



July 25, 2008

Via E-Mail

New Jersey Board of Public Utilities
Office of Policy and Planning
Attention: Draft EMP Comments
Two Gateway Center
Newark, New Jersey 07102
energymasterplan@bpu.state.nj.us

Re: In the Matter of the Draft New Jersey Energy Master Plan.

To Whom It May Concern:

On April 27, 2008, the Draft New Jersey Energy Master Plan (“EMP”) was released to the public by the Hon. New Jersey Governor Jon. S. Corzine. In response to the State’s request for interested parties’ thoughts on the EMP’s provisions, Constellation Energy Commodities Group, Inc. (“CCG”) and Constellation NewEnergy, Inc. (“CNE”) (collectively, “Constellation”) hereby submit their initial comments on the EMP. While Constellation comments herein only on limited topics contained in the EMP, it reserves the right to continue discussing all of the EMP’s contents and any new issues raised by other parties in addressing the EMP.

Constellation appreciates the hard work and efforts that the State has put into developing the EMP. Through the EMP, New Jersey stands to become a leader among those states taking action with respect to their energy future, improving energy and the environment not only for the State, but for the broader region.

I. BACKGROUND ON CONSTELLATION

CCG is a power marketer authorized by the Federal Energy Regulatory Commission (“FERC”) to sell energy and capacity and certain ancillary services at market-based rates.¹ CCG focuses on serving the full requirements power needs of distribution utilities, co-ops and municipalities that competitively source their load requirements and, in that role, has been a winning bidder to deliver wholesale full requirements load to New Jersey’s utilities through the Basic Generation Service (“BGS”) Auctions over the years. CNE is a leading national competitive retail energy supplier to commercial and industrial customers, serving more than 10,000 customers in 17 states (including New Jersey) and two Canadian provinces, and has been granted market-based rate authority by FERC.² CNE is committed

¹ See *Constellation Power Source, Inc.*, 79 FERC ¶ 61,167 (1997) (FERC order initially granting CCG market-based rate authority).

² See *NEV, L.L.C.*, 81 FERC ¶ 61,186 (1997) (FERC order initially granting CNE market-based rate authority).

to providing customized energy-related products and services to customers in the competitive electricity marketplace. Both companies are subsidiaries of Constellation Energy Group, Inc., a Fortune 125 company headquartered in Baltimore, Maryland.

II. CONSTELLATION'S EMP COMMENTS

A. EMP GOAL 2: "Reduce peak demand for electricity by 5,700 MW by 2020"

1. ACTION ITEM 2: "Expand incentives for participation in regional demand response programs"

With respect to encouraging demand response, Constellation believes that encouraging and enabling all customers – either individually or through their load serving entities – to manage their energy demand on an ongoing basis (not only at critical times) is a critical component to costs and price management. The more that consumers' load is able to be adjusted in order to respond to demand response signals, the less pressure there is on the system to dispatch the last available resources which are generally the highest cost resources.

However, utility procurement for demand response resources is not the best way to encourage such products in New Jersey. Unlike capital intensive renewable resources, which may require proper targeted, market-based requirements (*e.g.*, through renewable portfolio standards ("RPS")) to encourage development, the costs of encouraging demand response are relatively limited, and can be recovered over a short timeframe. In addition, the three-year forward capacity market created in PJM Interconnection, L.L.C. ("PJM") covers most demand response investments for which the payback period typically ranges from a couple of months to a year or two.

PJM has seen strong success from such existing demand response programs. For instance, committed demand response resources for PJM's "demand resources" and "interruptible load for reliability" programs have increased from 1,679 MW in 2006 to 5,258 MW for the 2011-2012 planning year.³ PJM identifies that more than 6,000 commercial and industrial facilities (with demand greater than 100 kW) and more than 45,000 small commercial and residential sites currently participate in PJM's demand response programs.⁴ The confusion and uncertainty that could be created in the marketplace by separate, utility-based demand response programs could lead to reduced investment in resources, thus undermining the future potential positive impact of PJM's similar programs.

³ *Review of PJM's Reliability Pricing Model (RPM)*, The Brattle Group (issued June 30, 2008) ("Brattle Report") at p.91, avail. at <http://www.brattle.com/documents/UploadLibrary/Upload696.pdf>.

