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SYNOPSIS
Establishes a long-term capacity agreement pilot program to promote construction of qualified electric generation facilities.

CURRENT VERSION OF TEXT
As amended by the General Assembly on January 10, 2011.

(Sponsorship Updated As Of: 1/11/2011)
AN ACT establishing a long-term capacity agreement pilot program
to promote construction of qualified in-State electric
generation facilities, amending and supplementing P.L.1999,
c.23.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares:
   a. In 2007, PJM Interconnection, L.L.C., the firm that manages
      the regional electric power grid, changed the method of procuring
      capacity in the wholesale electricity market with the
      implementation of the reliability pricing model which, as
      estimated by the Board of Public Utilities, costs New Jersey
      ratepayers an additional $1 billion per year for capacity;
   b. The PJM reliability pricing model created additional
      barriers to entry for new, efficient generators, by imposing a one to
      three year term requirement for contracts entered into by new
      entrants. The maximum three-year term is insufficient to support
      the project financing necessary to develop new, efficient generation
      within the State sought to create enhancements to the previously
      ineffective capacity procurement mechanism which had resulted in
      projected capacity deficiencies in New Jersey and other areas of the
      regional power grid. While the reliability pricing model has
      resulted in significant capacity additions in the form of new demand
      response resources, new energy efficiency resources, reversals of
      generation unit retirements, upgrades of existing generating units
      and certain new peaking facilities available to the region and the State;
   c. The PJM reliability pricing model continues to undergo
      structural changes that make it unreliable as an indicator of the true
      cost of capacity and therefore unreliable as an incentive for
      developing new generation could, through structural changes,
      provide necessary incentives, such as the expansion of the “New
      Entry Price Adjustment” mechanism for the construction of new
      capacity, including new intermediate and base load plants, by
      allowing new resources to qualify and receive a guaranteed capacity
      price for a longer period of time. However, the implementation of
      similar structural changes was previously denied by
      FERC and any future implementation is uncertain at this time;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1Senate SEN committee amendments adopted November 15, 2010.
2Assembly ATU committee amendments adopted December 13, 2010.
3Assembly floor amendments adopted January 6, 2011.
4Assembly floor amendments adopted January 10, 2011.
d. To alleviate the cost burden and barriers to new entry created by the PJM, address the lack of incentives under the reliability pricing model, the construction of new, efficient in-State generation must be fostered by State policy to avoid higher electricity prices, higher congestion, and reliability concerns that assures that generation is constructed available to the region, and thus the users in the State in a timely and orderly manner;

e. Due to PJM’s lack of 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, and since only PJM has the authority to order transmission system upgrades and expansions to mitigate electrical system reliability concerns caused by transmission system overloads or the lack of local generation being developed, New Jersey continues to send New Jersey’s Jersey is experiencing an electric power capacity deficit and high power prices that may result in the loss of jobs and investment due to the necessity for the upgrade of the transmission system to the west of New Jersey to ensure a reliable supply of electricity and capacity from generators located outside of New Jersey;

f. As a result of a lack of new, efficient in-State electric generating facilities, New Jersey has become more reliant on coal-fired power plants;

g. The PJM State of the Market Report for 2009 by the PJM Independent Market Monitor states that there over 11,000 megawatts (“MW”) of coal-fired units at risk of retirement due to their inability to cover their avoided costs;

h. Many of New Jersey’s in-State generating facilities, as a result of new emission reduction requirements, will need to have installed new emissions control technology or retire them by April 30, 2015. In one instance, the rule will have a significant impact on New Jersey’s in-State fleet of electric generation facilities, as the rule imposes nitrogen oxide (“NOx”) emission limits that will likely require the retirement of up to 102 combustion turbines, representing approximately 2,800 MW, and five older New Jersey steam electric generating units, representing approximately 800 MW, by April 30, 2015;

i. New Jersey’s in-State fleet of electric generation facilities is aging, with over 50 percent of these facilities being more than 30 years old and over 70 percent being more than 20 years old; and

Fostering and incentivizing the development of a limited program for new in-State electric generation facilities while potential enhancements to the reliability pricing model and other PJM mechanisms are under consideration will help
ensure sufficient capacity to stabilize power prices to assist the State’s economic development and create opportunities for employment in the energy sector while helping to reduce the cost and volatility of electricity prices in New Jersey.

