

CIVIL CASE INFORMATION STATEMENT

TITLE IN FULL:

**I/M/O THE PROVISION OF BASIC
GENERATION SERVICE FOR THE
PERIOD BEGINNING JUNE 1, 2008**

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.:**

APPELLANT'S ATTORNEY: Plaintiff Defendant Other (Petitioner)

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See Attachment A

[*Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.]

GIVE DATE AND SUMMARY OF JUDGMENT OR DECISION BEING APPEALED AND ATTACH A COPY:

By Order dated January 25, 2008 ("January 2008 BGS Order"), the New Jersey Board of Public Utilities ("BPU") approved the pass through to ratepayers of the cost of procuring Solar Renewable Energy Certificates ("SRECs") above \$300.00 per megawatt-hour incurred by winning Basic Generation Service ("BGS") bidders in prior annual BGS supply auctions, specifically, for: 1) contracts entered into in 2006 for the term of June 1, 2006 through May 31, 2009; and 2) contracts entered into in 2007 for the term of June 1, 2007 through May 31, 2010. The January 2008 BGS Order also permitted the state's regulated Electric Distribution Companies to pass through the cost of SRECs above \$300 per megawatt-hour through rates beginning June 1, 2008 for those SRECs associated with BGS supply contracts entered into pursuant to prior BGS auctions for delivery after May 31, 2008. The Board also ordered the Electric Distribution Companies ("EDCs") by June 1, 2008 to submit a proposed rate recovery mechanism to effectuate the pass-through of the additional SREC related costs.

Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?

Yes No

If so, has the order been certified as final pursuant to R. 4:42-2?

Yes

No

(If not, leave to appeal must be sought. R. 2:2-4, 2:5-6.)

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h).)

Yes

No

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Pursuant to the restructuring of the state's electric utility industry mandated by the Electric Discount and Energy Competition Act ("EDECA," codified at N.J.S.A. 48:3-49 et seq.), electric utility ratepayers are free to choose electric energy suppliers. Prior to that, electric energy service was supplied exclusively by the local regulated Electric Distribution Company ("EDC"). The EDECA and subsequent orders issued by the New Jersey Board of Public Utilities ("BPU" or "Board") set forth a process whereby EDC's would procure energy to serve those customers who elect not to choose an alternative supplier of energy and continue to have their energy service provided by their local EDC, a service known as Basic Generation Service ("BGS"). The EDECA also set forth renewable portfolio standards, whereby suppliers are required to source a certain percentage of their supply from renewable energy sources.

By Order dated June 22, 2007, the Board directed the state's four regulated EDCs to file proposals for procuring Basic Generation Service for the period beginning June 1, 2008 by no later than July 2, 2007. In that same Order, the Board invited "all other interested stakeholders to file alternative BGS procurement proposals with the Board by July 2, 2007." On July 2, 2007, the four EDCs filed a Joint Proposal ("Joint Proposal") for BGS procurement and each Company specific addendum for the seventh annual BGS auction to be held in February 2008. Alternative proposals were also filed by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively known as "Constellation"), AARP of New Jersey, and the PJM Power Providers Group. Public hearings were held on September 24, 25, 26, and 27; and a "legislative type" hearing was held before the Board on September 20, 2007 at which Rate Counsel and other parties presented comments. Initial comments were filed by interested parties, including Rate Counsel, on August 24, 2007, and final comments were filed by interested parties, including Rate Counsel, PSE&G ERT and IEPNJ, on or about September 28, 2007. The Board considered the BGS procurement proposals at its November 8, 2007 agenda meeting and issued a Board Order ("January 2008 BGS Order") memorializing its ruling on January 25, 2008.

In addition to addressing the auction process proposed by the EDCs for procuring BGS supply for the period beginning June 1, 2008, the January 2008 BGS Order also addressed the treatment of the cost of procuring Solar Renewable Energy Certificates ("SRECs") incurred by BGS suppliers who, as result of being the winning bidders in prior BGS auctions, had earlier entered into multi-year contracts to supply BGS which are still in effect. As the Board acknowledged in its January 2008 BGS Order, each BGS supplier is responsible to procure enough SRECs to satisfy its portion of the solar renewable portfolio standard mandated by the Board and the EDECA. Specifically, citing the final comments submitted by PSE&G ERT and IEPNJ, the Board ruled that those existing BGS suppliers could pass through to ratepayers the additional costs of procuring SRECs above \$300 per megawatt hour for contracts entered into in 2006 and 2007 for delivery beginning June 1, 2008.

In essence, the Board's ruling retroactively caps the SREC price for which existing BGS suppliers are liable at \$300 for those contracts entered into in 2006 and 2007, and permits them to pass-through to electric ratepayers who take service under BGS the cost of procuring SRECs in excess of that amount for the period beginning June 1, 2008. The \$300 figure reflects the Solar Alternative Compliance Payment ("SACP") in effect at the time the earlier BGS contracts were entered into, which the Board subsequently increased in a separate proceeding, with a decision rendered at its September 12, 2007 agenda meeting and memorialized in an Order dated December 6, 2007. In its January 2008 BGS Order, the Board reasoned that "[w]hile the [BGS] suppliers were on notice that the SACP could change...the Board is concerned that requiring the suppliers to bear this cost could discourage them from participating in future auctions...." Specifically, the Board approved the pass through to ratepayers of the cost of

procuring above \$300.00 per megawatt-hour incurred by winning BGS bidders in prior annual BGS supply auctions for: 1) contracts entered into in 2006 for the term of June 1, 2006 through May 31, 2009; and 2) contracts entered into in 2007 for the term of June 1, 2007 through May 31, 2010. The January 2008 BGS Order also permitted the state's regulated EDCs to commence the pass through of the cost of SRECs above \$300 per megawatt-hour through rates on June 1, 2008.

TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.)

1. The Board's January 2008 BGS Order instituted a rate increase without proper notice and, thus, was arbitrary and capricious, and contrary to law.
2. The Board's January 2008 BGS Order is retroactive ratemaking, permitting the recovery of the cost of procuring SRECs in excess of \$300 per megawatt hour for supply beginning June 1, 2008 under the 2006 and 2007 BGS supply contracts and thereby increasing customer rates which were set in the 2006 and 2007 BGS proceedings.
3. Ratepayers, as third party beneficiaries of the 2006 and 2007 BGS contracts, were harmed by the Board's action and were denied due process.

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

1. Did the trial judge issue oral findings or opinion? Yes No
If so, on what date? _____
2. Did the trial judge issue written findings or opinion? Yes No
If so, on what date? _____

Caution: Before you indicate that there was neither an opinion nor findings, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

Date of your inquiry: _____

Will the trial judge be filing a statement or opinion pursuant to R. 2:5-1(b)? Yes No

Civil appeals are screened under the Civil Appeals Settlement Program to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a conference. Yes No

Explain your answer:

1. IS THERE ANY CASE NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

(A) Arises from substantially the same case or controversy as this appeal? Yes No

(B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? Yes No

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? Yes No

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:

Appellate Division Docket Number:

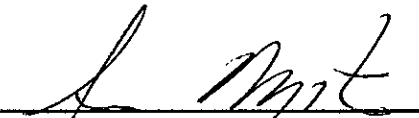
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Name of Appellant or Respondent

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Names of Counsels of Record

March 10, 2008
Date


Signature of Counsel of Record

Attachment A

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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC)
GENERATION SERVICE FOR THE PERIOD)
BEGINNING JUNE 1, 2008) DECISION AND ORDER
DOCKET NO. ER07060379

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes actions taken by the Board of Public Utilities ("Board" or "BPU") at its regularly scheduled November 8, 2007 public agenda meeting pertaining to the provision of basic generation service ("BGS") for the period beginning June 1, 2008.

