



(continued)

**VETO MESSAGE:** No

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**NEWSPAPER ARTICLES:** Yes

"Christie signs law promoting more in-state power plants," The Star-Ledger, 1-29-11

LAW/KR

§§1,3,4 -  
C.48:3-98.2 to  
48:3-98.4  
§5 - C.48:3-60.1

P.L.2011, CHAPTER 9, *approved January 28, 2011*  
Senate, No. 2381 (*Fourth Reprint*)

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,

**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 provide necessary incentives, such as the expansion of the “New  
2 Entry Price Adjustment” mechanism for the construction of new  
3 capacity, including new intermediate and base load plants, by  
4 allowing new resources to qualify and receive a guaranteed capacity  
5 price for a longer period of time. However, the implementation of  
6 similar structural changes <sup>2</sup> [were] was<sup>2</sup> previously denied by  
7 FERC and any future implementation is uncertain at this time<sup>1</sup>;

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

16 e. Due to PJM’s lack of authority to order new generation as a  
17 means to mitigate local electrical system reliability concerns and  
18 solve other issues related to the lack of local generation, and since  
19 only PJM has the authority to order transmission system upgrades  
20 and expansions to mitigate electrical system reliability concerns  
21 caused by transmission system overloads or the lack of local  
22 generation being developed, <sup>1</sup> [New Jersey continues to send] New  
23 <sup>2</sup> [Jersey's] Jersey is experiencing an electric power<sup>2</sup> capacity  
24 deficit <sup>2</sup> and high power prices that<sup>2</sup> may result in the loss of<sup>1</sup> jobs  
25 and investment <sup>1</sup> [out-of-state to] due to the necessity for the<sup>1</sup>  
26 upgrade <sup>1</sup> of<sup>1</sup> the transmission system to the west of New Jersey to  
27 ensure a reliable supply of electricity and capacity from generators  
28 located outside of New Jersey;

29 f. As a result of a lack of new, efficient <sup>2</sup> [in-State]<sup>2</sup> electric  
30 <sup>2</sup> [generating] generation<sup>2</sup> facilities, New Jersey has become more  
31 reliant on <sup>2</sup> [out-of-state]<sup>2</sup> coal-fired power plants;

32 g. The PJM State of the Market Report for 2009 by the PJM  
33 Independent Market Monitor states that there <sup>2</sup> are<sup>2</sup> over 11,000  
34 megawatts (“MW”) of coal-fired units at risk of retirement due to  
35 their inability to cover their avoided costs;

36 h. <sup>1</sup> [Many of New Jersey’s in-State generating facilities, as a  
37 result of new emission reduction requirements, will need to have  
38 installed new emissions control technology or retire them by April  
39 30, 2015. In one instance, the rule will have a significant impact on  
40 New Jersey’s in-State fleet of electric generation facilities, as the  
41 rule imposes nitrogen oxide (“NOx”) emission limits that will likely  
42 require the retirement of up to 102 combustion turbines,  
43 representing approximately 2,800 MW, and five older New Jersey  
44 steam electric generating units, representing approximately 800  
45 MW, by April 30, 2015;

1 i.]<sup>1</sup> New Jersey's in-State fleet of electric generation facilities  
2 <sup>1</sup>[are] is<sup>1</sup> aging, with over 50 percent of these facilities being more  
3 than 30 years old and over 70 percent being more than 20 years old;  
4 and

5 <sup>1</sup>[j.] i.<sup>1</sup> Fostering and incentivizing the development of <sup>1</sup>a  
6 limited program for<sup>1</sup> new <sup>2</sup>[in-State]<sup>2</sup> electric generation facilities  
7 <sup>2</sup>[, while potential enhancements to the reliability pricing model  
8 and other PJM mechanisms are under consideration,<sup>1</sup><sup>2</sup> will <sup>2</sup>help  
9 ensure sufficient capacity to stabilize power prices to<sup>2</sup> assist the  
10 State's economic development <sup>2</sup>[by creating] and create<sup>2</sup>  
11 <sup>1</sup>[numerous]<sup>1</sup> opportunities for employment in the energy sector  
12 while helping to reduce the cost and volatility of electricity prices in  
13 New Jersey.

14

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

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

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

25 <sup>2</sup>"Base load electric power generation facility" means an electric  
26 power generation facility intended to be operated at a greater than  
27 50 percent capacity factor including, but not limited to, a combined  
28 cycle power facility and a combined heat and power facility;<sup>2</sup>

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

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

40 "Basic generation service" or "BGS" means electric generation  
41 service that is provided, to any customer that has not chosen an  
42 alternative electric power supplier, whether or not the customer has  
43 received offers for competitive supply options, including, but not  
44 limited to, any customer that cannot obtain such service from an  
45 electric power supplier for any reason, including non-payment for  
46 services. Basic generation service is not a competitive service and  
47 shall be fully regulated by the board;

1 "Basic generation service provider" or "provider" means a  
2 provider of basic generation service;

3 "Basic generation service transition costs" means the amount by  
4 which the payments by an electric public utility for the procurement  
5 of power for basic generation service and related ancillary and  
6 administrative costs exceeds the net revenues from the basic  
7 generation service charge established by the board pursuant to  
8 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,  
9 together with interest on the balance at the board-approved rate, that  
10 is reflected in a deferred balance account approved by the board in  
11 an order addressing the electric public utility's unbundled rates,  
12 stranded costs, and restructuring filings pursuant to P.L.1999, c.23  
13 (C.48:3-49 et al.). Basic generation service transition costs shall  
14 include, but are not limited to, costs of purchases from the spot  
15 market, bilateral contracts, contracts with non-utility generators,  
16 parting contracts with the purchaser of the electric public utility's  
17 divested generation assets, short-term advance purchases, and  
18 financial instruments such as hedging, forward contracts, and  
19 options. Basic generation service transition costs shall also include  
20 the payments by an electric public utility pursuant to a competitive  
21 procurement process for basic generation service supply during the  
22 transition period, and costs of any such process used to procure the  
23 basic generation service supply;

24 "Board" means the New Jersey Board of Public Utilities or any  
25 successor agency;

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

1 "Bondable stranded costs rate order" means one or more  
2 irrevocable written orders issued by the board pursuant to P.L.1999,  
3 c.23 (C.48:3-49 et al.) which determines the amount of bondable  
4 stranded costs and the initial amount of transition bond charges  
5 authorized to be imposed to recover such bondable stranded costs,  
6 including the costs to be financed from the proceeds of the  
7 transition bonds, as well as on-going costs associated with servicing  
8 and credit enhancing the transition bonds, and provides the electric  
9 public utility specific authority to issue or cause to be issued,  
10 directly or indirectly, transition bonds through a financing entity  
11 and related matters as provided in P.L.1999, c.23, which order shall  
12 become effective immediately upon the written consent of the  
13 related electric public utility to such order as provided in P.L.1999,  
14 c.23;

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

26 "British thermal unit" or "Btu" means the amount of heat  
27 required to increase the temperature of one pound of water by one  
28 degree Fahrenheit;

29 "Broker" means a duly licensed electric power supplier that  
30 assumes the contractual and legal responsibility for the sale of  
31 electric generation service, transmission or other services to end-use  
32 retail customers, but does not take title to any of the power sold, or  
33 a duly licensed gas supplier that assumes the contractual and legal  
34 obligation to provide gas supply service to end-use retail customers,  
35 but does not take title to the gas;

36 "Buydown" means an arrangement or arrangements involving the  
37 buyer and seller in a given power purchase contract and, in some  
38 cases third parties, for consideration to be given by the buyer in  
39 order to effectuate a reduction in the pricing, or the restructuring of  
40 other terms to reduce the overall cost of the power contract, for the  
41 remaining succeeding period of the purchased power arrangement  
42 or arrangements;

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

47 "Class I renewable energy" means electric energy produced from  
48 solar technologies, photovoltaic technologies, wind energy, fuel

1 cells, geothermal technologies, wave or tidal action, and methane  
2 gas from landfills or a biomass facility, provided that the biomass is  
3 cultivated and harvested in a sustainable manner;

4 "Class II renewable energy" means electric energy produced at a  
5 resource recovery facility or hydropower facility, provided that  
6 such facility is located where retail competition is permitted and  
7 provided further that the Commissioner of Environmental  
8 Protection has determined that such facility meets the highest  
9 environmental standards and minimizes any impacts to the  
10 environment and local communities;

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

14 <sup>2</sup>"Combined cycle power facility" means a generation facility  
15 that combines two or more thermodynamic cycles, by producing  
16 electric power via the combustion of fuel and then routing the  
17 resulting waste heat by-product to a conventional boiler or to a heat  
18 recovery steam generator for use by a steam turbine to produce  
19 electric power, thereby increasing the overall efficiency of the  
20 generating facility;<sup>2</sup>

21 "Combined heat and power facility" or "co-generation facility"  
22 means a generation facility which produces electric energy, steam,  
23 or other forms of useful energy such as heat, which are used for  
24 industrial or commercial heating or cooling purposes. A combined  
25 heat and power facility or co-generation facility shall not be  
26 considered a public utility;

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

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

38 "Comprehensive resource analysis" means an analysis including,  
39 but not limited to, an assessment of existing market barriers to the  
40 implementation of energy efficiency and renewable technologies  
41 that are not or cannot be delivered to customers through a  
42 competitive marketplace;

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



1 "Customer account service" means metering, billing, or such  
2 other administrative activity associated with maintaining a customer  
3 account;

4 "Delivery year" or "DY" means the 12-month period from June  
5 1st through May 31st <sup>2</sup>[and shall be] <sup>2</sup> numbered according to the  
6 calendar year in which it ends;

7 "Demand side management" means the management of customer  
8 demand for energy service through the implementation of cost-  
9 effective energy efficiency technologies, including, but not limited  
10 to, installed conservation, load management and energy efficiency  
11 measures on and in the residential, commercial, industrial,  
12 institutional and governmental premises and facilities in this State;

13 "Electric generation service" means the provision of retail  
14 electric energy and capacity which is generated off-site from the  
15 location at which the consumption of such electric energy and  
16 capacity is metered for retail billing purposes, including agreements  
17 and arrangements related thereto;

