



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC)
GENERATION SERVICE (BGS) FOR THE PERIOD)
BEGINNING JUNE 1, 2016)
)
) DOCKET NO. ER15040482

Parties of Record

- Gregory Eisenstark, Esq.**, Windels Marx Lane & Mittendorf, LLP, on behalf of Jersey Central Power & Light Company
- Alexander C. Stern, Esq.**, Attorney for Public Service Electric and Gas Company
- Philip J. Passanante, Esq.**, Associate General Counsel for Atlantic City Electric Company
- Margaret Comes, Esq.**, Senior Attorney for Rockland Electric Company
- Chantale LaCasse**, BGS Auction Manager, NERA Economic Consulting
- Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel
- Murray E. Bevan, Esq.**, Bevan, Mosca, Giuditta & Zarillo, P.C., on behalf of the Retail Energy Supply Association
- James Laskey, Esq.**, Norris McLaughlin & Marcus, P.A. on behalf of Noble Americas Energy Solutions LLC.
- Brian J. Murphy**, NextEra Energy Power Marketing, LLC
- Adam Kaufman**, independent Energy Producers of New Jersey

BY THE BOARD:

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 16, 2015 agenda meeting pertaining to the provision of basic generation service ("BGS") for retail customers who continue to purchase their electric supply from their electric utility company for the period beginning June 1, 2016.

By Order dated May 19, 2015, in the within matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 1, 2015 to determine how to procure the remaining one-third of the State's BGS requirements for residential and small commercial customers ("RSCP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2016. A procedural schedule to address the proposals was also adopted by the Board at that

time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On July 1, 2015, the EDCs filed a Joint Proposal for BGS procurement ("Joint EDC Proposal"), and each EDC also filed a company-specific addendum to the Joint EDC Proposal. A discovery period followed. Initial Comments on the BGS proposals were filed on September 4, 2015. Final Comments were filed on October 9, 2015.

Parties that filed either a proposal, comments, or appeared at the public hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), the Retail Energy Supply Association ("RESA"), Noble Americas Energy Solutions ("Noble"), NextEra Energy Power Marketing, LLC ("NEPM"), and the Independent Energy Producers of New Jersey ("IEPNJ").

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. ACE's public hearing was held on September 21, 2015; PSE&G's public hearing was held on September 18, 2015; RECO's public hearing was held on September 9, 2015, and JCP&L's public hearing was held on September 22, 2015.

The Board also held a legislative-type hearing on September 28, 2015 at its Trenton hearing room, chaired by President Mroz. The purpose of the hearing was to take additional comments on the pending proposals.

POSITIONS OF THE PARTIES: PROPOSALS, INITIAL COMMENTS AND FINAL COMMENTS

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely relied on previous auctions and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. This Order summarizes the main features of the Joint EDC Proposal because it forms the basis of much of the discussion in this Order, and because with the modifications described below, it is the basis for the BGS procurement process that the Board will approve through this Order. Although this Order does not separately summarize each party's position in detail, the Board has carefully reviewed each party's proposals and positions before rendering this decision.

JOINT EDC PROPOSAL

As previously stated, on July 1, 2015, New Jersey's four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for procurement of BGS for the period beginning on June 1, 2016, including proposed preliminary auction rules for the auctions, Supplier Master Agreement ("SMA") and EDC-specific addenda.

The EDCs have jointly proposed two simultaneous, multi-round, descending clock auctions ("Auctions") for the procurement of services to meet the full electricity requirements (*i.e.*, energy, capacity, ancillary services, transmission, etc.) of retail customers that have not chosen a third party supplier ("TPS").

The first Auction would procure service for a one-year period beginning June 1, 2016, for the larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service (the "CIEP Auction"). The customers in this category represent approximately 3,400 Megawatts ("MW") of load to be procured through bidding on 45 full-requirements tranches

of approximately 75 MW each.^{1 2} This is the same type of Auction that the Board approved on November 24, 2014 in Docket Number ER14040370.

The second Auction would procure one-third of the service requirements for all other customers of the state's four EDCs for a three-year period beginning June 1, 2016, for Residential and Small commercial Pricing Auction the ("BGS-RSCP Auction") for approximately 5,500 MW of load to be served through 54 full-requirements tranches of approximately 100 MW each.^{3 4} This is the same type of Auction that the Board approved on November 24, 2014 in Docket No. ER14040370.

The competitive process by which the EDCs propose to procure their supply requirements for BGS load for the BGS period is detailed in the Joint EDC Proposal and in Appendices A and B thereto (Provisional CIEP and RSCP Auction Rules, respectively), and is the same type of auction process that the Board has approved for each of the past fourteen years. Under the Joint EDC Proposal, the retail load of each EDC is considered a separate "product" in each Auction. When a participant bids in either BGS Auction, that participant states the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-RSCP Auction, a price for an EDC is the amount in cents per Kilowatt-Hour ("kWh") to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in dollars per Megawatt-Day (\$/MW-day) paid for the capacity obligation associated with the BGS-CIEP customers served. A tranche of one product (i.e. a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services, etc.) tranche. At the end of the Auctions, the final prices for the EDCs' tranches may be different because of differences in the products, due to each EDC's load factor, delivery location and other factors.

The EDCs proposed that rates for BGS-RSCP customers be designed using a generic methodology implemented as described in the Company-specific addenda. Bidders would be provided with a spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-RSCP rates would be tariff rates determined by converting the Auction prices to BGS-RSCP rates in a manner that reflects seasonality and time of use indications, where appropriate and feasible, in order to provide appropriate price signals.

The EDCs proposed that payments to winning BGS-RSCP bidders for June through September be adjusted to reflect higher summer costs. Payments to bidders for the remainder of the delivery period would be adjusted to reflect lower winter costs. The summer and winter factors are designed so that the overall average payment to the bidder would equal the Auction clearing price.

The EDCs proposed that for BGS-CIEP tranches, rate schedules would be designed to include the transmission and ancillary service costs, and a provision to pass through the hourly PJM real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and various other payments for energy, ancillary services and transmission which would be known in advance of the Auction. Under the EDCs' proposal,

¹ A tranche is a full-requirements product and represents a fixed percentage share of an EDC's load for a specific period.

² The 75 MW tranche size is an approximate amount of BGS-CIEP eligible load for ACE, JCP&L and PSE&G tranches. However, RECO only has one tranche with an eligible load of about 38 MW.

³ As explained below, this does not include procurement for the RECO customers within the company's territory outside of PJM. A separate procurement plan is proposed for those customers.

⁴ The EDCs have previously secured two-thirds of their total RSCP load requirements through May 31, 2018 by means of Board-approved auctions in February 2014 and February 2015.

winning bidders would also receive a Standby Charge of \$0.00015/kWh. The Standby Charge would essentially act as an "option fee." The capacity payment would be charged to all CIEP customers on BGS service, while the Standby Charge would be charged to all customers in the CIEP service category whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided for customers taking BGS-CIEP service plus the Standby Charge rate times the monthly sales to all CIEP customers, whether on BGS-CIEP or not. Under the Joint EDC Proposal, each BGS supplier would be required to assume PJM Load Serving Entity ("LSE") responsibility for the portion of BGS load (whether BGS-CIEP or BGS-RSCP) served by that supplier. In accordance with the PJM Agreements required of LSEs, BGS suppliers would be physically and financially responsible for the day-to-day provision of electric supply for BGS customers. The detailed commercial terms and conditions, under which the BGS supplier would operate, including credit requirements, are set forth in the CIEP and RSCP SMAs attached to the Joint EDC Proposal as Appendix C and D, respectively.

The EDCs requested that the Board render a decision on the Auction process, and thereafter render a decision on the results of the Auctions. Specifically, they requested that the Board approve or reject in their entirety the results of the BGS-RSCP Auction and, separately, the results of the BGS-CIEP Auction, by the end of the second full business day after the calendar day on which the last of the two Auctions closes. The EDCs also recommended that the Board clarify that, at its discretion, it may act on one completed Auction while the second is still ongoing. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

Each of the Company-specific addenda addresses the use of committed supply, contingency plans, accounting and cost recovery, and utility pricing and tariff sheets.

Numerous other Auction details are explained in the Joint EDC Proposal, Company-specific addenda, and attachments, including that:

- BGS suppliers must meet all New Jersey Renewable Portfolio Standards ("RPS") requirements, and any similar standards imposed under any federal, state or local legislation that may be applicable throughout the respective supply periods;
- As conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS SMA within three business days of Board certification of the results, and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;
- To qualify, applicants must disclose what, if any, bidder associations exist and if so, applicants will provide such additional information as the Auction Manager may require;
- Qualified bidders are required to post a per-tranche letter of credit or bid bond; and
- The BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-RSCP Auction secures one-third of each EDC's total load requirements for three years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions.⁵

⁵ While the concept is to divide the EDCs' load requirements into thirds, the actual tranches available for any EDC for any time period may vary by EDC.

In addition, RECO is proposing to secure the capacity requirements for BGS customers in that portion of the Company's service territory that lies outside of the area served through PJM, its Central and Western Divisions, commencing June 1, 2016. Rockland is proposing to purchase the capacity needs of its BGS customers in the NYISO capacity market and blend its forecast of those prices into the BGS-RSCP price. This is the same proposal approved by the Board in its April 15, 2015 Order in BPU Docket No. ER14043370.

DISCUSSION AND FINDINGS

RSCP and CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2016, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features, and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework and varying procurement periods. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP customers.⁶ For the 2003 through 2015 BGS Auctions, the Board continued to approve descending-clock Auctions for the procurement of default service while continuing to adjust certain elements of the process including changing the beginning of the supply period from August to June and expanding the size of the CIEP class.⁷

As previously stated, for the period beginning June 1, 2016, by Order dated May 19, 2015, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-RSCP and the annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2016. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-RSCP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive comments and criticism to improve on a process that is important to all of the EDCs' electric ratepayers. In making its decision, the Board has considered the suggestions that were made. The Board has attempted to reach a balance of competing interests, mindful of its statutory responsibility to ensure continued provision of BGS at just and reasonable rates consistent with market conditions. N.J.S.A. 48:3-57(a)(1). The Board will address the issues raised by the various parties during the proceeding in this Order.

