

IN THE MATTER OF RC CAPE MAY HOLDINGS, L.L.C.

24 Waterway Avenue
Suite 800
The Woodlands, Texas 77380

ADMINISTRATIVE CONSENT ORDER AMENDMENT

The following SUPPLEMENTAL FINDINGS are made and this ADMINISTRATIVE CONSENT ORDER AMENDMENT ("Amendment") to the January 24, 2006 Administrative Consent Order, the October 31, 2006 Administrative Consent Order Amendment, and the January 13, 2010 Administrative Consent Order Amendment, *In the Matter of Atlantic City Electric Company, Conectiv and Pepco Holdings, Inc.* is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection by N.J.S.A. 13:1D-1 *et seq.* and the Air Pollution Control Act of 1954, N.J.S.A. 26:2C-1 *et seq.*, and duly delegated pursuant to N.J.S.A. 13:1B-4 to the Assistant Commissioner for Compliance and Enforcement.

SUPPLEMENTAL FINDINGS

1. The New Jersey Department of Environmental Protection ("NJDEP" or "the Department") and Atlantic City Electric Company, Conectiv Atlantic Generation, LLC, Conectiv, and Pepco Holdings, Inc. (collectively, "Conectiv") entered into an Administrative Consent Order ("ACO") dated January 24, 2006, resolving the Department's claims for, among other things: injunctive relief and civil penalties arising out of alleged violations of the Prevention of Significant Deterioration ("PSD") requirements in Part C of Title I of the Clean Air

- Act, 42 U.S.C. §§ 7470-7492, and its implementing regulations, 40 C.F.R. 52.21, and the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 *et seq.*, and its implementing regulations, N.J.A.C. 7:27 *et seq.* at the B.L. England generation station ("B.L. England");
2. Atlantic City Electric Company ("ACEC") entered into a Purchase and Sale Agreement with RC Cape May Holdings, LLC ("RC Cape May") dated August 15, 2006, pursuant to which ACEC sold B.L. England to RC Cape May;
 3. In light of the Purchase and Sale Agreement, the Department, ACEC, Conectiv, Pepco Holdings, Inc. and RC Cape May on October 31, 2006, entered into an Amendment to the January 24, 2006 ACO pursuant to which RC Cape May agreed, among other things, to either Repower or meet the Performance Standards of the January 24, 2006 ACO (Section XII, Stipulations and Preservation of Rights) by the deadlines set forth therein for each unit;
 4. Pursuant to an ACO Amendment dated January 13, 2010, the Parties agreed to a revised timeline by which RC Cape May would either Repower or meet the Performance Standards of the January 24, 2006 ACO;
 5. RC Cape May has determined to Repower B.L. England, and has requested a revised timeline to complete said Repowering.
 6. In exchange for agreeing to a revised timeline, the Department requires that RC Cape May implement an interim compliance program that achieves emission reductions for nitrogen oxides, as well as other actions contained herein;
 7. In light of these Supplemental Findings, the Department and RC Cape May (collectively, the "Parties") wish to enter into this Amendment, amending the January 24, 2006 ACO, the October 31, 2006 ACO Amendment, and the January 13, 2010 ACO Amendment as follows:

ORDER

I. APPLICABILITY

8. The provisions of the October 31, 2006 ACO Amendment, as modified by this Amendment, shall continue to apply and be binding upon the Department and RC Cape May, its successors and assigns upon the Effective Date as set forth in Paragraph 44 hereof. The Parties agree that this Amendment imposes certain obligations upon RC Cape May in connection with the operation of B.L. England, and does not impose any additional obligations upon, or affect in any way the rights of, Conectiv as set forth in the ACO, the October 31, 2006 Amendment of the same, any permit issued to Conectiv or applicable law.

9. This Amendment addresses only certain parts of the January 24, 2006 ACO, the October 31, 2006 ACO Amendment, and the January 13, 2010 ACO Amendment applicable to B.L. England. Nothing in this Amendment shall relieve RC Cape May of unfulfilled requirements imposed on it by the January 24, 2006 ACO, the October 31, 2006 ACO Amendment, or the January 13, 2010 ACO Amendment except as explicitly set forth herein.

10. Obligations imposed by this Amendment 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 Amendment 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 Amendment are not subject to the automatic stay of 11 U.S.C. § 362(a), but, instead, fall with the exemption from the automatic stay at 11 U.S.C. § 362(b)(4).

