Agenda Date: 12/8/08
Agenda Item: 2G

**STATE OF NEW JERSEY**
**Board of Public Utilities**
**Two Gateway Center**
**Newark, NJ 07102**
**www.nj.gov/bpu/**

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| | | ENERGY |
| IN THE MATTER OF DEMAND RESPONSE PROGRAMS FOR THE PERIOD BEGINNING JUNE 1, 2009 -- ELECTRIC DISTRIBUTION COMPANY PROGRAMS | ) ) ) ) | ORDER<br><br><br>DOCKET NO. EO08050326 |

(SERVICE LIST ATTACHED)

BY THE BOARD:

By Order dated July 1, 2008, pursuant to N.J.S.A. 48:3-98.1 ("Section 98.1"), the Board directed the State's electric distribution companies ("EDCs"), Public Service Electric & Gas Company ("PSE&G"), Jersey Central Power & Light Company ("JCP&L"), Atlantic City Electric Company ("ACE"), and Rockland Electric Company ("RECO"), to submit proposals for demand response ("DR") programs to be implemented for the period beginning June 1, 2009. The July 1 Order also set a procedural schedule designed to maximize stakeholder participation while expediting the process to increase the use of DR[1].

Proposals were submitted in a timely manner by PSE&G, JCP&L, ACE and RECO. These proposals contained more than a dozen separate programs, ranging from residential air conditioning cycling to a system for electricity storage and an ice-making system that could be used to shift load necessary for running air conditioning. Several of these programs feature new technologies, and some would require a sizeable financial investment by the utilities that would ultimately be borne by ratepayers. After initial review by Staff and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), all four EDC filings were deemed to be deficient in terms of the minimum filing requirements established in the Board's May 12, 2008 Order *In the Matter of Electric Public Utilities and Gas Public Utilities Offering Energy Efficiency and Conservation Programs, Investing in Class I Renewable Energy Sources and Offering Class I Renewable Energy Programs in Their Respective Service Territories on a Regulated Basis Pursuant to N.J.S.A. 48:3-98.1* in Docket No. EO08030164 ("the May 12 Order").

[1]In the July 1 Order under Docket No. EO08060421, the Board also invited market participants including, but not limited to, energy suppliers, curtailment service providers ("CSPs") and utilities to submit market-based program proposals for decreasing New Jersey's total annual electricity consumption, and/or reducing the State's electricity peak load. However, this Order will focus exclusively on the EDC programs and will not address the market-based proposals.

On August 22, 2008, Rate Counsel met with Staff to express its concern that the expedited procedural schedule contained in the July 1 Order did not allow sufficient time for fully evaluating the more innovative and complex EDC proposals. Later that day, Rate Counsel filed a letter with the Board requesting that deficiency letters be issued to the EDCs for failure of the EDC filings to satisfy the minimum filing requirements under the May 12 Order.

Staff agreed with Rate Counsel that additional time was necessary, but was concerned that extending the procedural schedule could jeopardize the timely implementation of those DR programs that contemplated participation in the relevant PJM Interconnection LLC ("PJM") programs in time to meet the deadline for registering DR with PJM for the period beginning June 1, 2009.

Staff and Rate Counsel agreed on a suggested plan of action that would address these concerns, and presented it to the EDCs at a meeting on August 27, 2008. A key element of the plan was an interim step to ensure that some level of demand response would be in effect for the period beginning June 1, 2009: the Board would be asked to adopt a modified version of the proposal submitted in November 2007 by the Demand Response Working Group ("DRWG") which offered an additional incentive payment ("Premium Payment") for new DR registered with PJM. The plan was memorialized in a letter sent to the EDCs by Energy Division Director Nusha Wyner on August 29, 2008, which was accompanied by a separate letter noting the deficiencies in each company's August 1, 2008 filing. The letter requested responses from the EDCs to the proposed action plan by September 8, 2008. Each of the EDCs responded in a timely manner, and their responses were given careful consideration by the Board[2].