⁶ Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

⁷ Board Orders dated December 2, 2003, Docket No. EO03050394; December 1, 2004, Docket No. EO04040288; December 8, 2005, Docket No. EO05040317; December 22, 2006, Docket No. EO06020119; January 25, 2008, Docket No. ER07060379; January 20, 2009, Docket No. ER08050310; December 10, 2009, Docket No. EO09050351; December 6, 2010, Docket ER10040287; November 11, 2011, Docket No. EO11040250; November 20, 2012, Docket No. ER12060485; November 22, 2013, Docket No. ER13050378, and November 24, 2014, Docket No. ER14040370.

Based on the experience of previous BGS Auctions, and having considered the record that has been developed in this matter, the Board **FINDS** that a BGS-RSCP and BGS-CIEP Auction, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2016.

BGS-CIEP AUCTION SUPPLY PERIOD

No party took issue with the continued use of a 12-month period for the BGS-CIEP Auction. The Board **FINDS** that a 12-month procurement period is appropriate and reasonable and **APPROVES** that aspect of the EDCs' proposal.

BGS-RSCP AUCTION SUPPLY PERIOD

RESA recommends that the Board should encourage a more competitive marketplace by transitioning the BGS procurement process away from the laddered-three-year contracts currently employed in the BGS-RSCP Auction and towards more frequent procurements held closer to the delivery date. RESA asserts that this transition will result in more market reflective default service pricing because it would minimize the time over which the default price can diverge from actual market prices. RESA believes that making this change would result in customers on default service receiving a product that is more comparable to the product offerings of TPS, thus customers would be making choices between similar products. Further, RESA indicates that the current structure serves as a barrier to the further development of retail competition. RESA proposes that the Board replace the three-year laddered contracts currently employed in the BGS-RSCP auction with a procurement process that includes quarterly pricing for all commercial and industrial customers, and annual pricing for all residential customers starting June 1, 2016. (RESA Initial Comments at 7 - 8).

The EDCs request that the Board reject RESA's recommendation to alter the BGS-RSCP procurement structure. The EDCs indicate that RESA provides no new support for this position and ignores the benefits of the three-year term structure, which the EDCs indicate has been affirmed repeatedly by the Board. According to the EDCs, the Board in prior BGS proceedings has found consistently that a rolling three-year term provides the proper balance for BGS-RSCP customers between the need for BGS supply to reflect market prices and the need to protect these smaller customers from market volatility. In agreeing with the Board's prior finding regarding RESA's recommendation, they point out that unstable energy market conditions, such as those associated with the 2013/2014 winter's polar vortex, could expose both residential-RSCP and commercial-RSCP customers to the unnecessary risks associated with energy price fluctuations and increases should the Board adopt RESA's proposal. They believe the current BGS procurement structure protects customers who may not have the necessary expertise or inclination to properly manage their energy costs during unstable market conditions, and these customers would be unprotected under RESA's proposal. Further the EDCs are not convinced that RESA's proposals for pricing based on auctions for procurement of electricity for shorter periods than the current format would increase retail competition significantly. The EDCs point out that RESA has provided no evidence to support its assertion that moving to quarterly commercial-RSCP and annual residential-RSCP procurements would induce additional TPSs to enter into the New Jersey electricity marketplace. (EDCs Final Comments at 3 - 4).

IEPNJ recommends that the Board continue the historically successful BGS auction structure, as proposed by the EDCs. It is IEPNJ's position that the three year BGS auction structure strikes the appropriate balance to hedge against price spikes, while minimizing future risk to suppliers that would occur under contracts of a longer term. IEPNJ believes that a three year term allows the suppliers bidding into the BGS auction to rely on several known variables when

preparing their bids. IEPNJ points out that knowing these values reduces the risk to suppliers, thereby helping to keep their bid prices reasonably low. IEPNJ indicates that the averaging of the contracts entered over the course of three years provides stability to customer rates while a term of less than three years will result in increased price volatility. It is IEPNJ's belief that this increased price volatility will increase the budgetary stress on BGS customers who benefit from stable energy rates. In this economy, at this time, increasing price volatility risk to consumers is harmful for residents and businesses alike. As a result, based on the success of this structure over the last decade, IEPNJ strongly endorses the continuation of the BGS auction structure. (IEPNJ's Legislative Hearing Comments at 2).

NEPM supports the current BGS procurement approach, and indicates it concurs with IEPNJ's recommendation that the Board maintain the current three-year BGS auction structure to protect consumers from price volatility. (NEPM Final Comments at 2).

Rate Counsel indicates that its long held position has been that the three-year ladder structure protects consumers from the volatility of the market that might occur with shorter-term procurement processes. A shorter-term procurement structure may result in increased costs to ratepayers since administrative costs associated with preparing more frequent bids would be incorporated in a more frequent procurement process. However, Rate Counsel's bigger concern is that price movements due to larger market forces may be magnified with a shorter procurement process. (Rate Counsel's Final Comments at 6 – 7).

Based on the experience of the previous BGS Auctions, and having considered the record which has been developed in this matter, the Board continues to believe that the staggered three-year rolling procurement process currently in use for the BGS-RSCP Auction provides a hedge to customers in a time of extreme weather events that impact prices as we have seen recently, volatile energy prices and the potential of increasing capacity prices, even though it may make it more difficult for retail suppliers to compete for RSCP customers in times of rising prices. By way of contrast, as market prices started to come down in wholesale electric markets over the last four years, TPS have been able to be more competitive than the rolling three-year average RSCP Auction price, and competition appears to have increased. The Board is not convinced that RESA's proposals for pricing based on more frequent auctions for procurement of electricity for shorter periods than provided by the current format would increase retail competition significantly.

The Board believes that the goal of the BGS procurement process should be to enable smaller commercial and residential customers to benefit from both a stable yet market-based rate for BGS-FP supply over the term of the procurement plan for this service while still allowing these customers the ability to choose alternative providers. The Board further believes that the use of the staggered three-year rolling procurement process, ensuring price stability, is a policy decision that has value for those customers who continue to receive BGS service from the EDCs. Therefore, the Board **DIRECTS** the EDCs to procure the approximate one-third of the EDCs' current BGS-RSCP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-RSCP rates for the June 1, 2016 to May 31, 2019 period.

CIEP THRESHOLD

RESA recommends that the Board reduce the BGS-CIEP threshold to require all customers using 400 kw and above to be on BGS-CIEP pricing beginning in June 1, 2016, and to require all customers using 100 kw and above to be on BGS CIEP pricing by June 1, 2019. RESA

believes customers between 100 kw and 400 kw have the necessary ability to understand hourly pricing. (RESA Initial Comments at 4).

Rate Counsel notes that to date we still have no information on the customer impact from the Board's previous lowering of the CIEP threshold to 500 kw. It is Rate Counsel's position that this information should be gathered not only from retail suppliers but from the customers affected by the lower CIEP threshold. Rate Counsel believes that with two years of experience available now, the EDCs should be able to determine how smaller business owners are reacting to the challenge of managing energy usage and markets. Therefore, Rate Counsel continues to recommend that the Board direct the EDCs to solicit specific information from customers about the impact of the lower CIEP threshold on customers' bills and customer reaction to the change prior to making any further changes. Such a study would have value to the Board and to the BGS process. (Rate Counsel's Final Comments at 6).

NEPM disagrees with the RESA proposed BGS-CIEP changes. The changes are not necessary because customers have the option to leave basic service for a variety of products through the existing retail market, and if these customers prefer to remain on basic service, they should have that option without the threat of a changing pricing structure. To the extent that this matter is even being discussed, wholesale suppliers may feel the need to increase required risk premiums to reflect product uncertainty across all BGS products. Accordingly, NEPM believes customers are best served with no changes to the BGS approach. (NEPM Final Comments at 2).

According to the EDCs, no party has presented evidence that the RSCP small commercial customers with peak demands between 100 kW and 499 kW would be well served by being forced to manage the volatility of the hourly-priced BGS-CIEP product as proposed by RESA. Further, the EDCs continue to maintain that implementing RESA's proposal would actually limit customers' choice, as all commercial and industrial customers already have the option to select BGS-CIEP on an optional basis if they would like an hourly-priced service. They believe that simply charging customers on an hourly basis would not provide them with the necessary tools to make informed decisions with regard to their electricity purchases. The EDCs see no benefit in forcing customers of this size to be served under BGS-CIEP, given that they may not be able to hire a facilities manager, may not have systems in place to manage load in response to volatile hourly prices in an automatic fashion, and may not be able to afford the distractions from their business that would come with managing such risks themselves. (EDCs' Final Comments at 7).

By Order dated June 18, 2012, In the Matter of the Review of the Basic Generation Service Procurement Process, Docket No. ER12020150 ("BGS Review Order"), the Board concluded that a gradual expansion of the number of customers on hourly pricing, given the record presented in that proceeding, was reasonable, prudent and warranted at that time, and approved RESA's request to lower the CIEP threshold for customers with a peak load share of 500 kW and above. As part of the decision, the Board saw a value in limiting the reduction to those customers with a peak load share of 500 kW and not immediately moving to the 300 kW range as proposed by RESA. Therefore, the Board rejected RESA's request to expand the BGS-CIEP threshold to 300 kW effective for the next BGS procurement. However, the Board, as proposed by RESA, encouraged feedback on the BGS-CIEP threshold during future BGS procurement proceedings each year in order to receive stakeholder input through comments and legislative-type hearings. The Board stated that through these BGS proceedings, it can garner information, inclusive of up-to-date market data, to make an informed decision on a future lowering of the BGS-CIEP threshold that is gradual, orderly, and structured to enable a

greater number of customers to respond to real-time pricing, possibly using additional conservation and energy efficiency products and services available in the marketplace.

Based on the record in this matter, the Board agrees with the EDCs that there has been no evidence presented in this proceeding by RESA or any of the other stakeholders that would at this time indicate that further lowering the BGS-CIEP threshold to 400 kw beginning in June 1, 2016 and to 100 kw by June 1, 2019, is either desired by the relevant customers or will bring net benefits to those customers. Based on the record presented, Staff agrees with the EDCs that smaller, commercial customers continue to be better served by a three-year product, and that further lowering the BGS-CIEP threshold only serves to force customers onto an hourly price structure, even if these customers are unable to deal effectively with hourly prices and have therefore chosen to remain as BGS-RSCP customers. Further Staff believes that the customers in the BGS-RSCP class are in the best position to determine for themselves whether it makes economic sense to switch to a TPS, and, certainly many have chosen to do so. For those customers who have not switched to a TPS and continue to want to receive the BGS-RSCP product, Staff believes that these customers have determined that switching is not economically reasonable for their businesses, and by lowering the BGS CIEP threshold the Board would be making a decision for these customers that they may have chosen not to make. Therefore, the Board continues to believe that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy, and that the appropriate cutoff for mandatory inclusion in the CIEP is a peak load share of 500 kW. Therefore, the Board **REJECTS** RESA's request to expand the BGS-CIEP threshold to 400 kw beginning in June 1, 2016 and to require all customers using 100 kw and above to be on BGS-CIEP pricing by June 1, 2019.