18 "Electric power generator" means an entity that proposes to  
19 construct, own, lease or operate, or currently owns, leases or  
20 operates, an electric power production facility that will sell or does  
21 sell at least 90 percent of its output, either directly or through a  
22 marketer, to a customer or customers located at sites that are not on  
23 or contiguous to the site on which the facility will be located or is  
24 located. The designation of an entity as an electric power generator  
25 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in  
26 and of itself, affect the entity's status as an exempt wholesale  
27 generator under the Public Utility Holding Company Act of 1935,  
28 15 U.S.C. s.79 et seq.;

29 "Electric power supplier" means a person or entity that is duly  
30 licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et  
31 al.) to offer and to assume the contractual and legal responsibility to  
32 provide electric generation service to retail customers, and includes  
33 load serving entities, marketers and brokers that offer or provide  
34 electric generation service to retail customers. The term excludes an  
35 electric public utility that provides electric generation service only  
36 as a basic generation service pursuant to section 9 of P.L.1999, c.23  
37 (C.48:3-57);

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

41 "Electric related service" means a service that is directly related  
42 to the consumption of electricity by an end user, including, but not  
43 limited to, the installation of demand side management measures at  
44 the end user's premises, the maintenance, repair or replacement of  
45 appliances, lighting, motors or other energy-consuming devices at  
46 the end user's premises, and the provision of energy consumption  
47 measurement and billing services;

1 "Electronic signature" means an electronic sound, symbol or  
2 process, attached to, or logically associated with, a contract or other  
3 record, and executed or adopted by a person with the intent to sign  
4 the record;

5 "Eligible generator" means a developer of a <sup>2</sup>[new, natural gas  
6 fired, combined-cycle] base load<sup>2</sup> <sup>4</sup>or mid-merit<sup>4</sup> electric power  
7 <sup>2</sup>[generating] generation<sup>2</sup> facility <sup>2</sup>[with a net summer output  
8 rating of 100 megawatts or larger, that is physically located within  
9 the State of New Jersey,] including, but not limited to, an on-site  
10 generation facility that qualifies as a capacity resource under PJM  
11 criteria <sup>4</sup>[but exclusive of a combustion turbine generation facility  
12 that is directly interconnected with the electric public utilities'  
13 transmission or distribution system,<sup>2</sup>]<sup>4</sup> and that commences  
14 construction <sup>4</sup>[<sup>2</sup>of new generation<sup>2</sup>]<sup>4</sup> after the effective date of  
15 P.L. , c. (C. ) (pending before the Legislature as this bill);

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

22 "Energy consumer" means a business or residential consumer of  
23 electric generation service or gas supply service located within the  
24 territorial jurisdiction of a government aggregator;

25 "Energy efficiency portfolio standard" means a requirement to  
26 procure a specified amount of energy efficiency or demand side  
27 management resources as a means of managing and reducing energy  
28 usage and demand by customers;

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

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

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

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

45 "Gas related service" means a service that is directly related to  
46 the consumption of gas by an end user, including, but not limited to,  
47 the installation of demand side management measures at the end

1 user's premises, the maintenance, repair or replacement of  
2 appliances or other energy-consuming devices at the end user's  
3 premises, and the provision of energy consumption measurement  
4 and billing services;

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

20 "Gas supply service" means the provision to customers of the  
21 retail commodity of gas, but does not include any regulated  
22 distribution service;

23 "Government aggregator" means any government entity subject  
24 to the requirements of the "Local Public Contracts Law," P.L.1971,  
25 c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"  
26 N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"  
27 P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written  
28 contract with a licensed electric power supplier or a licensed gas  
29 supplier for: (1) the provision of electric generation service, electric  
30 related service, gas supply service, or gas related service for its own  
31 use or the use of other government aggregators; or (2) if a  
32 municipal or county government, the provision of electric  
33 generation service or gas supply service on behalf of business or  
34 residential customers within its territorial jurisdiction;

35 "Government energy aggregation program" means a program and  
36 procedure pursuant to which a government aggregator enters into a  
37 written contract for the provision of electric generation service or  
38 gas supply service on behalf of business or residential customers  
39 within its territorial jurisdiction;

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

43 "Greenhouse gas emissions portfolio standard" means a  
44 requirement that addresses or limits the amount of carbon dioxide  
45 emissions indirectly resulting from the use of electricity as applied  
46 to any electric power suppliers and basic generation service  
47 providers of electricity;

1       <sup>2</sup>“Incremental auction” means an auction conducted by PJM, as  
2 part of PJM’s reliability pricing model, prior to the start of the  
3 delivery year to secure electric capacity as necessary to satisfy the  
4 capacity requirements for that delivery year, that is not otherwise  
5 provided for in the base residual auction;<sup>2</sup>

6       "Leakage" means an increase in greenhouse gas emissions  
7 related to generation sources located outside of the State that are not  
8 subject to a state, interstate or regional greenhouse gas emissions  
9 cap or standard that applies to generation sources located within the  
10 State;

11       <sup>2</sup>“Locational deliverability area” or “LDA” means one or more of  
12 the zones within the PJM region which are used to evaluate area  
13 transmission constraints and reliability issues including electric  
14 public utility company zones, sub-zones, and combinations of  
15 zones.<sup>2</sup>

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

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

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

43       <sup>4</sup>“Mid-merit electric power generation facility” means a  
44 generation facility that operates at a capacity factor between  
45 baseload generation facilities and peaker generation facilities.<sup>4</sup>

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

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

3 "Offshore wind energy" means electric energy produced by a  
4 qualified offshore wind project;

5 "Offshore wind renewable energy certificate" or "OREC" means  
6 a certificate, issued by the board or its designee, representing the  
7 environmental attributes of one megawatt hour of electric  
8 generation from a qualified offshore wind project;

9 "Off-site end use thermal energy services customer" means an  
10 end use customer that purchases thermal energy services from an  
11 on-site generation facility, combined heat and power facility, or co-  
12 generation facility, and that is located on property that is separated  
13 from the property on which the on-site generation facility,  
14 combined heat and power facility, or co-generation facility is  
15 located by more than one easement, public thoroughfare, or  
16 transportation or utility-owned right-of-way;

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

33 "Person" means an individual, partnership, corporation,  
34 association, trust, limited liability company, governmental entity or  
35 other legal entity;

36 "PJM Interconnection, L.L.C." or "PJM" means the privately-  
37 held, limited liability corporation that is a FERC-approved Regional  
38 Transmission Organization <sup>2</sup>, or its successor,<sup>2</sup> that manages the  
39 regional, high-voltage electricity grid serving all or parts of 13  
40 states including New Jersey and the District of Columbia, operates  
41 the regional competitive wholesale electric market, manages the  
42 regional transmission planning process, and establishes systems and  
43 rules to ensure that the regional and in-State energy markets operate  
44 fairly and efficiently;

45 "Private aggregator" means a non-government aggregator that is  
46 a duly-organized business or non-profit organization authorized to  
47 do business in this State that enters into a contract with a duly  
48 licensed electric power supplier for the purchase of electric energy

1 and capacity, or with a duly licensed gas supplier for the purchase  
2 of gas supply service, on behalf of multiple end-use customers by  
3 combining the loads of those customers;

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

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

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

34 "Related competitive business segment of an electric public  
35 utility or gas public utility" means any business venture of an  
36 electric public utility or gas public utility including, but not limited  
37 to, functionally separate business units, joint ventures, and  
38 partnerships, that offers to provide or provides competitive services;

39 "Related competitive business segment of a public utility holding  
40 company" means any business venture of a public utility holding  
41 company, including, but not limited to, functionally separate  
42 business units, joint ventures, and partnerships and subsidiaries, that  
43 offers to provide or provides competitive services, but does not  
44 include any related competitive business segments of an electric  
45 public utility or gas public utility;

46 "Reliability pricing model" or "RPM" means PJM's capacity-  
47 market model, and its successors, that secures capacity on behalf of  
48 electric load serving entities to satisfy load obligations not satisfied

1 through the output of electric generation facilities owned by those  
2 entities<sup>2, 2</sup> <sup>1</sup>or otherwise secured by those entities through bilateral  
3 contracts<sup>1</sup> ;

4 "Renewable energy certificate" or "REC" means a certificate  
5 representing the environmental benefits or attributes of one  
6 megawatt-hour of generation from a generating facility that  
7 produces Class I or Class II renewable energy, but shall not include  
8 a solar renewable energy certificate or an offshore wind renewable  
9 energy certificate;

10 "Resource clearing price" or "RCP" means the clearing price  
11 established for the applicable locational deliverability area by the  
12 base residual auction<sup>1</sup> or incremental auction<sup>1 2</sup>, as determined by  
13 the optimization algorithm for each auction,<sup>2</sup> conducted by PJM as  
14 part of PJM's reliability pricing model;

15 "Resource recovery facility" means a solid waste facility  
16 constructed and operated for the incineration of solid waste for  
17 energy production and the recovery of metals and other materials  
18 for reuse;

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

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

42 "Retail margin" means an amount, reflecting differences in  
43 prices that electric power suppliers and electric public utilities may  
44 charge in providing electric generation service and basic generation  
45 service, respectively, to retail customers, excluding residential  
46 customers, which the board may authorize to be charged to  
47 categories of basic generation service customers of electric public  
48 utilities in this State, other than residential customers, under the

1 board's continuing regulation of basic generation service pursuant to  
2 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the  
3 purpose of promoting a competitive retail market for the supply of  
4 electricity;

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

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

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

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

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

31 "Standard offer capacity agreement" or "SOCA" means a  
32 financially-settled transaction agreement, approved by board order,  
33 that provides for '[an]' eligible '[generator] generators'[: (1)]<sup>2</sup>  
34 to receive '[a payment] payments' from '[one or more] the<sup>2</sup>  
35 electric public utilities' [, in the event the SOCP is greater than the  
36 'base residual auction' RCP for any applicable delivery year, 'and'  
37 that '[provides for]' such payment '[to be] is' equal to the  
38 difference between the SOCP and the 'base residual auction' RCP  
39 multiplied by the contract capacity '[, that provides] ; and (2) to  
40 remit a payment to one or more electric public utilities for the  
41 benefit of ratepayers, in the event the base residual auction RCP is  
42 greater than \$290 per megawatt day for any applicable delivery  
43 year, and that such payment is equal to the result of the difference  
44 between the base residual auction RCP and \$290 per megawatt day  
45 for the applicable delivery year multiplied by the contract capacity.  
46 The SOCA shall provide'<sup>1</sup>]<sup>2</sup> for a defined amount of electric  
47 capacity for <sup>4</sup>[the term of the transaction of not less than] a term to