2. Section 3 of P.L.1999, c.23 (C.48:3-51) is amended to read as follows:

3. As used in P.L.1999, c.23 (C.48:3-49 et al.):

"Assignee" means a person to which an electric public utility or another assignee assigns, sells or transfers, other than as security, all or a portion of its right to or interest in bondable transition property. Except as specifically provided in P.L.1999, c.23 (C.48:3-49 et al.), an assignee shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Base load electric power generation facility" means an electric power generation facility intended to be operated at a greater than 50 percent capacity factor including, but not limited to, a combined cycle power facility and a combined heat and power facility;

"Base residual auction" means the auction conducted by PJM, as part of PJM's reliability pricing model, three years prior to the start of the delivery year to secure electrical capacity as necessary to satisfy the capacity requirements for that delivery year;

"Basic gas supply service" means gas supply service that is provided to any customer that has not chosen an alternative gas supplier, whether or not the customer has received offers as to competitive supply options, including, but not limited to, any customer that cannot obtain such service for any reason, including non-payment for services. Basic gas supply service is not a competitive service and shall be fully regulated by the board;

"Basic generation service" or "BGS" means electric generation service that is provided, to any customer that has not chosen an alternative electric power supplier, whether or not the customer has received offers for competitive supply options, including, but not limited to, any customer that cannot obtain such service from an electric power supplier for any reason, including non-payment for services. Basic generation service is not a competitive service and shall be fully regulated by the board;

"Basic generation service provider" or "provider" means a provider of basic generation service;

"Basic generation service transition costs" means the amount by which the payments by an electric public utility for the procurement of power for basic generation service and related ancillary and administrative costs exceeds the net revenues from the basic generation service charge established by the board pursuant to section 9 of P.L.1999, c.23 (C.48:3-57) during the transition period, together with interest on the balance at the board-approved rate, that
is reflected in a deferred balance account approved by the board in an order addressing the electric public utility's unbundled rates, stranded costs, and restructuring filings pursuant to P.L.1999, c.23 (C.48:3-49 et al.). Basic generation service transition costs shall include, but are not limited to, costs of purchases from the spot market, bilateral contracts, contracts with non-utility generators, parting contracts with the purchaser of the electric public utility's divested generation assets, short-term advance purchases, and financial instruments such as hedging, forward contracts, and options. Basic generation service transition costs shall also include the payments by an electric public utility pursuant to a competitive procurement process for basic generation service supply during the transition period, and costs of any such process used to procure the basic generation service supply:

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

"Bondable stranded costs" means any stranded costs or basic generation service transition costs of an electric public utility approved by the board for recovery pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.), together with, as approved by the board: (1) the cost of retiring existing debt or equity capital of the electric public utility, including accrued interest, premium and other fees, costs and charges relating thereto, with the proceeds of the financing of bondable transition property; (2) if requested by an electric public utility in its application for a bondable stranded costs rate order, federal, State and local tax liabilities associated with stranded costs recovery or basic generation service transition cost recovery or the transfer or financing of such property or both, including taxes, whose recovery period is modified by the effect of a stranded costs recovery order, a bondable stranded costs rate order or both; and (3) the costs incurred to issue, service or refinance transition bonds, including interest, acquisition or redemption premium, and other financing costs, whether paid upon issuance or over the life of the transition bonds, including, but not limited to, credit enhancements, service charges, overcollateralization, interest rate cap, swap or collar, yield maintenance, maturity guarantee or other hedging agreements, equity investments, operating costs and other related fees, costs and charges, or to assign, sell or otherwise transfer bondable transition property;

"Bondable stranded costs rate order" means one or more irrevocable written orders issued by the board pursuant to P.L.1999, c.23 (C.48:3-49 et al.) which determines the amount of bondable stranded costs and the initial amount of transition bond charges authorized to be imposed to recover such bondable stranded costs, including the costs to be financed from the proceeds of the transition bonds, as well as on-going costs associated with servicing and credit enhancing the transition bonds, and provides the electric public utility specific authority to issue or cause to be issued,
directly or indirectly, transition bonds through a financing entity
and related matters as provided in P.L.1999, c.23, which order shall
become effective immediately upon the written consent of the
related electric public utility to such order as provided in P.L.1999,
c.23;

"Bondable transition property" means the property consisting of
the irrevocable right to charge, collect and receive, and be paid
from collections of, transition bond charges in the amount necessary
to provide for the full recovery of bondable stranded costs which
are determined to be recoverable in a bondable stranded costs rate
order, all rights of the related electric public utility under such
bondable stranded costs rate order including, without limitation, all
rights to obtain periodic adjustments of the related transition bond
charges pursuant to subsection b. of section 15 of P.L.1999, c.23
(C.48:3-64), and all revenues, collections, payments, money and
proceeds arising under, or with respect to, all of the foregoing;

"British thermal unit" or "Btu" means the amount of heat
required to increase the temperature of one pound of water by one
degree Fahrenheit;

"Broker" means a duly licensed electric power supplier that
assumes the contractual and legal responsibility for the sale of
electric generation service, transmission or other services to end-use
retail customers, but does not take title to any of the power sold, or
a duly licensed gas supplier that assumes the contractual and legal
obligation to provide gas supply service to end-use retail customers,
but does not take title to the gas;

