

Regulatory Commission ("FERC"). Prospective implementation of such structural changes to the RPM is uncertain at this time. Therefore, to address the lack of incentives under RPM to support the addition of mid-merit and/or baseload generation, the Legislature determined that "construction of new, efficient generation must be fostered by State policy that ensures sufficient generation" is constructed on a timely and orderly manner and made available to the region and to users in the State.

The Legislature maintains that PJM lacks authority to order new generation as a means to mitigate local electrical system reliability concerns and solve other issues related to the lack of local generation. Instead, PJM's authority is restricted to ordering transmission system upgrades and expansions to mitigate electrical system reliability concerns caused by transmission system overloads and/or the lack of local generation being developed. Because of this, the Legislature concluded that "New Jersey is experiencing an electric power capacity deficit and high power prices that may result in the loss of jobs and investment" due to a continued need to upgrade the transmission system to the west of New Jersey to ensure that a reliable supply of electricity and capacity flows eastwardly from generators located outside of New Jersey.

Additionally, according to the Legislature, as a result of a lack of new, efficient electric generation facilities, New Jersey has become more reliant on out-dated coal-fired power plants.

From a resource adequacy perspective, New Jersey is therefore even more vulnerable to the 11,000 megawatts ("MW") of coal-fired generation at risk of retirement due to the inability of various generation companies to cover their respective going forward cash operating costs plus incremental capital expenditures to ensure environmental compliance in the PJM market.²

The Legislature therefore concluded that creating a limited program to encourage construction of local electric generation facilities while potential enhancements to RPM and other PJM pricing mechanisms are under consideration, will help ensure sufficient capacity to stabilize power prices to promote the State's economic development, create opportunities for employment in the energy sector, and help to reduce the cost and volatility of electricity prices in New Jersey.

The LCAPP Law directs the Board to immediately commence a proceeding to establish a process that will seek offers for financially-settled Standard Offer Capacity Agreements ("SOCA") between the State's electric public utilities ("EDCs") and eligible generators, as defined in the LCAPP Law. The LCAPP Law requires selected eligible generators, with Board approved and executed SOCAs, to participate in and be accepted as a capacity resource in PJM's Base Residual Auction ("BRA") conducted each May.

Pursuant to the LCAPP Law, the Board shall require that the State's EDCs retain a single agent, with the approval of the Board, to administer the LCAPP. The agent retained in accordance with the LCAPP law ("LCAPP Agent"), shall, on behalf of the Board, be responsible for:

- (1) assisting the Board with the establishment of the LCAPP that allows for offering financially-settled SOCAs for the purpose of facilitating the development of eligible generators;

²Based upon the PJM State of the Market Report for 2009 issued by the PJM Independent Market Monitor.

(2) pre-qualifying eligible generators for participation in the LCAPP through a showing of environmental, economic, and community benefits, and through demonstration of reasonable certainty of completion of development, construction and permitting activities necessary to meet the desired in-service date; and

(3) recommending to the Board the selection of winning eligible generators based on the net benefit to ratepayers of each pre-qualified eligible generator's offer price and term. Eligible generators that can enter commercial operation for energy delivery year³ 2015 are to be provided with a weighted preference, in addition to the net benefit ratepayer test. Eligible generators shall also indicate the amount of capacity they are offering in the LCAPP.

Accordingly, to implement the LCAPP Law, the BOARD **HEREBY FINDS** that it must:

(1) approve a form of SOCA, a financially settled transaction agreement that provides eligible generators with payments from the EDCs for a defined amount of electric capacity for a term specified by the Board not to exceed fifteen (15) years. Pursuant to the LCAPP Law, upon Board approval these payments are a fully non-bypassable irrevocable charge;

(2) approve a method and the contract terms for providing payment to selected eligible generators from the EDCs for the difference between the Standard Offer Capacity Price ("SOCP")⁴ and the Resource Clearing Price ("RCP")⁵ multiplied by the SOCA capacity in the event the SOCP is greater than the RCP for any applicable delivery year, and for providing refunds to the EDCs from the selected eligible generators for the difference between the SOCP and the RCP multiplied by the SOCA capacity in the event the RCP is greater than the SOCP for any applicable delivery year;