1 be determined by the board but not to exceed 15 years.<sup>4</sup> <sup>2</sup>[15  
2 years.] <sup>4</sup>[seven years or not more than 10 years.]<sup>2</sup><sup>4</sup> and <sup>1</sup>[that  
3 provides]<sup>1</sup> for <sup>1</sup>[such payment] <sup>2</sup>such<sup>2</sup> payments <sup>2</sup>[made pursuant  
4 to paragraph (1)]<sup>1</sup><sup>2</sup> to be a fully non-bypassable charge, with such  
5 an order, once issued, being irrevocable;

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

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

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

24 "Thermal efficiency" means the useful electric energy output of a  
25 facility, plus the useful thermal energy output of the facility,  
26 expressed as a percentage of the total energy input to the facility;

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

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

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

1 "Transmission and distribution system" means, with respect to an  
2 electric public utility, any facility or equipment that is used for the  
3 transmission, distribution or delivery of electricity to the customers  
4 of the electric public utility including, but not limited to, the land,  
5 structures, meters, lines, switches and all other appurtenances  
6 thereof and thereto, owned or controlled by the electric public  
7 utility within this State; and

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

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

12  
13 3. (New section) Notwithstanding any provisions of the  
14 "Administrative Procedure Act," P. L. 1968, c.410 (C.52:14B-1 et  
15 seq.) to the contrary, the board shall <sup>2</sup>[], within 10 days of the  
16 effective date of P.L. , c. (C. ) (pending before the Legislature  
17 as this bill),<sup>2</sup> initiate <sup>2</sup>and complete<sup>2</sup> a proceeding <sup>2</sup>[on] in  
18 accordance with<sup>2</sup> the schedule set forth in this section <sup>2</sup>[allowing  
19 such proceeding to be completed]<sup>2</sup> to support the commencement  
20 of the LCAPP <sup>2</sup>[no later than January 31, 2011, and shall adopt,  
21 after notice, the opportunity for comment, and public hearing on the  
22 schedule set forth in this section, the following requirements for the  
23 LCAPP]<sup>2</sup>:

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

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

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

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

33 c. the participation of selected eligible generators with board  
34 approved, executed SOCAs in and clearing of the base residual  
35 auction conducted by PJM and scheduled to commence on May 2,  
36 2011, as part of PJM's reliability pricing model for the delivery  
37 year 2015;

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

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

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

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

1       a. The board shall initiate <sup>4</sup>[the proceeding within 30 days of  
2 the effective date of P.L. , c. (C. ) (pending before the  
3 Legislature as this bill),]<sup>4</sup> and allow such proceeding to be  
4 completed no later than <sup>4</sup>[March 1, 2011] 60 days after the  
5 effective date of P.L. , c. (C. ) (pending before the Legislature  
6 as this bill)<sup>4</sup> to allow for the commencement of the LCAPP. The  
7 SOCA or SOCAs resulting from that proceeding shall be awarded  
8 <sup>4</sup>[.] and <sup>4</sup>executed <sup>4</sup>[and approved by the board with a written  
9 board order]<sup>4</sup> no later than <sup>4</sup>[April 15, 2011] 30 days after the  
10 approval of the form of the SOCA or SOCAs<sup>4</sup>. The LCAPP shall  
11 require selected eligible generators with board approved and  
12 executed SOCAs to participate and be accepted as a capacity  
13 resource in the base residual auction conducted by PJM <sup>4</sup>[and  
14 scheduled to commence either on May 2, 2011, as part of PJM’s  
15 reliability pricing model for the delivery year 2015, or May 2012,  
16 as part of PJM’s reliability pricing model for the delivery year  
17 2016]<sup>4</sup>;

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

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

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

34       (3) recommending to the board the selection of winning eligible  
35 generators based on the net benefit to ratepayers of each  
36 prequalified eligible generator’s offer price and term. <sup>4</sup>[Eligible  
37 generators that are located in an “area in need of redevelopment” in  
38 accordance with the “Local Redevelopment and Housing Law,”  
39 P.L.1992, c.79 (C.40A:12A-1 et seq.) or a brownfield development  
40 area in accordance with the “Brownfield and Contaminated Site  
41 Remediation Act,” P.L.2005, c.223 (C.58:10B-1 et seq.), and  
42 eligible] Eligible<sup>4</sup> generators that can enter commercial operation  
43 for delivery year 2015 <sup>4</sup>[, shall have] are to be provided with<sup>4</sup> a  
44 weighted preference in addition to the net benefit <sup>4</sup>[to ratepayers  
45 ranking provided for in this subsection] ratepayer test<sup>4</sup> . Eligible

1 generators shall also indicate the amount of capacity they are  
2 offering in the LCAPP.

3 c. In the proceeding initiated by the board pursuant to this  
4 section, the board shall adopt, after notice, the opportunity for  
5 comment, and public hearing, an order addressing the following  
6 requirements for the LCAPP:

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

11 (2)<sup>2</sup> that eligible generators participating in the LCAPP shall be  
12 required to offer <sup>2</sup>[the maximum] a<sup>2</sup> quantity, in megawatts, <sup>2</sup>offer  
13 a price per megawatt-day, and a term<sup>2</sup> of the SOCA <sup>2</sup>[at the  
14 standard offer 'capacity'<sup>1</sup> price of \$232.75 per megawatt per day,  
15 which represents a discount to the most recent clearing price  
16 established by the base residual auction conducted by the PJM in  
17 May, 2010 as part of the PJM's reliability pricing model] to be  
18 evaluated by the agent and approved by the board<sup>2</sup>;

19 <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  
20 recommendation,<sup>2</sup> the board <sup>2</sup>[select] approve the selected<sup>2</sup> <sup>1</sup>[an]<sup>1</sup>  
21 eligible <sup>1</sup>[generator] generators<sup>1</sup> from among the <sup>2</sup>qualified<sup>2</sup>  
22 eligible generators participating in the LCAPP for the award of  
23 <sup>2</sup>[a]<sup>2</sup> board-approved long-term financially-settled <sup>2</sup>[SOCA]  
24 SOCAs<sup>2</sup> for a term <sup>4</sup>[of not less than] to be determined by the  
25 board but not to exceed 15 years<sup>4</sup> <sup>2</sup>[15 years] <sup>4</sup>[seven years or  
26 more than 10 years at the offer price and term of each selected  
27 eligible generator<sup>2</sup>]<sup>4</sup>; <sup>1</sup>[.]<sup>1</sup>

28 <sup>2</sup>(4) that the board establish a method and the contract terms for  
29 providing for selected eligible generators to receive payments from  
30 the electric public utilities for the difference between the SOCP and  
31 the RCP multiplied by the SOCA capacity in the event the SOCP is  
32 greater than the RCP for any applicable delivery year and for  
33 providing for electric public utilities to receive refunds from the  
34 selected eligible generators for the difference between the SOCP  
35 and the RCP multiplied by the SOCA capacity in the event the RCP  
36 is greater than the SOCP for any applicable delivery year;

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

40 (6) that the board establish criteria associated with the  
41 prequalification of eligible generators for participation in the  
42 LCAPP through a showing of environmental, economic, and  
43 community benefits, and through demonstration of reasonable  
44 certainty of completion of development, construction and permitting  
45 activities necessary to meet the desired in-service date;

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

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

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

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

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

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

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

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

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

5       <sup>2</sup>[(2) neither] f. Neither<sup>2</sup> the board or any other governmental  
 6 entity shall have the authority, directly or indirectly, legally or  
 7 equitably, to rescind, alter, repeal, modify or amend <sup>2</sup>a SOCA or<sup>2</sup>  
 8 an LCAPP cost rate order, to revalue, re-evaluate <sup>2,2</sup> or revise the  
 9 amount of LCAPP costs, or to determine that the LCAPP charges or  
 10 the revenues to recover the LCAPP charges for such SOCA's are  
 11 unjust or unreasonable <sup>2</sup>]; and

12       <sup>1</sup>[o.] n.<sup>1</sup> that the board shall have complete discretion to  
 13 approve any and all SOCA's resulting from the LCAPP]<sup>2</sup>.

14  
 15       <sup>2</sup>4. (New section) If one or more provisions in P.L. \_\_\_\_\_,  
 16 c. (C. \_\_\_\_\_)(pending before the Legislature as this bill) are challenged  
 17 in an administrative or judicial proceeding, the board may suspend  
 18 the applicability of the challenged provision or provisions during  
 19 the pendency of those proceedings until final resolution of the  
 20 challenge and any appeals, and shall issue such orders and take such  
 21 other actions as it deems appropriate to ensure that the provisions  
 22 that are not challenged are implemented expeditiously to achieve  
 23 the public purposes of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)(pending before the  
 24 Legislature as this bill).<sup>2</sup>

25  
 26       <sup>2</sup>5. (New section) Notwithstanding the provisions of any other  
 27 law, rule, regulation, or order to the contrary, gas public utilities  
 28 shall not impose a societal benefits charge pursuant to section 12 of  
 29 P.L.1999, c.23 (C.48:3-60), or any other charge designed to recover  
 30 the costs for social, energy efficiency, conservation, environmental  
 31 or renewable energy programs, on natural gas delivery service or  
 32 commodity that is used to generate electricity that is sold for  
 33 resale.<sup>2</sup>

34  
 35       <sup>2</sup>[4.] 6.<sup>2</sup> This act shall take effect immediately.

36  
 37  
 38  
 39  
 40       Establishes a long-term capacity agreement pilot program to  
 41 promote construction of qualified electric generation facilities.