"Buydown" means an arrangement or arrangements involving the
buyer and seller in a given power purchase contract and, in some
cases third parties, for consideration to be given by the buyer in
order to effectuate a reduction in the pricing, or the restructuring of
other terms to reduce the overall cost of the power contract, for the
remaining succeeding period of the purchased power arrangement
or arrangements;

"Buyout" means an arrangement or arrangements involving the
buyer and seller in a given power purchase contract and, in some
cases third parties, for consideration to be given by the buyer in
order to effectuate a termination of such power purchase contract;

"Class I renewable energy" means electric energy produced from
solar technologies, photovoltaic technologies, wind energy, fuel
cells, geothermal technologies, wave or tidal action, and methane
gas from landfills or a biomass facility, provided that the biomass is
cultivated and harvested in a sustainable manner;

"Class II renewable energy" means electric energy produced at a
resource recovery facility or hydropower facility, provided that
such facility is located where retail competition is permitted and
provided further that the Commissioner of Environmental
Protection has determined that such facility meets the highest
environmental standards and minimizes any impacts to the
environment and local communities;

"Co-generation" means the sequential production of electricity
and steam or other forms of useful energy used for industrial or
commercial heating and cooling purposes;

2 "Combined cycle power facility" means a generation facility
that combines two or more thermodynamic cycles, by producing
electric power via the combustion of fuel and then routing the
resulting waste heat by-product to a conventional boiler or to a heat
recovery steam generator for use by a steam turbine to produce
electric power, thereby increasing the overall efficiency of the
generating facility.2

"Combined heat and power facility" or "co-generation facility"
means a generation facility which produces electric energy, steam,
or other forms of useful energy such as heat, which are used for
industrial or commercial heating or cooling purposes. A combined
heat and power facility or co-generation facility shall not be
considered a public utility;

"Competitive service" means any service offered by an electric
public utility or a gas public utility that the board determines to be
competitive pursuant to section 8 or section 10 of P.L.1999, c.23
(C.48:3-56 or C.48:3-58) or that is not regulated by the board;

"Commercial and industrial energy pricing class customer" or
"CIEP class customer" means that group of non-residential
customers with high peak demand, as determined by periodic board
order, which either is eligible or which would be eligible, as
determined by periodic board order, to receive funds from the Retail
Margin Fund established pursuant to section 9 of P.L.1999, c.23
(C.48:3-57) and for which basic generation service is hourly-priced;

"Comprehensive resource analysis" means an analysis including,
but not limited to, an assessment of existing market barriers to the
implementation of energy efficiency and renewable technologies
that are not or cannot be delivered to customers through a
competitive marketplace;

"Customer" means any person that is an end user and is
connected to any part of the transmission and distribution system
within an electric public utility's service territory or a gas public
utility's service territory within this State;

"Customer account service" means metering, billing, or such
other administrative activity associated with maintaining a customer
account;

"Delivery year" or "DY" means the 12-month period from June
1st through May 31st 1 and shall be 2 numbered according to the
calendar year in which it ends;

"Demand side management" means the management of customer
demand for energy service through the implementation of cost-
effective energy efficiency technologies, including, but not limited
to, installed conservation, load management and energy efficiency
measures on and in the residential, commercial, industrial, institutional and governmental premises and facilities in this State;

"Electric generation service" means the provision of retail electric energy and capacity which is generated off-site from the location at which the consumption of such electric energy and capacity is metered for retail billing purposes, including agreements and arrangements related thereto;

"Electric power generator" means an entity that proposes to construct, own, lease or operate, or currently owns, leases or operates, an electric power production facility that will sell or does sell at least 90 percent of its output, either directly or through a marketer, to a customer or customers located at sites that are not on or contiguous to the site on which the facility will be located or is located. The designation of an entity as an electric power generator for the purposes of P.L.1999, c.23 (C.48:3-49 et al.) shall not, in and of itself, affect the entity's status as an exempt wholesale generator under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq.;

"Electric power supplier" means a person or entity that is duly licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers, and includes load serving entities, marketers and brokers that offer or provide electric generation service to retail customers. The term excludes an electric public utility that provides electric generation service only as a basic generation service pursuant to section 9 of P.L.1999, c.23 (C.48:3-57);

"Electric public utility" means a public utility, as that term is defined in R.S.48:2-13, that transmits and distributes electricity to end users within this State;

"Electric related service" means a service that is directly related to the consumption of electricity by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Electronic signature" means an electronic sound, symbol or process, attached to, or logically associated with, a contract or other record, and executed or adopted by a person with the intent to sign the record;

"Eligible generator” means a developer of a new, natural gas fired, combined-cycle base load or mid-merit electric power generating facility with a net summer output rating of 100 megawatts or larger, that is physically located within the State of New Jersey, including, but not limited to, an on-site generation facility that qualifies as a capacity resource under PJM
criteria but exclusive of a combustion turbine generation facility that is directly interconnected with the electric public utilities' transmission or distribution system and that commences construction of new generation after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill);

