ASSEMBLY, No. 3092

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:
Assemblyman JOHN F. MCKEON
District 27 (Essex and Morris)

SYNOPSIS

Provides for BPU incentives for district energy collaboratives and certain combined heat and power facilities.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning district energy collaboratives, certain combined heat and power facilities, and amending and supplementing P.L.1999, c.23.

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

1. 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 of the Revised Statutes 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**]** that 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

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.

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, basic generation service transition cost recovery, or the transfer or financing of the 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 the 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 (C.48:3-49 et al.), which order shall become effective immediately upon the written consent of the related electric public utility to the order as provided in P.L.1999, c.23 (C.48:3-49 et al.).

"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 the 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.

"Brownfield" means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant.

"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⟧ the 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, small scale hydropower facilities with a capacity of three megawatts or less and put into service after the effective date of P.L.2012, c.24, 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 hydropower facility with a capacity of greater than three megawatts, but less than 30 megawatts, or a resource recovery facility, provided that the facility is located where retail competition is permitted and provided further that the Commissioner of Environmental Protection has determined that the facility meets the highest environmental standards and minimizes any impacts to the environment and local communities. Class II renewable energy shall not include electric energy produced at a hydropower facility with a capacity of greater than 30 megawatts on or after the effective date of P.L.2015, c.51.

"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.

"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.

"Combined heat and power facility" or "co-generation facility" means a generation facility which produces electric energy and 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.

<u>"Competitive service" means any service offered by an electric public utility or a gas public utility that the board determines to be</u>

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.

"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.

"Connected to the distribution system" means, for a solar electric power generation facility, that the facility is: (1) connected to a net metering customer's side of a meter, regardless of the voltage at which that customer connects to the electric grid; (2) an on-site generation facility; (3) qualified for net metering aggregation as provided pursuant to paragraph (4) of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87); (4) owned or operated by an electric public utility and approved by the board pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1); (5) directly connected to the electric grid at 69 kilovolts or less, regardless of how an electric public utility classifies that portion of its electric grid, and is designated as "connected to the distribution system" by the board pursuant to subsections q. through s. of section 38 of P.L.1999, c.23 (C.48:3-87); or (6) is certified by the board, in consultation with the Department of Environmental Protection, as being located on a brownfield, on an area of historic fill, or on a properly closed sanitary landfill facility. Any solar electric power generation facility, other than that of a net metering customer on the customer's side of the meter, connected above 69 kilovolts shall not be considered connected to the distribution system.

"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, 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.

“District energy collaborative” or “DEC” means a microgrid designed and operated to achieve a sustainable, secure, and cost-effective electric generation and distribution system while

providing Class I and Class II renewable energy as backup energy and that has been established after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), that generates electricity for sale into the regional electric grid managed by PJM, is licensed by the board, and is not an electric public utility.

"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⟧ the 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⟧ Energy Policy Act of ⟦1935, 15 U.S.C. s.79 et seq.⟧ 2005, Pub.L.109-58, or its successor act.

"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 base load or mid-merit electric power generation facility including, but not limited to, an on-site generation facility that qualifies as a capacity resource

under PJM criteria and that commences construction after the effective date of P.L.2011, c.9 (C.48:3-98.2 et al.).

"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, numbered according to the calendar year in which it ends.

"Existing business relationship" means a relationship formed by a voluntary two-way communication between an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer and a customer, regardless of an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction initiated by the customer regarding products or services offered by the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer; however, a consumer's use of electric generation service or gas supply service through the consumer's electric public utility or gas public utility shall not constitute or establish an existing business relationship for the purpose of P.L.2013, c.263.

"Farmland" means land actively devoted to agricultural or horticultural use that is valued, assessed, and taxed pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

"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.

"Final remediation document" shall have the same meaning as provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b).

"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 of the Revised Statutes 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.

"Historic fill" means generally large volumes of non-indigenous material, no matter what date they were emplaced on the site, used to raise the topographic elevation of a site, which were contaminated prior to emplacement and are in no way connected with the operations at the location of emplacement and which include, but are not limited to, construction debris, dredge spoils, incinerator residue, demolition debris, fly ash, and non-hazardous solid waste. "Historic fill" shall not include any material which is substantially chromate chemical production waste or any other chemical production waste or waste from processing of metal or mineral ores, residues, slags, or tailings.

"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.