At its September 12, 2008 agenda meeting, the Board issued an Order directing the following:

- Staff shall reconvene and lead a working group for the purpose of modifying the DRWG proposal to include, but not be limited to, the following issues:

  Identifying a funding source other than the Retail Margin account;
  Suggesting funding options in the event that the proposal's 300 MW cap is exceeded;
  Establishing measurement and verification protocols; and
  Fostering cooperation between EDCs and curtailment service providers ("CSPs").

- After modification of the proposal by the working group, the Board Secretary shall issue a letter to be circulated through the Board's listserv for this proceeding, and posted on its website, providing notice of the Board's intention to consider the proposal, and seeking comments on that course of action.

- Staff shall meet individually with each of the EDCs and Rate Counsel to identify those programs within the EDCs' August 1 filings that may be reviewed within a modification of the procedural schedule attached to the July 1 Order, as well as those programs which will require extended review. Staff, the EDCs and Rate

[2]Summaries of both the action plan proposed by Staff and Rate Counsel, and the responses to that plan by the EDCs, can be found in the Board Order dated September 22, 2008 that was issued under this docket number and the docket number for the market-based aspect of this proceeding (EO08060421).

Counsel will develop proposed procedural schedules for the latter programs that will permit the implementation of programs approved by the Board by June 1, 2010[3].

A working group was convened on September 18, 2008 to address the issues that required modification. On September 26, 2008, a Secretary's letter containing the modified DRWG proposal ("Modified Proposal") was e-mailed to the listserv and posted on the BPU website. A copy of the Modified Proposal, amended to reflect the clarifications contained herein, is attached to this Order.

Comments on the Modified Proposal were accepted through October 10, 2008, with comments received from PSE&G, RECO, JCP&L, ACE, Rate Counsel, the New Jersey Large Energy Users Coalition ("NJLEUC"), ConsumerPowerline, EnerNOC, and Consolidated Edison Solutions.

In addition to the written comments, public hearings were held in the service areas of each of the four EDCs pursuant to N.J.S.A. 14:1 – 5.12(c) for the purpose of soliciting comments from members of the public on the Modified Proposal. The schedule of hearings was as follows:

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|---|---|---|---|
| RECO | Alpine, NJ | November 5, 2008 | 3:30pm and 5:30pm |
| JCP&L | Morristown, NJ | November 13, 2008 | 4:00pm and 5:30pm |
| ACE | Mays Landing, NJ | November 25, 2008 | 3:30pm and 5:30pm |
| PSE&G | New Brunswick, NJ | December 2, 2008 | 3:30pm and 5:30pm |

No members of the public appeared at the RECO, ACE and PSE&G hearings. One member of the public appeared at the JCP&L hearing; however, his testimony focused on service problems in his municipality, and did not address any of the issues in the Modified Proposal.

## THE COMMENTS

The following is a summary of the major issues raised:

## ELIGIBILITY

The New Jersey Energy Master Plan ("EMP") released on October 22, 2008 calls for reducing peak electric load in the state by 5,700 megawatts ("MW") by 2020. Sixteen percent of that target – or 900 MW – is projected to come from DR. Since that capacity is incremental to the 337 MW of DR currently active in New Jersey[4], it is imperative that incentives be put in place immediately to encourage the registration of new capacity. It is the intent of the Board in

[3]The proceedings described in the paragraph will be considered in separate Board Orders.

[4] Source: PJM Load Activity Report through October 31, 2008. The EMP uses the generic term "demand response" to cover several opportunities for utilizing demand side resources to reduce system peaks. The Modified Proposal focuses exclusively on only one of those opportunities, Interruptible Load for Reliability ("ILR"), which is defined by PJM as interruptible load that certifies into the Reliability Pricing Model ("RPM") three months prior to the delivery year, but does not participate in the RPM auctions.

considering any incentive program to limit the financial benefit to new capacity (or additional load from customers already participating), and not reward capacity that has already been registered. Thus, any form of DR that has been registered prior to the date of this Order, or that is registered after the date of this Order but is unavailable for delivery in the energy year beginning June 1, 2009, will be deemed ineligible for the Premium Payment.

