

February 25, 2011

Via Electronic Filing

New Jersey Board of Public Utilities
2 Gateway Center
Newark, NJ 07102

Re: Comments on Agent's Standard Offer Capacity Agreement (SOCA)

CPV Shore, LLC ("CPV") has reviewed the LCAPP Agent's Standard Offer Capacity Agreement ("SOCA") issued February 23, 2011 pursuant to the New Jersey Board of Public Utilities' ("NJBPU") February 10, 2011 order in Docket No. E011010026 initiating a proceeding to implement a Long-term Capacity Agreement Pilot Program ("LCAPP") as required by P.L. 2011, c. 9.

The form of SOCA addressed several concerns identified in earlier comments submitted by CPV and others participants in the LCAPP process. However, the current draft SOCA still contains a few fundamental flaws which will result in the inability of a Generator to obtain financing for a project. For that reason, the final form of SOCA ultimately executed by the EDCs and the Generator must include provisions that address the concerns outlined below.

- **Termination Events** - (Section 8). As currently drafted, the open-ended risk of termination due to a future adoption of, or change in, any Applicable Law after the Effective Date of the SOCA creates unquantifiable risk for the Generator without sufficient recourse. Similarly, the Generator bearing all the risk of a court invalidating or declaring the Act unconstitutional creates significant uncertainty. Both of these risks will effectively render the SOCA un-financeable. The Generator will make significant investment in the construction of a facility and will rely on the SOCA payments for its revenues to support the financing. Financing parties will not lend into a transaction where the supporting revenue is subject to this risk.

One potential resolution would be the addition of provisions for adequate compensation to the Generator for the payments due under the SOCA to service its obligations related to the construction of the new generation, which is a key objective of the LCAPP proceeding. Another potential resolution would be to limit the applicability of these termination events to a defined period, such as 12 months from the Board approval of the SOCA, but in no event to later than April 15, 2012. In these scenarios, the Generators security would not be drawn upon.

- **Suspension of Obligations** - (Section 2.6) The ability of the Board to suspend provisions within the Act that result in the potentially indefinite cessation of payment obligations under the SOCA would result in the loss of critical revenues under the SOCA and similarly renders the SOCA un-financeable. This risk of suspension of these payments jeopardizes the revenues that were relied upon to finance the construction of the facility. This is an inappropriate risk for the Generator to bear without proper recourse and compensation.

As suggested by other participants, one remedy would be to delete this provision in its entirety. As an alternative, the duration of suspension of payments could be limited to a defined period of time of six (6) months. In the event that the suspension period exceeds 6 months, the

Generator would be able to terminate and receive reasonable compensation to alleviate financing parties' concerns and make the SOCA financeable.

- **Failure to Participate in a PJM Market (Section 7.1.8)** - Based on the language of the draft SOCA, a generator that fails to submit a supply offer for energy and ancillary services commencing on the date that the Facility first clears Unforced Capacity in a Base Residual Auction. Because a Generator is unable to submit a supply offer for energy and ancillary services until it is in commercial operations, it would be in default if commercial operations occurred one day after June 1 of the Delivery Year. This provides a hair line trigger with no ability to cure that would make the SOCA unfinanceable. To resolve this issue, we suggest that the Event of Default for failure to submit energy and ancillary service offers begins with commercial operations of the Facility.
- **Remedies to an Early Termination (Section 9.3)** - Payments in the event of default should appropriately reflect the damages borne by the non-defaulting party. As drafted, the payments to the Generator as a non-defaulting party are not sufficient to address its damages, therefore rendering the SOCA non-financeable. Currently the remedy is based on the then current difference between the New Jersey RCP and the SOCP as opposed to the expected forward payments. To resolve this issue, the event of default payment to the Generator as the non-defaulting party must include the expected SOCA revenue that would be lost over the remaining term of the SOCA as a result of default.
- **Force Majeure Exclusion for Events of Default(Section 7.1)** - Without an appropriate Force Majeure provision with the regard to the Generator's failure to achieve commercial operations or failure to participate in a PJM market, the generator, and its financiers, are stepping up to obligations that are outside of its control, thus rendering the SOCA unfinanceable. Force Majeure is a fundamental contract provision that is customary for projects of this nature, and will be required by the financing parties. As such, the attached redline includes the addition of Force Majeure to those two Events of Default.