II. DEFINITIONS

11. For purposes of Section VI of this Amendment only, Operating Day for a unit means any calendar day on which the unit fires any amount of Fossil Fuel.
12. 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.
13. For purposes of this Amendment only, Repower means the replacement of an existing coal-fired or oil-fired boiler with a new natural gas heat source.
14. "Shut Down" means permanently cease operation of.
15. For purposes of Section III of this Amendment only, Shut Down Day means any calendar day during which there is a Shut Down Period as defined in the current Title V permit, BOP110003, Ref. # 4, U2 Unit 2 Steam Generator, OS5 Shutdown.
16. For purposes of Section III of this Amendment only, Start-Up Day means any calendar day during which there is a Start Up Period as defined in the current Title V permit, BOP110003, Ref. # 4, U2 Unit 2 Steam Generator, OS4 Start-Up using No. 2 fuel oil.

III. EMISSION REDUCTIONS AND PERFORMANCE STANDARDS

A. Performance Standards—B.L. England Unit 1

17. The January 24, 2006 ACO Paragraph 110, Section XII ("Stipulations and Preservation of Rights), as amended by the January 13, 2010 ACO Amendment, Section III, Paragraph 16, is amended as follows: RC Cape May is permitted to continue to operate Unit 1 through September 30, 2013 as follows: 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; and/or 2) during "peak reliability periods" as defined in Section II (Definitions) of the ACO, and as further clarified in a letter dated February 4, 2008 from the NJDEP to RC Cape May. On September 30, 2013, RC Cape May shall cease operations of B.L. England Unit 1 until such time as B.L. England shall meet the following Performance Standards: 1) NO_x emission rates of no greater than 0.150 lb/mmBtu, 24-hour daily average, 0.110 lb/mmBtu, 30-day rolling average, and 0.100 lb/mmBtu, 90 -day rolling average. Notwithstanding the foregoing, RC Cape May shall Shut Down Unit 1 by May 1, 2014. The Shut Down of Unit 1 will be irrevocable and cannot be reversed or changed for any reason except for a State or Federal mandate to continue operations.

B. Performance Standards–B.L. England Unit 2

18. The January 24, 2006 ACO Paragraph 111, Section XII ("Stipulations and Preservation of Rights"), as amended by the January 13, 2010 ACO Amendment, Section III, Paragraph 17, is amended as follows: RC Cape May may operate Unit 2 in accordance with all applicable permits, laws, rules and regulations to May 1, 2015 but is limited to operating no more than 4,300 hours per year (the 12-month period from May 1 to April 30) from the Effective Date of this Amendment to May 1, 2015.

C. Interim NO_x Emission Rates – B.L. England Units 1 and 2

19. By no later than the Effective Date of this Amendment, RC Cape May shall operate B.L. England Units 1 and 2 to achieve and maintain a NO_x emission rate of 0.42 lb/mmBtu, 24-hour daily average, except that this limit shall not apply during a Start-up Day or a Shut Down Day, as defined herein, provided RC Cape May undertakes best efforts to minimize NO_x emissions

during any Start-Up and Shut-Down Periods. For the avoidance of doubt, on any given day (the "Current Day") if RC Cape May is operating a unit under a full 24-hour Day Ahead Award from the PJM and has received a Day Ahead Schedule from the PJM for the next day, the Current Day will only be considered a Shut Down Day if the unit experiences a forced outage during the Current Day.

IV. REPOWERING OR SHUT DOWN OF B.L. ENGLAND

20. Except as provided in paragraph 23 below, RC Cape May shall Repower B.L. England by May 1, 2016.
21. RC Cape May shall work expeditiously towards obtaining all required regulatory approvals and constructing and putting into service the equipment and facilities necessary to Repower B.L. England. In connection with Repowering B.L. England, RC Cape May must obtain a permit modification that incorporates advances in the art of air pollution control, as defined in N.J.A.C. 7:27-22.35, applicable at the time of permitting.
22. NJDEP agrees to make an expeditious determination on all administratively complete applications for NJDEP permits necessary for the construction and operation of equipment and facilities necessary to Repower B.L. England.
23. (a) By December 31, 2013, RC Cape May shall notify NJDEP whether the company will proceed with Repowering B.L. England in accordance with this Amendment. (b) If RC Cape May provides notice pursuant to (a) above that the company will not proceed with Repowering B.L. England, then RC Cape May shall Shut Down B.L. England Unit 2 in accordance with all applicable laws, rules and regulations by May 1, 2014. (c) If RC Cape May notifies NJDEP pursuant to (a), above, that it intends on Repowering BL England pursuant to (a), above, but is

