facility that
39 produces Class I or Class II renewable energy, but shall not include
40 a solar renewable energy certificate or an offshore wind renewable
41 energy certificate;

42 "Resource clearing price" or "RCP" means the clearing price
43 established for the applicable locational deliverability area by the
44 base residual auction¹ or incremental auction^{1 2}, as determined by
45 the optimization algorithm for each auction,² conducted by PJM as
46 part of PJM's reliability pricing model;

47 "Resource recovery facility" means a solid waste facility
48 constructed and operated for the incineration of solid waste for

1 energy production and the recovery of metals and other materials
2 for reuse;

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

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

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

37 "Shopping credit" means an amount deducted from the bill of an
38 electric public utility customer to reflect the fact that such customer
39 has switched to an electric power supplier and no longer takes basic
40 generation service from the electric public utility;

41 "Social program" means a program implemented with board
42 approval to provide assistance to a group of disadvantaged
43 customers, to provide protection to consumers, or to accomplish a
44 particular societal goal, and includes, but is not limited to, the
45 winter moratorium program, utility practices concerning "bad debt"
46 customers, low income assistance, deferred payment plans,
47 weatherization programs, and late payment and deposit policies, but

1 does not include any demand side management program or any
2 environmental requirements or controls;

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

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

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

16 "Standard offer capacity agreement" or "SOCA" means a
17 financially-settled transaction agreement, approved by board order,
18 that provides for '[an]' eligible '[generator]' generators²[(1)]²
19 to receive²[a payment] payments² from²[one or more] the²
20 electric public utilities²[, in the event the SOCP is greater than the
21 'base residual auction' RCP for any applicable delivery year,
22 'and' that '[provides for]' such payment '[to be] is' equal to the
23 difference between the SOCP and the 'base residual auction' RCP
24 multiplied by the contract capacity '[, that provides]'; and (2) to
25 remit a payment to one or more electric public utilities for the
26 benefit of ratepayers, in the event the base residual auction RCP is
27 greater than \$290 per megawatt day for any applicable delivery
28 year, and that such payment is equal to the result of the difference
29 between the base residual auction RCP and \$290 per megawatt day
30 for the applicable delivery year multiplied by the contract capacity.
31 The SOCA shall provide¹]² for a defined amount of electric
32 capacity for the term of the transaction of not less than²[15 years,]
33 seven years or not more than 10 years,² and '[that provides]' for
34 '[such payment] ²such² payments² [made pursuant to paragraph
35 (1)]¹]² to be a fully non-bypassable charge, with such an order, once
36 issued, being irrevocable;

37 "Standard offer capacity price" or "SOCP" means the capacity
38 price that is fixed for the term of the SOCA and²which² is the
39 ²[minimum]² price to be received by '[an]' eligible '[generator]
40 generators'¹ under a board-approved SOCA;

41 "Stranded cost" means the amount by which the net cost of an
42 electric public utility's electric generating assets or electric power
43 purchase commitments, as determined by the board consistent with
44 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the
45 market value of those assets or contractual commitments in a

1 competitive supply marketplace and the costs of buydowns or
2 buyouts of power purchase contracts;

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

10 "Thermal efficiency" means the useful electric energy output of a
11 facility, plus the useful thermal energy output of the facility,
12 expressed as a percentage of the total energy input to the facility;

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

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

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

33 "Transmission and distribution system" means, with respect to an
34 electric public utility, any facility or equipment that is used for the
35 transmission, distribution or delivery of electricity to the customers
36 of the electric public utility including, but not limited to, the land,
37 structures, meters, lines, switches and all other appurtenances
38 thereof and thereto, owned or controlled by the electric public
39 utility within this State; and

40 "Universal service" means any service approved by the board
41 with the purpose of assisting low-income residential customers in
42 obtaining or retaining electric generation or delivery service.
43 (cf: P.L.2010, c.57, s.1)
44

45 3. (New section) Notwithstanding any provisions of the
46 "Administrative Procedure Act," P. L. 1968, c.410 (C.52:14B-1 et
47 seq.) to the contrary, the board shall ²[], within 10 days of the
48 effective date of P.L. , c. (C.) (pending before the Legislature

1 as this bill),]² initiate ²and complete² a proceeding ²[on] in
2 accordance with² the schedule set forth in this section ²[allowing
3 such proceeding to be completed]² to support the commencement
4 of the LCAPP ²[no later than January 31, 2011, and shall adopt,
5 after notice, the opportunity for comment, and public hearing on the
6 schedule set forth in this section, the following requirements for the
7 LCAPP]²:

8 ²[a. the establishment of the LCAPP that allows for offering
9 financially-settled SOCAs for the purpose of facilitating the
10 development of eligible generators;

