



Agenda Date: 01/18/12
Agenda Item: LSB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

DIVISION OF ECONOMIC
DEVELOPMENT AND PUBLIC
POLICY

IN THE MATTER OF PROTECTION OF MARKET
SENSITIVE AND COMMERCIAL INFORMATION
PROVIDED TO THE BOARD PURSUANT TO CERTAIN)
CONFIDENTIALITY AGREEMENTS

CONFIDENTIALITY ORDER

DOCKET NO. EO12010025

Parties of Record

Stefanie A. Brand, Esq., Director, Division of the Ratepayer Advocate

BY THE BOARD:

By Order dated December 10, 2009, the New Jersey Board of Public Utilities ("Board") initiated proceedings to review New Jersey's power and capacity needs under Docket No. EO09110920. By order dated May 27, 2011, the Board initiated another proceeding under Docket No. EO11050309 to continue investigating New Jersey's electric capacity needs as well as other issues associated with transmission planning, the proper functioning of the power market and barriers to new entry. At the agenda meeting on December 14, 2011, Board staff ("Staff") submitted for the Board's consideration a set of recommendations memorialized in the Staff Report on Capacity, Transmission Planning and Interconnection Issues under Dockets Nos. EO09110920 and EO11050309 ("Staff Report"). Following these proceedings and after reviewing the recommendations of the Staff Report, the Board believes that it is appropriate to seek information from the PJM Interconnection, L.L.C. ("PJM") and the PJM Independent Market Monitor ("IMM") regarding capacity resources participating in PJM's Reliability Pricing Model.

The Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., which amended the former Right to Know Law, governs the public's access to government records, and became effective on July 8, 2002. One of the modifications enacted through OPRA is an expansion of the definition of a government record for only those documents required to be made, maintained or kept on file by law, to information received, made, maintained or kept on file by a public agency in the course of its official business, except for advisory, consultative or deliberative material. N.J.S.A. 47:1A-1.1. The statute carves out information which shall not be included in the definition of a government record and shall be deemed confidential, including trade secrets, proprietary commercial or financial information, and information which, if disclosed, would give an advantage to competitors or bidders. Id.

OPRA also changed procedures regarding government records by setting forth new format and timing requirements for making and responding to requests for access. As a result, many public agencies proposed new rules and regulations to redesign their record request operations to comply with OPRA. The proposed new rules of the Board appeared in the July 1, 2002, New Jersey Register, and were adopted in the July 21, 2003 publication of the New Jersey Register.

As part of the new procedures governing the public's access to its records, and to provide a mechanism for claimants asserting confidentiality claims, the Board authorized its custodian of records to determine whether information requested by the public is a government record within the meaning of OPRA or is confidential. N.J.A.C. 14:1-12.6. Additionally, the Board reserved its authority to make a confidentiality determination when appropriate:

Nothing herein shall limit the Board's authority to make a confidentiality determination within the context of a hearing or other proceeding or with regard to any other matter, as the Board may deem appropriate.

[N.J.A.C. 14:1-12.6(d)].

Accordingly, the Board may make confidentiality determinations regarding information gathered in proceedings such as the within matter.

Pursuant to section 18.17.4 of the Operating Agreement of PJM Interconnection, L.L.C. (PJM Rate Schedule 24), which was filed by PJM and approved by the Federal Energy Regulatory Commission ("FERC") under Docket Nos. ER10-2710-000, ER10-2710-001, ER10-2710-002, ER10-2710-003, ER10-2710-004, ER10-2710-005 and ER10-2710-006, in order to review certain information which PJM treats as confidential information ("Confidential Information"), the Board must execute a "Form of Certification" regarding the treatment of information which has been filed with PJM as Confidential Information. Once the Form of Certification is signed and accepted by FERC, the Board will become an Authorized Commission entitled to receive confidential information from PJM and the IMM. Section 18.17.4(a)(ii) of the PJM Operating Agreement further provides that Confidential Information shall not be disclosed by the Authorized Commission except by order of FERC. Furthermore, the Form of Certification requires the Board to certify that it has the authority to protect the confidentiality of the Confidential Information. In consultation with Board Staff, the Board has reviewed the type of information being sought and agrees that this type of information includes commercially sensitive details of the transmission and generation markets in the PJM region, and contains details that could provide unfair competitive advantages to other market participants. Nevertheless, the Board believes that the information is key in providing insight and details to allow the Board to perform its necessary regulatory functions.

Additionally, pursuant to N.J.S.A. 52:27F-18, the Board is authorized to collect information regarding electric generation and other pertinent issues.

The Board **HEREBY FINDS** that the information it seeks that will be provided by the IMM and/or PJM pursuant to the Form of Certification, falls under the exemptions to the OPRA provided in N.J.S.A. 47:1A-1.1 for trade secrets and proprietary commercial or financial information, as well as for information that, if disclosed, would give an advantage to competitors or bidders. Additionally, the Board **HEREBY FINDS** that such information is required to be kept confidential pursuant to the PJM Operating Agreement pursuant to FERC Order. The Board **FURTHER FINDS** that any trade secret information collected pursuant to N.J.S.A. 52:27F-18 is exempt

from OPRA pursuant to N.J.S.A. 47:1A-9(a). Therefore, the Board has authority to protect the confidential information from disclosure.

The Board **HEREBY FINDS** and **CONCLUDES** that this information would provide an advantage to competitors or bidders, and shall be deemed confidential and not included as a government record pursuant to OPRA.

Therefore, should a request for this information be made to the Board's custodian, the Board **DIRECTS** that such information be treated as confidential and all requests for access be denied.

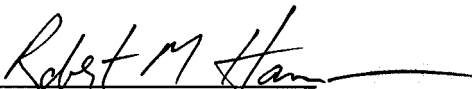
Accordingly, the Board **HEREBY AUTHORIZES** President Hanna to execute a "Form of Certification" to be filed with FERC and designate appropriate personnel as authorized to execute a Form of Non-Disclosure Agreement with PJM and review the Confidential Information pursuant to PJM Operating Agreement.

Additionally, the Board **HEREBY DIRECTS** Staff to initiate a rulemaking process pursuant to N.J.S.A. 48:2-21.32 and N.J.S.A. 47:1A-9(a) to specifically designate the information received from PJM pursuant the Form of Certification as exempt from public access.

This Order shall be Effective on January 28, 2012


DATED: 1/18/12


BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY