



*State of New Jersey*

DEPARTMENT OF ENVIRONMENTAL PROTECTION

JON S. CORZINE  
*Governor*

LISA P. JACKSON  
*Acting Commissioner*

IN THE MATTER OF  
ATLANTIC CITY ELECTRIC COMPANY  
CONECTIV, and  
PEPCO HOLDINGS, INC.  
800 King Street  
WILMINGTON, DELAWARE 19801

ADMINISTRATIVE CONSENT ORDER

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The following FINDINGS are made and ADMINISTRATIVE CONSENT ORDER ("ACO") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP" or the "Department") by N.J.S.A. 13:1D-1 et seq., the Air Pollution Control Act of 1954, N.J.S.A. 26:2C-1 et seq., and the Spill Compensation and Control Act, 58:10-23.11 et seq., and duly delegated pursuant to N.J.S.A. 13:1B-4 to the Assistant Commissioners for Compliance and Enforcement, Site Remediation and Waste Management, Land Use Management, and Natural & Historic Resources.

### FINDINGS

1. The Department is a principal department in the Executive Branch of the State of New Jersey ("State") Government. N.J.S.A. 13:1D-1. It is directed to formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State. N.J.S.A. 13:1D-9. Specifically, the Department is directed to control air pollution in accordance with the provision of any applicable code, rule, or regulation promulgated by the Department for this purpose and has been granted the necessary powers to effect this purpose. N.J.S.A. 26:2C-9b. In addition, with the State being the Trustee, for the benefit of its citizens, of all natural resources within its jurisdiction, the Department is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.
2. Atlantic City Electric Company ("ACEC") owns and operates an electric utility steam generating facility, known as the B.L. England generating station, located in Beesley's Point, Upper Township, County of Cape May, State of New Jersey (ID# 73001). ACEC also owns

a facility in Egg Harbor Township, Atlantic County, New Jersey near Pleasantville, New Jersey ("Pleasantville").

3. The electric utility steam generating units at B.L. England are regulated by the Department pursuant to N.J.S.A. 26:2C-1 et seq., and the Department's rules at N.J.A.C. 7:27-1 et seq.
4. Conectiv Atlantic Generation, L.L.C. ("CAG"), an affiliate of ACEC, owns and operates the Deepwater generating station located in Pennsville, Salem County, New Jersey ("Deepwater").
5. ACEC is a direct wholly-owned subsidiary of Conectiv, and CAG is an indirect wholly-owned subsidiary of Conectiv. Conectiv, in turn, is a direct wholly-owned subsidiary of Pepco Holdings, Inc. (collectively, ACEC, CAG, Conectiv, and Pepco Holdings, Inc. are hereinafter the "Companies").
6. NJDEP alleges that the Companies undertook major modifications at B.L. England, a major emitting facility, in violation of the Air Pollution Control Act ("APCA"), N.J.S.A. 26:2C-1 et seq., and its implementing regulations, N.J.A.C. 7:27-8.1 et seq. and N.J.A.C. 7:27-18.1 et seq., and/or in violation of the Prevention of Significant Deterioration ("PSD") requirements in Part C of Title I of the federal Clean Air Act ("CAA"), 42 U.S.C. §§ 7470-7492, and its implementing regulations, 40 C.F.R. Part 52.21 et seq.
7. NJDEP further alleges that, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Companies are responsible for groundwater contamination at the Companies' B.L. England,

Deepwater, and Pleasantville Sites.

8. NJDEP and the Companies (collectively, the "Parties") wish to resolve the State's potential civil enforcement actions against the Companies for: (1) physical modifications that the Companies may have undertaken at their B.L. England plant in violation of the APCA and its implementing regulations and/or the federal CAA and its implementing regulations; and 2) Natural Resource Damages for groundwater contamination at the Companies' B.L. England, Deepwater, and Pleasantville Sites. The Parties also wish to address the Companies' responsibilities with regard to the sulfur content of coal at B.L. England Unit 1.
9. The Parties recognize that this ACO has been negotiated in good faith and at arm's length, that the Parties have voluntarily agreed to this ACO, that implementation of this ACO will avoid prolonged and complicated litigation between the Parties, and that this ACO is fair, reasonable, and consistent with the goals of the State's environmental laws, and in the public interest.

THEREFORE, without any admission of fact or law, and without any admission of liability for the violations alleged, the Parties order and agree as follows:

## **ORDER**

### **I. APPLICABILITY**

10. The provisions of this ACO shall apply to and be binding upon NJDEP, upon the Companies and their successors and assigns, and upon the Companies' officers, employees, and agents solely in their capacities as such. The Companies' obligations under this ACO are

independent of, and in addition to, any applicable requirements under federal and state law, including but not limited to those requirements set forth in existing and/or future operating permits issued by NJDEP to the B.L. England facility.

11. If, prior to the fulfillment of the Companies' obligations under this ACO, the Companies propose to sell or transfer any of the assets or operations of B.L. England, then the Companies shall advise the purchaser or transferee in writing of the existence of this ACO thirty (30) days before such sale or transfer and shall simultaneously send a copy of such written notification by certified mail, return receipt requested, to NJDEP and the New Jersey Office of the Attorney General. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of B.L. England.
12. If NJDEP agrees that: (1) the purchaser or transferee of the B.L. England generating station has the financial capability, technical capability, and recent history of compliance to justify a transfer of responsibility for (i) Natural Resource Damages except with respect to the claim for Natural Resource Damages settled in Paragraph 84 of this ACO, and (ii) the obligations applicable to the Unit(s) and/or B.L. England, other than remediation of discharges of Hazardous Substances at the B.L. England Site which is addressed in Paragraph 13 of this ACO; (2) the Companies and the purchaser or transferee have properly allocated any NOx or SO2 Allowances under this ACO that may be associated with the Unit(s) and the purchaser or transferee has agreed to Surrender NOx and SO2 Allowances as provided by this ACO; and (3) the purchaser or transferee has agreed contractually to assume responsibility for items (1)-(2) herein, then NJDEP may, in the exercise of its sole discretion, agree to a modification of this ACO such that the purchaser or transferee shall

be either i) solely responsible, or ii) jointly and severally responsible, for all unfulfilled requirements of items (1) and (2) herein. Notwithstanding any agreement pursuant to which a third party would (as between the Companies and said third party) assume responsibility for items (1) and (2) herein at B.L. England, in the event that the purchaser or transferee fails to fulfill the obligations assumed by agreement with the Companies, then nothing in this paragraph shall relieve the Companies of their responsibility for Natural Resource Damages for resources other than groundwater at B.L. England.

13. The Companies also are responsible for the ongoing remediation of discharges at the B.L. England, Deepwater and Pleasantville Sites. Should the Companies determine to sell or transfer all or part of B.L. England, Deepwater and Pleasantville to a third party, the Companies shall comply with all transfer procedures set forth in the Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq. and its implementing regulations. NJDEP shall approve the application for the remediation agreements upon the complete and accurate submission of the documents required to be submitted pursuant to subsection 13:1K-9(e). Upon approval of the application for remediation agreements by NJDEP, the Companies may transfer responsibility for the ongoing groundwater and soil remediation at the B.L. England, Deepwater and Pleasantville Sites to a purchaser or transferee that has agreed contractually to assume responsibility for such remediation. Notwithstanding any agreement pursuant to which a third party would (as between the Companies and said third party) assume responsibility for environmental remediation at the B.L. England, Deepwater and Pleasantville Sites, in the event that the purchaser or transferee fails to fulfill the obligations assumed by agreement with the Companies, then nothing in this paragraph shall relieve the Companies of their responsibility to complete the ongoing

environmental remediation at these Sites.

14. Notwithstanding anything set forth in paragraphs 12-13 of this ACO or any agreement related to the sale of the Unit(s) and/or B.L. England, the Companies shall remain liable (1) for the obligation under this ACO to pay to NJDEP \$674,162 in U.S. funds or property of equivalent ecological value for Natural Resource Damages for groundwater contamination at the B.L. England, Deepwater and Pleasantville Sites, as set forth in paragraph 84; and (2) the obligation under this ACO to perform Projects under Section VI (Other Equitable Relief).
15. To the extent it deems appropriate, NJDEP may, in the exercise of its sole discretion, incorporate the purchaser or transferee's obligations and liabilities under this ACO into the purchaser or transferee's permit(s).
16. Obligations or penalties imposed by this ACO are imposed pursuant to the police powers of the State of New Jersey for the enforcement of law and the protection of public health, safety, welfare and the environment. No obligations imposed by this ACO are intended to constitute a debt, claim, penalty or other civil action that could be limited or discharged in a bankruptcy proceeding. Obligations imposed by this ACO are not subject to the automatic stay of 11 U.S.C. § 362(a), but, instead, fall within the exemption from the automatic stay at 11 U.S.C. § 362(b) (4).

## II. DEFINITIONS

17. A "30-Day Rolling Average Emission Rate" shall be determined by calculating the Emission Rate for an Operating Day, and then arithmetically averaging that Emission Rate with the



Emission Rates for the previous twenty-nine (29) Operating Days. A new 30-Day Rolling Average shall be calculated for each new Operating Day.

18. A "24-Hour Emission Rate" shall be determined by dividing the total quantity of pollutant (given in pounds emitted) by the total heat input (given in BTUs) for a 24-hour Operating Day, starting and ending at 12 midnight. This rate shall be determined by using a certified Continuous Emissions Monitoring System ("CEMs"). For any period of time where emissions data is not available, the emissions shall be determined by using the pounds per million BTU of heat input (lb/mmBtu) rate for the nearest hour where approximately the same number of BTUs per hour (i.e., within 10%) were being burned. That emission rate for the nearest hour shall be multiplied by the number of BTUs burned during the period of missing emissions data to derive the approximate emissions for the missing time period.
19. "ACO" means this Administrative Consent Order.
20. "Air Pollution Control Act" or "APCA" means the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and its implementing regulations.
21. "B.L. England" means the electric generating plant, owned and operated by the Companies and located in Beesley's Point, Upper Township, Cape May County, New Jersey, which includes one Babcock & Wilcox coal-fired cyclone boiler with a maximum rated heat input capacity of 1300 mmBtu/Hr and a maximum rating of 129 MW ("Unit 1"); one Babcock & Wilcox coal-fired cyclone boiler with a maximum rated heat input capacity of 1600 mmBtu/Hr and a maximum rating of 160 MW ("Unit 2"); one Combustion Engineering oil-fired tangential boiler with a maximum rated heat input capacity of 1720 mmBtu/Hr and a

maximum rating of 160 MW ("Unit 3"); four 2 MW diesel units; all of which are located on the B.L. England Property; and for purposes of NJDEP's right of first refusal in Paragraph 81(c) only, (i) the B.L. England Property, (ii) Block 479, Lot 74 and that portion of Lot 76 not included in the B.L. England Property, and (iii) if a Third Party Agreement as provided in Paragraph 81(c) also provides for the sale of Block 479, Lots 94.01, 97, 98 and 99, then Block 479, Lots 94.01, 97, 98 and 99 shall be considered B.L. England.

22. "B.L. England Property" means the real property located at 900 North Shore Road, Beesley's Point, Upper Township, Cape May County, New Jersey 08223, designated on the tax map for Upper Township as Block 479, Lot 76.01 and part of Lot 76, to the extent within the boundary drawn on the ALTA/ACSM Land Title Survey dated October 25, 1999 attached hereto as Exhibit A and subject to easement rights to be retained by the Companies for transmission lines, distribution lines, communications facilities, rail lines and substations.
23. "B.L. England Site" means the real property located at 900 North Shore Road, Beesley's Point, Upper Township, Cape May County, New Jersey 08223, designated on the tax map for Upper Township as Block 479, Lots 74, 76, 76.01, 94.01, 97, 98, 99, and Block 661, Lot 81.
24. "BPU" means the New Jersey Board of Public Utilities or any successor agency
25. "CAA" or the "Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. § 7401 et seq. and its implementing regulations.
26. "CAFRA" means the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and its implementing regulations.

