

which directed the Board to conduct a proceeding to procure generation capacity of 2,000 MWs by seeking offers for Standard Offer Capacity Agreements between the State's electric public utilities and defined eligible generators.⁴

The LCAPP Law limited the procurement of new generation capacity to 2,000 MWs.⁵ The LCAPP Agent, hired in conformity with the LCAPP Law, issued an Evaluation Report.⁶ At the Board's March 29, 2011 Special Agenda meeting, the LCAPP Agent stated that New Jersey load could potentially benefit from additional capacity beyond the 2000MWs procured under the LCAPP.⁷

The Board is interested in determining the need for additional electric capacity, and then how best to facilitate the timely development of that capacity while addressing the reliability and economic needs of its ratepayers. The Board is also interested in investigating (1) the adequacy of existing and planned transmission and generation facilities, serving the electrical requirements of all customers in the State; (2) pricing and physical constraints impacting directly or indirectly the State's electrical transmission and distribution grids; (3) the competitiveness of the State's marketplace, vis-à-vis surrounding jurisdictions; and (4) options and policy recommendations to provide an adequate, safe and reliable supply of electricity at a reasonable cost to all customers in the State. As explained below, events are expected to occur over the next five to eight years that will have a direct and substantial impact on both the reliability of supply and reliability of the transmission grid in New Jersey. Therefore, the Board is undertaking this investigation to address these issues, adopt appropriate policies and take appropriate steps to ensure New Jersey's ratepayers are adequately protected over the next decade.

Electricity markets are extremely complex and the economic viability of potential solutions -- short-term, intermediate and long-term -- will depend on a variety of different factors and developments, many of which lie outside the Board's control. These developments include uncertainty surrounding the implications of the recently released U.S. Environmental Protection Agency ("EPA") proposed regulations. The EPA has proposed rules establishing standards for cooling water intake structures at existing power plants and other facilities pursuant to section 316(b) of the Clean Water Act.⁸ Also, the EPA proposed the Clean Air Transport Rule which would require significant reductions in sulfur dioxide (SO₂) and nitrogen oxides (NO_x) emissions that cross state lines.⁹ This proposed rule will require companies operating coal-burning plants to install scrubbers and other technology to reduce emissions of the pollutants. Some companies may decide to retire older plants rather than invest in new control measures in order to comply with the EPA proposed rules. It should be noted that the Clean Air Transport Rule does not address power plant emissions of carbon dioxide and other pollutants. The regulation of carbon dioxide and these other emissions is also under consideration by the EPA. In light of the potential impacts of these EPA regulations the Board needs to review and consider possible steps.

⁴ N.J.S.A. 48:3-98.3(a).

⁵ N.J.S.A. 48:3-98.3(c)1.

⁶ LCAPP Agent Report (March 21, 2011).

⁷ BPU Special Agenda Meeting Transcript at pgs. 45-46 (March 29, 2011).

⁸ 40 CFR Parts 122 and 125.

⁹ 40 CFR Parts 51, 52, 72, 78, and 97.

Additionally, there are other factors which will likely affect system reliability in New Jersey. These include more stringent State environmental regulations, permitting hurdles causing construction delays for needed transmission lines, , the upcoming retirement of the Oyster Creek nuclear generating station,¹⁰ and additional exports of power out of New Jersey.¹¹ With these in mind, New Jersey faces even greater uncertainty that adequate service reliability will be maintained.

Before the commencement of LCAPP, little new in-state conventional mid-merit electric generation was scheduled to be built over the next three to five years. This, coupled with the expected de-rating or retirement of existing plants in order to comply with both Federal and State environmental requirements, and the impact to the State becomes even more significant.

All the while, electricity requirements are forecasted to rise at a pace of between 1% and 2% per year. New Jersey's needs additional electricity supplies.

By 2012, PJM is projecting that the transmission system in the northern portion of New Jersey and other eastern regions of PJM will be marginally adequate to ensure reliability at times of peak demand. As a result, PJM has ordered that significant new transmission upgrades be made to ensure reliability in eastern PJM, including New Jersey. Among other projects, PJM has determined the 500 kV Susquehanna-Roseland transmission line ("S-R Upgrade") is needed by 2015 to ensure electric reliability.¹²

In the course of its transmission planning, PJM's has stated that New Jersey may experience service interruptions in the near future. During the Board's 2009-2010 proceedings on the proposed S-R Upgrade, PJM had several witnesses testify to the severe reliability problems in New Jersey.¹³ The PJM witnesses testified in great detail concerning the Regional Transmission Expansion Planning ("RTEP"), which is PJM's accepted transmission planning process. During the course of the RTEP, which is developed on a yearly basis, PJM identified more than two dozen North American Electric Reliability Corporation ("NERC") reliability violations - first in PJM's 2007 RTEP, then in its 2008 RTEP and 2009 Retool of the 2008 RTEP that it performed as a result of the national economic crisis. As a designated regional transmission organization, PJM must comply with approved NERC reliability standards.

