

[Fourth Reprint]

**SENATE, No. 2381**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

INTRODUCED OCTOBER 18, 2010

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Morris and Somerset)**

**Assemblyman UPENDRA J. CHIVUKULA**

**District 17 (Middlesex and Somerset)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Essex, Morris, Somerset and Union)**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Camden)**

**Co-Sponsored by:**

**Assemblymen Giblin, Amodeo, Wisniewski, Connors and Assemblywoman Rodriguez**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on January 10, 2011.



**(Sponsorship Updated As Of: 1/11/2011)**

1 AN ACT establishing a long-term capacity agreement pilot program  
2 to promote construction of qualified <sup>2</sup>[in-State]<sup>2</sup> 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 <sup>1</sup>[which, as  
14 estimated by the Board of Public Utilities, costs New Jersey  
15 ratepayers an additional \$1 billion per year for capacity]<sup>1</sup>;

16 b. The PJM reliability pricing model <sup>1</sup>[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 <sup>2</sup>[in] available to the region and<sup>2</sup>  
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 <sup>2</sup>[in] available to the region and<sup>2</sup> the State<sup>1</sup>;

32 c. The PJM reliability pricing model <sup>1</sup>[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 <sup>2</sup>[were] was<sup>2</sup> previously denied by  
42 FERC and any future implementation is uncertain at this time<sup>1</sup>;

**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:**

<sup>1</sup>Senate SEN committee amendments adopted November 15, 2010.

<sup>2</sup>Assembly ATU committee amendments adopted December 13, 2010.

<sup>3</sup>Assembly floor amendments adopted January 6, 2011.

<sup>4</sup>Assembly floor amendments adopted January 10, 2011.

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

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, <sup>1</sup>[New Jersey continues to send] New  
16 <sup>2</sup>[Jersey's] Jersey is experiencing an electric power<sup>2</sup> capacity  
17 deficit <sup>2</sup>and high power prices that<sup>2</sup> may result in the loss of<sup>1</sup> jobs  
18 and investment <sup>1</sup>[out-of-state to] due to the necessity for the<sup>1</sup>  
19 upgrade <sup>1</sup>of<sup>1</sup> 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 <sup>2</sup>[, in-State]<sup>2</sup> electric  
23 <sup>2</sup>[generating] generation<sup>2</sup> facilities, New Jersey has become more  
24 reliant on <sup>2</sup>[out-of-state]<sup>2</sup> 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 <sup>2</sup>are<sup>2</sup> 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. <sup>1</sup>[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.]<sup>1</sup> New Jersey's in-State fleet of electric generation facilities  
40 <sup>1</sup>[are] is<sup>1</sup> 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 <sup>1</sup>[j.] i.<sup>1</sup> Fostering and incentivizing the development of <sup>1</sup>a  
44 limited program for<sup>1</sup> new <sup>2</sup>[in-State]<sup>2</sup> electric generation facilities  
45 <sup>2</sup>[<sup>1</sup>, while potential enhancements to the reliability pricing model  
46 and other PJM mechanisms are under consideration,<sup>1</sup>]<sup>2</sup> will <sup>2</sup>help

1 ensure sufficient capacity to stabilize power prices to<sup>2</sup> assist the  
2 State's economic development <sup>2</sup>[by creating] and create<sup>2</sup>  
3 '[numerous]'<sup>1</sup> 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 <sup>2</sup>"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.<sup>2</sup>

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 <sup>2</sup>"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;<sup>2</sup>

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 <sup>2</sup>[and shall be] ,<sup>2</sup> 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 <sup>2</sup>[new, natural gas  
43 fired, combined-cycle] base load<sup>2</sup> <sup>4</sup>or mid-merit<sup>4</sup> electric power  
44 <sup>2</sup>[generating] generation<sup>2</sup> facility <sup>2</sup>[with a net summer output  
45 rating of 100 megawatts or larger, that is physically located within  
46 the State of New Jersey.] including, but not limited to, an on-site  
47 generation facility that qualifies as a capacity resource under PJM



1 criteria <sup>4</sup>[but exclusive of a combustion turbine generation facility  
2 that is directly interconnected with the electric public utilities'  
3 transmission or distribution system,<sup>2</sup><sup>4</sup> and that commences  
4 construction <sup>4</sup>[<sup>2</sup>of new generation<sup>2</sup>]<sup>4</sup> after the effective date of  
5 P.L. , c. (C. ) (pending before the Legislature as this bill);