27. "Cardiff substation" means the substation in Egg Harbor Township in Atlantic County.
28. "Cedar substation" means the substation in Stafford Township in Ocean County.
29. "CEMS" or "Continuous Emission Monitoring System," for obligations involving NO<sub>x</sub> and SO<sub>2</sub> under this ACO, means "CEMS" as defined in 40 C.F.R. Part 72.2 and installed and maintained as required by 40 C.F.R. Part 75.
30. "COC Project" means the modification of the Cardiff and Oyster Creek substations and expansion of the Cedar substation and the upgrade of the 53 mile transmission line that extends from a) the Cardiff substation in Egg Harbor Township, Atlantic County, b) across the southeastern part of Burlington County, c) through the Cedar substation in Stafford Township, Ocean County, and d) terminates at the Oyster Creek substation in Lacey Township, Ocean County.
31. "Compensate Electrically" means the electric system requirements necessary to fulfill the duty set forth in N.J.A.C. 14:3-3.1 to furnish safe, adequate, and proper service.
32. "Conserve" means to preserve natural resources after B.L. England is Shut Down and Dismantled.
33. "Current Auction Process" means the Companies' efforts to sell B.L. England as described in the June 15, 2005 [Confidential] Offering Memorandum for the Proposed Sale of Certain Atlantic City Electric Company Fossil Generating Assets, prepared for the Companies by Concentric Energy Advisors.
34. "Deepwater" means the electric generating plant, owned and operated by the Companies and

located in Pennsville, Salem County, New Jersey.

35. "Deepwater Site" means the real property at 373 North Broadway, Pennsville, Salem County, New Jersey 08070, designated on the tax map for Pennsville as Block 202, Lot 2, Block 203, Lot 8, and Block 301, Lots 6, 8, 12, 13, 13.01, 15, and 15.01.
36. "Dennis substation" means a new substation that the Companies must construct in Dennis Township, Cape May County, New Jersey in order to Compensate Electrically for the Shut Down of B.L. England and/or to otherwise fulfill the duties set forth at N.J.A.C. 14:3-3.1 to furnish safe, adequate, and proper service.
37. "Dismantle" and "Dismantling" mean removal of all aboveground structures, to the structure's slab or foundation. If there is no discharge of Hazardous Substances from subsurface structures, "Dismantle" also means in-place abandonment of these subsurface structures, using fill as necessary to stabilize voids and spaces, consistent with BPU decisions and orders regarding cost recovery. If there is a discharge of Hazardous Substances from subsurface structures, what constitutes "Dismantling" of these subsurface structures will be determined on a case-by-case basis by the NJDEP Site Remediation Program.
38. "Emission Rate" means the number of pounds of pollutant emitted per million Btu of heat input ("lb/mmBtu") or pounds of pollutant emitted per hour ("lb/hr").
39. "EPA" means the United States Environmental Protection Agency.
40. "FWW Permits" means the Freshwater Wetlands Permit and Special Activity Transition Area Waiver for the 69kV and 230kV power line upgrades of the Cedar substation-to-Oyster Creek

substation portion of the COC Project.

41. "Hazardous Substances" means hazardous substances as defined by the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11b(k).
42. "Industrial Site Recovery Act" or "ISRA" means the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. and its implementing regulations.
43. "January 30, 2004 B.L. England coal reauthorization" means the Permit/Certificate to allow combustion of coal with a mean sulfur content of up to 1.70% (12-month rolling average) and up to 1.90% (monthly) in Unit 1 of B.L. England Generating Station dated January 30, 2004.
44. "lb/mmBtu" means pounds per million British Thermal Units of heat input, based upon higher heating value.
45. "May 29, 2003 B.L. England coal reauthorization" means the letter authorization from William O'Sullivan, P.E., Director, Division of Air Quality, NJDEP regarding coal combustion in Unit 1 of B.L. England Generating Station dated May 29, 2003.
46. "MW" means a megawatt, or one million Watts.
47. "Natural Resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust, or otherwise controlled by the State.
48. "Natural Resource Damages" means any and all claims for lost value of, injury to, or destruction of, ground water, or for the restoration to compensate the citizens of New Jersey for the injuries to ground water, arising from discharges of Hazardous Substances

that occurred at the B.L. England, Deepwater and Pleasantville Sites prior to the Effective Date of this ACO. Natural Resource Damages include all claims for assessments, attorney's fees, consultant's or expert fees, interest, or any other expenses or compensation, injunctive relief, and administrative remedies, recoverable as Natural Resource Damages for injuries to ground water under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Spill Compensation and Control Act, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., or any other state or federal common law, statute, or regulation. However, Natural Resource Damages shall not include:

- (i) any damages as a result of injuries to any natural resource other than ground water,
- (ii) compliance, during remediation of a discharge, with any statutory or regulatory requirement that is not within this definition of Natural Resource Damages, for example, without limitation, the mitigation of freshwater wetlands as required by N.J.A.C. 7:7A, or
- (iii) the restoration or other compensation for injury to any natural resource, including ground water, caused after the Effective Date of this Administrative Consent Order, by implementation of any remedial action, including a compensatory restoration remedial action, at any of the Sites.

49. "Natural Resource Injuries" or "Injured Natural Resources" means any adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from contamination, and includes, without limitation, the damage to, or the loss, destruction, or impairment of, a Natural Resource or a Natural Resource Service.

50. "Natural Resource Services" means all ecological and human services, processes, and functions that natural resources provide as a result of their location, quantity, and their physical, chemical and biological quality. Ecological services include the physical, chemical, and biological processes, functions, and services that one Natural Resource provides for another Natural Resource. Human services include the processes and functions of Natural Resources that provide economic, social, ecological, or other value to the present and future citizens of New Jersey.
51. "NJDEP" means the New Jersey Department of Environmental Protection.
52. "NOx" means oxides of nitrogen, as measured in accordance with the provisions of this ACO.
53. "NOx Allowance" means a tradeable unit which represents a limited authorization by the State or EPA under an air pollution control program, including the Clean Air Interstate Rule, to emit up to one ton of NOx during a control period.
54. "Operating Day" for a Unit means any calendar day on which the Unit fires coal.
55. "Oyster Creek substation" means the substation in Lacey Township in Ocean County.
56. "Peak reliability periods" for operation of B.L. England Unit 1 are defined as those times between June 1 and September 30 for the years 2008 through 2012, respectively, during which the PJM Interconnection, LLC schedules B.L. England Unit 1 to be operated for electric system reliability purposes.
57. "Performance Standards" means a) a 30-day rolling average emission rate of no greater than 0.150 lbs/mmBtu and no greater than 0.250 lbs/mmBtu based on a 24-hour emission rate for

SO<sub>2</sub>; b) a 30-day rolling average emission rate of no greater than 0.130 lbs/mmBtu and no greater than 0.150 lb/mmBtu based on a 24-hour emission rate for NO<sub>x</sub>; and c) a 30-day rolling average emission rate of no greater than 0.030 lbs/mmBtu for total particulate matter.

58. "Pleasantville" means the facility owned and operated by the Companies and located near Pleasantville in Egg Harbor Township, Atlantic County.
59. "Pleasantville Site" means the real property at 2542 Fire Road, Egg Harbor Township, Atlantic County, New Jersey 08234, designated on the tax map for Egg Harbor Township as Block 801, Lot 4.
60. "PM" means total particulate matter, as measured in accordance with the provisions of this ACO.
61. "PM Emission Rate" means the average number of pounds of PM emitted per million Btu of heat input ("lb/mmBtu"), as measured in annual stack tests in accordance with New Jersey Air Test Method 1, "Sampling and Analytical Procedures for Determining Emissions of Particles from Manufacturing Processes and from Combustion of Fuels," N.J.A.C. 7:27B-1 et seq.
62. "Pollution control project" or "PCP" shall have the same meaning as the phrase "pollution control project" in 40 C.F.R. § 52.21.
63. "Project Dollars" means the Companies' expenditures and payments incurred or made in carrying out the projects identified in Section VI--Other Equitable Relief -- to the extent that such expenditures or payments both: (a) comply with the Project Dollar and other



requirements set forth in Section VI - Other Equitable Relief - for such expenditures and payments; and (b) constitute the Companies' documented external costs for contractors, vendors, as well as equipment, and its internal costs consisting of employee time, travel, and other out-of-pocket expenses specifically attributable to these particular Projects.

64. "Repower" means the replacement of an existing coal-fired boiler with a new heat source (e.g. natural gas or distillate oil), or new coal-combustion technology (e.g. circulating fluidized bed boilers or integrated gasification combined-cycle ("IGCC") technology).
65. "Required Regulatory Approval" is an approval, permit, or authorization without which B.L. England may not be Shut Down, and consists of approvals, permits or authorizations from the following: the Army Corps of Engineers, the New Jersey Board of Public Utilities ("BPU"), NJDEP, the Pinelands Commission, state and local approvals necessary for transmission line crossings over state highway or county roads together with any foundations constructed in the course of building such crossings, and approvals of local and county agencies necessary for construction of the Dennis substation. With regard to BPU, "Required Regulatory Approval" consists only of those approvals, permits, or authorizations necessary to construct the Dennis substation. With regard to the Pinelands Commission, "Required Regulatory Approval" consists only of those approvals, permits, or authorizations necessary to modify and/or construct transmission lines and/or substations within the State Pinelands Management Area and, as necessary, the Pinelands National Reserve. With regard to state and local approvals necessary for road crossings of transmission lines and any foundations constructed in the course of building such crossings, "Required Regulatory Approval" consists only of those approvals, permits, or authorizations necessary to modify and/or construct transmission lines,

without which B.L. England may not be Shut Down, across state highways, including the Garden State Parkway, or across county roads, plus those approvals, permits or authorizations necessary to construct foundations for any of the foregoing state highway or county road crossings.

66. "Restoration" means any remedial action, or combination of remedial actions, to restore, rehabilitate, replace, or acquire the equivalent of Injured Natural Resources and Natural Resource Services. Restoration includes: primary restoration, which is a remedial action, or combination of remedial actions, including natural recovery, that seeks to return an Injured Natural Resource or Natural Resource Service to its pre-discharge quality, quantity, function, and value; and compensatory restoration, which is a remedial action, or combination of remedial actions, but not including natural recovery, that compensates the present and future citizens of New Jersey for injuries to their Natural Resource.
67. "Ship Bottom substation" means the substation in the City of Ship Bottom in Ocean County, New Jersey.
68. "Shut Down" means permanently cease operation of.
69. "SO<sub>2</sub>" means sulfur dioxide, as measured in accordance with this ACO.
70. "SO<sub>2</sub> Allowance" means "Allowance" as defined at 42 U.S.C. § 7651a(3): an authorization, allocated to an affected Unit by the Administrator of EPA under the CAA Subchapter IV-A Acid Deposition Control, to emit, during or after a specified calendar year, up to one ton of sulfur dioxide.