"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.

“Locational Marginal Price” or “LMP” means the price of electricity purchased in the PJM region reflecting the value of the electricity at the specific location and time of delivery and yielding different prices during the normal and heavy use of the transmission system.

"Long-term capacity agreement pilot program" or "LCAPP" means a pilot program established by the board that includes participation by eligible generators, to seek offers for financially-settled standard offer capacity agreements with eligible generators pursuant to the provisions of P.L.2011, c.9 (C.48:3-98.2 et al.).

"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.

“Microgrid” a small scale electric grid connected to the regional electric grid managed by PJM that can generate and manage electricity output in a self-contained, localized area and that can disconnect from the regional electric grid managed by PJM to operate autonomously.

"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 metering aggregation" means a procedure for calculating the combination of the annual energy usage for all facilities owned by a single customer where **[**such**]** the customer is a State entity, school district, county, county agency, county authority, municipality, municipal agency, or municipal authority, and which are served by a solar electric power generating facility as provided pursuant to paragraph (4) of subsection e. of section 38 of P.L.1999, c.23 (C.48:3-87).

"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 co-generation 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, including, but not limited to, a generation facility that produces Class I or Class II renewable energy, and equipment and services appurtenant to electric **[**sales**]** output by **[**such**]** that facility **[**to**]** for sale or use by 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.

"Preliminary assessment" shall have the same meaning as provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b).

"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.

"Properly closed sanitary landfill facility" means a sanitary landfill facility, or a portion of a sanitary landfill facility, for which performance is complete with respect to all activities associated with the design, installation, purchase, or construction of all measures, structures, or equipment required by the Department of Environmental Protection, pursuant to law, in order to prevent, minimize, or monitor pollution or health hazards resulting from a sanitary landfill facility subsequent to the termination of operations at any portion thereof, including, but not necessarily limited to, the placement of earthen or vegetative cover, and the installation of methane gas vents or monitors and leachate monitoring wells or collection systems at the site of any sanitary landfill facility.

"Public utility holding company" means: (1) any company that, directly or indirectly, owns, controls, or holds with power to vote,

10 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⟧ the company not to be a public utility holding company under the ⟦Public Utility Holding Company⟧ Energy Policy Act of ⟦1935, 15 U.S.C. s.79 et seq.⟧ 2005 Pub.L.109-58, or its successor act; 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⟧ the person be subject to the obligations, duties, and liabilities imposed in the ⟦Public Utility Holding Company⟧ Energy Policy Act of ⟦1935, 15 U.S.C. s.79 et seq.⟧ 2005 Pub.L.109-58, or its successor act.

"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).

"Registration program" means an administrative process developed by the board pursuant to subsection u. of section 38 of P.L.1999, c.23 (C.48:3-87) that requires all owners of solar electric power generation facilities connected to the distribution system that intend to generate SRECs, to file with the board documents detailing the size, location, interconnection plan, land use, and other project information as required by the board.

"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, which the Department of Environmental Protection has determined to be in compliance with current environmental standards, including, but not limited to, all applicable requirements of the federal "Clean Air Act" (42 U.S.C. s.7401 et seq.).

"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 those 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, "restructuring 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 C.48:3-57), for the purpose of promoting a competitive retail market for the supply of electricity.

"Sales representative" means a person employed by, acting on behalf of, or as an independent contractor for, an electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator who, by any means, solicits a potential residential customer for the provision of electric generation service or gas supply service.

"Sanitary landfill facility" shall have the same meaning as provided in section 3 of P.L.1970, c.39 (C.13:1E-3).

"School district" means a local or regional school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of chapter 54 of Title 18A of the New Jersey Statutes, and a district under full State intervention pursuant to P.L.1987, c.399 (C.18A:7A-34 et al.).

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

"Site investigation" shall have the same meaning as provided in section 3 of P.L.1976, c.141 (C.58:10-23.11b).

"Small scale hydropower facility" means a facility located within this State that is connected to the distribution system, and that meets the requirements of, and has been certified by, a nationally recognized low-impact hydropower organization that has established low-impact hydropower certification criteria applicable to: (1) river flows; (2) water quality; (3) fish passage and protection; (4) watershed protection; (5) threatened and endangered species protection; (6) cultural resource protection; (7) recreation; and (8) facilities recommended for removal.