Rate Counsel has requested that prior to any further lowering of the BGS-CIEP threshold, the Board direct the EDCs to solicit specific information from customers about the impact of the lower CIEP threshold on customers' bills and customer reaction to the change. Based on the record in this proceeding, the Board rejects RESA's request to expand the BGS-CIEP threshold to 400 kW and above beginning in June 1, 2016. Therefore, there is no need to perform the requested review process suggested by Rate Counsel at this time.

Further, for the 2004 through 2015 Auctions, certain C&I RSCP customers, to the extent they could be identified and metered without a material impact on the BGS Auction process, were permitted to join the CIEP class on a voluntary basis. Staff recommends that voluntary enrollment in the CIEP class should again be permitted for the 2016 Auction with similar constraints. Specifically, the choice must be made in a timely manner and, once made, must be irrevocable for the one-year term of the CIEP contract. Therefore, Staff recommends that the Board direct the EDCs to work with Staff to develop a process and schedule for identifying and converting non-residential customers that choose to be included in the BGS-CIEP category. The process developed should be based on the foregoing parameters. It should require a customer commitment for participation by no later than the second business day in January 2016. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2016 to reconsider their decision for the upcoming 2016 Auction.

The Board has reviewed the submissions and Staff's recommendations, and **FINDS** the Staff recommendations to be reasonable. Therefore, the Board **DIRECTS** the EDCs to work with Staff to develop and implement a process similar to that used in the past to notify customers of this "window of opportunity" to voluntarily transfer into the BGS-CIEP class. Further, the Board also **DIRECTS** the EDCs to post the conditions of the voluntary CIEP process in a conspicuous location on their web pages.

RECONCILIATION CHARGE

RESA believes that the Board should require the EDCs to utilize a uniform timeframe for the calculation of reconciliation charges. RESA asserts that a uniform reconciliation charge will better facilitate a transparent and forward looking price to compare (“PTC”) which RESA believes will assist customers in understanding their energy costs, and, if they choose to do so, effectively shop for energy from a competitive supplier. RESA further points out that the lack of a standardized, forward-looking reconciliation mechanism precludes the price transparency needed for the successful implementation and utilization of a shopping comparison website. RESA urges the Board to take action on this matter in this BGS proceeding, and in the BGS Order direct the EDCs to utilize quarterly, forward-looking reconciliation charges. (RESA Initial Comments 6 - 7).

The EDCs state that in their July 1, 2015 filing for the upcoming BGS Auctions, they have updated the rate design to reflect migration, which they believe should lower deviations between costs and revenue, and ultimately reduce reconciliation charges. Further the EDCs indicate that the concept of a “forward looking reconciliation charge” is inherently contradictory. The reconciliation charge is necessary because revenues collected for BGS from customers and payments to BGS Suppliers differ.

The EDCs point out that they have been working with Board Staff as well as the Board’s advisor, and the EDCs believe that data improvements made in the previous year and continued this year will move toward reducing the amount of the reconciliation charge. Rate Counsel previously endorsed these Board efforts and concurred that the changes sought by RESA are ill-advised given this effort. The EDCs believe that the RESA proposal is neither practical nor necessary and therefore should be rejected by the Board. (EDCs’ Final Comments at 11).

Rate Counsel notes that in the previous BGS proceeding, the EDCs proposed changes in the rate design to reflect current migration levels. Rate Counsel points out that the EDCs indicated this should lower deviations between costs and revenue, and ultimately reduce reconciliation charges. In addition, Rate Counsel states the concept of a “forward looking” reconciliation charge does not make sense in that the reconciliation charge is an after the fact true-up mechanism implemented to reconcile differences between BGS payments to suppliers and BGS revenues collected from customers. In approving the EDC proposed changes to the rate design, the Board directed the EDCs to provide data in June 2016 on the proposed changes to the reconciliation charges. Accordingly, Rate Counsel recommends that the Board not introduce further changes in the reconciliation charge calculation until the EDCs’ proposed changes have been implemented and evaluated. (Rate Counsel Final Comments at 8).

The Board agrees with Rate Counsel and the EDCs that the current BGS filing does include changes that have the potential to more accurately calculate the BGS rate. Further, the Board agrees with Rate Counsel that the Board should not introduce further changes in the reconciliation charge calculation until the EDCs’ proposed changes have been implemented and evaluated. Accordingly, the Board **DIRECTS** the EDCs to make a filing in July 2016 providing data on the results of the implementation of the proposed changes to the reconciliation charge approved by the Board as part of last year’s BGS proceeding. Until Staff and Rate Counsel have had a chance to review and evaluate the data provided by the EDCs to be provided in July 2016, the Board **DENIES** RESA’s request for any further changes in the method for computing the reconciliation charge.

NON-BYPASSABLE CHARGES AND TRANSMISSION RELATED CHARGES

RESA urges the Board to order the EDCs to set the cost components in BGS service equitably with those assessed in TPS supply through this proceeding. RESA believes that Capacity Resource costs ("CPR"), Network Integration Transmission costs ("NITs"), PJM Transmission Enhancement Process ("TECs") and Reliability Must Run ("RMR") agreements lack transparency. Therefore RESA requests that responsibility for CPR, NITs, TECs and RMR charges should be transferred to the EDCs for all customers, and be accounted for through a reconcilable and nonbypassable charge. (RESA Initial Comments at 5).

Rate Counsel urges the Board not to establish a non-bypassable charge to cover the costs proposed by RESA. It is Rate Counsel's position that both BGS suppliers and TPSs should manage all of their costs and account for them in their fixed price bids and contracts. Rate Counsel believes that these PJM charges are not sprung upon suppliers with no prior notice or forewarning as BGS suppliers and RESA members actively participate in PJM proceedings where such tariff changes are proposed and discussed. Rate Counsel believes that if these sophisticated financial entities are truly unable to anticipate any of these costs, and these costs are large enough to undermine the BGS auction, then BGS providers and TPS should provide significantly more evidence to support their claim. Merely stating that they do not want to account for these costs in their bids is not sufficient. (Rate Counsel Final Comments at 3 – 4).

The EDCs have two responses to RESA's request for a non-bypassable charge to be assessed by the EDCs on all customers. First, they indicate that any comparison between TPS and BGS providers must consider the role of these two types of suppliers, and recognize that the restrictions imposed on each of them are different. BGS providers must accept all BGS pricing terms, and are not free to establish their own commercial terms with customers. According to the EDCs, the price adjustments applicable to Federal Energy Regulatory Commission ("FERC")-approved transmission rates as incorporated in Section 15.9 of each SMA were adopted by the Board to avoid unnecessary premiums that could result from BGS providers being paid a fixed price and being subject to regulated transmission charges that they cannot manage, influence, or control. The EDCs believe these adjustments are consistent with minimizing the costs unnecessarily faced by BGS customers under the standardized pricing parameters of the SMA. The EDCs point out that TPSs are not required to accept standardized pricing terms. Also, the EDCs believe the disconnect authority rationale is a red herring. They argue that RESA does not offer any facts or logic explaining why disconnect authority makes it more efficient for the EDCs as opposed to the TPSs to provide transmission service. There is no logical nexus between disconnect authority and which entity should be responsible for transmission service for TPS customers.

Further the EDCs assert that shifting all transmission responsibility to the EDCs is a step backward, not forward. BGS was founded on the simple principle that the BGS provider was to be the Load Serving Entity ("LSE") with responsibility for all PJM-mandated functions. Doing so provides full parity and competitive neutrality with TPSs, and embodies the letter and spirit of the Electric Discount and Energy Competition Act ("EDECA"). In the past, arguments have been made that certain functions that in the EDCs' view are appropriately handled by the LSEs should be placed back on the EDCs. This is a view that has been and should continue to be rejected. The Board should reject RESA's request to shift transmission cost responsibility from BGS providers to the EDCs. (EDCs' Final Comments at 12 - 13).

The Board agrees with the EDCs that any comparison between TPS and BGS providers must consider their different roles, and recognize that the restrictions imposed on each of them are different. BGS providers must accept all BGS pricing terms associated with the SMA. BGS

providers are not free to establish their own commercial terms with customers as can TPSs. Staff agrees with the EDCs that TPSs do not have to accept standardized pricing terms as do BGS suppliers. Thus, TPS are free to collect increases in PJM imposed changes to CPR, NITs, TECs and RMR charges from their customers, if they so provide in their contract terms, although they cannot advertise the resulting contracts as “fixed-price.”

Further, the Board agrees with the EDCs that BGS was founded on the simple principle that the BGS provider was to be the LSE and responsible for all PJM-mandated functions, and that BGS providers are best positioned to assess and manage all risks with the BGS price reflecting such risks. However, Staff continues to believe that transmission related costs are an exception. These are regulated costs that cannot be managed or hedged, and often they are reflected in rates charged by PJM to wholesale suppliers while not final and are subject to refund. The current methodology employed under Section 15.9 of each SMA adopted by the Board is intended to avoid unnecessary premiums that could result from BGS providers being paid a fixed price and being subject to FERC regulated transmission charges that they cannot manage, influence, or control. Therefore, the Board **DENIES** RESA’s request that responsibility for CPR, NITs, TECs and RMR charges should be transferred to the EDCs and be accounted for through a reconcilable and nonbypassable charge on all customers.

RESA RPM CP PROPOSAL

RESA asserted that the Board has not taken any action with regard to its petition to allow TPS to recover incremental costs incurred as a result of PJM’s Capacity Performance (“CP”) proposal which was filed with the Board on January 20, 2015. In this BGS proceeding, RESA has renewed its request for a recovery mechanism and posits that the EDCs are best suited to collect the incremental costs deriving from the PJM CP proposal “transition years” through a reconcilable and nonbypassable charge on TPS and BGS customers. (RESA’s Initial Comments at 6).