71. "Surrender of Allowances" means permanently surrendering NO<sub>x</sub> and SO<sub>2</sub> Allowances such that these Allowances can never be used to meet any compliance requirement under the CAA, the APCA and its implementing regulations, the New Jersey State Implementation Plan ("SIP"), or any other federal or NJDEP program now existing or subsequently enacted.
72. "Third Party Agreement" shall refer to an agreement to sell B.L. England or the B.L. England Property to a person or entity other than NJDEP or a charitable conservancy, which agreement includes as a condition a right of first refusal in favor of NJDEP for the B.L. England Property as set forth in Section VII (Land Dedication) of this ACO.
73. "Title V Permit" means the permit required of B.L. England under Subchapter V of the CAA, 42 U.S.C. §§7661-7661e and N.J.A.C. 7:27-22 that the Department issued on December 30, 2005.
74. "True-Up" means 1) the permanent withdrawal of SO<sub>2</sub> Allowances from an SO<sub>2</sub> Allowance account to satisfy the compliance requirements of the Clean Air Act, including the Acid Rain program, 40 C.F.R. Parts 72 and 73, and the Clean Air Interstate Rule, any federal or state rules implementing the Clean Air Interstate Rule, and any other provisions of the Clean Air Act pertaining to SO<sub>2</sub> Allowances; and 2) the permanent withdrawal of NO<sub>x</sub> Allowances from a NO<sub>x</sub> Allowance account to satisfy the end of season reconciliation requirements of the NO<sub>x</sub> Budget Trading program and the Clean Air Interstate Rule, any federal or state rules implementing the Clean Air Interstate Rule, and any other provisions of the Clean Air Act pertaining to NO<sub>x</sub> Allowances.
75. "Unit" means any part of B.L. England that emits or would have the potential to emit any

regulated New Source Review pollutant, as defined in 40 C.F.R. Part 52, consistent with the definition of "emissions unit" in 40 C.F.R. § 52.21.

76. "Watts" means amperes times volts.

### **III. SHUT DOWN OR REPOWERING OF FACILITY**

77. Contingent upon the Companies receiving all Required Regulatory Approvals necessary for the construction of substation and transmission facilities to Compensate Electrically for the Shut Down of B.L. England, and provided that these substations and transmission facilities are in service, the Companies shall completely Shut Down B.L. England by December 15, 2007.
78. The Companies shall work expeditiously towards obtaining all Required Regulatory Approvals and constructing and putting into service the substation and transmission facilities that are needed to Compensate Electrically for the Shut Down of B.L. England.
79. NJDEP agrees to make an expeditious determination on all administratively complete applications for NJDEP permits necessary for the construction, expansion and operation of substation and transmission facilities needed to Compensate Electrically for the Shut Down of B.L. England. NJDEP agrees to conduct its review in parallel with other reviewing authorities.
80. Except as provided in this Paragraph 80, at no time prior to December 15, 2007 may the Companies undertake at B.L. England a physical or operational change that would require a permit under subchapter 18 of the New Jersey Administrative Code, N.J.A.C. 7:27-18.1 et

seq., or the Prevention of Significant Deterioration provisions of the Clean Air Act, 42 U.S.C. §§ 7470-7492, or the New Source Performance Standards of the Clean Air Act, 42 U.S.C. § 7411, and EPA's implementing regulations, as delineated in WEPCo v. Reilly, 893 F.2d 901 (7<sup>th</sup> Cir. 1990). Notwithstanding the foregoing, the Companies may make physical or operational change(s) at B.L. England in order to meet the requirements of this ACO, including any work necessary to Shut Down B.L. England or to facilitate the construction of substation and transmission facilities to Compensate Electrically for the Shut Down of B.L. England, as well as to satisfy the provisions of Section IV (Groundwater: Cleanup and Natural Resource Damages) and Section XII (Stipulations and Preservation of Rights). As necessary, the Companies shall apply for any APCA and CAA permits required for the physical or operational changes contemplated by this paragraph. In addition, if the Companies need an APCA and/or CAA permit to operate an emergency generator and its associated fuel storage tank to support a communications tower at B.L. England, the Companies shall apply for any such necessary APCA and CAA permits. The Department agrees to make an expeditious determination on all administratively complete permit applications submitted pursuant to this paragraph.

81. The Companies represent that their decision to Shut Down B.L. England is irrevocable and cannot be reversed or changed by the Companies for any reason, including economics, except for 1) a State or Federal mandate to continue operations, or 2) a failure--through no fault of their own--to obtain all Required Regulatory Approvals to construct, expand, and operate substation and transmission facilities needed to Compensate Electrically for the Shut Down of B.L. England. Notwithstanding the foregoing, the Companies may sell or transfer the assets or operations of B.L. England in accordance with Section I (Applicability) of this ACO to a

third party that (1) agrees to satisfy all the requirements under this ACO that are applicable to B.L. England, including the Performance Standards set forth in Section XII (Stipulations and Preservation of Rights), (2) agrees to Repower B.L. England, or (3) agrees to Shut Down B.L. England and use B.L. England for some purpose other than the generation of electricity. If such third party meets the Performance Standards set forth in Section XII (Stipulations and Preservation of Rights) or Repowers as required by this ACO, there shall be no obligation on the part of such third party to Shut Down B.L. England, irrespective of the status of any Required Regulatory Approvals relating to Shut Down by the Companies. A Repowered Unit shall incorporate advances in the art of air pollution control (state-of-the-art technology) that NJDEP and/or EPA determines appropriate under applicable laws and regulations, including N.J.S.A. 26:2C-9.2(c).

82. Any purchaser or transferee of the Companies' interest in B.L. England shall advise NJDEP by December 15, 2007 of any election to Repower B.L. England, and shall Repower B.L. England by December 15, 2011. If there is an election to Repower B.L. England, NJDEP prefers the use of IGCC technology and agrees to make an expeditious determination on all administratively complete applications for NJDEP permits necessary for the construction and operation of a plant using IGCC technology.
83. Consistent with BPU decisions regarding cost recovery and otherwise, the Companies shall complete all Dismantling of B.L. England within a reasonable time--as described by the Companies in reports required by Section XX (Progress Reports) of this ACO--following Shut Down. The Companies shall remediate the B.L. England Site pursuant to applicable laws and regulations. The Companies shall not be required to Dismantle the wastewater treatment

plant, rail line, sanitary facilities, and other facilities useful for remediation and/or monitoring until NJDEP issues a No Further Action letter for the remediated portion of the B.L. England Site. Nothing in this paragraph shall be construed to require the dismantling of, or prohibit the construction of, substations, transmission lines, communication facilities, distribution structures, rail lines, roads, or other facilities necessary to enable the Companies to provide safe, adequate, and proper service.

**IV. GROUNDWATER: CLEAN UP AND NATURAL RESOURCE DAMAGES**

84. In resolution of NJDEP's Natural Resource Damages claims for groundwater contamination arising from discharges of Hazardous Substances prior to the effective date of this ACO at the B.L. England, Deepwater, and Pleasantville Sites, the Companies shall 1) within 45 days of the effective date of this ACO make a one-time payment to NJDEP of \$674,162 in U.S. funds or property of equivalent ecological value, and 2) remediate the groundwater contamination at these facilities pursuant to applicable statutory and regulatory standards.
85. When the Companies submit documentation in accordance with the New Jersey Technical Regulations for Site Remediation, N.J.A.C. 7:26E, demonstrating to NJDEP's satisfaction that the Companies have achieved "applicable statutory and regulatory standards" for groundwater remediation, as well as all other applicable remediation standards, and have otherwise met the requirements for No Further Action letters in N.J.A.C. 7:26C-2.6 at each of these sites, NJDEP will expeditiously issue No Further Action letters concerning groundwater contamination for that site.

86. This Section IV (Groundwater: Clean Up and Natural Resource Damages) is expressly limited to clean up of groundwater contamination and resolution of Natural Resource Damages for groundwater contamination at the B.L. England, Deepwater and Pleasantville Sites. Nothing herein resolves any Natural Resource Damages that may be brought against the Companies for damages to, or loss of, Natural Resources other than groundwater. Similarly, nothing herein addresses the Companies' obligations under State or federal law to restore Natural Resources other than groundwater.
87. The Companies agree that the Natural Resource Damages settlement values for the B.L. England, Deepwater, and Pleasantville Sites reflected in this ACO are premised on current and future compliance with all lawfully imposed requirements for remediation that are protective of human health and the environment at these sites. The Companies' failure to comply with these remediation requirements may give rise to additional Natural Resource Damages to the extent that the noncompliance either creates or increases the scope or duration of any Natural Resource Injuries. The Department expressly reserves its right to pursue the Companies for any Natural Resources Injuries, including ground water, that are exacerbated by such noncompliance. For purposes of this paragraph, the current scope of Natural Resource Injuries is set forth in the initial Natural Resource Damages Assessment of Groundwater Contamination, the schedule of which is attached to the Parties' April 26, 2004 letter agreement.

#### V. CIVIL PENALTY

88. Based on the FINDINGS and in resolution of the Companies' alleged violations at B.L. England of (i) the APCA permit provisions, N.J.S.A. 26:2C-1 et seq., and its implementing



regulations, N.J.A.C. 7:27-8.1 et seq. and N.J.A.C. 7:27-18.1 et seq.; and/or (ii) the Prevention of Significant Deterioration provisions of the CAA, 42 U.S.C. §§ 7470-7492, and their implementing regulations, 40 C.F.R. §52.21 et seq., the Companies paid a penalty of \$750,000 to NJDEP on June 1, 2004. The check was made payable to the "Treasurer, NJDEP of New Jersey," and remitted with the associated invoice to the Department of Treasury, Division of Revenue, P.O. Box 417, Trenton, NJ 08625-0417.

89. Compliance with the terms of this ACO and payment of the \$750,000 penalty described in Paragraph 88 shall satisfy any and all civil penalties associated with the Companies' alleged violations of 1) the APCA, N.J.S.A.26:2C-1 et seq. and its implementing regulations, N.J.A.C. 7:27-8.1 et seq. and N.J.A.C. 7:27-18.1 et seq., that may have arisen from any physical or operational changes that the Companies may have undertaken at B.L. England prior to the effective date of this ACO; and 2) any claims that NJDEP could bring against the Companies under the Citizen Suit provisions of the federal CAA for alleged violations of the PSD provisions, 42 U.S.C. §§ 7470-7492, and their implementing regulations, 40 C.F.R. §52.21 et seq., arising from any physical or operational changes that the Companies may have undertaken at B.L. England prior to the effective date of this ACO.

## **VI. OTHER EQUITABLE RELIEF**

90. In addition to paying the civil penalty as required above in Section V (Civil Penalty) of this ACO, the Companies shall undertake projects to benefit the environment ("Projects") valued at \$2 million (plus or minus \$50,000). As an example, the Companies may fulfill this responsibility to undertake \$2 million in Projects by Conserving or donating all or part of the B.L. England Property to protect the B.L. England Property from sprawl, vehicular

traffic, and the siting of other sources of air pollution. Such Conservation or donation shall not relieve the Companies of their obligations a) under State or federal law, b) under Section IV of this ACO ("Groundwater: Clean Up and Natural Resource Damages") and c) to remediate contamination at the B.L. England Site. Any Conservation or donation of B.L. England Property shall be subject to the requirements of the BPU to obtain approval for the sale or transfer of assets. Within one year of the effective date of this ACO, the Companies shall submit Project proposals outlining how they will spend all Project Dollars or communicate in writing to NJDEP whether they will fulfill their responsibilities under this section by Conserving or donating a portion of the B.L. England Property of equivalent value. The Companies shall maintain for review by NJDEP, upon request, all documents identifying Project Dollars spent by the Companies. All plans and reports prepared by the Companies or by other persons pursuant to the requirements of this section of the ACO shall be publicly available from the Companies, without charge, for two years after the approval or disapproval of the Project(s).