"Energy agent" means a person that is duly registered pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.), that arranges the sale of retail electricity or electric related services or retail gas supply or gas related services between government aggregators or private aggregators and electric power suppliers or gas suppliers, but does not take title to the electric or gas sold;

"Energy consumer" means a business or residential consumer of electric generation service or gas supply service located within the territorial jurisdiction of a government aggregator;

"Energy efficiency portfolio standard" means a requirement to procure a specified amount of energy efficiency or demand side management resources as a means of managing and reducing energy usage and demand by customers;

"Energy year" or "EY" means the 12-month period from June 1st through May 31st and shall be numbered according to the calendar year in which it ends;

"Federal Energy Regulatory Commission" or "FERC" means the federal agency established pursuant to 42 U.S.C. s.7171 et seq. to regulate the interstate transmission of electricity, natural gas, and oil;

"Financing entity" means an electric public utility, a special purpose entity, or any other assignee of bondable transition property, which issues transition bonds. Except as specifically provided in P.L.1999, c.23 (C.48:3-49 et al.), a financing entity which is not itself an electric public utility shall not be subject to the public utility requirements of Title 48 or any rules or regulations adopted pursuant thereto;

"Gas public utility" means a public utility, as that term is defined in R.S.48:2-13, that distributes gas to end users within this State;

"Gas related service" means a service that is directly related to the consumption of gas by an end user, including, but not limited to, the installation of demand side management measures at the end user's premises, the maintenance, repair or replacement of appliances or other energy-consuming devices at the end user's premises, and the provision of energy consumption measurement and billing services;

"Gas supplier" means a person that is duly licensed pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.) to offer and assume the contractual and legal obligation to provide gas supply service to retail customers, and includes, but is not limited to, marketers and brokers. A non-public utility affiliate of a public utility holding company may be a gas supplier, but a gas public utility or any subsidiary of a gas utility is not a gas supplier. In the
event that a gas public utility is not part of a holding company legal
structure, a related competitive business segment of that gas public
utility may be a gas supplier, provided that related competitive
business segment is structurally separated from the gas public
utility, and provided that the interactions between the gas public
utility and the related competitive business segment are subject to
the affiliate relations standards adopted by the board pursuant to
subsection k. of section 10 of P.L.1999, c.23 (C.48:3-58);
"Gas supply service" means the provision to customers of the
retail commodity of gas, but does not include any regulated
distribution service;
"Government aggregator" means any government entity subject
to the requirements of the "Local Public Contracts Law," P.L.1971,
c.198 (C.40A:11-1 et seq.), the "Public School Contracts Law,"
N.J.S.18A:18A-1 et seq., or the "County College Contracts Law,"
P.L.1982, c.189 (C.18A:64A-25.1 et seq.), that enters into a written
contract with a licensed electric power supplier or a licensed gas
supplier for: (1) the provision of electric generation service, electric
related service, gas supply service, or gas related service for its own
use or the use of other government aggregators; or (2) if a
municipal or county government, the provision of electric
generation service or gas supply service on behalf of business or
residential customers within its territorial jurisdiction;
"Government energy aggregation program" means a program and
procedure pursuant to which a government aggregator enters into a
written contract for the provision of electric generation service or
gas supply service on behalf of business or residential customers
within its territorial jurisdiction;
"Governmental entity" means any federal, state, municipal, local
or other governmental department, commission, board, agency,
court, authority or instrumentality having competent jurisdiction;
"Greenhouse gas emissions portfolio standard" means a
requirement that addresses or limits the amount of carbon dioxide
emissions indirectly resulting from the use of electricity as applied
to any electric power suppliers and basic generation service
providers of electricity;
"Incremental auction" means an auction conducted by PJM, as
part of PJM's reliability pricing model, prior to the start of the
delivery year to secure electric capacity as necessary to satisfy the
capacity requirements for that delivery year, that is not otherwise
provided for in the base residual auction; 2
"Leakage" means an increase in greenhouse gas emissions
related to generation sources located outside of the State that are not
subject to a state, interstate or regional greenhouse gas emissions
cap or standard that applies to generation sources located within the
State;
"Locational deliverability area" or "LDA" means one or more of
the zones within the PJM region which are used to evaluate area

transmission constraints and reliability issues including electric public utility company zones, sub-zones, and combinations of zones.

