



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF STANDARD OFFER CAPACITY)
AGREEMENTS BETWEEN NEW JERSEY POWER)
DEVELOPMENT LLC AND PUBLIC SERVICE)
ELECTRIC & GAS COMPANY; JERSEY CENTRAL)
POWER & LIGHT COMPANY; ATLANTIC CITY)
ELECTRIC; AND ROCKLAND ELECTRIC COMPANY;)
SUBMISSION OF A DISPUTE TO THE BOARD FOR)
RESOLUTION)

ORDER

DOCKET NO. EO11110845

James E. McGuire, Esq., for New Jersey Power Development LLC
Margaret Comes, Esq., for Rockland Electric Company
Philip J. Passanante, Esq., for Atlantic City Electric Company
Marc B. Lasky, Esq., for Jersey Central Power and Light Company
Charles J. Falletta, Esq., for Public Service Electric & Gas Company
Stefanie A. Brand, Director, New Jersey Division of Rate Counsel
Hesser G. McBride, Jr. Esq., for Hess Newark, LLC
Julie L. Friedberg, Esq., for NRG Energy, Inc.

BY THE BOARD:

This matter comes before the Board on an application of the New Jersey Power Development LLC ("Petitioner" or "NJPD"), seeking Board assistance in resolving a purported dispute under the Standard Offer Capacity Agreement ("SOCA") executed by NJPD as part of the Long-Term Capacity Agreement Pilot Program ("LCAPP"). N.J.S.A. 48:3-60.1, -98.2, and -98.4. As will be discussed in further detail, the Board will retain jurisdiction, appoint a Commissioner to serve as a Presiding Commissioner, and will notify all parties of the opportunity to intervene as soon as possible.

NJPD, on November 28, 2011, filed with the Board a petition seeking dispute resolution pursuant to Section 12 of the SOCA, claiming that the issuance by the Federal Energy Regulatory Commission ("FERC") of its Order Accepting PJM's Proposed Tariff Revisions, Subject To Conditions, and Addressing Related Complaint, PJM Interconnection, L.L.C., 135 FERC ¶ 61,022 (2011), order on reh'g, 137 FERC ¶ 61,145 (2011) ("PJM MOPR Order") constituted a material change to PJM's Reliability Pricing Model ("RPM") sufficient to trigger

NJPD's right to declare a dispute under section 12.1.3 of the SOCA. Specifically, NJPD claims that the changes to the Minimum Offer Pricing Rule ("MOPR") included in the PJM MOPR Order adversely affect the Petitioner's ability to submit a zero bid into the market and thereby assure that the bid would "clear," or fall below the RPM clearing price in the Base Residual Auction ("BRA"). The change, which effectively disallows this action, will greatly increase the likelihood that new entry will not clear in the market and thus will be unable to collect a capacity payment, according to the NJPD. Petition at 5.

According to the petition, NJPD met with each of the four electric distribution companies ("EDCs") in the State in an attempt to resolve the dispute, as required by the SOCA. Despite these efforts, no resolution was reached. In fact, according to NJPD, the EDCs claimed that no dispute existed. Petition at 7.

NJPD, in an attempt to remedy the dispute, has included a proposed change to the SOCA. Attachment A to the Petition. At this time, it is unnecessary to go into the specifics of the requested change; instead, recognition that a change has been proposed constitutes a sufficient basis for the Board's current actions.

On December 19, 2011, the four EDCs answered through a single filing. In that answer, the EDCs claim that no dispute exists, as the PJM MOPR Order did not fundamentally change the operations of the MOPR, and thus did not materially affect the performance under or operation of the SOCA. Additionally, the EDCs assert that the Board does not have the ability to modify the SOCA, as the statute specifically forbids such modifications, and the Board has expressly accepted that limitation. Answer at 2. Furthermore, claim the EDCs, the changes to the MOPR can not give rise to a dispute under the SOCA as the possible changes to the MOPR and the risk associated with those possible changes were already considered in the LCAPP process. Answer at 3. Finally, the EDCs state that no dispute exists because NJPD has failed to demonstrate that the RPM MOPR Order adversely affects the performance, calculation, or payment of the SOCA transaction. Accordingly, the EDCs believe no dispute exists and that no resolution is necessary. Answer at 6.

On December 29, 2011, NJPD filed a reply, noting that Board Staff acknowledged the material nature of the MOPR changes in the Board Staff Report on New Jersey Capacity, Transmission Planning and Interconnection Issues, Docket Nos. EO11050309 and EO09110920. Furthermore, according to NJPD, the LCAPP Report noted that modifications to the MOPR constitute unforeseen risk, and thus constitute a material change. Finally, NJPD makes clear its belief that the modification process under consideration is entirely consistent with the SOCA, as it was expressly included in the contracts. The fundamental purpose of this process, claims NJPD, is to place the parties in positions that existed prior to the change to the MOPR. Accordingly, NJPD reasserts its request for a modification to the SOCA.

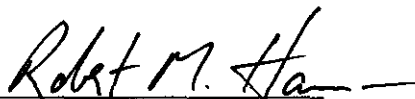
DISCUSSION

As an initial matter, the Board has determined that, in light of the significance and timing of this matter, it is appropriate to have the Board retain the matter. Accordingly, the Board HEREBY DETERMINES to retain jurisdiction over this matter and HEREBY APPOINTS President Robert M. Hanna to serve as the presiding officer. This presiding officer is HEREBY AUTHORIZED to set and modify the schedule for this matter as appropriate, decide upon motions, and otherwise control the conduct of this case, without the need for full Board approval, subject to subsequent Board ratification.