The Board acknowledges the comment of ConsumerPowerline that "by restricting the Premium Payment to new participants, the Modified Proposal creates a two-tiered pricing structure for demand response." However, given both the goals of the EMP and the limited budget for this program, the Board finds it reasonable to restrict the Premium Payments to new DR.

Comments filed by Rate Counsel, EnerNOC, RECO, ACE and JCP&L requested clarification of the Modified Proposal's eligibility rules as outlined in the sixth paragraph of Board Secretary Kristi Izzo's letter of September 26, 2008 and the second paragraph of that letter's Attachment B. EnerNOC also recommended that the Board modify the eligibility rules by accepting other forms of DR registered with PJM, in addition to ILR, for the period beginning June 1, 2009. As discussed above, the Board's policy of encouraging new participation would preclude it from doing this, since that capacity would have already been submitted to and cleared by PJM. EnerNOC, ACE and JCP&L point out an inconsistency in language between the two paragraphs cited above that will be corrected by eliminating the reference to DR in the sixth paragraph of the Secretary's Letter.

ACE and JCP&L also suggested in their comments that the Modified Proposal be expanded to include curtailment events that are called by the EDCs as well as by PJM. While the Board agrees that the concept of including EDC-called events should be considered when designing DR programs in general, it believes that incorporating it into the Modified Proposal would unnecessarily complicate this one-year program.

## FUNDING

On January 13, 2008, L. 2007, c. 340 (the "Act") was signed into law, which among other things, allows an electric or gas public utility to provide energy efficiency and conservation programs in its service territory on a regulated basis. The Act also provides a number of different mechanisms by which utilities can recover the costs of these programs, including "placing appropriate technology and program cost investments in the respective utility's rate base, or recovering the utility's technology and program costs through another ratemaking methodology approved by the board, including, but not limited to, the societal benefits charge established pursuant to section 12 of P.L. 1999, c. 23 (C.48:3-60)." N.J.S.A. 48:3-98.1 (b). The Act further states that "the board may provide funding for energy efficiency, conservation, and renewable energy improvements through the societal benefits charge established pursuant to section 12 of P.L. 1999, c. 23 (C.48:3-60), the retail margin on certain hourly-priced and larger non-residential customers pursuant to the board's continuing regulation of basic generation service pursuant to sections 3 and 9 of P.L. 1999, c. 23 (C.48:3-51 and 48:3-57), or other monies appropriated for such purposes." N.J.S.A. 48:3-98.1 (a)(3).

Rate Counsel, ACE and JCP&L's recommended using retail margin money or Office of Clean Energy ("OCE") funds collected through the Societal Benefits Charge ("SBC"). While it is true that using such funds would not lead to an immediate increase in rates, other issues are apparent. The use of retail margin funds for this type of program is still under review, in light of the fact that there is pending legislation which has proposed using these funds for another purpose. The use of retail margin is also problematic because the Modified Proposal does not restrict participation to customers that are subject to paying the retail margin. OCE funding is also problematic because the SBC level for 2009 has already been established, budgets for OCE programs are presently being finalized, and it is questionable whether the late addition of a new program into the existing schedule is permissible outside of the Comprehensive Resource Analysis required under N.J.S.A. 48:3-60.

ACE and JCP&L suggested that the costs of the Modified Proposal should be recovered through an existing Tariff clause such as Rider System Control Charge (Rider SCC) or through a new clause such as the Rider DRC that JCP&L has proposed in several other dockets. However, not all EDCs have a Rider SCC in their tariffs. Those that do are using it to fund legacy air conditioning cycling programs that are due to be replaced by new programs proposed in their August 1, 2008 filings.