91. All Project proposals must be approved by NJDEP, which approval NJDEP will not unreasonably withhold. In determining whether to approve or disapprove any Project, NJDEP will consider whether the Project secures as much environmental and/or health benefit as possible for Project Dollars expended. Similarly, in carrying out the Projects, the Companies shall use good faith efforts to secure as much environmental and/or health benefit as possible for the Project Dollars expended. Compliance with an approved Project proposal shall constitute such good faith efforts. NJDEP will approve or disapprove administratively complete Project proposals within 90 days of receipt. If NJDEP either does not approve of any of the Projects or wishes the Companies to modify any of them, the Companies shall,

within 90 days of such disapproval or request to modify, respond by modifying their proposals or submitting new Project proposal(s). This process of submittal by the Companies and determination by NJDEP shall continue in 90 day intervals until Projects valued at \$2 million (plus or minus \$50,000) are approved by NJDEP.

92. The Companies shall certify, as part of each Project proposal, that as of the date of the submittal of the proposal, they were unaware of any person or entity that was required by law to perform the Project described in the proposal. This requirement to certify that no other person or entity is required by law to perform the Project shall not apply in the event that the Companies make a commitment to Conserve or donate all or part of the B.L. England Property to protect it from sprawl, vehicular traffic, and the siting of other sources of air pollution. Within 60 days following the completion of each approved Project, the Companies shall submit to NJDEP a report that documents the date that the Project was completed, the results of implementing the Project, including the emission reductions or other environmental benefits achieved, and the Project Dollars contributed for the implementation of the project. If NJDEP deems the Project to be complete, the Companies' satisfactory completion of this report shall fulfill all of the Companies' responsibilities regarding the completion of that Project and all reporting requirements of this ACO regarding that Project.
93. If the Companies elect to undertake a Project by contributing funds to another person or instrumentality that will carry out the Project, that person or instrumentality must identify in writing: (a) its legal authority for accepting such funding; and (b) its legal authority to conduct the Project for which the Companies contribute the funds. Regardless of whether the Companies elect to undertake a Project by themselves or to do so by contributing funds to

another person or instrumentality that will carry out the Project, the Companies acknowledge that they will receive credit for the expenditure of such funds as Project Dollars only if the Companies demonstrate that the funds have actually been contributed to such person or instrumentality and that such contributions met all requirements of this section of this ACO.

## **VII. LAND DEDICATION**

94. In accordance with Section VI ("Other Equitable Relief") of this ACO, and subject to the requirements of the BPU to obtain approval for the sale or transfer of assets, the Companies may Conserve or donate all or part of the B.L. England Property, as defined herein, to protect the B. L. England Property from sprawl, vehicular traffic, and the siting of other sources of air pollution. For any portion of the B.L. England Property not Conserved or donated to the State, the Companies, subject to the requirements of the BPU to obtain approval for the sale or transfer of assets, shall give NJDEP and/or a charitable conservancy (as defined in N.J.S.A. 13:8B-2(a)) a "right of first offer," i.e., the opportunity to purchase such portion before the B.L. England Property is marketed to any other entity or person (except in the context of the Current Auction Process as described in b) and c) below), and shall give NJDEP a "right of first refusal," i.e. retention of a right to purchase such portion of the B.L. England Property for a limited period (except in the context of the Current Auction Process as described in b) below), as follows:

- a. The Companies Shut Down and Dismantle B.L. England: If the Companies Shut Down and Dismantle B.L. England, the Companies shall give NJDEP and/or a charitable conservancy an opportunity for six (6) months from the completion of the Dismantling of B.L. England to negotiate an agreement for the purchase of the B.L.

England Property. If the Companies and NJDEP or a charitable conservancy are not able to reach agreement during this six (6) month period, the Companies thereafter may seek bids from other persons or entities. If as a result of such bids, one or more of the Companies enter into a Third Party Agreement (which agreement shall incorporate as a condition NJDEP's right of first refusal as set forth in this Paragraph 94(a)), then NJDEP shall have forty-five (45) days from the date it receives written notice that the Companies have entered into such Third Party Agreement to execute an agreement with the relevant Companies to purchase the B.L. England Property at the price set forth in such Third Party Agreement and on terms and conditions no less favorable to the Companies than those contained in such Third Party Agreement, including the assumption of any environmental liabilities in such Third Party Agreement. If NJDEP does not execute such an agreement to purchase the B.L. England Property within the forty-five (45) day time period set forth herein, NJDEP's and any charitable conservancy's right of first offer and NJDEP's right of first refusal are extinguished.

- b. The Companies Sell B.L. England Through the Current Auction Process to an Entity Committing Either to Repower B.L. England or to Satisfy the Performances Standards in Accordance with this ACO: If as a result of the Current Auction Process one or more of the Companies enter into an agreement for the purchase of B.L. England with a person or entity that commits either to Repower B.L. England or to satisfy the Performance Standards set forth in Section XII (Stipulations and Preservation of Rights) in accordance with this ACO, then neither NJDEP nor any other person or entity shall have any right of first offer or right of first refusal with respect to B.L. England.

- c. The Companies Sell B.L. England Through Current Auction Process to an Entity Not Committing Either to Repower B.L. England or to Satisfy the Performance Standards in Accordance with this ACO: If as a result of the Current Auction Process one or more of the Companies enter into a Third Party Agreement (which agreement shall incorporate as a condition NJDEP's right of first refusal as set forth in this Paragraph 94(c)) with a person or entity that does not commit to either Repower B.L. England or to satisfy the Performance Standards set forth in Section XII (Stipulations and Preservation of Rights) in accordance with this ACO, then NJDEP shall have forty-five (45) days from the date it receives written notice that the Companies have entered into such Third Party Agreement to execute an agreement with the relevant Companies to purchase B.L. England at the price set forth in such Third Party Agreement and on terms and conditions no less favorable to the Companies than those contained in such Third Party Agreement, including the assumption of any environmental liabilities in such Third Party Agreement. If NJDEP does not execute such an agreement to purchase B.L. England within the forty-five (45) day time period set forth herein, NJDEP's right of first refusal is extinguished.

#### **VIII. CLEAN WATER ACT SECTION 316(b)**

95. Current EPA regulations implementing Section 316(b) of the Clean Water Act (CWA") were published in final form on Friday, July 9, 2004, 69 Fed. Reg. 41576 and are codified at 40 C.F.R. Parts 9, 122, et seq. These new regulations apply to B.L. England.
96. NJDEP issued a final NJPDES renewal permit (NJ005444) for B.L. England on February 4, 2005. In accordance with the schedule in this permit, the Companies shall submit all required

studies necessary to meet federal Section 316(b) requirements or any other requirements of the NJPDES permit.

97. The Parties recognize that New Jersey is unable to waive federal Section 316(b) requirements. However, if B.L. England operations do in fact cease by December 15, 2007, Section 316(b) requirements will no longer be applicable because intake of cooling water in excess of 50 million gallons per day will no longer occur as of the date of plant Shut Down. If the Companies are unable to Shut Down B.L. England by December 15, 2007 in accordance with paragraph 77 of this ACO because of 1) a failure--beyond the Companies' control--to obtain all Required Regulatory Approvals, or 2) a State or federal mandate to continue operating B.L. England, NJDEP will, within the limits of its delegated authority to implement the CWA and consistent with the Parties' April 26, 2004 letter agreement, consider an application from the Companies for a major or minor permit modification to extend the schedule of Section 316(b) requirements articulated in the above-referenced NJPDES renewal permit until December 31, 2010 . If B.L. England does not Shut Down by December 15, 2007 and no permit modification is granted, the Companies will be required to adhere to any Section 316(b) requirements articulated in the above-referenced NJPDES renewal permit except as NJDEP may otherwise determine within the limits of its delegated authority and discretion to implement the CWA.

#### **IX. B.L. ENGLAND COAL REAUTHORIZATION**

98. B.L. England shall combust coal at Unit 1 with a sulfur content of not greater than 1.90% (monthly) and 1.70% (12-month rolling average) in accordance with the terms set forth in the May 29, 2003 B. L England coal reauthorization and January 30, 2004 B.L. England coal

reauthorization as amended by this Section IX. Combustion of coal in compliance with the terms set forth in these two coal reauthorizations, as extended by NJDEP, and as amended by this Section IX shall be deemed to satisfy all future Unit 1 coal sulfur content standards under N.J.A.C. 7:27-10.2 until a) Unit 1 is Shut Down, or b) December 15, 2012, whichever date is sooner. NJDEP shall not require new short-term SO<sub>2</sub> emission limits for Unit 1 or strategies for developing such limits prior to December 15, 2012, and the Companies are hereby relieved of the provisions of Attachment 1, Sections IV.B.1 (last paragraph only) and IX.D, of the January 30, 2004 B.L. England coal reauthorization regarding short-term SO<sub>2</sub> emission limits and compilation of short-term SO<sub>2</sub> emissions data. The SO<sub>2</sub> emission limits of 7,182 lbs/hr and 1852 parts per million on a dry volume basis corrected to 7% oxygen remain unchanged and the Expiration Date of the May 29, 2003 B.L. England coal reauthorization and January 30, 2004 B.L. England coal reauthorization shall be extended until a) Unit 1 is Shut Down, or b) December 15, 2012, whichever date is sooner. In addition, in consideration of the Companies' commitment to Shut Down Unit 1, this ACO relieves the Companies from the provisions of the second paragraph of the May 29, 2003 B.L. England coal reauthorization (Application for Renewal) and Attachment 1, Conditions 6 (Efforts to Continue to Reduce Sulfur Dioxide Emissions) and 7 (Annual Report).

99. In the event that the Companies do not elect to Repower and are unable to Shut Down Unit 1 in accordance with Section III ("Shut Down or Repowering of Facility") of this ACO and must instead meet the SO<sub>2</sub> Performance Standard outlined in Section XII ("Stipulations and Preservation of Rights") of this ACO, the Companies shall comply with the requirements of N.J.A.C. 7:27-10.2(a)-(c) by December 15, 2012 or any extension of this deadline granted by



NJDEP pursuant to Section XXI ("Force Majeure") of this ACO.

100. To determine compliance with the mean sulfur content of 1.90% (monthly) and 1.70% (12-month rolling average) sulfur in coal limits, the Companies shall utilize the following procedures to account for downtime of Unit 1: The 1.90% monthly average shall only include any month with 15 days or more of coal burning, including partial days. The 1.70% annual average (12-month rolling average) shall only include consecutive rolling months (excluding those months with less than 15 days of coal burning, including partial days) where 15 days or more of coal burning, including partial days, occurred.
101. No later than 10 business days after the effective date of this ACO, the Companies shall withdraw the applications for contested case hearings in Atlantic City Electric Company, B.L. England Station v. NJDEP, OAL Dkt. No. EEQ 2999-03 and Atlantic City Electric Company v. NJDEP, Bureau of Operating Permits, OAL Dkt. No. EEQ 5221-04 regarding the combustion of coal at B.L. England Unit 1 with a maximum sulfur content in excess of 1%.

**X. CAFRA AND FRESHWATER WETLANDS PROTECTION ACT**  
**PERMITS**

102. On October 1, 2004, NJDEP issued to the Companies a) a Freshwater Wetlands Permit and Special Activity Transition Area Waiver (collectively, "FWW Permits") for the 69kV and 230kV power line upgrades of the Cedar substation-to-Oyster Creek substation portion of the COC Project and b) CAFRA permits for the Ship Bottom and Cedar substations and the 69kV and 230kV power line upgrades of the Cedar substation to Oyster Creek substation portion of the COC Project.

