

Tamara L. Linde
Vice President – Regulatory

Law Department
PSEG Services Corporation
80 Park Plaza, T-5G, Newark, New Jersey 07102-4194
tel: 973.430.8058 fax: 973.430.5983
cell phone: 973.204.2386
email: tamara.linde@pseg.com



March 1, 2011

**In the Matter of the
Long-Term Capacity Agreement Pilot Program
BPU Docket No. EO11010026**

VIA ELECTRONIC & REGULAR MAIL

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

Re: Proposed Form of Standard Offer Capacity Agreement

Dear Ms. Izzo:

In conformance with the directives of the Board of Public Utilities in its Order Initiating Proceeding and Approving Agent, issued on February 10, 2011 in the above-captioned matter, Public Service Electric and Gas Company, Jersey Central Power & Light Company, Atlantic City Electric Company and Rockland Electric Company (the "EDCs") hereby submit the Supplemental Reply Comments of the Electric Distribution Companies.

Should you have any questions, please contact the undersigned.

Very truly yours,

*Original Signed by
Tamara Linde, Esq.*

Attachment

C Attached Service List (E-Mail Only)

BPU LCAPP AGENT

Levitan & Associates, Inc.
PHONE: (____) ____-____
FAX: (____) ____-____
agent@nj-lcapp.com

BPU

Mark Beyer, Chief Economist
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
PHONE: (973) 693-3414
FAX: (973) 648-4410
mark.beyer@bpu.state.nj.us

Andrew K. Dembia
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
PHONE: (973) 648-3858
FAX: (____) ____-____
andrew.dembia@bpu.state.nj.us

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Suite 801
Newark, NJ 07102
PHONE: (973) 648-3426
FAX: (973) 638-2409
kristi.izzo@bpu.state.nj.us

Jerome May, Director
Board of Public Utilities
Division of Energy
Two Gateway Center, Suite 801
Newark, NJ 07102
PHONE: (973) 648-4950
FAX: (973) 648-7420
Jerome.may@bpu.state.nj.us

Frank Perrotti
Board of Public Utilities
Division of Energy
Two Gateway Center, Suite 801
Newark, NJ 07102
PHONE: (973) 648-7290
FAX: (973) 648-2467
frank.perrotti@bpu.state.nj.us

Kenneth Sheehan, Chief Counsel
New Jersey Board of Public Utilities
Two Gateway Center
Suite 801
Newark, NJ 07101
PHONE: (____) ____-____
FAX: (____) ____-____
kenneth.sheehan@bpu.state.nj.us

DAG

Babette Tenzer, DAG
NJ Dept. of Law & Public Safety
Division of Law
124 Halsey Street
PO Box 45029
Newark, NJ 07101
PHONE: (973) 648-7811
FAX: (973) 648-3555
babette.tenzer@dol.lps.state.nj.us

Caroline Vachier, DAG, Assistant Section
Chief, Deputy Attorney General
NJ Dept. of Law & Public Safety
Division of Law
124 Halsey Street, 5th Flr.
P.O. Box 45029
Newark, NJ 07101
PHONE: (973) 648-3709
FAX: (973) 648-3555
caroline.vachier@dol.lps.state.nj.us

ADVOCATE

Stefanie A. Brand, Director
The Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
PHONE: (973) 648-2690
FAX: (973) 624-1047
sbrand@rpa.state.nj.us

Paul Flanagan, Litigation Manager
Dept. of The Public Advocate
Division of Rate Counsel
31 Clinton Street - 11th Floor
P.O. Box 46005
Newark, NJ 07101
PHONE: (973) 648-2690
FAX: (973) 642-1047
pflanagan@rpa.state.nj.us

Lisa Gurkas
Department of the Public Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07102
PHONE: (973) 648-2690
FAX: (973) 624-1047
lgurkas@rpa.state.nj.us

Ami Morita
Dept. of The Public Advocate
Division of Rate Counsel
31 Clinton Street - 11th Floor
P.O. Box 46005
Newark, NJ 07101
PHONE: (973) 648-2690
FAX: (973) 624-1047
amorita@rpa.state.nj.us

ATLANTIC CITY ELECTRIC CO.