After careful review of these comments, the Board HEREBY DIRECTS that the costs of the Modified Proposal, including the Premium Payments and the EDCs' incremental administrative costs, be funded pursuant to the Act. Specifically, the four EDCs are to recover reasonable and prudent costs associated with the administration of the Modified Proposal via a separate component of the electric RGGI Recovery Charge ("RRC"). Carrying charges at the weighted average of the interest rates on each utility's' commercial paper and bank credit lines utilized in the prior month will be accrued monthly on any under- or over- recovered balances. The charge will be reset nominally on an annual basis. The RRC will be reviewed and modified in an annual filing that the utilities will make with the Board. The EDCs will commence charging the RRC on May 1, 2009, after the level of PJM registration of DR is known for each EDC. The EDCs shall make a true-up filing on November 1, 2009 so that there will be full cost recovery by the time Premium Payments are made in the last quarter of 2009.The EDCs are HEREBY DIRECTED to work with Staff to develop a form for this true-up filing.

## ADMINISTRATIVE COSTS

Both Rate Counsel and NJLEUC raised concerns about the allowance in the Modified Proposal for the recovery of administrative costs by the EDCs. Both parties questioned whether the 15% allowance was an entitlement or a cap. The Board HEREBY CLARIFIES that the 15% allowance for administrative costs is indeed a cap, and that as part of the true-up filing described above, the EDCs will be required to submit documentation, subject to audit, demonstrating that any costs being claimed for recovery were prudently and reasonably incurred.

## INCENTIVE RATE TREATMENT

All four EDCs raise the issue of incentive rate treatment in their comments, as does NJLEUC. The EDCs suggest that they be allowed to earn a return on their program costs pursuant to N.J.S.A. 48:3-98.1(a)(3); NJLEUC opposes their argument. The program outlined in the Modified Proposal is a one-year effort designed to stimulate the DR market through a Premium Payment to eligible CSPs funded by revenues collected and distributed by the EDCs. The EDCs are acting as the conduit for these payments which, as discussed more fully below, will be collected in advance at no risk to the EDC. The EDCs will also be made whole for any reasonably and prudently incurred administrative costs as discussed above. In view of these considerations, as well as the fact that this is a one-year pilot program with a relatively small budget, no incentive rate treatment is warranted.

## COST RECOVERY

The EDCs contend that the revenues required to fund the Modified Proposal be fully collected prior to being distributed to eligible CSPs in the fall of 2009. The Board agrees with this position, but is concerned that the revenues collected match program costs as closely as possible. Therefore, the Board HEREBY SETS the following schedule for cost recovery:

April 1, 2009 – EDCs must file tariff sheets specifying cost recovery based on amount of new ILR registered with PJM in their respective service areas by March 1, 2009.

May 1, 2009 – EDCs are permitted to begin cost recovery based on tariff sheets filed by April 1, 2009.

November 1, 2009 – Deadline for true-up filing by EDCs. Filing will include actual amount of DR delivered to PJM against the amount registered, and justification for all administrative costs.

December 1, 2009 – Deadline for payments to be made to eligible CSPs.

## COOPERATION

Both EnerNOC and Consolidated Edison Solutions raised questions in their comments about the relationship between the EDCs and CSPs. Given the very narrow "window of opportunity" that CSPs will have in registering new ILR capacity prior to PJM's March 1, 2009 deadline, the Board is concerned that unreasonable delays by the EDCs in their fulfillment of CSP requests for customer data needed to determine eligibility, and pulse output installations needed to evaluate compliance could potentially harm the ability of this program to meet its goals.

The Board strongly encourages cooperation between the EDCs and CSPs in the implementation of the Modified Proposal, recognizing that an effective DR program is in the best interests of New Jersey's ratepayers. Based on data collected from surrounding states, the Board believes it is reasonable for EDCs to provide CSPs with a customer's historic consumption data and peak load contribution ("PLC") data within ten (10) days of a properly executed customer consent form. Additionally, the Board believes it is reasonable for EDCs to complete pulse output installation within sixty (60) days of receiving a properly executed authorization from the CSP. The Board HEREBY ORDERS the EDCs to comply with these deadlines.