By Order dated June 22, 2007, 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 all other interested parties to file proposals by July 2, 2007 to determine how to procure the remaining one-third of the State's BGS fixed price ("FP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2008. 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 2, 2007, the EDCs filed a Joint Proposal on BGS procurement ("Joint EDC Proposal") and each EDC also filed a Company-specific addendum to the Joint EDC Proposal. Proposals were also submitted by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, "Constellation"), AARP of New Jersey, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), and the PJM Power Providers Group ("P3"). A discovery period followed.

On or about August 24, 2007, Initial Comments on the BGS proposals were received from Rate Counsel, Constellation, Retail Energy Supply Association ("RESA"), and Direct Energy.

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 26, 2007; PSE&G's public hearing was held on September 25, 2007; RECO's public hearing was held on September 27,

2007, and JCP&L's public hearing was held on September 24, 2007. No members of the public appeared at any of the hearings.

The Board also held a legislative-type hearing on September 20, 2007, at its Newark office, chaired by President Jeanne M. Fox. Also participating was Commissioner Christine V. Bator. The purpose of the hearing was to take comments on the pending proposals. The EDCs, National Economic Research Associates ("NERA"), the EDC's auction manager, Rate Counsel, RESA, Constellation, and Intelligent Energy presented comments for the record, and were questioned by the Commissioners and Board Staff.

Final Comments on the issues were submitted on or about September 28, 2007 by the EDCs, Rate Counsel, Constellation, RESA, the New Jersey Business & Industry Association ("NJBIA"), the Independent Energy Producers of New Jersey ("IEPNJ"), and PSEG Energy Resources and Trade LLC ("PSEG ER&T").

POSITIONS OF THE PARTIES, 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. For this reason, and because it forms the basis of much of the discussion in this Order and because, with the modifications described below, the Joint EDC Proposal contains many elements that will be incorporated into the BGS procurement process which the Board will approve herein, the Board will summarize, in this Order, the main features of the July 2, 2007 Joint EDC proposal. The Board will not, in this Order, separately summarize each party's position in similar detail, but has carefully reviewed each party's proposals and/or positions in reviewing the record in this matter and rendering this Order.

JOINT EDC PROPOSAL

On July 2, 2007, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for Basic Generation Service beginning on June 1, 2008; including proposed preliminary auction rules for the auctions, Supplier Master Agreements and EDC-specific addenda. At that time, the EDCs also posted to the BGS Auction web site a draft application and a proposed alternate guaranty process for supplier comments.

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").

One Auction would procure service hourly-priced service for the approximately 2000 larger commercial and industrial ("C&I") customers on the EDCs' systems for a one-year period beginning June 1, 2008 ("BGS-Commercial and Industrial Energy Pricing ("CIEP") Auction"). The customers in this category represent approximately 3,200 megawatts ("MW") of load to be procured through bidding on 81 full-requirements tranches¹ of approximately 75 MW each². This is the same type of

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. As

Auction that the Board approved last year in Docket EO06020119. However, this year the EDCs proposed to redefine the BGS-CIEP bid product by raising the tranche size to 75 MW of eligible load, as opposed to 25 MW of eligible load in prior years.

The second Auction would procure one-third of the service requirements for all other customers of all four EDCs, for a three-year period beginning June 1, 2008, through a fixed-price Auction ("BGS-FP Auction") for approximately 5,300 MW of load to be served through 50 full-requirements tranches³ of approximately 100 MW each.

The competitive process by which the EDCs proposed to procure their supply for BGS load for 2008 is detailed in the Joint EDC Proposal and in Appendices A and B thereto (Provisional CIEP and FP Auction Rules, respectively), and is the same type of Auction process that the Board has approved for each of the past five 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-FP 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 of 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-FP 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-FP rates would be fixed tariff rates determined by converting the Auction prices to BGS-FP 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-FP 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 PJM⁴ real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a

discussed later, this proposal results in each of the EDCs having actual served load of about 4 MW per tranche.

³ The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2009 by means of Board-approved BGS-FP Auctions in February 2006 and February 2007.

⁴ PJM, the Pennsylvania-New Jersey-Maryland Interconnection, is the FERC approved regional transmission organization that manages the wholesale competitive energy market, and coordinates the movement of electricity in all or parts of a group of states including parts of New Jersey.

\$/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, 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-FP) 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 FP Supplier Master Agreements 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-FP 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 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 Supplier Master Agreement 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 bid bond; and
- the BGS-CIEP Auction is for a supply period of 12 months, and the BGS-FP Auction is to secure one-third of each EDC's total load requirements for three years,⁵ with the remaining two-thirds having been secured through previous BGS-FP Auctions.

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.

The EDCs have only proposed a few changes to the Auction process this year. Among the proposed changes is that the 2008 BGS-CIEP Auction bid product will reflect a 75 MW tranche size rather than a 25 MW tranche size. This proposed change in the BGS-CIEP Auction will be discussed in detail below.

DISCUSSION AND FINDINGS

FP and CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2008, 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. The Board's decision at that time was developed after considering all of the comments received. 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-FP and BGS-CIEP customers.⁶ For the 2003, 2004, 2005, 2006 and 2007 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

For the BGS Auction for the period beginning June 1, 2008, the Board, by Order dated June 22, 2007, directed the EDCs, and all other interested parties to file proposals to determine how to procure the remaining one third of the State's BGS-FP and the annual CIEP requirements. Specifically, the Board extended the opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the FP and CIEP customer classes for the period beginning June 1, 2008. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no 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-FP 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 in order to improve on a process important to all of the State's electric ratepayers. In making its decision, the Board has considered the suggestions that were made, including modifying the CIEP Auction product, expanding the CIEP threshold, changing the FP Auction rules, changing the FP Auction bid term, expanding application of the retail margin, creating a BGS Portfolio including a BGS portfolio manager, passing through transmission related costs, requiring underlying supply contracts of BGS winning bidders, revising the Supplier Master Agreement ("SMA"), determining Solar Alternative Compliance Payments, and incorporating an FP migration proposal. The Board has attempted to reach a balance of competing interests, mindful

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. EO050403317; and December 22, 2006, Docket No. EO06020119.

of its statutory responsibility to ensure continued provision of basic generation service at just and reasonable rates. The Board will address each of these issues in this Order.

Based on the experience of previous BGS Auctions, and having considered the record which has been developed in this matter, the Board concludes and FINDS that, with certain refinements and enhancements as will be discussed herein, a BGS-FP and BGS-CIEP Auction using a descending-clock Auction format should be used for the procurement period beginning June 1, 2008.

FP AUCTION SUPPLY PERIOD

The EDCs have one-third of their FP supply under contract through May 31, 2009 and an additional one-third contracted through May 31, 2010. They propose that the 2008 FP Auction be used to procure the remaining one-third of their supply requirements for a three year period June 1, 2008 through May 31, 2011. The EDCs indicate that the current three year rolling average provides stability to smaller commercial and industrial customers unable to engage in, or uninterested in, risk management. In the past, the three year rolling average has insulated FP customers from drastic increases in electricity costs, thus minimizing rate shock.