"Long-term capacity agreement pilot program” or “LCAPP” means a one-time pilot program established by the board that is limited to participation by eligible generators, to seek offers for financially-settled standard offer capacity agreements that extend for a term of not less than 15 years, to quickly and safely construct new, natural gas fired, combined-cycle electric power generating facilities with a net summer output rating of 100 megawatts or larger within the State with eligible generators pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill);

"Market transition charge” means a charge imposed pursuant to section 13 of P.L.1999, c.23 (C.48:3-61) by an electric public utility, at a level determined by the board, on the electric public utility customers for a limited duration transition period to recover stranded costs created as a result of the introduction of electric power supply competition pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

"Marketer” means a duly licensed electric power supplier that takes title to electric energy and capacity, transmission and other services from electric power generators and other wholesale suppliers and then assumes the contractual and legal obligation to provide electric generation service, and may include transmission and other services, to an end-use retail customer or customers, or a duly licensed gas supplier that takes title to gas and then assumes the contractual and legal obligation to provide gas supply service to an end-use customer or customers;

"Mid-merit electric power generation facility” means a generation facility that operates at a capacity factor between baseload generation facilities and peaker generation facilities;

"Net proceeds” means proceeds less transaction and other related costs as determined by the board;

"Net revenues” means revenues less related expenses, including applicable taxes, as determined by the board;

"Offshore wind energy” means electric energy produced by a qualified offshore wind project;

"Offshore wind renewable energy certificate” or "OREC” means a certificate, issued by the board or its designee, representing the environmental attributes of one megawatt hour of electric generation from a qualified offshore wind project;

"Off-site end use thermal energy services customer” means an end use customer that purchases thermal energy services from an on-site generation facility, combined heat and power facility, or cogeneration facility, and that is located on property that is separated
from the property on which the on-site generation facility, combined heat and power facility, or co-generation facility is located by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way;

"On-site generation facility" means a generation facility, and equipment and services appurtenant to electric sales by such facility to the end use customer located on the property or on property contiguous to the property on which the end user is located. An on-site generation facility shall not be considered a public utility. The property of the end use customer and the property on which the on-site generation facility is located shall be considered contiguous if they are geographically located next to each other, but may be otherwise separated by an easement, public thoroughfare, transportation or utility-owned right-of-way, or if the end use customer is purchasing thermal energy services produced by the on-site generation facility, for use for heating or cooling, or both, regardless of whether the customer is located on property that is separated from the property on which the on-site generation facility is located by more than one easement, public thoroughfare, or transportation or utility-owned right-of-way;

"Person" means an individual, partnership, corporation, association, trust, limited liability company, governmental entity or other legal entity;

"PJM Interconnection, L.L.C." or “PJM” means the privately-held, limited liability corporation that is a FERC-approved Regional Transmission Organization, or its successor, that manages the regional, high-voltage electricity grid serving all or parts of 13 states including New Jersey and the District of Columbia, operates the regional competitive wholesale electric market, manages the regional transmission planning process, and establishes systems and rules to ensure that the regional and in-State energy markets operate fairly and efficiently;

"Private aggregator" means a non-government aggregator that is a duly-organized business or non-profit organization authorized to do business in this State that enters into a contract with a duly licensed electric power supplier for the purchase of electric energy and capacity, or with a duly licensed gas supplier for the purchase of gas supply service, on behalf of multiple end-use customers by combining the loads of those customers;

"Public utility holding company" means: (1) any company that, directly or indirectly, owns, controls, or holds with power to vote, ten percent or more of the outstanding voting securities of an electric public utility or a gas public utility or of a company which is a public utility holding company by virtue of this definition, unless the Securities and Exchange Commission, or its successor, by order declares such company not to be a public utility holding company under the Public Utility Holding Company Act of 1935, 15 U.S.C. s.79 et seq., or its successor; or (2) any person that the
Securities and Exchange Commission, or its successor, determines, after notice and opportunity for hearing, directly or indirectly, to exercise, either alone or pursuant to an arrangement or understanding with one or more other persons, such a controlling influence over the management or policies of an electric public utility or a gas public utility or public utility holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 or its successor;

"Qualified offshore wind project" means a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the board pursuant to section 3 of P.L.2010, c.57 (C.48:3-87.1);

"Regulatory asset" means an asset recorded on the books of an electric public utility or gas public utility pursuant to the Statement of Financial Accounting Standards, No. 71, entitled "Accounting for the Effects of Certain Types of Regulation," or any successor standard and as deemed recoverable by the board;

"Related competitive business segment of an electric public utility or gas public utility" means any business venture of an electric public utility or gas public utility including, but not limited to, functionally separate business units, joint ventures, and partnerships, that offers to provide or provides competitive services;

"Related competitive business segment of a public utility holding company" means any business venture of a public utility holding company, including, but not limited to, functionally separate business units, joint ventures, and partnerships and subsidiaries, that offers to provide or provides competitive services, but does not include any related competitive business segments of an electric public utility or gas public utility;

“Reliability pricing model” or “RPM” means PJM’s capacity-market model, and its successors, 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;

"Renewable energy certificate" or "REC" means a certificate representing the environmental benefits or attributes of one megawatt-hour of generation from a generating facility that produces Class I or Class II renewable energy, but shall not include a solar renewable energy certificate or an offshore wind renewable energy certificate;

"Resource clearing price" or “RCP” means the clearing price established for the applicable locational deliverability area by the base residual auction or incremental auction, as determined by
the optimization algorithm for each auction, conducted by PJM as part of PJM’s reliability pricing model;