Rate Counsel recommends that the Board deny RESA’s request to have the Board direct the EDCs to collect for TPS losses incurred through participation in the PJM capacity market. According to Rate Counsel, the TPSs are not bound by the same contractual terms and conditions as the BGS providers and have the freedom to determine what products and services to offer. They also have the ability and the option to address unexpected regulatory changes through their retail contracts, and have the ability to craft their contracts to set forth what costs will be passed-through to retail customers. Rate Counsel believes that creating a non-bypassable charge for TPS customers would shift business risk and costs to the customers and ignore what the customers may have negotiated for in their existing agreements. Rate Counsel believes that TPSs must be responsible for their own individual contractual obligations which is a fundamental premise of competitive markets. (Rate Counsel’s Final Comments at 4 – 5).

According to the EDCs, RESA is requesting that the incremental costs associated with PJM CP auctions for 2016/2017 and 2017/2108 (the transition years) be treated as a non-bypassable surcharge applicable to BGS and TPS customers. The EDCs point out that, as RESA notes in its Initial Comments, the same RESA proposal is explained in detail in a January 20, 2015 petition to the Board. It is the EDCs’ position that the petition is not in the record of this proceeding, nor should it be. (EDCs’ Final Comments at 15).

The RESA petition to recover incremental costs incurred as a result of PJM’s CP proposal was filed with the Board on January 20, 2015, and is a separate proceeding pending at the Board. The Board agrees with the EDCs, that RESA’s petition is not part of the record of this

proceeding, nor should it be. Therefore, the Board will take no action in this proceeding regarding RESA's request as it is beyond the scope of the BGS proceeding.

ADVANCED METERING INFRASTRUCTURE

RESA requests that the Board initiate a stakeholder process to develop a timeline and plan for (1) requiring the EDCs to deploy Advanced Metering Infrastructure ("AMI"), which includes meters, supporting telemetry equipment, and back office infrastructure for all customers in New Jersey, (2) ensuring that TPSs – with the consent of their customers – gain timely and efficient access to the interval usage data produced by those meters so they may offer innovative products and services aimed at promoting energy conservation and energy efficiency goals, and (3) ensuring that, once deployed all load is settled at PJM based on interval usage data. As a first step, RESA recommends that the Board require the EDCs to file implementation plans describing the steps, costs, and timeline to fully deploy AMI within their service territories by no later than December 31, 2016. RESA believes availing all electric customers with information about their real-time usage through AMI is one of the most significant steps the Board can take to drive down energy costs for all customers and promote energy efficiency and conservation. (RESA Initial Comments at 2).

Rate Counsel believes that the BGS docket is not the appropriate forum to introduce an issue as far-reaching as the implementation of AMI throughout the entire state of New Jersey. According to Rate Counsel, any utility investment in AMI for which the utility seeks recovery from ratepayers must be based on a comprehensive benefit/cost analysis showing that the benefits of AMI outweigh the costs, a showing no utility has made to date. According to Rate Counsel, a rate case is a more appropriate proceeding than a stakeholder process to adequately investigate the cost-effectiveness of any proposal to implement AMI. (Rate Counsel's Final Comments at 5).

The EDCs agree that the provision of AMI to electric customers by the EDCs does not belong in the BGS proceeding. The EDCs further argue that the BGS proceeding is not the proper forum to debate either AMI or whether the Board should initiate a stakeholder proceeding on AMI. Therefore, the Board should disregard RESA's recommendation. (EDCs Final Comments at 13 – 14).

The Board has determined that the issue raised by RESA – whether the Board should initiate a stakeholder process to develop a timeline and plan for requiring the EDCs to deploy AMI -- should be evaluated as part of the larger comprehensive review of energy policy for the State of New Jersey. The Board is transferring the RESA's proposal to require the EDCs to deploy AMI to the committee reviewing the current Energy Master Plan to determine where AMI fits into the State's energy future. Therefore, the Board **DENIES** RESA's request to order an AMI stakeholder process.

ADMINISTRATIVE EXPENSES

Rate Counsel states that in the prior BGS proceeding, the Board agreed with Rate Counsel that a review should be initiated of BGS administrative costs to ensure that amounts being paid by ratepayers are just and reasonable. Rate Counsel further indicates that the Board directed Staff to initiate such a review of BGS administrative costs collected through tranche fees. Rate Counsel points out that the review has yet to be undertaken. Rate Counsel requests that the Board direct Staff to initiate and complete this administrative costs review proceeding prior to the 2017 BGS procurement process. (Rate Counsel's Initial Comments at 4 -5)

Rate Counsel points out that the Board excluded from this review of administrative costs the litigation costs associated with NERA's on-going patent litigation that are collected from ratepayers as BGS administrative costs. According to Rate Counsel, the Board decided that the costs associated with the BGS patent litigation were confidential and that a review of these costs should be deferred until the litigation was resolved. Rate Counsel renews its request that the litigation costs should be part of the review of administrative costs. Rate Counsel now proposes that as an initial step, the EDCs should be directed to provide a status update on the on-going BGS auction patent claim litigation. Included with the update should be an affidavit supporting the claim of confidentiality if continued confidentiality protection is requested by the EDCs or by NERA. After that information has been provided, a determination can be made regarding whether those costs should be included as BGS Administrative costs and assumed by ratepayers. (Rate Counsel Initial Comments at 4 – 5).

The EDCs assert that the BGS proceeding is an inappropriate forum for the review of administrative expenses. The BGS process is by necessity a streamlined process, and must be resolved in a four to five month period. They believe administrative cost reviews are more akin to typical base rate case expense level reviews that allow for a longer schedule. The EDCs point out that for these reasons, and because the Board has already decided how it will review BGS administrative costs, there is no need for the Board to revisit this issue in the current BGS proceeding. Further the EDCs continue to believe this proceeding is not the appropriate forum to review these patent claim issues, which may be the subject of litigation. (EDCs Final Comments 9 – 10)

As noted by Rate Counsel, the Board directed Staff to initiate a review of BGS administrative fees in a separate proceeding to ensure that the amounts being paid by ratepayers are just and reasonable. To conduct this review the Board **FINDS** it would be appropriate to have an outside consultant conduct the review of BGS administrative fees. Therefore, the Board **DIRECTS** Staff to retain a consultant to review the BGS Administrative fees.

Further, Rate Counsel continues its request that the litigation costs should be part of the review of administrative costs. While the Board in the 2015 BGS proceeding indicated that the costs associated with the litigation itself should continue to be subject to confidentiality until the conclusion of the patent claims issues involving the BGS Auction process, the Board agrees with Rate Counsel's recent proposal that as an initial step the EDCs should be directed to provide a status update on the on-going BGS auction patent claim litigation. Based on the information provided, a determination can be made as to whether those costs should be included in the review of BGS administrative costs. The Board believes that this status update should be provided after the conclusion of the 2016 BGS Auction. Therefore, the Board **DIRECTS** the EDCs to provide a status update on the on-going BGS auction patent claim litigation after the conclusion of the 2016 BGS Auction. Of importance, if the EDCs or NERA believe confidentiality regarding the patent litigation remains an issue, then prior to the status update an affidavit of confidentiality protection can be requested by the EDCs or by NERA for Staff and Rate Counsel to execute.

PJM RPM CAPACITY PROPOSAL CLARIFICATION

Rate Counsel believes that the uncertainty surrounding the PJM capacity market has substantially lessened, since PJM's CP product was initially approved by FERC, and that bidders in the February 2016 BGS auctions should be able to reasonably project future capacity costs and the impacts associated with PJM's CP product, at least for the next three years. Rate Counsel points out that the PJM Base Residual Auction ("BRA") for delivery years 2018-2019 was held in August, and both PJM's CP transitional auctions for the delivery years 2016-2017

and 2018-2019 will have been completed prior to the 2016 BGS procurement. Therefore, the capacity costs for those years are now known, and costs for years after that will be known before future BGS auctions for those years are conducted. Rate Counsel believes the Board should not continue to allow BGS providers to pass through increased capacity costs, as bidders should be able to account for Capacity Performance in their bids in the February Auction, and a pass through is therefore no longer needed or justified. (Rate Counsel Final Comments at 2).

Rate Counsel expresses a broader policy concern that the BGS product is slowly shifting from a full requirements product that was designed to protect ratepayers from the volatility of the market to a product that allows sophisticated BGS providers to pass along risks and uncertainties to ratepayers. According to Rate Counsel, the Board has increasingly allowed BGS providers to pass on to ratepayers' increases in certain costs, initially transmission increases and, more recently, increased costs in the capacity market. Rate Counsel believes that with the pass through of these costs comes the risk that is gradually being shifted from BGS suppliers to ratepayers. Rate Counsel urges the Board not to move away from procuring a fixed price product that was meant to protect ratepayers from market volatility, to a product that is slowly increasing protection for bidders at ratepayers' expense. (Rate Counsel Initial Comments at 2 – 3; Final Comments at 2-3).

The EDCs agree with Rate Counsel given that, at this point, the PJM CP auctions for both planning years 2016/17 and 2017/18 have been held to procure the capacity performance products. The EDCs state that they proposed the Supplements in their July 1, 2015 BGS filing to provide such protection to BGS suppliers, since at that time they believed it was still unclear whether all changes for the CP construct would be implemented ahead of the 2016 BGS procurement process. Now that such changes have been implemented, the EDCs agree that the Supplements are no longer needed for the 2016 BGS procurement process. The EDCs further indicate that while the Supplements were drafted so that they would have no effect if the PJM capacity performance auctions for planning years 2016/17 and 2017/18 were held before the 2016 BGS Auctions, as they have been, for the sake of clarity the EDCs propose to submit SMAs without the Supplements in connection with the compliance filing in this proceeding.

In response to Rate Counsel's concern that allowing these types of pass throughs might pose a worrying trend that the parties are no longer aspiring to a fixed product, the EDCs provide assurances that they continue to share Rate Counsel's fixed product aspiration while also looking to discharge their supplier of last resort obligation at the lowest possible cost to ratepayers. The EDCs indicate that although they certainly aspire to provide a fixed-price product, there are times, albeit as infrequent as possible, that this objective must bend to the greater objective of minimizing unforeseen and un-hedgeable costs associated with BGS procurement. They point out that the Board wisely implemented the Supplements last year precisely to protect the structural integrity of the BGS Auction. The allowance of such a pass through of potential cost increases ensured the vibrancy of the 2015 BGS Auction, and was a unique occurrence that has rarely been seen in the fifteen years of the BGS Auction process. (EDCs' Final Comments at 14 – 15).