"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 eligible generators to receive payments from the electric public utilities for a defined amount of electric capacity for a term to be determined by the board but not to exceed 15 years, and for ⟦such⟧ the payments 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 price to be received by eligible generators under a board-approved SOCA.

"State entity" means a department, agency, or office of State government, a State university or college, or an authority created by the State.

"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.

"Telemarketer" shall have the same meaning as set forth in section 2 of P.L.2003, c.76 (C.56:8-120).

"Telemarketing sales call" means a telephone call made by a telemarketer to a potential residential customer as part of a plan, program, or campaign to encourage the customer to change the customer's electric power supplier or gas supplier. A telephone call made to an existing customer of an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, or sales representative, for the sole purpose of collecting on accounts or following up on contractual obligations, shall not be deemed a telemarketing sales call. A telephone call made in response to an express written request of a customer shall not be deemed a telemarketing sales call.

"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, 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**]** those 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.

"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.

"Unsolicited advertisement" means any advertising claims of the commercial availability or quality of services provided by an

electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer which is transmitted to a potential customer without that customer's prior express invitation or permission.
(cf: P.L.2015, c.51, s.1)

2. Section 9 of P.L.1999, c.23 (C.48:3-57) is amended to read as follows):

9. a. (1) Simultaneously with the starting date for the implementation of retail choice as determined by the board pursuant to subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53), until the board specifically finds it to be no longer necessary and in the public interest, each electric public utility shall provide basic generation service. Power procured for basic generation service by an electric public utility shall be purchased, at prices consistent with market conditions. The charges assessed to customers for basic generation service shall be regulated by the board and shall be based on the reasonable and prudent cost to the utility of providing such service, including the cost of power purchased at prices consistent with market conditions by the electric public utility in the competitive wholesale marketplace and related ancillary and administrative costs, as determined by the board. The charges assessed to customers for basic generation service pursuant to this subsection may include a retail margin, as determined by the board. The board shall approve unbundled rates to assure that aggregate rate reductions established pursuant to section 4 of P.L.1999, c.23 (C.48:3-52) are sustained notwithstanding changes in basic generation charges approved pursuant to this section.

(2) Each electric public utility shall remit to the State Treasurer all monies collected by the utility as a retail margin authorized pursuant to paragraph (1) of this subsection. A Retail Margin Fund shall be established as a non-lapsing, revolving fund in the General Fund for the deposit of all retail margin monies received from the electric public utilities and remitted to the State Treasurer.

(3) (a) The board may use monies paid in connection with the retail margin, from any portion of the amount appropriated pursuant to section 3 of P.L.2009, c.34 that has not been allocated pursuant to subsection d. of section 3 of P.L.2009, c.34, and any other monies in the Retail Margin Fund in excess of the amount appropriated, for the purpose of funding grants by the board only to CIEP class customers to implement alternative programs and measures that are consistent with, and will further the goals of the energy master plan adopted pursuant to section 12 of P.L.1977, c.146 (C.52:27F-14), to maximize energy conservation and energy efficiency, reduce peak energy demand, and increase renewable energy sources. The grants may also fund supportive measures, such as energy audits, education and outreach programs, and technical assistance, that are deemed necessary to the proper

implementation of the alternative programs and measures. The board shall establish the types of measures to receive such financial assistance, the eligibility criteria for such financial assistance, the procedures and criteria for awarding such financial assistance, and the conditions of such financial assistance, by order or orders issued after notice and an opportunity for public comment, notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary. The board may change programs and program designs as technologies, markets and customer needs change.

(b) (i) The board, in consultation with the BPU Business Ombudsman created under section 4 of P.L.2005, c.215 (C.48:2-95), shall issue a solicitation to advertise the availability of grants for projects to install or expand combined heat and power facilities at facilities owned or operated by CIEP class customers in this State.