unable to finish Repowering B.L. England by May 1, 2016, then RC Cape May shall notify NJDEP prior to May 1, 2016 that the company requires additional time to finish Repowering B.L. England. RC Cape May shall include the following in the company's notice to NJDEP: 1) the reasons why Repowering cannot occur prior to May 1, 2016; and 2) the anticipated date RC Cape May expects to complete the Repowering of B.L. England. After May 1, 2015, RC Cape May shall continue to cease operations at B.L. England Unit 2 until Repowering is completed.

(d) If RC Cape May determines after the company gives notice pursuant to (c), above, that the company is unable to complete Repowering, the company shall notify NJDEP of its determination by May 1, 2014 and shall Shut Down B.L. England Unit 2 immediately thereafter. RC Cape May represents that if it determines that it is unable to Repower B.L. England, and provides NJDEP of the company's determination, the Shut Down of B.L. England Unit 2 will be irrevocable and cannot be reversed or changed for any reason except for a State or Federal mandate, including but not limited to a determination by the FERC that Shut Down of B.L. England Unit 2 would adversely affect the transmission of electric energy, or would cause or result in an electric emergency.

24. Paragraph 112 of the ACO is amended to state as follows: "If RC Cape May Shuts Down B.L. England Unit 2, as contemplated under Paragraph 23, above, RC Cape May may continue to operate B.L. England Unit 3 in accordance with all applicable laws, rules and regulations.

V. LAND DEDICATION

25. RC Cape May will preserve in its natural state a total of 150 acres of the existing wetlands of the B.L. England Property in order to protect said property from sprawl, vehicular traffic, and the siting of other sources of air pollution. The wetlands to be preserved shall include

all wetlands located on the B.L. England Property designated as Lot 74, Block 479, also known as Parcel 2, and a portion of the wetlands located on B.L. England Property designated as Lot 76, Block 479, also known as Parcel 1 as measured from the boundary of Lot 76 consisting of South Fork Creek, as depicted on Exhibit A attached hereto, so that the total acreage preserved equals 150 acres. Within 90 days after the execution of this Amendment, RC Cape May shall submit a survey to the Department depicting the 150 acres to be preserved pursuant to this Amendment, and a conservation restriction/easement using the Department's template. The conservation restriction/easement shall preserve in perpetuity all wetlands designated in the survey from future disturbances, unless approved by the Department, with the exception that the conservation restriction/easement shall allow the wetland area to be disturbed in order to construct any natural gas pipeline necessary to Repower.

26. Should revisions or corrections to the draft conservation restriction/easement be required, the Department will provide RC Cape May with comments. Within 30 calendar days of receipt of the Department's comments, RC Cape May shall file the conservation restriction/easement with the County Clerk's Office for recording onto the property deed.

27. RC Cape May shall submit to the Department proof of the deed recording within 20 calendar days of the recording by the County Clerk.

VI. CIVIL PENALTY

28. RC Cape May shall continue to pay to NJDEP a civil penalty of \$3,000 per day for each Operating Day that Unit 2 operates, as that term is defined herein, after the Effective Date of this Amendment, without the requisite pollution control equipment necessary to ensure that Unit 2 meets the NOx emission rates set forth in Paragraph 17 of the January 17, 2010 ACO

Amendment. Payment shall be made quarterly in arrears by check or wire transfer payable to "Treasurer, State of New Jersey" and shall be submitted to:

New Jersey Department of Environmental Protection
Director, Air & Hazardous Materials, Compliance & Enforcement
401 E. State Street
Mail Code 401-04B
P.O. Box 420
Trenton, NJ 08625-0420

29. The Parties agree that with respect to Unit 2, the stipulated civil penalty set forth in Paragraph 113 of the January 24, 2006 ACO is hereby void and shall be of no further force and effect.