The attached agreement contains revisions to the draft SOCA that more adequately allocate risk and are compatible with the project financing requirements of potential generators and the financial community. In addition, CPV has provided comments to the form of Letter of Credit (attached) to address the draw conditions. Specifically, the condition should not allow for a draw on the letter of credit should the Generator be delayed in executing the SOCA due to delay caused by a counterparty or if there are changes to the SOCA. This modification of the draw condition should also be reflected in the Officer's Certification Form.

CPV appreciates the opportunity to submit the attached SOCA and respectfully requests the NJBPU and its Agent give careful consideration to the items presented in the development of a financeable form of a SOCA.

Attachments [3]

New Jersey Long-Term Capacity Agreement Pilot Program
Applicant Instructions for Officer Certification

Instructions

1. The Officer Certification Form, attached, must be filled out in its entirety, signed by an authorized officer of the Applicant, and submitted with the Applicant's Standard Offer Capacity Price Bid Form **by March 7, 2011, 5:00 pm EPT** via fax or email to the address below. If an Applicant intends to offer multiple Capacity Facilities, a separate Officer Certification Form must be submitted for each Capacity Facility. If the Applicant submits multiple Pricing Options for the same Capacity Facility, the same Officer Certification Form applies to all such Pricing Options.

Levitan & Associates, Inc.
Attn: Sara Wilmer
100 Summer Street, Suite 3200
Boston, MA 02110
agent@nj-lcapp.com
(617) 531-2826 (fax)
(617) 531-2818 Ext. 15 (phone)

2. The original of the signed Officer Certification Form must be **postmarked no later than March 8, 2011** and mailed to:

Levitan & Associates, Inc.
Attn: Sara Wilmer
100 Summer Street, Suite 3200
Boston, MA 02110
(617) 531-2818 Ext. 15 (phone)

3. Copies of the Bid Letters of Credit, which can be downloaded from <http://www.nj-lcapp.com>, must be executed and submitted **by March 7, 2011, 5:00 pm EPT** via courier, fax or email to the address below. Instructions for the Bid Letters of Credit may be found at <http://www.nj-lcapp.com>.

Levitan & Associates, Inc.
Attn: Sara Wilmer
100 Summer Street, Suite 3200
Boston, MA 02110
agent@nj-lcapp.com
(617) 531-2826 (fax)
(617) 531-2818 Ext. 15 (phone)

4. The original of the signed Bid Letters of Credit must be **postmarked no later than March 8, 2011**, and provided in accordance with the instructions posted at <http://www.nj-lcapp.com>

**New Jersey Long-Term Capacity Agreement Pilot Program
Officer Certification Form**

The following Certifications must be agreed to and signed by the Officer representing the Applicant:

The undersigned is an officer of the Applicant with legal authority to sign contracts and bind the Applicant to its Standard Offer Capacity Price and all other Bid Information submitted in the New Jersey Long-Term Capacity Agreement Pilot Program, pursuant to New Jersey Board of Public Utilities Order in Docket No. EO11010026, dated February 10, 2011 (“SOCP and Bid Information”).

The undersigned certifies that the SOCP and Bid Information submitted by the Applicant on the Standard Offer Capacity Price Bid Form to Levitan & Associates, Inc., as Agent, shall be firm, irrevocable, and binding upon the Applicant until April 30, 2011, 5:00 PM EPT.

The undersigned certifies that all information provided in Applicant’s Pre-Qualification Package and in subsequent communications with the Agent regarding the capacity offered by Applicant in the New Jersey Long-Term Capacity Pilot Program remains correct and valid.

If the Applicant is notified that it has been chosen to enter into a Standard Offer Capacity Agreements (“SOCA”) with each of the New Jersey Electric Distribution Companies (“EDCs”), and if the New Jersey Board of Public Utilities approves the form of the SOCA reflecting the SOCP and Bid Information, then the undersigned certifies that a duly authorized representative of the Applicant will execute the four SOCAs within thirty (30) days of being notified that the New Jersey Board of Public Utilities has approved the form of the SOCA.

