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PSEG Services Corporation

February 25, 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 Reply Comments of the Electric Distribution Companies on the Proposed Forms of Standard Offer Capacity Agreement (SOCA).

Should you have any questions, please contact the undersigned.

Very truly yours,

Original Signed by
Tamara Linde, Esq.

Attachments

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OF NEW JERSEY
BEFORE THE
BOARD OF PUBLIC UTILITIES

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

REPLY COMMENTS OF
ELECTRIC DISTRIBUTION COMPANIES

In response to the directive of the New Jersey Board of Public Utilities (the "Board") in its Order Initiating Proceedings and Approving Agent, issued on February 10, 2011 in the above-captioned matter ("February 10 Order"), four parties or groups of parties submitted proposed forms of SOCA and two others submitted comments regarding one or more principles they believed should be reflected in the SOCA adopted by the Board. On February 22, 2011, consistent with the directives of the February 10 Order, initial comments on the proposed forms of SOCA and related principles were submitted by GenOn Energy, Inc. ("GenOn"), LS Power Group (LS Power"), NRG Energy, Inc. ("NRG"), the Division of Rate Counsel ("Rate Counsel"), and jointly by Public Service Electric and Gas Company, Jersey Central Power & Light Company, Atlantic City Electric Company, and Rockland Electric Company (collectively, the "EDCs"). On February, 23, 2011, taking into consideration the proposed forms of SOCA submitted by various parties and the initial comments submitted on February 22, Levitan & Associates, Inc. (the "LCAPP Agent") posted a draft SOCA (the "Agent Draft SOCA").

In light of the LCAPP Agent's consideration of the initial comments in its proposal of the Agent Draft SOCA, these reply comments of the EDCs focus primarily on the Agent Draft SOCA.

COMMENTS

As the EDCs noted in their initial comments, the SOCA approved by the Board must conform to the requirements and provisions of the Long-Term Capacity Pilot Program ("LCAPP") established by P.L. 2011, c.9 (the "LCAPP Law") and must provide for appropriate protections to allow ratepayers to realize the net value that the LCAPP Law establishes as the requisite basis for the Board's selection of eligible generators to execute SOCAs.[1] The EDCs continue to believe that the form of SOCA they have proposed best fulfills the requirements of the LCAPP Law and provides the necessary protection to ratepayers. The Agent Draft SOCA, which appears to draw heavily on the EDCs' proposed form of SOCA, also largely satisfies the LCAPP Law's requirements. However, the EDCs respectfully submit that the Agent Draft SOCA does not conform to the LCAPP Law, at least in several important respects, and that it does not adequately protect the interests of ratepayers and the EDCs, whose interests are largely congruent.

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[1] As the EDCs stated in their initial comments:

> …the LCAPP Law, in turn, directs the Board in administering the LCAPP to select eligible generators for the execution of SOCAs based upon the Board's evaluation of whether awarding SOCAs to an eligible generator will provide "net value to ratepayers." LCAPP Law § 3(c)(7). Accordingly, the Board must evaluate the alternative proposed forms of SOCA and consider the additional comments submitted based on (i) the conformance of each proposal to the requirements and provisions of the LCAPP Law, and (ii) whether the proposed form of SOCA provides appropriate protections to allow ratepayers to realize the net value required for the Board's selection of an eligible generator.

In these reply comments, the EDCs will continue to use the same perspective to address the Agent Draft SOCA and related issues.

These reply comments focus on specific elements of the Agent Draft SOCA with the requirements of the LCAPP Law and needed ratepayer protections in mind and recommend specific revisions to the Agent Draft SOCA. In addition, these comments propose certain revisions necessary to implement the forms of security specified in the Agent Draft SOCA as well as proposed forms of Letter of Credit and Cash Escrow Agreement. These revisions are reflected in the red-lined form of SOCA that is attached to these reply comments as Attachment I.[2] A clean version is included as Attachment II.

We note that because of the extremely compressed schedule established for this proceeding, the time available for the EDCs' consideration of the Agent Draft SOCA was limited. The EDCs accordingly reserve the right to supplement or correct these reply comments and the attached recommended revisions to the Agent Draft SOCA. We also recognized that the compressed schedule also limited the time available for consideration of the parties' initial comments by the LCAPP Agent and the Board. The EDCs respectfully urge the Board to continue to give consideration to the refinements to the form of SOCA that were discussed and presented in the EDCs' initial comments and the attachments thereto.

A. The LCAPP Law Requires an Eligible Generator to Clear the Base Residual Auction Every Delivery Year During the Contract Year.

The LCAPP Law requires that approved eligible generators with executed SOCAs "shall 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). The Agent Draft SOCA

[2] The EDCs have also identified a number of minor drafting corrections, which are also reflected in Attachment I.

recognizes this statutory requirement in its sixth recital[3] but does not include the obligation to clear in the BRA among the obligations of generator set forth in section 2.3. In this regard, the Agent Draft SOCA falls short of the explicit statutory requirement. The LCAPP Law does not allow for discretion with regard to the requirement that the generator clear the BRA for each delivery year for the entire term of the SOCA. Therefore, it is necessary for the SOCA, which the Board will adopt, to recognize the failure to comply with this statutory mandate as an event of default or termination event. Accordingly, the EDCs believe that under the LCAPP Law this requirement must be an express obligation of the generator and the failure to perform this obligation must be listed as an event of default allowing termination of the SOCA.

Specifying in the SOCA the statutory requirement that the generator's supply offer clear in each BRA and the right to terminate the SOCA if it fails to do is necessary to protect the interests of ratepayers. First, if the eligible generator is not held to its obligation to clear in SOCA, ratepayers may be deprived of the "net value" upon which the LCAPP Law directs the Board to base its selection of eligible generators to execute SOCAs. LCAPP Law § 3(c)(7). The unmistakable requirement that each selected eligible generator "clear the annual [BRA]" reflects the New Jersey Legislature's judgment that the generators' supply offers clearing in the BRA is a material component of the SOCA's value to ratepayers because it is necessary to "stabilize power prices." *Id.* § 1(i). The Board is simply not free to disregard that legislative judgment in the form of SOCA it prescribes.

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[3] The Sixth Recital of the Agent Draft SOCA provides (emphasis supplied):

> WHEREAS, Generator is willing to commit to offer ***and clear*** Unforced Capacity of the Capacity Facility into each Base Residual Auction conducted by the PJM Interconnection, L.L.C. ("PJM") for all Delivery Years through the Conclusion Date.

Second, while the omission of this obligation from the Agent Draft SOCA may reflect a belief that ratepayers' interests are protected by limiting the payment obligation under the SOCA to the quantity of unforced capacity that clears in the BRA in the delivery year, as the Agent Draft SOCA does (*see* Agent Draft SOCA, §§ 1.1 (definition of "Available Capacity Amount"); 4.1), this conclusion, although necessary, is contractually insufficient. The EDCs agree that the eligible generator should not be entitled to payment for unforced capacity that does not clear in the BRA. However, allowing the SOCA to remain in effect notwithstanding the generator's failure to clear a BRA could well impose administrative and financial costs on the EDCs which will be absorbed by ratepayers. The Board must bear in mind that such long-term obligations impose real costs on the EDCs and ultimately on ratepayers. Long-term contracts may impose additional costs on customers by having adverse impacts on utility balance sheets and borrowing costs since, in some cases, long-term contracts have been treated in a manner similar to credit obligations. The burden of any impact on the EDCs' borrowing costs would ultimately rest on ratepayers.

Third, the specification in the Agent Draft SOCA (§ 2.3.3(b)) that the generator must price its supply offer in the BRA "at the lowest allowable price under the RPM Rules" is not an adequate substitute for a requirement that the generator's offer clear in the BRA. Even if such pricing permits the generator's offer to clear in some or even many annual BRAs, it still places on ratepayers the risk that the generator's offer may not clear, notwithstanding its offer at the "lowest allowable price." As explained above, the LCAPP Law unambiguously places this risk and responsibility on the eligible generators with executed SOCAs

To address these considerations, the EDCs propose that Section 2.3.3(b) of the Agent Draft SOCA be revised to include the requirement to clear each BRA and that Section 7 be revised to add the failure to clear a BRA as an event of default.

B. The LCAPP Law Requires the Eligible Generator To Offer the Awarded Capacity in the BRA.

As noted above, the LCAPP Law obligates eligible generators with executed SOCAs to "participate in and clear the annual [BRA]." LCAPP Law, § 12(c)(12). The Agent Draft SOCA addresses this requirement by specifying that the generator submit supply offers for an amount of Unforced Capacity "no ***greater*** than the Awarded Capacity Amount." Agent Draft SOCA, § 2.3.3(b) (emphasis supplied). This may be a typographical error since, read literally, it would enable the eligible generator to submit a supply offer for as little as one megawatt, to the extent permitted by PJM rules, and the EDCs see no reason why a generator should be barred from offering more than the Awarded Capacity Amount in any BRA.[4]

If this result was intended, the EDCs respectfully submit that it understates the performance obligation contemplated by the LCAPP Law. By requiring eligible generators to offer "a quantity in megawatts," directing the Board to select among those offers to ensure net value to ratepayers, and requiring selected generators to participate and clear in the annual BRAs throughout the delivery term, the New Jersey Legislature expressed its expectation that eligible generators with executed SOCAs would offer ***no less than*** their Awarded Capacity Amounts in each BRA. LCAPP Law §§ 3(c)(2), 3(c)(7), 3(c)(12). The EDCs presume that the Board and the Agent will use eligible generators' proposed Awarded Capacity Amounts in their analysis of the net value of

[4] The RPM Rules require existing generators to submit supply offers for all available unforced capacity, but there is no such requirement for planned generation.

generators' offers to ratepayers. If an eligible generator is selected on that basis, but then is not obligated to offer at least the Awarded Capacity Amount in each BRA, the "net value" calculation that underpins the award of the SOCA to that generator would be vitiated.

The SOCA should therefore obligate the eligible generator to offer the Awarded Capacity Amount, or at least that amount, in each annual BRA during the SOCA's Delivery Term. The EDCs have proposed revisions to Section 2.3.3(b) and parallel revisions to Section 7.1.8 to reflect this consideration.

C. The Requirement to Meet the Awarded Commencement Date.

The LCAPP Law requires that the Board take into account "the desired in-service date" as part of its evaluation of generators for participation in the LCAPP and that "eligible generators that can enter commercial operation for delivery year 2015 are to be provided with a weighted preference." LCAPP Law §§ 3(b)(2), 3(b)(3). In order for the Board's process of selecting and approving eligible generators for SOCAs to work effectively and to yield the net value to ratepayers that forms the basis for the Board's determinations, the EDCs believe that the SOCA must include provisions that provide strong incentives to the approved eligible generator to deliver the generation project it has proposed, commencing on the in-service date it proposed. The EDCs believe this consideration is particularly important if the generator was given a weighted preference for proposing to be in commercial operation for delivery year 2015. To provide a generator with a preference for meeting an earlier in-service date only to allow that generator to delay the in-service date for two years with no consequences, is ill-considered.

The Agent Draft SOCA does not adequately address these requirements of the LCAPP Law. First, while the draft does recognize and specify the in-service date on which the award of the SOCA was predicated (*see* Agent Draft SOCA § 1, definition of "Awarded Commencement Date"), it allows the generator a two-year grace period before the failure meet the Awarded Commencement Date becomes an event of default. *See id.* § 7.1.7. No contractual or financial consequence for delay is specified until the two years have passed. [5]

The EDCs believe that the two-year grace period is excessive and undercuts the efficacy of the Board's process for selecting eligible generators and awarding SOCAs. [6] The LCAPP Law clearly contemplates that a generator that proposes to commence commercial operation by delivery year 2015 (*i.e.*, by June 1, 2014) will be given a preference in the selection process. The two-year grace period in the Agent Draft SOCA allows a developer to win a SOCA by proposing to meet the delivery year 2015 deadline but suffer no significant consequence for failing to fulfill this key element of its proposal. Even for proposals that offer later in-service dates, the extended grace period could encourage developers to make overly-optimistic in-service date proposals in order to secure the award of a SOCA. In either case, failure to meet the proposed in-service date reduces and delays the realization of the beneficial results the LCAPP Law contemplates from the construction and commercial operation of these facilities.

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[5] The Agent Draft SOCA requires the generator to post Construction Period Security. However, as discussed below, the draft does not specify the events that would permit the EDC to draw on that security. Moreover, even assuming that the draft intended to allow the Utility to draw if the Generator misses its promised in-service date, the amount of the security is capped at $1 million, which is too low to counteract the untoward incentives that the extended grace period provides.

[6] Indeed, even most of the generators that have addressed compliance with the awarded commercial operation date have not proposed such an extended grace period.

Furthermore, although perhaps an oversight, the Agent Draft SOCA does not even obligate the eligible generator to ***attempt*** to meet the in-service date that formed the basis of its proposal to the Board and the Board's selection of the generator to execute SOCAs. Instead, Section 2.3.2 of the Agent Draft SOCA only requires the generator to use "all commercially reasonable efforts" to achieve commercial operation no later than the "Commencement Date." The term "Commencement Date" is defined to be the ***later*** of the Awarded Commencement Date (the firm date the generator proposed to begin supply unforced capacity ("UCAP") in the offer that the Board accepted) and the date when the facility first provides unforced capacity to PJM having previously cleared in a BRA. Agent Draft SOCA § 1.1 (definition of "Commencement Date"). In effect, this provision only obligates the generator to try to achieve commercial operation by the time when it actually achieves commercial operation. The EDCs believe it is not only consistent with the LCAPP Law, but also necessary to protect the efficacy of the Board's selection process to obligate the eligible generator, at a minimum, to use best efforts to achieve commercial operation by the "Awarded Commencement Date" rather than the "Commencement Date."