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

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

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

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

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

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

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

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

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

1 event that a gas public utility is not part of a holding company legal  
2 structure, a related competitive business segment of that gas public  
3 utility may be a gas supplier, provided that related competitive  
4 business segment is structurally separated from the gas public  
5 utility, and provided that the interactions between the gas public  
6 utility and the related competitive business segment are subject to  
7 the affiliate relations standards adopted by the board pursuant to  
8 subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);

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

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

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

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

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

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

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

47 <sup>2</sup>"Locational deliverability area" or "LDA" means one or more of  
48 the zones within the PJM region which are used to evaluate area

1 transmission constraints and reliability issues including electric  
2 public utility company zones, sub-zones, and combinations of  
3 zones.<sup>2</sup>

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

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

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

31 <sup>4</sup>"Mid-merit electric power generation facility" means a  
32 generation facility that operates at a capacity factor between  
33 baseload generation facilities and peaker generation facilities.<sup>4</sup>

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

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

38 "Offshore wind energy" means electric energy produced by a  
39 qualified offshore wind project;

40 "Offshore wind renewable energy certificate" or "OREC" means  
41 a certificate, issued by the board or its designee, representing the  
42 environmental attributes of one megawatt hour of electric  
43 generation from a qualified offshore wind project;

44 "Off-site end use thermal energy services customer" means an  
45 end use customer that purchases thermal energy services from an  
46 on-site generation facility, combined heat and power facility, or co-  
47 generation facility, and that is located on property that is separated

1 from the property on which the on-site generation facility,  
2 combined heat and power facility, or co-generation facility is  
3 located by more than one easement, public thoroughfare, or  
4 transportation or utility-owned right-of-way;

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

21 "Person" means an individual, partnership, corporation,  
22 association, trust, limited liability company, governmental entity or  
23 other legal entity;

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

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

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

1 Securities and Exchange Commission, or its successor, determines,  
2 after notice and opportunity for hearing, directly or indirectly, to  
3 exercise, either alone or pursuant to an arrangement or  
4 understanding with one or more other persons, such a controlling  
5 influence over the management or policies of an electric public  
6 utility or a gas public utility or public utility holding company as to  
7 make it necessary or appropriate in the public interest or for the  
8 protection of investors or consumers that such person be subject to  
9 the obligations, duties, and liabilities imposed in the Public Utility  
10 Holding Company Act of 1935 or its successor;

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

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

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

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

34 "Reliability pricing model" or "RPM" means PJM's capacity-  
35 market model, and its successors, that secures capacity on behalf of  
36 electric load serving entities to satisfy load obligations not satisfied  
37 through the output of electric generation facilities owned by those  
38 entities<sup>2, 2 1</sup> or otherwise secured by those entities through bilateral  
39 contracts<sup>1</sup> ;

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

46 "Resource clearing price" or "RCP" means the clearing price  
47 established for the applicable locational deliverability area by the  
48 base residual auction<sup>1</sup> or incremental auction<sup>1 2</sup>, as determined by

1 the optimization algorithm for each auction,<sup>2</sup> conducted by PJM as  
2 part of PJM's reliability pricing model;

3 "Resource recovery facility" means a solid waste facility  
4 constructed and operated for the incineration of solid waste for  
5 energy production and the recovery of metals and other materials  
6 for reuse;

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

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

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

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

45 "Social program" means a program implemented with board  
46 approval to provide assistance to a group of disadvantaged  
47 customers, to provide protection to consumers, or to accomplish a  
48 particular societal goal, and includes, but is not limited to, the

1 winter moratorium program, utility practices concerning "bad debt"  
2 customers, low income assistance, deferred payment plans,  
3 weatherization programs, and late payment and deposit policies, but  
4 does not include any demand side management program or any  
5 environmental requirements or controls;