The Applicant is providing four Bid Letters of Credit to be drawn on by the four New Jersey EDCs in the event that the Applicant is selected as a winning bidder and fails to execute the SOCAs within thirty (30) days of being notified that the New Jersey Board of Public Utilities has approved the form of the SOCA

Insert the following text: as long as such failure to execute within thirty (30) business days is not a result of a delay caused a counterparty to the SOCA or a change to the SOCA.

Signature of Officer

Date

Printed Name

Title (must be an Officer)

Applicant (Company name)

Capacity Facility

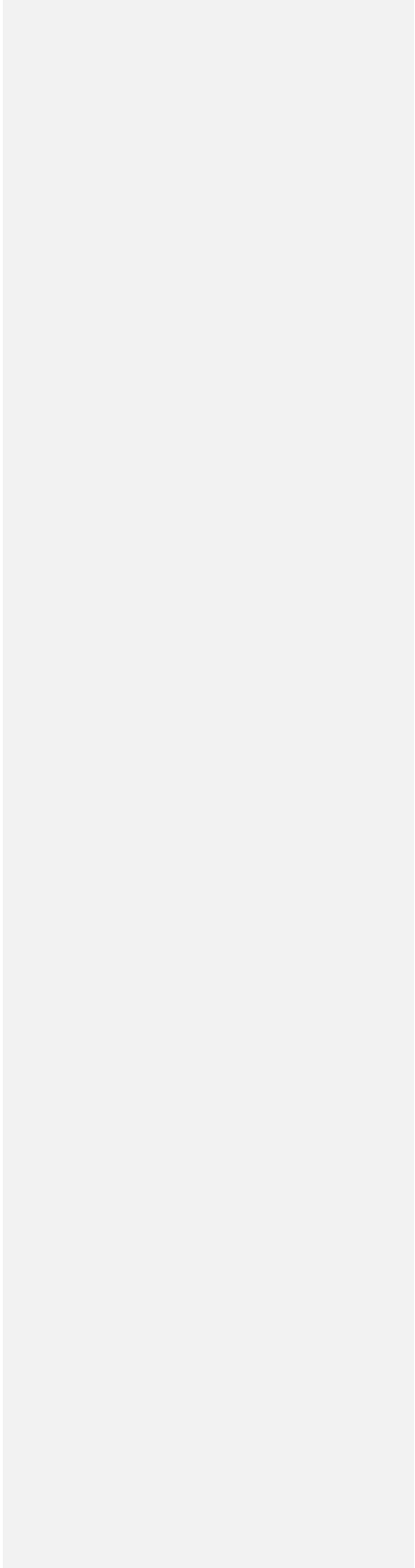
Signature and Seal of Notary Public

Date

My Commission Expires

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STANDARD OFFER CAPACITY AGREEMENT



STANDARD OFFER CAPACITY AGREEMENT

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

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

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

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

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

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

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

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

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

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

WHEREAS, Utility is an Electric Public Utility; and

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

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

**SECTION 1
DEFINITIONS; RULES OF INTERPRETATION**

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

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

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

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

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

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

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

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

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

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

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

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

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

“Calculation Dispute” is defined in Section 12.2.1.

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

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

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

“Construction Period Security” means an irrevocable standby letter of credit to be provided to the Utility or cash held in escrow by the Utility in support of the Generator’s obligations during the Construction Period in an amount defined in section 2.3.3.

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

“Defaulting Party” is defined in Section 9.1.1.

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

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

“Delivery Term Security” means an irrevocable standby letter of credit to be provided to the Utility or cash held in escrow by the Utility in support of the Generator’s obligations during the Delivery Term in an amount defined in Section 2.3.3.

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“Dispute” is defined in Section 12.1.

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

“Effective Date” is defined in the Preamble hereof.

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

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

“Event of Default” is defined in Section 7.1.

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

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“Force Majeure” means an event or circumstance, such as natural catastrophes, terrorism, war, Market Change, Change-in-Law, riots, acts of God, or labor strikes, disputes or disruptions, failure of actions by a Governmental Authority or to act when required to act or to act on a timely basis that, in any such event (i) prevents or delays one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the Claiming Party; and, (iii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing, none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Supplier’s Fuel supply, except when caused by Force Majeure; (b) Supplier’s ability to sell Capacity at a price greater than the price set out in Article 6; (c) the breakdown of Supplier’s plant and/or equipment, except when caused by Force Majeure; (d) an occurrence or an event that merely increases the costs of, or causes an economic hardship to, a Party; and (e) Buyer’s ability to procure the supply of Capacity at a price lower than that set forth in Article 6 to this Agreement.