The EDCs propose several revisions to the Agent Draft SOCA to address these considerations.

- As discussed above, the eligible generator's obligation should be to achieve commercial operation by the date it proposed to the Board that it would begin to supply UCAP, which is the Awarded Commencement Date.

- For eligible generators that specify a date on or before June 1, 2014 as the Awarded Commencement Date: (i) failure to commence commercial operation by June 1, 2014 should constitute an event of default; and (ii) the eligible generator should be required to forfeit the full amount of Construction Period Security.
- For all other eligible generators (*i.e.*, those with Awarded Commencement Dates after June 1, 2014): (i) failure to commence commercial operation with one year of the awarded commencement date should constitute an event of default; and (ii) the eligible generator should be required to forfeit $1/12^{th}$ of the Construction Period Security for each month of delay after the Awarded Commencement Date.

The EDCs believe that these proposed revisions will more effectively align the incentives of the eligible generators with the interests of ratepayers as the LCAPP Law requires.

D. The EDCs Should Not Be Obligated in the SOCA To Monitor and Police the Eligible Generator's Bidding in PJM Markets.

The LCAPP Law requires the eligible generator to "offer the capacity, electricity and ancillary services into the PJM wholesale markets as required by PJM market rules." LCAPP Law, § 3(c)(11). In addition to a provision repeating this specific obligation (§ 3.3(a)), the Agent Draft SOCA includes additional provisions that specify quantity and price requirements for the generator's supply offers in the PJM wholesale markets and a prohibition on withholding. Agent Draft SOCA, §§ 3.3(b) – 3.3(e).

The EDCs question whether these requirements (other than the requirement to participate and clear in the BRA, as discussed above) are necessary and appropriate for

the SOCA. They appear to go beyond the requirements of the LCAPP Law. Moreover, they could be interpreted to impose on the EDCs the obligation to monitor and police the selected eligible generator's PJM energy market activities, under a contractual standard that is subjective at best and ambiguous at worst.[7] The EDCs submit that it is unnecessary for the EDCs to duplicate the market monitoring oversight activities through which PJM and the PJM Market Monitor assure that market manipulation does not occur. Moreover, it would be impossible for the EDCs to do so without incurring significant expense and burden and without access to commercially sensitive information, including the generators' bids and cost data. The EDCs do not believe that the New Jersey Legislature intended to impose such a burden on the EDCs where more appropriate mechanisms for the function already exist at PJM. Indeed, as noted above, the LCAPP Law indicates a clear and specific intention to rely on "PJM market rules" to govern the eligible generators' participation in PJM markets.

Accordingly, if the Board does not modify or eliminate the provisions setting forth specific pricing requirements for the eligible generators' bids in PJM markets, the Board should, at a minimum, include a provision making it clear that the EDCs are not responsible for monitoring and reporting on those activities or for declaring a contractual default if the generator fails to adhere to them. The EDCs have recommended specific language for that purpose in Section 2.4 of the Agent Draft SOCA.

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[7] The requirements that the selected generators bid energy and ancillary services in a manner that is both "commercially reasonable" and reflects the "lowest allowable price under PJM rules" could require the EDCs to reconcile competing considerations. A commercially reasonable bid might be based on the generator's variable costs or, in some cases, the other opportunities available to the generator, while the lowest energy bids allowed under the PJM rules could in some cases be zero or even negative amounts.

E. The New Jersey RCP Proposed in the Agent Draft SOCA Is Inconsistent With the LCAPP Law and May Be Difficult To Calculate.

The Agent Draft SOCA proposes to base payments on the difference between the contract price (the SOCP) and the "New Jersey RCP," calculated as the "weighted average of the RCPs for the Electric Public Utilities." Agent Draft SOCA, §4.1.3. The concept of a New Jersey RCP does not appear in the LCAPP Law, which calls for payments to be based on the difference between the SOCP and the "Resource Clearing Price" or "RCP," defined as the "clearing price established [in the BRA] for the applicable locational delivery area." LCAPP Law, § 3; *see also id.*, § 3(c)(4). There is no locational delivery area under the RPM rules that corresponds to the New Jersey RCP; nor is there any provision in the LCAPP Law for averaging the clearing prices in several RCPs to calculate payments under the SOCA. Indeed, basing payments on an average of prices in multiple locational delivery areas would be inconsistent with the locational focus of the RPM. Moreover, using the averaged New Jersey RCP in the SOCA would result in a generator's receiving (or making) payments that do not reflect the difference between its SOCP and the clearing price it receives through participating and clearing in the RPM BRA.

Using the New Jersey RCP also presents computational difficulties that could lead to disputes in the implementation of the SOCA. Locational delivery areas are defined on the basis of transmission system conditions that do not always correspond to EDC service territories. The transmission facilities of Public Service Electric and Gas Company, for example, are divided into two locational delivery areas. If the RPM prices separate for the locational delivery areas within a single EDC, calculating an average RCP for that utility, let alone the whole state, becomes complicated. Because the locational delivery

areas are based on the configuration of the transmission system, not retail load, PJM does not publish data dividing the load of an EDC among its component locational delivery areas. The EDCs would have to exercise judgment to allocate the load report by PJM among the locational delivery areas in order to calculate the New Jersey RCP in the manner contemplated in the Agent Draft SOCA, which could lead to disputes and claims of manipulation.

For these reasons, the EDCs recommend that payments under the SOCA be based on the RCP, as defined in the form of SOCA the EDCs proposed. The EDCs recommend the necessary revisions in the attachments to these reply comments.

F. The LCAPP Law Contemplates a Single Standard Offer Clearing Price.

The LCAPP Law requires that an eligible generator "offer a price per mega-watt-day, and a term of the SOCA to be evaluated by the agent and approved by the Board." LCAPP Law § 3(c)(1). The requirement is that a single price – "a price" – be offered for the term of the proposed SOCA. Any ambiguity with regard to this requirement of the statute is removed by reference to the definition of "standard offer capacity price" provided in the LCAPP Law: "'Standard offer capacity price' or 'SOCP' means the capacity price ***that is fixed for the term of the SOCA*** and which is the price to be received by eligible generators under a board-approved SOCA." *Id.*, at § 3 (definition of "Standard offer capacity price") (emphasis supplied).

The Agent Draft SOCA appears to contemplate that different SOCPs can be offered for each delivery year of the tem of the SOCA. *See* Agent Draft SOCA, Attachment C – Schedule of Approved Standard Offer Capacity Prices. The EDCs believe that this provision is inconsistent with the express requirements of the LCAPP

Law. The LCAPP Law's specification of a single fixed price for the term of the SOCA is well considered. First, it insulates ratepayers from the risks associated with front-end loaded pricing schedules under which the generator receives substantial financial benefits in the early years of the contract, but which substantially reduce the financial incentive to perform in the later years when the economics of the front-loaded schedule turn in the favor of ratepayers. Second, the requirement for a single fixed price for the term of the agreement eliminates the debate and conjecture surrounding the appropriate discount rate to consider when assessing the value of a schedule of prices that change over the years of the agreement.

Accordingly, the EDCs propose revisions to the Agent Draft SOCA to make clear that the SOCP specified in the SOCA is a single fixed price that is unchanged over the term of the SOCA.

G. The SOCA Must Address the Possibility that the SOCA Will Become Subject to Clearing or Requirements for Execution of an Organized Exchange or Platform.

While the risk may be small, there is a possibility under current law, including the Dodd-Frank Act,[8] and related regulations (*i.e.*, both existing regulations and proposed regulations that are presently in the Commodity Futures Trading Commission's rulemaking process), that the SOCA could become subject to clearing or the requirement for execution on an organized exchange or platform. If this were to occur, the parties could be required to enter into agreements with clearing members and become subject to requirements and limitations of the clearing and execution entities and margin requirements, likely in the form of cash. Such an event would constitute a material

[8] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

change from the straightforward bilateral contract contemplated by the LCAPP Law and implemented through the SOCA. If it were possible to comply with such a requirement, the costs to EDCs and therefore to ratepayers could be increased above the levels the Board considered in concluding that a SOCA would provide net value to ratepayers. In fact, it is not clear that the SOCA could even be preserved because the parties may not be able to comply with potential clearing and execution requirements for certain forms of contract under federal law, regardless of cost.

The Agent Draft SOCA does not address this risk. The EDCs believe that if this remote possibility were to occur, it is likely that the SOCA could not be performed and the appropriate remedy is simple, straightforward "no fault" termination. To address this possibility, the EDCs proposed in their original draft SOCA, and again propose, to make the imposition of a clearing or exchange requirement an event permitting early termination of the SOCA.

In addition, the EDCs again propose certain provisions to address the allocation of certain record and bookkeeping responsibilities that are already possibly required or that may be required in the future by federal law and implementing regulations.

H. Assurance that EDCs Recover All Costs Incurred Under or Associated with LCAPP Must be a Condition Precedent.

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

The Agent Draft SOCA only addresses this requirement in the narrow circumstance of the Board's potential exercise of its authority to suspend operation of a provision of the LCAPP Law. *See* Agent Draft SOCA, § 2.6. The EDCs respectfully submit that this is insufficient. The EDCs believe it is appropriate and in fact essential that the SOCA expressly recognize the EDCs' right to full and timely recovery of all LCAPP related costs as a prerequisite to their incurrence of any obligations under the SOCA. Accordingly, the EDCs again propose to include a provision in Section 2.5 of the SOCA recognizing this right as a condition precedent to the EDCs' obligations to perform under the agreement. If this condition precedent is not met at any point in time, neither party is required to perform any obligation under the SOCA. The SOCA, however, is not terminated.

I. Security

The Agent Draft SOCA provides for the eligible generator to post "Construction Period Security" and "Delivery Term Security" in the form of letter of credit or cash held

in escrow by the EDCs to support the Generator's performance obligations. Agent Draft SOCA, §§ 2.33(h), 2.33(i). The EDCs note that the Agent Draft SOCA does not, however, define the circumstances in which the EDCs are permitted to draw upon that security or include other provisions necessary to make the security it requires effective. The EDCs have proposed a number of definitions and implementing provisions in Sections 2, 7 and 9 of the SOCA to address the requirements, terms, and processes required to implements the security provided by Letters of Credit and Cash Escrow arrangements. The EDCs also propose a form of Letter of Credit and Form of Cash Escrow Agreement to be attached to the SOCA to provide clarity regarding each party's obligations before the SOCA is executed.[9]

In the case of the Construction Period Security, as discussed above, the modifications recommend that the EDC be authorized to draw on the security in the event the in-service date of the eligible generator's new facility is delayed.

In the case of the Delivery Term Security, the modification authorizes the EDC to draw on the security in the event the eligible generator fails to make payments that may be required after delivery commences. There are two principal categories of potential generator payment obligations: (i) the eligible generator is obligated to make payments to the EDCs with respect to a Delivery Year if the RPM clearing price (the New Jersey RCP, or, as the EDCs propose, the RCP) exceeds the contract price (the SOCP) , *id.*, § 4.1.2; and (ii) the eligible generator may be obligated to make payments upon termination of the SOCA, *id.* §§ 9.3, 9.4. The Delivery Term Security in place must be adequate to cover these obligations, if they arise. The EDCs are concerned, however, that the amount

[9] The proposed form of Letter of Credit and Form of Case Escrow Agreement are in the red-line and clean versions of the draft SOCA attached as Attachments I and II respectively.

proposed for the Delivery Term Security ($25,000 per megawatt) and in particular the provision that the amount decline ratably over the term of the SOCA, may be inadequate to support these obligations. The generator's obligation to make payments could arise during any Delivery Year and the amount of that obligation cannot be tied to a fixed amount per megawatt of the Capacity Facility. Nor is there any reason to expect that the magnitude will decline over the term of the SOCA. In fact, over time, if the RCP exceeds the SOCP in one Delivery Year, that difference may persist or increase in subsequent Delivery Years, particularly if the higher clearing prices are attributable to higher costs for commodities used to construct generating plants, such as copper or steel. Likewise, there is no reason to expect the generator's payment obligation to be less if the SOCA terminates early for an Event of Default or an Early Termination Event relatively late in the term of the agreement, rather than early in the term.

It cannot be assumed, therefore, that the potential financial exposure which is secured by the Delivery Term Security is limited to any defined amount per megawatt and will decline over the term of the agreement. Thus, the amount of the Delivery Term Security must take into account the amount of eligible generator's potential payment obligation under Section 4.1.2 and the security for this obligation should not decline over the delivery term. The EDCs propose revisions to Section 2.3.3(i) to effectuate these considerations.

J. Elimination or Modification of RPM

The Agent Draft SOCA provides the elimination of the RPM or its substantial modification should be handled as a "Dispute" under the dispute resolution provision of the SOCA. Agent Draft SOCA, § 12.1. Under that provision, if a dispute arises and the

parties are unable to resolve it themselves, they can submit it to arbitration upon mutual agreement or, failing agreement, can pursue the matter in court. *Id.*, §§ 12.3.

