



Agenda Date: 6/21/06

Agenda Item: 2E

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF THE PROVISION OF)
BASIC GENERATION SERVICE FOR)
PERIOD BEGINNING JUNE 1, 2007)

ENERGY

DECISION AND ORDER

DOCKET NO. EO06020119

(Service List Attached)

BY THE BOARD:

By virtue of its Order dated March 24, 2006, the Board initiated the Basic Generation Service ("BGS") proceeding for the procurement period beginning June 1, 2007. That Board Order listed seven questions regarding the BGS process and instructed interested parties to file preliminary comments on those questions. On or about April 6, 2006, Initial Comments ("IC") were received from: Constellation Energy Commodities Group, Inc. ("Constellation"); Comverge, Inc. ("Comverge"); Consolidated Edison Energy, Inc. ("CEE"); Conectiv Energy Supply, Inc. ("Conectiv"); Independent Energy Producers of New Jersey ("IEPNJ"); JP Morgan Ventures Energy Corporation ("JP Morgan"); Morgan Stanley Capital Group Inc. ("MSCG"); New Jersey Large Energy Users Coalition ("NJLEUC"); Pepco Energy Services, Inc. ("PES"); PPL EnergyPlus LLC ("PPL"); Retail Energy Supply Association ("RESA"); and the Division of the Ratepayer Advocate ("RPA"). The New Jersey electric distribution companies, consisting of Atlantic City Electric Co., Jersey Central Power & Light Co., Public Service Electric & Gas Co., and Rockland Electric Co. filed a joint position together with their independent Auction Manager, National Economic Research Associates, Inc. (jointly the "electric distribution companies" or "EDCs").

On April 18, 2006 a meeting was held at the Board's Newark office, in order to give all interested parties an opportunity to discuss and ask questions about the Initial Comments. CEE, Conectiv, Constellation, Comverge, EDCs, IEPNJ, JP Morgan, MSCG, National Energy Marketers Association ("NEMA"), New Jersey Citizen Action ("NJCA"), PES, PPL, RESA, Reliant Energy, RPA, and Suez Energy Resources all participated in this meeting.

On April 28, 2006 the Board held a Legislative-type hearing at its Newark office. President Jeanne M. Fox presided over the hearing. Commissioners Joseph L. Fiordaliso and Christine V. Bator also participated in the Hearing. The purpose of the Hearing was to allow the participating parties to enter their comments on the record and to allow the Commissioners and Staff to ask the participants questions regarding their comments. The Hearing was broken down into panels on the following subjects: Type of procurement process and term of supply contracts; transparency/underlying supply contracts; and the Supplier Master Agreement ("SMA"). The EDCs, RPA, CEE, Constellation, Comverge, MSCG, NJLEUC and RESA presented comments

for the record, and were questioned by President Jeanne M. Fox, Commissioner Joseph L. Fiordaliso, Commissioner Christine V. Bator and Board Staff.

Final Comments ("FC") were submitted on or about May 5, 2006 by CEE, Constellation, Comverge, the EDCs, IEPNJ, MSCG, NJCA, NJLEUC, PES, PV NOW, RESA, and the RPA.

In initiating the 2007 BGS procurement process, the Board indicated that the focus, at this time, would be on consideration of the procurement process, policy issues directly related thereto and issues that are of particular interest to the Board and warrant individual consideration. The Board attempted to facilitate the proceeding by providing a set of questions for the industry to consider and address in its comments. The Board had always intended that the outcome of this review would act as the basis for a more detailed consideration of the procurement particulars, similar to the type of process employed in past years. The comments from the participants listed above have been helpful in clarifying some matters, which will be addressed herein, and have raised some other options which will be considered further in the next phase of this proceeding.

ISSUES

Evaluating the Current BGS Procurement Process

The most important aspect of this initial phase of the 2007 BGS procurement process inquiry was to invite interested parties to comment on the continued use of a descending clock auction for BGS procurement. By specifically soliciting comments on this issue, the Board intended to make clear that the essential elements of the BGS procurement process have always been, and will always be, subject to periodic review and revision by the Board. At the outset, it should be noted that the record reflects that all interested parties involved in this matter are in agreement that a descending clock auction for BGS procurement should be continued in some form. The RPA, although proposing consideration of a portfolio approach for part of the BGS requirements and recommending two rule changes, supports the descending-clock auction for the majority of BGS requirements. (RPA FC at 2). Similarly, although NJLEUC indicates that an RFP approach might be used for some features such as demand response, it also supports the current auction process. (NJLEUC IC at 2). PES has a positive impression of the auction concept but suggests that the Maryland structure should be considered to better correlate bids and rate design. (PES IC at 3-5).