After careful consideration of the comments filed, the Board HEREBY ADOPTS the Modified Proposal attached hereto as a one-year program for the period beginning June 1, 2009 with the clarifications set forth above.

DATED: 12/10/08

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M Fox
JEANNE M. FOX
PRESIDENT

Frederick F. Butler
FREDERICK F. BUTLER
COMMISSIONER

JOSEPH L. FIORDALISO
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COMMISSIONER

Elizabeth Randall
ELIZABETH RANDALL
COMMISSIONER

ATTEST:

Kristi Izzo
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

Kristi Izzo

# DEMAND RESPONSE WORKING GROUP MODIFIED PROPOSAL

(NOTE: Clarifications to the Modified Proposal contained in this Order are indicated below. Deleted material is in [brackets] and added material is underlined.)

The Demand Response Working Group ("DRWG") Modified Proposal is a New Jersey-specific demand response ("DR") program which [would] will be administered by the four New Jersey electric distribution companies ("EDCs") under the direction of the New Jersey Board of Public Utilities (the "Board"). The Modified Proposal incorporates the basic concept of the DRWG Proposal submitted to the Board on November 14, 2007, with revisions discussed at a working group meeting on September 18, 2008.

[If approved by the Board,] This program will provide a supplemental financial incentive ("Premium Payment") to the existing market values currently offered in the PJM capacity program to participants who deliver eligible demand response that has been measured and verified by PJM ("Eligible Participants"). Presently, PJM DR payments are funded through the existing PJM markets, and this arrangement will continue.

The DRWG Modified Proposal offers a maximum Premium Payment of $22.50 per megawatt-day ("MWd") to qualifying DR resources based upon successful performance during the summer of EY 2009 (June 1, 2009 through September 30, 2009). The maximum Premium Payment corresponds to a maximum total budget of $4,927,500, based on a statewide goal of 600 MW. Each EDC's share of the budget will be determined by its percentage share of New Jersey's total non-residential electric load minus any existing non-residential demand response in that EDC's service territory, multiplied by the 600 MW goal ("EDC Cap"). If more than the EDC Cap is delivered through the DRWG Modified Proposal, the Premium Payment to each Eligible Participant will be reduced proportionately, so that the total cost of the Premium Payments does not exceed the total budget. Eligible Participants must be load serving entities or curtailment service providers ("CSPs") that register with PJM for participation in the EY 2009 ILR [or DR] market[s]. A summary of the incentive payment structure is attached hereto as Attachment A.

The Modified Proposal uses the existing PJM Capacity Market Business Rules, PJM procedures, software infrastructure and personnel. PJM will assist with the implementation of the Modified Proposal in a variety of ways, including, among others, by (i) determining whether facility resources qualify for the DR Pilot; (ii) registering and tracking resources participating in the DR Pilot; (iii) notifying the EDCs when particular facilities have requested enrollment as a DR Pilot resource; (iv) initiating emergency and load management events; (v) tracking performance of DR resources; and (vi) providing performance reports and support data for each event to each EDC and the Board that will be used to substantiate whether particular DR resources have earned the DR Pilot premium payment (described below and in Attachment B).

For the purposes of this program, the Demand Response that is eligible is defined as: a) customer accounts not previously registered in PJM's [capacity programs –] Interruptible Load for Reliability ("ILR") program [or Demand Response ("DR")] in the 2008/2009 PJM Delivery Year, and b) incremental increases in kW capacity associated with customer accounts that were previously registered for ILR [and DR] in the 2008/2009 PJM Delivery Year. Both are considered as eligible for a Premium Payment.

The Modified Proposal recommends that Premium Payments for this program be administered by the EDCs. Likewise, it recommends that the costs of the program, including the Premium Payments and the EDCs' incremental administrative costs, be funded pursuant to N.J.S.A. 48:3-98.1 (a)(3). Pursuant to this statute, the Board may direct an electric or gas public utility to undertake energy efficiency, conservation and renewable energy improvement programs.