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

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

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

19 "Standard offer capacity agreement" or "SOCA" means a  
20 financially-settled transaction agreement, approved by board order,  
21 that provides for <sup>1</sup>[an]<sup>1</sup> eligible <sup>1</sup>[generator] generators <sup>2</sup>[(1)<sup>1</sup>]<sup>2</sup>  
22 to receive <sup>2</sup>[a payment] payments<sup>2</sup> from <sup>2</sup>[one or more] the<sup>2</sup>  
23 electric public utilities <sup>2</sup>[, in the event the SOCP is greater than the  
24 <sup>1</sup>base residual auction<sup>1</sup> RCP for any applicable delivery year, <sup>1</sup>and<sup>1</sup>  
25 that <sup>1</sup>[provides for]<sup>1</sup> such payment <sup>1</sup>[to be] is<sup>1</sup> equal to the  
26 difference between the SOCP and the <sup>1</sup>base residual auction<sup>1</sup> RCP  
27 multiplied by the contract capacity <sup>1</sup>[, that provides] ; and (2) to  
28 remit a payment to one or more electric public utilities for the  
29 benefit of ratepayers, in the event the base residual auction RCP is  
30 greater than \$290 per megawatt day for any applicable delivery  
31 year, and that such payment is equal to the result of the difference  
32 between the base residual auction RCP and \$290 per megawatt day  
33 for the applicable delivery year multiplied by the contract capacity.  
34 The SOCA shall provide<sup>1</sup>]<sup>2</sup> for a defined amount of electric  
35 capacity for <sup>4</sup>[the term of the transaction of not less than] a term to  
36 be determined by the board but not to exceed 15 years,<sup>4</sup> <sup>2</sup>[15  
37 years.] <sup>4</sup>[seven years or not more than 10 years,<sup>2</sup>]<sup>4</sup> and <sup>1</sup>[that  
38 provides]<sup>1</sup> for <sup>1</sup>[such payment] <sup>2</sup>such<sup>2</sup> payments <sup>2</sup>[made pursuant  
39 to paragraph (1)<sup>1</sup>]<sup>2</sup> to be a fully non-bypassable charge, with such  
40 an order, once issued, being irrevocable;

41 "Standard offer capacity price" or "SOCP" means the capacity  
42 price that is fixed for the term of the SOCA and <sup>2</sup>which<sup>2</sup> is the  
43 <sup>2</sup>[minimum]<sup>2</sup> price to be received by <sup>1</sup>[an]<sup>1</sup> eligible <sup>1</sup>[generator]  
44 generators<sup>1</sup> under a board-approved SOCA;

45 "Stranded cost" means the amount by which the net cost of an  
46 electric public utility's electric generating assets or electric power

1 purchase commitments, as determined by the board consistent with  
2 the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the  
3 market value of those assets or contractual commitments in a  
4 competitive supply marketplace and the costs of buydowns or  
5 buyouts of power purchase contracts;

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

13 "Thermal efficiency" means the useful electric energy output of a  
14 facility, plus the useful thermal energy output of the facility,  
15 expressed as a percentage of the total energy input to the facility;

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

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

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

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

43 "Universal service" means any service approved by the board  
44 with the purpose of assisting low-income residential customers in  
45 obtaining or retaining electric generation or delivery service.

46 (cf: P.L.2010, c.57, s.1)



1 3. (New section) Notwithstanding any provisions of the  
 2 “Administrative Procedure Act,” P. L. 1968, c.410 (C.52:14B-1 et  
 3 seq.) to the contrary, the board shall <sup>2</sup>[], within 10 days of the  
 4 effective date of P.L. , c. (C. ) (pending before the Legislature  
 5 as this bill),<sup>2</sup> initiate <sup>2</sup>and complete<sup>2</sup> a proceeding <sup>2</sup>[on] in  
 6 accordance with<sup>2</sup> the schedule set forth in this section <sup>2</sup>[allowing  
 7 such proceeding to be completed]<sup>2</sup> to support the commencement  
 8 of the LCAPP <sup>2</sup>[no later than January 31, 2011, and shall adopt,  
 9 after notice, the opportunity for comment, and public hearing on the  
 10 schedule set forth in this section, the following requirements for the  
 11 LCAPP]<sup>2</sup>:

12 <sup>2</sup>[a. the establishment of the LCAPP that allows for offering  
 13 financially-settled SOCAs for the purpose of facilitating the  
 14 development of eligible generators;

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

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

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

21 c. the participation of selected eligible generators with board  
 22 approved, executed SOCAs in and clearing of the base residual  
 23 auction conducted by PJM and scheduled to commence on May 2,  
 24 2011, as part of PJM’s reliability pricing model for the delivery  
 25 year 2015;