(ii) The solicitation shall indicate that grants are to be awarded on a first-come, first-served basis for projects that satisfy all of the following eligibility criteria:

(aa) the project shall serve a CIEP class customer in this State with an electric demand of at least 750 kilowatts or a level of demand that subjects the customer to payment of a retail margin pursuant to paragraph (1) of this section;

(bb) the project shall establish by contract or other arrangement that the electric output generated at a combined heat and power facility shall, to the maximum extent feasible, be consumed at the project site by a facility located at the site and that any surplus power that is produced may be sold into the regional electric grid managed by PJM; and

(cc) the facility shall have an electric generating capacity of greater than one megawatt and the facility shall be designed to achieve thermal efficiency levels of at least 65 percent for low-heat-value facilities with up to 20 megawatts of electric generating capacity, and at least 70 percent for facilities with electric generating capacity greater than 20 megawatts. A facility that does not currently achieve the applicable thermal efficiency level shall be eligible to receive grants pursuant to this subsection if new or expanded projects developed at the facility will achieve thermal efficiency levels of at least 65 percent for facilities with up to 20 megawatts of electric generating capacity, and at least 70 percent for facilities with electric generating capacity greater than 20 megawatts.

(iii) The solicitation shall further provide that the amount of each grant shall be a function of the kilowatt-hours of electricity and the number of Btu per hour of thermal energy that the combined heat and power facility generates over a period of four years beginning with the facility’s commencement of operation. The amount of the grant per kilowatt-hour and per Btu per hour shall be

calculated so that a facility receives a grant in the amount of $6 for each percent of its electric capacity factor.

(4) Nothing in this section shall be construed to authorize the board to use the retail margin for any use that does not provide a direct benefit to CIEP class customers, except as the board may determine is necessary pursuant to section 13 of P.L.2007, c.340 (C.48:3-98.1) and section 4 of P.L.2005, c.215 (C.48:2-95).

(5) The board shall, not later than December 1 of each year, transmit to the Joint Budget Oversight Committee, or its successor, a report detailing the amount of monies deposited in and allocated from the Retail Margin Fund during the preceding State fiscal year. The report shall include, but not be limited to, the number and description of each combined heat and power facility project funded from the Retail Margin Fund and the amount allocated to each project, and the number and description of any grants allocated for the alternative programs and measures provided for in paragraph (3) of this subsection. In addition to the report, the board shall also provide to the joint committee a copy of all board orders concerning the establishment or use of, or change in the amount of, the retail margin.

b. The board may allow an electric public utility to purchase power for basic generation service through a bilateral contract from a related competitive business segment of its public utility holding company only if:

(1) The related competitive business segment is not a related competitive business segment of the electric public utility; and

(2) The board determines that the procurement of power from the related competitive business segment of the public utility holding company is necessary in order to ensure the reliability of service to basic generation service customers or to address other extraordinary circumstances, and that the purchase price does not exceed the market price for such power or the power was procured through a competitive bid process subject to board review and approval. The board shall require that all net revenues derived from such sales, when the source of power is assets or contracts which costs are included in stranded costs recovery charges assessed pursuant to sections 13 and 14 of P.L.1999, c.23 (C.48:3-61 and C.48:3-62), shall be applied:

(a) To offset any market transition charge or equivalent rate mechanism assessed to customers pursuant to section 13 of P.L.1999, c.23 (C.48:3-61); or

(b) If the electric public utility is not assessing a market transition charge, to offset the rates charged to customers for distribution service, except that such offset shall cease to be required after the term of the transition bond charge has expired as provided in paragraph (1) of subsection d. of section 14 of P.L.1999, c.23 (C.48:3-62).

(3) The board may devise an alternative accounting or cost recovery process that permits an electric public utility to purchase power from a related competitive business segment of its public utility holding company, or otherwise, to provide basic generation service to its customers during the period that the electric public utility is providing for sustainable rate reductions pursuant to subsection j. of section 4 of P.L.1999, c.23 (C.48:3-52) and subsection a. of this section, if the board determines that such process is necessary to mitigate the impacts of market price fluctuations and to sustain such rate reductions.

c. After the starting date of retail competition as provided in subsection a. of section 5 of P.L.1999, c.23 (C.48:3-53), the board shall issue a decision as to whether to make available on a competitive basis the opportunity to provide basic generation service to any electric power supplier, any electric public utility, or both.

d. Power procured for basic generation service by an electric power supplier shall be purchased at prices consistent with market conditions. The charges assessed to customers for basic generation service shall be regulated by the board and shall be based on the reasonable and prudent cost to the supplier of providing such service, including the cost of power purchased at prices consistent with market conditions, by the supplier in the competitive wholesale marketplace and related ancillary and administrative costs, as determined by the board or shall be based upon the result of a competitive bid.