The EDCs believe it would be more appropriate for the SOCA to terminate if the RPM is eliminated or substantially modified. *See* EDC Initial Comments at 23. If, however, the Board decides to use the dispute resolution process in that event, several changes to the Agent Draft SOCA are necessary. First, the Agent Draft SOCA provides that, if RPM is eliminated or substantially modified, the only subject of the dispute would be the selection of a replacement for the clearing price. *Id.*, §§ 12.1.2, 12.1.3. The scope of the dispute should not be so limited, but should also encompass other changes to the SOCA that might be necessary. For example, it may occur that the only viable replacement for the RPM clearing price yields results that are significantly lower or higher than the RPM price. In that event, the parties should be free to consider whether changes to the SOCP are warranted to preserve the net value of the SOCA to ratepayers. Second, if the parties are unable to agree on a replacement clearing price and any other necessary changes, neither arbitration nor a civil lawsuit is an appropriate vehicle to resolve the matter. The EDCs propose that, in that event, the parties' recourse should be to bring the matter before the Board.

K. Other Recommended Modifications

The EDCs also recommend a number of minor or technical drafting corrections to the Draft Agent SOCA, such as the elimination of references to defined terms that are not used in the draft (such as "Security Agreement"). The principal such changes are these:

a. **Section 1.1 – Definitions and Unneeded References**

The EDCs propose to conform the definitions of PJM Market Rules and RPM Rules to avoid ambiguity.

b. **Section 2.4 – EDC Reporting**

The EDCs propose to clarify the requirement for annual reporting by the EDC to reflect the fact that the eligible generator will not supply unforced capacity to the EDC under the SOCA, but instead will offer to supply unforced capacity in the BRA.

c. Section 2.6 – Suspension of Obligations

The EDCs propose certain limited revisions to this section so that the language more accurately tracks the provisions of the LCAPP Law.

d. Section 10 – Transfers

The EDCs agree that it is appropriate that the eligible generator should be permitted to assign the SOCA without consent in connection with the grant of a security interest to a Facility Lender. However, the EDCs believe that the permitted assignment should be limited to the eligible generator's rights, not its obligations. Revisions to Section 10.2 are proposed to address this consideration.

CONCLUSION

The EDCs appreciate the opportunity to provide these reply comments addressing the terms of the Agent Draft SOCA. The EDCs believe that, as discussed and demonstrated in their initial comments, the Board should adopt their proposed form of SOCA, as revised in those comments. If, however, the Board decides to use the Agent

Draft SOCA as the basis for the SOCA it prescribes, the Board should revise the Agent Draft SOCA as discussed in these reply comments and the attachments hereto.

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

STANDARD OFFER CAPACITY AGREEMENT

STANDARD OFFER CAPACITY AGREEMENT

This STANDARD OFFER CAPACITY AGREEMENT ("Agreement"), dated as of [ ] ("Effective Date"), is entered into by and between [UTILITY], a corporation organized under the law of the state of New Jersey ("Utility") and [CAPACITY SELLER], a corporation organized under the law of [ ] ("Generator").

WHEREAS, the State of New Jersey has established the Long-Term Capacity Agreement Pilot Program ("LCAPP") to promote construction of qualified electric generation facilities pursuant to P.L. 2011 c. 9 (the "Act");

WHEREAS, the Act requires that each Electric Public Utility enter into a standard offer capacity agreement as described in the Act and in a form approved by the New Jersey Board of Public Utilities ("Board") with eligible generators approved by the Board;

WHEREAS, under the Act, this Agreement shall be irrevocable once the Board issues an order approving this Agreement;

WHEREAS, under the Act, neither the Board nor any other governmental agency of New Jersey shall have the authority (i) to rescind, alter, modify, or repeal this Agreement or an order approving rate recovery of LCAPP costs, (ii) to revalue, re-evaluate, or revise the amount of the LCAPP costs, or (iii) to determine that the LCAPP costs or the revenues to recover the LCAPP costs are unjust or unreasonable;

WHEREAS, Generator has not commenced, ~~and~~but intends to commence, construction of an [ ] megawatt ("MW") electric generation facility, as described in Attachment A, after January 28, 2011 (the "Capacity Facility");

WHEREAS, Generator is willing to commit to offer and clear Unforced Capacity of the Capacity Facility into each Base Residual Auction conducted by the PJM Interconnection, L.L.C. ("PJM") for all Delivery Years through the Conclusion Date;

WHEREAS, Generator is willing to commit to offer all the electric energy output and ancillary services of the Capacity Facility into the PJM markets during the Delivery Term;

WHEREAS, Generator's eligibility and selection to participate in the LCAPP have been approved by the Board;

WHEREAS, this Agreement is in the form approved by the Board;

WHEREAS, Utility is an Electric Public Utility; and

WHEREAS, Generator has caused Construction Period Security to be provided to Utility, ~~dated as of the date hereof and attached hereto as Attachment B,~~ in support of Generator's obligations under this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual terms and conditions set forth herein, and for further good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1
DEFINITIONS; RULES OF INTERPRETATION

1.1. Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein have the following meanings:

"Act" means the New Jersey P.L. 2011 c. 9 that establishes the LCAPP.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least ten percent (10%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least ten percent (10%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"Agreement" means this Standard Offer Capacity Agreement dated as of [ ], 2011 by and between Utility and Generator.

"Annual Forecasted Peak Demand" means in the case of Utility, its forecasted peak demand and, in the case of another Electric Public Utility, the forecasted peak demand of such other Electric Public Utility, for a given Delivery Year as determined by PJM and published in the most recent PJM Load Forecast Report issued before the start of the Delivery Year.

"Applicable Law" means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the LCAPP or any one or both of the parties to this Agreement or the terms hereof.

"Automated Clearing House" or "ACH" means an electronic network for financial transactions administered by NACHA-The Electronic Payments Association.

"Available Capacity Amount" means the lesser of: (i) the quantity of Unforced Capacity from the Capacity Facility that is offered by Generator and cleared by PJM in the relevant Base Residual Auction, and (ii) the Awarded Capacity Amount.

"Awarded Capacity Amount" means [ ] MW, the amount of Unforced Capacity for which the Board has approved Generator to enter into standard offer capacity agreements with the Electric Public Utilities pursuant to the Act.

"Awarded Commencement Date" means the first day of the first Delivery Year for which the Board has approved Generator to receive or make payments under standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which date is June 1, [ ].

"Base Residual Auction" means the primary auction conducted by PJM as part of PJM's Reliability Pricing Model to secure electrical capacity as necessary to satisfy the capacity requirements imposed under the PJM Reliability Assurance Agreement for the Delivery Year.

"Board" means the New Jersey Board of Public Utilities or any successor agency.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

"Calculation Dispute" is defined in Section 12.2.1.

"Capacity Facility" means the [ ] MW electric generation facility to be constructed by Generator as further defined in Attachment A.

"Cash" means cash in United States Dollars and any investments of cash held in escrow.

"Cash Escrow Agreement" means a cash escrow agreement providing for the holding, investment and disbursement of Cash in substantially the form of Attachment E (in the case of Construction Period Security) or Attachment F (in the case of Delivery Term Security). Cash held under a Cash Escrow Agreement must be held in the United States.

"Cash Escrow Default" means, with respect to the Generator in connection with collateral in the form of Cash held under the Cash Escrow Agreement, (1) failure by Custodian to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the Cash Escrow Agreement; (2) the expiration or termination of the Cash Escrow Agreement or the failing or ceasing of the Cash Escrow Agreement to be in full force and effect prior to the satisfaction of all obligations of the Generator under this Agreement, without the written consent of the Utility; (3) Custodian disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Cash Escrow Agreement; (4) Custodian is no longer a Qualified Bank; or (5) any event analogous to the events described in Section 7.1.4, 7.1.5 or 7.1.6 shall occur with respect to Custodian.

"Commencement Date" means the last to occur of: (i) the Awarded Commencement Date; and (ii) the date the Capacity Facility first provides Unforced Capacity to PJM by having previously cleared in a Base Residual Auction.

"Construction Period" means the period commencing on the Effective Date and concluding on the date the Generator first provides Unforced Capacity to PJM by having previously cleared in a Base Residual Auction.

"Construction Period Security" means an irrevocable standby Letter of Credit to be provided to the Utility or Cash held in escrow ~~by~~on behalf the Utility by the Custodian under a Cash Escrow Agreement, in support of the Generator's obligations during the Construction Period in an amount ~~defined in~~calculated under section 2.3.3.

"Conclusion Date" means May 31, [ ], which date shall not be altered by any delay or change in the Commencement Date or other provision under this Agreement.

"Custodian" means a Qualified Bank selected by the Utility to act as custodian under a Cash Escrow Agreement.

"Defaulting Party" is defined in Section 9.1.1.

"Delivery Year" means each 12-month period from June 1st through May 31st numbered according to the calendar year in which it ends beginning on the Commencement Date and concluding on the Conclusion Date.

"Delivery Term" means the period commencing with the Commencement Date and concluding on the Conclusion Date.

"Delivery Term Security" means an irrevocable standby Letter of Credit to be provided to the Utility or cash held in escrow ~~by~~on behalf of the Utility by the Custodian under a Cash Escrow Agreement, in support of the Generator's obligations during the Delivery Term in an amount defined in Section 2.3.3.

"Dispute" is defined in Section 12.1.

"Early Termination Date" means the date determined in accordance with Section 9.1.

"Effective Date" is defined in the Preamble hereof.

"EFORd" means a measure calculated by PJM of the probability that an electric power generating unit will not be available due to a forced outage or forced derating when there is a demand on the unit to generate.

"Electric Public Utility" means, generically, unless the context indicates otherwise, any one (1) of the four (4) electric public utilities under the jurisdiction of the Board, specifically Public Service Electric and Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company.

"Electric Public Utilities" means, collectively, the four (4) electric public utilities under the jurisdiction of the Board, specifically Public Service Electric and Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company.

"Event of Default" is defined in Section 7.1.

"Facility Lender" means (i) any lender providing construction, interim, long-term, or refinancing debt or equity funds to Generator for the Capacity Facility, (ii) any trustee or agent acting on their behalf, and (iii) any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

"Generator" means a developer of an electric power generating facility that the Board has determined to qualify as eligible pursuant to the Act and is named in the Preamble hereof.

"Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity with jurisdiction over any party hereto, this Agreement, the LCAPP, or PJM, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

"Interest Rate" means for any date, the per annum rate of interest equal to the yield on Two-Year U.S. Treasury Notes as may be published in *The Wall Street Journal* on such day (or if not published on such day the most recent preceding day on which published) plus sixty (60) basis points.

"Illegality" is defined in Section 8.1.1.

"Invalidity of the Act" is defined in Section 8.1.2.

"Letter of Credit" or "LC" means an irrevocable standby letter of credit provided by a Qualified Bank ~~or other financial institution that has a senior long-term unsecured debt rating of at least A by Standard & Poor's, A2 by Moody's Investors Service, or A by Fitch Ratings, in a form acceptable to Utility and Generator.~~, substantially in the form of Attachment C (in the case of Construction Period Security) or Attachment D (in the case of Delivery Term Security). Each Letter of Credit must permit presentation of documents for drawing at a location in New Jersey or, if elsewhere in the United States, must permit presentation of documents by facsimile. A Letter of Credit may not require presentation of documents at a location outside the United States.

"Letter of Credit Default" means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall no longer be a Qualified Bank, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement; or (v) any event analogous to an event specified in Section 7.1.4, 7.1.5 or 7.1.6 shall occur with respect to the issuer of such Letter of Credi[t; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Credit Support Party in respect of such Letter of Credit in accordance with the terms of this Agreement].

"Long-Term Capacity Agreement Pilot Program" or "LCAPP" is the program established by ~~P.L. 2011 c. 9~~the Act to promote construction of qualified electric generation facilities.

"Month" means a calendar month commencing on the first day of such month and ending on the last day of such month.

"MW" means megawatt.

"NACHA Operating Rules" means the rules issued by NACHA – The Electronic Payments Association for the administration of the Automated Clearing House.

~~"New Jersey Resource Clearing Price" or "New Jersey RCP" is defined in Section 4.1.3.~~

"Non-Defaulting Party" is defined in Section 9.1.1.

"Payment Date" is defined in Section 2.2.

"Person" means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

"PJM Interconnection, L.L.C." or "PJM" means the Regional Transmission Organization that manages the regional, high-voltage electricity grid serving New Jersey and all or parts of other states and, among other things, administers the Reliability Pricing Model, and any successor.

"PJM Market Rules" means the rules, standards, procedures, and practices set forth in the PJM Tariff, PJM Operating Agreements, PJM Reliability Assurance Agreement, PJM Consolidated Transmission Owners Agreement, PJM Manuals, PJM Regional Practices Document, PJM-Midwest Independent Transmission System Operator Joint Operating Agreement, and other documents setting forth market rules, as in effect from time to time during the term of this Agreement.

"PJM Markets" means the capacity, energy, and ancillary services markets administered by PJM.

"Qualified Bank" means a United States commercial bank that has assets of at least $[_____] and a senior long-term unsecured debt rating of at least A by Standard & Poor's, A2 by Moody's Investors Service, or A by Fitch Ratings.

"Reliability Pricing Model" or "RPM" means PJM's capacity-market model that secures capacity on behalf of electric load serving entities to satisfy load obligations not satisfied through the output of electric generation facilities owned by those entities or otherwise secured by those entities through bilateral contracts.