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

28 e. that electric public utilities shall procure at least 500  
 29 megawatts and not more than <sup>1</sup>[1500] 1,000<sup>1</sup> megawatts of  
 30 financially-settled SOCAs from the eligible generators;

31 f. <sup>1</sup>[that no single eligible generator or its affiliate may enter  
 32 into more than 900 megawatts of financially-settled standard offer  
 33 capacity agreements;

34 g.]<sup>1</sup>

35 a. The board shall initiate <sup>4</sup>[the proceeding within 30 days of  
 36 the effective date of P.L. , c. (C. ) (pending before the  
 37 Legislature as this bill),]<sup>4</sup> and allow such proceeding to be  
 38 completed no later than <sup>4</sup>[March 1, 2011] 60 days after the  
 39 effective date of P.L. , c. (C. ) (pending before the Legislature  
 40 as this bill)<sup>4</sup> to allow for the commencement of the LCAPP. The  
 41 SOCA or SOCAs resulting from that proceeding shall be awarded  
 42 <sup>4</sup>[.] and<sup>4</sup> executed <sup>4</sup>[and approved by the board with a written  
 43 board order]<sup>4</sup> no later than <sup>4</sup>[April 15, 2011] 30 days after the  
 44 approval of the form of the SOCA or SOCAs<sup>4</sup>. The LCAPP shall  
 45 require selected eligible generators with board approved and  
 46 executed SOCAs to participate and be accepted as a capacity

1 resource in the base residual auction conducted by PJM <sup>4</sup> [and  
2 scheduled to commence either on May 2, 2011, as part of PJM’s  
3 reliability pricing model for the delivery year 2015, or May 2012,  
4 as part of PJM’s reliability pricing model for the delivery year  
5 2016]<sup>4</sup>;

6 b. The board shall require <sup>4</sup> [, within 10 days of the effective  
7 date of P.L. , c. (C. ) (pending before the Legislation as this  
8 bill)]<sup>4</sup> that the electric public utilities within the State retain an  
9 agent <sup>4</sup>, with the approval of the board,<sup>4</sup> to administer the LCAPP.  
10 The agent retained in accordance with this section shall <sup>4</sup>, on behalf  
11 of the board,<sup>4</sup> be responsible for:

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

15 (2) prequalifying eligible generators for participation in the  
16 LCAPP through a showing of environmental, economic, and  
17 community benefits, and through demonstration of reasonable  
18 certainty of completion of development, construction and permitting  
19 activities necessary to meet the desired in-service date <sup>4</sup> [. Eligible  
20 generators must prequalify by April 1, 2011 and seek a SOCA by  
21 submitting an offer price and term by April 1, 2011]<sup>4</sup> ; and

22 (3) recommending to the board the selection of winning eligible  
23 generators based on the net benefit to ratepayers of each  
24 prequalified eligible generator’s offer price and term. <sup>4</sup> [Eligible  
25 generators that are located in an “area in need of redevelopment” in  
26 accordance with the “Local Redevelopment and Housing Law,”  
27 P.L.1992, c.79 (C.40A:12A-1 et seq.) or a brownfield development  
28 area in accordance with the “Brownfield and Contaminated Site  
29 Remediation Act,” P.L.2005, c.223 (C.58:10B-1 et seq.), and  
30 eligible] Eligible<sup>4</sup> generators that can enter commercial operation  
31 for delivery year 2015 <sup>4</sup> [, shall have] are to be provided with<sup>4</sup> a  
32 weighted preference in addition to the net benefit <sup>4</sup> [to ratepayers  
33 ranking provided for in this subsection] ratepayer test<sup>4</sup> . Eligible  
34 generators shall also indicate the amount of capacity they are  
35 offering in the LCAPP.

36 c. In the proceeding initiated by the board pursuant to this  
37 section, the board shall adopt, after notice, the opportunity for  
38 comment, and public hearing, an order addressing the following  
39 requirements for the LCAPP:

40 (1) that electric public utilities shall procure <sup>3</sup> [1,000] 2,000<sup>3</sup>  
41 megawatts of financially-settled SOCAs from eligible generators,  
42 which shall include new generation capacity <sup>4</sup> [for the 2015 or 2016  
43 delivery year]<sup>4</sup>;