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

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

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

“Illegality” is defined in Section 8.1.1.

“Invalidity of the Act” is defined in Section 8.1.2.

“LC” means an irrevocable standby letter of credit provided by a bank or other financial institution that has a senior long-term unsecured debt rating of at least A by Standard & Poor’s, A2 by Moody’s Investors Service, or A by Fitch Ratings, in a form acceptable to Utility and Generator.

“Locational Deliverability Area” or “LDA” means the RTO sub-regions identified by PJM as part of the RPM. As of the Effective Date, the LDAs for Public Service Electric and Gas Company, Atlantic City Electric Company, Jersey Central Power & Light Company, and Rockland Electric Company shall be the PS, AE, JCPL and RECO zones, respectively, as defined by PJM.

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

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

“MW” means megawatt.

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

“New Jersey Resource Clearing Price” or “New Jersey RCP” is defined in Section 4.1.3.

“Non-Defaulting Party” is defined in Section 9.1.1.

“Payment Date” is defined in Section 2.2.

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

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

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“PJM Market Rules” means the rules, standards, procedures, and practices set forth in the PJM Tariff, PJM Operating Agreements, PJM Reliability Assurance Agreement, PJM Consolidated Transmission Owners Agreement, PJM Manuals, PJM Regional Practices Document, PJM-Midwest Independent Transmission System Operator Joint Operating Agreement, and other documents setting forth market rules.

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

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

“Resource Clearing Price” or “RCP” means the clearing price expressed in \$/MW-day for Unforced Capacity in the applicable Delivery Year established by the Base Residual Auction and posted by PJM for the Electric Public Utilities.

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

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

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

“Termination Event” is defined in Section 8.1.

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

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

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

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the amounts that became payable to such party under Section 2.1 in respect of the Transaction on or prior to such Early Termination Date (including amounts not paid by the other party on the ground of the occurrence of an Event of Default, in accordance with Section 2.5) and which remain unpaid as at such Early Termination Date, together with (to the extent permitted under Applicable Law) interest from (and including) the date such amounts were to have been paid to

(but excluding) such Early Termination Date, at the Interest Rate. Such amounts of interest will be calculated on the basis of a 360-day year, daily compounding and the actual number of days elapsed.

“Utility” is defined in the Preamble hereof.

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

1.2. Rules of Interpretation

1.2.1. General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity or gas market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Section or subsection hereof; (e) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (f) the masculine includes the feminine and neuter and vice versa; (g) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined; (h) “including” means “including, without limitation” or “including, but not limited to”; and (i) the word “or” is not necessarily exclusive.

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

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

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

SECTION 2
OBLIGATIONS

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

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

2.3. Obligations of Generator.

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

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

2.3.3. Throughout the Delivery Term, Generator shall:

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

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(b) Submit supply offers for an amount of Unforced Capacity from the Capacity Facility in accordance with the RPM Rules in the Base Residual Auction associated with each Delivery Year during the term of this Agreement, such that the Unforced Capacity supply offers shall be priced at the lowest allowable price under the RPM rules;

Deleted: no greater than the Awarded Capacity Amount

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

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

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

(f) Provide on a timely basis (which, in the case of documentation provided to Generator by PJM, shall mean within five (5) Business Days of Generator's receipt of such documentation) all documentation required by Utility to make the calculations and notifications required by Sections 2.2 and 4.1, including without limitation: (i) documentation provided to Generator by PJM after the conclusion of each Base Residual Auction showing the amount of Unforced Capacity offered from the Capacity Facility and cleared by PJM in such Base Residual Auction; (ii) documentation provided to Generator by PJM in advance of each Delivery Year showing the all EFORd measurements for the Capacity Facility for the Delivery Year; (iii) the result of any capability test of the Capacity Facility conducted by PJM; (iv) documentation provided to Generator by PJM in advance of each Delivery Year showing the Available Capacity Amount for the Delivery Year or required to calculate the Available Capacity Amount for the Delivery Year; and (v) documentation notifying Generator of any correction to an input to a calculation, as provided in Section 2.9; provided that Generator may redact from any such documentation data that do not relate to the Capacity Facility;