"Resource Clearing Price" or "RCP" means the clearing price expressed in $/MW-day for Unforced Capacity in the applicable Delivery Year ~~established by~~offered and cleared in the Base Residual Auction from the Capacity Facility and posted by PJM ~~for the Electric Public Utilities~~.

"RPM Rules" means the provisions of ~~PJM's tariffs and agreements accepted by the Federal Energy Regulatory Commission and the provisions of PJM's manuals~~the PJM Market Rules governing the Reliability Pricing Model, as in effect from time to time during the term of this Agreement.

"Standard Offer Capacity Price" or "SOCP" means the price at which the Board has approved Generator to enter into standard offer capacity agreements with the Electric Public Utilities pursuant to the Act, which price is listed in Attachment ~~C~~B to this Agreement.

"Termination Date" means the earlier to occur of (i) the Conclusion Date or (ii) the Early Termination Date.

"Termination Event" is defined in Section 8.1.

"Total Annual Forecasted Peak Demand" for a given Delivery Year means the sum of the Annual Forecasted Peak Demands for each Electric Public Utility for such Delivery Year.

"Transaction" means the calculations, payments and payment obligations under Section 4.1 and the related provisions of this Agreement (including without limitation Section 2.1).

"Unforced Capacity" means the capacity of a generator or other capacity resource that accounts for the EFORd of that capacity resource as periodically determined by PJM.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the amounts that became payable to such party under Section 2.1 in respect of the Transaction on or prior to such Early Termination Date (including amounts not paid by the other party on the ground of the occurrence of an Event of Default, in accordance with Section 2.5) and which remain unpaid as at such Early Termination Date, together with (to the extent permitted under Applicable Law) interest from (and including) the date such amounts were to have been paid to (but excluding) such Early Termination Date, at the Interest Rate. Such amounts of interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed.

"Utility" is defined in the Preamble hereof.

"Utility's Load Ratio" means the percentage derived by dividing Utility's Annual Forecasted Peak Demand by Total Annual Forecasted Peak Demand, both for a given Delivery Year, such that the sum of the Utility Load Ratios for the Electric Public Utilities shall always equal 100%.

1.2. Rules of Interpretation

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" (if any) are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity or gas market price index include a reference to such entity's or index's successors and (if applicable) permitted assigns; (d) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular Section or subsection hereof; (e) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (f) the masculine includes the feminine and neuter and vice versa; (g) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

(h) "including" means "including, without limitation" or "including, but not limited to"; and (i) the word "or" is not necessarily exclusive.

1.2.2. Terms Not to be Construed For or Against Either Party. Each term hereof will be construed simply according to its fair meaning and not strictly for or against either party. No term hereof will be construed against a party on the ground that the party is the author of that provision.

1.2.3. Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and will in no way affect the meaning or interpretation of the provisions hereof.

1.2.4. Rounding. All ~~calculations~~calculations, including but not limited to ~~RCP, New Jersey~~ RCP, Available Capacity Amount, and Utility Load Ratios, will be rounded to the nearest third decimal place.

SECTION 2
OBLIGATIONS

2.1. General Conditions. Each party will make each payment specified herein to be made by it, including without limitation the payments under Section 2.2, subject to Section 2.5 and the other provisions hereof.

2.2. Calculation and Payment of Transaction Amounts. In the case of the first Delivery Year, no less than thirty (30) calendar days prior to the Awarded Commencement Date and, in the case of each subsequent Delivery Year, no less than thirty (30) calendar days prior to the commencement of such Delivery Year, Utility will provide a statement to Generator of the result of the calculation under Section 4.1 for the Delivery Year, specifying the party obligated to make payments with respect to such Delivery Year, and the monthly amount of such payments, including any correction made under Section 2.10. The party obligated to make payments will make such payments with respect to each Month on or before the last Business Day of the subsequent Month (the "Payment Date") to the account specified herein in freely transferable funds via electronic funds transfer through a system that provides for final credit no later than one business day after transfer. The system for making such electronic funds transfers may be the ACH, in which case the paying party will originate the ACH credit for receipt the following Business Day. Each party agrees to be bound by the NACHA Operating Rules in connection with payments made via ACH and agrees that the origination of all ACH transactions will comply with applicable provisions of U.S. law. Whenever payments are made via ACH, the receiving party hereby authorizes the paying party to initiate credit entries to the account of the receiving party at the receiving party's financial institution as set forth in Section ~~2.6~~2.7. This authorization will remain in full force and effect until a party has received prior written notice from the other party of its termination, such notice to be provided in such time and in such manner as to afford the party receiving such notice a reasonable opportunity to act on it.

2.3. Obligations of Generator.

2.3.1. Generator shall use all commercially reasonable efforts to cause the Capacity Facility to qualify under the RPM Rules as a capacity resource in an amount no less than the Awarded Capacity Amount for the Base Residual Auction associated with each Delivery Year during the term of this Agreement, commencing upon the Awarded Commencement Date.

2.3.2. Generator shall use all commercially reasonable efforts to cause the Capacity Facility to achieve commercial operation no later than the Awarded Commencement Date.

2.3.3. Throughout the Delivery Term, Generator shall:

(a) Cause the Capacity Facility to comply with all obligations of a capacity resource under the RPM Rules, including without limitation the obligations relating to the submission of offers to supply electric energy and ancillary services in PJM markets, and Generator shall bear all costs associated with such compliance, including without limitation all fees and penalties imposed by PJM;

(b) Submit supply offers for an amount of Unforced Capacity no ~~greater~~less than the Awarded Capacity Amount from the Capacity Facility in accordance with the RPM Rules in the Base Residual Auction associated with each Delivery Year during the term of this Agreement, commencing with the Delivery Year that begins on the Awarded Commencement Date, such that the Unforced Capacity supply offers shall be priced at the lowest allowable price under the RPM Rules and such that the Unforced Capacity supply offers shall clear in each such Base Residual Auction;

(c) Submit supply offers from the Capacity Facility for the maximum amount of associated electrical energy that the Capacity Facility can provide in the PJM day-ahead energy market in accordance with PJM Market Rules throughout the Delivery Term, such that the energy supply offers shall be commercially reasonable and priced at the lowest allowable price under PJM's Market Rules;

(d) Submit supply offers from the Capacity Facility for the maximum amount of associated ancillary services that the Capacity Facility can provide in the PJM ancillary services markets in accordance with PJM Market Rules throughout the Delivery Term, such that the ancillary services offers shall be commercially reasonable and priced at the lowest allowable price under PJM's Market Rules;

(e) Neither physically nor financially withhold any Unforced Capacity up to the amount of Awarded Capacity or associated electrical energy and ancillary services from the Capacity Facility;

(f) Provide on a timely basis (which, in the case of documentation provided to Generator by PJM, shall mean within five (5) Business Days of Generator's receipt of such documentation) all documentation required by Utility to make the calculations and notifications required by Sections 2.2 and 4.1, including without limitation: (i) documentation provided to Generator by PJM after the conclusion of each Base Residual Auction showing the amount of Unforced Capacity offered from the Capacity Facility and cleared by PJM in such Base Residual Auction; (ii) documentation provided to Generator by PJM in advance of each

Delivery Year showing the all EFORd measurements for the Capacity Facility for the Delivery Year; (iii) the result of any capability test of the Capacity Facility conducted by PJM; (iv) documentation provided to Generator by PJM in advance of each Delivery Year showing the Available Capacity Amount for the Delivery Year or required to calculate the Available Capacity Amount for the Delivery Year; and (v) documentation notifying Generator of any correction to an input to a calculation, as provided in Section ~~2.9~~2.10; provided that Generator may redact from any such documentation data that do not relate to the Capacity Facility; and

(g) Provide on a timely basis all documentation reasonably requested by Utility to demonstrate Generator's compliance with all of its obligations as set forth in this Section 2.3 and affirmative covenants as set forth in Section 6. Utility shall have the right, upon reasonable notice to Generator, to request such information once each year and, in addition, upon the occurrence of any event or upon Utility's receipt of information that gives Utility reasonable grounds for concern in good faith as to Generator's compliance with one or more such obligations~~;~~.

2.3.4. ~~(h)~~ The Generator shall cause to be provided to the Utility, throughout the Construction Period, Construction Period Security in an amount to be calculated annually equal to the product of $10,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio, but in no case more than the product of $1 million and the Utility's Load Ratio. Such Construction Period Security shall be in the form of an LC or Cash held in escrow by the Utility~~;~~. In the event the Capacity Facility fails to achieve commercial operation by the Awarded Capacity Date, then: (i) if the Awarded Capacity Date is on or before June 1, 2014, the Utility shall be authorized, in addition to any other remedies available to it, to draw upon the Construction Period Security in the amount equal to the amount determined pursuant to the first sentence of this Section 2.3.3(h), or (ii) if the Awarded Capacity Date is a date later than June 1, 2014, for each month of delay beyond the Awarded Capacity Date, Utility shall be authorized, in addition to any other remedies available to it, to draw upon the Construction Period Security in an amount equal to one-twelfth of the amount determined pursuant to the first sentence of this Section 2.3.3(h). In addition, Utility has the right to draw upon the Construction Period Security as provided in Section 9.4.

2.3.5. ~~(i)~~ The Generator shall cause to be provided to the Utility, throughout the Delivery Term, Delivery Term Security in an amount to be calculated annually equal to the greater of: (i) the product of $25,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio ~~with~~; or (ii) the amount ~~of Delivery Term Security declining *pro rata* at the conclusion of each Delivery Year over any remaining term of this Agreement~~, if any, that Utility's calculation pursuant to Section 2.2 indicates that Generator is obligated to pay pursuant to Section 4.1.2. Such Delivery ~~Period~~Term Security shall be in the form of an LC or Cash held in escrow by the Utility~~; and~~. In the event Generator fails to make any payment due to Utility under Section 4.1.2, Utility shall be authorized, in addition to any other remedies available to it, to draw upon the Delivery Term Security in the amount of such payment. In addition, Utility has the right to draw upon the Delivery Term Security as provided in Section 9.4.

~~(j) Fulfill all Generator's obligations under, and otherwise comply with all terms of, the Construction Period Security and Delivery Term Security.~~

2.4. Obligations of the Utility. The Utility shall prepare and file an annual report to the Board within thirty (30) calendar days after the end of each Delivery Year describing (i) the status of this Agreement, (ii) the amount of Unforced Capacity and cost of associated Transactions made under this Agreement, (iii) the performance of the Generator ~~in supplying Unforced Capacity~~ under this Agreement only with respect to the Generator's offering to supply Unforced Capacity in the annual Base Residual Auction, and (iv) any material actions taken by the Generator or the Utility under this Agreement. Nothing in this Agreement imposes upon Utility the obligation to monitor, enforce, or declare an Event of Default with respect to, the price or amount of energy or ancillary services, or the price of unforced capacity, that Generator offers to supply in any PJM Market.

2.5. Conditions Precedent to Obligations. Each obligation of each party under this Agreement is subject to (i) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing ~~and~~; (ii) the condition precedent that no Early Termination Date has occurred or been effectively designated~~.~~; and (iii) the condition precedent that the Board has issued an order authorizing Utility to recover from ratepayers through a non-bypassable irrevocable charge all payments under this Agreement, any other costs associated with this Agreement and any costs of the agent retained to implement provisions of the Act and that such order is final, not subject to judicial review and in effect.

2.6. Suspension of Obligations.

In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act that (i) imposes an obligation on either party to make any payment to another party; (ii) assures Utility of recovery from ratepayers through a non-bypassable irrevocable charge of all costs ~~directly~~ associated with this Agreement ~~or any~~and the costs of the agent retained to implement provisions of the Act; or (iii) imposes an obligation on Generator to offer and clear capacity from the Capacity Facility in the Base Residual Auction, then, no payment pursuant to Sections 2.1, 2.2 and 4.1 with respect to any Delivery Year or portion of a Delivery Year that is within the period of suspension shall be owed by either party, and the non-performance of the requirements of those provisions with respect to the period of suspension shall not be an Event of Default.

2.7. Accounts; Change of Account

2.7.1. Payments are to be made to the following accounts:

Generator:
Pay:
For the Account of:
Account Number:
Fed. ABA Number:

Utility:
Pay:
For the Account of:
Account Number:

Fed. ABA Number:

2.7.2. Either party may change its account for receiving a payment by giving written notice to the other party, which notice will be effective for the next payment date that is at least five Business Days after the effective date of such notice unless such other party gives timely notice of a reasonable objection to such change.

2.7.3. The parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be considered by the parties as conclusive evidence of receipt.

2.8. Default Interest; Other Amounts. Prior to the occurrence or effective designation of an Early Termination Date, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 9.3.3, be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Interest Rate. Such interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed. Each payment will be made in U.S. Dollars in freely transferable funds via electronic funds transfer, as set forth in Section 2.2, on the relevant Payment Date (or if that date is not a Business Day, on the next Business Day).

2.9. Calculations. Utility shall make all calculations of payments due under Sections 2.2 and 4.1 in accordance with the terms of this Agreement, in good faith and with commercial reasonableness, and its determinations and calculations will be binding, subject to the resolution of any Calculation Dispute. Inaccuracy in any calculation shall not be an Event of Default. The sole remedy of the parties with respect to any inaccuracy of a calculation will be the right (but not the obligation), to commence a Calculation Dispute.