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

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

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

17 c. the participation of selected eligible generators with board
18 approved, executed SOCAs in and clearing of the base residual
19 auction conducted by PJM and scheduled to commence on May 2,
20 2011, as part of PJM's reliability pricing model for the delivery
21 year 2015;

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

24 e. that electric public utilities shall procure at least 500
25 megawatts and not more than ¹[1500] 1,000¹ megawatts of
26 financially-settled SOCAs from the eligible generators;

27 f. ¹[that no single eligible generator or its affiliate may enter
28 into more than 900 megawatts of financially-settled standard offer
29 capacity agreements;

30 g.]¹

31 a. The board shall initiate the proceeding within 30 days of the
32 effective date of P.L. , c. (C.) (pending before the Legislature
33 as this bill), and allow such proceeding to be completed no later
34 than March 1, 2011 to allow for the commencement of the LCAPP.
35 The SOCA or SOCAs resulting from that proceeding shall be
36 awarded, executed and approved by the board with a written board
37 order no later than April 15, 2011. The LCAPP shall require
38 selected eligible generators with board approved and executed
39 SOCAs to participate and be accepted as a capacity resource in the
40 base residual auction conducted by PJM and scheduled to
41 commence either on May 2, 2011, as part of PJM's reliability
42 pricing model for the delivery year 2015, or May 2012, as part of
43 PJM's reliability pricing model for the delivery year 2016;

44 b. The board shall require, within 10 days of the effective date
45 of P.L. , c. (C.)(pending before the Legislation as this bill) that
46 the electric public utilities within the State retain an agent to

1 administer the LCAPP. The agent retained in accordance with this
 2 section shall be responsible for:

3 (1) assisting the board with the establishment of the LCAPP that
 4 allows for offering financially-settled SOCAs for the purpose of
 5 facilitating the development of eligible generators;

6 (2) prequalifying eligible generators for participation in the
 7 LCAPP through a showing of environmental, economic, and
 8 community benefits, and through demonstration of reasonable
 9 certainty of completion of development, construction and permitting
 10 activities necessary to meet the desired in-service date. Eligible
 11 generators must prequalify by April 1, 2011 and seek a SOCA by
 12 submitting an offer price and term by April 1, 2011; and

13 (3) recommending to the board the selection of winning eligible
 14 generators based on the net benefit to ratepayers of each
 15 prequalified eligible generator's offer price and term. Eligible
 16 generators that are located in an "area in need of redevelopment" in
 17 accordance with the "Local Redevelopment and Housing Law,"
 18 P.L.1992, c.79 (C.40A:12A-1 et seq.) or a brownfield development
 19 area in accordance with the "Brownfield and Contaminated Site
 20 Remediation Act," P.L.2005, c.223 (C.58:10B-1 et seq.), and
 21 eligible generators that can enter commercial operation for delivery
 22 year 2015, shall have a weighted preference in addition to the net
 23 benefit to ratepayers ranking provided for in this subsection.
 24 Eligible generators shall also indicate the amount of capacity they
 25 are offering in the LCAPP.

26 c. In the proceeding initiated by the board pursuant to this
 27 section, the board shall adopt, after notice, the opportunity for
 28 comment, and public hearing, an order addressing the following
 29 requirements for the LCAPP:

30 (1) that electric public utilities shall procure 1,000 megawatts of
 31 financially-settled SOCAs from eligible generators, which shall
 32 include new generation capacity for the 2015 or 2016 delivery year;

33 (2)² that eligible generators participating in the LCAPP shall be
 34 required to offer ²[the maximum] a² quantity, in megawatts, ²offer
 35 a price per megawatt-day, and a term² of the SOCA ²[at the
 36 standard offer ¹capacity¹ price of \$232.75 per megawatt per day,
 37 which represents a discount to the most recent clearing price
 38 established by the base residual auction conducted by the PJM in
 39 May, 2010 as part of the PJM's reliability pricing model] to be
 40 evaluated by the agent and approved by the board²;

41 ¹[h.] ²[g.¹](3)² that ², taking into consideration the agent's
 42 recommendation,² the board ²[select] approve the selected² ¹[an]¹
 43 eligible ¹[generator] generators¹ from among the ²qualified²
 44 eligible generators participating in the LCAPP for the award of
 45 ²[a]² board-approved long-term financially-settled ²[SOCA]
 46 SOCAs² for a term of not less than ²[15 years] seven years or more

1 than 10 years at the offer price and term of each selected eligible
 2 generator²; ¹[.]¹

3 ²(4) that the board establish a method and the contract terms for
 4 providing for selected eligible generators to receive payments from
 5 the electric public utilities for the difference between the SOCP and
 6 the RCP multiplied by the SOCA capacity in the event the SOCP is
 7 greater than the RCP for any applicable delivery year and for
 8 providing for electric public utilities to receive refunds from the
 9 selected eligible generators for the difference between the SOCP
 10 and the RCP multiplied by the SOCA capacity in the event the RCP
 11 is greater than the SOCP for any applicable delivery year;