Based on the EDCs' comments in response to Rate Counsel's concerns regarding the PJM CP process, the Board believes that no action is required since the EDCs have offered to withdraw the Supplements from the SMAs when they make their compliance filings. Therefore, the Board **DIRECTS** the EDCS to remove the PJM CP Auction Supplements from their compliance filings due as a result of this Order.

With regards to Rate Counsel's broader policy concern that the BGS product is slowly shifting from a full requirements product that was designed to protect ratepayers from the volatility of the market to a product that allows sophisticated BGS providers to pass along those risks and uncertainties to ratepayers, the Board shares Rate Counsel's concern, and wishes to provide clarification. The Board agrees with the EDCs who indicate that they would like to provide assurances that they continue to share Rate Counsel's fixed product aspiration while also looking to discharge their supplier of last resort obligation at the lowest possible cost to ratepayers. The Board also agrees with the EDCs that there are times, albeit as infrequent as possible, that the goal of providing a "fixed-price" product must bend to the greater objective of minimizing unforeseen or foreseen but un-hedgeable and unquantifiable costs associated with BGS procurement. As the Board indicated last year, in the 2015 BGS proceeding, Order dated November 24, 2015 Docket No. ER14040370, N.J.S.A. 48:3-57(e) provides that BGS suppliers shall be permitted to recover through BGS charges on a full and timely basis all reasonable and prudently incurred costs in the provision of BGS. Although EDECA does not specify how such recovery is to be implemented, the Board has long recognized that the BGS procurement process works best and leads to the lowest reasonable prices when potential suppliers are not exposed to unforeseen and un-hedgeable costs associated with BGS procurement charges or costs due to changes by regulatory agencies that are not reasonably quantifiable or hedgeable at the time that bids are submitted during the BGS procurement process. Otherwise, the Board believes that potential providers would likely include an enhanced risk premium in their BGS bids to reflect the potential imposition of what these bidders see as unforeseeable or unhedgeable costs that may or may not be imposed during the period of the proposed three-year contract. In addition, the Board is concerned that the robust participation in the BGS procurement process that has been the hallmark of previous successful BGS procurements will be threatened with suppliers electing to opt out if the Board does not in certain instances take action to minimize these contingencies. The Board **FINDS** that without the Board having the flexibility to allow the pass through of certain limited contingent costs, the BGS procurement process will be infused with uncertainty, likely to impact supplier behavior and impact future procurement processes. The Board also notes that the pass through processes that it has previously approved also require that charges be reduced to reflect actual costs, not just increased, and that this has benefitted ratepayers.

CONFIDENTIALITY

The EDCs have requested that the Board approve a confidentiality order as in prior years. The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner, and results in no bidder or bidders having an advantage over any other. From the Board's experience with prior BGS Auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon Auction confidentiality issues in its December 1, 2004 Order (Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These provisions were adopted and applied in subsequent Auctions. The Board **FINDS** that the confidentiality provisions of its December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and **HEREBY APPROVES** the same confidentiality provisions for the 2016 BGS Auctions, and incorporates the reasoning and relevant provisions of its

December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

AUCTION PROMOTION/DEVELOPMENT

Based on a review of the record, the Board **FINDS** that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction, provided that the rules and details are specified and implemented correctly, and provided that the Auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the Auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps to be undertaken are the following:⁸

- Bidder Information Session in Philadelphia;
- An Auction Web Site at www.bgs-auction.com which publicizes new developments, allows interested parties to download documents related to the Auctions, has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed, provides potential bidders with data relevant to the bidding process, and has links to PJM and other useful sites;
- Press releases to newspapers and trade publications; and
- Direct e-mails to interested parties to inform them of any new developments or any new documents posted to the web site.

The Board **FINDS** that the foregoing marketing efforts by the EDCs and the Auction Manager should increase the chances that a successful BGS procurement will be achieved. Accordingly, the Board **APPROVES** continuation of the above-referenced Auction promotion initiatives.

BOARD APPROVAL PROCESS

As noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the Auction process approved with this Order, including certification of the Auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, Tentative Approvals and Process,⁹ there are a number of decisions/actions that need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule so that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

⁸ These actions have occurred for past Auctions and in anticipation of a favorable Board ruling herein, some of these actions may have already been undertaken for the 2016 Auction.

⁹ Attachment A is labelled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

Based on the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, any additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-RSCP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-RSCP Auction and the BGS-CIEP Auction no later than the second business day¹⁰ after the last Auction closes. At its discretion and depending on circumstances, the Board may address the results of one Auction that has closed while the second Auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

Another decision that requires Board approval is acceptance of the EDCs' Compliance Filings. Because of the significance of this proceeding, the Board **DIRECTS** the EDCs to make a Compliance Filing by November 23, 2015. Further, the Board gives Staff the authority in reviewing the EDCs' compliance filings, to request that the Board Secretary issue compliance letters approving the filings should Staff upon review find them in compliance with this Order.

Either the EDCs or the Auction Manager, in consultation with Staff and the Board's consultant, may make other Auction decisions as identified in Attachment A to this Order. These decisions include establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, specific bidder application and credit issues, load cap and volume adjustment decisions, Auction price decrements, and other decisions which might be required throughout the implementation process. Some of the aforementioned areas, such as bidder application and credit issues, are subject to rules spelled out in the Joint EDC Proposal. Other areas, such as load caps and volume adjustment decisions, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, and Auction price decrements are either Company-specific concerns, are determined directly from algorithms included in and approved as part of the Joint EDC Proposal, or are areas that need to be addressed by the Auction Manager based on its experience in this field. In the event that these other areas need to be addressed by the Auction Manager, the Board **DIRECTS** that the Auction Manager include in its Final Report a description of any such actions. Should any unforeseen circumstances occur during the Auction decision-making process, the Board **DIRECTS** Staff to immediately bring the matter to the Board's attention.

When the Auctions are complete, the Board will review and consider the results within the time frame set forth above. Prior to Board certification of the results, the Auction Manager will provide a Final Report to the Board on the results of the Auctions and how the Auctions were conducted, including the post-Auction evaluation forms in Attachment B. The Auction Manager will also

¹⁰ As used in this Order, a "business day" is a day when the Board is open for business. Should weather or other conditions make the Board's offices inaccessible, the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

provide a redacted version of the Final Report, consistent with the confidentiality provisions of this Order, to the EDCs and Rate Counsel. The Board's Auction consultant shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in the form of Attachment B to this Order, prior to Board certification of the results.

FINDINGS AND CONCLUSIONS

Based on the foregoing and after carefully reviewing the record in this proceeding, the Board **FINDS** that:

This has been an open proceeding, with all parties desiring to present written or oral comments on the record having been afforded the opportunity to do so;

The Joint EDC Proposal, as modified herein, is consistent with the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to -107, and the EDCs' Final Restructuring Orders;

The Joint EDC Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for BGS customers beginning June 1, 2016;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2016 BGS period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-RSCP customers, as well as for a portion of the BGS-RSCP service required for the 2017 and 2018 BGS periods;

An Auction process for one-third of the EDCs' BGS-RSCP load for a 36-month period balances risks and provides a reasonable opportunity for price stability under current conditions;

An Auction process for procurement of the entire non-shopping BGS-CIEP load for a 12-month period is appropriate;

The EDCs' BGS-RCSP rate design is an appropriate methodology to translate final BGS-RCSP bids into customer rates for the purpose of this Auction;

The application of seasonal payment factors to the tranche-weighted Auction prices, determined in the manner prescribed herein is appropriate, and may be updated by the EDCs in January to reflect the most recent data;

Recovery of increases or decreases in rates for Firm Transmission Service from both RCSP and CIEP customers, and payment of such increases or downward adjustments to rates paid to BGS Suppliers, as provided in Section 15.9 of the SMAs is appropriate, subject to review and verification of those charges by the EDCs prior to submission to the Board;

Consistent with the Board's policy that all CIEP customers benefit and should pay the costs of having BGS-CIEP service available, capacity is the bid product in the CIEP Auction and the CIEP Standby Fee will be assessed to all CIEP customers;

The EDCs are the parties responsible to the Board for compliance with the RPS requirements;

The EDCs will prepare the RPS reports required by the Board on behalf of the BGS suppliers, and will contractually require the BGS suppliers to comply with the Board's RPS requirements;

The EDCs have designated NERA to continue to act as the Auction Manager for the 2016 Auctions;

Fulfillment of their Auction obligations will not cause successful bidders in the BGS Auction to be "Electric Power Suppliers" as defined in N.J.S.A. 48:3-51 and N.J.A.C. 14:4-1.2, and thus, successful bidders do not need to obtain a New Jersey electric power supplier license to fulfill their Auction obligations;

All Auction rules, algorithms and procedures that were unchanged in this proceeding, and were approved in prior Board Orders, as well as the Auction rules, algorithms and procedures that were modified in this proceeding, including changes in the decrement formulas, are deemed reasonable for the purpose of these Auctions;

Certain information and processes associated with the Auctions may be competitively sensitive by nature, and the Board has incorporated herein a Protective Order addressing treatment of this competitive information as Attachment C;

The accounting and cost recovery processes identified in the EDC-specific Addenda to the Joint EDC Proposal, as modified herein, are reasonable and consistent with the Board's Final Unbundling Orders;

The EDC-specific Contingency Plans are reasonable;

The Tentative Approvals and Decision Process Schedule in Attachment A reasonably balance process efficiency with Board oversight;

Boston Pacific will be the Board's Auction Advisor for the 2016 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Two designees from the Board's Energy Division, the Office of the Economist and its consultant, Boston Pacific, shall observe the Auctions for the Board;

The Auction Advisor will provide the post-Auction evaluation forms in Attachment B to the Board, and a redacted version to the EDCs and Rate Counsel, on the results of the Auctions and how the Auctions were conducted, prior to Board certification of the results;

Boston Pacific shall also provide a completed post-Auction evaluation form in the form of Attachment B to the Board, prior to Board certification of the results;

The Board will consider the results of the BGS-RCSP Auction and the BGS-CIEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the second business day after the last Auction closes. At its discretion and depending on circumstances, the Board may address one Auction that has closed while the second continues; Nothing herein is in any way intended to relieve the EDCs and/or the Auction Manager of their responsibilities to conduct the Auction in a lawful manner, including obtaining any appropriate licenses that may be required by law; and

For RPS compliance purposes, winning bidders in the 2016 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation RECs as would be available to them through the EDCs.