As part of this proposal it is recommended that the EDCs incremental administrative costs, if prudently incurred and subject to review and approval by the Board, be capped at 15% of their EDC Cap as determined in Attachment A. The EDCs will be required to submit documentation, subject to audit, demonstrating that any costs being claimed for recovery were prudently and reasonably incurred.

The EDCs shall provide CSPs with a customer's historic consumption data and peak load contribution ("PLC") data within ten (10) days of a properly executed customer consent form. Additionally, the EDCs shall complete pulse output installation within sixty (60) days of receiving a properly executed authorization from the CSP.

## Attachment A

**DRWG Modified Proposal Premium Payment Structure:**

1. EDC DR Cap will be derived as follows:

   EDC DR Cap = $[MW_{EDC} - MW_{ILR}]$ x

   $$[(MW_{EDC} - MW_{EDCILR}) / (MW_{NJ} - MW_{NJILR})] \times 600\text{ MW}$$

   Where:

   $MW_{EDC}$ reflects EDC non-residential load in MW
   $MW_{EDCILR}$ reflects EDC non-residential existing demand response in MW
   $MW_{NJ}$ reflects statewide non-residential load in MW
   $MW_{NJILR}$ reflects statewide non-residential demand response in MW

2. Total budget cap for each EDC will derived as follows:

   Total budget = \$22.50/MW-Day x (EDC DR Cap) x 365 Days

3. Maximum award will not at any time exceed \$22.50/ MW-Day.

4. Premium payment will be awarded on a performance basis for summer EY 2009.

5. If more than the MW Cap of demand response for an specific EDC is delivered, the premium payment will be awarded on a pro-rata share basis using the following formula:

   $$\text{Premium payment (\$/MW-Day)} = \frac{\text{Total EDC budget Cap (in \$)}}{\text{MW qualified resources} \times 365}$$

If no events are called during Energy Delivery Year 2009, premium payments will be awarded as described above to Eligible Participants as determined by PJM up to the capped amounts in 1 and 2 above.

Attachment B

**Program Administration:**

The following are the fundamental steps for implementation and administration of the DRWG Program:

1) Curtailment Service Providers ("CSPs") will register "new" customer accounts and kW of capacity associated with each in the PJM ILR market by the PJM deadline (i.e., March 2, 2009). EDCs will have the opportunity to review registrations for accuracy following registration.

2) PJM will establish a process for tracking "new" capacity, that is, a) customer accounts not previously registered for ILR capacity credits in the 2008/2009 PJM Delivery Year, and b) increases in kW capacity associated with customer accounts that were previously registered for ILR credits in the 2008/2009 PJM Delivery Year. Both are considered as eligible for a Premium Payment.

3) PJM will provide for review by each EDC, in the March/April 2009 timeframe, a report of all accounts in the EDC's service territory registered for ILR capacity credits for each CSP, with an indication of total kW of capacity credits, and how many "new" kW of capacity credits are associated with each customer account. Only "new" capacity is considered eligible for a Premium Payment.

4) EDCs will review the PJM report referred to in step #3 above for exceptions and report back to PJM, Staff and CSPs as appropriate in the April/May 2009 timeframe. Absent revision, this report will represent the final "pool" of capacity eligible for Premium Payments.

5) PJM would, as part of its assessment of performance "penalties" (in the form of decrements to PJM capacity payments) in the October/November 2009 timeframe, issue a report concerning the performance of accounts that were found to be eligible for Premium Payments in step #3 above. PJM's assessment will dictate the percentage decrement to Premium Payments for non- or under-performing eligible accounts. Customer lists will be treated as confidential.

6) EDCs will review the PJM report referred to in step #5 above to calculate the proposed Premium Payments, for review and approval by Staff and/or the Board. The Premium Payments will be based on that PJM report and Board-approved curtailment incentives (applying any funding cap, performance or other adjustments). The EDCs will distribute the Premium Payments to the CSPs by the end of the calendar year.