"Resource recovery facility" means a solid waste facility constructed and operated for the incineration of solid waste for energy production and the recovery of metals and other materials for reuse;

"Restructuring related costs" means reasonably incurred costs directly related to the restructuring of the electric power industry, including the closure, sale, functional separation and divestiture of generation and other competitive utility assets by a public utility, or the provision of competitive services as such costs are determined by the board, and which are not stranded costs as defined in P.L.1999, c.23 (C.48:3-49 et al.) but may include, but not be limited to, investments in management information systems, and which shall include expenses related to employees affected by restructuring which result in efficiencies and which result in benefits to ratepayers, such as training or retraining at the level equivalent to one year’s training at a vocational or technical school or county community college, the provision of severance pay of two weeks of base pay for each year of full-time employment, and a maximum of 24 months’ continued health care coverage. Except as to expenses related to employees affected by restructuring, "restricting related costs" shall not include going forward costs;

"Retail choice" means the ability of retail customers to shop for electric generation or gas supply service from electric power or gas suppliers, or opt to receive basic generation service or basic gas service, and the ability of an electric power or gas supplier to offer electric generation service or gas supply service to retail customers, consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

"Retail margin" means an amount, reflecting differences in prices that electric power suppliers and electric public utilities may charge in providing electric generation service and basic generation service, respectively, to retail customers, excluding residential customers, which the board may authorize to be charged to categories of basic generation service customers of electric public utilities in this State, other than residential customers, under the board’s continuing regulation of basic generation service pursuant to sections 3 and 9 of P.L.1999, c.23 (C.48:3-51 and 48:3-57), for the purpose of promoting a competitive retail market for the supply of electricity;

"Shopping credit" means an amount deducted from the bill of an electric public utility customer to reflect the fact that such customer has switched to an electric power supplier and no longer takes basic generation service from the electric public utility;

"Social program" means a program implemented with board approval to provide assistance to a group of disadvantaged customers, to provide protection to consumers, or to accomplish a particular societal goal, and includes, but is not limited to, the
winter moratorium program, utility practices concerning "bad debt"
customers, low income assistance, deferred payment plans,
weatherization programs, and late payment and deposit policies, but
does not include any demand side management program or any
environmental requirements or controls;

"Societal benefits charge" means a charge imposed by an electric
public utility, at a level determined by the board, pursuant to, and in
accordance with, section 12 of P.L.1999, c.23 (C.48:3-60);

"Solar alternative compliance payment" or "SACP" means a
payment of a certain dollar amount per megawatt hour (MWh)
which an electric power supplier or provider may submit to the
board in order to comply with the solar electric generation
requirements under section 38 of P.L.1999, c.23 (C.48:3-87);

"Solar renewable energy certificate" or "SREC" means a
certificate issued by the board or its designee, representing one
megawatt hour (MWh) of solar energy that is generated by a facility
connected to the distribution system in this State and has value
based upon, and driven by, the energy market;

“Standard offer capacity agreement” or “SOCA” means a
financially-settled transaction agreement, approved by board order,
that provides for 1 eligible 1 generators 1 to receive 2 payments from 2 one or more the 2
electric public utilities 2 in the event the SOCP is greater than the
‘base residual auction’ RCP for any applicable delivery year. 1 and
that 1 provides for 1 such payment 1 to be equal to the
difference between the SOCP and the ‘base residual auction’ RCP
multiplied by the contract capacity that provides such payment is equal to the
benefit of ratepayers, in the event the base residual auction RCP is
greater than $290 per megawatt day for any applicable delivery
year, and that such payment is equal to the result of the difference
between the base residual auction RCP and $290 per megawatt day
for the applicable delivery year multiplied by the contract capacity.
The SOCA shall provide for a defined amount of electric
capacity for the term of the transaction of not less than a term to
be determined by the board but not to exceed 15 years, 4 seven years or not more than 10 years, 2 and 1 that
provides for such payments made pursuant to paragraph (1) to be a fully non-bypassable charge, with such
an order, once issued, being irrevocable;

"Standard offer capacity price" or “SOCP” means the capacity
price that is fixed for the term of the SOCA and which is the
minimum price to be received by eligible generators under a board-approved SOCA;

"Stranded cost" means the amount by which the net cost of an
electric public utility's electric generating assets or electric power
purchase commitments, as determined by the board consistent with the provisions of P.L.1999, c.23 (C.48:3-49 et al.), exceeds the market value of those assets or contractual commitments in a competitive supply marketplace and the costs of buydowns or buyouts of power purchase contracts;

"Stranded costs recovery order" means each order issued by the board in accordance with subsection c. of section 13 of P.L.1999, c.23 (C.48:3-61) which sets forth the amount of stranded costs, if any, the board has determined an electric public utility is eligible to recover and collect in accordance with the standards set forth in section 13 of P.L.1999, c.23 (C.48:3-61) and the recovery mechanisms therefor;