Gloria Godson
Atlantic City Electric Co.
401 Eagle Run Road
Newark, DE 19702
PHONE: (____) ____-____
FAX: (____) ____-____
gloria.godson@pepcoholdings.com

Philip J. Passanante, Assisant General
Counsel
Atlantic City Electric Co. - 89KS42
800 King Street, 5th Floor
PO Box 231
Wilmington, DE 19899-0231
PHONE: (302) 429-3105
FAX: (302) 429-3801
philip.passanante@pepcoholdings.com

Roger E. Pedersen, Manager, NJ -
Regulatory Affairs
Atlantic City Electric Co. - 63ML38
5100 Harding Highway
Mays Landing, NJ 08330
PHONE: (609) 625-5820
FAX: (609) 625-5838
roger.pedersen@pepcoholdings.com

Robert Reuter
Atlantic City Electric Co.
701 9th Street, NW
Washington, DC 20001
PHONE: (202) 331-6511
FAX: (____) ____-____
rjreuter@pepco.com

CONSOLIDATED EDISON

Margaret Comes, Sr Staff Attorney
Consolidated Edison Company of New
York, Inc.
Law Department, Room 1815-S
4 Irving Place
New York, NY 10003
PHONE: (212) 460-3013
FAX: (212) 677-5850
comesm@coned.com

JCP&L

Kevin Connelly
First Energy
300 Madison Avenue
Morristown, NJ 07960
PHONE: (973) 401-8708
FAX: (973) 644-4243
kconnelly@firstenergycorp.com

Marc B. Lasky, Esq.
Morgan, Lewis & Bockius LLP
89 Headquarters Plaza North
Suite 1435
Morristown, NJ 07960
PHONE: (973) 993-3133
FAX: (877) 432-9652
mlasky@morganlewis.com

Larry Sweeney
First Energy
300 Madison Avenue
P. O. Box 1911
Morristown, NJ 07962-1911
PHONE: (973) 401-8697
FAX: (973) 644-4157
lsweeney@firstenergycorp.com

ROCKLAND

John L. Carley, Esq.
Consolidated Edison Co. of NY
Law Dept., Room 1815-S
4 Irving Place
New York, NY 10003
PHONE: (212) 460-2097
FAX: (212) 677-5850
carleyj@coned.com

PSE&G

Kenneth Carretta, General Regul
Markets Counsel
PSEG Services Corporation
80 Park Plaza, T-05, T-05
Newark, NJ 07102
PHONE: (973) 430-6462
FAX: (973) 430-5983
kenneth.corretta@pseg.com

Gregory Eisenstark, Esq.
Associate General Regulatory Co
PSEG Services Corporation
80 Park Plaza, T-05
Newark, NJ 07102
PHONE: (973) 430-6281
FAX: (973) 430-5983
gregory.eisenstark@pseg.com

Connie E. Lembo
PSEG Services Corporation
80 Park Plaza, T-05
Newark, NJ 07102
PHONE: (973) 430-6273
FAX: (973) 430-5983
constance.lembo@pseg.com

Tamara L. Linde, VP-Regulatory
PSEG Services Corporation
80 Park Plaza, T05, T-05
Newark, NJ 07102
PHONE: (973) 430-8058
FAX: (973) 430-5983
tamara.linde@pseg.com

**STATE OF NEW JERSEY
BEFORE THE
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE LONG-TERM)
CAPACITY AGREEMENT PILOT) DOCKET NO. EO11010026
PROGRAM)

**SUPPLEMENTAL REPLY COMMENTS OF
ELECTRIC DISTRIBUTION COMPANIES**

Public Service Electric and Gas Company, Jersey Central Power & Light Company, Atlantic City Electric Company, and Rockland Electric Company (collectively, the “EDCs”) submit these supplemental reply comments to address Version 2 of the draft standard offer capacity agreement (the “Revised Agent Draft SOCA”) posted by Levitan & Associates, Inc. (the “LCAPP Agent”) on the evening of February 28, 2011. Because the LCAPP Agent established a comment deadline less than eighteen hours after the Revised Agent Draft SOCA was posted, the EDCs have had only limited time to review the documents. Nevertheless, we have identified a number of fundamental concerns that lead us to conclude that the Revised Agent Draft SOCA fails in material respects to comply with the requirements of P.L. 2011, c.9 (the “LCAPP Law”). The EDCs detail those concerns briefly below. In general, the EDCs’ reiterate in their entirety their February 25, 2011 Reply Comments, which included proposed revisions to the original Revised Agent Draft SOCA that would cure the deficiencies noted in these Supplemental Reply Comments and conform the SOCA to the requirements of the LCAPP Law. The EDCs continue to believe that the revisions proposed in their Reply Comments are necessary if the SOCA is to comply with the requirements of the LCAPP

Law and to protect the interests of ratepayers and we continue to urge the Board to adopt them.

1. The Revised Agent Draft SOCA Does Not Obligate the Eligible Generator To Submit Supply Offers that Clear in the Base Residual Auction.