Board of Public Utilities
I/M/O Demand Response Programs for the Period Beginning June 1, 2009 – Electric Distribution Company Programs,
Docket No. EO08050326
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Board of Public Utilities
I/M/O Demand Response Programs for the Period Beginning June 1, 2009 – Electric Distribution Company Programs, Docket No. EO08050326
Service List

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I/M/O Demand Response Programs for the Period Beginning June 1, 2009 – Electric Distribution Company Programs, Docket No. EO08050326 and
I/M/O Demand Response Programs for the Period Beginning June 1, 2009 – Market-based Programs, Docket No. EO08060421
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# DEMAND RESPONSE WORKING GROUP MODIFIED PROPOSAL

(NOTE: Clarifications to the Modified Proposal contained in this Order are indicated below. Deleted material is in [brackets] and added material is underlined.)

The Demand Response Working Group ("DRWG") Modified Proposal is a New Jersey-specific demand response ("DR") program which [would] will be administered by the four New Jersey electric distribution companies ("EDCs") under the direction of the New Jersey Board of Public Utilities (the "Board"). The Modified Proposal incorporates the basic concept of the DRWG Proposal submitted to the Board on November 14, 2007, with revisions discussed at a working group meeting on September 18, 2008.

[If approved by the Board,] This program will provide a supplemental financial incentive ("Premium Payment") to the existing market values currently offered in the PJM capacity program to participants who deliver eligible demand response that has been measured and verified by PJM ("Eligible Participants"). Presently, PJM DR payments are funded through the existing PJM markets, and this arrangement will continue.

The DRWG Modified Proposal offers a maximum Premium Payment of $22.50 per megawatt-day ("MWd") to qualifying DR resources based upon successful performance during the summer of EY 2009 (June 1, 2009 through September 30, 2009). The maximum Premium Payment corresponds to a maximum total budget of $4,927,500, based on a statewide goal of 600 MW. Each EDC's share of the budget will be determined by its percentage share of New Jersey's total non-residential electric load minus any existing non-residential demand response in that EDC's service territory, multiplied by the 600 MW goal ("EDC Cap"). If more than the EDC Cap is delivered through the DRWG Modified Proposal, the Premium Payment to each Eligible Participant will be reduced proportionately, so that the total cost of the Premium Payments does not exceed the total budget. Eligible Participants must be load serving entities or curtailment service providers ("CSPs") that register with PJM for participation in the EY 2009 ILR [or DR] market[s]. A summary of the incentive payment structure is attached hereto as Attachment A.

The Modified Proposal uses the existing PJM Capacity Market Business Rules, PJM procedures, software infrastructure and personnel. PJM will assist with the implementation of the Modified Proposal in a variety of ways, including, among others, by (i) determining whether facility resources qualify for the DR Pilot; (ii) registering and tracking resources participating in the DR Pilot; (iii) notifying the EDCs when particular facilities have requested enrollment as a DR Pilot resource; (iv) initiating emergency and load management events; (v) tracking performance of DR resources; and (vi) providing performance reports and support data for each event to each EDC and the Board that will be used to substantiate whether particular DR resources have earned the DR Pilot premium payment (described below and in Attachment B).

For the purposes of this program, the Demand Response that is eligible is defined as: a) customer accounts not previously registered in PJM's [capacity programs –] Interruptible Load for Reliability ("ILR") program [or Demand Response ("DR")] in the 2008/2009 PJM Delivery Year, and b) incremental increases in kW capacity associated with customer accounts that were previously registered for ILR [and DR] in the 2008/2009 PJM Delivery Year. Both are considered as eligible for a Premium Payment.

The Modified Proposal recommends that Premium Payments for this program be administered by the EDCs. Likewise, it recommends that the costs of the program, including the Premium Payments and the EDCs' incremental administrative costs, be funded pursuant to N.J.S.A. 48:3-98.1 (a)(3). Pursuant to this statute, the Board may direct an electric or gas public utility to undertake energy efficiency, conservation and renewable energy improvement programs.