(3) develop criteria associated with the prequalification of eligible generators for participation in the LCAPP through a showing of environmental, economic, and community benefits, and through demonstration of reasonable certainty of completion of development, construction and permitting activities necessary to meet the desired in-service date while providing a weighted preference based on likelihood of commercial operation for energy delivery year 2015;

(4) develop a method for evaluating and comparing the net value to ratepayers of each eligible generator's offer price and term; and

(5) establish a method for providing a weighted preference for eligible generators that can enter commercial operation for energy delivery year 2015.

³Energy Delivery Year is defined as the 12-month period from June 1st through May 31st, numbered according to the calendar year in which the Energy Delivery Year ends.

⁴Standard offer capacity price 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.

⁵The RCP is the price established for the Locational Deliverability Area ("LDA") by the BRA as conducted by PJM as part of the RPM.

The LCAPP Law requires eligible generators, approved by the Board, to enter into a SOCA with each of the State's four EDCs, provided that each EDC shall pay or receive refunds pursuant to an annually calculated load-ratio share of the capacity of the SOCA based upon each EDC's annual forecasted peak demand as determined by PJM. The resulting SOCAs shall bind the EDCs to the Board-approved SOCAs with selected eligible generators for the term of the SOCA; obligating the selected eligible generators with executed SOCAs to offer the capacity, energy, and ancillary services into the PJM wholesale markets as required by the PJM market rules, and also requiring eligible generators with executed SOCAs to participate in and clear the annual BRA conducted by PJM as part of RPM for each delivery year of the entire term of the SOCA.

Based upon the Legislatively-imposed requirement, the Board's Order approving the recommended SOCAs must be issued on or before March 30, 2011. Furthermore, the LCAPP, once approved by the Board, shall require the State's EDCs to procure up to 2,000 MW of financially-settled SOCAs. Pursuant to the LCAPP Law, the Board shall award the SOCA(s) within thirty (30) days after the Board's approval of the form of the SOCA (i.e. by April 30, 2011).

Therefore, pursuant to the mandates and requirements of the LCAPP Law, the Board **HEREBY INITIATES** a proceeding and **HEREBY DIRECTS** Board Staff to notify all affected and/or interested parties by posting notice of this proceeding on the Board's website. The Board **FURTHER DIRECTS** the EDCs to post this Order on each of their respective website homepages within two (2) business days of the date of this Order. The Board **FURTHER DIRECTS** each of the EDCs to electronically supply each of their respective Basic Generation Service suppliers with a copy of this Order within two (2) business of the date of this Order.

In addition, pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** President Solomon as the Presiding Officer who is authorized to rule on all motions that may arise during the pendency of this proceeding, as well as establish and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues, subject to ratification by the Board.

Based upon a request by Board Staff, on February 7, 2011, the EDCs, collectively, submitted to the Board a recommended candidate for the position of LCAPP Agent. Immediately thereafter, on February 7, 2011, the Board's Secretary published a Notice for Solicitation of Comments on the Electric Distribution Public Utilities' recommended LCAPP Agent on the Board's website. Interested parties were requested to electronically submit any comments on the recommended LCAPP Agent by 12:00pm (Eastern Standard Time) on Wednesday, February 9, 2011 for the Board's consideration. No comments were received. The Board, upon reviewing and considering the experience and qualifications of the recommended LCAPP Agent, **HEREBY AUTHORIZES** the firm of Levitan & Associates, Inc. to be retained by the EDCs as LCAPP Agent, to enable the Board to meet the timelines set forth in the LCAPP Law. The EDCs are **HEREBY AUTHORIZED** to timely reimburse the LCAPP Agent for its work in connection with this LCAPP proceeding.