The LCAPP Law is unambiguous, in requiring that approved eligible generators with executed standard offer capacity agreements (“SOCAs”) “participate in *and clear* the annual base residual auction [BRA] conducted by the PJM as part of its reliability pricing model *for each delivery year of the entire term* of the agreement.” LCAPP Law § 3(c)(12) (emphasis supplied). Indeed, the LCAPP Agent itself recognized this requirement in information it supplied to prospective eligible generators.¹ Nevertheless, the obligations of the eligible generator set forth in the Revised Agent Draft SOCA do *not* include any obligation to clear any amount of capacity in any BRA during the term of the SOCA. The eligible generator is obligated only to submit supply offers in the BRA, regardless of whether those offers clear. Revised Agent Draft SOCA, § 2.3.3(b). An eligible generator with an executed SOCA could therefore repeatedly fail to clear any unforced capacity from its capacity resource in the BRA – violating its fundamental obligation under the LCAPP Law – but its SOCA would remain in force. Prescribing a

¹ “Question and Answer” Number 26, posted on the LCAPP Agent’s website, provides in pertinent part as follows:

Will the amount of SOCAs (in MWs) being offered for each Delivery Year be posted, at least on an aggregated [*sic*] basis?

The LCAPP Law requires that the entire capacity under SOCA must be offered into and clear the RPM auctions. . . .

<http://www.nj-lcapp.com/qa.html>. Others have recognized this mandate of the LCAPP Law as well. See February 25, 2011 Comments of NextEra Energy Resources at 1-2

SOCA that does not implement the clear and express terms of the LCAPP Law would exceed the Board's statutory authority.

2. The Revised Agent Draft SOCA Does Not Assure the EDCs of Recovery of Payments to Eligible Generators.

The LCAPP Law requires the Board to order “the full recovery of all costs associated with the electric public utilities’ resulting SOCAs, and the costs of the agent retained pursuant to [the law], from ratepayers through a non-bypassable, irrevocable charge.” LCAPP Law § 3(d). The Revised Agent Draft SOCA, however, fails to acknowledge this requirement as a condition precedent to the parties’ obligations under the SOCA or to provide for the termination or suspension of the EDC’s payment obligations if it is denied recovery of those payments.² Accordingly, the EDCs cannot lawfully be required to incur payment obligations under a SOCA if their ability to recover the costs of those obligations, as well as other costs of the LCAPP, has not been established by Board order. Nor can they be required to continue to incur those obligations if the right to such recovery is somehow denied or frustrated after the SOCA commences. While the LCAPP Law speaks of an “irrevocable” charge for recovery of these costs, the EDCs can take only limited comfort in this provision. The law can change because, as a general proposition, one legislature cannot bind a future legislature. Moreover, beyond the inclusion of the word "irrevocable," the LCAPP Law does not even contain the additional protections against future modifications that are included in securitization legislation, including a state "pledge" against modifications (*see* N.J.S.A.

² The EDCs proposed revisions to the original Agent Draft SOCA to implement this requirement of the LCAPP Law in their Reply Comments, but the LCAPP Agent declined to adopt them. To the contrary, it eliminated the only provision of the original Agent Draft SOCA (section 2.6) that addressed this requirement, albeit, inadequately.

48:3-64, 65 and 66). Other future circumstances can also intervene to frustrate the recovery of such costs.

The Revised Agent Draft SOCA thus would impose upon the EDCs a risk that the New Jersey Legislature explicitly decided they should not bear. Adoption of a form of SOCA that denies the EDCs the protection the LCAPP Law expressly provides to them would plainly exceed the Board's statutory authority.

3. The Revised Agent Draft SOCA Does Not Hold Eligible Generators to the Terms of Their Proposals and Thus Does Not Ensure Ratepayers Will Realize Net Value From the SOCAs.

The LCAPP Law requires that the Board to ensure that eligible generators selected for the execution of SOCAs will provide "net value to ratepayers" through a process that requires generators to propose a "desired in-service date" and provides a weighted preference to "eligible generators that can enter commercial operation for delivery year 2015." LCAPP Law §§ 3(c)(6), 3(c)(7), 3(c)(8). The Revised Agent Draft SOCA, however, does not require the eligible generator even to attempt to achieve commercial operation by the in-service date that formed the basis of its selection by the Board. Revised Agent Draft SOCA, § 2.3.2 (generator must only attempt to achieve commercial operation by the "Commencement Date," not the "Awarded Commencement Date"). Moreover, a generator can miss its proposed in-service date by two years (and more, by claiming *force majeure*) without putting its SOCA at risk. *Id.*, § 7.1.7. The generator would not even risk losing its Construction Period Security during the delay. *Id.*, § 2.3.3(h).³

³ More broadly, the Revised Agent Draft SOCA substantially undercuts the usefulness of the Construction Period Security and the Delivery Period Security by denying the EDCs the right to draw upon

These provisions make the in-service dates specified in eligible generators' proposals essentially meaningless from a contractual perspective. This encourages generators to submit overly optimistic in-service dates proposals in order to secure a SOCA, since they know they will suffer no consequence if they do not live up to their proposals. The Board will be unable to rely on the generators it selects to begin performing on the dates that they propose. The Board therefore can have no assurance that the SOCAs will yield net value to ratepayers, as the LCAPP Act requires.