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

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(h) Cause to be provided to the Utility throughout the Construction Period, Construction Period Security in an amount to be calculated annually equal to the product of \$10,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio, but in no case more than the product of \$1 million and the Utility's Load Ratio. Such Construction Period Security shall be in the form of an LC or cash held in escrow by the Utility;

(i) Cause to be provided to the Utility throughout the Delivery Term, Delivery Term Security in an amount to be calculated annually equal to the product of \$25,000/MW and the Awarded Capacity Amount and the Utility's Load Ratio with the amount of Delivery Term Security declining *pro rata* at the conclusion of each Delivery Year over any remaining term of this Agreement. Such Delivery Period Security shall be in the form of an LC or cash held in escrow by the Utility; and

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

2.4. Obligations of the Utility. The Utility shall prepare and file an annual report to the Board within thirty (30) calendar days after the end of each Delivery Year describing (i) the status of this Agreement, (ii) the amount of Unforced Capacity and cost of associated Transactions made under this Agreement, (iii) the performance of the Generator in supplying Unforced Capacity under this Agreement, and (iv) any material actions taken by the Generator or the Utility under this Agreement.

2.5. Conditions Precedent to Obligations. Each obligation of each party under this Agreement is subject to (i) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing and (ii) the condition precedent that no Early Termination Date has occurred or been effectively designated.

2.6. Suspension of Obligations.

In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act that (i) imposes an obligation on either party to make any payment to another party; (ii) assures Utility of recovery from ratepayers through a non-bypassable irrevocable charge of all costs directly associated with this Agreement or any costs of the agent retained to implement provisions of the Act; or (iii) imposes an obligation on Generator to offer and clear capacity from the Capacity Facility in the Base Residual Auction, then, no payment pursuant to Sections 2.1, 2.2 and 4.1 with respect to any Delivery Year or portion of a Delivery Year that is within the period of suspension shall be owed by either party, and the non-performance of the requirements of those provisions with respect to the period of suspension shall not be an Event of Default provided, that, if such suspension continues for a period greater than six (6) months, then Generator, at its sole discretion, may declare a Termination Event pursuant to Section 8.1.3.

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2.7. Accounts; Change of Account

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

Generator:

Pay:

For the Account of:

Account Number:

Fed. ABA Number:

Utility:

Pay:

For the Account of:

Account Number:

Fed. ABA Number:

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

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

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

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

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

**SECTION 3
TERM AND TERMINATION**

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

**SECTION 4
TRANSACTIONS**

4.1. Transactions.

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

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

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

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

SECTION 5 **REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6
AFFIRMATIVE COVENANTS

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

6.1. Furnish Specified Information.

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

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

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

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

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

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

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

SECTION 7
EVENTS OF DEFAULT

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

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

7.1.2. Failure to Provide Information.

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

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

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

7.1.5. Bankruptcy. The party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within fifteen (15) calendar days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

(vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen (15) calendar days thereafter; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

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

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

Generator fails to cause the Capacity Facility to achieve commercial operation and achieve the Commencement Date by no later than the two (2) years after the Awarded Commencement Date, except in an event(s) of Force Majeure.

7.1.8. Failure to Participate in a PJM Market.

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

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7.1.9 Security Default.

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

SECTION 8
TERMINATION EVENTS

8.1. Termination Events. The occurrence of any of the following events constitutes a Termination Event (a “Termination Event”). Notwithstanding the above, the events under Sections 8.1.1 or 8.1.2, shall only constitute a Termination Event if such event occurs within twelve (12) months following Board approval of the Agreement, but in no event later than April 15, 2012.

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

- (1) to perform any absolute or contingent obligation to make a payment or to receive a payment in respect of the Transaction or to comply with any other material provision of this Agreement;
- (2) to perform any contingent or other obligation which the party has or any other material provision of this Agreement; or
- (3) to perform its obligations under the Security Agreement, to maintain the security interest under the Security Agreement or to maintain the first priority perfected status of such security interest.