RESA has proposed that the Board introduce, in the 2008 Auction, quarterly pricing for certain commercial and industrial customers, and annual pricing for residential and smaller commercial and industrial customers. (RESA Final Comments at 4). RESA maintains that the Board should transition to a more market-reflective FP price. (RESA Initial Comments at 4). Under the RESA proposal, the quarterly FP product would serve the commercial and industrial FP load and would apply to all non-residential customers with a peak load share of between 1,000 kW (the lower limit for CIEP that the Board has previously determined to apply in June 2007) and 100 kW. RESA stated that moving to more frequent procurements, rather than continuing the laddered three-year contracts, would help to minimize the time over which the default price can become distorted and "out of market." (RESA Final Comments at 4). The EDCs have recommended that the Board reject the RESA proposal and maintain the current structure of the BGS-FP product. The EDCs pointed out that changing the BGS-FP product to a shorter period is contrary to the Board's cautious approach to protect residential and smaller industrial and commercial customers against the volatility of short-term energy markets. (EDCs Final Comments at 15). Constellation recommends that the Board reject the RESA proposal to change the structure of the BGS-FP product. Constellation indicates that the current structure, rather than a structure incorporating shorter contract lengths for FP customers, provides the appropriate contract term lengths, providing BGS suppliers with flexibility in procuring their supply in very liquid markets, thereby allowing suppliers to offer more competitively priced products. FP customers benefit from a stable, market-responsive and competitively-sourced product, in that contracts are for three-year terms, with 1/3 of the EDCs' load being obtained each year through the Auction process. (Constellation Final Comments at 6).

The Board recognizes that the staggered three-year rolling procurement process currently in use for the BGS-FP Auction provides a valuable hedge to customers in a time of increasing energy prices; however, it may make it more difficult for retail suppliers to compete for FP customers in times of rising prices. By way of contrast, if market prices start to come down, retail suppliers may find that their prices can be more competitive than the rolling three-year average Auction price, and competition would likely increase. The Board is not convinced that the current proposals for pricing based on Auctions for procurement of electricity for shorter periods than the current format would increase retail competition significantly. Gauging by the results of past BGS Auctions, such Auctions could increase the short-term costs to customers.

Based on the information in the record, including the results of past BGS Auctions, the Board is of the opinion that the benefits to customers' rates and rate stability associated with the staggered three-year rolling procurement process outweigh the purported benefits of short term contracts with a duration of one year or less. Therefore, the Board DIRECTS the EDCs to procure the approximate one-third of the EDCs' current BGS-FP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the 36-month period, as well as the 36-month supply contracts secured previously, will be used to determine the price for BGS-FP rates for the June 1, 2008 to May 31, 2009 period.

BGS PORTFOLIO APPROACH FOR FP CUSTOMERS

To provide greater price stability for BGS-FP customers, Rate Counsel recommended the development of a BGS portfolio that would permit BGS-FP load to be served from a variety of sources, including the BGS-FP Auction. Rate Counsel recommended that the BGS portfolio include sources such as Demand Response and Long-Term Contracts (i.e., 10 to 25 years, or even "Life of Plant" contracts, etc.), in addition to three-year contracts procured through the Auction. (Rate Counsel Initial Comments at 7). Further, Rate Counsel suggested that to put a BGS Portfolio into operation, the BPU should obtain the services of a professional Electricity Portfolio Management Group with expertise in Mid-Atlantic electric markets. The Portfolio Management Group could be provided through an outside consulting firm, assembled in-house under the auspices of the BPU utilizing BPU or other New Jersey government employees, or could be developed as a separate government entity. (Rate Counsel Initial Comments at 7).

The Board agrees that a portfolio approach that includes the use of a variety of resources as part of the BGS-FP supply mix with the goal of providing greater price stability could have a positive impact on all consumers. However, at this time the Board is concerned with how Rate Counsel's proposal could be implemented for the BGS Auction for the period beginning June 1, 2008. The Board's concerns include, but are not limited to: 1) whether use of a Portfolio Manager, as suggested by Rate Counsel, does not undermine one of the features of the BGS Auction which puts the burden on winning bidders who have the expertise in portfolio management and do indeed use portfolios, to serve their obligations to deliver full requirements service under the New Jersey BGS Auction; and 2) whether the Board as a State agency, can legally take on the financial responsibility of choosing and overseeing a Portfolio Management Group under current law. Further, the issue of a portfolio approach to BGS, including how this portfolio should be developed, is part of larger comprehensive energy policy currently being examined by the Energy Master Plan. It has always been the Board's intent to coordinate its review of these issues with the Energy Master Plan proceeding. Accordingly, the Board DENIES Rate Counsel's request to include a portfolio approach, as well as the use of a Portfolio Manager to implement a BGS portfolio, as part of the current BGS Auction process for the period beginning June 1, 2008.

FP AUCTION RULES

Rate Counsel repeated its request, made in prior Auctions, to change two of the BGS-FP Auction rules. (Rate Counsel Initial Comments at 2-4). The first proposal is that prices should "tick-down on ties." Rate Counsel's second proposal is that bidders be paid the last price that they bid ("pay-as-bid"), rather than the higher clearing price which is the current practice. Rate Counsel's tick-down on ties and pay-as-bid proposals are opposed by the EDCs. The EDCs maintain that Rate Counsel fails to recognize that bidders will change their behavior in response to changes in the Auction rules. The EDCs also contend that once such changes in behaviors

are taken into account, these proposals cannot be expected to result in lower prices than those obtained under the current BGS Auction rules. (EDCs Final Comments at 7).

Rate Counsel offered no new arguments or evidence to show how these proposed Auction rule changes would benefit ratepayers. The Board has previously expressed concerns with these proposals, including that they do not seem to account for alternate bidding patterns under alternate rule structures. Based on the comments received in this current BGS proceeding, the Board continues to have concerns and remains unpersuaded that Rate Counsel's proposed modifications to the Auction rules would enhance the current Auction process.

Further, in last year's BGS proceeding, the Board requested that its Auction Consultant, Boston Pacific, address these issues in its Auction Final Report ("Final Report")⁸. Boston Pacific in its Final Report rejected these proposals as offering no certain benefit to customers, while possibly reducing competition in the Auction, and decreasing excess supply being offered in the Auction by encouraging earlier bidder withdrawals, which could thereby cause a change in bidders' behavior.

Rate Counsel in this proceeding indicated that it was unable to find any factual basis for the assertion by Boston Pacific in the Final Report that Rate Counsel's recommendation could result in higher prices for ratepayers. Rather, Rate Counsel concluded that rejection of its recommendation was based on Boston Pacific's unsupported speculation that paying bidders what they offer would cause bidders to change their behavior. (Rate Counsel Initial Comments at 4).