e. Each electric public utility or electric power supplier that provides basic generation service pursuant to subsection a., c. or d. of this section shall be permitted to recover in its basic generation charges on a full and timely basis all reasonable and prudently incurred costs incurred in the provision of basic generation services consistent with the provisions of this section, except to the extent that certain costs related to the provision of basic generation service are already being recovered in other elements of an electric public utility's charges. The board may approve ratemaking and other pricing mechanisms that provide incentives, including financial risks and rewards, for the utility or electric power supplier to procure a portfolio of electric power supply that provides maximum benefit to basic generation service customers.

f. Each electric public utility shall submit a quarterly report to the board of generation contracts between the public utility and any related competitive business segment. A utility that submits a report pursuant to this subsection may petition the board for confidential treatment as trade secrets of any or all of the information provided.

g. Nothing in this section shall apply to any existing board approved bilateral power purchase contract by an electric public utility as of the effective date of P.L.1999, c.23 (C.48:3-49 et al.).
(cf: P.L.2009, c.34, s.2)

3. (New section) a. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall initiate a proceeding, and, after notice, opportunity for public comment, and a public hearing, shall adopt standards which require electric public utilities to offer non-discriminatory rates to a district energy collaborative. For each kilowatt-hour of electricity sold by the DEC for which the electric public utility receives assigned PJM payments, the electric public utility shall pay the DEC an amount equal to the then prevailing per kilowatt-hour BGS rate for fixed price customers, or if there is no such rate, a reasonably comparable amount determined by the board; provided that, if the aggregate generation of all microgrids operated by a DEC exceeds the aggregate amount of electricity supplied by the electric power supplier or BGS provider to the facilities of the municipality or county over an annualized period, the price for the excess generation shall be the average over the annualized period of the PJM electric power pool's real-time locational marginal price rate, adjusted for losses, for the respective zone in the PJM electric power pool, which may require an adjustment to the amounts previously paid by the electric public utility to the DEC. The payments shall be made by the electric public utility to the DEC on a monthly basis and may be made through a tariff or contract as determined by the electric public utility. Any difference between the amounts paid by the electric public utility to the DEC and the PJM payments received by the electric public utility associated with the microgrid, along with the electric public utility's incremental costs of implementing and administering the payments, shall flow through a reconciliation clause of the electric public utility's tariff.

b. DECs that are connected to the distribution system may earn eligible energy credits, SRECs, or other applicable incentives when Class I and Class II renewable energy is in use.

c. All DECs shall be licensed by the board. The board's licensing requirements shall ensure sound and uniform business practices. The board shall adopt and implement a DEC licensing procedure within 30 days after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill). For the purposes of the licensing procedure, the board shall issue an order in writing either approving or disapproving a DEC application for licensing within 30 days of the date of receipt of the application. If the board fails to either approve or disapprove the application within the 30-day period, the application shall be deemed approved.

4. This act shall take effect immediately.

STATEMENT

This bill directs the Board of Public Utilities (board) to provide incentives for district energy collaboratives (DEC) and certain combined heat and power facilities.

Under the bill, the board is to adopt standards which require electric public utilities (utilities) to offer non-discriminatory rates to a DEC. For each kilowatt-hour of electricity sold by the DEC for which the utility receives assigned PJM payments, the utility is to pay the DEC an amount equal to the then prevailing per kilowatt-hour basic generation service rate for fixed price customers, or if there is no such rate, a reasonably comparable amount determined by the board. The payments are to be made by the utility to the DEC on a monthly basis and may be made through a tariff or contract as determined by the utility.

The bill provides that DECs that are connected to the distribution system may earn eligible energy credits or other applicable incentives. All DECs are to be licensed by the board, which is to adopt and implement a DEC licensing procedure within 30 days after the bill's effective date.

Under the bill, the board is to issue a solicitation to advertise the availability of grants for projects to install or expand combined heat and power facilities owned or operated by commercial and industrial energy pricing class customers in this State. The solicitation is to indicate that grants are to be awarded on a first-come, first-served basis for projects that satisfy the criteria set for in the bill. The solicitation is to further provide that the amount of each grant is be a function of the kilowatt-hours of electricity and the number of British thermal units (Btu) per hour of thermal energy that the combined heat and power facility generates over a period of four years beginning with the facility's commencement of operation. The amount of the grant per kilowatt-hour and per Btu per hour is to be calculated so that a facility receives a grant in the amount of $6 for each percent of its electric capacity factor.