2.10. Corrections to Input to Transaction Payment. If PJM revises any of the inputs required for Utility to calculate any payment required under Section 4.1 within the time permitted by PJM's applicable tariff rate or rate schedule for the revision of PJM charges, Utility will reflect the amount (if any) that is payable as a result of that correction (including without limitation interest on such amount payable from the date of original payment under Section 4.1 through the date of payment under this Section 2.9 at the Interest Rate) in the calculation of payment of payments due for the Delivery Year after Utility receives notice of the revision. Utility shall calculate the correction so as to place the parties in the same economic position after such payment as they would have been had the correct input been employed initially.

2.11. Substitution, Return and Handling of Credit Support.

2.11.1. Election to Change Form of Credit Support. With respect to the Construction Period Security or the Delivery Term Security, the Generator may, at any time and from time to time, replace (i) a Letter of Credit with Cash held under a Cash Escrow Agreement or (ii) Cash held under a Cash Escrow Agreement with a Letter of Credit, provided that such

substitute Cash and Cash Escrow Agreement or substitute Letter of Credit (as the case may be) meets the requirements for Construction Period Security or Delivery Term Security, as applicable, whereupon the Utility shall cooperate with the Generator in obtaining the concurrent release, termination or return of the Letter of Credit or Cash and Cash Escrow Agreement (as the case may be) being replaced.

2.11.2. Return of Original Credit Support Documents. Without limitation to the generality of the foregoing, the Utility shall return to the Generator all original Credit Support Documents, and all amendment, extension and other documents related thereto, within twenty (20) days of the termination, cancellation or replacement thereof.

2.11.3. Handling of Cash Collateral. If any collateral in the form of Cash is expected to be or is received by the Utility pursuant to this Agreement, whether following a Letter of Credit drawing due to failure on the part of the issuer of the Letter of Credit to renew or extend the Letter of Credit or otherwise, the parties shall cooperate to cause such collateral in the form of Cash to be delivered as soon as practicable to a Custodian to be held pursuant to a Cash Escrow Agreement. Any collateral in the form of Cash that is received and held by the Utility pending delivery to a Custodian shall be segregated by the Utility from its other property and held exclusively in accounts with Qualified Banks.

SECTION 3
TERM AND TERMINATION

This Agreement is effective as of the Effective Date and will remain in effect until the later to occur of the Termination Date or the fulfillment by the parties of all obligations hereunder.

SECTION 4
TRANSACTIONS

4.1. Transactions.

4.1.1. If, for a Delivery Year, the SOCP is greater than the ~~New Jersey~~ RCP then, subject to Section 2.5, Utility will pay Generator each Month during the Delivery Year one-twelfth of the product of (i) the difference between the SOCP and the ~~New Jersey~~ RCP, (ii) the Available Capacity Amount, (iii) the number of days in the Delivery Year; and (iv) Utility Load Ratio, each for the applicable Delivery Year.

4.1.2. If, for a Delivery Year, the ~~New Jersey~~ RCP is greater than the SOCP then, subject to Section 2.5, Generator will pay Utility each Month an amount equal to one-twelfth of the product of (i) the difference between the ~~New Jersey~~ RCP and the SOCP, (ii) the Available Capacity Amount, (iii) the number of days in the Delivery Year, and (iv) Utility Load Ratio, each for the applicable Delivery Year.

~~4.1.3. New Jersey RCP shall be calculated for each Delivery Year as the weighted average of the RCPs for the Electric Public Utilities, using the Utility Load Ratios as weights.~~

4.2. Structure of Transaction. Nothing in this Agreement shall entitle or obligate Utility to purchase or take delivery of capacity, electric energy or ancillary services from the Capacity Facility.

SECTION 5
REPRESENTATIONS AND WARRANTIES

5.1. Mutual Representations and Warranties. Each party represents to the other party, continuing from the Effective Date throughout the Delivery Term, that:

5.1.1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

5.1.2. It has the power (i) to execute this Agreement, the Construction Period Security, Delivery Term Security and any other documentation relating hereto or thereto, (ii) to deliver this Agreement and cause to be delivered the Construction Period Security, Delivery Term Security and any other documentation that it is required by this Agreement to deliver and (iii) to perform its obligations hereunder or thereunder and has taken all necessary action to authorize such execution, delivery and performance.

5.1.3. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

5.1.4. Its obligations under this Agreement, the Construction Period Security, and Delivery Term Security constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

5.1.5. All governmental and other consents that are required to have been obtained by it with respect to this Agreement, the Construction Period Security, and the Delivery Term Security are in full force and effect and all conditions of any such consents have been complied with.

5.1.6. No Event of Default or event which, with notice or the passage of time or both, would constitute an Event of Default has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations hereunder or under the Construction Period Security or Delivery Term Security.

5.1.7. All applicable information that is furnished in writing by or on behalf of it to the other party required by Section 6.1 is, as of the date of the information, true, accurate and complete in every material respect.

5.1.8. It is an "eligible contract participant" within the meaning of Section 1(a)18 of the Commodities Exchange Act, as amended.

5.1.9. In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement: (i) it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise); (ii) the other party is not acting as a fiduciary or financial or investment advisor for it; (iii) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement; (iv) the other party has not given to it (directly or indirectly through any other Person) any advice, counsel, assurance, guarantee, or representation whatsoever as to the expected or projected success, profitability, return, performance, result, effect, consequence, or benefit (either legal, regulatory, tax, financial, accounting, or otherwise) hereof; (v) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own decision to enter into the Transaction based upon its own judgment and upon any advice from such advisors as it has deemed necessary, and not upon any view expressed by the other party; and (vii) it is entering into this Agreement with a full understanding of all the risks hereof and thereof (economic and otherwise), and it is capable of assuming and willing to assume (financially and otherwise) those risks.

5.1.10. It is a "United States person" (within the meaning of section 7701(a)(30) of the Internal Revenue Code of 1986, as amended, and is exempt from backup withholding under Internal Revenue Code section 3406 and relevant U.S. Department of the Treasury regulations.

5.2. Generator's Representations and Warranties. Generator hereby represents and warrants to Utility as of the Effective Date that:

5.2.1. Generator's selection to participate in the LCAPP has been approved by the Board.

5.2.2. Generator is approved by the Board pursuant to the Act as eligible to enter into standard offer capacity agreements with the Electric Public Utilities for the Awarded Capacity Amount at the SOCP.

5.2.3. Generator will not, either alone or in combination with any Affiliate of Generator that is eligible to participate in the LCAPP, enter into financially-settled standard offer capacity agreements for more than 700 MW of Unforced Capacity pursuant to the LCAPP.

SECTION 6
AFFIRMATIVE COVENANTS

Each party agrees with the other that, so long as either party has or may have any obligation hereunder:

6.1. Furnish Specified Information.

6.1.1. Each party will deliver to the other party such proof of the names, true signatures and authority of Persons signing this Agreement on its behalf as the other party may reasonably request upon execution hereof;

6.1.2. Generator will deliver to Utility on a timely basis:

(a) All information required by the Utility to perform the calculations specified in Sections 2.2 and 4.1, including without limitation information supplied to Generator by PJM;

(b) All documents, including all written notifications and other communications from PJM, related to Generator's compliance or non-compliance with the RPM Rules;

(c) All additional information and documents required for Utility to provide an annual report to the Board as specified in Section 2.4.

6.2. Maintain Authorizations. Each party will use all reasonable efforts, including the maintenance of records and provision of notices, to maintain in full force and effect all consents, licenses or approvals of PJM and of any Governmental Authority or other authority that are required to be obtained by it with respect to this Agreement and ~~the Security Agreement and~~ its obligations hereunder ~~and thereunder~~ and will use all reasonable efforts to obtain any that may become necessary in the future.

6.3. Comply with Laws and RPM Rules. Each party will comply in all material respects with all Applicable Laws and orders and all ~~RPM~~PJM Rules to which it may be subject if failure so to comply would materially impair its ability to perform its obligations hereunder ~~or under the Security Agreement~~. Each party will comply with any recordkeeping and reporting requirements to which it is subject under Applicable Law.

SECTION 7
EVENTS OF DEFAULT

7.1. Events of Default. The occurrence at any time with respect to a party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:

7.1.1. Failure to Pay. Failure by the party to make, when due, any payment under this Agreement required to be made by it if such failure is not remedied on or before the third (3rd) Business Day after notice of such failure is given to the party.

7.1.2. Failure to Provide Information.

Failure by Generator to provide to Utility such information or documentation required by Section 2.3.3 or Section 6.1.2 if such failure is not remedied on or before the fifth (5th) Business Day after notice of such failure is given to Generator by Utility.

7.1.3. Breach of Agreement. Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or to provide information or documentation) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth (30th) calendar day after notice of such failure is given to the party, or, in the case of a failure to comply with any applicable provision of the RPM Rules, within the time (if any) provided in the RPM Rules to remedy such failure.

7.1.4. Misrepresentation. A representation made or repeated by the party in this Agreement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated and such misrepresentation is not cured within thirty (30) calendar days after such misrepresentation is made or repeated;

7.1.5. Bankruptcy. The party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within fifteen (15) calendar days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) calendar days thereafter; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

7.1.6. Merger Without Assumption. The party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of such party hereunder or under the Security Agreement.

7.1.7. Failure to Achieve Commercial Operation of the Capacity Facility.

Generator fails to cause the Capacity Facility to achieve commercial operation and achieve the Commencement Date by (i) if the Generator's Awarded Commencement Date is June 1, 2014, by no later than the ~~two~~Awarded Commencement Date; and (~~2~~ii) ~~years~~otherwise, by no later than the one (1) year after the Awarded Commencement Date.

7.1.8. Failure to Participate in a PJM Market.

Generator fails to submit a supply offer, consistent with Section 2.3.3, during the Delivery Term (i) in the Base Residual Auction for its Unforced Capacity from the Capacity Facility commencing with the Base Residual Auction for the Delivery Year commencing with Awarded Commencement Date and (ii) for all of the associated electrical energy and ancillary services from the Capacity Facility commencing with the Commencement Date.

7.1.9. Failure to Clear a Base Residual Auction

With respect to Generator, Generator's supply offer from the Capacity Facility fails to clear in any Base Residual Auction with respect to a Delivery Year during the Delivery Term.

7.1.10. ~~7.1.9.~~ Security Default.

With respect to Generator: (i) failure of the Generator to maintain the Construction Period Security throughout the Construction Period, to deliver the Delivery Term Security prior to the start of the Delivery Term, or to maintain the Delivery Term Security throughout the Delivery Term, (ii) failure by Generator to comply with any provision of, or to perform any of its obligations under, either the Construction Period Security or the Delivery Term Security if such failure is continuing after any applicable grace period has elapsed; (~~ii~~iii) the ~~expiration or termination of~~occurrence of a Letter of Credit Default with respect to either the Construction Period Security or the Delivery Term Security ~~Agreement prior to its intended expiration date~~, or (~~iii~~iv) the ~~failing or ceasing of~~occurrence of a Cash Escrow Default with respect to either the Construction Period Security or the Delivery Term Security ~~to be in full force and effect for its intended term; (iii) Generator disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, the Construction Period Security or the Delivery Term Security Agreement; or (iv) a default or event of default, howsoever characterized, occurs under the Construction Period Security or the Delivery Term Security.~~.

SECTION 8
TERMINATION EVENTS

8.1. Termination Events. The occurrence at any time of any of the following events constitutes a Termination Event (a "Termination Event").

8.1.1. Illegality. Due to the adoption of, or any change in, any Applicable Law after the Effective Date, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any Applicable Law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 6.2) for a party:

(1) to perform any absolute or contingent obligation to make a payment or to receive a payment in respect of the Transaction or to comply with any other material provision of this Agreement;

(2) to perform any contingent or other obligation which the party has or any other material provision of this Agreement; or

(3) to perform its obligations under the Security Agreement, to maintain the security interest under the Security Agreement or to maintain the first priority perfected status of such security interest.

8.1.2. Invalidity of the Act. If a court invalidates or declares unconstitutional the Act or portion thereof requiring or specifying some performance, right, or obligation of Utility or Generator.

8.1.3. Execution or Clearing Requirement. The Transaction is determined to be subject to any requirement that it be executed or cleared on an exchange or a multiparty platform or similar facility.

SECTION 9
REMEDIES

9.1. Right to Terminate Following Event of Default or Termination Event.

9.1.1. If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, then the other party (the "Non-Defaulting Party") may, by not more than twenty (20) calendar days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date.

9.1.2. If at any time a Termination Event has occurred and is then continuing, then either party ~~in the case of an Illegality or an Invalidity of the Act~~, may, by not more than twenty (20) calendar days notice to the other party specifying the relevant Termination Event, designate a day not earlier than the day such notice is effective as an Early Termination Date.

9.2. Effect of Designation.

9.2.1. If notice designating an Early Termination Date is given under Section 9.1, the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

9.2.2. Upon the occurrence or effective designation of an Early Termination Date, no further payments under Section 2.1 or 2.7 will be required to be made, and this Agreement shall be null and avoid, except with respect to the provisions hereof required to effect payments of the amounts, if any, payable in respect of an Early Termination Date, which amounts shall be determined and paid pursuant to Section 9.3.

