

**DRAFT Pre-Auction Letter of Credit**

**For use ONLY for the Letter of Credit Comment Process**

**DRAFT Pre-Auction Letter of Credit**

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: the Electric Distribution Companies (“EDCs”)  
c/o NERA Economic Consulting, Inc. (“NERA”)  
BGS Auction Manager  
One Gateway Center, Suite 720  
Newark, NJ 07102

The EDCs are all of the following:

Atlantic City Electric Company (“ACE”) and Jersey Central Power & Light Company (“JCP&L”) and Public Service Electric and Gas Company (“PSE&G”) and Rockland Electric Company (“RECO”)

1. We hereby establish in your favor this irrevocable Letter of Credit (this “Letter of Credit”) for the account of \_\_\_\_\_, an Applicant to the Part 2 Application process of the BGS Auction(s) who has successfully completed the Part 1 Application (the “Bidder”), in the amount of USD \$\_\_\_\_\_, effective immediately and available to you at sight upon demand by all of you at our counters at \_\_\_\_\_(Location) and expiring on \_\_\_\_\_ which is at least sixty (60) calendar days from date of issuance, unless terminated earlier in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Bidder, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 11 hereof. This Letter of Credit may be drawn by presenting documents required in Paragraph 3 hereof and your certificate stating that the Bidder
  - a) “has made a material omission or misrepresentation in the Part 1 Application or the Part 2 Application submitted to participate in the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Auction; or has violated the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Auction Rules (the “Rules”);” or
  - b) “has a winning bid in the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Auction and has failed to execute the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Supplier Master Agreement within three (3) business days of the certification of the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Auction results by the New Jersey Board of Public Utilities (“Board”) as specified in the Rules”; or
  - c) “has a winning bid in the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Auction and has failed to meet the creditworthiness requirements of the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Supplier Master Agreement within three (3) business days of the certification of the \_\_\_\_\_ [BGS-FP/BGS-CIEP] Auction results by the Board as specified in the Rules.”

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3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (New York, New York time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), (i) a notice in the form of Annex 1 hereto executed by an Authorized Officer of each EDC and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of the EDCs. Authorized Officer shall mean President, Treasurer, any Vice President or any Assistant Treasurer.
4. We hereby agree to honor a drawing hereunder made in compliance with the terms and conditions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such accounts at such banks in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (New York, NY time) on the date of such drawing if delivery of this requisite document is made prior to 11:00 A.M. (New York, NY time) on a Business Day pursuant to Paragraph 3 hereinabove, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite documents is made on or after 11:00 A.M. (New York, NY time) on any Business Day pursuant to Paragraph 3 hereinabove.
5. 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 prompt notice (not exceeding three (3) Business Days following the date of receipt of the documents) 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 stating 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.
6. This Letter of Credit shall automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 hereto, (iii) the above-stated expiration date hereof.
7. As used herein:  
“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.

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<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern Time zone, this time, all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly.

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8. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practices for Documentary Credits – 2007 revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
9. 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.
10. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ (“Bank”) satisfy the senior unsecured debt rating of “A” from Standard & Poor’s or “A2” from Moody’s.
11. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.
12. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_. Presentation by fax must be confirmed by telephone to our Standby Letter of Credit Unit at \_\_\_\_\_; provided, however, that should this telephone number change or become invalid such that the Standby Letter of Credit Unit cannot be reached by you at the above number at the time of fax presentation, the requirement of telephonic confirmation shall be waived and the faxed document(s) shall be considered operative and valid without such confirmation.
13. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
14. This original Letter of Credit has been sent to NERA, the BGS Auction Manager, at One Gateway Center, Suite 720, Newark, NJ 07102 (as per Bidder’s instructions, the BGS Auction Manager holds the Letter of Credit for the benefit of all EDCs). The aggregate amount paid to the EDCs 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 each of the EDCs. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Representative of the BGS Auction

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Manager on behalf of the EDCs. An Authorized Representative of the BGS Auction Manager means any Vice President or Senior Vice President of NERA.

Very truly yours,

(Bank)

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

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**DRAFT Pre-Auction Letter of Credit**  
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Annex 1 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are defined herein shall have the meanings ascribed thereto in the Letter of Credit;
2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned are entitled to make a drawing under the Letter of Credit in the amount of \$ \_\_\_\_\_, inasmuch as the Bidder has \_\_\_\_\_ (state reason from conditions (a) – (c) of Paragraph 2).
3. The amounts to be received by each EDC are \$ \_\_\_\_\_ for ACE, \$ \_\_\_\_\_ for JCP&L, \$ \_\_\_\_\_ for PSE&G and \$ \_\_\_\_\_ for RECO.
4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

ACE  
By \_\_\_\_\_  
Name:  
Title:  
Date:

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JCP&L

By \_\_\_\_\_

Name:

Title:

Date:

PSE&G

By \_\_\_\_\_

Name:

Title:

Date:

RECO

By \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Bidder)

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Annex 2 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

ON [Business Day pursuant to Paragraph 4]

PAY TO: EDC (ACE or JCP&L or PSE&G or RECO)

Attn:

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_ OF

(Bank)  
(Address)

EDC (ACE or JCP&L or PSE&G or RECO)

By \_\_\_\_\_

Name:

Title:

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Annex 3 to Letter of Credit

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

ACE  
By \_\_\_\_\_  
Name:  
Title:  
Date:

JCP&L  
By \_\_\_\_\_  
Name:  
Title:  
Date:

PSE&G  
By \_\_\_\_\_  
Name:  
Title:  
Date:

RECO  
By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ (Bidder)