



March 24, 2011

VIA ELECTRONIC MAIL & REGULAR MAIL

Kristi Izzo, Secretary
Secretary of the Board
State of New Jersey
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, New Jersey 07102

**Re: PSEG Power LLC Limited Comments on the LCAPP Agent’s March 21, 2011 Report
In the Matter of the Long-Term Capacity Agreement Pilot Program
Docket No. EO11010026**

Dear Ms. Izzo:

PSEG Power LLC (“PSEG Power”) respectfully submits the following limited comments regarding the LCAPP Agent’s March 21, 2011 Report (“Agent’s Report” or “Report”) on the Long-Term Capacity Agreement Pilot Program (“LCAPP”).

PSEG Power has expressed its opposition to the LCAPP program through its participation in a complaint in federal district court challenging the constitutionality of the statute and by supporting a Complaint that the PJM Power Providers filed with the Federal Energy Regulatory Commission. PSEG Power offers these limited comments on the deficiencies in the qualification process.

The Agent failed to support its prequalification decisions. The Agent disqualified nearly two thirds of the prequalification applicants “because they were tied to existing generation units and therefore did not meet the condition of being a new generation facility.” (Report at 38.)

This blanket rejection of expansion and up-rate proposals was not required by the statute, and the Report's explanation does not adequately support these exclusions. To the extent that this LCAPP program is implemented, New Jersey ratepayers may have had significantly less costly options available than the options selected and some generators may have been unfairly excluded.

The LCAPP Statute defines an eligible generator as “a developer of a base load or mid-merit electric power generation² facility including, but not limited to, an on-site generation facility that qualifies as a capacity resource under PJM criteria and that commences construction after the effective date of [the Statute].” Act § 2. It did not define “generation facility” as a stand-alone generation facility. In fact, the definition of “eligible generator” does not even use the term “new.”¹ Instead, the definition creates a “new” requirement by requiring that construction commence after the Statute's enactment. Expansion projects and up-rates require construction of substantial new physical facilities that result in new capacity. The Statute contains no indication that these types of new facilities should be excluded and is consistent with allowing any new capacity for which construction commences after the Statute's enactment. *See, e.g.*, Act § 3.c.1 (referencing “new generation capacity”).

Expansion projects and up-rates would achieve the same claimed benefits as new, stand-alone facilities – and potentially at a lower cost. The distinction between an expansion or up-rate

¹ Rather, “new” was used in connection with the definition of “eligible generator” in an earlier version of the Statute (*see* Fourth Reprint of S-2381, dated Jan. 11, 2011, which displays portions of the bill that were removed in bold-faced brackets) and then removed, suggesting that it was the Legislature's intent not to limit the LCAPP to new facilities.

and a new stand-alone location would not affect energy and capacity prices, the impact on jobs or the environmental impact. The only apparent difference between the expansion and up-rate proposals that the Agent excluded and the proposals that the Agent considered is that the former included a number of out-of-state locations while the later were located entirely within New Jersey. This difference is not a rational basis for such an unsupported exclusion.

Respectfully submitted,

PSEG Power LLC

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C Attached Service List (E-mail Only)

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BPU DOCKET NO. EO11010026**

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