103. NJDEP shall not require CAFRA review of the transmission line upgrade between the Cardiff and Cedar substations.
104. NJDEP is requiring the Companies, and the Companies have agreed, subject to Paragraphs 105 and 106 below, to apply for a CAFRA permit for the Dennis substation. NJDEP agrees that the Companies will fulfill the applicable impervious cover and vegetative cover requirements of N.J.A.C. 7:7E at the Dennis substation by recording, in a Department-approved document, a conservation restriction, as defined in N.J.A.C. 7:7-1.3 and N.J.A.C. 7:7E-1.8, for approximately 11.5 acres of the Companies' Dennis substation property and by contributing within ninety (90) days of the effective date of this ACO \$220,000 to a charitable conservancy (as defined in N.J.S.A. 13:8B-2(a)), with the proviso that said funds will be used to acquire real property 1) within the same watershed area as the Dennis substation or, if that is not feasible, 2) elsewhere within Cape May County. In addition, any such real property shall be of a similar character to that on which the Dennis substation is located, i.e., forested property. The Companies specifically reserve the right to appeal from any adverse CAFRA permit decision and/or any condition set forth within any CAFRA permit issued pursuant to the application for the Dennis substation, except for the terms in a CAFRA permit for the Dennis substation as described in this Paragraph 104. The requirements of this Paragraph 104 shall apply regardless of any action taken, or not taken, with respect to the appeal described in Paragraph 105 below.
105. In consideration of NJDEP's agreement not to require CAFRA review of the transmission line upgrade between the Cardiff and Cedar substations and NJDEP's issuance of CAFRA permits for the Ship Bottom and Cedar substations and the 69kV and 230kV power line

upgrades of the Cedar substation to Oyster Creek substation portion of the COC Project, the Companies and NJDEP have requested the Appellate Division to stay the Companies' appeal in the action captioned Atlantic City Electric. Co. v. NJDEP, Docket No. A-001156-03T5 (Superior Court of New Jersey, Appellate Division). On January 12, 2006, the Appellate Division issued an Order staying these appellate proceedings for a period of six months. If at the end of this six month period NJDEP has not adopted a final rule as set forth in this Paragraph 105, the Companies and NJDEP agree jointly to request the Appellate Division to grant a further stay of the Companies' appeal in the above-referenced action. In consideration of the Companies' agreement to (1) prepare and file a joint motion with NJDEP seeking a further stay, if necessary, of this appeal, and (2) file an application for a CAFRA permit for the Dennis substation while continuing to contest NJDEP's CAFRA jurisdiction over electrical substations, NJDEP agrees expeditiously to propose a rule to amend its Coastal Permit Program Rules (N.J.A.C. 7:7) and/or its Coastal Zone Management Rules (N.J.A.C. 7:7E), both of which set forth NJDEP's rules in reviewing coastal permit applications, so as to exempt electrical substations from the impervious cover and vegetative cover requirements of Subchapters 5, 5A and 5B of N.J.A.C. 7:7E. Provided that NJDEP adopts a final rule amending its Coastal Permit Program Rules (N.J.A.C. 7:7) and/or its Coastal Zone Management Rules (N.J.A.C. 7:7E) so as to exempt electrical substations from the impervious cover and vegetative cover requirements of Subchapters 5, 5A and 5B of N.J.A.C. 7:7E, and provided NJDEP's rule is final and unappealable, the Companies thereafter shall withdraw their appeal in the above-referenced matter. If NJDEP fails to adopt a final rule as set forth herein by the time the Appellate Division's January 12, 2006 stay expires, and if the Appellate Division refuses to grant a further stay of the appellate proceedings in the above-

referenced matter, the Companies may advise the Appellate Division that they wish that the stay be lifted and to proceed with the appeal.

106. The Companies' application for and acceptance of the CAFRA permits for the Ship Bottom, Cedar and Dennis substations and for the transmission line upgrade between the Cedar substation and the Oyster Creek substation portions of the COC Project shall not serve as a precedent with respect to NJDEP's CAFRA jurisdiction over power lines or electrical substations, and the Companies reserve the right to challenge any future jurisdictional determinations for any future projects involving electrical substations. NJDEP recognizes and reconfirms its March 11, 2005 revised jurisdictional determination on limited remand in Atlantic City Electric. Co. v. NJDEP, Docket No. A-001156-03T5 (Superior Court of New Jersey, Appellate Division) that it does not have CAFRA jurisdiction over power lines. NJDEP, however, reserves its rights to assert jurisdiction over any future projects involving electrical substations.
107. NJDEP will make an expeditious determination on the Companies' applications for permits and/or approvals necessary for construction or expansion of substation and transmission facilities necessary to Compensate Electrically for the Shut Down of B.L. England and/or to fulfill otherwise the duty set forth in N.J.A.C. 14:3-3.1 to furnish safe, adequate, and proper service.

#### **XI. SCOPE OF RELEASE**

108. The Companies' compliance with this ACO resolves the Companies' alleged civil liability with regard to: 1) any alleged violations of the APCA, N.J.S.A. 26:2C-1 et seq., and its

implementing regulations, N.J.A.C. 7:27-8.1 et seq. and N.J.A.C. 7:27-18.1 et seq., that may have arisen from any physical or operational changes that the Companies may have undertaken at B.L. England prior to the effective date of this ACO; 2) any claims that NJDEP could bring against the Companies under the Citizen Suit provisions of the federal Clean Air Act for alleged violations of the Prevention of Significant Deterioration provisions, 42 U.S.C. §§ 7470-7492 (and their implementing regulations, 40 C.F.R. 52.21 et seq.), arising from any physical or operational changes that the Companies may have undertaken at B.L. England prior to the effective date of this ACO; 3) any claims that NJDEP could bring against the Companies under the New Source Performance Standard program of Section 111 of the federal Clean Air Act, 42 U.S.C. § 7411 (and its implementing regulations, 40 C.F.R. 60.1 et seq.), arising from any physical or operational changes that the Companies may have undertaken at B.L. England prior to the effective date of this ACO; and 4) Natural Resource Damages for groundwater contamination arising from a discharge of Hazardous Substances prior to the effective date of this ACO at the B.L. England, Deepwater, and Pleasantville Sites. In consideration of the Companies' compliance with this ACO, NJDEP covenants not to sue and releases the Companies from liability for all of the foregoing civil claims that were or could have been brought by NJDEP against the Companies.

109. The Parties acknowledge that this ACO does not specify or require the donation of any particular property nor is such intended by NJDEP. It is understood by the Companies that this ACO does not constitute an interference with any existing contract that any of the Companies has with any third party regarding any particular property owned by any of the Companies.

## XII. STIPULATIONS AND PRESERVATION OF RIGHTS

110. If the Companies are unable to Shut Down B.L. England Unit 1 in accordance with Paragraph 77 by December 15, 2007, the Companies shall not operate B.L. England Unit 1 from December 16, 2007 to December 15, 2012 except as otherwise provided in this Section XII. From December 16, 2007 to either 1) December 15, 2011 (the Repower date), or 2) December 15, 2012, (or any extension of these deadlines granted by NJDEP pursuant to Section XXI ("Force Majeure") of this ACO), the Companies may operate Unit 1: 1) as necessary for PJM capacity tests; emission compliance testing; EPA-required relative accuracy test audits, CEMS certifications; Title V compliance certifications; and for compliance, performance, and optimization tests associated with pollution control projects to Repower or meet the Performance Standards set forth in this Paragraph 110; and/or 2) during "peak reliability periods" as defined in Section II (Definitions) of this ACO. The Companies shall either Repower by December 15, 2011, or shall permanently Shut Down Unit 1 or meet the following Performance Standards by December 15, 2012: 1) a 30-day rolling average emission rate of no greater than 0.150 lbs/mmBtu and no greater than 0.250 lbs/mmBtu based on a 24-hour emission rate for SO<sub>2</sub>; 2) a 30-day rolling average emission rate of no greater than 0.130 lbs/mmBtu and no greater than 0.150 lbs/mmBtu based on a 24-hour emission rate for NO<sub>x</sub>; and 3) a 30-day rolling average emission rate of no greater than 0.030 lbs/mmBtu for particulate matter.
111. If the Companies are unable to Shut Down B.L. England Unit 2 in accordance with Paragraph 77 by December 15, 2007, the Companies shall operate Unit 2 in accordance with all applicable permits and shall either Repower by December 15, 2011, or shall ensure that by

May 1, 2010 Unit 2 meets the following Performance Standards: 1) a 30-day rolling average emission rate of no greater than 0.150 lbs/mmBtu and no greater than 0.250 lbs/mmBtu based on a 24-hour emission rate for SO<sub>2</sub>; 2) a 30-day rolling average emission rate of no greater than 0.130 lbs/mmBtu and no greater than 0.150 lbs/mmBtu based on a 24-hour emission rate for NO<sub>x</sub>; and 3) a 30-day rolling average emission rate of no greater than 0.030 lbs/mmBtu for particulate matter. Between December 16, 2007 and either 1) December 15, 2011 (the Repower date), or 2) May 1, 2010 (or any extension of these deadlines granted by NJDEP pursuant to Section XXI ("Force Majeure") of this ACO), the Companies shall use all reasonable efforts to achieve the lowest NO<sub>x</sub> emissions practicable, with the goal of achieving a 30-day rolling average emission rate of 0.25 lbs/mmBtu for NO<sub>x</sub>. This 30-day rolling average emission rate goal of 0.25 lbs/mmBtu for NO<sub>x</sub> shall not be included in any Title V permit issued by NJDEP.

112. Unit 3 shall continue to operate, consistent with this ACO and the applicable permits and authorizations for this Unit, and consistent with all other regulatory requirements, until both Unit 1 and Unit 2 are Shut Down and Dismantling activities have begun. All remaining air emissions sources at B.L. England, including but not limited to diesel generators, shall continue to operate consistent with this ACO and the applicable permits and authorizations for these sources.
113. If, for whatever reason other than a Force Majeure event as described in Section XXI of this ACO, the Companies a) do not Repower by December 15, 2011, or b) do not Shut Down B.L. England Units 1 and 2 by December 15, 2007 and also do not meet the Performance Standards and deadlines described above in this Stipulation and Preservation of Rights

Section, as may be extended pursuant to Section XXI ("Force Majeure") of this ACO, the Companies shall pay to NJDEP a stipulated civil penalty of:

- (i) \$5 million for failure to meet any of the Performance Standards and deadlines described above in this Stipulation and Preservation of Rights Section of the ACO regarding Unit 1; and
- (ii) \$5 million for failure to meet any of the Performance Standards and deadlines described above in this Stipulation and Preservation of Rights Section of the ACO regarding Unit 2.

In no event shall penalties under this Paragraph 113 exceed \$5 million at Unit 1 or \$5 million at Unit 2. The stipulated civil penalties set forth in this Paragraph 113 shall not apply to any exceedances of the Performance Standards set forth in this ACO once compliance with such Performance Standards has been consistently achieved; provided, however, that if the pollution control equipment needed to meet the Performance Standards of this Section XII are operational by the deadlines described above in this Stipulation and Preservation of Rights Section, NJDEP will allow for a six month "shake down" period during which the stipulated civil penalty will not apply.

114. NJDEP reserves the right to seek specific performance of the Performance Standards set forth in this Section XII (Stipulation and Preservation of Rights) if B.L. England does not Shut Down by December 15, 2007. NJDEP shall not seek specific performance of the Performance Standards set forth in this ACO at B.L. England Unit 1 prior to June 15, 2013 (which includes a six-month "shake down" period, as referenced in Paragraph 113 above), or



any extended deadline for meeting the Performance Standards granted by NJDEP in accordance with Section XXI ("Force Majeure") of this ACO, or at B.L. England Unit 2 prior to November 1, 2010 (which includes a six-month "shake down" period, as referenced in Paragraph 113 above), or any extended deadline for meeting the Performance Standards granted by NJDEP in accordance with Section XXI ("Force Majeure").