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

8.1.3. In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act pursuant to Section 2.6 of this Agreement and such suspension continues for a period longer than six (6) months and the generator provides notice of Termination pursuant to Section 2.6 of this Agreement.

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SECTION 9
REMEDIES

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

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

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

9.2. Effect of Designation.

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

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

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

9.3.1. Events of Default.

(a) If the Early Termination Date results from a Generator Event of Default, the Generator will pay the Utility: (i) all Unpaid Amounts owing to the Utility; (ii) all reasonable expenses payable under Section 9.4; and (iii), in the case of an Event of Default relating to participating in a Base Residual Auction, an amount equal the product of (3) multiplied by the product of (a) the amount, if any, by which the Resource Clearing Price for such Base Residual Auction exceeds the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; and (c) three hundred and sixty-five (365).

(b) If the Early Termination Date results from a Utility Event of Default, the Utility will pay the Generator: (i) all Unpaid Amounts owing to the Generator; (ii) all expenses payable under Section 9.4; (iii) if the Event of Default occurs during a Delivery Year, an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; and (c) the number of days remaining in the Delivery Year following the Early Termination Date; and (iv) an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term as of the next Delivery Year commencing after Early Termination Date.

9.3.2. Termination Events. If an Early Termination Date results from Section 8.1, then the Utility shall pay to the Generator (i) all Unpaid Amounts owing to the Generator; and (ii) an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term starting with and including the current Delivery Year.

9.3.3. Notice and Payment. The party designating an Early Termination Date shall provide notice of such Early Termination Date to the other party. Upon Utility's issuance

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

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

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

SECTION 10 **TRANSFER**

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

10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and with notice to the Board, assign this Agreement (i) to a purchaser of all or

substantially all of the assets of Generator; or (ii) in connection with the grant of a security interest to any Facility Lender, provided that such security interest does not interfere with the rights of obligations of any party under the Construction Period Security or Delivery Term Security and that under no circumstances shall any Facility Lender have ownership rights to more than 700 MW of Unforced Capacity from electric generation facilities with standard offer capacity agreements, (iii) in connection with a merger of Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator; provided that such purchaser or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility.

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

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

SECTION 11 NOTICES

11.1. Effectiveness. Any notice or other communication in respect hereof may be given in any manner set forth below (except that a notice or other communication under Section 7, 8 or 9 will not be effective if given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided and will be deemed effective as indicated: (i) if in writing and delivered in person or by courier, on the date it is delivered; (ii) if sent by telex, on the date the recipient's answerback is received; (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (the burden of proving receipt will be on the sender and

will not be met by a transmission report generated by the sender's facsimile machine); (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or (v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

11.2. Addresses for Notices.

11.2.1. Addresses for notices or communications to Generator:

Address:

11.2.2. Address for notices or communications to Utility:

Address:

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

SECTION 12

RESOLUTION OF DISPUTES

12.1. Notice of Dispute.

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

12.1.2. If PJM's RPM is eliminated, then a Dispute shall be deemed to have occurred and both parties shall attempt to develop a replacement for the RCP as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.1.3. If PJM's RPM is modified in a material manner such that it adversely affects the performance, calculation or payment of the Transaction, then a party may declare a Dispute and both parties shall attempt to develop a replacement for the RCP as provided under Section 12.2.2 to (i) amend this Agreement and (ii) permit Transactions to continue over the remaining Delivery Term, subject to Board approval.