VII. STIPULATED PENALTIES AND DISPUTE RESOLUTION

30. Within twenty-one (21) calendar days after receipt of a written demand from NJDEP, and subject to the provisions of Section V (Dispute Resolution), RC Cape May shall pay the following stipulated penalties to NJDEP by submitting a check or wire transfer payable to "Treasurer, State of New Jersey" to:

New Jersey Department of Environmental Protection
Director, Air & Hazardous Materials,
Compliance & Enforcement
401 E. State Street
Mail Code 401-04B
P.O. Box 420
Trenton, NJ 08625-0420

- a. RC Cape May shall pay a stipulated penalty of \$3,000 per day, per unit, for each day after May 1, 2012, that B.L. England Units 1 and/or 2 exceed the interim NOx emission rate set forth at Paragraph 18 herein.
- b. RC Cape May shall pay a stipulated penalty of \$3,000 per day for failure to timely

pay the civil penalties as specified in Section V (Civil Penalty) of this Amendment.

31. If RC Cape May disputes its obligation to pay all or part of a demanded stipulated penalty under this Section or civil penalties under Section VI of this Amendment, it may avoid the imposition of a separate stipulated penalty for failure to pay the disputed penalty by depositing the disputed amount in a commercial escrow account pending resolution of the matter. If the dispute is thereafter resolved in RC Cape May's favor, the escrowed amount, plus accrued interest, shall be returned to RC Cape May. 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.
32. If RC Cape May fails to pay stipulated penalties under this Section or civil penalties pursuant to Section VI of this Amendment, NJDEP may institute civil proceedings to collect such penalties pursuant to N.J. Court Rules R. 4:70, assess civil administrative penalties for the violations of this Amendment, or take any other appropriate enforcement action authorized by law. RC Cape May reserves all rights to appeal or otherwise challenge any assessment of or demand for stipulated penalties under this Section or stipulated civil penalties under Section V and any associated enforcement action under this Amendment.
33. The payment of stipulated penalties does not alter RC Cape May's responsibility to complete all requirements of this Amendment.

VIII. REPORTING

34. Beginning with the first calendar quarter following the Effective Date of this Amendment and continuing every calendar quarter thereafter for the duration of this Amendment, RC Cape

May shall submit within thirty (30) days after the end of each quarter a report identifying the Operating Days, as defined herein, of B.L. England Units 1 and 2 during the preceding quarter and providing to NJDEP the same electronic data (and in the same format) on hourly heat input that RC Cape May provided to USEPA for the preceding quarter.

IX. FORCE MAJEURE

35. For the purpose of this Amendment, a "Force Majeure Event" means (a) an event which causes a delay in performing any requirement of this Amendment; or b) a unit malfunction which causes RC Cape May to exceed any emission rates specified under this Amendment, which has or will be caused by circumstances beyond the control of RC Cape May, and which RC Cape May could not have prevented by the exercise of due diligence.
36. If a Force Majeure Event occurs, RC Cape May shall notify NJDEP in writing as soon as practicable, but in no even later than seven (7) business days following the date RC Cape May first knew, or within ten (10) business days following the date RC Cape May should have known by the exercise of due diligence- whatever comes earlier - that the Force Majeure Event caused or may cause such delay or exceedence. In this notice RC Cape May shall reference this Paragraph and describe the anticipated length of time that the delay or exceedence may persist, the cause or causes of the delay or exceedence, the measures taken or to be taken by RC Cape May to prevent or minimize the delay or exceedence, and the schedule by which those measures will be implemented. RC Cape May shall adopt all reasonable measures to avoid or minimize such delays or exceedences.
37. NJDEP shall notify RC Cape May in writing regarding its claim of Force Majeure within fifteen (15) business days of receipt of the Force Majeure notice provided under this section. If NJDEP determines that a) a delay or exceedence has been or will

be caused by a Force Majeure Event, and b) RC Cape May has taken all necessary actions to prevent or minimize the delay or exceedence, the Parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay or exceedence for a period of time equivalent to the delay actually caused by such circumstances. Notwithstanding the foregoing, a delay shall not affect the Shut Down dates specified in Paragraphs 17 and 23 for B.L. England Units 1-2.

37. RC Cape May shall not be liable for stipulated penalties, or for any exceedence of a 90-Day, 30-Day or 24-Hour emission rate, for a period that shall be caused by a Force Majeure Event under this Section IX.