As part of this proposal it is recommended that the EDCs incremental administrative costs, if prudently incurred and subject to review and approval by the Board, be capped at 15% of their EDC Cap as determined in Attachment A. The EDCs will be required to submit documentation, subject to audit, demonstrating that any costs being claimed for recovery were prudently and reasonably incurred.

The EDCs shall provide CSPs with a customer's historic consumption data and peak load contribution ("PLC") data within ten (10) days of a properly executed customer consent form. Additionally, the EDCs shall complete pulse output installation within sixty (60) days of receiving a properly executed authorization from the CSP.

## Attachment A

**DRWG Modified Proposal Premium Payment Structure:**

1. EDC DR Cap will be derived as follows:

   EDC DR Cap = $[MW_{EDC} - MW_{ILR]}$ x

   $$[(MW_{EDC} - MW_{EDCILR}) / (MW_{NJ} - MW_{NJILR})] \times 600 \text{ MW}$$

   Where:

   $MW_{EDC}$ reflects EDC non-residential load in MW
   $MW_{EDCILR}$ reflects EDC non-residential existing demand response in MW
   $MW_{NJ}$ reflects statewide non-residential load in MW
   $MW_{NJILR}$ reflects statewide non-residential demand response in MW

2. Total budget cap for each EDC will derived as follows:

   Total budget = $22.50/MW-Day x (EDC DR Cap) x 365 Days

3. Maximum award will not at any time exceed $22.50/ MW-Day.

4. Premium payment will be awarded on a performance basis for summer EY 2009.

5. If more than the MW Cap of demand response for an specific EDC is delivered, the premium payment will be awarded on a pro-rata share basis using the following formula:

   $$\text{Premium payment (\$/MW-Day)} = \frac{\text{Total EDC budget Cap (in \$)}}{\text{MW qualified resources} \times 365}$$

If no events are called during Energy Delivery Year 2009, premium payments will be awarded as described above to Eligible Participants as determined by PJM up to the capped amounts in 1 and 2 above.

Attachment B

**Program Administration:**

The following are the fundamental steps for implementation and administration of the DRWG Program:

1) Curtailment Service Providers ("CSPs") will register "new" customer accounts and kW of capacity associated with each in the PJM ILR market by the PJM deadline (i.e., March 2, 2009). EDCs will have the opportunity to review registrations for accuracy following registration.

2) PJM will establish a process for tracking "new" capacity, that is, a) customer accounts not previously registered for ILR capacity credits in the 2008/2009 PJM Delivery Year, and b) increases in kW capacity associated with customer accounts that were previously registered for ILR credits in the 2008/2009 PJM Delivery Year. Both are considered as eligible for a Premium Payment.

3) PJM will provide for review by each EDC, in the March/April 2009 timeframe, a report of all accounts in the EDC's service territory registered for ILR capacity credits for each CSP, with an indication of total kW of capacity credits, and how many "new" kW of capacity credits are associated with each customer account. Only "new" capacity is considered eligible for a Premium Payment.

4) EDCs will review the PJM report referred to in step #3 above for exceptions and report back to PJM, Staff and CSPs as appropriate in the April/May 2009 timeframe. Absent revision, this report will represent the final "pool" of capacity eligible for Premium Payments.

5) PJM would, as part of its assessment of performance "penalties" (in the form of decrements to PJM capacity payments) in the October/November 2009 timeframe, issue a report concerning the performance of accounts that were found to be eligible for Premium Payments in step #3 above. PJM's assessment will dictate the percentage decrement to Premium Payments for non- or under-performing eligible accounts. Customer lists will be treated as confidential.

6) EDCs will review the PJM report referred to in step #5 above to calculate the proposed Premium Payments, for review and approval by Staff and/or the Board. The Premium
Payments will be based on that PJM report and Board-approved curtailment incentives (applying any funding cap, performance or other adjustments). The EDCs will distribute the Premium Payments to the CSPs by the end of the calendar year.

Board of Public Utilities
I/M/O Demand Response Programs for the Period Beginning June 1, 2009 – Electric Distribution Company Programs, Docket No. EO08050326
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