12.2. Resolution by the Parties

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

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

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

12.3. Optional Resolution Through Arbitration

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

12.4. Effect of Dispute

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

**SECTION 13
MISCELLANEOUS**

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

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

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

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

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

13.6. Governing Law and Jurisdiction

**Board / LCAPP Agent Final Draft
February 23, 2011**

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

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

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

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

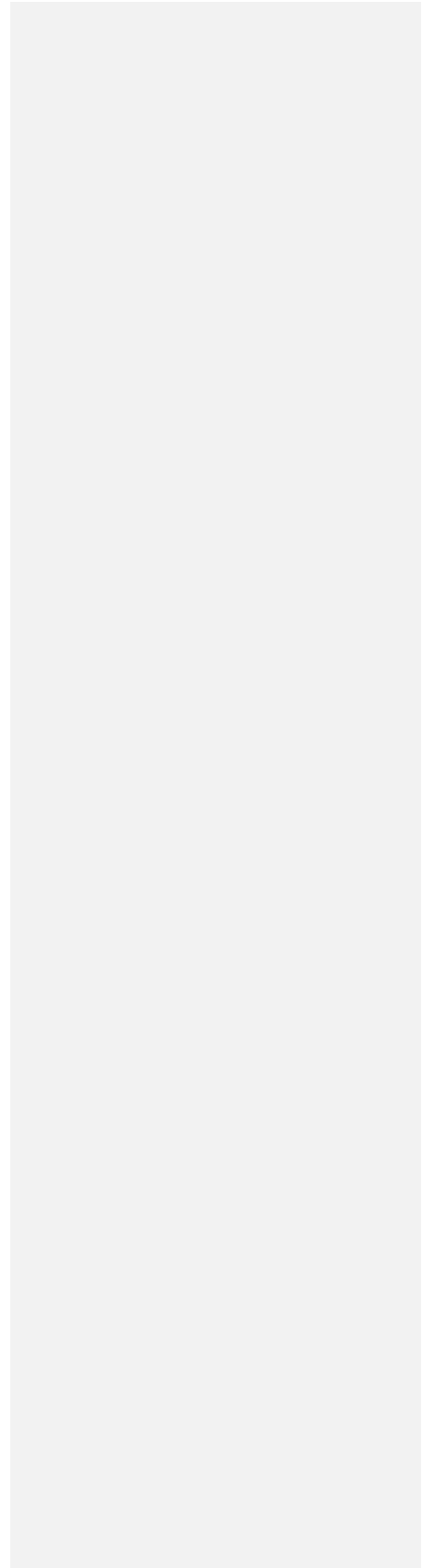
IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

By: _____

**Board / LCAPP Agent Final Draft
February 23, 2011**

Name: _____
Title: _____
Company: _____

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



ATTACHMENT A
DESCRIPTION OF THE CAPACITY FACILITY

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

Size (net MW of installed capacity): _____

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

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

Secondary Fuel (if applicable): _____

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

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

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

**ATTACHMENT B
CONSTRUCTION PERIOD SECURITY**

[Form of Irrevocable Standby Letter of Credit to be provided by Utility]

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

ATTACHMENT C
SCHEDULE OF APPROVED STANDARD OFFER CAPACITY PRICES

Delivery Year (ending May 31 st)	Standard Offer Capacity Price (\$/MW-day)
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	

[On Issuing Bank's Letterhead]

FORM OF IRREVOCABLE STANDBY BID LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

APPLICANT:

[Applicant Name]

[Applicant Address]

BENEFICIARY:

[Utility]

[Utility Address]

1. We hereby issue in your favor this Irrevocable Standby Bid Letter of Credit (this "Letter of Credit") in the amount of \$[] in U.S. currency effective [no later than March 7, 2011] and available to you at sight upon demand at our counters at _____ [designate Issuing Bank's location for presentments] and expiring at 5:00 PM Eastern Prevailing Time ("EPT")¹ on [no sooner than May 1, 2011, (the "Expiration Date")], unless terminated earlier in accordance with the provisions of Paragraph 9 hereof.

2. This Letter of Credit is issued at the request and for the account of _____ (including its successors and assigns, the "Bidder"). This Letter of Credit may be drawn once [Utility] _____ has notified the [Issuing Bank] in writing that the Bidder:
 - a) has been selected in the Long Term Capacity Agreement Pilot Program ("LCAPP") instituted by the New Jersey Board of Public Utilities ("Board") and has made any material omission or misrepresentation in the Pre-Qualification Package submitted pursuant to participation in the LCAPP; and/or

 - b) has been selected in the LCAPP and failed to execute the Standard Offer Capacity Agreement ("SOCA") within thirty (30) business days of being notified that the Board has approved the form of the SOCA, as long as such failure to execute within thirty (30) business days is not a result of a delay caused a counterparty to the SOCA or a change to the SOCA.