The Board, in its review of the Final Report, has found that the entire analysis performed by Boston Pacific was included in the version of the Final Report which Rate Counsel received. As stated by Boston Pacific, to evaluate Rate Counsel's pay-as-bid and tick down on ties proposals, the following criteria were used:

- First, the BGS-FP Auction is a success because it attracts a large number of diverse, high-quality bidders. A rule should not be changed if the change would materially lower the number of bidders or lessen the diversity and quality of bidders.
- Second, persistent excess supply is what literally keeps the price ticking down, and this is what achieves lower prices for consumers. The rules should not be changed if the change could materially lessen excess supply by encouraging earlier or more substantial withdrawals.
- Third, a change in rules will lead to a change in bidding behavior. A change in rules should not be adopted with the assumption that bidding behavior will be unchanged. Put another way, the benefits of a change should not be estimated based on the results of bidding under existing rules.

When Rate Counsel's pay-as-bid and tick down on ties proposals were judged against the above described criteria, Boston Pacific found that these two proposals could decrease the numbers of bidders throughout the Auction by encouraging early withdrawals from the Auction, could lessen available supply in the Auction, and could lead to bidding behavioral changes in

⁸ Final Report on the 2007 BGS FP and CIEP Auctions and the RECO Swap RFP, Docket No. EO06020119, dated April 30, 2007.

the Auction that could result in a different outcome that could harm ratepayers. The Board considers the analysis conducted by Boston Pacific to be appropriate as the analysis is framed in terms of the goals of creating as much competition and excess supply in the Auction as possible, which should result in a downward pressure on Auction prices.

Therefore, based on the comments received in this current proceeding, and the recommendation of Boston Pacific in its Final Report, the Board continues to have concerns and remains unpersuaded that Rate Counsel's proposed modifications to the Auction rules would enhance the current Auction process. Therefore, the Board APPROVES the Auction rules as proposed by the EDCs and REJECTS Rate Counsel's proposed pay-as-bid and tick down on ties modifications to the FP Auction rules.

As part of its comments in this proceeding, Rate Counsel discussed the Boston Pacific Final Report in the 2007 BGS proceeding, specifically how the Boston Pacific Report was filed with, and, according to Rate Counsel, adopted by the Board. (Rate Counsel Initial Comments at 3). The Board would like to clarify the status of Boston Pacific's Final Report. In fulfillment of part of its contractual obligations, Boston Pacific provided a Final Report to the Board regarding the 2007 BGS Auction. As previously indicated, the Board asked Boston Pacific to provide an assessment of Rate Counsel's pay-as-bid and tick down on ties proposals. That Final Report was then accepted for filing. Staff, in providing its recommendation to the Board regarding the Final Report, indicated that 1) Boston Pacific had met all of its contractual obligations including submission of a Final Report, and 2) Boston Pacific completed the assignment in doing an assessment of Rate Counsel's pay-as-bid and tick down on ties proposals. Therefore, the Board only accepted Boston Pacific's Final Report for filing and, did not, at that time, adopt everything in that report as suggested by Rate Counsel.

FP MIGRATION

Currently, BGS-FP customers are able to freely move back and forth (migrate) from BGS-FP service to a TPS. Therefore, it is assumed that BGS suppliers must account for this migration risk in developing their costs associated with serving load for BGS-FP service. It has been suggested and discussed at the legislative-type hearing on September 20, 2007 that suppliers could offer a more competitive price if this migration risk was mitigated by barring larger customers with a peak usage of 500 kW and above that switch from BGS-FP to a TPS from ever returning to BGS-FP service. These customers would have the fallback of the BGS-CIEP service.

In its comments, Constellation recommends that the Board should maintain the current BGS structure which allocates to BGS suppliers the risk of switching by large FP customers. Constellation indicates that with respect to the bids offered for supplying FP (rather than hourly) BGS load for large FP customers, BGS suppliers, using historical data, are able to estimate and account for the risks of migration by EDCs' large customers to retail suppliers in the normal course of the competitive market and likely include such estimated costs for migration risk in their bids. Constellation maintains that this structure and allocation of risks has worked well in the BGS Auctions' five year history, resulting in competitive BGS supply rates for all classes of customers. Constellation recommends no change to the structure at this point in time. (Constellation Final Comments at 8).

Rate Counsel recommends that the Board exercise care and restraint in establishing any limitations on movement on and off BGS-FP service. Rate Counsel indicates that there are two basic considerations that support its position: 1) To date very few of those who are eligible for

BGS-FP service have chosen to try the market. Among those who in the future might be tempted to try the market to get a better price, any limitation on their return to BGS-FP service could have a "chilling effect", and 2) There has been no indication of the likely magnitude or the "dollar value" of migration risk as yet. Until such information is available, there is no reasonable way to assess the magnitude of the gain from removing such risk. Thus, Rate Counsel recommends that no action be taken, but that the BPU continue to monitor the situation. (Rate Counsel Final Comments at 6).

Currently there may not be a high premium for migration in suppliers' FP bids since there has been very little migration from the BGS-FP class to a TPS over the past six years. This is due in large part to the fact that, during this period, BGS-FP prices, based on the three-year rolling average, have provided lower and more stable prices to BGS-FP customers. However, if market prices start to come down, customers may find that prices offered by a TPS can be more competitive than the rolling three-year average Auction price, and customers may begin to switch to a TPS. The BGS Auction should be closely monitored to see if suppliers are including migration risk premiums in their bids. BGS service under the Electric Discount and Energy Competition Act ("EDECA") N.J.S.A. 48:3-4a et. seq. is meant to provide electric service to any customer that has not chosen an alternative electric power supplier. Therefore, at the current time, BGS-FP customers should continue to have the option of returning to BGS-FP service even after switching to a TPS.

However, the Board concludes that to prevent gaming, larger FP customers switching back to BGS-FP from a TPS must remain on BGS-FP for a 12-month term. After this period, the customer would be free to switch back to a TPS. This would allow customers to freely switch to a TPS, but at the same time limit larger BGS-FP customers from moving freely back and forth between BGS-FP service and a TPS based on current prices. This limitation should provide BGS suppliers with more certainty regarding the size of the BGS-FP class, and thus should lower any customer migration risk included in their bid prices.

Therefore, to minimize any risk premium that may be included in BGS suppliers' costs associated with serving load for BGS-FP service, the Board DIRECTS that the EDCs modify their BGS filing to include a provision that any BGS-FP customer using 500 kW or more that switches to a TPS and then seeks to return to BGS-FP, must commit to remain on BGS-FP for 12 months. Further, the Board DIRECTS its Business Energy Ombudsperson's Office and other Board Staff and the EDCs to monitor this situation and report back to the Board. In addition, the Board will require the EDCs to provide quarterly reports to staff identifying how many FP customers have switched to a TPS, and in the event they return to BGS-FP service, that they have remained on BGS-FP service for a period of one year.

CIEP AUCTION BID PRODUCT

The EDCs proposed redefining the BGS-CIEP bid product by raising the tranche size to 75 MW of eligible load, as opposed to 25 MW of eligible load as in prior years. The EDCs proposed doing so because they indicated it would better align the actual amount of BGS-CIEP load served per tranche for each of the EDCs. Because of different customer migration rates among the EDCs, there were significant differences in the actual load served per BGS-CIEP tranche. The proposal to raise the tranche size would result in each EDC having about 4 MW of actual load served per tranche, rather than the 1-5 MW range that resulted from a 25 MW tranche size. No parties commented on this change. The Board is persuaded that increasing the size of the CIEP tranche makes the product more attractive to bidders, and therefore should result in a greater number of

bidders participating in the CIEP Auction. Therefore, the Board APPROVES that the BGS-CIEP Auction bid product reflect a 75 MW tranche size rather than a 25 MW tranche.