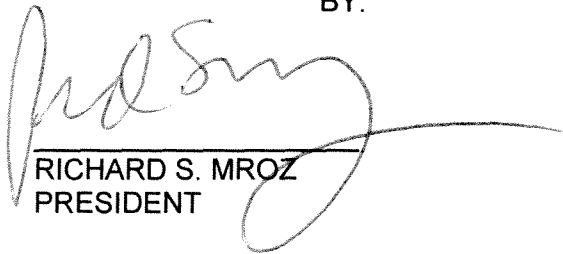
Accordingly, for the foregoing reasons, the Board **APPROVES** the Joint EDC Proposal, including the BGS-RSCP and BGS-CIEP Auction Rules, the EDC-specific addenda and the Supplier Master Agreements, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject the BGS-RSCP Auction results and/or the BGS-CIEP Auction results.

Furthermore, the Board **DIRECTS** that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by November 23, 2015. The Board **AUTHORIZES** Staff, after reviewing the EDCs' above described compliance filings, to request that the Board Secretary issue a compliance letter of approval if Staff upon review finds the filings in compliance with this Order.

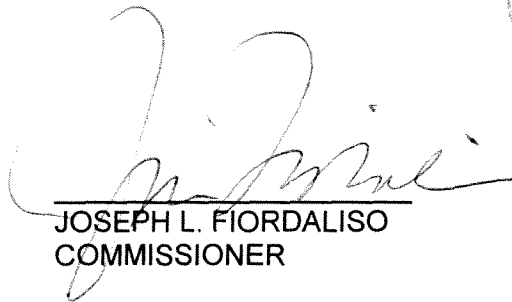
The Board **FURTHER DIRECTS** the EDCs to work with Staff and Boston Pacific to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

DATED: 11-16-15

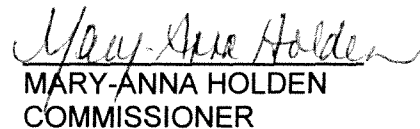
BOARD OF PUBLIC UTILITIES
BY:



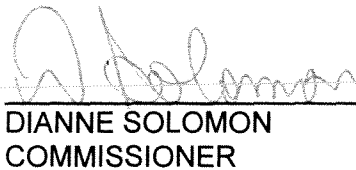
RICHARD S. MROZ
PRESIDENT



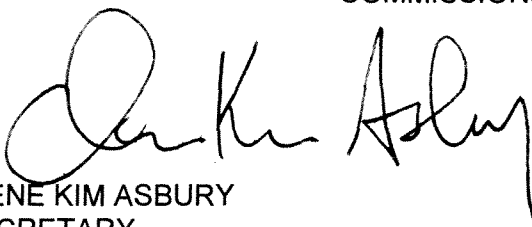
JOSEPH L. FIORDALISO
COMMISSIONER



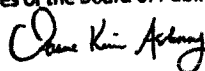
MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

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



**In the Matter of the Provision of Basic Generation Service
For the Period Beginning June 1, 2016**

**Docket No. ER15040482
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**In the Matter of the Provision of Basic Generation Service
For the Period Beginning June 1, 2016**

**Docket No. ER15040482
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**In the Matter of the Provision of Basic Generation Service
For the Period Beginning June 1, 2016**

**Docket No. ER15040482
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ATTACHMENT A

Tentative 2016 Auction Approvals and Decision Process

This document sets forth a high level view of the proposed approval and interaction process. For purposes of the decision making schedule, the following abbreviations apply:

1. EDCs – These are decisions for which the EDCs are solely responsible. The EDCs may draw upon the Auction Manager (AM) or consultants as they desire.
2. EDCs/BA – These are decisions for which the EDCs are solely responsible, where the Board Advisor (Staff and/or Boston Pacific) will have an opportunity to observe the decision process, but for which consensus or approval is not requested.
3. EDCs/AM/BA – These are decisions for which the EDCs are responsible, but where the Auction Manager may advise, and the Board Advisor (Staff and/or Boston Pacific) will have an opportunity to observe.
4. AM/BA – These are actions for which the Auction Manager is responsible, and on which the BA will have the opportunity to observe and advise.
5. BPU – These are actions to be taken by the Board.
6. AM/EDCs – These are actions for which the Auction Manager is responsible and for which the Auction Manager acts in concert with the EDCs.

Decision point	Decision process	Timing
Joint EDC Filing	EDCs	July 1, 2015
Decision on 2014 Process	BPU	November 16, 2015
Compliance Filing	EDCs	November 23, 2015
Approval of Compliance filing	BPU	November 2015
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2015
Announce minimum and maximum starting prices	AM/BA	November 13, 2015
Announce Tranche Targets	AM	November 13, 2015
Announce Load Caps	AM/BA	November 13, 2015
Information session for potential bidders	AM/EDCs	December 5, 2014
Review Part I applications	AM/BA	December 15-18, 2015

ATTACHMENT A

Tentative 2013 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 13-21, 2016
Setting of target limit exposure to contingency plan	EDCs/BA	Mid-January 2016
Information Session for registered bidders	AM/EDCs	January 26, 2016 (tentative)
Trial Auction	AM	January 28, 2016
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on February 2, 2016, for RSCP Auction on February 3, 2016
BGS-CIEP Auction starts		February 5, 2016
BGS-RSCP Auction starts		February 8, 2016
Provide full factual report to Board	AM/BA	Upon completion of FP Auction
Board decision on Auction results	BPU	No later than by end of 2 nd business day following the calendar day on which the last auction closes.

**ATTACHMENT B
Docket No. ER15040482**

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2016 BGS-RSCP AUCTION**

Prepared by: _____ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on Monday, February 8, 2016

Auction finished with the close of Round ## at [xxx] on [xxx]

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>
Eligibility ratio	_____	_____	_____
PSE&G load cap	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>
JCP&L load cap	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>
ACE load cap	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>
RECO load cap	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>
Statewide load cap	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>

* Note: [No volume adjustment was made during the RSCP auction, so the pre-auction tranche target and EDC-specific load caps were unchanged for the auction. / Or alternatively, note details of volume adjustments if they occurred.]

**ATTACHMENT B
Docket No. ER15040482**

Post-Auction Checklist for the New Jersey 2016 BGS-RSCP Auction

Table 1 below shows pertinent indicators and measures for the auction.

Table 1. Summary of BGS-RSCP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-RSCP peak load share (MW)					
Total tranches needed					
Starting tranche target in auction					
Final tranche target in auction					
Tranche size (%)					
Tranche size (approximate MW)					
Starting EDC load caps (# tranches)					
Starting statewide load cap (#tranches)					
Final EDC load caps (# tranches)					
Final statewide load cap (#tranches)					
Quantity procured (# tranches)					
Quantity procured (% BGS-RSCP load)					
# Winning bidders					
Maximum # of tranches procured from any one bidder					
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **					

* Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Starting tranche target in auction”.

** Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Final tranche target in auction”.

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-RSCP Auction

Table 2. Overview of Findings on BGS-FP Auction

Question		Comments
1	BP's/NERA's recommendation as to whether the Board should certify the RSCP auction results?	
2	Did bidders have sufficient information to prepare for the RSCP auction?	
3	Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?	
4	Were there any issues and questions left unresolved prior to the RSCP auction that created material uncertainty for bidders?	
5	From what BP/NERA could observe, were there any procedural problems or errors with the RSCP auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?	
6	From what BP/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
7	From what BP/NERA could observe, were there any hardware or software problems or errors, either with the RSCP auction system or with its associated communications systems?	
8	Were there any unanticipated delays during the FP auction?	
9	Did unanticipated delays appear to adversely affect bidding in the RSCP auction? What adverse effects did BP/NERA directly observe and how did they relate to the unanticipated delays?	
12	Were appropriate data back-up procedures planned and carried out?	
11	Were any security breaches observed with the RSCP auction process?	

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-RSCP Auction

Question		Comments
12	From what BP/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BP/NERA during the RSCP auction?	
13	From what BP/NERA could observe, were the protocols followed for decisions regarding changes in RSCP auction parameters (e.g., volume, load caps, bid decrements)?	
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the RSCP auction software double-checked or reproduced off-line by the Auction Manager?	
15	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	
16	From what BP/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	
18	Were there any complaints from bidders about the process that BP/NERA believed were legitimate?	
19	Was the RSCP auction carried out in an acceptably fair and transparent manner?	
20	Was there evidence of non-productive "gaming" on the part of bidders?	
21	Was there any evidence of collusion or improper coordination among bidders?	
22	Was there any evidence of a breakdown in competition in the RSCP auction?	
23	Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-RSCP Auction

Question		Comments
24	Does the RSCP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-RSCP load?	
25	Were there factors exogenous to the RSCP auction (e.g., changes in market environment) that materially affected the FP auction in unanticipated ways?	
26	Are there any concerns with the RSCP auction's outcome with regard to any specific EDC(s)?	

ATTACHMENT B
Docket No. ER15040482

POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2016 BGS-CIEP AUCTION

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Friday, February 5, 2016

Auction finished with the close of Round ## at [xxx] on [xxx]

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>
Eligibility ratio	_____	_____	_____
Statewide load cap	<u> ## tranches </u>	<u> ## tranches </u>	<u> ## tranches </u>

* Note: [No volume adjustment was made during the CIEP auction, so the pre-auction tranche target and the statewide load cap were unchanged for the auction. / Or alternatively, note details of volume adjustments if they occurred.]

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-CIEP Auction

Table 1 below shows pertinent indicators and measures for the auction.

Table 1. Summary of BGS-CIEP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-CIEP peak load share (MW)					
Total tranches needed					
Starting tranche target in auction					
Final tranche target in auction					
Tranche size (%)					
Tranche size (approximate MW)					
Starting load cap (# tranches)					
Final load cap (# tranches)					
Quantity procured (# tranches)					
Quantity procured (% BGS-CIEP load)					
# Winning bidders					
Maximum # of tranches procured from any one bidder					
Minimum and maximum starting prices prior to indicative bids (\$/MW-day)					
Starting price at start of auction (\$/MW-day)*					
Final auction price (\$/MW-day)**					

* Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Starting tranche target in auction”.

** Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Final tranche target in auction”.

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-CIEP Auction

Table 2. Overview of Findings on BGS-CIEP Auction

Question		Comments
1	BP's/NERA's recommendation as to whether the Board should certify the CIEP auction results?	
2	Did bidders have sufficient information to prepare for the CIEP auction?	
3	Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?	
4	Were there any issues and questions left unresolved prior to the CIEP auction that created material uncertainty for bidders?	
5	From what BP/NERA could observe, were there any procedural problems or errors with the CIEP auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?	
6	From what BP/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
7	From what BP/NERA could observe, were there any hardware or software problems or errors, either with the CIEP auction system or with its associated communications systems?	
8	Were there any unanticipated delays during the CIEP auction?	
9	Did unanticipated delays appear to adversely affect bidding in the CIEP auction? What adverse effects did BP/NERA directly observe and how did they relate to the unanticipated delay?	
10	Were appropriate data back-up procedures planned and carried out?	
11	Were any security breaches observed with the CIEP auction process?	

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-CIEP Auction

Question	Comments
12 From what BP/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BP/NERA during the CIEP auction?	
13 From what BP/NERA could observe, were the protocols followed for decisions regarding changes in CIEP auction parameters (e.g., volume, load cap, bid decrements)?	
14 Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the CIEP auction software double-checked or reproduced off-line by the Auction Manager?	
15 Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	
16 From what BP/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17 Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	
18 Were there any complaints from bidders about the process that BP/NERA believed were legitimate?	
19 Was the CIEP auction carried out in an acceptably fair and transparent manner?	
20 Was there evidence of non-productive “gaming” on the part of bidders?	
21 Was there any evidence of collusion or improper coordination among bidders?	
22 Was there any evidence of a breakdown in competition in the CIEP auction?	
23 Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	

ATTACHMENT B
Docket No. ER15040482

Post-Auction Checklist for the New Jersey 2016 BGS-CIEP Auction

Question		Comments
24	Does the CIEP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-CIEP load?	
25	Were there factors exogenous to the CIEP auction (e.g., changes in market environment) that materially affected the CIEP auction in unanticipated ways?	
26	Are there any concerns with the CIEP auction's outcome with regard to any specific EDC(s)?	

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Agenda Date: 10/22/04
Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
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ENERGY

IN THE MATTER OF THE PROVISION OF)
BASIC GENERATION SERVICE FOR)
YEAR THREE OF THE POST-TRANSITION)
PERIOD – CONFIDENTIALITY ISSUES)

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD.

This matter concerns the confidentiality of certain information to be utilized during the upcoming Basic Generation Service ("BGS") Auction.

At its October 22, 2004, public agenda meeting the Board approved an auction process for the procurement of BGS supplies for the period beginning June 1, 2005 ("Year Three of the post-Transition Period" or "Year Three"), which process is substantially similar to the process which was utilized for the past three years. In each of those auctions, the Board directed that certain sensitive information and processes would be afforded confidential treatment. At this time, in response to a request by the electric distribution companies ("EDCs") (EDC's Initial Proposal at 10-11), the Board is reaffirming the proprietary and confidential nature of the same procurement information and processes for Year Three bidding as it did in its previous Orders. The following areas are covered by this Order:

- (1) **The Logic Processes and Algorithms:** The auction manager, National Economic Research Associates ("NERA"), uses logic processes and algorithms to foster a competitive auction.
- (2) **Starting Prices:** EDC - specific minimum and maximum starting prices and final starting prices in effect during the bidding phase of the first round of the auction. Each EDC, in consultation with Staff, NERA and the Board's consultant, Charles River Associates ("CRA") sets its own starting prices. The EDC-specific final starting prices are announced to approved bidders only, shortly before the start of the auction.
- (3) **Indicative Offers** The number of tranches that a qualified bidder is willing to supply at the maximum starting price and the number of tranches a qualified bidder is willing to supply at the minimum starting price. Indicative offers are used to determine

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eligibility for participation in the auction and are considered in determining final starting prices.

(4) **Round Prices and Individual Bids:** The price set by NERA for each round of the auction, the number of tranches bid by each qualified bidder during each round of the auction, and any other information submitted by the bidder in each round to fully specify its bid, such as exit prices and switching priorities.

(5) **Bidder Information:** The bidder identities and information supplied to NERA on the application forms to become a bidder in the New Jersey BGS Auction.

DISCUSSION

The Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., which amended the former Right to Know Law concerning the public's access to government records, became effective on July 8, 2002. One of the modifications includes an expansion of the definition of a government record from only those documents required to be made, maintained or kept on file by law, to information received, made, maintained or kept on file by a public agency in the course of its official business, except for advisory, consultative or deliberative material. N.J.S.A. 47:1A-1.1. The statute goes on to list information which shall not be included in the definition of a government record and shall be deemed confidential, including trade secrets, proprietary commercial or financial information, and information which, if disclosed, would give an advantage to competitors or bidders. Id.

OPRA also changed procedures regarding government records by setting forth new format and timing requirements for making and responding to requests for access. As a result, many public agencies proposed new rules and regulations to redesign their record request operations in compliance with OPRA. The proposed new rules of the Board of Public Utilities appeared in the July 1, 2002, New Jersey Register, and were adopted in the July 21, 2003 publication of the New Jersey Register.

As part of the new procedures established concerning the public's access to its records and for claimants asserting confidentiality claims, the Board authorized its custodian of records to determine whether information requested by the public is a government record within the meaning of OPRA or is confidential. N.J.A.C. 14:1-12.6. Additionally, the Board reserved its authority to make a confidentiality determination when appropriate:

Nothing herein shall limit the Board's authority to make a confidentiality determination within the context of a hearing or other proceeding or with regard to any other matter, as the Board may deem appropriate.

[N.J.A.C. 14:1-12.6(d).]

Accordingly, the Board may make confidentiality determinations regarding information gathered in proceedings such as the within matter. In ruling on the Year Three procurement processes, the Board has determined that an auction process similar to the ones approved for the past three years are the most appropriate means for obtaining energy prices consistent with those achieved by a competitive market, as required by N.J.S.A. 43:3-57(d).

Simulating market conditions, however, requires that the auction participants know that their competitive positions will not be compromised. Based on the experience and expertise gained

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in the previous auctions, as well as the advice of its consultant, the Board recognizes the need to alleviate any doubts about its treatment of competitively sensitive information.

The Board has approved the use of a descending clock auction process for Year Three. The auction process, at its most basic level, includes three groups of contributors. The first group is made up of the four electric distribution companies the purchasers of the BGS supply, who rely on maximum participation by qualified bidders in order to ensure a competitive procurement for its BGS customers. The second group consists of the qualified bidders or BGS suppliers, which proffer the competitive bids to supply tranches¹ of power to the EDCs. In order to become a qualified bidder, BGS suppliers must meet certain general, financial and credit requirements. Qualified bidders are made up of two groups: (a) those that provide direct supply and (b) those that provide supply through market purchases. The third contributor is the Auction Manager, National Economic Research Associates, who administers the auction in consultation with the EDCs, the Board Staff and the Board's consultant, Charles River Associates.

During the course of the auction, the auction manager solicits bids through a series of auction rounds. The first round begins as the BGS suppliers bid the number of tranches they are willing to supply at each EDCs-specific starting prices. Assuming the number of tranches bid are greater than those needed by an EDC, the next auction round proceeds at a lower price. With each new price in the rounds, BGS suppliers may change their bids by modifying the number of tranches they are willing to supply. Rounds in the auction continue until the total number of tranches bid equals the total demand from the EDCs.

The auction process is expected to simulate a competitive market. The object is to allow prices to tick down round by round until the final price is one that approximates a price that could be achieved on an open market. To ensure that the EDCs get a competitive price, the BGS suppliers must bid based on their individual assessments of a fair market value or at least their assessment of individual ability to provide BGS supply at a particular rate. If the bidders knew each other's "market" positions or bid positions, the process would fail to create competition. Similarly, if bidders knew all of the details of the auction process they might also be able to determine their exact position in relation to other bidders and also circumvent the competitive intent of the process.

The Board is charged with overseeing the EDCs acquisition of BGS supply at market value. In order to achieve this goal, the Board FINDS and CONCLUDES that it must provide a certain amount of protection to the information supplied by the participants and to the formulas, algorithms and logic used to develop critical auction particulars. The Board's analysis of the need to treat certain information as competitively sensitive and confidential is set forth below.

I. THE LOGIC PROCESSES AND ALGORITHMS THE AUCTION MANAGER USES TO FOSTER A COMPETITIVE AUCTION

The auction manager will set the parameters for the auction, including the minimum and maximum starting prices. The EDCs must use this price range, as well as their own calculations to set their EDC-specific starting prices. Likewise, the qualified bidders must submit indicative offers using the minimum and maximum starting prices. Though the minimum and maximum starting prices are released publicly prior to the auction, the method used to determine these

¹ A tranche of one product (i.e. a tranche of the BGS load for one EDC) is a full requirements tranche. A tranche for an EDC is a fixed percentage share of the BGS load of that EDC for Year Three of the post-Transition Period beginning June 1, 2004.

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prices is confidential information. Revealing this thought process could prejudice the independent evaluation of market prices that qualified bidders would perform. Furthermore, it would impede the competitive nature of the auction. So long as the bidders do not know the rationale behind the auction prices, they must bid based on independent methodologies. As a result, the bidders are more likely to make bids of varying degrees because their valuations will be based on diverse variables.

Just as minimum and maximum starting prices are used to promote competition, volume adjustments during the auction rounds must be used to ensure that the EDCs receive the most competitive bids. The auction manager is given the authority to make two volume adjustments to ensure that the prices not only continue to decrease, but that bidding remains competitive. The auction manager may reduce the auction volume (reduce the number of tranches that the EDCs will purchase) after review of the first round bids. Again, simple market theories apply - if demand is larger than supply, the price remains high. Therefore, the auction rules allow for a volume adjustment after the first round, and once more in a later round. If the guidelines/ algorithms used to make these adjustments were disclosed, the bidders might be able to manipulate the system.

In short, the methodologies used to determine the starting prices, as well as volume adjustments, are integral to the competitive bidding process. Both categories of information fall under an OPRA exception to the definition of a government record because they would provide an advantage to competitors or bidders. As stated above, the Legislature has required the Board to procure energy prices consistent with market conditions. N.J.S.A. 48-3-57(d). The Board is therefore simulating a market scenario through the use of supply and demand theory. Releasing these auction parameters would result in an advantage to all of the bidders, at the expense of higher energy prices for the EDC's customers. Thus, as long as the Board continues to rely on a similar auction process to procure BGS supply, this information continues to require confidential treatment.

The Board HEREBY FINDS and CONCLUDES that this information, if disclosed would provide an advantage to competitors or bidders to the detriment of BGS customers, and shall be deemed confidential and not included as a government record pursuant to OPRA.