**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)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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

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

7  
8 1. The Legislature finds and declares:

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

15 b. The PJM reliability pricing model created additional barriers  
16 to entry for new, efficient generators, by imposing a one to three  
17 year term requirement for contracts entered into by new entrants.  
18 The maximum three-year term is insufficient to support the project  
19 financing necessary to develop new, efficient generation within the  
20 State;

21 c. The PJM reliability pricing model continues to undergo  
22 structural changes that make it unreliable as an indicator of the true  
23 cost of capacity and therefore unreliable as an incentive for  
24 developing new generation;

25 d. To alleviate the cost burden and barriers to new entry  
26 created by the PJM reliability pricing model, the construction of  
27 new, efficient, in-State generation must be fostered by State policy  
28 to avoid higher electricity prices, higher congestion, and reliability  
29 concerns;

30 e. Due to PJM's lack of authority to order new generation as a  
31 means to mitigate local electrical system reliability concerns and  
32 solve other issues related to the lack of local generation, and since  
33 only PJM has the authority to order transmission system upgrades  
34 and expansions to mitigate electrical system reliability concerns  
35 caused by transmission system overloads or the lack of local  
36 generation being developed, New Jersey continues to send jobs and  
37 investment out-of-state to upgrade the transmission system to the  
38 west of New Jersey to ensure a reliable supply of electricity and  
39 capacity from generators located outside of New Jersey;

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

43 g. The PJM State of the Market Report for 2009 by the PJM  
44 Independent Market Monitor states that there over 11,000

**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.**



1 megawatts (“MW”) of coal-fired units at risk of retirement due to  
2 their inability to cover their avoided costs;

3 h. Many of New Jersey’s in-State generating facilities, as a  
4 result of new emission reduction requirements, will need to have  
5 installed new emissions control technology or retire them by April  
6 30, 2015. In one instance, the rule will have a significant impact on  
7 New Jersey’s in-State fleet of electric generation facilities, as the  
8 rule imposes nitrogen oxide (“NOx”) emission limits that will likely  
9 require the retirement of up to 102 combustion turbines,  
10 representing approximately 2,800 MW, and five older New Jersey  
11 steam electric generating units, representing approximately 800  
12 MW, by April 30, 2015;

13 i. New Jersey’s in-State fleet of electric generation facilities  
14 are aging, with over 50 percent of these facilities being more than  
15 30 years old and over 70 percent being more than 20 years old; and

16 j. Fostering and incentivizing the development of new in-State  
17 electric generation facilities will assist the State’s economic  
18 development by creating numerous opportunities for employment in  
19 the energy sector while helping to reduce the cost and volatility of  
20 electricity prices in New Jersey.

21

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

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

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

32 “Base residual auction” means the auction conducted by PJM, as  
33 part of PJM’s reliability pricing model, three years prior to the start of  
34 the delivery year to secure electrical capacity as necessary to satisfy  
35 the capacity requirements for that delivery year;

36 "Basic gas supply service" means gas supply service that is  
37 provided to any customer that has not chosen an alternative gas  
38 supplier, whether or not the customer has received offers as to  
39 competitive supply options, including, but not limited to, any  
40 customer that cannot obtain such service for any reason, including  
41 non-payment for services. Basic gas supply service is not a  
42 competitive service and shall be fully regulated by the board;

43 "Basic generation service" or "BGS" means electric generation  
44 service that is provided, to any customer that has not chosen an  
45 alternative electric power supplier, whether or not the customer has  
46 received offers for competitive supply options, including, but not  
47 limited to, any customer that cannot obtain such service from an  
48 electric power supplier for any reason, including non-payment for

1 services. Basic generation service is not a competitive service and  
2 shall be fully regulated by the board;

3 "Basic generation service provider" or "provider" means a  
4 provider of basic generation service;

5 "Basic generation service transition costs" means the amount by  
6 which the payments by an electric public utility for the procurement  
7 of power for basic generation service and related ancillary and  
8 administrative costs exceeds the net revenues from the basic  
9 generation service charge established by the board pursuant to  
10 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,  
11 together with interest on the balance at the board-approved rate, that  
12 is reflected in a deferred balance account approved by the board in  
13 an order addressing the electric public utility's unbundled rates,  
14 stranded costs, and restructuring filings pursuant to P.L.1999, c.23  
15 (C.48:3-49 et al.). Basic generation service transition costs shall  
16 include, but are not limited to, costs of purchases from the spot  
17 market, bilateral contracts, contracts with non-utility generators,  
18 parting contracts with the purchaser of the electric public utility's  
19 divested generation assets, short-term advance purchases, and  
20 financial instruments such as hedging, forward contracts, and  
21 options. Basic generation service transition costs shall also include  
22 the payments by an electric public utility pursuant to a competitive  
23 procurement process for basic generation service supply during the  
24 transition period, and costs of any such process used to procure the  
25 basic generation service supply;

26 "Board" means the New Jersey Board of Public Utilities or any  
27 successor agency;

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

1 other related fees, costs and charges, or to assign, sell or otherwise  
2 transfer bondable transition property;

3 "Bondable stranded costs rate order" means one or more  
4 irrevocable written orders issued by the board pursuant to P.L.1999,  
5 c.23 (C.48:3-49 et al.) which determines the amount of bondable  
6 stranded costs and the initial amount of transition bond charges  
7 authorized to be imposed to recover such bondable stranded costs,  
8 including the costs to be financed from the proceeds of the  
9 transition bonds, as well as on-going costs associated with servicing  
10 and credit enhancing the transition bonds, and provides the electric  
11 public utility specific authority to issue or cause to be issued,  
12 directly or indirectly, transition bonds through a financing entity  
13 and related matters as provided in P.L.1999, c.23, which order shall  
14 become effective immediately upon the written consent of the  
15 related electric public utility to such order as provided in P.L.1999,  
16 c.23;

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

28 "British thermal unit" or "Btu" means the amount of heat  
29 required to increase the temperature of one pound of water by one  
30 degree Fahrenheit;

31 "Broker" means a duly licensed electric power supplier that  
32 assumes the contractual and legal responsibility for the sale of  
33 electric generation service, transmission or other services to end-use  
34 retail customers, but does not take title to any of the power sold, or  
35 a duly licensed gas supplier that assumes the contractual and legal  
36 obligation to provide gas supply service to end-use retail customers,  
37 but does not take title to the gas;

38 "Buydown" means an arrangement or arrangements involving the  
39 buyer and seller in a given power purchase contract and, in some  
40 cases third parties, for consideration to be given by the buyer in  
41 order to effectuate a reduction in the pricing, or the restructuring of  
42 other terms to reduce the overall cost of the power contract, for the  
43 remaining succeeding period of the purchased power arrangement  
44 or arrangements;

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

1 "Class I renewable energy" means electric energy produced from  
2 solar technologies, photovoltaic technologies, wind energy, fuel  
3 cells, geothermal technologies, wave or tidal action, and methane  
4 gas from landfills or a biomass facility, provided that the biomass is  
5 cultivated and harvested in a sustainable manner;

6 "Class II renewable energy" means electric energy produced at a  
7 resource recovery facility or hydropower facility, provided that  
8 such facility is located where retail competition is permitted and  
9 provided further that the Commissioner of Environmental  
10 Protection has determined that such facility meets the highest  
11 environmental standards and minimizes any impacts to the  
12 environment and local communities;

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

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

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

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

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

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

42 "Customer account service" means metering, billing, or such  
43 other administrative activity associated with maintaining a customer  
44 account;

45 "Delivery year" or "DY" means the 12-month period from June  
46 1st through May 31st and shall be numbered according to the  
47 calendar year in which it ends;

1 "Demand side management" means the management of customer  
2 demand for energy service through the implementation of cost-  
3 effective energy efficiency technologies, including, but not limited  
4 to, installed conservation, load management and energy efficiency  
5 measures on and in the residential, commercial, industrial,  
6 institutional and governmental premises and facilities in this State;

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

12 "Electric power generator" means an entity that proposes to  
13 construct, own, lease or operate, or currently owns, leases or  
14 operates, an electric power production facility that will sell or does  
15 sell at least 90 percent of its output, either directly or through a  
16 marketer, to a customer or customers located at sites that are not on  
17 or contiguous to the site on which the facility will be located or is  
18 located. The designation of an entity as an electric power generator  
19 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in  
20 and of itself, affect the entity's status as an exempt wholesale  
21 generator under the Public Utility Holding Company Act of 1935,  
22 15 U.S.C. s.79 et seq.;

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

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

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

42 "Electronic signature" means an electronic sound, symbol or  
43 process, attached to, or logically associated with, a contract or other  
44 record, and executed or adopted by a person with the intent to sign  
45 the record;

46 "Eligible generator" means a developer of a new, natural gas  
47 fired, combined-cycle electric power generating facility with a net  
48 summer output rating of 100 megawatts or larger, that is physically

1 located within the State of New Jersey, and that commences  
2 construction after the effective date of P.L. , c. (C. )  
3 (pending before the Legislature as this bill);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 "Leakage" means an increase in greenhouse gas emissions  
36 related to generation sources located outside of the State that are not  
37 subject to a state, interstate or regional greenhouse gas emissions  
38 cap or standard that applies to generation sources located within the  
39 State;

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

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

8 "Marketer" means a duly licensed electric power supplier that  
9 takes title to electric energy and capacity, transmission and other  
10 services from electric power generators and other wholesale  
11 suppliers and then assumes the contractual and legal obligation to  
12 provide electric generation service, and may include transmission  
13 and other services, to an end-use retail customer or customers, or a  
14 duly licensed gas supplier that takes title to gas and then assumes  
15 the contractual and legal obligation to provide gas supply service to  
16 an end-use customer or customers;

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

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

21 "Offshore wind energy" means electric energy produced by a  
22 qualified offshore wind project;

23 "Offshore wind renewable energy certificate" or "OREC" means  
24 a certificate, issued by the board or its designee, representing the  
25 environmental attributes of one megawatt hour of electric  
26 generation from a qualified offshore wind project;

27 "Off-site end use thermal energy services customer" means an  
28 end use customer that purchases thermal energy services from an  
29 on-site generation facility, combined heat and power facility, or co-  
30 generation facility, and that is located on property that is separated  
31 from the property on which the on-site generation facility,  
32 combined heat and power facility, or co-generation facility is  
33 located by more than one easement, public thoroughfare, or  
34 transportation or utility-owned right-of-way;

35 "On-site generation facility" means a generation facility, and  
36 equipment and services appurtenant to electric sales by such facility  
37 to the end use customer located on the property or on property  
38 contiguous to the property on which the end user is located. An on-  
39 site generation facility shall not be considered a public utility. The  
40 property of the end use customer and the property on which the on-  
41 site generation facility is located shall be considered contiguous if  
42 they are geographically located next to each other, but may be  
43 otherwise separated by an easement, public thoroughfare,  
44 transportation or utility-owned right-of-way, or if the end use  
45 customer is purchasing thermal energy services produced by the on-  
46 site generation facility, for use for heating or cooling, or both,  
47 regardless of whether the customer is located on property that is  
48 separated from the property on which the on-site generation facility