### **XIII. ALLOWANCES**

115. If the Companies Shut Down B.L. England Units 1 and 2 by December 15, 2007, the Companies, contingent upon BPU authorization recognizing the cost impacts of this Section of the ACO, shall, after satisfying any applicable True-Up Requirements, Surrender to NJDEP NOx Allowances for B.L. England Units 1 and 2 for the 2007 ozone season. Similarly, the Companies, contingent upon BPU authorization recognizing the cost impacts of this Section of the ACO, shall Surrender to NJDEP a) NOx Allowances for B.L. England Units 1 and 2 for the 2008 ozone season that were allocated to the Companies in 2005; b) NOx allowances for B.L. England Units 1 and 2 for the 2009 ozone season that will be allocated to the Companies in 2006; and c) NOx Allowances for B.L. England Units 1 and 2 for the 2010 ozone season that will be allocated to the Companies in 2007. If B.L. England Shuts Down by December 15, 2007, no NOx Allowances for Units 1 and 2 will be allocated in 2008 or thereafter under the New Jersey NOx Budget Program, N.J.A.C. 7:27-31 et seq. If Shut Down of either Unit is delayed or extended beyond December 15, 2007 for any reason, the Companies shall Surrender NOx Allowances in conformity with the principles outlined in this Section.
116. If the Companies Shut Down B.L. England Units 1 and 2 by December 15, 2007, the

Companies, contingent upon BPU authorization recognizing the cost impacts of this Section of the ACO, shall, after satisfying any applicable True-Up requirements, Surrender to EPA all SO2 Allowances allocated by EPA to B.L. England Units 1 and 2 for vintage year 2007 and subsequent vintage years, including SO2 Allowances allocated by EPA to B.L. England Units 1 and 2 after the date of Shut Down. If Shut Down of either Unit is delayed or extended beyond December 15, 2007 for any reason, the Companies shall Surrender SO2 Allowances in conformity with the principles outlined in this Section.

117. If the Companies, through no fault of their own, are unable to Shut-Down B.L. England by December 15, 2007, or by such later date as provided in this ACO, and instead either 1) meet the Performance Standards delineated in Section XII ("Stipulations and Preservation of Rights") by the deadlines specified therein, or 2) Repower by December 15, 2011 (or any extension of these deadlines granted by NJDEP pursuant to Section XXI ("Force Majeure") of this ACO), the Companies may use any SO2 Allowances allocated to B.L. England Units 1 and 2 for vintage years 2007 and beyond only to satisfy the operational needs of these Units and shall not use such SO2 Allowances at any other unit the Companies own and/or operate nor sell or transfer to a third party (except through a transaction provided for in Section I (Applicability) of this ACO) any such SO2 Allowances allocated to B.L. England Units 1 and 2. Nothing in this ACO shall preclude the Companies from transferring SO2 Allowances between B.L. England Units 1 and 2. Subject to BPU authorization recognizing the cost impacts of this Section of the ACO, the Companies shall Surrender to EPA, or transfer to a non-profit third party for the purpose of retirement, any vintage year 2007 and beyond SO2 Allowances allocated to B.L. England Units 1 and 2 that exceed the operational needs of B.L. England Units 1 and 2. In retiring these Allowances, the Companies shall use the applicable

EPA Acid Rain Program Allowance Transfer Form.

118. If the Companies, through no fault of their own, are unable to Shut-Down B.L. England by December 15, 2007, or by such later date as provided in this ACO, and instead either 1) meet the Performance Standards delineated in Section XII ("Stipulations and Preservation of Rights") by the deadlines specified therein, or 2) Repower by December 15, 2011 (or any extension of these deadlines granted by NJDEP pursuant to Section XXI ("Force Majeure") of this ACO), the Companies may use any NOx Allowances allocated to B.L. England Units 1 and 2 for the 2007 ozone season and subsequent ozone seasons only to satisfy the operational needs of these Units and shall not use such NOx Allowances at any other unit the Companies own and/or operate nor sell or transfer to a third party (except through a transaction provided for in Section I (Applicability) of this ACO) any such NOx Allowances. Nothing in this ACO shall preclude the Companies from transferring ozone season NOx Allowances between B.L. England Units 1 and 2. Subject to BPU authorization recognizing the costs impacts of this Section of the ACO, the Companies shall Surrender to NJDEP, or transfer to a non-profit third party for the purpose of retirement, any 2007 ozone season and subsequent ozone seasons NOx Allowances allocated to B.L. England Units 1 and 2 that exceed the operational needs of B.L. England Units 1 and 2.
119. If the Companies, through no fault of their own, are unable to Shut-Down B.L. England by December 15, 2007, or by such later date as provided in this ACO, and instead either 1) meet the Performance Standards delineated in Section XII ("Stipulations and Preservation of Rights") by the deadlines specified therein, or 2) Repower by December 15, 2011 (or any extension of these deadlines granted by NJDEP pursuant to Section XXI ("Force Majeure")

of this ACO), the Companies may use any annual NOx Allowances allocated to B.L. England Units 1 and 2 under the Clean Air Interstate Rule or NJDEP's implementing regulations (or any subsequent legislation) for 2009 and 2010 only to satisfy the operational needs of these Units and shall not use such annual NOx Allowances at any other unit the Companies own and/or operate nor sell or transfer to a third party (except through a transaction provided for in Section I (Applicability) of this ACO) any such annual NOx Allowances. Nothing in this ACO shall preclude the Companies from transferring annual NOx Allowances between B.L. England Units 1 and 2. Subject to BPU authorization recognizing the costs impacts of this Section of the ACO, the Companies shall Surrender to NJDEP, or transfer to a non-profit third party for the purpose of retirement, any annual NOx Allowances allocated to B.L. England Units 1 and 2 for 2009 and 2010 that exceed the operational needs of B.L. England Units 1 and 2.

120. If any NOx or SO2 Allowances are transferred directly to a non-profit third party, the Companies shall submit a report of such transfer to NJDEP within seven (7) business days of such transfer. Such report shall: (i) provide the identity of the non-profit third-party recipient(s) of the NOx or SO2 Allowances and a listing of the serial numbers of the transferred NOx or SO2 Allowances; (ii) demonstrate that the non-profit third-party recipient(s) will not sell, trade, or otherwise exchange any of the NOx or SO2 Allowances; (iii) demonstrate that the non-profit third party recipient(s) will not use any of the NOx or SO2 Allowances to meet any obligation imposed by any environmental law; and (iv) demonstrate that the non-profit third-party recipient(s) will Surrender the NOx or SO2 Allowances to EPA or NJDEP within one year after the Companies transfer the NOx or SO2 Allowances to the non-profit third-party recipient(s). The Companies shall not have complied

with the Allowance Surrender requirements of this Section XIII (Allowances) of the ACO until all non-profit third-party recipient(s) shall have actually Surrendered the transferred NOx or SO2 Allowances to EPA or NJDEP.

121. For all SO<sub>2</sub> Allowances Surrendered to EPA pursuant to this ACO, the Companies shall first submit the applicable EPA Acid Rain Program Allowance Transfer Form to EPA's Office of Air and Radiation's Clean Air Markets Division directing the transfer of the SO<sub>2</sub> Allowances held or controlled by the Companies to the EPA Enforcement Surrender Account or to any other EPA account that the Agency may direct. As part of submitting these transfer requests, the Companies shall irrevocably authorize the transfer of these SO<sub>2</sub> Allowances and identify, by name of account and any applicable serial or other identification numbers or station names, the source and location of the SO<sub>2</sub> Allowances being Surrendered.
122. For all NOx Allowances Surrendered to NJDEP pursuant to this ACO, the Companies shall submit those NOx Allowances for deposit in the New Jersey Surrender Account, Account No. NJ0000000301. As part of submitting these NOx Allowances for deposit in the Surrender Account, the Companies shall identify, by name of account and any applicable serial or other identification numbers or station names, the source and location of the NOx Allowances being Surrendered.
123. The Companies may without limitation use, sell, or transfer 100% of any NOx Allowances from the 2006 ozone season or earlier, any SO<sub>2</sub> Allowances allocated by EPA to Units 1 and 2 for vintage year 2006 or earlier or any Clean Air Interstate Rule annual NOx Allowances for vintage years 2011 and following.

124. Notwithstanding any provision of this ACO to the contrary, in the event that the BPU determines that the value of some or all of the NOx Allowances or SO2 Allowances to be Surrendered in accordance with this Section XIII (Allowances) of the ACO should accrue to the benefit of ratepayers and should not be Surrendered, this ACO shall not restrict the Companies' use or disposition of that portion of the NOx Allowances or SO2 Allowances allocated to B.L. England Units 1 or 2 which the BPU determines should not be Surrendered.
125. As provided in Paragraph 12, a proper allocation of B.L. England Units 1 and 2 NOx or SO2 Allowances among the Companies and a Third Party shall mean (1) provisions in a Third Party Agreement pursuant to which NOx and SO2 Allowances are transferred at closing or year by year only to satisfy the operational needs of the Unit(s); and/or (2) provisions in a Third Party Agreement that require the purchaser or transferee to Surrender any NOx or SO2 Allowances that are initially transferred to the purchaser or transferee but which subsequently become NOx or SO2 Allowances in excess of the NOx or SO2 Allowances needed to satisfy the operational needs of the Unit(s). Notwithstanding any provision of the ACO to the contrary, in the event that the BPU determines that the value of some or all of the NOx Allowances or SO2 Allowances i) that were retained by the Companies pursuant to item (1) in the preceding sentence or ii) that are transferred to a purchaser or transferee pursuant to item (2) in the preceding sentence, should accrue to the benefit of ratepayers and should not be Surrendered, this ACO shall not restrict the use or disposition by the Companies or a purchaser or transferee of that portion of the NOx Allowances or SO2 Allowances allocated to B.L. England Units 1 or 2 which the BPU determines should accrue to the benefit of ratepayers and should not be Surrendered.

#### **XIV. PERMITS, AUTHORIZATIONS, AND APPROVALS**

126. In any instance where this ACO or otherwise applicable law requires the Companies to secure a Required Regulatory Approval, the Companies shall make such application in a timely and complete manner including, but not limited to, submitting a complete permit application and responding to requests for additional information by the regulatory authority in a timely fashion. Such applications shall be completed and submitted to the appropriate authorities to allow sufficient time for all legally required processing and review of the request for a Required Regulatory Approval. There are several instances in this ACO where the phrase “through no fault of their own” is used. For purposes of these provisions, any failure by the Companies to submit a timely application for a Required Regulatory Approval, or failure to provide supplemental information to the regulatory authority in a timely manner, shall be considered a “fault” attributable to the Companies.
127. In any instance where this ACO requires the Companies to secure a Required Regulatory Approval from NJDEP, NJDEP shall act expeditiously, and in parallel with other reviewing authorities, to review applications for such Required Regulatory Approval.
128. Nothing in this ACO shall be construed to relieve the Companies of any obligation to comply with Title V of the CAA and NJDEP’s implementing regulations, N.J.A.C. 7:27-22 et seq. Subject to Paragraphs 129 and 130, the emission limits and corresponding performance deadlines, as set forth in Section XII (Stipulations and Preservation of Rights) of this ACO, and the emission rates, as set forth in Section XV (Emissions Rates) of this ACO, shall be incorporated as federally- and state-enforceable conditions in the Title V operating permit for B.L. England issued by NJDEP. All other performance or operational requirements of this

ACO that are included in the Companies' Title V operating permit for B.L. England shall be incorporated as state-enforceable only conditions in the permit.