38. If NJDEP denies RC Cape May's claim that a Force Majeure Event prevented it from meeting the deadlines or Performance Standards as amended herein, RC Cape May must pay the penalties as stipulated in Sections VI and/or VII of this Amendment. If NJDEP denies RC Cape May's claim that a Force Majeure Event prevented it from meeting other obligations under this Amendment, RC Cape May may be subject to the stipulated penalties under the Amendment. For any stipulated penalties that RC Cape May may be subject to because of NJDEP's denial of RC Cape May's claim of Force Majeure, RC Cape May may refuse NJDEP's demand for payment of such stipulated penalties and may raise whatever defenses it is otherwise entitled to assert in any action brought by NJDEP to enforce any demand for payment.

39. RC Cape May shall bear the burden of proving that any delay in performing any requirement of this Amendment or any exceedence of a 24-Hour, 30-Day or 90-Day emission rate, as set forth herein, after the deadlines specified in this Amendment was caused or will be caused by a Force Majeure Event. RC Cape May shall also bear the burden of proving the

duration and extent of any delay or exceedence 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.

40. Unanticipated or increased costs or expenses associated with RC Cape May's performance of its obligations under this Amendment shall not constitute a Force Majeure Event. A breach of any of RC Cape May's contracts may, but shall not automatically, constitute a Force Majeure Event.

41. The Parties agree that, depending upon the circumstances related to an event and RC Cape May's responses to such circumstances, the kinds of events listed below could also qualify as Force Majeure within the meaning of this Section: acts of God, acts of War, and acts of terrorism.

X. GENERAL PROVISIONS

42. Effective Date: This Amendment shall become effective upon the execution hereof by the Parties.

43. Permit Amendments: By September 1, 2012, RC Cape May shall submit to NJDEP a permit modification application to incorporate the requirements, terms and/or conditions made applicable to B.L. England by this Amendment.

44. Meaning of Terms: Terms that are defined in this Amendment Section II ("Definitions") shall have the meaning given to that term herein. Except as provided in the preceding sentence, terms used in this Amendment that have a definition in applicable State or federal law shall have the same meaning ascribed to them in State or federal law.

45. Other Laws: Nothing in this Amendment shall relieve RC Cape May of its obligation to

comply with all applicable federal, state and local laws and regulations. Nothing contained in this Amendment shall be construed to prevent or limit the Department's rights to obtain penalties or injunctive relief under any federal, state or local laws or regulations.

46. Complete Agreement: The January 24, 2006 ACO, October 31, 2006 Amendment, the January 13, 2010 ACO Amendment, and this Amendment, constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in these documents. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in the January 24, 2006 ACO, October 31, 2006 ACO Amendment, the January 13, 2010 ACO Amendment, and this Amendment.

47. Notice: Any communication made by NJDEP to RC Cape May pursuant to this Amendment shall be sent to:

Jim Maiz
Rockland Capital, LLC
24 Waterway Avenue
Suite 800
The Woodlands, TX 77380

with a copy to:

Dennis Toft, Esq.
Wolff & Samson, PC
One Boland Drive
West Orange, NJ 07052

When this Amendment requires written notification to or written communication with NJDEP, such written notification or written communication shall be provided to:

Manager
Air Compliance & Enforcement

Southern Regional Office
One Port Center, 2 Riverside Drive, Suite 201
Camden, New Jersey 08103

with a copy to:

Section Chief
Environmental Enforcement
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 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 parties with a written notice setting forth such new notice recipient or address.

48. Signatories and Counterparts: Each undersigned representative of RC Cape May certifies that he or she is fully authorized to enter into and to execute the terms and conditions of this Amendment and legally bind the entity for which he or she signs. Each undersigned representative of NJDEP represents that he or she is fully authorized to enter into the terms and conditions of this Amendment and legally bind NJDEP. This Amendment may be executed in 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.

FOR RC CAPE MAY HOLDINGS, LLC

DATED: 5/18/12

BY: 

NAME: George Hair

TITLE: S. Vice President

FOR NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATED: _____

BY: _____

NAME: Wolfgang Skacel

TITLE: Assistant Commissioner,
Compliance & Enforcement

FOR RC CAPE MAY HOLDINGS, LLC

DATED: _____

BY: _____

NAME: _____

TITLE: _____

FOR NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATED: May 18 2012

BY: 

NAME: Wolfgang Stacc

TITLE: Assistant Commissioner,
Compliance & Enforcement