1 is located by more than one easement, public thoroughfare, or  
2 transportation or utility-owned right-of-way;

3 "Person" means an individual, partnership, corporation,  
4 association, trust, limited liability company, governmental entity or  
5 other legal entity;

6 "PJM Interconnection, L.L.C." or "PJM" means the privately-  
7 held, limited liability corporation that is a FERC-approved Regional  
8 Transmission Organization that manages the regional, high-voltage  
9 electricity grid serving all or parts of 13 states including New Jersey  
10 and the District of Columbia, operates the regional competitive  
11 wholesale electric market, manages the regional transmission  
12 planning process, and establishes systems and rules to ensure that  
13 the regional and in-State energy markets operate fairly and  
14 efficiently;

15 "Private aggregator" means a non-government aggregator that is  
16 a duly-organized business or non-profit organization authorized to  
17 do business in this State that enters into a contract with a duly  
18 licensed electric power supplier for the purchase of electric energy  
19 and capacity, or with a duly licensed gas supplier for the purchase  
20 of gas supply service, on behalf of multiple end-use customers by  
21 combining the loads of those customers;

22 "Public utility holding company" means: (1) any company that,  
23 directly or indirectly, owns, controls, or holds with power to vote,  
24 ten percent or more of the outstanding voting securities of an  
25 electric public utility or a gas public utility or of a company which  
26 is a public utility holding company by virtue of this definition,  
27 unless the Securities and Exchange Commission, or its successor,  
28 by order declares such company not to be a public utility holding  
29 company under the Public Utility Holding Company Act of 1935,  
30 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the  
31 Securities and Exchange Commission, or its successor, determines,  
32 after notice and opportunity for hearing, directly or indirectly, to  
33 exercise, either alone or pursuant to an arrangement or  
34 understanding with one or more other persons, such a controlling  
35 influence over the management or policies of an electric public  
36 utility or a gas public utility or public utility holding company as to  
37 make it necessary or appropriate in the public interest or for the  
38 protection of investors or consumers that such person be subject to  
39 the obligations, duties, and liabilities imposed in the Public Utility  
40 Holding Company Act of 1935 or its successor;

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

47 "Regulatory asset" means an asset recorded on the books of an  
48 electric public utility or gas public utility pursuant to the Statement

1 of Financial Accounting Standards, No. 71, entitled "Accounting for  
2 the Effects of Certain Types of Regulation," or any successor  
3 standard and as deemed recoverable by the board;

4 "Related competitive business segment of an electric public  
5 utility or gas public utility" means any business venture of an  
6 electric public utility or gas public utility including, but not limited  
7 to, functionally separate business units, joint ventures, and  
8 partnerships, that offers to provide or provides competitive services;

9 "Related competitive business segment of a public utility holding  
10 company" means any business venture of a public utility holding  
11 company, including, but not limited to, functionally separate  
12 business units, joint ventures, and partnerships and subsidiaries, that  
13 offers to provide or provides competitive services, but does not  
14 include any related competitive business segments of an electric  
15 public utility or gas public utility;

16 "Reliability pricing model" or "RPM" means PJM's capacity-  
17 market model, and its successors, that secures capacity on behalf of  
18 electric load serving entities to satisfy load obligations not satisfied  
19 through the output of electric generation facilities owned by those  
20 entities;

21 "Renewable energy certificate" or "REC" means a certificate  
22 representing the environmental benefits or attributes of one  
23 megawatt-hour of generation from a generating facility that  
24 produces Class I or Class II renewable energy, but shall not include  
25 a solar renewable energy certificate or an offshore wind renewable  
26 energy certificate;

27 "Resource clearing price" or "RCP" means the clearing price  
28 established for the applicable locational deliverability area by the  
29 base residual auction conducted by PJM as part of PJM's reliability  
30 pricing model;

31 "Resource recovery facility" means a solid waste facility  
32 constructed and operated for the incineration of solid waste for  
33 energy production and the recovery of metals and other materials  
34 for reuse;

35 "Restructuring related costs" means reasonably incurred costs  
36 directly related to the restructuring of the electric power industry,  
37 including the closure, sale, functional separation and divestiture of  
38 generation and other competitive utility assets by a public utility, or  
39 the provision of competitive services as such costs are determined  
40 by the board, and which are not stranded costs as defined in  
41 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited  
42 to, investments in management information systems, and which  
43 shall include expenses related to employees affected by  
44 restructuring which result in efficiencies and which result in  
45 benefits to ratepayers, such as training or retraining at the level  
46 equivalent to one year's training at a vocational or technical school  
47 or county community college, the provision of severance pay of two  
48 weeks of base pay for each year of full-time employment, and a

1 maximum of 24 months' continued health care coverage. Except as  
2 to expenses related to employees affected by restructuring,  
3 "restructuring related costs" shall not include going forward costs;

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

10 "Retail margin" means an amount, reflecting differences in  
11 prices that electric power suppliers and electric public utilities may  
12 charge in providing electric generation service and basic generation  
13 service, respectively, to retail customers, excluding residential  
14 customers, which the board may authorize to be charged to  
15 categories of basic generation service customers of electric public  
16 utilities in this State, other than residential customers, under the  
17 board's continuing regulation of basic generation service pursuant to  
18 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the  
19 purpose of promoting a competitive retail market for the supply of  
20 electricity;

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

25 "Social program" means a program implemented with board  
26 approval to provide assistance to a group of disadvantaged  
27 customers, to provide protection to consumers, or to accomplish a  
28 particular societal goal, and includes, but is not limited to, the  
29 winter moratorium program, utility practices concerning "bad debt"  
30 customers, low income assistance, deferred payment plans,  
31 weatherization programs, and late payment and deposit policies, but  
32 does not include any demand side management program or any  
33 environmental requirements or controls;

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

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

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

47 "Standard offer capacity agreement" or "SOCA" means a  
48 financially-settled transaction agreement, approved by board order,

1 that provides for an eligible generator to receive a payment from  
2 one or more electric public utilities, in the event the SOCP is  
3 greater than the RCP for any applicable delivery year, that provides  
4 for such payment to be equal to the difference between the SOCP  
5 and the RCP multiplied by the contract capacity, that provides for a  
6 defined amount of electric capacity for the term of the transaction  
7 of not less than 15 years, and that provides for such payment to be a  
8 fully non-bypassable charge, with such an order, once issued, being  
9 irrevocable;

10 "Standard offer capacity price" or "SOCP" means the capacity  
11 price that is fixed for the term of the SOCA and is the minimum  
12 price to be received by an eligible generator under a board-  
13 approved SOCA;

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

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

28 "Thermal efficiency" means the useful electric energy output of a  
29 facility, plus the useful thermal energy output of the facility,  
30 expressed as a percentage of the total energy input to the facility;

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

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

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

3 "Transmission and distribution system" means, with respect to an  
4 electric public utility, any facility or equipment that is used for the  
5 transmission, distribution or delivery of electricity to the customers  
6 of the electric public utility including, but not limited to, the land,  
7 structures, meters, lines, switches and all other appurtenances  
8 thereof and thereto, owned or controlled by the electric public  
9 utility within this State; and

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

14

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

25 a. the establishment of the LCAPP that allows for offering  
26 financially-settled SOCAs for the purpose of facilitating the  
27 development of eligible generators;

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

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

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

34 c. the participation of selected eligible generators with board  
35 approved, executed SOCAs in and clearing of the base residual  
36 auction conducted by PJM and scheduled to commence on May 2,  
37 2011, as part of PJM's reliability pricing model for the delivery  
38 year 2015;

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

41 e. that electric public utilities shall procure at least 500  
42 megawatts and not more than 1500 megawatts of financially-settled  
43 SOCAs from the eligible generators;

44 f. that no single eligible generator or its affiliate may enter into  
45 more than 900 megawatts of financially-settled standard offer  
46 capacity agreements;

47 g. that eligible generators participating in the LCAPP shall be  
48 required to offer the maximum quantity, in megawatts, of the SOCA

- 1 at the standard offer price of \$232.75 per megawatt per day, which  
2 represents a discount to the most recent clearing price established  
3 by the base residual auction conducted by the PJM in May, 2010 as  
4 part of the PJM's reliability pricing model;
- 5 h. that the board select an eligible generator from among the  
6 eligible generators participating in the LCAPP for the award of a  
7 board-approved long-term financially-settled SOCA for a term of  
8 not less than 15 years;
- 9 i. that the selection of winning eligible generators give  
10 preference to those eligible generators located in "areas in need of  
11 redevelopment" in accordance with the "Local Redevelopment and  
12 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), that based on  
13 the board's determination, can provide the greatest environmental,  
14 economic, and community benefits, and can demonstrate certainty  
15 of completion of development and permitting activities necessary to  
16 meet the desired in-service date;
- 17 j. that an eligible generator selected by the board, enter into a  
18 SOCA with each of the State's four electric public utilities provided  
19 that each electric public utility shall pay a load-ratio share of the  
20 SOCA price based upon each electric public utility's annual  
21 forecasted peak demand as determined by PJM;
- 22 k. that the resulting SOCA shall bind the electric public utilities  
23 to the board approved SOCAs with a selected eligible generator for  
24 not less than 15 years;
- 25 l. that the selected eligible generators with executed SOCAs  
26 shall offer the capacity, electricity, and ancillary services into the  
27 PJM wholesale markets as required by the PJM market rules;
- 28 m. that selected eligible generators with executed SOCAs shall  
29 participate in and clear the annual base residual auction conducted  
30 by the PJM as part of PJM's reliability pricing model for each  
31 delivery year of the entire term of the agreement;
- 32 n. that the board shall order the full recovery of all costs  
33 associated with the electric public utilities' resulting SOCAs from  
34 ratepayers through a non-bypassable, irrevocable charge;
- 35 (1) notwithstanding any other provision of law, each LCAPP  
36 standard offer capacity agreement shall become irrevocable upon  
37 the issuance of such order; and
- 38 (2) neither the board or any other governmental entity shall  
39 have the authority, directly or indirectly, legally or equitably, to  
40 rescind, alter, repeal, modify or amend an LCAPP cost rate order, to  
41 revalue, re-evaluate or revise the amount of LCAPP costs, or to  
42 determine that the LCAPP charges or the revenues to recover the  
43 LCAPP charges for such SOCAs are unjust or unreasonable; and
- 44 o. that the board shall have complete discretion to approve any  
45 and all SOCAs resulting from the LCAPP.
- 46
- 47 4. This act shall take effect immediately.