9.3. Payments on Early Termination. If an Early Termination Date occurs, the following provisions will apply.

9.3.1. Events of Default. If the Early Termination Date results from an Event of Default, the Defaulting Party will pay the Non-Defaulting Party: (i) all Unpaid Amounts owing to the Non-Defaulting Party; (ii) all expenses payable under Section ~~9.4~~9.5: and (iii), in the case of an Event of Default relating to participating in or clearing a Base Residual Auction, an amount equal to the product of (a) the amount, if any, by which the ~~New Jersey~~ RCP for such Base Residual Auction exceeds the SOCP, (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); (d) the Utility Load ratio, and (e) the number of Delivery Years remaining in the Delivery Term starting with and including the Delivery Year associated with such Base Residual Auction.

9.3.2. Termination Events. If an Early Termination Date results from Section 8.1.1 (an Illegality) or Section 8.1.2 (an Invalidity of the Act), each party shall pay to the other all Unpaid Amounts owing pursuant to the terms of this Agreement.

9.3.3. Notice and Payment. The party designating an Early Termination Date shall provide notice of such Early Termination Date to the other party. Upon Utility's issuance or receipt of such notice, Utility shall, as soon as practicable, calculate the amounts payable under Section 9.3.1 or 9.3.2, as applicable, and shall provide the calculation to the parties, specifying the party who is obligated to pay and the amount of such payment. An amount calculated as being due in respect of an Unpaid Amount will be payable, as applicable: (i) on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default); or (ii) on the day which is two (2) Business Days after the date on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under Applicable Law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Interest Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

9.4. Rights Under Construction Period Security and Delivery Term Security.

9.4.1. Parties' Rights and Remedies. If at any time (1) any Event of Default or a Termination Event has occurred and is continuing with respect to the Generator or (2) an

Early Termination Date has occurred or been designated as the result of an Event of Default or a Termination Event with respect to the Generator, then, unless the Generator has paid in full all of its obligations under this Agreement that are then due (including without limitation any amounts due under Section 9.3 and Section 9.5), the Utility may exercise one or more of the following rights and remedies:

(1) all rights and remedies available to the Utility under the terms of the applicable Letter of Credit or Cash Escrow Agreement, including without limitation the right to draw on such Letter of Credit and Cash held by the Custodian under such Cash Escrow Agreement;

(2) all other rights and remedies available to the Utility under applicable law as a party receiving credit support in the form of a letter or credit or cash held in escrow; and

(3) the right to set-off any amounts payable by the Generator with respect to any obligations under this Agreement against any Cash held by the Utility under Section 2.11.3 or on behalf of the Utility under any Cash Escrow Agreement.

9.4.2. Deficiencies and Excess Proceeds. The Utility will return to the Generator any Letter of Credit or Cash held by the Utility under Section 2.11.3 or held on behalf of the Utility under a Cash Escrow Agreement remaining after liquidation, set-off and/or application under Section 9.4.1 after satisfaction in full of all amounts payable by the Generator with respect to any of its obligations under the Agreement. The Generator in all events will remain liable for any amounts remaining unpaid after any liquidation, set-off and/or application under such Section 9.4.1.

9.5. ~~9.4.~~ Expenses. A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by the Non-Defaulting Party by reason of the enforcement and protection of its rights hereunder or under the Security Agreement or by reason of the early termination of the Transaction, including, but not limited to, costs of collection.

9.6. ~~9.5.~~ LIMITATION OF LIABILITY. NO PARTY WILL BE REQUIRED TO PAY OR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT HERETO ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT HERETO IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

SECTION 10
TRANSFER

10.1. Restriction of Assignments. Except as otherwise provided in this Section 10, neither party may assign this Agreement without (i) the other party's prior written consent, such consent not to be unreasonably delayed, conditioned or withheld, it being understood that refusal to consent to the assignment of the Agreement to a Person that does not own or control the operation of the Capacity Facility shall not be deemed to be unreasonable, and (ii) the prior approval of the Board. Any assignment in violation of this provision shall be void.

10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and with notice to the Board, and subject to the last sentence of this Section 10.2 (i) assign this Agreement ~~(i)~~ to a purchaser of all or substantially all of the assets of Generator; or (ii) assign its rights (but not its obligations) under this Agreement in connection with the grant of a security interest to any Facility Lender, provided that such security interest does not interfere with the rights of obligations of any party under the Construction Period Security or Delivery Term Security and that under no circumstances shall any Facility Lender have ownership rights to more than 700 MW of Unforced Capacity from electric generation facilities with standard offer capacity agreements, and (iii) assign this Agreement in connection with a merger of Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator; provided that such purchaser or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility. Any assignee for an assignment under clause (i) or (iii) of the preceding sentence shall provide Construction Period Security and Delivery Term Security meeting the requirements of this Agreement.

10.3. Utility's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Utility may, without the prior written consent of Generator, assign this Agreement (i) to a purchaser of all or substantially all of the assets of Utility; or (iii) in connection with a merger of Utility with another Person or any other transaction resulting in a change of control of Utility; provided that such purchaser, Affiliate or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement.

10.4. Assumption by Assignee; No Release from Liabilities. Any permitted assignee or transferee of a party's interest in this Agreement shall assume all existing and future obligations of such party to be performed under this Agreement. Whether or not prior written consent to an assignment is required hereunder, the assignor shall give notice to the other party and to the Board promptly after a permitted assignment of this Agreement. Unless otherwise agreed to by the parties and except as set forth in Sections 10.2 and 10.3 above, upon any permitted assignment of this Agreement to an assignee and such assignee's written assumption of this Agreement, the assigning party shall be released from the performance of its obligations under this Agreement for the period from and after the date of such assignment and assumption; provided, however, that in all other cases, the assigning party shall continue to be bound by this Agreement unless the parties otherwise agree.

SECTION 11
NOTICES

11.1. Effectiveness. Any notice or other communication in respect hereof may be given in any manner set forth below (except that a notice or other communication under Section 7, 8 or 9 will not be effective if given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided and will be deemed effective as indicated: (i) if in writing and delivered in person or by courier, on the date it is delivered; (ii) if sent by telex, on the date the recipient's answerback is received; (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine); (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or (v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

11.2. Addresses for Notices.

11.2.1. Addresses for notices or communications to Generator:

Address:

11.2.2. Address for notices or communications to Utility:

Address:

11.2.3. Change of Addresses. Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

SECTION 12

RESOLUTION OF DISPUTES

12.1. Notice of Dispute.

12.1.1. In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof should arise between the parties (a "Dispute"), a party may declare a Dispute by delivering to the other party a written notice identifying the disputed issue.

12.1.2. If PJM's RPM is eliminated, then a Dispute shall be deemed to have occurred and both parties shall attempt to develop a replacement for the RCP, and, if appropriate, any other provisions of this Agreement including, without limitation, the SOCP, as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.1.3. If PJM's RPM is modified in a material manner such that it adversely affects the performance, calculation or payment of the Transaction , then a party may declare a Dispute and both parties shall attempt to develop a replacement for the RCP, and, if appropriate, any other provisions of this Agreement including, without limitation, the SOCP, as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.2. Resolution by the Parties

12.2.1. If the Dispute relates to the accuracy of Utility's calculation of any payment required to be made under this Agreement (a "Calculation Dispute"), then Generator must provide written notice of the Dispute to Utility within ten (10) Business Days of Generator's receipt of Utility's calculation of the payment pursuant to Section 2.2., which notice must state the nature of Generator's disagreement with Utility's calculation and include all documentation upon which Generator bases its disagreement. Within ten (10) Business Days of Utility's receipt of a written notice claiming a Calculation Dispute, Utility shall either: (a) notify Generator that Utility agrees the initial calculation was in error and provide a revised calculation of the payment that is the subject of the Calculation Dispute; or (b) provide Generator with the basis of Utility's determination that the calculation was correct, including all documentation upon which Utility relies. If Generator does not accept Utility's revised calculation or Utility's explanation of the original calculation, then, within ten (10) Business Days, executives of both parties shall meet at a mutually agreeable time and place and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute.

12.2.2. If the Dispute is not a Calculation Dispute, then upon receipt of a written notice claiming a Dispute, executives of both parties shall meet at a mutually agreeable time and place within ten (10) Business Days after delivery of such notice and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Dispute. In such meetings and exchanges, a party shall have the right to designate as confidential any information that such party offers. No confidential information exchanged in

such meetings for the purpose of resolving a Dispute may be used by a party in litigation against the other party.

12.2.3. Any correction to a calculation upon which the parties agree to resolve the Calculation Dispute, shall be reflected in the Utility's calculation under Section 2.2 for the next Delivery Year following the resolution of the Dispute.

12.3. Optional Resolution Through Arbitration

If the parties are unable to resolve a Dispute between themselves pursuant to Section 12.2, then, if both parties mutually agree to submit the Dispute to binding arbitration, then the disputing party may initiate binding arbitration in Trenton, New Jersey, conducted in accordance with the then current American Arbitration Association's ("AAA") Large, Complex Commercial Rules or other mutually agreed procedures. If the parties do not mutually agree to submit a Dispute to binding arbitration, then either party may initiate a proceeding in a court of competent jurisdiction, or, in the case of a Dispute under Section 12.1.2 or Section 12.1.3, the Board, with respect to the Dispute.

12.4. Effect of Dispute

The pendency of a Dispute shall not suspend, either: (a) the obligation of the parties to perform their obligations under this Agreement, including the obligation to make payments, prior to a Termination Date; or (b) the effectiveness of a notice of an Event of Default under Section 9.1.1 or a notice designating an Early Termination Date under Section 9.1.2.

SECTION 13
MISCELLANEOUS

13.1. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

13.2. Amendments. No amendment, modification or waiver in respect hereof will be effective unless (i) in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system and (ii) until approved by the Board.

13.3. Remedies Cumulative. Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

13.4. Counterparts. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

13.5. No Waiver of Rights. A failure or delay in exercising any right, power or privilege in respect hereof will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

13.6. Governing Law and Jurisdiction

13.6.1. Governing Law. This Agreement will be governed by and construed in accordance with the substantive law of the State of New Jersey, without regard to the application of such state's laws relating to conflicts of laws.

13.6.2. Jurisdiction. With respect to any suit, action or proceedings relating hereto ("Proceedings"), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of New Jersey; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence.

13.7. Waiver of Immunities. Each party irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Applicable Law, that it will not claim any such immunity in any Proceedings.

13.8. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. EACH PARTY ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER HEREINTO BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

By: _____
Name: _____
Title: _____
Company: _____

By: _____
Name: _____
Title: _____
Company: _____

ATTACHMENT A
DESCRIPTION OF THE CAPACITY FACILITY

General Technology (such as combined cycle, steam cycle, integrated gasification combined cycle, nuclear, wind, etc.): _____

Size (net MW of installed capacity): _____

Full Load Heat Rate (BTU/kWh, HHV, summer rating): _____

Primary Fuel (such as coal, gas, residual oil, distillate oil): _____

Secondary Fuel (if applicable): _____

Number and Configuration of Prime Movers (such as two industrial frame gas turbines plus one steam turbine generator, single pulverized fuel boiler plus steam turbine generator, two circulating fluidized bed boiler plus steam turbine generator, nuclear plant uprate, twenty onshore wind turbines): _____

Location (town or city, county, state): _____

Owner(s) and Ownership Percentage(s): _____
_____

ATTACHMENT B
APPROVED STANDARD OFFER CAPACITY PRICE

Standard Offer Capacity Price or SOCP for the term of this Agreement is $[ ] /Mw-day.

ATTACHMENT C
CONSTRUCTION PERIOD SECURITY LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number:_____ Date: _____

AMOUNT:USD _____

EXPIRY: _____

BENEFICIARY:	APPLICANT:
[UTILITY]	[GENERATOR]
[ADDRESS OF UTILITY]	[ADDRESS OF GENERATOR]

Ladies and Gentlemen:

[BANK] ("we" or the "Bank") hereby establish our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this "Letter of Credit") in your favor in the amount of XXX AND XX/100 Dollars ($) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next [preceding] [succeeding] Business Day (the "Expiration Date"); provided, however, that this Letter of Credit shall automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 days prior to the then current Expiration Date. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on the Bank of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

2. The Drawing Certificate issued in the form of Exhibit A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the case of a drawing pursuant to paragraph 1.A, 1.B, 1.C or 1.D or thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received, provided, however, that the original documents referenced in paragraphs 1 and 2 above and the sight draft referenced above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the third Business Day following receipt of such facsimile transmittal.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that the Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than Section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

_____

(Name)

_____

Title:

EXHIBIT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

~~**ATTACHMENT B**~~Bank

~~**CONSTRUCTION PERIOD SECURITY**~~ Bank Address

~~[Form of~~Subject: Irrevocable Nontransferable Standby Letter of Credit ~~to be provided by Utility]~~

Reference Number: _____

The undersigned executive officer or director of [UTILITY] (the "Beneficiary"), hereby certifies under penalty of perjury to [ISSUING BANK NAME] (the "Bank"), and [GENERATOR] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. , dated (the Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to $_____ under that certain Standard Offer Capacity Agreement between Applicant and Beneficiary dated as of _____, 20___ (the "Agreement") for the following reason(s) [check applicable provision]:

[ ]A. The Awarded Capacity Date (as defined in the Agreement) is on or before June 1, 2014, and the Applicant has failed to achieve commercial operation by the Awarded Capacity Date.

[ ]B. The Awarded Capacity Date is a date later than June 1, 2014, and the Applicant has failed to achieve commercial operation by the Awarded Capacity Date.