The majority of the comments on the type of process focused on the BGS-FP procurement. Commenters had no serious alternative to the descending clock auction process that the Board has authorized for the past five years and many praised the process. (JP Morgan IC at 1-2).

PES did raise the possibility that the Board should consider a process that did not require that bids are administratively translated into rates. (PES IC at 4-5). In the procurement process advocated by PES, wholesale suppliers would be provided with a worksheet that mimics the existing rate tariff components. For example, PES indicates that a worksheet for a rate schedule that is billed based on three time-of-use energy rating periods and a maximum demand charge has four locations in which the bidding supplier can input a bid that corresponds to each of the three time-of-use energy tariff components plus the maximum demand component. Suppliers are free to enter their bid in each of the four input locations or in just one. According to PES, the winning bidder is then selected based upon a set of pre-identified weights associated with the four potential inputs, and the final components of the tariff are determined by calculating a weighted average, based on the number of tranches purchased, of the winning tranche prices for each tariff component.

The PES solution seems to remove one administrative process and introduce another. At least with the current methodology, the rate design algorithms are based on load research whereas the PES supply-period weighting process seems likely to be more subjective. The lone concern of PES is not enough for the Board to abandon the descending-clock auction process for BGS-FP service, especially when this supposed issue does not seem to be a concern to any potential bidders.¹ The Board will keep the PES concern in mind when it reviews the BGS-FP rate design methodology for 2007.

Although there were no serious counter proposals to a descending-clock auction for BGS-CIEP customers, there were suggestions for modifications to the bid product (RESA FC at 4) and the frequency of the auctions (PES FC at 3). In addition, as noted in some of the comments, some of the BGS-CIEP tranches in 2006 will be served in accordance with the EDC's Contingency Plans. For 2006, this will mean that the EDCs are responsible for serving a portion of the BGS-CIEP load beginning June 1, 2006. This is the first time that tranches, in either auction, have not been filled through the auction process and the first time that the EDC's Contingency Plans have been implemented. The Board would like to factor a few months of actual experience into its BGS-CIEP considerations. Therefore, while the Board still favors a descending-clock auction to determine BGS-CIEP suppliers, it will reserve a final determination on the BGS-CIEP procurement process, at this time.

Associated with the type of procurement process was consideration of the length of the procurement contracts and the makeup of the supply to be procured. Comments ranged from a one-year auction for mid-sized commercial and industrial customers (RESA FC at 3-4) to maintaining the status quo of averaging 3-year contracts (Constellation IC at 4) to long-term contracts for part of the supply requirements. (RPA IC at 2). It is not necessary for the Board to make a final determination on these issues at this time. The Board will continue to consider these issues during the second phase of this proceeding which will begin with the filings directed below. At that time, interested parties may comment on the BGS-CIEP service, including service through the EDCs, the length of either the BGS-FP or BGS-CIEP contract and the makeup of the supply to be procured.

2. Transparency

A second subject area of importance to the Board was the matter of transparency and specifically the issue of whether, as a condition to participating in the BGS Auction, winning bidders should be required to disclose the details of their underlying supply contacts. This subject was raised by NJLEUC during the 2006 proceeding. In the current proceeding, the RPA and NJCA support such a requirement while NJLEUC supports a similar requirement for EDC affiliates in New Jersey and Pennsylvania. The EDCs and the wholesale suppliers oppose the concept.