STATEMENT

1

2

3       This bill establishes a long-term capacity agreement pilot  
4 program (hereinafter "LCAPP") to incentivize the construction of  
5 qualified in-State electric generation facilities. The creation of the  
6 LCAPP is expected to reduce the cost of energy for New Jersey  
7 residents and reduce the State's dependence on out-of-state  
8 generation.

9       This bill is also intended to further New Jersey's policy of  
10 promoting the use of clean and efficient generation by requiring all  
11 eligible generators that participate in the LCAPP to construct clean  
12 and efficient generation facilities.

13       Finally, this bill is intended to promote economic development  
14 in the State through the jobs created by the construction and  
15 operation, and maintenance of new in-State generation facilities and  
16 by the expected reduction in electric energy costs.

# SENATE ENVIRONMENT AND ENERGY COMMITTEE

## STATEMENT TO

### **SENATE, No. 2381**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: NOVEMBER 15, 2010

The Senate Environment and Energy Committee favorably reports Senate Bill No. 2381 with committee amendments.

This bill establishes a long-term capacity agreement pilot program (hereinafter "LCAPP") to provide incentives for the construction of qualified in-State electric generation facilities. The bill would require the Board of Public Utilities to complete a proceeding that would provide for a standard offer capacity agreement (SOCA). The SOCA is a contract in which eligible generators would receive payments from one or more electric public utilities for at least 15 years for the provision of a defined amount of capacity at a certain price for the term of the agreement. The bill would require that the SOCA price be at least \$232.75 per megawatt day. As amended by the committee, the bill requires that electric public utilities procure at least 500 and not more than 1,000 megawatts of SOCAs. Under the bill, an eligible generator is defined as a developer of a new, natural gas fired, combined-cycle electric power generating facility with a net summer output rating of 100 megawatts or larger, that is physically located within the State of New Jersey, and that commences construction after the effective date of the bill.

The committee amendments would:

(1) make changes to the findings and declarations in section 1 of the bill;

(2) make changes to the definitions of "reliability pricing model," "resource clearing price," and "standard offer capacity agreement";

(3) reduce the maximum amount of megawatts that may be procured under the bill from 1,500 to 1,000;

(4) delete the limitation that no single generator enter into more than 900 megawatts of SOCAs;

(5) require the SOCA to provide that eligible generators remit a payment to the electric public utilities for the benefit of the ratepayers when the base residual auction resource clearing price is \$290 per megawatt day or more, that equals the difference between the resource clearing price and \$290 per megawatt day for the applicable delivery year multiplied by the contract capacity; and

(6) make technical and clarifying changes.



ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO

[First Reprint]  
**SENATE, No. 2381**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 16, 2010

The Assembly Telecommunications and Utilities Committee reports favorably and with amendments Senate Bill No. 2381 (1R).

As amended, this bill establishes a long-term capacity agreement pilot program (hereinafter "LCAPP") to provide incentives for the construction of qualified electric generation facilities. The bill would require the Board of Public Utilities to complete a proceeding that would provide for a standard offer capacity agreement (SOCA). The SOCA is a contract in which eligible generators would receive payments from one or more electric public utilities for a defined amount of capacity at a certain price for the term of the agreement. As amended by the committee, the bill requires that electric public utilities procure not more than 1,000 megawatts of SOCAs. Under the bill, an eligible generator is defined as a developer of a base load electric power generation facility that commences construction of new generation after the effective date of the bill.

The committee amendments would:

- (1) make changes to the findings and declarations in section 1 of the bill;
- (2) make changes to the definitions of "eligible generator," "long-term capacity agreement pilot program," "PJM Interconnection, L.L.C.," "reliability pricing model," "resource clearing price," "standard offer capacity agreement," and "standard offer capacity price";
- (3) adds new definitions for "combined cycle power generator," "incremental auction," and "locational deliverability area,"
- (4) reduce the maximum amount of megawatts that may be procured under the bill from 1,500 to 1,000;
- (5) require that no single generator enter into more than 700 megawatts of SOCAs;
- (6) require the BPU to retain an agent to assist with the development and implementation of the LCAPP to recommend to the

BPU the selection of winning eligible generators based upon the net benefit to ratepayers and other factors; and

(7) make technical and clarifying changes.

Senate Bill No. 2381 (1R), which was amended and reported by the committee on this date, is identical to Assembly Bill No. 3442, which was also amended and reported by the committee on this date.

STATEMENT TO  
[Second Reprint]  
**SENATE, No. 2381**

with Assembly Floor Amendments  
(Proposed by Assemblyman CHIVUKULA)

ADOPTED: JANUARY 6, 2011

This amendment increases from 1,000 to 2,000 the number of megawatts electric public utilities shall procure from eligible generators under any financial-settled, standard offer capacity agreement.

STATEMENT TO  
[Third Reprint]  
**SENATE, No. 2381**

with Assembly Floor Amendments  
(Proposed by Assemblyman CHIVUKULA)

ADOPTED: JANUARY 10, 2011

These amendments: (1) revise the definition of “eligible generator” to delete language that excludes combustion turbine generation facilities and includes mid-merit generation facilities; (2) revise the definition of “LCAPP” to include rather than limit participation by “eligible generators;” and (3) revise the definition of “SOCA” to replace specific terms of years with a term to be determined by the board not to exceed 15 years.

The amendments also delete specific dates in section 3 of the bill by which proceedings shall begin, agreements shall be approved, agents shall be retained, and prequalification of “eligible generators” shall occur, and replace the specific dates with more general periods of time, or with non-date specific approvals by the board.

The amendments also eliminate the weighted preference for “eligible generators” that are located in an “area in need of redevelopment” or a brownfield development area, and provide for a weighted preference for “eligible generators” that can enter commercial operation for delivery year 2015.

The amendments also make certain technical corrections to various provisions of the bill.

# ASSEMBLY, No. 3442

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED OCTOBER 25, 2010

**Sponsored by:**

**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 and Connors**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/14/2010)**

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

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

7  
8 1. The Legislature finds and declares:

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

15 b. The PJM reliability pricing model created additional barriers  
16 to entry for new, efficient generators, by imposing a one to three  
17 year term requirement for contracts entered into by new entrants.  
18 The maximum three-year term is insufficient to support the project  
19 financing necessary to develop new, efficient generation within the  
20 State;

21 c. The PJM reliability pricing model continues to undergo  
22 structural changes that make it unreliable as an indicator of the true  
23 cost of capacity and therefore unreliable as an incentive for  
24 developing new generation;

25 d. To alleviate the cost burden and barriers to new entry  
26 created by the PJM reliability pricing model, the construction of  
27 new, efficient, in-State generation must be fostered by State policy  
28 to avoid higher electricity prices, higher congestion, and reliability  
29 concerns;

30 e. Due to PJM's lack of authority to order new generation as a  
31 means to mitigate local electrical system reliability concerns and  
32 solve other issues related to the lack of local generation, and since  
33 only PJM has the authority to order transmission system upgrades  
34 and expansions to mitigate electrical system reliability concerns  
35 caused by transmission system overloads or the lack of local  
36 generation being developed, New Jersey continues to send jobs and  
37 investment out-of-state to upgrade the transmission system to the  
38 west of New Jersey to ensure a reliable supply of electricity and  
39 capacity from generators located outside of New Jersey;

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

43 g. The PJM State of the Market Report for 2009 by the PJM  
44 Independent Market Monitor states that there over 11,000

**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.**

1 megawatts (“MW”) of coal-fired units at risk of retirement due to  
2 their inability to cover their avoided costs;

3 h. Many of New Jersey’s in-State generating facilities, as a  
4 result of new emission reduction requirements, will need to have  
5 installed new emissions control technology or retire them by April  
6 30, 2015. In one instance, the rule will have a significant impact on  
7 New Jersey’s in-State fleet of electric generation facilities, as the  
8 rule imposes nitrogen oxide (“NOx”) emission limits that will likely  
9 require the retirement of up to 102 combustion turbines,  
10 representing approximately 2,800 MW, and five older New Jersey  
11 steam electric generating units, representing approximately 800  
12 MW, by April 30, 2015;

13 i. New Jersey’s in-State fleet of electric generation facilities  
14 are aging, with over 50 percent of these facilities being more than  
15 30 years old and over 70 percent being more than 20 years old; and

16 j. Fostering and incentivizing the development of new in-State  
17 electric generation facilities will assist the State’s economic  
18 development by creating numerous opportunities for employment in  
19 the energy sector while helping to reduce the cost and volatility of  
20 electricity prices in New Jersey.