129. The Title V operating permit issued by NJDEP shall not include conditions on NOx, SO2, and PM emissions for B.L. England Units 1 and 2 that are more stringent than those provided by this ACO or impose conditions on NOx, SO2, and PM emissions for B.L. England Units 1 and 2 by deadlines earlier than those specified in this ACO or any extended deadline pursuant to the terms of this ACO, except as required by federal or state law.
130. If a final Title V operating permit is issued prior to the effective date of this ACO, the Companies shall, within 30 days after the effective date of this ACO, submit an application to modify the Title V operating permit to include a schedule for applicable requirements established in this ACO.
131. A Title V operating permit shall not be directly enforceable under this ACO, although any term or limit established by or under this ACO shall be enforceable under this ACO (subject to the terms of Section XIX (Termination) herein), regardless of whether such limit has or will become part of a Title V operating permit. Notwithstanding the foregoing, NJDEP may seek enforcement of any term or limit incorporated into a Title V operating permit pursuant to either an action to enforce such permit or an action to enforce this ACO, but not both.

#### **XV. EMISSIONS RATES**

132. In determining compliance with the Performance Standards for B.L. England Units 1 and 2 set forth in Section XII ("Stipulations and Preservation of Rights") of this ACO, the



provisions of this Section XV ("Emissions Rates") shall apply.

133. In determining SO<sub>2</sub> Emission Rates, the Companies shall use the methods specified in 40 C.F.R. Part 75, Appendix F and 40 C.F.R. Part 60, Appendix A.
134. In determining NO<sub>x</sub> Emission Rates, the Companies shall use the methods specified in 40 C.F.R. Part 75, Appendix F and 40 C.F.R. Part 60, Appendix A.
135. The reference method for determining PM Emission Rates shall be New Jersey Air Test Method 1, "Sampling and Analytical Procedures for Determining Emissions of Particles from Manufacturing Processes and from Combustion of Fuels," N.J.A.C. 7:27B-1 et seq.
136. If the Companies do not Shut Down B.L. England as described in this ACO, they shall submit to NJDEP for review and approval a protocol for measuring PM emissions in accordance with the reference method set forth in the immediately preceding paragraph.
137. The Companies shall calculate the PM Emission Rate from the annual stack tests in accordance with 40 C.F.R. § 60.8(f) and the emission test protocol approved by NJDEP pursuant to Paragraph 136 of this ACO.
138. The Companies shall conduct stack testing for PM emissions at Units 1 and 2 of B.L. England in accordance with the protocol approved by NJDEP pursuant to Paragraphs 135-137 of this ACO and as required by its permits from the State of New Jersey. The Companies shall report to NJDEP the results of the stack tests within 60 days of conducting such tests, unless NJDEP provides the Companies with additional time in which to submit such test results.

**XVI. STIPULATED ADMINISTRATIVE PENALTIES**

139. Except as provided in Sections XXI ("Force Majeure") and XII ("Stipulations and Preservation of Rights") of this ACO, the Companies may be subject to stipulated administrative penalties to NJDEP for failure to comply with the provisions of this ACO in accordance with the following payment schedule:

<u>Calendar Days after Due Date</u>	<u>Per Calendar Day</u>
1 - 7	\$ 500.00
8 - 14	\$1,000.00
15 or more	\$3,000.00

The stipulated administrative penalties set forth in this Section XVI shall not apply to failures to comply with the provisions of Section III (Shut Down of Facility), Section IV (Groundwater: Clean Up and Natural Resource Damages), and/or Section XII (Stipulations and Preservation of Rights).

140. Within fourteen (14) calendar days after receipt of a written demand from NJDEP for stipulated administrative penalties referenced in the immediately preceding paragraph, the Companies will submit a check to the Department, made payable to the "Treasurer, NJDEP of New Jersey" and remit with the associated invoice to the Department of Treasury, Division of Revenue, P.O. Box 417, Trenton, NJ 08625-0417.

141. If the Companies dispute their obligation to pay part or all of a demanded stipulated civil penalty

under Section XII (Stipulations and Preservation of Rights) or a stipulated administrative penalty under this Section XVI (Stipulated Administrative Penalties), they may avoid the imposition of a separate stipulated administrative penalty for failure to pay the disputed stipulated penalty (civil or administrative) by depositing the disputed amount in a commercial escrow account pending resolution of the matter. If the dispute is thereafter resolved in the Companies' favor, the escrowed amount, plus accrued interest shall be returned to the Companies. If the dispute is resolved in NJDEP's favor, NJDEP shall be entitled to the escrowed amount determined to be due by the Court, plus any accrued interest.

142. If the Companies fail to pay stipulated administrative penalties under this Section XVI (Stipulated Administrative Penalties) or civil penalties pursuant to Section XII (Stipulations and Preservation of Rights) of this ACO, NJDEP may institute civil proceedings to collect such penalties pursuant to N.J. Court Rules R. 4:67-6 and R. 4:70, assess civil administrative penalties for the violations of this ACO, or take any other appropriate enforcement action authorized by law. The Companies reserve all rights to appeal or otherwise challenge any assessment of or demand for stipulated administrative penalties under this Section XVI (Stipulated Administrative Penalties) or stipulated civil penalties under Section XII (Stipulations and Preservation of Rights) and any associated enforcement action under this ACO.
143. The payment of stipulated penalties does not alter the Companies' responsibility to complete all requirements of this ACO.
144. Stipulated administrative penalties under this ACO shall not apply in connection with the Companies' ongoing remediation under ISRA, N.J.S.A. 13:1K-6 et seq., at the B.L. England or Deepwater Sites, or in connection with remediation at the Pleasantville Site under the existing Memorandum of

Agreement with NJDEP.

**XVII. GENERAL PROVISIONS**

145. Effect of Settlement. This ACO is not a permit, and except as specifically provided by this ACO, compliance with the terms of this ACO does not guarantee compliance with all applicable federal, State, or local laws or regulations. NJDEP reserves all statutory and common law rights to require the Companies to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare, and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional actions should the Department determine that such actions are necessary. The Companies reserve all defenses to any such additional or future actions.
146. No Waiver. Nothing in this ACO shall constitute a waiver by the Parties of any statutory or common law rights relating to matters not covered by this ACO. Nothing in this ACO shall be considered a waiver of the Companies' ability to challenge any NJDEP requirement, claim, or action concerning (i) compensation for Natural Resource Damages for Natural Resources other than groundwater at the B.L. England, Deepwater, or Pleasantville Sites; (ii) CAFRA jurisdiction over power lines or electrical substations, or (iii) the remediation of groundwater or other Natural Resources at the B.L. England, Deepwater or Pleasantville Sites, provided that with respect to the remediation of groundwater, the Companies' reservation of rights herein shall not be a disclaimer of their general obligation to remediate groundwater contamination pursuant to applicable statutory and regulatory standards as set forth in Paragraph 84 of this ACO.
147. No Admission of Liability. Neither the entry of this ACO nor the payment of the associated penalty

shall constitute an admission of liability by the Companies for any of the alleged violations described herein.

148. Compliance by the Companies with any extension of time granted by NJDEP in writing pursuant to Section XXI ("Force Majeure") of this ACO for complying with any terms of this ACO shall be deemed compliance with the terms of the ACO.
149. In any subsequent administrative or judicial action initiated by NJDEP for injunctive relief or civil or administrative penalties to enforce the provisions of this ACO, the Companies shall not contest either the Court's jurisdiction or NJDEP's jurisdiction over any of the matters covered by this ACO, with the exception of NJDEP's jurisdiction under the PSD provisions (Part C) of the Clean Air Act, 42 U.S.C. §§ 7470-7492 (and EPA's implementing regulations) and NJDEP's jurisdiction to require a CAFRA permit for projects involving power lines or electrical substations. In addition, in any such subsequent administrative or judicial action the Companies shall not assert against the State of New Jersey any defense or claim based upon principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, entire controversy, or any other defense based on the contention that the claims raised by NJDEP in the subsequent proceeding were brought, or should have been brought, in connection with this ACO. The Companies reserve the right to raise any and all defenses and to contest NJDEP's jurisdiction in any action brought by a third party, including the United States or other States, for injunctive relief or civil or administrative penalties relating to the matters covered by this ACO.
150. The Companies agree not to contest the terms or conditions of this ACO except that the Companies reserve the right to request and obtain clarification from NJDEP regarding the Department's interpretation or application of the terms or conditions of this ACO, and to contest the Department's

interpretation or application of such terms or conditions in any action to enforce this ACO. NJDEP shall respond to any request for clarification within 20 days of the Department's receipt of the request for clarification. The Companies' request for clarification must be made sufficiently in advance such that the Companies are able to meet all deadlines imposed by this ACO. Nothing in this paragraph extends or tolls deadlines in this ACO.

151. Except as otherwise provided in this Section, the Companies expressly reserve the right, entirely at their own risk, not to comply with any term, condition or demand for payment of stipulated penalties under this ACO, and to defend themselves in any action brought to enforce such terms, conditions, or demand for payment. Pursuant to N.J.S.A. 13:1D-9, NJDEP may bring an action to enforce any term, condition, or demand for civil or administrative stipulated penalties of the ACO either by instituting an action in the New Jersey Superior Court or by instituting proceedings in the Office of Administrative Law. Any action instituted in Superior Court to collect civil or administrative stipulated penalties shall be pursuant to N.J. Court Rules, R. 4:67 and/or R. 4:70. In the event that the Department prevails in any such enforcement action, the Companies shall be liable for any stipulated penalties which accrued during the period of non-compliance, which shall not include the period during which such enforcement action is pending.
152. Effective Date. This ACO shall become effective upon the execution hereof by both Parties.
153. Modification/Waiver. No modification or waiver of this ACO shall be valid except by written amendment executed by the Companies and NJDEP.
154. Severability. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall not be affected thereby and each provision shall be valid and enforced to the fullest extent

permitted by law.

155. Citations to Law. Provisions of law expressly cited by this ACO shall be construed to mean the provision as it exists on the effective date of this ACO.
156. Meaning of Terms. Every term expressly defined by this ACO shall have the meaning given to that term by this ACO. Every other term used in this ACO that has a definition in applicable State or federal law shall have in this ACO the same meaning ascribed to it in State or federal law. Whenever used in this ACO, the term "including" shall be deemed followed by the words "without limitation".
157. Other Laws. Nothing in this ACO shall relieve the Companies of their obligation to comply with all applicable federal, State, and local laws and regulations, except as provided herein.
158. Third Parties. This ACO does not limit, enlarge, or affect in any way the rights of any Party to this ACO as against any third parties. This ACO does not relieve the Companies in any way of their obligations with respect to matters under the jurisdiction of the BPU. Similarly, this ACO does not in any way limit the BPU's jurisdiction or its decisions concerning ratemaking issues. Except as expressly and to the extent provided herein, the Parties agree that nothing in this ACO shall be construed as future legal precedent.
159. Public Documents. All information and documents the Companies submit to NJDEP pursuant to this ACO shall be subject to public inspection; provided, however, that, at the time of submission, the Companies may identify any document as containing Confidential Business Information ("CBI"). For those documents for which the Companies make a CBI claim, NJDEP will, pursuant to the provisions of New Jersey's Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and/or the regulations concerning confidentiality promulgated under the New Jersey Air Pollution Control Act

(N.J.A.C. 7:27-1 et seq.) and/or Industrial Site Recovery Act (N.J.A.C. 7:26B-7 et seq.) make a determination of confidentiality.