⁴ *See Brochure: PJM Real Time Economic Demand Response Program*, PJM Interconnection, L.L.C. at p.1, avail. at <http://www.pjm.com/markets/demand-response/downloads/documentation/dsr-brochure.pdf>.

If the State believes it must encourage demand response much sooner and on a more significant scale, it should look to a host of market-neutral tools to promote such activity such as rebate programs, State investment in demand response technology (*e.g.*, “smart” meters) and performance-based grants. The most appropriate avenues for encouraging additional demand response are through reliance on PJM’s current demand response programs and promotion of demand response programs by competitive third-party suppliers (perhaps through additional incentives for third-party suppliers).

2. ACTION ITEM 4: “Move the State’s electricity grid toward the development of a ‘smart grid’ infrastructure”

Adoption of ‘smart grid’ designs and technologies will have long-term positive effects on reliability, prices and the over-all efficiency of competitive markets. In particular, technologies that provide transparency of prices and allow loads to respond to the needs of the grid – *e.g.*, a distribution system problem or an under-voltage situation – will be critical in realizing the benefits of a smart grid.

That said, of critical importance in implementing smart grid technology is consideration of access to data provided as a result of such innovation. Constellation submits that data collected through smart grid infrastructure should be accessible and conveniently located – *e.g.*, collected on centralized servers – for all market participants (with customer permission, where appropriate), including retail third-party suppliers, curtailment service providers and wholesale suppliers of utilities’ BGS requirements.

Timely and thorough information regarding customer load is key to the success of retail and wholesale markets, especially as new grid technologies emerge which enable new product offerings to be developed and implemented for consumers. Such data will enable suppliers to better manage their portfolios for meeting customers’ and utilities’ needs and will allow suppliers to offer the most competitive prices and innovative products as possible.

B. EMP GOAL 3: “Meet 22.5% of the State’s electricity needs from renewable sources”

Constellation first generally notes that in order to meet the State’s goals for renewable investment, New Jersey should rely on competitive, market-based solutions. It is unnecessary for the State to order that its utilities enter into long term contracts to encourage investment in renewable energy projects. The State has developed the proper incentives through the RPS to encourage private financing for new technologies, and need not place the burdens and risks of long term renewable energy contracts directly on the backs of consumers.

Green products, for instance, have emerged as desirable products offered by competitive third-party suppliers, who are largely encouraged to invest in such offerings due to market-based RPS obligations not only in New Jersey, but throughout PJM and the broader region. Responding to the pressures of competition, each third-party supplier must strive to drive down the costs of their RPS obligations in order to provide the most competitively-priced energy products (including minimum RPS requirements) or ‘extra-

green' products (including more than the minimum RPS requirements). These efforts to drive down RPS costs also encourage third-party suppliers (and wholesale market participants) to hedge their future RPS obligations by entering into longer term contracts with alternative energy developers.

These voluntary contracts between market participants in turn support the financing and development of new renewable resources in New Jersey and neighboring jurisdictions and other PJM states for potential delivery into New Jersey. For example, Constellation last year entered into two 18-year agreements with a wind developer in Illinois for almost 300 MW of wind energy to supply to Mid-Atlantic states such as New Jersey and to meet such states' RPS requirements.

1. ACTION ITEM 1: “Complete the transition of New Jersey’s solar program to a fiscally responsible market that will foster the continued growth of solar energy use in the State”

Constellation appreciates that at times policymakers may wish to encourage development of renewable or experimental technologies because of the common good that is expected to result from such development and investment. The best way for the State to encourage investment in specific types of resources is to require that suppliers meet targeted portfolio requirements, which has occurred in New Jersey through the implementation of RPS, as discussed above. Because suppliers are required to satisfy certain RPS requirements, they are willing to enter into longer term contracts with private investors in renewable generation. These contracts in turn allow such investors to obtain financing to build their plants. In this manner, competition at the wholesale and retail level is not adversely impacted and the market works exactly as it should: increased demand for renewable resources leads to increased construction of such resources.