21

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

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

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

32 “Base residual auction” means the auction conducted by PJM, as  
33 part of PJM’s reliability pricing model, three years prior to the start of  
34 the delivery year to secure electrical capacity as necessary to satisfy  
35 the capacity requirements for that delivery year;

36 "Basic gas supply service" means gas supply service that is  
37 provided to any customer that has not chosen an alternative gas  
38 supplier, whether or not the customer has received offers as to  
39 competitive supply options, including, but not limited to, any  
40 customer that cannot obtain such service for any reason, including  
41 non-payment for services. Basic gas supply service is not a  
42 competitive service and shall be fully regulated by the board;

43 "Basic generation service" or "BGS" means electric generation  
44 service that is provided, to any customer that has not chosen an  
45 alternative electric power supplier, whether or not the customer has  
46 received offers for competitive supply options, including, but not  
47 limited to, any customer that cannot obtain such service from an  
48 electric power supplier for any reason, including non-payment for

1 services. Basic generation service is not a competitive service and  
2 shall be fully regulated by the board;

3 "Basic generation service provider" or "provider" means a  
4 provider of basic generation service;

5 "Basic generation service transition costs" means the amount by  
6 which the payments by an electric public utility for the procurement  
7 of power for basic generation service and related ancillary and  
8 administrative costs exceeds the net revenues from the basic  
9 generation service charge established by the board pursuant to  
10 section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period,  
11 together with interest on the balance at the board-approved rate, that  
12 is reflected in a deferred balance account approved by the board in  
13 an order addressing the electric public utility's unbundled rates,  
14 stranded costs, and restructuring filings pursuant to P.L.1999, c.23  
15 (C.48:3-49 et al.). Basic generation service transition costs shall  
16 include, but are not limited to, costs of purchases from the spot  
17 market, bilateral contracts, contracts with non-utility generators,  
18 parting contracts with the purchaser of the electric public utility's  
19 divested generation assets, short-term advance purchases, and  
20 financial instruments such as hedging, forward contracts, and  
21 options. Basic generation service transition costs shall also include  
22 the payments by an electric public utility pursuant to a competitive  
23 procurement process for basic generation service supply during the  
24 transition period, and costs of any such process used to procure the  
25 basic generation service supply;

26 "Board" means the New Jersey Board of Public Utilities or any  
27 successor agency;

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



1 other related fees, costs and charges, or to assign, sell or otherwise  
2 transfer bondable transition property;

3 "Bondable stranded costs rate order" means one or more  
4 irrevocable written orders issued by the board pursuant to P.L.1999,  
5 c.23 (C.48:3-49 et al.) which determines the amount of bondable  
6 stranded costs and the initial amount of transition bond charges  
7 authorized to be imposed to recover such bondable stranded costs,  
8 including the costs to be financed from the proceeds of the  
9 transition bonds, as well as on-going costs associated with servicing  
10 and credit enhancing the transition bonds, and provides the electric  
11 public utility specific authority to issue or cause to be issued,  
12 directly or indirectly, transition bonds through a financing entity  
13 and related matters as provided in P.L.1999, c.23, which order shall  
14 become effective immediately upon the written consent of the  
15 related electric public utility to such order as provided in P.L.1999,  
16 c.23;

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

28 "British thermal unit" or "Btu" means the amount of heat  
29 required to increase the temperature of one pound of water by one  
30 degree Fahrenheit;

31 "Broker" means a duly licensed electric power supplier that  
32 assumes the contractual and legal responsibility for the sale of  
33 electric generation service, transmission or other services to end-use  
34 retail customers, but does not take title to any of the power sold, or  
35 a duly licensed gas supplier that assumes the contractual and legal  
36 obligation to provide gas supply service to end-use retail customers,  
37 but does not take title to the gas;

38 "Buydown" means an arrangement or arrangements involving the  
39 buyer and seller in a given power purchase contract and, in some  
40 cases third parties, for consideration to be given by the buyer in  
41 order to effectuate a reduction in the pricing, or the restructuring of  
42 other terms to reduce the overall cost of the power contract, for the  
43 remaining succeeding period of the purchased power arrangement  
44 or arrangements;

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

1 "Class I renewable energy" means electric energy produced from  
2 solar technologies, photovoltaic technologies, wind energy, fuel  
3 cells, geothermal technologies, wave or tidal action, and methane  
4 gas from landfills or a biomass facility, provided that the biomass is  
5 cultivated and harvested in a sustainable manner;

6 "Class II renewable energy" means electric energy produced at a  
7 resource recovery facility or hydropower facility, provided that  
8 such facility is located where retail competition is permitted and  
9 provided further that the Commissioner of Environmental  
10 Protection has determined that such facility meets the highest  
11 environmental standards and minimizes any impacts to the  
12 environment and local communities;

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

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

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

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

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

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

42 "Customer account service" means metering, billing, or such  
43 other administrative activity associated with maintaining a customer  
44 account;

45 "Delivery year" or "DY" means the 12-month period from June  
46 1st through May 31st and shall be numbered according to the  
47 calendar year in which it ends;

1 "Demand side management" means the management of customer  
2 demand for energy service through the implementation of cost-  
3 effective energy efficiency technologies, including, but not limited  
4 to, installed conservation, load management and energy efficiency  
5 measures on and in the residential, commercial, industrial,  
6 institutional and governmental premises and facilities in this State;

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

12 "Electric power generator" means an entity that proposes to  
13 construct, own, lease or operate, or currently owns, leases or  
14 operates, an electric power production facility that will sell or does  
15 sell at least 90 percent of its output, either directly or through a  
16 marketer, to a customer or customers located at sites that are not on  
17 or contiguous to the site on which the facility will be located or is  
18 located. The designation of an entity as an electric power generator  
19 for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in  
20 and of itself, affect the entity's status as an exempt wholesale  
21 generator under the Public Utility Holding Company Act of 1935,  
22 15 U.S.C. s.79 et seq.;

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

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

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

42 "Electronic signature" means an electronic sound, symbol or  
43 process, attached to, or logically associated with, a contract or other  
44 record, and executed or adopted by a person with the intent to sign  
45 the record;

46 "Eligible generator" means a developer of a new, natural gas  
47 fired, combined-cycle electric power generating facility with a net  
48 summer output rating of 100 megawatts or larger, that is physically

1 located within the State of New Jersey, and that commences  
2 construction after the effective date of P.L. , c. (C. )  
3 (pending before the Legislature as this bill);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 "Leakage" means an increase in greenhouse gas emissions  
36 related to generation sources located outside of the State that are not  
37 subject to a state, interstate or regional greenhouse gas emissions  
38 cap or standard that applies to generation sources located within the  
39 State;

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

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

8 "Marketer" means a duly licensed electric power supplier that  
9 takes title to electric energy and capacity, transmission and other  
10 services from electric power generators and other wholesale  
11 suppliers and then assumes the contractual and legal obligation to  
12 provide electric generation service, and may include transmission  
13 and other services, to an end-use retail customer or customers, or a  
14 duly licensed gas supplier that takes title to gas and then assumes  
15 the contractual and legal obligation to provide gas supply service to  
16 an end-use customer or customers;

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

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

21 "Offshore wind energy" means electric energy produced by a  
22 qualified offshore wind project;

23 "Offshore wind renewable energy certificate" or "OREC" means  
24 a certificate, issued by the board or its designee, representing the  
25 environmental attributes of one megawatt hour of electric  
26 generation from a qualified offshore wind project;

27 "Off-site end use thermal energy services customer" means an  
28 end use customer that purchases thermal energy services from an  
29 on-site generation facility, combined heat and power facility, or co-  
30 generation facility, and that is located on property that is separated  
31 from the property on which the on-site generation facility,  
32 combined heat and power facility, or co-generation facility is  
33 located by more than one easement, public thoroughfare, or  
34 transportation or utility-owned right-of-way;

35 "On-site generation facility" means a generation facility, and  
36 equipment and services appurtenant to electric sales by such facility  
37 to the end use customer located on the property or on property  
38 contiguous to the property on which the end user is located. An on-  
39 site generation facility shall not be considered a public utility. The  
40 property of the end use customer and the property on which the on-  
41 site generation facility is located shall be considered contiguous if  
42 they are geographically located next to each other, but may be  
43 otherwise separated by an easement, public thoroughfare,  
44 transportation or utility-owned right-of-way, or if the end use  
45 customer is purchasing thermal energy services produced by the on-  
46 site generation facility, for use for heating or cooling, or both,  
47 regardless of whether the customer is located on property that is  
48 separated from the property on which the on-site generation facility

1 is located by more than one easement, public thoroughfare, or  
2 transportation or utility-owned right-of-way;

3 "Person" means an individual, partnership, corporation,  
4 association, trust, limited liability company, governmental entity or  
5 other legal entity;

6 "PJM Interconnection, L.L.C." or "PJM" means the privately-  
7 held, limited liability corporation that is a FERC-approved Regional  
8 Transmission Organization that manages the regional, high-voltage  
9 electricity grid serving all or parts of 13 states including New Jersey  
10 and the District of Columbia, operates the regional competitive  
11 wholesale electric market, manages the regional transmission  
12 planning process, and establishes systems and rules to ensure that  
13 the regional and in-State energy markets operate fairly and  
14 efficiently;

15 "Private aggregator" means a non-government aggregator that is  
16 a duly-organized business or non-profit organization authorized to  
17 do business in this State that enters into a contract with a duly  
18 licensed electric power supplier for the purchase of electric energy  
19 and capacity, or with a duly licensed gas supplier for the purchase  
20 of gas supply service, on behalf of multiple end-use customers by  
21 combining the loads of those customers;

22 "Public utility holding company" means: (1) any company that,  
23 directly or indirectly, owns, controls, or holds with power to vote,  
24 ten percent or more of the outstanding voting securities of an  
25 electric public utility or a gas public utility or of a company which  
26 is a public utility holding company by virtue of this definition,  
27 unless the Securities and Exchange Commission, or its successor,  
28 by order declares such company not to be a public utility holding  
29 company under the Public Utility Holding Company Act of 1935,  
30 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the  
31 Securities and Exchange Commission, or its successor, determines,  
32 after notice and opportunity for hearing, directly or indirectly, to  
33 exercise, either alone or pursuant to an arrangement or  
34 understanding with one or more other persons, such a controlling  
35 influence over the management or policies of an electric public  
36 utility or a gas public utility or public utility holding company as to  
37 make it necessary or appropriate in the public interest or for the  
38 protection of investors or consumers that such person be subject to  
39 the obligations, duties, and liabilities imposed in the Public Utility  
40 Holding Company Act of 1935 or its successor;

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

47 "Regulatory asset" means an asset recorded on the books of an  
48 electric public utility or gas public utility pursuant to the Statement

1 of Financial Accounting Standards, No. 71, entitled "Accounting for  
2 the Effects of Certain Types of Regulation," or any successor  
3 standard and as deemed recoverable by the board;

4 "Related competitive business segment of an electric public  
5 utility or gas public utility" means any business venture of an  
6 electric public utility or gas public utility including, but not limited  
7 to, functionally separate business units, joint ventures, and  
8 partnerships, that offers to provide or provides competitive services;

9 "Related competitive business segment of a public utility holding  
10 company" means any business venture of a public utility holding  
11 company, including, but not limited to, functionally separate  
12 business units, joint ventures, and partnerships and subsidiaries, that  
13 offers to provide or provides competitive services, but does not  
14 include any related competitive business segments of an electric  
15 public utility or gas public utility;