¹⁰ See December 9, 2010 Administrative Consent Order between Exelon Generation Company, LLC and the New Jersey Department of Environmental Protection.

¹¹ Filing of an Executed Merchant Transmission Facility Interconnection Agreement Among the New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc., and Hudson Transmission Partners, LLC and Request for Critical Energy Infrastructure Information Designation, Docket No.ER11- 3479. (Filed April 29, 2011). The New York Independent System Operator ("NYISO") is seeking approval from the Federal Energy Regulatory Commission ("FERC") of an Interconnection Agreement governing the interconnection of Hudson Transmission Partners (HTP) merchant transmission facility. The HTP line is a 660MW transmission project that will connect the PSE&G Bergen Substation with Consolidated Edison Company's West 49th Street Substation in New York City. The HTP Transmission Facility will have only unidirectional flow from PJM into NYC. The Linden VFT transmission line and the Neptune transmission line presently have FERC approval to transmit and currently do transmit power from PJM into NYISO.

¹² PJM states the S-R Upgrade is still needed by 2012 but as stated below, has come up with an alternative since it recognizes that the S-R Upgrade will not come on-line until at least June 2014. See letter from Steven R. Herling, PJM's Vice President of Planning, to the NJDEP dated June 17, 2010.

¹³ See NJBPU Order regarding Upgrade, which summarizes each witnesses' testimony. See, http://www.state.nj.us/bpu/agenda/announcements/approved/announcements_archives.html.

Violations can result in penalties of up to \$1 million per day per violation.¹⁴ As a result of the RTEPs, PJM and PSE&G determined that, due to the number and extent of these violations, the S-R Upgrade was the only viable solution. PJM has stood by its position that there will be serious reliability violations beginning in 2012 and onward if the S-R Upgrade is not constructed.¹⁵

PJM reiterated the seriousness of its reliability concerns yet again in June 2010, this time in connection with permitting delays that eventually caused at least a two year delay in the projected in-service date of the S-R Upgrade, stating that:

Recognizing that the Hopatcong West portion will likely be delayed, PJM will be developing specific operational procedures to manage the risk to the reliability of the region. These procedures will define, among other things, the circumstances under which service to customers in northern New Jersey will have to be curtailed to minimize the potential for broader service disruptions. Should the Hopatcong East portion of the line not be completed before June 1, 2012, such procedures will also need to be developed to address the reliability issues that are to be resolved by that portion of the line.¹⁶

PJM has not formally advised the State of the contingency plans to address these very real pending reliability concerns, other than providing a commitment that the PSEG ER&T Hudson Unit No. 1 (originally constructed in 1964) will remain in service as a reliability-must-run ("RMR") unit. Exacerbating the delayed in-service date of the "S-R Upgrade" is the very recent notification by the National Park Service that it will not issue its report regarding the ability of PSE&G to construct the line through the a portion of land under its jurisdiction until January 2013.¹⁷

Based on the delay of the entire S-R Upgrade, it appears that PJM's brownouts are likely in New Jersey. This is not mere conjecture or speculation - the high likelihood of customer brownouts is supported by, and based upon, PJM's own analysis and statements. The Board has also been informed by PJM that, with the delay of the S-R transmission line in-service date, the State is likely to see millions of dollars of increases in congestion costs.¹⁸

The consequences of this situation are not only reliability-related. There will be signification rate impacts as well, as "congestion," which is the shortage of transmission capacity during peak periods, leads to price spikes for required purchases of spot market electricity purchases during those peak periods. While much of New Jersey's residential customer electricity needs are covered by Basic Generation Service ("BGS") contracts that provide some protection from those price spikes, power generators must factor-in higher costs when pricing their offers. Furthermore, commercial and industrial customers who take BGS-FP service, i.e., CIEP

¹⁴ See, e.g. *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242 (2007); Order No. 693-A, reh'g denied, 120 FERC ¶ 61,053 (2007) (Order approving the first 83 NERC reliability standards and directing other related actions). See also, *North American Electric Reliability Corp.*, 118 FERC ¶ 61,030 at P. 88 (2007). 16 U.S.C.A. 825-1(b)

¹⁵ See, letter from Steven R. Herling, PJM's Vice President of Planning, to the NJBPU dated January 21, 2010.

¹⁶ See, letter from Steven R. Herling, PJM's Vice President of Planning, to the NJDEP dated June 17, 2010.

¹⁷ National Parks Service correspondence to PSE&G dated May 4, 2011.

¹⁸ See, PJM November 10, 2010 Power Point Presentation "Transmission Expansion Advisory Committee" at p 9.

customers, are not really protected from these price spikes. Customers in this class are not protected unless they have left BGS and are fortunate enough to have executed contracts with third party suppliers whose terms and provisions provide relief.