160. Notice. Unless otherwise provided herein, written notifications to or written communications with NJDEP shall be deemed submitted on the date such written notifications or written communications are hand delivered or received by overnight delivery; overnight mail; or by certified or registered mail, return receipt requested. Such date will be the date NJDEP uses to determine compliance with the terms of this ACO. When this ACO requires written notification to or written communication with NJDEP, the Companies shall submit such written notification or written communication to:

Richelle Wormley, Manager  
Air Compliance & Enforcement  
Southern Regional Office  
One Port Center, 2 Riverside Drive, Suite 201  
Camden, NJ 08103

with a copy to:

Kevin Auerbacher, Section Chief  
Environmental Enforcement  
R.J. Hughes Justice Complex  
25 Market Street  
P.O. Box 093  
Trenton, NJ 08625-0093

Each Party reserves its right to change either the notice recipient or the address for providing notices to it by providing the other Party with a written notice setting forth such new notice recipient or address. Unless otherwise specifically provided herein, any communication made by the Department to the Companies pursuant to this ACO shall be sent to:

Thomas S. Shaw  
Executive Vice President  
Pepco Holdings, Inc.  
800 King Street  
P.O. Box 231



Wilmington, DE 19899-0231

Mailstop: 89KS55

with a copy to:

Kirk J. Emge  
Vice President, Legal Services  
Pepeco Holdings, Inc.  
800 King Street  
P.O. Box 231  
Wilmington, DE 19899-0231

Mailstop: 89KS42

161. Nothing in this ACO shall preclude the Department from taking enforcement action against the Companies for matters not set forth in the FINDINGS of this ACO.
162. Complete Agreement. This ACO constitutes the final, complete, and exclusive agreement and understanding between the Parties to this ACO with respect to the settlement embodied in this ACO. The Parties to this ACO acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this ACO.
163. Signatories and Counterparts. Each undersigned representative of the Companies certifies that he or she is fully authorized to enter into and to execute the terms and conditions of this ACO and legally bind the Company(ies) for which he or she signs. Each undersigned representative of NJDEP represents that each is fully authorized to enter into the terms and conditions of this ACO and legally bind NJDEP. This ACO may be executed in one or more counterparts, each of which shall be deemed an original as to any Party having executed it, but all of which together shall constitute one and the same document.

164. Applicable Law. The terms of this ACO shall be governed and interpreted under the laws of the State of New Jersey.

### **XVIII. RIGHT OF ENTRY**

165. Any authorized representative of NJDEP, upon presentation of credentials, shall have a right of entry upon the premises of the B.L. England, Deepwater and/or Pleasantville Sites at any reasonable time for the purpose of monitoring compliance with the provisions of this ACO, including inspecting plant equipment and inspecting and copying any records necessary to determine compliance with this ACO. The Companies shall maintain such records for a period of five years from the date of entry of this ACO.

166. The Companies and NJDEP hereby consent to and agree to comply with this ACO which shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.

### **XIX. TERMINATION**

167. Except as provided in Section I ("Applicability") of this ACO, this ACO shall terminate when NJDEP determines in good faith that all of the Companies' obligations under this ACO have been complied with and satisfied.

168. The Department reserves the right to terminate this ACO unilaterally and to take any additional enforcement action it deems necessary in the event the Companies 1) knowingly and willfully violate its terms, or 2) fail to act with due diligence in carrying out its terms. Before the Department unilaterally terminates this ACO, the Department shall notify the Companies in writing of the obligation(s) which they have not performed, and the Companies

shall have 30 calendar days after receipt of such notice to perform such obligation(s).

## **XX. PROGRESS REPORTS**

169. The Companies shall submit semi-annual progress reports (i.e. reports for January 1 through June 30, and July 1 through December 31) to the Department 30 days after June 30 and December 31 or, if such date falls on a weekend or holiday, then the first business day thereafter. The first report shall be due July 30, 2006. Each report shall explain the status of and contain all necessary information to determine the Companies' compliance with this ACO and shall include, but not be limited to, the following:

- a. Status of Required Regulatory Approvals;
- b. After Shut Down of B.L. England, progress toward Dismantling B.L. England;
- c. Difficulties or problems encountered during the reporting period and actions taken to rectify;
- d. Activities planned for the next reporting period;
- e. A summary of any violation, and any anticipated violation, of the requirements of this ACO; and
- f. A summary of any report or communication filed with BPU, PJM and FERC pertaining to the Shut Down or Repowering of B.L. England.

170. Each of the Companies' progress reports shall be signed by a Conectiv Vice President, or

higher-ranking official, and shall contain the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents and, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both, for submitting false, inaccurate or incomplete information.”

171. The Companies shall report to NJDEP any violation of the requirements of this ACO within 10 days of the Companies' discovery of any such violation.
172. Nothing herein relieves the Companies from their obligations under other ACOs or applicable federal, State, and local laws and regulations to submit reports, data or other information to the appropriate governmental authorities.

#### **XXI. FORCE MAJEURE**

173. For purposes of this ACO, the Companies failure to obtain Required Regulatory Approvals does not constitute a Force Majeure Event for purposes of tolling or extending the time by which the Companies must meet the Performance Standards delineated in Section XII (“Stipulations and Preservation of Rights”) of this ACO. Subject to the preceding sentence, a “Force Majeure Event” shall mean (a) an event which causes a delay in performing any requirement of this ACO, where the delay has been or will be caused by circumstances beyond the Companies' control and which could not have been prevented by the exercise of due diligence, including delays caused by a failure of a regulatory authority to act in a timely fashion with respect to a permit, approval or authorization that the Companies sought in a

diligent and timely manner, and including the kinds of events listed in Paragraph 181 of this ACO; or (b) an equipment malfunction at B.L. England which causes a Unit to exceed a 24-hour or 30-Day Emission Rate required under this ACO, where such malfunction has been caused by circumstances beyond the Companies' control and could not have been prevented by the exercise of due diligence.

174. If a Force Majeure Event occurs, the Companies shall notify NJDEP in writing as soon as practicable, but in no event later than seven (7) business days following the date the Companies first knew, or within ten (10) business days following the date the Companies should have known by the exercise of due diligence--whichever comes earlier--that the Force Majeure Event caused or may cause such delay or exceedance. In this notice the Companies shall reference this paragraph of the ACO and describe the anticipated length of time that the delay or exceedance may persist, the cause or causes of the delay or exceedance, the measures taken or to be taken by the Companies to prevent or minimize the delay or exceedance, and the schedule by which those measures will be implemented. The Companies shall adopt all reasonable measures to avoid or minimize such delays or exceedances.
175. NJDEP shall notify the Companies in writing regarding their claim of Force Majeure within (15) fifteen business days of receipt of the Force Majeure notice provided under this section.
176. If NJDEP determines that a) a delay or exceedance has been or will be caused by a Force Majeure Event, and b) the Companies have taken all necessary actions to prevent or minimize the delay or exceedance, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay or exceedance for a period of time equivalent to the delay actually caused by such circumstances. Provided, however, that a State or Federal

mandate to continue operations shall not toll the deadlines for meeting the Performance Standards set forth in Section XII ("Stipulations and Preservation of Rights") of this ACO.

177. The Companies shall not be liable for stipulated civil or administrative penalties, or for any exceedance of a 30-Day or 24-Hour Emission Rate, for a period that shall be equal to any delay caused by a Force Majeure Event under this Section XXI of the ACO.
178. If NJDEP denies the Companies' claim that a Force Majeure Event prevented them from meeting the deadlines or Performance Standards set forth in Section XII ("Stipulations and Preservation of Rights"), the Companies must pay the penalties as stipulated in Section XII of this ACO. If NJDEP denies the Companies' claim that a Force Majeure Event prevented them from meeting other obligations under this ACO, the Companies may be subject to the stipulated administrative penalties under this ACO. For any stipulated penalties that the Companies may be subject to because of NJDEP's denial of the Companies' claim of Force Majeure, the Companies, pursuant to Paragraph 151 of this ACO, may refuse NJDEP's demand for payment of such stipulated penalties and may raise whatever defenses they are otherwise entitled to assert in any action brought to enforce any demand for payment.
179. The Companies shall bear the burden of proving that any delay in performing any requirement of this ACO or any exceedance of a 24-Hour or 30-Day Emission Rate after the deadlines specified in this ACO was caused by or will be caused by a Force Majeure Event. The Companies shall also bear the burden of proving the duration and extent of any delay or exceedance attributable to a Force Majeure Event. An extension of one compliance date based on a particular Force Majeure Event may, but will not necessarily, result in an extension

of a subsequent compliance date.

180. Unanticipated or increased costs or expenses associated with the Companies' performance of their obligations under this ACO shall not constitute a Force Majeure Event. A breach by any of the Companies' contractors may, but shall not automatically, constitute a Force Majeure Event.
181. The Parties agree that, depending upon the circumstances related to an event and the Companies' response to such circumstances, the kinds of events listed below could also qualify as Force Majeure Events within the meaning of this Section: acts of God; acts of War; and acts of terrorism.

#### **XXII. TELEMETERED EMISSIONS DATA**

182. The Companies currently are required to telemeter emissions data, including certain data collected by an ambient monitoring network, from B.L. England to NJDEP by way of dedicated telephone lines. Since the ambient monitoring network is no longer required, and since the Companies submit quarterly certified excess emissions reports along with quarterly certified electronic data reports that contain CEMS and COMS (continuous opacity monitoring systems) data, the Companies have requested that they no longer be required to telemeter data to NJDEP.
183. Pursuant to the Companies' request, the Companies may stop telemetering of B.L. England emissions data to NJDEP upon the effective date of this ACO, provided that the Companies shall pay fees related to the telemetering of such data up to the effective date of this ACO or up to any subsequent date on which the Companies stop the telemetering of emissions data,

whichever is later.

FOR THE COMPANIES:

By this signature, I certify that I have full authority to execute this document on behalf of  
ATLANTIC CITY ELECTRIC COMPANY

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

By this signature, I certify that I have full authority to execute this document on behalf of  
CONNECTIV

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_



whichever is later.

FOR THE COMPANIES:

By this signature, I certify that I have full authority to execute this document on behalf of  
ATLANTIC CITY ELECTRIC COMPANY

DATED: January 24, 2006

BY: 

NAME: Kirk J. Emge

TITLE: General Counsel

By this signature, I certify that I have full authority to execute this document on behalf of  
CONNECTIV

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

whichever is later.

FOR THE COMPANIES:

By this signature, I certify that I have full authority to execute this document on behalf of  
ATLANTIC CITY ELECTRIC COMPANY

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

By this signature, I certify that I have full authority to execute this document on behalf of  
CONECTIV

DATED: January 24, 2006

BY: Albert F. Kirby III

NAME: Albert F. Kirby, III

TITLE: Vice President

By this signature, I certify that I have full authority to execute this document on behalf of  
PEPCO HOLDINGS, INC.

DATED: January 24, 2006

BY: 

NAME: Thomas S. Shaw

TITLE: Executive Vice President and Chief Operating Officer

FOR NJDEP:

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Mark Mauriello

TITLE: Acting Assistant Commissioner  
Land Use Management

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: Wolfgang Skacel

TITLE: Assistant Commissioner  
Compliance & Enforcement

By this signature, I certify that I have full authority to execute this document on behalf of  
PEPCO HOLDINGS, INC.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

FOR NJDEP:

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP

DATED: 1/24/06

BY: Mark W. Mauriello

NAME: Mark Mauriello

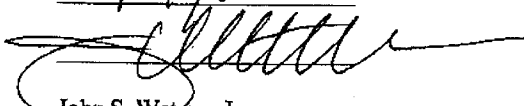
TITLE: Acting Assistant Commissioner  
Land Use Management

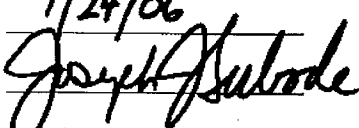
DATED: 1/24/06

BY: Wolfgang Skacel

NAME: Wolfgang Skacel

TITLE: Assistant Commissioner  
Compliance & Enforcement

DATED: 1/24/06  
BY:   
NAME: John S. Watson, Jr.  
TITLE: Assistant Commissioner  
Natural & Historic Resources

DATED: 1/24/06  
BY:   
NAME: Joseph J. Seebode  
TITLE: Assistant Commissioner  
Site Remediation & Waste Management