"Thermal efficiency" means the useful electric energy output of a facility, plus the useful thermal energy output of the facility, expressed as a percentage of the total energy input to the facility;

"Transition bond charge" means a charge, expressed as an amount per kilowatt hour, that is authorized by and imposed on electric public utility ratepayers pursuant to a bondable stranded costs rate order, as modified at any time pursuant to the provisions of P.L.1999, c.23 (C.48:3-49 et al.);

"Transition bonds" means bonds, notes, certificates of participation or beneficial interest or other evidences of indebtedness or ownership issued pursuant to an indenture, contract or other agreement of an electric public utility or a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance or refinance bondable stranded costs and which are, directly or indirectly, secured by or payable from bondable transition property. References in P.L.1999, c.23 (C.48:3-49 et al.) to principal, interest, and acquisition or redemption premium with respect to transition bonds which are issued in the form of certificates of participation or beneficial interest or other evidences of ownership shall refer to the comparable payments on such securities;

"Transition period" means the period from August 1, 1999 through July 31, 2003;

"Transmission and distribution system" means, with respect to an electric public utility, any facility or equipment that is used for the transmission, distribution or delivery of electricity to the customers of the electric public utility including, but not limited to, the land, structures, meters, lines, switches and all other appurtenances thereof and thereto, owned or controlled by the electric public utility within this State; and

"Universal service" means any service approved by the board with the purpose of assisting low-income residential customers in obtaining or retaining electric generation or delivery service.

(cf: P.L.2010, c.57, s.1)
3. (New section) Notwithstanding any provisions of the “Administrative Procedure Act,” P. L. 1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate and complete a proceeding in accordance with the schedule set forth in this section allowing such proceeding to be completed to support the commencement of the LCAPP no later than January 31, 2011, and shall adopt, after notice, the opportunity for comment, and public hearing on the schedule set forth in this section, the following requirements for the LCAPP:

2[a. the establishment of the LCAPP that allows for offering financially-settled SOCAs for the purpose of facilitating the development of eligible generators; b. the establishment of the LCAAP on the following schedule:

(1) the board shall complete the process to develop the SOCA no later than January 1, 2011; and
(2) SOCAs resulting from this process shall be awarded, executed and approved by the board with a written board order no later than February 25, 2011; c. the participation of selected eligible generators with board approved, executed SOCAs in and clearing of the base residual auction conducted by PJM and scheduled to commence on May 2, 2011, as part of PJM’s reliability pricing model for the delivery year 2015; d. that it be limited to eligible generators in order to maximize economic benefits and job creation in the State; e. that electric public utilities shall procure at least 500 megawatts and not more than 1,000 megawatts of financially-settled SOCAs from the eligible generators; f. that no single eligible generator or its affiliate may enter into more than 900 megawatts of financially-settled standard offer capacity agreements; g.]

a. The board shall initiate the proceeding within 30 days of the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), and allow such proceeding to be completed no later than March 1, 2011, 60 days after the approval of the form of the SOCA or SOCAs. The LCAPP shall require selected eligible generators with board approved and executed SOCAs to participate and be accepted as a capacity
resource in the base residual auction conducted by PJM and scheduled to commence either on May 2, 2011, as part of PJM’s reliability pricing model for the delivery year 2015, or May 2012, as part of PJM’s reliability pricing model for the delivery year 2016;

b. The board shall require, within 10 days of the effective date of P.L. c. (pending before the Legislation as this bill) that the electric public utilities within the State retain an agent, with the approval of the board, to administer the LCAPP. The agent retained in accordance with this section 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 SOCsAs for the purpose of facilitating the development of eligible generators;

(2) prequalifying 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. Eligible generators must prequalify by April 1, 2011 and seek a SOCA by submitting an offer price and term by April 1, 2011; and

(3) recommending to the board the selection of winning eligible generators based on the net benefit to ratepayers of each prequalified eligible generator’s offer price and term. Eligible generators that are located in an “area in need of redevelopment” in accordance with the “Local Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et seq.) or a brownfield development area in accordance with the “Brownfield and Contaminated Site Remediation Act,” P.L.2005, c.223 (C.58:10B-1 et seq.), and eligible generators that can enter commercial operation for delivery year 2015 shall have a weighted preference in addition to the net benefit ranking provided for in this subsection. Eligible generators shall also indicate the amount of capacity they are offering in the LCAPP.

c. In the proceeding initiated by the board pursuant to this section, the board shall adopt, after notice, the opportunity for comment, and public hearing, an order addressing the following requirements for the LCAPP:

(1) that electric public utilities shall procure 1,000 megawatts of financially-settled SOCsAs from eligible generators, which shall include new generation capacity for the 2015 or 2016 delivery year;