2. ACTION ITEM 2: “Develop New Jersey’s wind energy resources, considering at least 1000 MW of offshore wind and up to 200 MW of onshore wind by 2020”

The State has taken an appropriate and laudable measure to promote new wind resources through both the RPS, as discussed above, and through efforts such as the New Jersey Board of Public Utilities' (“Board”) “Solicitation for Proposals to Develop Off-Shore Wind Renewable Energy Facilities Supplying Electricity to the Distribution System Serving New Jersey” (“Off-Shore Wind RFP”). Through the Off-Shore Wind RFP, the State provided incentives to off-shore wind developers in the form of funds totaling \$19-million for an off-shore project producing up to 350 MW of wind electricity.

Targeted incentives such as those provided through the Off-Shore Wind RFP are superior to other options for renewable investment for a number of reasons. Importantly, this financing incentive allows all market participants to compete on an equal basis to develop the most cost effective ocean-based wind resources off of New Jersey’s coast. Moreover, by requiring that the energy produced through the Off-Shore Wind RFP be supplied to the PJM Interconnection, L.L.C. (“PJM”) power pool, rather than sold to the State’s utilities under long term contracts backed by the utilities’ ratepayers, the Board has

prevented customers from being straddled by the costs and risks inherent in construction and operation of new generating technology, and encouraged the continued development of wholesale markets to benefit consumers.

Constellation notes that, to meet its goals by 2020, the State may also consider (a) using economic development bonds to lower developers' interest expense, (b) creating special property and income tax incentives and (c) providing assistance from New Jersey's utilities with transmission interconnection facilities for new on- and off-shore wind farms.

The people of New Jersey deserve the best the market can offer in order to supply them with clean, reliable power. Reliance on private markets to develop and deliver such clean power through targeted incentives and market-based policies will best meet the State's goals.

3. ACTION ITEM 3: “Increase amount of biofuels and biomass in the State’s energy portfolio”; and ACTION ITEM 4: “Increase the Renewable Portfolio Standard for the years 2021 to 2025”

As Constellation explains above, RPS standards (and increased RPS standards) are an appropriate method for meeting State policy goals with respect to alternative fuel technologies such as the use of biofuels and biomass. In implementing any new RPS standards (*e.g.*, increasing the RPS requirements) particularly for years closer-in-time than those suggested in this Action Item 3, however, the State should continue to be careful not to adversely affect already existing contracts for the supply of energy in New Jersey, whether BGS (or other) contracts between wholesale suppliers and utilities, or retail supply contracts between third-party suppliers and consumers. To protect the sanctity and terms of such existing contracts, the State should consider “grandfathering” provisions for any new laws or regulations which may increase RPS requirements particularly in years in the near-term. That said, Constellation strongly urges the State to work to achieve stability, consistency and regulatory certainty with respect to RPS requirements, especially across jurisdictions as appropriate, such that energy markets have established and certain RPS targets, allowing market participants to continue to commit time and resources to find efficient and effective means to meet the State's important renewable energy policy objectives.

C. EMP GOAL 4: “Develop new low carbon emitting, efficient power plants and close the gap between the supply and demand of electricity”

Constellation supports the comments by the PJM Power Providers Group (“P3”) regarding the EMP's goal of ensuring an adequate supply of power for New Jersey's consumers. New Jersey should rely on PJM and the competitive markets in order to seek regional, market-based solutions to meeting reliability requirements. As P3 states:

The result of a well designed market and well designed energy policy is the willingness of capital markets to invest in New Jersey and neighboring states, thus providing the consumer the benefit of a

competitive market while mitigating the consumer's risk in these markets (developers assume the risk, not the consumers).⁵

D. EMP POLICY GOAL: Continued Advocacy & Analysis

1. “Work with PJM to modify or replace the Reliability Pricing Model, with a mechanism that focuses incentives on new generation capacity, demand response, and energy efficiency”

Constellation notes that PJM hired an independent consultant, The Brattle Group (“Brattle”), to prepare an analysis of PJM’s Reliability Pricing Model (“RPM”) auctions run to date. The Brattle Report was issued on June 30, 2008 and summarized that, despite the “very compressed time frame, the five base auctions conducted to date have been successful in achieving the stated reliability and economic objectives of RPM.”⁶ Brattle determined that, since RPM was implemented: 4,600 MW of capacity was retained that would have retired; almost 10,000 MW of incremental capacity has been committed; and the volume of generation interconnection requests eligible to participate in RPM has grown to 33,000 MW.⁷ The Brattle Report further identified “over 14,500 MW of resources that likely would not have been available in the absence of RPM...”⁸ The Brattle Report also speaks to the prices resulting from the RPM auctions. Specifically, the Brattle Report found that “customers have paid capacity prices that are consistent with resource adequacy conditions and the administratively-determined marginal cost of capacity for [PJM].”⁹