RESA also recommended that bidders in the 2008 BGS-CIEP Auction use, as the capacity cost component of their bids, the capacity cost set by the Reliability Pricing Model ("RPM") Auction for the PJM Planning Year 2008/2009. In order to determine who serves BGS, RESA recommended that the BGS suppliers should bid into the annual BGS-CIEP Auction a "CIEP Service Charge" comprised of ancillary services and other non-capacity marketplace risks (e.g., supplier margin, scheduling, spinning reserve, quick start, secondary reserve, operating reserve, etc.). In addition, RESA also proposed that the Standby Charge be eliminated. (RESA Final Comments at 3).

The Board is concerned that altering the BGS-CIEP bid product could reduce the level of participation in the Auction. In 2006 the BGS-CIEP product was altered to solicit the Default Service Supply Availability Charge. That year the Auction was not fully subscribed, and the change in the bid product may have played a role in that outcome. The Board is mindful that the BGS-CIEP bid product currently proposed by the EDCs was part of the Auction product that was used in several of the previous CIEP Auctions, including the 2007 BGS-CIEP Auction, in which the entire load bid was satisfactorily procured. Given the importance of a fully subscribed BGS-CIEP Auction, the Board APPROVES the EDCs' proposed BGS-CIEP bid product, and the use of the Standby Charge as a fixed charge of \$0.00015 per kWh.

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.

CIEP CUSTOMER THRESHOLDS

As previously determined by the Board in connection with the 2007 BGS Auction, the threshold for mandatory inclusion in the CIEP class is 1,000 kW for the 2008 BGS Auction. A further mandatory expansion of this class is supported by RESA for customers with a peak load share⁹ of 750 kW and above for the 2008 BGS-CIEP Auction, and for customers with a peak load share of 500 kW and above for the 2009 BGS-CIEP Auction. RESA claims that these customers would get the real-time price signals they need to take full advantage of load management and energy conservation and efficiency programs. (RESA Final Comments at 3). The EDCs support keeping the BGS-CIEP threshold at the current level through the 2008 Auction, citing that many smaller BGS-CIEP eligible customers still remain on the default hourly BGS-CIEP rate, despite having years to switch to a TPS. The EDCs state that lowering the mandatory BGS-CIEP threshold to include smaller customers has not had the same effect on retail competition that it has had for the larger, and presumably more knowledgeable, energy consumers. (EDCs Final Comments at 13). The NJBIA opposed any efforts by the Board to lower the threshold of ratepayers subject to the retail margin and mandatory competitive shopping. (NJBIA Final Comments at 1).

⁹ The individual customer's capacity peak load share is that customer's portion of the total capacity assigned to the EDC's transmission zone by PJM.

As the Board has stated in previous Orders,¹⁰ it continues to believe that accurate market pricing reduces the possibility for inter- and intra-class subsidies, encourages customers to consider conservation, renewable energy and distributed resource alternatives, promotes load management and generally gives customers more control over their energy costs. However, in a time of escalating energy and capacity prices, the hedge offered by the three-year structure of FP rates is attractive to most customers. The results of the recent survey of eligible customers by the Board's Ombudsperson demonstrated that customers now on BGS-FP had no desire to be moved to BGS-CIEP, which fact is borne out by the extremely small number of FP customers who have voluntarily moved to CIEP in the last four years, and the low switching rates for non-CIEP customers. Of concern to the Board is that the inclusion of customers in CIEP pricing with a peak usage of 1000 kW, down from 1250 kW, was just recently implemented by the Board on June 1, 2007. The impact on these customers, including how many of these customers have switched to a TPS, is not known at this time.

Until the Board has gained information regarding the recently reclassified CIEP customers with a peak usage between 1000 kW and 1250 kW, the Board believes that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy at this time, and that the appropriate cutoff for mandatory inclusion in the CIEP class for the 2008 Auction is a continuation of the peak load share of 1,000 kW. Accordingly, the Board DIRECTS the EDCs to maintain the current structure of the CIEP class for the 2008 BGS-CIEP Auctions. Further, the Board DIRECTS that the Business Energy Ombudsperson's Office and other Board Staff, in conjunction with input from the Energy Master Plan, review this issue so a determination can be made next year whether there should be any further mandatory expansion of the CIEP class for future procurement periods.

For the 2004, 2005, 2006 and 2007 Auctions, certain Commercial and Industrial FP 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. Voluntary enrollment in the CIEP class should again be permitted for the 2008 Auction with similar constraints. Specifically, the choice must be made in a timely manner and, once made, must be irrevocable for the term of the CIEP contract. Therefore, the Board DIRECTS 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 also require a customer commitment, for participation, by no later than the second business day in January 2008. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2008 to reconsider their decision for the upcoming 2008 Auction. The Board DIRECTS the EDCs to work with Staff to develop and implement a process to so notify voluntary customers of this "window of opportunity." The Board also DIRECTS the EDCs to post the conditions of the voluntary CIEP process in an appropriately conspicuous location on their web pages.

RETAIL MARGIN

Currently, the retail margin, imposed on all BGS-CIEP customers and BGS-FP customers with a peak load share of 750kW or greater, is 5 mils (\$0.005) per kWh. RESA recommended that, parallel with its proposal for expansion of the CIEP class for the BGS year beginning June 1, 2008, the application of the retail margin be extended to all customers with a peak load share of 500 kW and above. (RESA Initial Comments at 6). The EDCs recommended that the Board

¹⁰ Board Order dated December 1, 2004, Docket No. EO04040288; Board Order dated December 8, 2005, Docket No. EO05040317; and Board Order dated December 22, 2006, Docket No. EO06020119.

reject the RESA proposal and retain the retail margin for service beginning on June 1, 2008 for all customers with a peak load share of 750 kW and above. (EDCs' Final Comments at 16). NJBIA also opposes any reduction in the threshold of customers subject to the retail margin (NJBIA Final Comments at 2).

In its Order in Docket Nos. EX01110754 and EO02070384 dated December 18, 2002, the Board approved the imposition of the retail margin as a way to reflect within the BGS prices those costs of providing electric service at retail, including marketing costs and administrative expenses, which must be absorbed by third party suppliers seeking to compete for that market. The Board imposed the retail margin on larger customers, those with a load above 750 kW, in the belief that these customers should be encouraged to shop for retail electric supplies, and that this group of larger customers would be more attractive to licensed suppliers. At that time, the Board was concerned that imposing the retail margin on smaller FP customers would increase the cost of electricity to these customers with minimal resulting benefits due to limited available offerings from third party suppliers. Similar concerns exist today.

At this time, the Board does not believe it is appropriate to modify the application or size of the retail margin until the Business Energy Ombudsperson's Office has had an opportunity to provide input on this issue, and the Board has had an opportunity to review any pertinent information obtained from the Energy Master Plan process. With this in mind, the Board FINDS that no change in the levels or the application of the retail margin is warranted at this time.