NJLEUC proposes the following disclosure of information: bidders should provide the source (if they own the generation) or the counterparty (if they buy generation) for BGS supply; bidders who own generation should provide the amount of energy from each generating station, while the counterparty should identify the physical energy supplier; New Jersey and Pennsylvania utility affiliates should provide direct supply sources and indirect supply arrangements supporting third party bidders in the auction; the information should be provided prior to bidding

¹ PES states that it is a retail supplier.

and updated periodically; the information should be provided to the Board, its consultants, and the PJM Market Monitoring Unit in order to enable detection and resolution of market power concerns prior to the conduct of the auction. (NJLEUC IC at 3-5; FC at 3) The RPA similarly recommends that the source, cost, quantity and terms and conditions for the sources of supply to provide BGS service be submitted as soon as it is available and updated when it changes significantly. The RPA indicates its willingness to work with interested parties to identify reasonable reporting requirements. (RPA FC at 4). The RPA, NJLEUC and NJCA indicate that the Board's overall objective in adding this type of requirement should be to have sufficient information available to assess whether the auction results reflect a competitive bidding process and competitive underlying market conditions. These parties point to the need to evaluate concentration in the market from which BGS supplies are sourced and to assess the potential for the exercise of market power in that market. (NJLEUC FC at 2; RPA FC at 5; NJCA IC at 3)

Other parties suggest that a requirement to disclose supply sources would produce no meaningful results while threatening the competitiveness of the auction by reducing the number of bidders willing to agree to such conditions. (MSCG FC at 6). MSCG points out that the information that the Board should be and is interested in is already available pre- and post-auction to allow the Board to determine if the results of the BGS auction are consistent with market conditions in a competitive wholesale marketplace. (MSCG FC at 2) Constellation concurs and provides suggestions on the information that the Board needs to consider in the pre- and post-auction process including examination of forward and historical electric prices, including energy prices, capacity prices, ancillary services prices, PJM administrative fees and any other known costs for which suppliers take price risk, including indirect factors, such as transportation costs and taxes, impacting such prices. (Constellation FC at 2-3). The goals expressed by MSCG and Constellation are consistent with assuring that the auction results reflect a competitive bidding process and competitive market conditions as enunciated by NJLEUC. The difference of opinion is in how the Board should best go about realizing that goal.

At a basic level, those that support contract disclosure have framed the argument in the context of transparency. However, the Board remains unpersuaded by the attempts to portray the issue of supply contract disclosure as somehow furthering the goals of transparency. Transparency, as used in previous Board Orders, has referred to the process from the bidder's point of view. Stated another way, the Board's concerns about transparency have been tied to its belief that the more transparent the BGS Auction process is to bidders, the more likely it will be to attract participants and, more importantly, the better the prices obtained for ratepayers. While it is fair to question how much of the process is available to the general public, this matter has been dealt with in previous Board Orders.² It is also fair to suggest that the Board should consider the competitiveness of the wholesale market and have additional information with which to make its decision with respect to the appropriateness of the auction results. The Board, however, is aware of its obligation to make an informed decision and remains confident in its ability, as it has done before, to request additional information when it believes such information is warranted. It also has availed itself of the resources of the PJM Market Monitoring Unit to consider market power issues in the past and will not hesitate to do so again.

² I/M/O THE PROVISION OF BASIC GENERATION SERVICE FOR THE PERIOD BEGINNING JUNE 1, 2006, Docket No. EOO5040317, Order dated December 8, 2005, at 18-19.

The Board concurs with the general goals expressed by most parties that the Board needs to have the necessary information to assure that the auction results reflect a competitive bidding process and competitive market conditions. Therefore, while the Board will not impose additional requirements on Auction participants at this time, it will explore further, in this or other proceedings, the details of the information that it will require to meet the above goals. Each year, information is produced by both the Auction Manager and the Board's Advisor to indicate the state of the market leading up to the auctions. This information is discussed with Staff who then briefs the Board. The Board will likely further formalize this aspect of the process. Also included in this process will be consideration of the assistance that the PJM Market Monitoring Unit might provide to the Board. Additional details of the data and information that the Board will require and how and when it will be obtained will be developed and released in the Board's Final Auction Order.

3. Supplier Master Agreements

The final subject matter specifically identified in the Board's March 24, 2006 Order is revisiting the terms and conditions of the Supplier Master Agreements ("SMA"). Without exception, and with only some concerns expressed by the EDCs (EDC's FC at 10), the parties believe that it is reasonable to revisit the SMA at this time. In response to comments during the process, the EDCs also indicate that obtaining bidder input regarding both the alternate guaranty process and auction applications would be valuable and that NERA and the EDCs intend to include the related documents, or their substance, in their 2007 BGS procurement process proposal for comment by interested parties. (EDC's FC at 4). The Board concurs with the parties that the SMAs need to be periodically revisited in light of lessons learned over the years and in order to encourage a broad and deep interest in the BGS Auction among potential participants.