3. We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the amount available under this Letter of Credit from time to time, subject to reduction as provided in Paragraph 8. A partial or full drawing hereunder may be presented by you on any Business Day on or prior to the Expiration Date by delivering or transmitting to _____ (identify Issuing Bank), _____

¹ If the issuer of the Letter of Credit is located in an area that is not in the EPT time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly, here and in Paragraphs 5 and 9.

_____ (U.S. address), (a) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of the [Utility] (b) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of [Utility].

4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number(s): _____. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.
5. We will honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in your draft (or so much thereof as is available hereunder) delivered or transmitted to us in connection with such drawing to the account designated as provided below, by 3:00 PM EPT on the date of such drawing, if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made prior to 11:00 AM EPT on a Business Day, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery or transmission of the requisite documents pursuant to Paragraph 3 hereof is made on or after 11:00 AM EPT on any Business Day.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 5 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons why the demand for payment was not so effected and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit was previously paid by us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 3 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.
8. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amount available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 3 hereto together with the original of this Letter of Credit (and subsequent amendments, if any) returned for cancellation, or (c) 5:00 PM EPT on the Expiration Date.
9. Rule 3.14(a) of the International Standby Practices 1998 (International Chamber of

Commerce Publication No. 590), or any successor publication thereto (the "ISP"), as it applies to this Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business.

Rule 3.14(b) of the ISP is hereby modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.

10. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

"Bidder" shall mean an entity that has received notice: (1) that its Bidder Pre-Qualification Application has been reviewed; and (2) that the pre-qualification requirements have been met.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, New York and any day on which payments can be effected on the Fedwire system.

11. This Letter of Credit is not transferable. This Letter of Credit is subject to and shall be governed by the ISP except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with the laws of the State of New Jersey, without regard to principles of conflicts of law.
12. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary(ies).
13. We certify that as of the date of issuance of this Letter of Credit, our senior unsecured long-term debt is rated "A" or better by Standard & Poor's, "A2" or better by Moody's Investors Service, or "A" or better by Fitch Ratings. If a foreign bank, we certify we are a U.S. branch office of such foreign bank and that as of the date of issuance of this Letter of Credit, our senior unsecured long-term debt is rated "A" or better by Standard & Poor's, "A2" or better by Moody's Investors Service, or "A" or better by Fitch Ratings.
14. This original Letter of Credit has been sent to [name and address of an Authorized Officer of Utility]. The aggregate amount paid to the [Utility] during the validity of this Letter of

Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of [Utility]. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of [Utility].

Very truly yours,
(Issuing Bank)

By:_____

Name:

Title:

Date:

Annex 1 TO LETTER OF CREDIT

DRAWING UNDER LETTER OF CREDIT NO. _____

_____, 2011

To: (Issuing Bank)
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under your Letter of Credit No. _____ (the Letter of Credit) in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit. The amount to be received by [Utility] is USD \$_____.
3. Pursuant to Paragraph 2 of the Letter of Credit No. _____, dated _____, 2011, the undersigned is entitled to make a drawing under the Letter of Credit inasmuch as the Bidder has _____ (state a reason from conditions (a) and/or (b) of Paragraph 2 of the Letter of Credit).
4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

[Utility]

By: _____

Name: _____

Title: _____

Date: _____

cc: _____ [Bidder]

Annex 2 to Letter of Credit

SIGHT DRAFT

Amount: USD \$ _____

Date: _____, 2011

At sight, pay to the order of [Utility], the sum of _____ U.S. Dollars.

Drawn under Irrevocable Standby Letter of Credit No. _____ of
_____ [identify Issuing Bank] dated
_____, 2011.

To: _____ [Issuing Bank]
_____ [Address]

Payments shall be transmitted by wire transfer to [Utility] pursuant to the following instructions:

[Utility]
Account No.:
Bank:
Bank's Address:
ABA Routing No:
Contact:
Telephone No.:

[Utility]
By: _____
Name: _____
Title: _____
Date: _____

Annex 3 to Letter of Credit

CERTIFICATE OF CANCELLATION

_____, 20__

To: (Issuing Bank)
(Address)

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. _____

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit (and subsequent amendments, if any), marked cancelled.

[Utility]

By: _____

Name: _____

Title: _____

Date: _____

cc: _____ [Bidder]