44 (2)<sup>2</sup> that eligible generators participating in the LCAPP shall be  
45 required to offer <sup>2</sup> [the maximum] a<sup>2</sup> quantity, in megawatts, <sup>2</sup>offer  
46 a price per megawatt-day, and a term<sup>2</sup>  of the SOCA <sup>2</sup> [at the

1 standard offer <sup>1</sup>capacity<sup>1</sup> price of \$232.75 per megawatt per day,  
2 which represents a discount to the most recent clearing price  
3 established by the base residual auction conducted by the PJM in  
4 May, 2010 as part of the PJM's reliability pricing model] to be  
5 evaluated by the agent and approved by the board<sup>2</sup>;

6 <sup>1</sup>[h.] <sup>2</sup>[g. <sup>1</sup>] (3)<sup>2</sup> that <sup>2</sup>, taking into consideration the agent's  
7 recommendation,<sup>2</sup> the board <sup>2</sup>[select] approve the selected<sup>2</sup> <sup>1</sup>[an]<sup>1</sup>  
8 eligible <sup>1</sup>[generator] generators<sup>1</sup> from among the <sup>2</sup>qualified<sup>2</sup>  
9 eligible generators participating in the LCAPP for the award of  
10 <sup>2</sup>[a]<sup>2</sup> board-approved long-term financially-settled <sup>2</sup>[SOCA]  
11 SOCA<sup>2</sup> for a term <sup>4</sup>[of not less than] to be determined by the  
12 board but not to exceed 15 years<sup>4</sup> <sup>2</sup>[15 years] <sup>4</sup>[seven years or  
13 more than 10 years at the offer price and term of each selected  
14 eligible generator<sup>2</sup>]<sup>4</sup>; <sup>1</sup>[.]<sup>1</sup>

15 <sup>2</sup>(4) that the board establish a method and the contract terms for  
16 providing for selected eligible generators to receive payments from  
17 the electric public utilities for the difference between the SOCP and  
18 the RCP multiplied by the SOCA capacity in the event the SOCP is  
19 greater than the RCP for any applicable delivery year and for  
20 providing for electric public utilities to receive refunds from the  
21 selected eligible generators for the difference between the SOCP  
22 and the RCP multiplied by the SOCA capacity in the event the RCP  
23 is greater than the SOCP for any applicable delivery year;

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

27 (6) that the board establish criteria associated with the  
28 prequalification of eligible generators for participation in the  
29 LCAPP through a showing of environmental, economic, and  
30 community benefits, and through demonstration of reasonable  
31 certainty of completion of development, construction and permitting  
32 activities necessary to meet the desired in-service date;

33 (7) that the board establish a method for evaluating and  
34 comparing the net<sup>4</sup>[present]<sup>4</sup> value<sup>4</sup> to ratepayers<sup>4</sup> of each eligible  
35 generator's offer price and term;

36 (8) that the board establish a method for providing<sup>4</sup>[for a  
37 weighted preference for eligible generators in an "area in need of  
38 redevelopment" in accordance with the "Local Redevelopment and  
39 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.) or a  
40 brownfield development area in accordance with the "Brownfield  
41 and Contaminated Site Remediation Act," P.L.2005, c.223  
42 (C.58:10B-1 et seq.), and]<sup>4</sup> a weighted preference for eligible  
43 generators that can enter commercial operation for delivery year  
44 2015;<sup>2</sup>

45 <sup>1</sup>[i.] <sup>2</sup>[h. <sup>1</sup>] that the selection of winning eligible generators give  
46 preference to those eligible generators located in "areas in need of

1 redevelopment” in accordance with the “Local Redevelopment and  
 2 Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et seq.), that based on  
 3 the board’s determination, can provide the greatest environmental,  
 4 economic, and community benefits, and can demonstrate certainty  
 5 of completion of development and permitting activities necessary to  
 6 meet the desired in-service date;

7 <sup>1</sup>[j.] <sup>2</sup>i. <sup>1</sup>(9)<sup>2</sup> that <sup>1</sup>[an]<sup>1</sup> eligible <sup>1</sup>[generator] generators<sup>1</sup>  
 8 <sup>2</sup>[selected] approved<sup>2</sup> by the board, enter into a SOCA with each of  
 9 the State’s four electric public utilities provided that each electric  
 10 public utility shall pay <sup>2</sup>or receive refunds pursuant to<sup>2</sup> <sup>1</sup>[a] an  
 11 annually calculated<sup>1</sup> load-ratio share <sup>2</sup>of the capacity<sup>2</sup> of the SOCA  
 12 <sup>2</sup>[price]<sup>2</sup> based upon each electric public utility’s annual forecasted  
 13 peak demand as determined by PJM;