FINDINGS

For the foregoing reasons, the Board FINDS that:

- A. A descending-clock auction is appropriate to secure the EDC's BGS-FP electric requirements for the period beginning June 1, 2007;
- B. Bidders shall not be required, at this time, to disclose the details of their underlying supply arrangements;
- C. The application and alternate guaranty process should be offered for comment during the next phase of this proceeding. The EDCs, NERA, and Board Staff should work with the parties and amend these processes where appropriate; and
- D. Board Staff should immediately initiate a stakeholder process to review the provisions of the Supplier Master Agreements.


Accordingly, the Board DIRECTS the electric distribution companies: Atlantic City Electric Company; Jersey Central Power & Light Company; Public Service Electric and Gas Company; and Rockland Electric Company and all other interested parties to file proposals, consistent with this Order, for modifications to the BGS Auction process by July 10, 2006. Participants are welcome to comment on any aspect of the auction process not resolved through this Order. In particular, the Board encourages parties to submit comments on the unresolved items identified in this Order during the second phase of this proceeding.

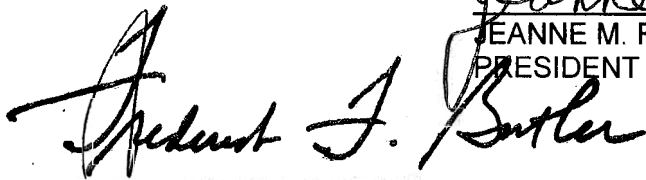
The Board ADOPTS the preliminary procedural schedule in Attachment A to this Order. Parties should adhere to the attached schedule unless otherwise directed by Staff. Any party that has an issue with the proposed schedule should notify the Board's Secretary in writing before June 30, 2006. If necessary, a procedural conference may be scheduled by Staff and/or the Advising DAG. Parties will be advised of the time and place of the legislative-type hearing identified in Attachment A through the electric list server used by Staff for these types of communications. The Board and/or Staff will also notify parties through the electric list server and, when possible, through the BPU webpage of the time and location of any meetings or hearings as well as any schedule changes.

Finally, the Board DIRECTS Staff to immediately initiate a stakeholder process to review the provisions of the Supplier Master Agreements and to provide a final recommendation for Board consideration by September 27, 2006. The initial stakeholder meeting should be noticed through the list server normally used by staff and the Auction website³. To facilitate the consideration of proposed contractual revisions, the Board will require any party advocating such revisions to circulate to all other parties, through the list server, the specific contractual language embodying such revision(s).


DATED: 7/10/06

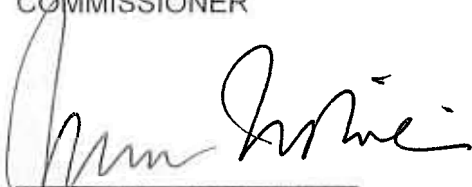
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT




FREDERICK F. BUTLER
COMMISSIONER

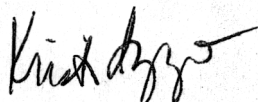

CONNIE O. HUGHES
COMMISSIONER



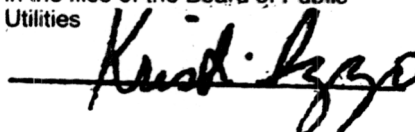
JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



³ www.bgs-auction.com

ATTACHMENT A
EO06020119

Preliminary 2007 BGS Auction Schedule

DATE	Activity or Decision Point
7/10/2006	Filing by all parties of Proposals for BGS Auction Modifications for 2007
7/24/2006	Discovery request deadline
8/07/2006	Discovery response deadline
8/18/2006	Deadline for Initial Comments on all proposals
TBA	Legislative-type Board Hearing
TBA	Public Hearing*
9/22/2006	Deadline for Final Comments
10/12/2006	Expected Board decision on BGS proposals
10/20/2006	EDC Compliance Filing
11/09/2006	Expected Board decision on Compliance Filing
Feb 2007	BGS Auctions

* This is a placeholder for public hearings (time and place to be scheduled by the EDCs in conjunction with the BPU), as required.