(2) that eligible generators participating in the LCAPP shall be required to offer the maximum quantity, in megawatts, offer a price per megawatt-day, and a term of the SOCA at the
standard offer \(^1\) capacity\(^1\) price of $232.75 per megawatt per day, which represents a discount to the most recent clearing price established by the base residual auction conducted by the PJM in May, 2010 as part of the PJM’s reliability pricing model\(^1\) to be evaluated by the agent and approved by the board\(^2\):

\[1\text{h.}] \quad \text{Taking into consideration the agent’s recommendation,}\quad \text{the board}\quad \text{approve the selected}\quad \text{for a term}\quad \text{of not less than} \quad 15 \text{ years} \quad \text{seven years or more than 10 years at the offer price and term of each selected eligible generator}^3.\]

\[4\text{.}\] that the board establish a method for providing for selected eligible generators to receive payments from the electric public utilities 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 for electric public utilities to receive 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;

\[5\text{.}\] that no single eligible generator or its affiliate may enter into more than 700 megawatts of financially-settled standard offer capacity agreements;

\[6\text{.}\] that the board establish 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;

\[7\text{.}\] that the board establish a method for evaluating and comparing the net present value to ratepayers\(^4\) of each eligible generator’s offer price and term;

\[8\text{.}\] that the board establish a method for providing a weighted preference for eligible generators in an “area in need of redevelopment” in accordance with the “Local Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et seq.) or a brownfield development area in accordance with the “Brownfield and Contaminated Site Remediation Act,” P.L.2005, c.223 (C.58:10B-1 et seq.), and\(^1\) a weighted preference for eligible generators that can enter commercial operation for delivery year 2015.\(^2\)

\[1\text{i.}\] \quad \text{Preference to those eligible generators located in “areas in need of...}
redevelopment” in accordance with the “Local Redevelopment and Housing Law,” P.L.1992, c.79 (C.40A:12A-1 et seq.), that based on the board’s determination, can provide the greatest environmental, economic, and community benefits, and can demonstrate certainty of completion of development and permitting activities necessary to meet the desired in-service date;

1. The [i] [il] (9) that [i] [an] eligible [generator] generators¹
2. [selected] approved² by the board, enter into a SOCA with each of the State’s four electric public utilities provided that each electric public utility shall pay or receive refunds pursuant to [a] an annually calculated¹ load-ratio share ² of the capacity² of the SOCA [price]² based upon each electric public utility’s annual forecasted peak demand as determined by PJM;
3. [k.] [ll] (10) that the resulting SOCA shall bind the electric public utilities to the board approved SOCs with [a] selected eligible [generator] generators¹ for [not less than 15 years] the term of the SOCA²;
4. [ll] [kk] (11) that the selected eligible generators with executed SOCs shall offer the capacity, electricity, and ancillary services into the PJM wholesale markets as required by the PJM market rules; ² and
5. [mm] [ll] (12) that selected eligible generators with executed SOCs shall participate in and clear the annual base residual auction conducted by the PJM as part of [PJM’s] its² reliability pricing model for each delivery year of the entire term of the agreement [8];
6. [nn] [mm] that the board shall order the full recovery of all costs associated with the electric public utilities’ resulting SOCs ², and the costs of the agent retained pursuant to subsection b. of this section,² from ratepayers through a non-bypassable, irrevocable charge;
7. [1(1) notwithstanding] e. Notwithstanding² any other provision of law, each LCAPP standard offer capacity agreement [SOCA² shall become irrevocable upon the issuance of such order ² approving a SOCA²; and
8. [2(2) neither] f. Neither² the board or any other governmental entity shall have the authority, directly or indirectly, legally or equitably, to rescind, alter, repeal, modify or amend ² a SOCA or² an LCAPP cost rate order, to revalue, re-evaluate ² or revise the amount of LCAPP costs, or to determine that the LCAPP charges or the revenues to recover the LCAPP charges for such SOCs are unjust or unreasonable ²; and
9. [0.o] n.¹ that the board shall have complete discretion to approve any and all SOCs resulting from the LCAPP².
24. (New section) If one or more provisions in P.L. c. (pending before the Legislation as this bill) are challenged in an administrative or judicial proceeding, the board may suspend the applicability of the challenged provision or provisions during the pendency of those proceedings until final resolution of the challenge and any appeals, and shall issue such orders and take such other actions as it deems appropriate to ensure that the provisions that are not challenged are implemented expeditiously to achieve the public purposes of P.L. c. (pending before the Legislature as this bill).

25. (New section) Notwithstanding the provisions of any other law, rule, regulation, or order to the contrary, gas public utilities shall not impose a societal benefits charge pursuant to section 12 of P.L.1999, c.23 (C.48:3-60), or any other charge designed to recover the costs for social, energy efficiency, conservation, environmental or renewable energy programs, on natural gas delivery service or commodity that is used to generate electricity that is sold for resale.

2[4.] 6. This act shall take effect immediately.