14 <sup>1</sup>[k.] <sup>2</sup>j. <sup>1</sup>(10)<sup>2</sup> that the resulting SOCA shall bind the electric  
 15 public utilities to the board approved SOCAs with <sup>1</sup>[a]<sup>1</sup> selected  
 16 eligible <sup>1</sup>[generator] generators<sup>1</sup> for <sup>2</sup>[not less than 15 years] the  
 17 term of the SOCA<sup>2</sup>;

18 <sup>1</sup>[l.] <sup>2</sup>k. <sup>1</sup>(11)<sup>2</sup> that the selected eligible generators with  
 19 executed SOCAs shall offer the capacity, electricity, and ancillary  
 20 services into the PJM wholesale markets as required by the PJM  
 21 market rules; <sup>2</sup>and<sup>2</sup>

22 <sup>1</sup>[m.] <sup>2</sup>l. <sup>1</sup>(12)<sup>2</sup> that selected eligible generators with executed  
 23 SOCAs shall participate in and clear the annual base residual  
 24 auction conducted by the PJM as part of <sup>2</sup>[PJM’s] its<sup>2</sup> reliability  
 25 pricing model for each delivery year of the entire term of the  
 26 agreement <sup>2</sup>[;] <sup>2</sup>.

27 <sup>1</sup>[n.] <sup>2</sup>m. <sup>1</sup>that the] d. The<sup>2</sup> board shall order the full recovery  
 28 of all costs associated with the electric public utilities’ resulting  
 29 SOCAs <sup>2</sup>, and the costs of the agent retained pursuant to subsection  
 30 b. of this section,<sup>2</sup> from ratepayers through a non-bypassable,  
 31 irrevocable charge;

32 <sup>2</sup>[(1) notwithstanding] e. Notwithstanding<sup>2</sup> any other provision  
 33 of law, each <sup>2</sup>[LCAPP standard offer capacity agreement] SOCA<sup>2</sup>  
 34 shall become irrevocable upon the issuance of such order  
 35 <sup>2</sup>approving a SOCA<sup>2</sup>; and

36 <sup>2</sup>[(2) neither] f. Neither<sup>2</sup> the board or any other governmental  
 37 entity shall have the authority, directly or indirectly, legally or  
 38 equitably, to rescind, alter, repeal, modify or amend <sup>2</sup>a SOCA or<sup>2</sup>  
 39 an LCAPP cost rate order, to revalue, re-evaluate <sup>2</sup>,<sup>2</sup> or revise the  
 40 amount of LCAPP costs, or to determine that the LCAPP charges or  
 41 the revenues to recover the LCAPP charges for such SOCAs are  
 42 unjust or unreasonable <sup>2</sup>[; and

43 <sup>1</sup>[o.] n.<sup>1</sup> that the board shall have complete discretion to  
 44 approve any and all SOCAs resulting from the LCAPP]<sup>2</sup>.

1       <sup>24.</sup> (New section) If one or more provisions in P.L. \_\_\_\_\_,  
2 c. (C. \_\_\_\_\_)(pending before the Legislation as this bill) are challenged  
3 in an administrative or judicial proceeding, the board may suspend  
4 the applicability of the challenged provision or provisions during  
5 the pendency of those proceedings until final resolution of the  
6 challenge and any appeals, and shall issue such orders and take such  
7 other actions as it deems appropriate to ensure that the provisions  
8 that are not challenged are implemented expeditiously to achieve  
9 the public purposes of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending before the  
10 Legislature as this bill).<sup>2</sup>

11  
12       <sup>25.</sup> (New section) Notwithstanding the provisions of any other  
13 law, rule, regulation, or order to the contrary, gas public utilities  
14 shall not impose a societal benefits charge pursuant to section 12 of  
15 P.L.1999, c.23 (C.48:3-60), or any other charge designed to recover  
16 the costs for social, energy efficiency, conservation, environmental  
17 or renewable energy programs, on natural gas delivery service or  
18 commodity that is used to generate electricity that is sold for  
19 resale.<sup>2</sup>

20  
21       <sup>2</sup>[4.] 6.<sup>2</sup> This act shall take effect immediately.