With respect to investments made in response to RPM, Constellation’s activities provide salient examples. In June of 2008, for instance, Constellation returned to service its Gould Street power plant, a 100 MW previously retired gas-fired power station in PJM’s Southwest Mid-Atlantic Coordinating Council (or “SWMAAC”) zone. This investment was made as a direct result of the RPM capacity market. Prior to that, in December of 2007, Constellation entered into an agreement with Conectiv Energy to purchase 545 MW of electric power to be produced at a new combined cycle natural gas plant to be developed in York County, Pennsylvania. The new plant is expected to be on line by June 2011. This new generation investment, supported by Constellation’s power contract, was made based on the expectation of continued RPM capacity auctions.

In sum, while the Brattle Report suggests incremental changes to RPM going forward, it concludes that RPM has been a success in attracting new resources and achieving reliability targets.¹⁰ Constellation supports P3’s RPM comment that, rather than seeking to

⁵ *Comments of the PJM Power Providers Group regarding the New Jersey Energy Master Plan*, PJM Power Providers Group (filed July 25, 2008) (“P3 EMP Comments”) at p.4.

⁶ Brattle Report at p.2.

⁷ *Id.*

⁸ *Id.* at pp.2-3.

⁹ *Id.* at p.3.

¹⁰ *Id.* at p.4.

replace RPM, “New Jersey should focus its resources on the surgical changes that PJM can deploy to further improve RPM.”¹¹

2. “Complete the review of the BGS auction process”

The Board has been able to promote a competitive market through use of the descending clock auction process for full-requirements wholesale supply. The process benefits from a nondiscriminatory, highly transparent structure in which bidders generally are allocated appropriate risks as wholesale suppliers and are provided sufficient information to tailor their bids more specifically to the requirements of the utilities’ loads, and therefore provide the most competitive wholesale prices for the benefit of New Jersey’s consumers. The BGS Auctions have resulted in prices that are reflective of the market, but insulate customers from the volatility of any one given procurement period through a structure which bids out only one-third of the utilities’ load for three-year periods at each procurement cycle. The six-year successful track record of the BGS Auction process has instilled confidence in the stability of this process such that bidders can offer prices without undue risk premiums associated with an uncertain regulatory process. This confidence in the process has resulted in the most efficient pricing in the auction process and has averted unnecessary premiums being charged to BGS customers.

Constellation has been an active participant in previous years’ proceedings regarding the creation of and improvements to the BGS Auction process. Constellation has provided over the years numerous suggestions for minor improvements to an already successful process for procuring New Jersey’s BGS requirements. At this point in time, it is clear that the BGS Auction process has proven successful and has been fully vetted over six years of thorough Board reviews of the Auctions’ rules and procedures, as well as the underlying BGS contracts entered into between suppliers and utilities.

For this reason, it is now appropriate for the Board to move beyond and “complete” the annual BGS review process in order to focus on other important goals and initiatives to improve New Jersey consumers’ energy future. However, in moving past a full, annual BGS review process such as that currently implemented by the Board, it should be noted that such a policy change should not preclude the Board’s ability to make changes to the BGS Auction process under changed circumstances that come to its attention.

III. CONCLUSION

Constellation applauds the State for its comprehensive, thoughtful promulgation of goals and action items in the EMP to encourage a promising energy future through competitive markets, clean technologies and energy responsibility in order to benefit New Jersey consumers. The EMP provides a framework that balances a variety of interests, should lead to the further development of the competitive retail electric market, and should encourage New Jersey’s progress into a cleaner and brighter energy future. Constellation

¹¹ P3 EMP Comments at pp.4-5.



appreciates the opportunity to submit these comments, and looks forward to continued discussion with the State and all of its stakeholders regarding the EMP.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "D. Allegretti", written over a light blue grid background.

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*On behalf of
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