BGS SUPPLIER MASTER AGREEMENT

In its 2007 BGS comments, Constellation proposed changes to the ability of suppliers to manage credit risks from supplying BGS to the EDCs, as well as several other proposals, not related to credit risks which it said should be made in order to improve the BGS Supplier Master Agreements ("SMAs") and the BGS Auction process by encouraging the most robust participation by potential suppliers. Constellation has resubmitted these proposals for the procurement of BGS for the period beginning June 1, 2008. They include bilateral and reciprocal credit provisions, amendment to the accelerated payment provisions requiring weekly instead of bi-monthly payment, elimination of the Independent Credit Requirement and the Mark-to-Market premium, a requirement that suppliers, but not the EDCs, should be subject to minimum unsecured debt ratings under the SMA of at least BB+/Ba1/BB+, assignment of individual tranches, and modification of the definition of a "Merger Event." Constellation has also asked the Board to reconsider making optional the Notional Quantity Language, and recommended that suppliers be permitted to provide their supplier responsibility shares to an EDC from any PJM E-Account, and that the EDCs should provide to winning suppliers peak load contribution data in each month after execution of and prior to delivery under the SMA. (Constellation Initial Filing at 10).

The EDCs opposed these proposed changes which they have indicated have been reviewed and previously rejected by the Board, as unwarranted. However, the EDCs have proposed some clarifications to the SMA. These include committing to assure bidders that each EDC will supply aggregate FP and CIEP peak load data to winning suppliers at least once a month between the award of tranches and the start of the delivery period, and redefining a "Merger Event" to make clear that a merged entity can qualify under the SMA as long its guarantor qualifies.

This is the sixth year in which the Board has considered issues concerning the Supplier Master Agreement. The Board is always interested in proposals that may increase the number of bidders in the BGS Auction. Given that participation in the BGS Auction is robust, that there is a lack of support for the proposed changes, and the fact that the Board in the 2007 BGS proceeding rejected these proposed changes, the Board APPROVES the EDCs' BGS- FP Supplier Master Agreement and the BGS-CIEP Supplier Master Agreement, as modified herein, including the EDCs' agreed on clarifications, for use in connection with the 2008 BGS Auctions.

PASS THROUGH OF TRANSMISSION RELATED COSTS

Rather than continuing current practice of passing through changes in transmission rates to BGS-FP customers through section 15.9 of the SMA, Rate Counsel proposed not allowing such pass through and that BGS-FP suppliers should include an estimate of the costs associated with electric transmission in their offer to provide BGS-FP service. Rate Counsel stated that this treatment of transmission costs best serves the interests of New Jersey ratepayers. (Rate Counsel Initial Comments at 5). The EDCs support continued inclusion of the provision allowing for potential changes in supplier payments to reflect transmission costs changes as they believe that this serves to attract more bidders, and eliminates from bids uncertainty over transmission costs, thereby resulting in lower bids. The EDCs point out that this is particularly true at this time, as PJM has approved significant regional transmission expansion and is already allocating the costs of such projects to bidders. (EDCs Final Comments at 11-12).

Section 15.9 provides a means for increasing (or decreasing) the rates paid by the EDCs to BGS Suppliers to compensate the suppliers for FERC-approved rate increases (or decreases) for Firm Transmission Services.¹¹ The section provides that rate increases for Firm Transmission Services would include changes to any charge or surcharge imposed on customers receiving Firm Transmission Services. Section 15.9 further provides that if, during the term of the SMA, a filing is made with the FERC to increase the rates for Firm Transmission Services, the EDCs will seek approval from the Board to increase the rates charged to BGS customers by the amount of such rate increases for Firm Transmission Services. Upon receipt of Board approval for the increase in the rates charged to BGS customers, the EDCs would begin collecting the increase from BGS customers, tracking that portion of the rates charged to BGS customers attributable to the rate increase, and retaining such tracked amounts for the ultimate benefit of the BGS suppliers. Upon approval by the FERC of a proposed rate increase, in a Final FERC Order not subject to refund, the EDCs would increase, by the amount approved by the Board, the BGS-FP Auction price paid to BGS-FP suppliers, and the BGS-CIEP Transmission Charge paid to BGS-CIEP suppliers, and would pay each BGS supplier, in proportion to its BGS Supplier Responsibility Share, the amounts tracked and retained for the benefit of BGS suppliers until the date final FERC approval was received.

Again this year, the Board has carefully considered that many suppliers in this proceeding indicated that elimination of Section 15.9 of the SMA would present serious drawbacks as the risk of a transmission rate increase is not one that can be hedged by BGS suppliers in the marketplace. BGS suppliers have previously indicated in prior BGS proceedings that, absent this "pass through" provision, they would have to include in their bids any expected or potential price increases for such service, as well as attempt to address the regulatory risk of unexpected increases. The Board again this year is concerned that such "hedging" could result in ratepayers paying for a winning bidder's estimate of rate increases, rather than for the actual

¹¹ This provision was first approved by the Board for inclusion in the SMA in its December 2, 2003 Order, Docket No. EO03050394.

incurred costs, as is in place today by virtue of Section 15.9 of the SMA. If the pass through of FERC-approved changes in rates for Firm Transmission Service as effectuated by Section 15.9 of the SMA were eliminated, then the Board, and BGS customers would be forced to rely on BGS suppliers' "best guess" as to both the risk and size of potential rate increases. Section 15.9 removes this guesswork. For that reason, the Board believes that, based on the information available at this time, the risks to BGS customers outweigh any potential benefits of eliminating Section 15.9. Accordingly, the Board DENIES Rate Counsel's request to eliminate Section 15.9 of the SMAs, and APPROVES Section 15.9 of the SMAs as filed by the EDCs. Also, the Board DIRECTS that the EDCs are required to review and verify the amount of any increased transmission related costs in the filings required under Section 15.9 prior to Board review of any request as required under Section 15.9 of the SMA.

UNDERLYING SUPPLY CONTRACTS

Rate Counsel resubmitted its request of last year that the Board direct BGS-FP suppliers to provide, on an after-the fact basis, information on their underlying supply contracts. Rate Counsel indicated that its interest in this information is based on concerns regarding the safety and reliability of the electric supply procured through the BGS-FP Auction. According to Rate Counsel, without information regarding the source of New Jersey's electric supply, the Board is unreasonably hindered in meeting its obligation to protect the State's ratepayers from the increasing risks associated with the restructured generation market. (Rate Counsel Initial Comments at 6). Constellation urges the Board to uphold its previous findings and deny Rate Counsel's request for release of BGS suppliers' underlying supply contracts. Constellation argues that Rate Counsel has provided no new reasoning for release of such information, and has not raised any new circumstances that would warrant such release. Finally, Constellation reiterates its comments from the BGS proceeding in 2006 that the release of BGS suppliers' underlying supply arrangements would be detrimental to the competitiveness of the BGS process and would pose a difficult if not impossible burden on suppliers. (Constellation Final Comments at 10). IEPNJ also believes this recommendation should be rejected. IEPNJ contends such disclosure is not only unnecessary to maintain system reliability, it is not feasible given the nature of supplier portfolio management and, even if it could be disclosed, would have the effect of chilling the market relative to participation in the BGS Auction. Further, IEPNJ points out that disclosure is not feasible because suppliers do not necessarily use specific generation resources to meet load, and may manage all their supply requirements (BGS and non-BGS) on a constantly changing and integrated basis, rendering a one time disclosure requirement meaningless. (IEPNJ Final Comments at 1). The EDCs also oppose the disclosure of supply sources for BGS suppliers. The EDCs contend that the PJM RTEP and PJM requirement for generation reserves and suppliers' capacity obligations ensure system reliability is always maintained. (EDCs' Final Comments at 4 - 5).