A more interesting question centers on the issue of the other entities with an interest in this matter. The SOCA is a master agreement, and the two other LCAPP winners have executed almost identical documents. Accordingly, it seems, at this juncture, to be appropriate to expect that the SOCA will be modified, if at all, in a manner that is consistent among all of the parties to all of the SOCAs. While the Board may not be authorized to designate these parties as "necessary," pursuant to N.J.A.C. 1:1-16.4, it may require that they be notified to ensure they have the opportunity to seek intervention. Therefore, by service of this Order the Board HEREBY NOTIFIES the other LCAPP winners that they may seek to intervene as soon as possible, and that the EDCs should provide a response or objection to such requests for intervention within 5 days of receipt to expedite the review.

DATED: 2/10/12

BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

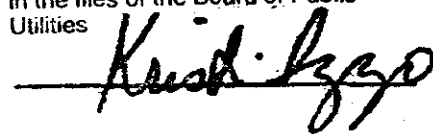

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

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



**I/M/O STANDARD OFFER CAPACITY AGREEMENTS
BPU DOCKET NO. EO1110845**

SERVICE LIST

<p>Robert J. Reuter Bulk Power Consultant Retail Load Supply PHI/Atlantic City Electric Company 701 9th Street, N.@. Washington, D.C. 20001 Email: rjreuter@pepco.com</p>	<p>Kristi Izzo, Secretary New Jersey Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, New Jersey 08625-0350 Email: kristi.izzo@bpu.state.nj.us</p>
<p>Dean Stathis Director Regulated Commodity Sourcing Jersey Central Power & Light 2800 pottsville Pike Reading, PA 19612-6001 Email: dstathis@firstenergycorp.com</p>	<p>Philip J. Passanante, Esq. Associate General Counsel Atlantic City Electric Company 500 North Wakefield Drive Newark, DE 19702 Email: philip.passanante@pepcoholdings.com</p>
<p>David M. Daly Vice President, Asset Management & Centralized Services Public Service & Gas Company 80 Park Plaza, T-14 Newark, NJ 07102-4194 Email: David.Daly@PSEG.com</p>	<p>Marc B. Lasky, Esq. Morgan, Lewis & Bockius, LLP 89 Headquarters Plaza North, Suite 1419 Morristown, NJ 07960 Email: mlasky@morganlewis.com</p>
<p>John L. Carley, Esq. Assistant General Counsel Rockland Electric Company 4 Irving Place New York, NY 10003-0987 Email: CarleyJ@coned.com</p>	<p>Tamara L. Linde, Esq. Vice President, Regulatory Public Service & Gas Company 80 Park Plaza, T-5G Newark, NJ 07102-4194 Email: tamara.linde@pseq.com</p>
<p>Mary Beth Brenner Director – Economic Development & Energy Policy New Jersey Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, New Jersey 08625-0350 Email: Marybeth.brenner@bpu.state.nj.us</p>	<p>Charles J. Falletta, Esq. Peter G. Verniero, Esq. Sills Cummis & Gross, P.C. One Riverfront Plaza Newark, NJ 07102-4194 Email: cfalletta@sillscummis.com Email: pverniero@sillscummis.com</p>

<p>Rhea Weinberg-Brekke Chief of Staff New Jersey Board of Public Utilities 44 South Clinton Avenue, 9th Floor P.O. Box 350 Trenton, New Jersey 08625-0350 Email: Rhea.brekke@bpu.state.nj.us</p>	<p>Stefanie A. Brand, Esq., Director New Jersey Division of Rate Counsel 31 Clinton Street, 11th Floor P.O. Box 46005 Newark, NJ 07101 Email: sbrand@rpa.state.nj.us</p>
<p>David Davis NRG Energy, Inc. 211 Carnegie Center Princeton, NJ 08540 Email: David.Davis@nrgenergy.com</p>	<p>Babette Tenzer, DAG Division of Law 124 Halsey Street P.O. Box 45029 Newark, NJ 07101 Email: babette.tenzer@dol.lps.state.nj.us</p>
<p>Alex Moreau, DAG Division of Law – Public Utility Law Section 124 Halsey Street P.O. Box 45029 Newark, NJ 07101 Email: Alex.Moreau@dol.lps.state.nj.us</p>	<p>James E. McGuire, Esq. Reed Smith LLP 136 Main Street, Suite 250 Princeton, NJ 08540 Email: jemcquire@reedsmith.com</p>
<p>Lisa Gurkas New Jersey Division of Rate Counsel 31 Clinton Street P.O. Box 46005 Newark, NJ 07101 Email: lgurkas@rpa.state.nj.us</p>	<p>Hesser G. McBride, Jr., Esq. Wilentz, Goldman & Spitzer, P.A. 90 Woodbridge Center Drive, Suite 900 P.O. Box 10 Woodbridge, NJ 07095-0958 Email: hmcbride@wilentz.com</p>
<p>Julie Friedberg, Esq. General Counsel – Northeast Region NRG Energy, Inc. 211 Carnegie Center Princeton, NJ 08540 Email: Julie.friedberg@nrgenergy.com</p>	<p>Margaret Comes Senior Attorney Consolidated Edison Company of New York, Inc. 4 Irving Place - Room 1815-S New York, New York 10003 Email: COMESM@coned.com</p>