12 (5) that no single eligible generator or its affiliate may enter into
 13 more than 700 megawatts of financially-settled standard offer
 14 capacity agreements;

15 (6) that the board establish criteria associated with the
 16 prequalification of eligible generators for participation in the
 17 LCAPP through a showing of environmental, economic, and
 18 community benefits, and through demonstration of reasonable
 19 certainty of completion of development, construction and permitting
 20 activities necessary to meet the desired in-service date;

21 (7) that the board establish a method for evaluating and
 22 comparing the net present value of each eligible generator's offer
 23 price and term;

24 (8) that the board establish a method for providing for a weighted
 25 preference for eligible generators in an "area in need of
 26 redevelopment" in accordance with the "Local Redevelopment and
 27 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or a
 28 brownfield development area in accordance with the "Brownfield
 29 and Contaminated Site Remediation Act," P.L.2005, c.223
 30 (C.58:10B-1 et seq.), and a weighted preference for eligible
 31 generators that can enter commercial operation for delivery year
 32 2015;²

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

41 ¹[j.] ^{i.} ¹ (9)² that ¹[an] ¹ eligible ¹[generator] generators¹
 42 ²[selected] approved² by the board, enter into a SOCA with each of
 43 the State's four electric public utilities provided that each electric
 44 public utility shall pay ²or receive refunds pursuant to² ¹[a] an
 45 annually calculated¹ load-ratio share ²of the capacity² of the SOCA
 46 ²[price]² based upon each electric public utility's annual forecasted
 47 peak demand as determined by PJM;

1 ¹[k.] ²[j.¹] (10)² that the resulting SOCA shall bind the
 2 electric public utilities to the board approved SOCAs with ¹[a]¹
 3 selected eligible ¹[generator] generators¹ for ²[not less than 15
 4 years] the term of the SOCA²;

5 ¹[l.] ²[k.¹] (11)² that the selected eligible generators with
 6 executed SOCAs shall offer the capacity, electricity, and ancillary
 7 services into the PJM wholesale markets as required by the PJM
 8 market rules; ²and²

9 ¹[m.] ²[l.¹] (12)² that selected eligible generators with
 10 executed SOCAs shall participate in and clear the annual base
 11 residual auction conducted by the PJM as part of ²[PJM's] its²
 12 reliability pricing model for each delivery year of the entire term of
 13 the agreement ²[;] ².

14 ¹[n.] ²[m.¹] that the] d. The² board shall order the full recovery
 15 of all costs associated with the electric public utilities' resulting
 16 SOCAs ², and the costs of the agent retained pursuant to subsection
 17 b. of this section,² from ratepayers through a non-bypassable,
 18 irrevocable charge;

19 ²[(1) notwithstanding] e. Notwithstanding² any other provision
 20 of law, each ²[LCAPP standard offer capacity agreement] SOCA²
 21 shall become irrevocable upon the issuance of such order
 22 ²approving a SOCA²; and

23 ²[(2) neither] f. Neither² the board or any other governmental
 24 entity shall have the authority, directly or indirectly, legally or
 25 equitably, to rescind, alter, repeal, modify or amend ²a SOCA or²
 26 an LCAPP cost rate order, to revalue, re-evaluate^{2, 2} or revise the
 27 amount of LCAPP costs, or to determine that the LCAPP charges or
 28 the revenues to recover the LCAPP charges for such SOCAs are
 29 unjust or unreasonable ²[; and

30 ¹[o.] n.¹ that the board shall have complete discretion to
 31 approve any and all SOCAs resulting from the LCAPP]².

32
 33 ²4. (New section) If one or more provisions in P.L. _____,
 34 c. (C.)(pending before the Legislation as this bill) are challenged
 35 in an administrative or judicial proceeding, the board may suspend
 36 the applicability of the challenged provision or provisions during
 37 the pendency of those proceedings until final resolution of the
 38 challenge and any appeals, and shall issue such orders and take such
 39 other actions as it deems appropriate to ensure that the provisions
 40 that are not challenged are implemented expeditiously to achieve
 41 the public purposes of P.L. _____, c. (C.)(pending before the
 42 Legislature as this bill).²

43
 44 ²5. (New section) Notwithstanding the provisions of any other
 45 law, rule, regulation, or order to the contrary, gas public utilities

1 shall not impose a societal benefits charge pursuant to section 12 of
2 P.L.1999, c.23 (C.48:3-60), or any other charge designed to recover
3 the costs for social, energy efficiency, conservation, environmental
4 or renewable energy programs, on natural gas delivery service or
5 commodity that is used to generate electricity that is sold for
6 resale.²

7

8 ²[4.] 6.² This act shall take effect immediately.