[ ]C. Such amount is presently due and owing to Beneficiary on account of a continuing "Event of Default" (as defined in the Agreement) or Termination Event (as defined in the Agreement) with respect to the Applicant, and the true calculation of the such amount is set forth in detail in the attached Statement of Damages.

[ ]D. An "Early Termination Date" (as defined in the Agreement) has occurred or been designated as a result of an "Event of Default" (as defined in the Agreement) or Termination Event for which the Applicant owes a termination payment, and the true calculation of such payment amount is set forth in detail in the attached Statement of Damages.

[ ]E. (i) (A) The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof or (B) the Letter of Credit will expire in fewer than 30 days from the date hereof, and (ii) the Applicant is required to but has not provided Beneficiary alternative Construction Period Security (as defined in the Agreement). The Applicant will hold the proceeds of the Letter of Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

_____

_____

_____

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered, [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this ____ day of _____ , _____.

Beneficiary: [UTILITY]

By: _____
Name: _____
Title: _____

Copy to:

[GENERATOR]

[ADDRESS OF GENERATOR]

[ATTACH STATEMENT OF DAMAGES, IF APPLICABLE]

~~(Generator may provide cash to be held in escrow by Utility in lieu of Letter of Credit)~~

STATEMENT OF DAMAGES

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that $ (or a greater amount) is presently due and owing to Beneficiary on account of [a failure to reach commercial operation by the Awarded Capacity Date] [a continuing "Event of Default"] [a Termination Event] [an "Early Termination Date"] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Sections 2.3.4 and 9 of the Agreement.

[INSERT DETAILED CALCULATION OF DAMAGES]

ATTACHMENT ~~C~~D
~~SCHEDULE OF~~ ~~APPROVED STANDARD OFFER CAPACITY~~ ~~PRICES~~
DELIVERY TERM SECURITY LETTER OF CREDIT

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number:_____ Date: _____

AMOUNT:USD _____

EXPIRY: _____

BENEFICIARY: APPLICANT:

[UTILITY] [GENERATOR]

[ADDRESS OF UTILITY] [ADDRESS OF GENERATOR]

Ladies and Gentlemen:

[BANK] ("we" or the "Bank") hereby establish our Irrevocable Nontransferable Standby Letter of Credit No. _____ (this "Letter of Credit") in your favor in the amount of XXX AND XX/100 Dollars ($) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., Eastern Prevailing Time, on the Expiration Date (as hereinafter defined).

This Letter of Credit expires and shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next [preceding] [succeeding] Business Day (the "Expiration Date"); provided, however, that this Letter of Credit shall automatically be extended for additional one-year terms unless we provide written notice to you, by certified mail return receipt requested or overnight delivery, at least 60 days prior to the then current Expiration Date. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation of your sight draft(s) drawn on the Bank of the following, on or prior to 5:00 p.m. Eastern Prevailing Time, on or prior to the Expiration Date:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed (including a Statement of Damages, in the

case of a drawing pursuant to paragraph 1.A, 1.B or 1.C thereof) and purportedly bearing the signature of an executive officer or director of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received, provided, however, that the original documents referenced in paragraphs 1 and 2 above and the sight draft referenced above are received by the Bank prior to 5:00 p.m. Eastern Prevailing Time on the third Business Day following receipt of such facsimile transmittal.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit may be cancelled upon written notice from the Beneficiary, requesting that the Letter of Credit be cancelled, accompanied by the original of this Letter of Credit and all amendments.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as International Chamber of Commerce Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder (other than Section 5-1401 of the General Obligations Law of the State of New York), shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

_____

(Name)

_____

Title:

EXHIBIT A

DRAWING CERTIFICATE

TO [ISSUING BANK NAME]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: _____

The undersigned executive officer or director of [UTILITY] (the "Beneficiary"), hereby certifies under penalty of perjury to [ISSUING BANK NAME] (the "Bank"), and [GENERATOR] (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. , dated (the Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to payment of an amount equal to $_____ under that certain Standard Offer Capacity Agreement between Applicant and Beneficiary dated as of _____, 20___ (the "Agreement") for the following reason(s) [check applicable provision]:

[ ]A. Such amount is presently due and owing under Section 4.1.2 of the Agreement.

[ ]B. Such amount is presently due and owing to Beneficiary on account of a continuing "Event of Default" (as defined in the Agreement) or Termination Event (as defined in the Agreement) with respect to the Applicant, and the true calculation of the such amount is set forth in detail in the attached Statement of Damages.

[ ]C. An "Early Termination Date" (as defined in the Agreement) has occurred or been designated as a result of an "Event of Default" (as defined in the Agreement) or Termination Event for which the Applicant owes a termination payment, and the true calculation of such payment amount is set forth in detail in the attached Statement of Damages.

[ ]D. (i) (A) The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof or

(B) the Letter of Credit will expire in fewer than 30 days from the date hereof, and (ii) the Applicant is required to but has not provided Beneficiary alternative Delivery Term Security (as defined in the Agreement). The Applicant will hold the proceeds of the Letter of Credit as cash collateral for any and all amounts owing to the Applicant under the Agreement until such time as it is entitled to payment of such amount pursuant to the Agreement.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of _____ U.S. DOLLARS AND ____/100ths (U.S.$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

_____

_____

_____

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered, [together with the attached Statement of Damages,] on behalf of the Beneficiary by its undersigned executive officer or director as of this ____ day of _____ , _____.

Beneficiary: [UTILITY]

By: _____
Name: _____
Title: _____

Copy to:

[GENERATOR]

[ADDRESS OF GENERATOR]

[ATTACH STATEMENT OF DAMAGES, IF APPLICABLE]

STATEMENT OF DAMAGES

For the reason(s) indicated in the Drawing Certificate to which this Statement of Damages is attached, and which this Statement of Damages is an integral part of, the Beneficiary certifies (i) that it has calculated that $ (or a greater amount) is presently due and owing to Beneficiary on account of [a failure to make a payment under Section 4.1.2 of the Agreement] [a continuing "Event of Default"] [a Termination Event] [an "Early Termination Date"] (as defined in the Agreement), calculated as set forth in detail below, and (ii) such calculation is made in accordance with Sections [2.3.4 and 9 of the Agreement.

[INSERT DETAILED CALCULATION OF DAMAGES]

ATTACHMENT F

FORM OF CASH ESCROW AGREEMENT FOR CONSTRUCTION PERIOD SECURITY

Pursuant to this Escrow Agreement ("***Agreement***") dated [_____], [UTILITY] (the "***Secured Party***") and [GENERATOR] (the "***Depositor***") hereby establish an Escrow Account (the "***Account***") with _____ (the "***Agent***") (the Secured Party, Depositor and Agent hereafter referred to individually as a "***Party***" and collectively as the "***Parties***"), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the "Assets") will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by the Secured Party and the Depositor, as their escrow agent, to hold, deal with and dispose of the Assets as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject to and in accordance with, however, the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

Terms not defined but used herein and in Schedules I, II, III and IV hereto will have the meanings given to them in the Standard Offer Capacity Agreement (the "***SOCA***"), dated as of [_____], 20__ between Secured Party and Depositor.

1. Agent's Duties. Agent's duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other persons, even though reference thereto may be made herein; *provided, however*, this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including, without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent's discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Assets or this Agreement, without determination by the Agent of such court's jurisdiction in the matter. If any Assets are at any time attached, garnished, or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such

property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to either the Secured Party or the Depositor or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from the Secured Party or the Depositor in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Assets at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to any of the Assets if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Assets deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Assets in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Assets in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in

Schedule III. The shares of the funds are not deposits or obligations of, or guaranteed by any bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Assets shall [become part of the Assets] [be disbursed pursuant to Schedule III]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from the Secured Party or the Depositor, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Assets, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each of the Secured Party and the Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between the Secured Party and the Depositor and/or any third parties, relating to or arising in connection with the Account, the Assets or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Assets then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Secured Party and the Depositor and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to the Secured Party or the Depositor shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Party (or to such other address as said Party may have theretofore substituted therefor by written notification to Agent), by United States certified or registered mail, postage prepaid, by reputable overnight courier service, or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Party to whom it was mailed on the third (3rd) business day after the time it is deposited in the United States mail by Agent, properly addressed and with postage prepaid, whether or not such Party thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or

performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule IV attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Secured Party and the Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor will pay all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Secured Party and the Depositor, Agent may sell such portion of the Assets held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled; or if Agent renders any service not provided for in this Agreement; or if the Secured Party and the Depositor request a substantial modification of its terms; or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees (including reasonably allocated costs of in-house counsel), and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid. The Depositor promise to pay these sums upon demand. The Depositor and its respective successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Assets for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Secured Party and the Depositor. Within thirty (30) days after receiving the aforesaid notice, the Secured Party and the Depositor agree to appoint a successor escrow agent to which Agent may transfer the Assets then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty (30) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by the Secured Party and the Depositor.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [_____], as provided in Schedule II, at which time the Assets then held in the Account, less Agent's unpaid fees, costs and expenses shall be distributed in the following manner: [_____]

14. Governing Law. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of [New Jersey].

15. Automatic Succession. Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the Successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. Disclosure: The Parties hereby agree not to use the name of *[insert name of Agent]* to imply an association with the transaction other than that of a legal escrow agent.

17. Brokerage Confirmations: The parties acknowledge that to, the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the parties waive receipt of such confirmations, to the extent permitted by law. The Agent shall furnish a statement of securities transactions on its regular monthly reports.

18. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Assets at any time deposited to the Account in accordance with the foregoing Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III and IV, which are incorporated by reference.

~~Delivery Year (ending May 31st)~~SECURED PARTY:

~~2015~~By:
~~2016~~Its:
~~2017~~
~~2018~~(Address)

~~2019~~
~~2020~~(City, State and Zip Code)

~~2021~~
~~2022~~(Telephone)

~~2023~~
~~2024~~(Facsimile Number)

~~2025~~Tax I.D.

DEPOSITOR:

~~Standard Offer Capacity Price ($/MW-day)~~

By:
Its:

(Address)

(City, State and Zip Code)

(Telephone)

(Facsimile Number)

Tax I.D.

_____,
as Agent
By:
Its:

~~2026~~

~~2027~~	
~~2028~~	
~~2029~~	
~~2030~~	
~~2031~~	
~~2032~~	
~~2033~~	

Notices to Agent shall be sent to:

[*Name*]
[*Address*]
[*City, State, Zip*]

With Fax Copy to:
[*Name*]
[*Facsimile Number*]

SCHEDULE I
TO CASH ESCROW AGREEMENT

PURPOSE AND MANNER OF DEPOSITS

Credit Support provided by Depositor in the form of Cash under the SOCA, all investments of such Cash, and all proceeds of such investments.

All Credit Support in the form of Cash provided by the Depositor shall be deposited in the Account promptly upon receipt by the Agent.

Instructions for transfer of funds into the Account:

_____

_____

_____

_____

SCHEDULE II
TO CASH ESCROW AGREEMENT

INSTRUCTIONS OF DEPOSITORS

1. Upon written notice signed by the Secured Party to the Agent that one or more of the following events has occurred, Agent shall withdraw Cash in the amount specified in such notice from the Account (as described on Schedule I) and shall transfer such Cash in accordance with the Secured Party's instructions.

(a) The Awarded Capacity Date (as defined in the SOCA) is on or before June 1, 2014, and the Depositor has failed to achieve commercial operation by the Awarded Capacity Date, and the Depositor owes the Secured Party a specified amount in respect of such failure, which amount remains outstanding.

(b) The Awarded Capacity Date is a date later than June 1, 2014, and the Depositor has failed to achieve commercial operation by the Awarded Capacity Date, and the Depositor owes the Secured Party a specified amount in respect of such failure, which amount remains outstanding.

(c) An Event of Default (as defined in the SOCA) or a Termination Event (as defined in the SOCA) with respect to the Depositor has occurred and is continuing, and the Depositor owes the Secured Party a specified amount in respect of such Event of Default, which amount remains outstanding.

(d) An Early Termination Date (as defined in the SOCA) has occurred or been designated as a result of an Event of Default or a Termination Event (as defined in the Agreement) and a specified amount of the Termination Payment (as defined in the SOCA) owed by the Depositor to the Secured Party remains outstanding.

2. Upon written notice signed by both the Secured Party and the Depositor that the Depositor has replaced a specified amount of Cash in the Account with a Letter of Credit (as defined in the SOCA), the Agent shall withdraw such amount of Cash from Depositor's Subaccount and transfer such Cash in accordance with the Depositor's instructions.

3. The Agent shall liquidate such Assets from the Account as may be necessary to meet the withdrawal instructions under paragraphs 1 through 2 of this Schedule II.

7. Authorized persons referred to in Sections 1 and 7 of the Agreement are as specified below, as such names may be amended from time to time by notice to the Agent:

For Depositor:

For Secured Party:

SCHEDULE III
TO CASH ESCROW AGREEMENT

PERMITTED INVESTMENTS

SCHEDULE IV
TO CASH ESCROW AGREEMENT

SCHEDULE OF FEES FOR SERVICES AS ESCROW AGENT

ATTACHMENT E

FORM OF CASH ESCROW AGREEMENT FOR DELIVERY TERM SECURITY

Pursuant to this Escrow Agreement ("***Agreement***") dated [_____], [UTILITY] (the "***Secured Party***") and [GENERATOR] (the "***Depositor***") hereby establish an Escrow Account (the "***Account***") with _____ (the "***Agent***") (the Secured Party, Depositor and Agent hereafter referred to individually as a "***Party***" and collectively as the "***Parties***"), to be maintained and administered for the purposes described in Schedule I attached hereto in accordance with the following terms and conditions:

The funds and/or property described on Schedule I attached hereto and incorporated herein (the "Assets") will be deposited in the Account upon delivery thereof to the Agent in the manner and at the time(s) specified in the said Schedule I. The Agent is hereby authorized and directed by the Secured Party and the Depositor, as their escrow agent, to hold, deal with and dispose of the Assets as provided in the Instructions set forth in Schedule II attached hereto and incorporated herein; subject to and in accordance with, however, the terms and conditions set forth in the following paragraphs of this Agreement, which in all events shall govern and control over any contrary or inconsistent provisions contained in Schedules I or II attached hereto.