The Board **HEREBY DIRECTS** the LCAPP Agent to immediately commence the work associated with undertaking the pre-qualification process. The LCAPP Agent shall, on behalf of the Board, be responsible for:

- (1) assisting the Board with the establishment of the LCAPP that allows for offering financially-settled SOCAs for the purpose of facilitating the development of eligible generators;
- (2) pre-qualifying eligible generators for participation in the LCAPP through a showing of environmental, economic, and community benefits, and through demonstration of reasonable certainty of completion of permitting, development, and construction activities necessary to meet the desired in-service date;
- (3) evaluating and comparing the net value to ratepayers of each eligible generator's offer price and term;
- (4) establishing a method for providing a weighted preference for eligible generators that can enter commercial operation for Energy Delivery Year 2015; and
- (5) recommending to the Board the selection of winning eligible generators based on the net benefit to ratepayers of each pre-qualified eligible generator's offer price and term.

Therefore, Board **HEREBY ADOPTS** the following schedule of milestones:

Proposed SOCA Submission	2/14/2011
Application Data Sheets Issued by Agent	2/15/2011
Application Data Sheets Due	2/22/2011
Initial Comments to Proposed Form of SOCA	2/22/2011
Reply Comments to Proposed Form of SOCA	2/25/2011
Final Form of SOCA Issued	3/1/2011
Final SOCP Bids Due	3/7/2011
Initial Recommended SOCA Proposals	3/15/2011
Issue Agent's Report Supporting Selection	3/21/2011
Public Comments on Agent's Report	3/24/2011
Reissue Agent's Report Supporting Selection	3/28/2011
Board Order on recommended SOCAs	3/30/2011

The Board **HEREBY DIRECTS** all interested generators to submit an application for a baseload or mid-merit generation facility to be considered in the LCAPP proceeding by **February 22, 2011**, in a form and manner to be specified in the Application Data Sheets posted to the LCAPP web portal at <http://www.nj-lcapp.com>. The application shall include, at a minimum, all of the information requested in the Application Data Sheets for the LCAPP Agent's review and consideration in the pre-qualification process. Such information will include but shall not be limited to:

- a) Identification of project sponsor(s), including contact person, list of officers, partners, and other principal team members, legal status of sponsor(s), corporate affiliations, nature of support agreements, project development experience, other generation assets under development, under construction, and in operation; disclosure of any instance in which the sponsor, its officers, directors, partners, and other principal team members have been convicted of any felony or crime related to the sale or purchase

of power, generating assets, or other energy or services; a financing plan, credit rating of sponsor (and/or guarantor), and recent financial statements.

- b) A detailed description of the new generating facility, including but not limited to type of generation technology, location, installed capacity, capacity expected to be cleared in an upcoming BRA, position in the PJM generation queue, status in the PJM interconnection process, estimate of all relevant interconnection costs, status of all necessary permit applications, plant operating characteristics, and projected in-service date. Thermal projects (including fossil fueled and biomass) shall provide fuel type and fuel supply plans. Non-dispatchable projects (e.g., wind, solar, combined heat and power) shall provide expected operating profiles by month and time of day.
- c) Environmental attributes associated with the new generation facility, such as brownfield site reuse, water supply and discharge, air emissions, and proximity to sensitive resources.
- d) Community benefits associated with the new generating facility, such as construction period and operating period employment, shares of local labor and materials used in construction, land use improvements, evidence of community acceptance, and property taxes or payment-in-lieu-of-taxes.
- f) A demonstration of reasonable certainty of completion of development, construction and permitting activities necessary to meet the desired in-service date (eligible generators that can enter commercial operation for energy delivery year 2015 will be provided with a weighted preference, in addition to the net benefit ratepayer test).
- g) Certification that construction of the generation facility has not begun as of January 28, 2011 (the effective date of the LCAPP Law).
- h) Any other pertinent information the potential generator believes would support the application.

The potential generators and the EDCs shall furnish any additional information requested by the LCAPP Agent in an expeditious manner but in no event, later than three (3) business days after the request for information is made.