Price discrepancies also provide a form of early-warning signal that reliability problems are on the horizon. In other words, the economic signals provided by congestion pricing indicate that, unless the trend towards increasing supply/demand imbalance is reversed, the ability of the system to reliably supply electricity during times of peak period will become increasingly problematic.

This proceeding represents an important and meaningful step designed to allow the Board to identify the impediments to the development of new electric capacity, and to correct any possible structural deficiencies of the current market. By undertaking this investigative proceeding, the Board will review and analyze these issues and take all steps within its jurisdiction that it finds to be necessary to ensure that New Jersey's electricity supply is reliable, more affordable and that the marketplace is structured such that New Jersey consumers are treated more fairly.

SCOPE OF PROCEEDING

The Board has a responsibility to the citizens and ratepayers of New Jersey to ensure that the utilities continue to provide safe, adequate and proper service at reasonable rates. N.J.S.A. 48:2-21. Serious and time sensitive issues concerning the reliability of the grid, transmission planning, transmission constraints, congestion costs, and possible capacity shortfalls are at stake in New Jersey. The Board has the obligation to ensure that New Jersey's transmission, capacity and energy needs are met. In fulfilling this obligation, the Board is concerned by the apparent inability of PJM's RPM to successfully encourage new generation; the potential retirement of a significant number of older, less efficient generating units, and delays associated with the construction of back-bone transmission projects in the State., Indeed, to sit idly and do nothing in the face of threats of brownouts and blackouts would be irresponsible.

Accordingly, the Board **HEREBY INITIATES** this proceeding and **HEREBY DIRECTS** Board Staff to establish a process to investigate New Jersey's electric capacity needs, as well as to investigate issues associated with transmission planning, the proper functioning of the power market and related issues.

The Board **HEREBY DIRECTS** Board Staff to investigate the following issues, and invites all interested parties to present their positions to the Board:

Electrical Capacity:

How much new electrical capacity has been developed and has been placed into service since the implementation of RPM in 2007 throughout the PJM footprint and the location, capacity and type of technology placed into service?

Is there a need for additional generation capacity beyond the 2,000MWs procured under the LCAPP to serve the needs of New Jersey? If so, how much?

What impediments, if any, exist that create barriers for new capacity development to project developers in the state?

What actions should the Board take to reduce or eliminate those impediments?

Whether the power market in any portion of New Jersey is not competitive, and if not, why?

What are the potential impacts of the EPA regulations and other regulatory changes on the New Jersey power sector? For instance, will there be an increase in generation plant outages for retrofit, and what existing units may potentially retire?

How should the Board, the power-producing sector and the investment community respond to the challenges facing New Jersey?

Transmission:

What factors exist that impede the interconnection of generation to the PJM grid, and delivery of energy to New Jersey?

What actions can the Board take to reduce or eliminate those impediments?

The Board **HEREBY DIRECTS** Staff to review all the data compiled and comments received by the Board in this proceeding and to issue a report to the Board no later than December 20, 2011. The report shall include: (a) a summary of Board Staff's review and analysis of the data compiled and the comments received from stakeholders; (b) a recommendation as to whether the Board should proceed with securing additional electrical capacity beyond the 2,000MW limit set forth in the LCAPP Law; and (c) recommended modifications or amendments to EDECA and/or LCAPP, if any, based upon Board Staff's review and analysis conducted herein, supported by a narrative explaining why the modifications or amendments are needed.

The following is a procedural schedule to initiate and conduct such proceeding:

Legislative Hearing for Interested Parties	June 17, 2011
Board Staff Recommendation	September 9, 2011
Initial Comments on Board Staff Recommendation	September 23, 2011
Reply Comments on Board Staff Recommendation	October 10, 2011
Legislative Hearing For Interested Parties	TBD by Presiding Officer
Recommendations presented to the Board	December 20, 2011

The Board **HEREBY DIRECTS** 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.

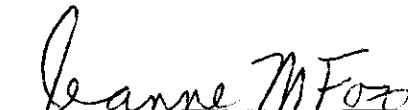
In addition to or in lieu of verbal comments, written comments can also be sent to the attention of the Office of the Secretary at: the New Jersey Board of Public Utilities, 44 S. Clinton Avenue, Trenton, N.J. 08625, postmarked no later than **November 1, 2011** – please include the phrase “Capacity and Transmission Investigation” in the subject line. Electronic comments can also be filed with the BPU at board.secretary@bpu.state.nj.us.

DATED: 5/27/11

BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER

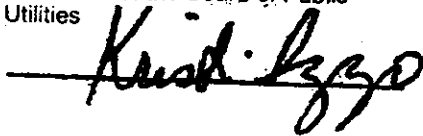


JOSEPH L. FIORDALISO
COMMISSIONER

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



KRISTI IZZO

**IN THE MATTER OF THE BOARD'S INVESTIGATION OF CAPACITY
PROCUREMENT AND TRANSMISSION PLANNING
DOCKET NO. EO 11050309**

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