Terms not defined but used herein and in Schedules I, II, III and IV hereto will have the meanings given to them in the Standard Offer Capacity Agreement (the "***SOCA***"), dated as of [_____], 20__ between the Secured Party and Depositor.

1. Agent's Duties. Agent's duties and responsibilities shall be limited to those expressly set forth in this Agreement, and Agent shall not be subject to, or obliged to recognize, any other agreement between any or all of the other Parties or any other persons, even though reference thereto may be made herein; *provided, however*, this Agreement may be amended at any time or times by an instrument in writing signed by all of the Parties. Agent shall not be subject to or obligated to recognize any notice, direction or instruction of any or all of the Parties or of any other person, except as expressly provided for and authorized in Schedule II, and in performing any duties under this Agreement, the Agent shall not be liable to any Party for consequential damages (including, without limitation lost profits), losses or expenses, except and to the extent attributable to any gross negligence or willful misconduct on the part of the Agent.

2. Court Orders or Process. If any controversy arises between the Parties, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, Agent will not be required to determine and/or resolve the controversy or to take any action regarding it. Agent may hold all documents and funds and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in Agent's discretion, Agent may require as evidence of final settlement, despite what may be set forth elsewhere in this Agreement. In such event, Agent will not be liable for interest or damage. Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Account, the Assets or this Agreement, without determination by the Agent of such court's jurisdiction in the matter. If any Assets are at any time attached, garnished, or levied upon under

any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then in any such event, Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Agent complies with any such order writ, judgment or decree, it shall not be liable to either the Secured Party or the Depositor or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

3. Agent's Actions and Reliance. Agent shall not be personally liable for any act taken or omitted by it hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment, except and to the extent any such act or omission constitutes gross negligence or willful misconduct on the part of the Agent. Agent shall also be fully protected in relying upon any written notice, instruction, direction, certificate or document provided to it under and pursuant to this Agreement that in good faith it believes to be genuine, including written instructions from the Secured Party or the Depositor in the form of the attached Exhibit(s), if any.

4. Collections. Unless otherwise specifically indicated in Schedule II, Agent shall proceed as soon as practicable to collect any checks, interest due, matured principal or other collection items with respect to Assets at any time deposited in the Account. All such collections shall be subject to the usual collection procedures regarding items received by Agent for deposit or collection. Agent shall not be responsible for any collections with respect to any of the Assets if Agent is not registered as record owner thereof or otherwise is not entitled to request or receive payment thereof as a matter of legal or contractual right. All collection payments or receipts shall be deposited to the respective Account, except as otherwise provided in Schedule II. Agent shall not be required or have a duty to notify anyone of any payment or maturity under the terms of any instrument, security or obligation deposited in the Account, nor to take any legal action to enforce payment of any check, instrument or other security deposited in the Account. The Account is a safekeeping escrow account, and no interest shall be paid by Agent on any money deposited or held therein, except as provided in Section 6 hereof.

5. Agent Responsibility. Agent shall not be responsible or liable for the sufficiency or accuracy of the form, execution, validity or genuineness of documents, instruments or securities now or hereafter deposited in the Account, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein. Registered ownership of or other legal title to Assets deposited in the Account shall be maintained in the name of Agent, or its nominee, only if expressly provided in Schedule II. Agent may maintain qualifying Assets in a Federal Reserve Bank or in any registered clearing agency as Agent may select, and may register such deposited Assets in the name of Agent or its agent or nominee on the records of such Federal Reserve Bank or such registered clearing agency or a nominee of either. Agent shall not be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such document, security or endorsement or this Agreement.

6. Investments. All monies held in the Account shall be invested by Agent in a triple "A" rated money market fund or in such other investments as may be provided for in Schedule III. The shares of the funds are not deposits or obligations of, or guaranteed by any bank, nor are they insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board or any other agency. The investment in such fund or other investments may involve investment risk, including possible loss of principal. The Agent shall not be liable for losses, penalties or charges incurred upon any sale or purchase of any such investment. All interest, dividends, distributions and other accretions to the Assets shall [become part of the Assets] [be disbursed pursuant to Schedule III]. All entities entitled to receive interest or income from the Account will provide Agent with a W-9 or W-8 IRS tax form prior to the disbursement of interest or income. A statement of citizenship will be provided if requested by Agent.

7. Notices/Directions to Agent. Notices and directions to Agent from the Secured Party or the Depositor, or from other persons authorized to give such notices or directions as expressly set forth in Schedule II, shall be in writing and signed by an authorized representative as identified pursuant to Schedule II, and shall not be deemed to be given until actually received by Agent's employee or officer who administers the Account. Agent shall not be responsible or liable for the authenticity or accuracy of notices or directions properly given hereunder if the written form and execution thereof on its face purports to satisfy the requirements applicable thereto as set forth in Schedule II, as determined by Agent in good faith without additional confirmation or investigation.

8. Books and Records. Agent shall maintain books and records regarding its administration of the Account, and the deposit, investment, collections and disbursement or transfer of Assets, shall retain copies of all written notices and directions sent or received by it in the performance of its duties hereunder, and shall afford each of the Secured Party and the Depositor reasonable access, during regular business hours, to review and make photocopies (at Depositor's cost) of the same.

9. Disputes Among Depositors and/or Third Parties. In the event Agent is notified of any dispute, disagreement or legal action between the Secured Party and the Depositor and/or any third parties, relating to or arising in connection with the Account, the Assets or the performance of the Agent's duties under this Agreement, the Agent shall be authorized and entitled, subject to Section 2 hereof, to suspend further performance hereunder, to retain and hold the Assets then in the Account, and to take no further action with respect thereto until the matter has been fully resolved, as evidenced by written notification signed by the Secured Party and the Depositor and any other parties to such dispute, disagreement or legal action.

10. Notice by Agent. Any notices which Agent is required or desires to give hereunder to the Secured Party or the Depositor shall be in writing and may be given by mailing the same to the address indicated below opposite the signature of such Party (or to such other address as said Party may have theretofore substituted therefor by written notification to Agent), by United States certified or registered mail, postage prepaid, by reputable overnight courier service, or by facsimile, so long as receipt of any such facsimile is confirmed. For all purposes hereof, any notice so mailed shall be as effective as though served upon the person of the Party to whom it was mailed on the third (3rd) business day after the time it is deposited in the United States mail by Agent, properly addressed and with postage prepaid, whether or not such Party

thereafter actually receives such notice. Notice given in any other manner shall be effective upon receipt. Whenever under the terms hereof the time for Agent's giving a notice or performing an act falls upon a Saturday, Sunday, or holiday, such time shall be extended to the next business day.

11. Agent Compensation and Expenses. Agent shall be paid a fee for its services as set forth on Schedule IV attached hereto and incorporated herein, which shall be subject to increase upon notice sent to the Secured Party and the Depositor, and reimbursed for its reasonable costs and expenses incurred. The Depositor will pay all Agent's usual charges and Agent may deduct such sums from the funds deposited. If Agent's fees, reasonable costs or expenses provided for herein are not promptly paid when due, and if there is no cash or insufficient cash in the Account to pay the same, then upon thirty (30) days' prior written notice to the Secured Party and the Depositor, Agent may sell such portion of the Assets held in the Account as necessary and reimburse itself therefor from the proceeds of such sale. In the event that the conditions of this Agreement are not promptly fulfilled; or if Agent renders any service not provided for in this Agreement; or if the Secured Party and the Depositor request a substantial modification of its terms; or if any controversy arises, or if Agent is made a party to or intervenes in any litigation pertaining to this escrow or its subject matter or, in the exercise of its business judgment, finds it necessary to consult with counsel regarding the same, then in any such case Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees (including reasonably allocated costs of in-house counsel), and expenses reasonably incurred by Agent in connection with such default, delay, controversy or litigation, and Agent shall have the right to retain all documents and/or other things of value at any time held by Agent in this escrow until such compensation, fees, costs, and expenses are paid. The Depositor promise to pay these sums upon demand. The Depositor and its respective successors and assigns agree to indemnify and hold Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees (including reasonably allocated costs of in-house counsel) and disbursements that may be imposed on Agent or incurred by Agent in connection with the performance of its duties under this Agreement. Agent shall have a first lien on the Assets for such compensation and expenses.

12. Agent Resignation. It is understood that Agent reserves the right to resign at any time by giving written notice of its resignation, specifying the effective date thereof, to the Secured Party and the Depositor. Within thirty (30) days after receiving the aforesaid notice, the Secured Party and the Depositor agree to appoint a successor escrow agent to which Agent may transfer the Assets then held in the Account, less its unpaid fees, costs and expenses. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such thirty (30) day period, Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorney's fees which Agent incurs in connection with such a proceeding shall be paid by the Secured Party and the Depositor.

13. Escrow Termination. If this Agreement shall not have previously terminated, then it shall terminate on [_____], as provided in Schedule II, at which time the Assets then held in the Account, less Agent's unpaid fees, costs and expenses shall be distributed in the following manner: [_____]

14. Governing Law. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of [New Jersey].

15. Automatic Succession. Any company into which the Agent may be merged or with which it may be consolidated, or any company to whom Agent may transfer a substantial amount of its Escrow business, shall be the Successor to the Agent without the execution or filing of any paper or any further act on the part of any of the Parties, anything herein to the contrary notwithstanding.

16. Disclosure: The Parties hereby agree not to use the name of *[insert name of Agent]* to imply an association with the transaction other than that of a legal escrow agent.

17. Brokerage Confirmations: The parties acknowledge that to, the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions of the escrow, the parties waive receipt of such confirmations, to the extent permitted by law. The Agent shall furnish a statement of securities transactions on its regular monthly reports.

18. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, when taken together, shall constitute and be one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

The undersigned Agent hereby agrees to hold, deal with and dispose of the Assets at any time deposited to the Account in accordance with the foregoing Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument Schedules I, II, III and IV, which are incorporated by reference.

SECURED PARTY: _____	DEPOSITOR: _____
By: _____ Its: _____	By: _____ Its: _____
_____ (Address)	_____ (Address)
_____ (City, State and Zip Code)	_____ (City, State and Zip Code)
_____ (Telephone)	_____ (Telephone)
_____ (Facsimile Number)	_____ (Facsimile Number)
Tax I.D. _____	Tax I.D. _____
	_____, as Agent By: _____ Its: _____

Notices to Agent shall be sent to:

[*Name*]
[*Address*]
[*City, State, Zip*]

With Fax Copy to:
[*Name*]
[*Facsimile Number*]

SCHEDULE I
TO CASH ESCROW AGREEMENT

PURPOSE AND MANNER OF DEPOSITS

Credit Support provided by Depositor in the form of Cash under the SOCA, all investments of such Cash, and all proceeds of such investments.

All Credit Support in the form of Cash provided by the Depositor shall be deposited in the Account promptly upon receipt by the Agent.

Instructions for transfer of funds into the Account:

_____

_____

_____

_____

SCHEDULE II
TO CASH ESCROW AGREEMENT

INSTRUCTIONS OF DEPOSITORS

1. Upon written notice signed by the Secured Party to the Agent that one or more of the following events has occurred, Agent shall withdraw Cash in the amount specified in such notice from the Account (as described on Schedule I) and shall transfer such Cash in accordance with the Secured Party's instructions.

(a) The Depositor has failed to pay an amount presently due and owing under Section 4.1.2 of the Agreement, which amount remains outstanding.

(b) An Event of Default (as defined in the SOCA) or a Termination Event (as defined in the SOCA) with respect to the Depositor has occurred and is continuing, and the Depositor owes the Secured Party a specified amount in respect of such Event of Default, which amount remains outstanding.

(c) An Early Termination Date (as defined in the SOCA) has occurred or been designated as a result of an Event of Default or a Termination Event (as defined in the Agreement) and a specified amount of the Termination Payment (as defined in the SOCA) owed by the Depositor to the Secured Party remains outstanding.

2. Upon written notice signed by both the Secured Party and the Depositor that the Depositor has replaced a specified amount of Cash in the Account with a Letter of Credit (as defined in the SOCA), the Agent shall withdraw such amount of Cash from Depositor's Subaccount and transfer such Cash in accordance with the Depositor's instructions.

3. The Agent shall liquidate such Assets from the Account as may be necessary to meet the withdrawal instructions under paragraphs 1 through 2 of this Schedule II.

7. Authorized persons referred to in Sections 1 and 7 of the Agreement are as specified below, as such names may be amended from time to time by notice to the Agent:

For Depositor:

For Secured Party:

SCHEDULE III
TO CASH ESCROW AGREEMENT

PERMITTED INVESTMENTS

SCHEDULE IV
TO CASH ESCROW AGREEMENT