The Board has always been mindful of ensuring reliability of power supply and delivery systems for New Jersey's ratepayers. PJM which is a FERC approved Regional Transmission Organization also is responsible for ensuring system reliability. Each winning bidder in the New Jersey BGS Auction must become a Load Serving Entity ("LSE") at PJM. This is a contractual requirement with PJM, where each LSE (winning bidder) is assigned a capacity obligation based on the load it will serve as a result of the BGS Auction. This capacity obligation includes not only the actual load won in the Auction, but also a reserve margin. Each supplier must prove to PJM at various points in time, including up to the time it provides power as required under the SMA, that it can meet its capacity obligations. This process ensures that the necessary generation resources or supply contracts are in place to satisfy the load that is bid under the BGS Auction. Further, if a BGS supplier defaults or uncertainties arise, PJM

dispatches generation on an hourly basis to maintain system reliability, ensuring that customers receive power regardless of the underlying contractual relationships among its members.

Based on the record in this proceeding and the fact that PJM has a process in place to ensure system reliability in both the long and short term, the Board remains unpersuaded by Rate Counsel's arguments that the BGS winning suppliers need to provide information on underlying supply contracts for the Board to maintain system reliability. Further, the Board does not feel that the pursuit of the underlying supply contracts would be constructive to the BGS Auction process, and believes that it could reduce the level of participation in the Auction by bidders. Therefore, the Board DENIES Rate Counsel's request for information concerning the underlying supply arrangements of winning bidders.

SOLAR ALTERNATIVE COMPLIANCE PAYMENTS

IEPNJ maintains that given the Board's decision at its September 12, 2007 agenda meeting, to increase future Solar Alternative Compliance Payment ("SACP") levels, the Board should protect winners of tranches in previous Auctions from this increase in the cost of meeting the BPU's renewable portfolio standards. IEPNJ contends that winners of tranches from previous Auctions should be insulated from what it referred to as a dramatic increase in SACP levels embodied in that decision, because this increase results from a regulatory action that was wholly unanticipated and not predictable at the time of those previously held Auctions. (IEPNJ Final Comments at 2). PSEG ER&T contends that a fundamental premise of the BGS Auction is that bidders have regulatory certainty at the time of the Auction. PSEG ER&T stated that an issue has recently arisen with regard to the timing of the implementation of the new level of SACP adopted by the Board at its September 12, 2007 open public meeting in Docket No. EO06100744. PSEG ER&T recommends that in this proceeding, the Board should make clear the level of SACP that will be applicable to the upcoming BGS Auction, and expressly state that tranches awarded in previous BGS Auctions (February 2007 and prior) are grandfathered at the existing \$300 SACP level so that the new SACP will only apply prospectively to tranches awarded at future BGS Auctions. PSEG ER&T asserts that by so clarifying its ruling, the Board will maintain confidence in the BGS Auction process and New Jersey's competitive markets for electricity. (PSEG ER&T Final Comments at 1).

Each BGS supplier, as part of its "all requirements" obligation under a BGS contract, is responsible for procuring solar renewable energy certificates ("SRECs") to satisfy its portion of the solar renewable portfolio standard. On September 12, 2007 the Board voted to approve a plan for transition of the solar program that reduces the emphasis on rebates as an incentive to spur solar installations, and that relies more heavily on market-based incentives. Specifically, rebates for larger solar projects were eliminated; instead, the incentive would come from the value of SRECs created for each megawatt-hour of electricity generated by an eligible solar electric generating facility. The price of SRECs is effectively capped by the SACP established by the Board, currently at \$300. The Board's September 12, 2007 decision would increase the SACP to \$711 beginning June 1, 2008, declining about three percent annually thereafter through Reporting Year June 1, 2015—May 31, 2016. The higher SACP may allow SREC prices to increase substantially above current levels. The potential increase in SREC prices affects two sets of BGS contracts: those covering the period from June 1, 2006 through May 31, 2009, and those covering the period from June 1, 2007 through May 31, 2010.

PSEG ER&T and IEPNJ are concerned that suppliers may bear significant additional costs for SRECs beyond what they had planned upon when they entered into these contracts. This is not an issue for the upcoming Auction to be conducted in February 2008 in which increased SACP

levels will be known and applicable, but it is an issue for the contracts from the 2006 and 2007 BGS Auctions. The suppliers are seeking to have those prior contracts "grandparented," so that the ratepayers, rather than the suppliers, would bear any additional costs associated with SREC prices above \$300. While the suppliers were on notice that the SACP could change, since the BPU's current regulations provide for the Board to re-evaluate the SACP at least annually, the Board is concerned that requiring the suppliers to bear this cost could discourage them from participating in future Auctions, including the upcoming Auction. Therefore, subject to the conditions as described below, the Board APPROVES the pass through to ratepayers of the cost of SRECs above \$300 per megawatt-hour for (1) June 1, 2008 through May 31, 2009 for the BGS contracts covering June 1, 2006 through May 31, 2009; and (2) June 1, 2008 through May 31, 2010 for the BGS contracts covering June 1, 2007 through May 31, 2010. Further, the EDCs will be permitted to recover in rates beginning June 1, 2008, the pass through to ratepayers of the cost of SRECs above \$300 per megawatt-hour for the periods mentioned above provided that the Board finds that these incremental costs were reasonably and prudently incurred. The EDCs are DIRECTED to submit to the Board for approval by June 1, 2008 a proposed rate recovery mechanism, including a method for demonstrating that any incremental costs were reasonably and prudently incurred, which process will provide for an opportunity to be heard by Rate Counsel and other parties. As part of the rate recovery mechanism, BGS suppliers will be required to provide documentation justifying recovery, and the EDCs will be required to review and verify the costs requested to be recovered in rates and included in the filing.

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 promote 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 (BPU 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 Number EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and APPROVES the same confidentiality provisions for the 2008 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

The Board concludes 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:¹²

- Bidder Information Sessions in Philadelphia and Washington, D.C.;
- 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 bid, 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 HEREBY 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 HEREBY APPROVES continuation of the above-referenced Auction promotion initiatives.

BOARD APPROVAL PROCESS

As with previous Auctions, and as noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, as described above, 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*,¹³ 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 in order that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous BGS Auctions, a fundamental concern driving the approval process is that uncertainty or delay concerning the period between the submission of bids and the approval of the 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

¹² These actions have occurred for past Auctions and in anticipation of a favorable Board opinion; some of these actions may have already been undertaken for the 2008 Auction.

¹³ 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.

certifying the results, the additional risk to bidders 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-FP 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-FP Auction and the BGS-CIEP Auction no later than the second business day 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 16, 2007. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.¹⁴

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 the 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.

For the final certification of the Auctions' results, the Board will schedule a special agenda meeting for the first day of the Auctions, as a forum to consider any unforeseen circumstances, should any develop. 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 provide a redacted version of the Final Report 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.

¹⁴ Prior to issuance of this Order, the EDCs submitted the required Compliance Filings, which the Board approved at its November 28, 2007 agenda meeting. Parties were so notified by Secretary's letter of the same date.