The Board **HEREBY DIRECTS** the EDCs, either collectively or individually, as well as any other interested party, to submit to the Board for its consideration, on or before **February 14, 2011**, a proposed form of SOCA in a readable electronic format. All proposed forms of SOCA shall be posted on the Board's website for public review and comment. All comments regarding the proposed form of SOCA are to be submitted on or before **February 22, 2011**. Reply comments are to be submitted on or before **February 25, 2011**. On or before **March 1, 2011**, a final form of SOCA will be posted on the Board's website.

The Board **HEREBY DIRECTS** the EDCs, either collectively or individually, as well as any other interested party to submit on or before **March 1, 2011**, to the Board for its review and

consideration, a method for providing selected eligible generators with the requisite payments from the EDC for the difference between the SOCP and the RCP multiplied by the SOCA capacity in the event the SOCP is greater than the RCP for any applicable delivery year, and for providing EDCs with refunds from the selected eligible generators for the difference between the SOCP and the RCP multiplied by the SOCA capacity in the event the RCP is greater than the SOCP for any applicable delivery year. The proposals should also include a methodology for collecting from and refunding to ratepayers the resulting amounts.

The Board **HEREBY DIRECTS** each of the EDCs to submit to the Board, on or before **March 1, 2011**, the EDC's annual forecasted peak demand for Energy Delivery Years 2011, 2012, 2013 and 2014 as determined by PJM.

On or before **March 7, 2011**, potential generators shall submit firm and binding SOCP offers. The proposed term covering the firm and binding SOCP offers shall not exceed fifteen (15) years. The firm SOCP offer shall reflect in full the terms and conditions in the final form of the SOCA.

The Board **HEREBY DIRECTS** the LCAPP Agent upon review of the information as identified in this Order, submitted by potential generators, the EDCs and/or any other interested stakeholder, as well as any other information deemed necessary by the LCAPP Agent to perform its duties, to issue a report setting forth a recommendation to the Board of winning eligible generators based upon the criteria set forth in the LCAPP Law and this Order, no later than **March 21, 2011**. The LCAPP Agent's report will be posted on the Board's website subject to public review and comment by any interested stakeholder. Public comments will be due no later than **March 24, 2011**, unless the LCAPP Agent's report is posted on the Board's website prior to March 21, 2011, in which case the deadline for public commentary will advance day for day, weekend days excluded. In the event the LCAPP Agent elects to reissue the Report supporting the Agent's basis for the selection of the SOCP offers, the Report shall be reissued no later than **March 28, 2011**. The Board intends to issue an Order on the recommended SOCAs on **March 30, 2011**.

The Board **HEREBY ORDERS** the EDCs to defer any and all reasonably and prudently incurred costs associated with retention of and work performed by the LCAPP Agent, retained by the EDCs in order to assist the Board, for prospective recovery, subject to review and approval by the Board, in each of the respective EDC's next electric distribution base rate proceedings. The Board **FURTHER ORDERS** the EDCs to maintain all invoices for work performed by the LCAPP Agent as well as records associated with any and all amounts paid to the agent, for the Board's review and consideration, should the EDCs seek recovery of the respective EDC's portion of the LCAPP Agent's costs. The Board **FURTHER ORDERS** the EDCs to defer any and all reasonably and prudently incurred costs directly associated with the LCAPP proceeding for prospective recovery, subject to review and approval by the Board in each of the respective EDC's next electric distribution base rate proceedings.

The Board **HEREBY DIRECTS** Board Staff to provide Notice of Public Hearings and to conduct a minimum of four (4) Public Hearings, with at least one in each of the EDC's service territories, at a place and time to be determined by the Presiding Officer. The Public Hearings shall be conducted by the Presiding Officer or his designee.

In addition to or in lieu of verbal comments, written comments can also be sent to the attention of the Office of the Secretary at: the New Jersey Board of Public Utilities, Two Gateway Center, Suite 801, Newark, N.J. 07102, postmarked no later than **March 18, 2011** – please include the

phrase "LCAPP Law" in the subject line. Electronic comments can also be filed with the BPU at board.secretary@bpu.state.nj.us.

DATED: 2/10/11

BOARD OF PUBLIC UTILITIES
BY:




LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

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