4. The Revised Agent Draft SOCA Requires EDCs To Report on Eligible Generators' Markets Activities for Sales That Do Not Take Place Under the SOCA Pursuant to Standards that Are Unclear and Ambiguous.

The LCAPP Law does not obligate the EDCs to purchase capacity, energy or ancillary services from eligible generators. Rather, it calls upon eligible generators with executed SOCAs to "offer the capacity, electricity and ancillary services into the PJM wholesale markets as required by PJM market rules." LCAPP Law, § 3(c)(11). The Revised Agent Draft SOCA includes specific quantity and price requirements for the generator's supply offers in the PJM wholesale markets and a prohibition on withholding, and obligates the EDCs to report annually on the generator's performance. Revised Agent Draft SOCA, §§ 2.3.3(b) – 2.3.3(e), 2.4.

It is inappropriate and inconsistent with the LCAPP Law to require the EDCs to report on generators' participation in PJM wholesale markets in accordance with specified pricing standards. The LCAPP Law contains no such requirement. Moreover, in order for the EDCs to prepare the report described in Section 2.4, the generator would

that security to enforce the generators' most significant obligations: completing their capacity facilities when promised and making payments, if required, under Section 4.1.2.

have to provide the EDCs with information that is extremely sensitive from a commercial perspective, including all of their bids in the PJM markets, as well as information about their costs and alternative sales opportunities to determine if their bids were the at the “lowest commercially reasonable price.” The EDCs expect that generators would be reluctant to provide that information to the EDCs, yet, without it, the EDCs’ reports would be incomplete or meaningless. If the Board wishes to obtain this information about generators’ participation in PJM wholesale markets, it should impose this reporting obligation on the *generators*, not the EDCs. At a bare minimum, any reporting obligation the SOCA imposes on EDCs should explicitly *exclude* the prices and quantities of generators’ bids into PJM markets.

Further, the standard to which the Revised Agent Draft SOCA would subject the generator’s bidding in PJM markets – “the lowest commercially reasonable price” is unclear and ambiguous. If the SOCA subject the EDCs to an annual reporting obligation with respect to generators’ bidding – which, as explained above, they should not – the EDCs would have no way of knowing whether the bidding data that generators provide (assuming they provide those data) satisfy this standard. Accordingly, if the Board does not eliminate the provisions setting forth specific pricing requirements for the eligible generators’ bids in PJM markets, the Board should place the responsibility for reporting compliance with those requirements on generators, not the EDCs. The Board could then direct a generator to take appropriate steps addressing any deficiencies in its performance, as necessary.⁴

⁴ The EDCs also note that there appears to be some ambiguity in the definition of “Resource Clearing Price” (“RCP”) in the current draft. As now written, the RCP refers to the base residual auction clearing price “for the LDA in which the Capacity facility is located.” This description fails to take account of the fact that the price paid to the resource within an LDA may be different than the LDA

CONCLUSION

The EDCs respectfully submit that the Revised Agent Draft SOCA fails to comply with the requirements of the LCAPP Law in material respects that expose ratepayers and EDCs to undue risk. The EDCs believe that, as discussed and demonstrated in their Initial Comments and Reply Comments, the Board should adopt the EDCs' proposed form of SOCA, or, failing that, the revisions to the original Agent Draft SOCA as discussed in their Reply Comments and the attachments thereto.

Respectfully submitted,

*Original Signed by
Tamara Linde, Esq.*

Tamara Linde
Vice President Regulatory
Public Service Electric and Gas Company
80 Park Plaza
Newark, NJ 07101

On behalf of the New Jersey Electric
Distribution Companies

clearing price if, for example, there are uplift payments associated with a resource bid as a block that results in a procurement in excess of the exact target amount. In that case, the uplift payment increases the LDA clearing price to load but the capacity resources receive a somewhat lower price. Accordingly, the language should be amended by the insertion of the phrase "payable to the Capacity Facility as" between "capacity" and "established" in the second line of the current definition. This will clarify that the relevant price is the amount received by the resource.