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 et seq., 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 the BGS customers beginning June 1, 2008;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2008 period, as well as a portion of the BGS-FP service required for the 2009 and 2010 periods;

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;

An Auction process for one-third of the EDCs' BGS-FP 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-FP rate design is an appropriate methodology to translate final BGS-FP 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;

Recovery of increases or decreases in rates for Firm Transmission Service from both FP 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 by the EDCs and included in the filing;

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

The EDCs shall continue to remit to the State Treasurer on a quarterly basis all retail margin monies hereafter collected with accrued interest, holding the retail margin monies in a separate interest bearing account pending such remittance;

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 2008 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. 14:4-2.2 and, thus, successful bidders do not need to obtain a New Jersey electric power supplier license;

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

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 Company, Inc. ("BP") will be the Board's Auction Advisor for the 2008 Auctions and will oversee the Auctions on behalf of the Board;

A designee from the Board's Energy Division and its consultant, BP, shall observe the Auctions for the Board;

The Auction Manager 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;

BP 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-FP 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;

The Auction Manager will provide an unredacted Final Report to the Board Staff and a redacted Final Report, consistent with the Board's Protective Order in this matter, to the EDCs and Rate Counsel on the results of the Auctions and how the Auctions were conducted;

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;

For RPS compliance purposes, winning bidders in the 2008 BGS Auction, through the EDCs, will be credited with an equivalent level of NUG RECs as would be available to them through the EDCs, assuming the EDCs had an unappealable right to such RECs; and

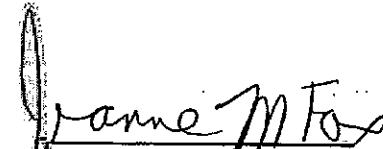
Subject to the conditions described within this Order, the Board approves the pass through to ratepayers of the cost of SRECs above \$300 per megawatt-hour for (1) June 1, 2008 through May 31, 2009 for the BGS contracts covering June 1, 2006 through May 31, 2009; and (2) June 1, 2008 through May 31, 2010, for the BGS contracts covering June 1, 2007 through May 31, 2010.


Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP 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-FP 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 16, 2007.¹⁵ The Board FURTHER DIRECTS the EDCs to work with Staff and BP 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.

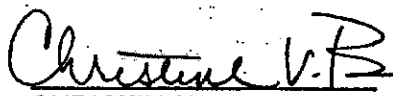
DATED: 1/25/08

BOARD OF PUBLIC UTILITIES
BY:

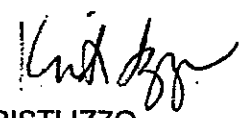

JEANNE M. FOX
PRESIDENT

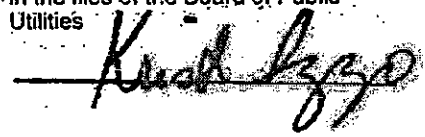

FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSONER

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

ATTEST: 
KRISTI IZZO
SECRETARY



¹⁵ As previously noted, in order to maintain the timeline requirements imposed by the Auction process, on November 16, 2007 the EDCs made the compliance filings based on the decision at the Board's November 8, 2007 agenda meeting. Those filings were subsequently approved on November 28, 2007.

ATTACHMENT A

Tentative 2008 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 BP¹) 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 BP) will have an opportunity to observe.
4. AM/BA – These are actions for which the Auction Manager is responsible and 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 2, 2007
Decision on 2007 Process	BPU	November 8, 2007
Compliance Filing	EDCs	November 16, 2007
Approval of Compliance filing	BPU	November 28, 2007
Final Auction Rules and Supplier Agreements available	AM/EDCs	November 28, 2007
Announce minimum and maximum starting prices	AM/BA	November 14, 2007
Announce Tranche Targets	AM	November 14, 2007
Announce Load Caps	AM/BA	November 14, 2007
Information session for potential bidders	AM/EDCs	December 7, 2007
Review Part I applications	AM/BA	December 18-21, 2007

¹ Boston Pacific Company, Inc.

ATTACHMENT A

Tentative 2008 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 8-15, 2008
Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 22, 2008
Trial Auction	AM	January 24, 2008
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on January 29, 2008, for FP Auction on January 30, 2008
BGS-CIEP Auction starts		February 1, 2008
BGS-FP Auction starts		February 4, 2008
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. ER07060379**

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2008 BGS-FP AUCTION**

Prepared by: _____ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on Monday, February 4, 2008

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 FP 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.]

Post-Auction Checklist for the New Jersey 2008 BGS-FP Auction

ATTACHMENT B
DOCKET NO. ER07060379

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

Table 1. Summary of BGS-FP Auction

	PSE&G	JCP&I	ACE	RECO	Total
BGS-FP 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-FP 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".

Post-Auction Checklist for the New Jersey 2008 BGS-FP Auction

ATTACHMENT B
DOCKET NO. ER07060379

Table 2. Overview of Findings on BGS-FP Auction

	Question	Comments
1	BP/NERA's recommendation as to whether the Board should certify the FP auction results?	
2	Did bidders have sufficient information to prepare for the FP 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 FP auction that created material uncertainty for bidders?	
5	From what BP/NERA could observe, were there any procedural problems or errors with the FP 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 any hardware or software problems or errors observed, either with the FP 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 FP 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 FP auction process?	

Post-Auction Checklist for the New Jersey 2008 BGS-FP Auction

ATTACHMENT B
DOCKET NO. ER07060379

	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 during the FP auction?	
13	From what BP/NERA could observe, were the protocols followed for decisions regarding changes in FP auction parameters (e.g., volume, load caps, bid decrements)?	
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the FP 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 FP 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 FP auction?	
23	Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	

Post-Auction Checklist for the New Jersey 2008 BGS-FP Auction

ATTACHMENT B
DOCKET NO. ER07060379

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

**ATTACHMENT B
DOCKET NO. ER07060379**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2008 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 1, 2008

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.]

Post-Auction Checklist for the New Jersey 2008 BGS-CIEP Auction
 ATTACHMENT B
 DOCKET NO. ER07060379

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 (\$/MWh)					
Starting price at start of auction (\$/MWh)*					
Price paid to winning bidders (\$/MWh)**					

* 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".

Post-Auction Checklist for the New Jersey 2008 BGS-CIEP Auction
 ATTACHMENT B
 DOCKET NO. ER07060379

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?	

Post-Auction Checklist for the New Jersey 2008 BGS-CIEP Auction
ATTACHMENT B
DOCKET NO. ER07060379

	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?	
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?	
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?	

Post-Auction Checklist for the New Jersey 2008 BGS-CIEP Auction
ATTACHMENT B
DOCKET NO. ER07060379

	Question	Comments
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)?	



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

ENERGY

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

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. 48:3-57(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

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.

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.

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.

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 tranches 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,

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

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.

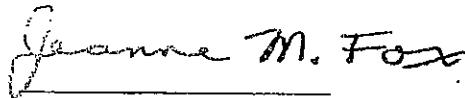
Should a request for the public bidder information provided to NERA concerning non-successful bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied, since such information would identify the non-successful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

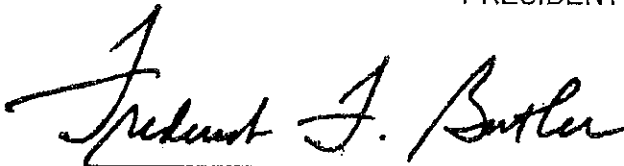
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES
BY:



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PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



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