16 "Reliability pricing model" or "RPM" means PJM's capacity-  
17 market model, and its successors, that secures capacity on behalf of  
18 electric load serving entities to satisfy load obligations not satisfied  
19 through the output of electric generation facilities owned by those  
20 entities;

21 "Renewable energy certificate" or "REC" means a certificate  
22 representing the environmental benefits or attributes of one  
23 megawatt-hour of generation from a generating facility that  
24 produces Class I or Class II renewable energy, but shall not include  
25 a solar renewable energy certificate or an offshore wind renewable  
26 energy certificate;

27 "Resource clearing price" or "RCP" means the clearing price  
28 established for the applicable locational deliverability area by the  
29 base residual auction conducted by PJM as part of PJM's reliability  
30 pricing model;

31 "Resource recovery facility" means a solid waste facility  
32 constructed and operated for the incineration of solid waste for  
33 energy production and the recovery of metals and other materials  
34 for reuse;

35 "Restructuring related costs" means reasonably incurred costs  
36 directly related to the restructuring of the electric power industry,  
37 including the closure, sale, functional separation and divestiture of  
38 generation and other competitive utility assets by a public utility, or  
39 the provision of competitive services as such costs are determined  
40 by the board, and which are not stranded costs as defined in  
41 P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited  
42 to, investments in management information systems, and which  
43 shall include expenses related to employees affected by  
44 restructuring which result in efficiencies and which result in  
45 benefits to ratepayers, such as training or retraining at the level  
46 equivalent to one year's training at a vocational or technical school  
47 or county community college, the provision of severance pay of two  
48 weeks of base pay for each year of full-time employment, and a



1 maximum of 24 months' continued health care coverage. Except as  
2 to expenses related to employees affected by restructuring,  
3 "restructuring related costs" shall not include going forward costs;

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

10 "Retail margin" means an amount, reflecting differences in  
11 prices that electric power suppliers and electric public utilities may  
12 charge in providing electric generation service and basic generation  
13 service, respectively, to retail customers, excluding residential  
14 customers, which the board may authorize to be charged to  
15 categories of basic generation service customers of electric public  
16 utilities in this State, other than residential customers, under the  
17 board's continuing regulation of basic generation service pursuant to  
18 sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the  
19 purpose of promoting a competitive retail market for the supply of  
20 electricity;

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

25 "Social program" means a program implemented with board  
26 approval to provide assistance to a group of disadvantaged  
27 customers, to provide protection to consumers, or to accomplish a  
28 particular societal goal, and includes, but is not limited to, the  
29 winter moratorium program, utility practices concerning "bad debt"  
30 customers, low income assistance, deferred payment plans,  
31 weatherization programs, and late payment and deposit policies, but  
32 does not include any demand side management program or any  
33 environmental requirements or controls;

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

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

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

47 "Standard offer capacity agreement" or "SOCA" means a  
48 financially-settled transaction agreement, approved by board order,

1 that provides for an eligible generator to receive a payment from  
2 one or more electric public utilities, in the event the SOCP is  
3 greater than the RCP for any applicable delivery year, that provides  
4 for such payment to be equal to the difference between the SOCP  
5 and the RCP multiplied by the contract capacity, that provides for a  
6 defined amount of electric capacity for the term of the transaction  
7 of not less than 15 years, and that provides for such payment to be a  
8 fully non-bypassable charge, with such an order, once issued, being  
9 irrevocable;

10 "Standard offer capacity price" or "SOCP" means the capacity  
11 price that is fixed for the term of the SOCA and is the minimum  
12 price to be received by an eligible generator under a board-  
13 approved SOCA;

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

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

28 "Thermal efficiency" means the useful electric energy output of a  
29 facility, plus the useful thermal energy output of the facility,  
30 expressed as a percentage of the total energy input to the facility;

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

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

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

3 "Transmission and distribution system" means, with respect to an  
4 electric public utility, any facility or equipment that is used for the  
5 transmission, distribution or delivery of electricity to the customers  
6 of the electric public utility including, but not limited to, the land,  
7 structures, meters, lines, switches and all other appurtenances  
8 thereof and thereto, owned or controlled by the electric public  
9 utility within this State; and

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

14

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

25 a. the establishment of the LCAPP that allows for offering  
26 financially-settled SOCAs for the purpose of facilitating the  
27 development of eligible generators;

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

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

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

34 c. the participation of selected eligible generators with board  
35 approved, executed SOCAs in and clearing of the base residual  
36 auction conducted by PJM and scheduled to commence on May 2,  
37 2011, as part of PJM's reliability pricing model for the delivery  
38 year 2015;

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

41 e. that electric public utilities shall procure at least 500  
42 megawatts and not more than 1500 megawatts of financially-settled  
43 SOCAs from the eligible generators;

44 f. that no single eligible generator or its affiliate may enter into  
45 more than 900 megawatts of financially-settled standard offer  
46 capacity agreements;

47 g. that eligible generators participating in the LCAPP shall be  
48 required to offer the maximum quantity, in megawatts, of the SOCA

- 1 at the standard offer price of \$232.75 per megawatt per day, which  
2 represents a discount to the most recent clearing price established  
3 by the base residual auction conducted by the PJM in May, 2010 as  
4 part of the PJM's reliability pricing model;
- 5 h. that the board select an eligible generator from among the  
6 eligible generators participating in the LCAPP for the award of a  
7 board-approved long-term financially-settled SOCA for a term of  
8 not less than 15 years;
- 9 i. that the selection of winning eligible generators give  
10 preference to those eligible generators located in "areas in need of  
11 redevelopment" in accordance with the "Local Redevelopment and  
12 Housing Law," P.L.1992, c.79 (C.40A:12A-1 et seq.), that based on  
13 the board's determination, can provide the greatest environmental,  
14 economic, and community benefits, and can demonstrate certainty  
15 of completion of development and permitting activities necessary to  
16 meet the desired in-service date;
- 17 j. that an eligible generator selected by the board, enter into a  
18 SOCA with each of the State's four electric public utilities provided  
19 that each electric public utility shall pay a load-ratio share of the  
20 SOCA price based upon each electric public utility's annual  
21 forecasted peak demand as determined by PJM;
- 22 k. that the resulting SOCA shall bind the electric public  
23 utilities to the board approved SOCAs with a selected eligible  
24 generator for not less than 15 years;
- 25 l. that the selected eligible generators with executed SOCAs  
26 shall offer the capacity, electricity, and ancillary services into the  
27 PJM wholesale markets as required by the PJM market rules;
- 28 m. that selected eligible generators with executed SOCAs shall  
29 participate in and clear the annual base residual auction conducted  
30 by the PJM as part of PJM's reliability pricing model for each  
31 delivery year of the entire term of the agreement;
- 32 n. that the board shall order the full recovery of all costs  
33 associated with the electric public utilities' resulting SOCAs from  
34 ratepayers through a non-bypassable, irrevocable charge;
- 35 (1) notwithstanding any other provision of law, each LCAPP  
36 standard offer capacity agreement shall become irrevocable upon  
37 the issuance of such order; and
- 38 (2) neither the board or any other governmental entity shall have  
39 the authority, directly or indirectly, legally or equitably, to rescind,  
40 alter, repeal, modify or amend an LCAPP cost rate order, to revalue,  
41 re-evaluate or revise the amount of LCAPP costs, or to determine  
42 that the LCAPP charges or the revenues to recover the LCAPP  
43 charges for such SOCAs are unjust or unreasonable; and
- 44 o. that the board shall have complete discretion to approve any  
45 and all SOCAs resulting from the LCAPP.
- 46
- 47 4. This act shall take effect immediately.

STATEMENT

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This bill establishes a long-term capacity agreement pilot program (hereinafter "LCAPP") to incentivize the construction of qualified in-State electric generation facilities. The creation of the LCAPP is expected to reduce the cost of energy for New Jersey residents and reduce the State's dependence on out-of-state generation.

This bill is also intended to further New Jersey's policy of promoting the use of clean and efficient generation by requiring all eligible generators that participate in the LCAPP to construct clean and efficient generation facilities.

Finally, this bill is intended to promote economic development in the State through the jobs created by the construction and operation, and maintenance of new in-State generation facilities and by the expected reduction in electric energy costs.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES  
COMMITTEE

STATEMENT TO  
**ASSEMBLY, No. 3442**

with committee amendments

**STATE OF NEW JERSEY**

DATED: DECEMBER 16, 2010

The Assembly Telecommunications and Utilities Committee reports favorably and with amendments Assembly Bill No. 3442.

As amended, this bill establishes a long-term capacity agreement pilot program (hereinafter "LCAPP") to incentivize the construction of qualified electric generation facilities. The creation of the LCAPP is expected to reduce the cost of energy for New Jersey residents and reduce the State's dependence on coal-burning electric power generation.

This bill is also intended to further New Jersey's policy of promoting the use of clean and efficient generation and to promote economic development through the jobs created by the construction and operation, and maintenance of new generation facilities and by the expected reduction in electric energy costs.

The committee amendments would:

(1) make changes to the findings and declarations in section 1 of the bill;

(2) make changes to the definitions of "eligible generator," "long-term capacity agreement pilot program," "PJM Interconnection, L.L.C.," "reliability pricing model," "resource clearing price," "standard offer capacity agreement," and "standard offer capacity price;"

(3) add new definitions for "combined cycle power generator," "incremental auction," and "locational deliverability area;"

(4) reduce the maximum amount of megawatts that may be procured under the bill from 1,500 to 1,000;

(5) require that no single generator enter into more than 700 megawatts of SOCAs;

(6) require the BPU to retain an agent to assist with the development and implementation of the LCAPP to recommend to the BPU the selection of winning eligible generators based upon the net benefit to ratepayers and other factors; and

(7) make technical and clarifying changes.

Assembly Bill No. 3442, which was amended and reported by the committee on this date, is identical to Senate Bill No. 2381 (1R), which was also amended and reported by the committee on this date.

STATEMENT TO  
[First Reprint]  
**ASSEMBLY, No. 3442**

with Assembly Floor Amendments  
(Proposed by Assemblyman CHIVUKULA)

ADOPTED: JANUARY 6, 2011

This amendment increases from 1,000 to 2,000 the number of megawatts electric public utilities shall procure from eligible generators under any financial-settled, standard offer capacity agreement.