Therefore, should a request for this information be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that any requests for access be denied.

II. EDC-SPECIFIC STARTING PRICES

There are two types of starting prices used in the auction. First, there are the minimum and maximum starting prices, which are released to potential bidders shortly before the application process to provide a basis for the EDC-specific starting prices and the BGS suppliers' indicative offers. The second type consists of the EDC-specific starting prices that will be in effect for the first round of the auction. These prices must fall somewhere between the minimum and maximum starting prices, and are released to the qualified bidders shortly before the auction. The EDC-specific starting prices are derived from the indicative offers and the value judgments of the EDCs, Board Staff, CRA and Auction Manager regarding the future price of energy.

Both types of starting prices are intended to attract qualified bidders to the auction. The financial community and/or the general public could misinterpret the EDC-specific starting prices if they were to be made public prior to the release of the final auction results.

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Rather than having qualified bidders making independent business judgments on the value assigned to a product, their bids could be influenced by outside perception. For example, should the starting prices create lofty expectations regarding energy prices on the part of shareholders or financial analysts, BGS suppliers might not bid as aggressively as necessary to create market conditions. In short, releasing this information prior to the public announcement of the final auction results could put the entire auction process at a competitive disadvantage. While some individual bidders in the auction might not suffer, distorted financial perceptions could lead to a less competitive auction, ultimately disadvantaging the ratepayers through inflated prices.

The Board HEREBY FINDS and CONCLUDES that this information would provide an advantage to competitors or bidders, and shall be deemed confidential and not included as a government record pursuant to OPRA.

Therefore, should a request for this information be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that any requests for access be denied until the Board has released the auction results.

III. INDICATIVE OFFERS

Indicative offers are the number of tranches that a qualified bidder is willing to supply at the maximum starting price and at the minimum starting price. The number of tranches the bidder offers to supply at the maximum starting price determines the bidder's initial eligibility for the auction. The indicative offer creates two limitations for the bidder. First, the total number of tranches the BGS supplier can bid in any round of the auction is now capped at its initial eligibility. As such, bidders are encouraged to make an indicative offer for the maximum number of tranches they would be willing to serve. Second, the bidder is now required to post a financial guarantee proportional to its initial eligibility.

Clearly, the indicative offer contains proprietary commercial and financial information. N.J.S.A. 47:1A-1.1. The BGS supplier is making a business judgment regarding the amount of load it is willing to supply. These judgments could be based on many factors. For instance, a direct supplier might indicate a willingness to supply a high number of tranches because it has a limited number of supply contracts compared to its available plant capacity. On the other hand a supplier who buys its energy from the market may only be willing to supply a low number of tranches because it has already entered into a number of contracts at the time of the auction. As stated, the indicative offers also reveal information concerning the amount of credit a BGS supplier may or may not have at hand.

Not only do the indicative offers constitute proprietary commercial and financial information, but their release would provide an advantage to competitors, including those not participating as bidders in the auction. N.J.S.A. 47:1A-1.1. BGS suppliers compete in a market place outside of the auction. If such information were to become public, the BGS suppliers' competitors would be given otherwise confidential information, providing an opportunity to speculate on the individual supplier's market position. If the Board does not keep sensitive market data confidential, it will not be able to simulate an arms-length negotiation. Moreover, release of this proprietary commercial and financial information would have a chilling effect on the BGS suppliers' willingness to participate in this or any future auctions.

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Accordingly, the Board HEREBY FINDS and CONCLUDES that this information is proprietary commercial and financial information that would provide an advantage to competitors or bidders, and shall be deemed confidential and not included as a government record pursuant to OPRA.

Therefore, should a request for this information be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that any such requests for access be denied for a period of three years from the close of the auction. Three years after the conclusion of the auction, the Board will consider the indicative bids public information, unless prior to the expiration of the three years a party formally requests that this information remain confidential. If a request for continuing confidentiality is made, the information shall remain confidential pending a further decision by the Board.

IV. ROUND PRICES AND INDIVIDUAL BIDS

Each round of the auction produces two sets of information: (a) the price for each round as determined by the auction manager and (b) the individual bids.

For similar reasons to those set forth above in Indicative Offers, the individual bids contain proprietary commercial and financial information. N.J.S.A. 47:1A-1.1. Furthermore, release of either the round-by-round price or the number of franchises individually bid in a round would allow the bidders to mathematically work backwards and determine the incremental algorithm used by the auction manager to make volume adjustments during the course of the auction. As explained in Section I, *supra*, revealing this methodology could impede the current and any future competitive process to the detriment of customers.

Accordingly, the Board FINDS and CONCLUDES that this information could provide an anti-competitive advantage to competitors or bidders, and shall be deemed confidential and not considered a government record pursuant to OPRA.

Therefore, should a request for the round-by-round prices be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that any requests for access be denied.

Should a request for the individual bids be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that any such requests be denied for a period of three years from the close of the auction. Three years after the conclusion of the auction, the Board will consider the individual bids public information, unless prior to the expiration of the three years a party has formally requested that this information remain confidential. If a request for continuing confidentiality is made, the information shall remain confidential pending a further decision by the Board.

V. BIDDER INFORMATION

While the upcoming auction will be held in February 2005, the period of power supply being procured will not begin to flow until June 1, 2005. For all past auctions, the list of bidders obtaining contracts was announced with the Board Order approving the auction results. Approximately one month before the load was to be served, when suppliers had presumably locked up their contracts, the list of bidders with BGS contracts along with the volumes and prices for each contract were released. The reason for the delayed release of this information was to ensure that the bidders were not placed at a competitive disadvantage. As stated above

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there are two types of BGS suppliers - those who supply directly from their own plants and those that purchase power from the market for resale. Power marketers must go to the market and fulfill the BGS requirements they have won by negotiating contracts. If their competitors knew the volumes that the bidder had already contracted to supply as a result of the auction, the successful bidder might be at a competitive disadvantage. The same can be said for direct suppliers who must market their product. If buyers knew the amount of their plant supply already locked up due to the BGS auction, it could put them at a competitive disadvantage for negotiation of other contracts.

The Board also believes that if it were to release the names of all of the auction participants, those suppliers that participated in the auction but failed to obtain a contract could be prejudiced in the private sector energy market. Specifically, the financial community might interpret loss of the contracts as a sign of weakened financial position. Furthermore, releasing the names of everyone who participated but failed to leave the auction with a contract, could lead to speculation by the financial community that might have a chilling effect on the BGS suppliers' willingness to participate in this or any future auctions. As such, the Board could be damaging the competitive nature of its own auction by making the financial risk of participation unpalatable to participants. The ultimate result would be higher energy prices passed on to consumers.

Based on its experience with the past three BGS auctions and the expert recommendations of the Board's consultant, CRA, the Board believes that releasing the winning bidders' volume and price information before contracts for the supply period are locked up, could put those suppliers participating in the auction at a disadvantage in the greater energy market, making such information an exemption to the definition of a government record. N.J.S.A. 47:1A-1.1. Additionally, releasing the list of unsuccessful participants could impair the competitive nature of the auction by making the financial risk of participation unpalatable to participants and resulting in higher energy prices for consumers therefore making such information an exemption to the definition of a government record. N.J.S.A. 47:1A-1.1.

The Board HEREBY FINDS and CONCLUDES that this information is proprietary commercial and financial information that could provide an advantage to competitors or bidders, and that such information shall be deemed confidential and not included as a government record pursuant to OPRA.

Therefore, should a request for the names of winning bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and all requests for access be denied, until May 1, 2005.

Should a request for the names of unsuccessful participants be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied.

Once the Board has determined that the winning auction suppliers have had sufficient time to lock in their BGS supply for the designated period of time, information such as volume and the identities of the successful participants may be released. In the past, this information has been released approximately a month before the beginning of the supply period. Identification information would also include all of the public information supplied to NERA on the application forms to become a qualified bidder in the New Jersey Basic Generation Service Auction. For example, information such as name, authorized representative, authorized legal representative, name of the entities' directors are of a public nature and must be disclosed as a government record. On the other hand, both the Part 1 and Part 2 Application Forms contain confidential business information of bidders that is not available publicly. The following information from the

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applications is non-public proprietary commercial or financial information, which is not considered a government record pursuant to OPRA. N.J.S.A. 47:1A-1.1.

Part 1 Application Form:

Bidding Agreements

Financial and Credit Requirements, except for the supplemental data which includes the following public information:

- (i) Two most recent annual Reports
- (ii) Most recent SEC Form 10-K;
- (iii) Applicant's senior unsecured debt rating from Moody's, Standard & Poor's, and Fitch, if unavailable, the issuer rating may be provided instead.

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

Qualified Bidder's Indicative Offer and Calculation of Required Bid Bond

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

If the information above were to become public as a result of participation in the BGS Auction, some bidders might elect not to participate in order to maintain the confidentiality of their proprietary commercial and financial information. This could impair the ability of the Auction to obtain a market price and could be detrimental to the interests of the EDCs' customers.

The Board HEREBY FINDS and CONCLUDES that the information listed above is proprietary commercial and financial information, and shall be deemed confidential and not included as a government record pursuant to OPRA.

Therefore, should a request for the public bidder information provided to NERA concerning successful bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied, until such time as the Board releases the final names and volumes for successful bidders.

Should a request for the public bidder information provided to NERA concerning non-successful bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied, since such information would identify the non-successful bidders.

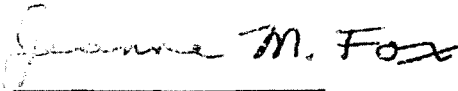
Should a request for the non-public bidder information provided to NERA be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied.

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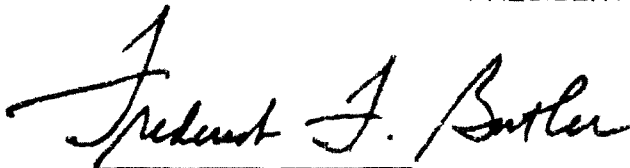
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described above would apply.

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES
BY:



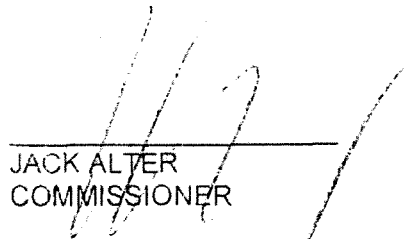
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER



JACK ALTER
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY