



STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC
GENERATION SERVICE FOR THE PERIOD
BEGINNING JUNE 1, 2009

DECISION AND ORDER

DOCKET NO. ER08050310

(SERVICE LIST ATTACHED)

BY THE BOARD

This Order memorializes actions taken by the Board of Public Utilities ("Board" or "BPU") at its November 7, 2008 agenda meeting pertaining to the provision of basic generation service ("BGS") for retail customers who continue to purchase their electric supply from their electric utility company for the period beginning June 1, 2009.

By Order dated June 19, 2008, 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 1, 2008 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, 2009. 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.

The Board, in its June 19, 2008 Order, also directed the EDCs and other interested stakeholders to comment on 1) what barriers, if any, may exist that are limiting commercial and industrial customers between 1,250 kW and 1,000 kW from switching to Third Party Suppliers ("TPS"); and 2) what are the potential problems or benefits if the CIEP threshold is lowered from 1000 kW to 750 kW.

On July 1, 2008, 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 the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the Retail Energy Supply Association ("RESA"), Constellation Energy Commodities Group ("Constellation"), Consolidated Energy Solutions ("Con Ed"), and Hess Corporation ("Hess"). A discovery period followed.

On or about August 22, 2008, Initial Comments on the BGS proposals were received from Rate Counsel, and RESA.

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 October 8, 2008; PSE&G's public hearing was held on October 1, 2008; RECO's public hearing was held on September 25, 2008, and JCP&L's public hearing was held on October 6, 2008. No members of the public appeared at any of the hearings.

Final Comments on the issues were submitted on or about September 26, 2008 by the EDCs, JCP&L, Rate Counsel, RESA, the New Jersey Business & Industry Association ("NJBIA"), and the PPL Companies ("PPL").

The Board also held a legislative-type hearing on September 29, 2008, at its Newark hearing room, chaired by Commissioner Joseph Fiordaliso. Also participating were Commissioner Nicholas Asselta and Commissioner Elizabeth Randall. The purpose of the hearing was to take comments on the pending proposals. The EDCs, National Economic Research Associates ("NERA"), the EDCs' auction manager, Rate Counsel, NJBIA, RESA¹, and Constellation presented comments for the record, and were questioned by the Commissioners and Board Staff.

Reply Comments were submitted on or about October 10, 2008 by the EDCs, RECO, Rate Counsel, Constellation, RESA, Con Ed and Direct Energy Services LLC ("Direct Energy").

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 1, 2008 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 1, 2008, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for BGS beginning on June 1, 2009, including proposed preliminary auction rules for the auctions, Supplier Master Agreements ("SMAs"), 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,

¹ The following companies testified as a panel on behalf of RESA: Hess, Con Ed, Direct Energy and Reliant Energy Retail Services ("Reliant").

capacity, ancillary services, transmission, etc.) of retail customers that have not chosen a TPS.

One Auction would procure service for a one-year period beginning June 1, 2009, for the approximately 2,200 larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an Auction to provide hourly-priced service (the "BGS-CIEP Auction"). The customers in this category represent approximately 2,900 Megawatts ("MW") of load to be procured through bidding on 45 full-requirements tranches² of approximately 75 MW each³. This is the same type of Auction that the Board approved last year in Docket ER07060379.

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, 2009, through a fixed-price auction ("BGS-FP Auction") for approximately 5,300 MW of load to be served through 54 full-requirements tranches⁴ of approximately 100 MW each.

The competitive process by which the EDCs propose to procure their supply for BGS load for 2009 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 seven 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.

² A tranche is a full-requirements product and represents a fixed percentage share of an EDC's load for a specific period.

³ 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.

⁴ The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2010 by means of Board-approved auctions in February 2006 and February 2007.

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 PJM⁵ real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and various other payments for energy, ancillary services and transmission which would be known in advance of the Auction. Under the EDCs' proposal, 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

⁵ PJM, the Pennsylvania-New Jersey-Maryland Interconnection, is the Federal Regulatory Energy Commission 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 most of New Jersey.

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,⁶ with the remaining two-thirds having been secured through previous BGS-FP Auctions.

The EDCs have only proposed a few changes to the Auction process this year. Some of the proposed changes include the following: the determination of the CIEP auction starting price level, the introduction of an automatic extension in the first round of bidding for both the CIEP and FP Auctions, the use of Web-Ex conferences⁷ for bidder information sessions, a change to the distribution of certain payments from PJM capacity programs for demand response, and for JCP&L, the use of a tiered rate structure. These proposed changes 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, 2009, 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.⁸ For the 2003, 2004, 2005, 2006, 2007 and 2008 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.⁹

For the BGS Auction for the period beginning June 1, 2009, the Board, by Order dated June 19, 2008, directed the EDCs, and all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-FP and the annual CIEP requirements. Specifically, the Board afforded 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, 2009. 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

⁶ 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.

A Web Ex conference provides the ability for bidders to remotely participate via the internet in bidder conferences.

⁸ Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

⁹ Board Orders dated December 2, 2003, Docket No. EO03050394; December 1, 2004, Docket No. EO04040288; December 8, 2005, Docket No. EO050403317; December 22, 2006, Docket No. EO06020119; and January 25, 2008, Docket No. ER07060379.

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 EDCs' electric ratepayers. In making its decision, the Board has considered the suggestions that were made, including lowering the CIEP threshold, customer information issues, changing the FP Auction bid term, creating a BGS portfolio including retention of a BGS portfolio manager, eliminating switching restrictions, shifting responsibility for transmission related costs, segregating peak load contribution ("PLC") data, and issues relating to RECO's methodology for calculating interest on over and under-recoveries. The Board has attempted to reach a balance of competing interests, mindful 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, 2009.

FP AND CIEP BIDDER CONFERENCES

Boston Pacific, Inc. ("BP") in its Final Report¹⁰ indicated that prior to the Auction, the Auction Manager held multiple technical conferences for bidders in order to explain the bidding process and update bidders on any changes in the process and key documents. BP indicated that these meetings were highly informative and useful for all entities involved in that process. BP further indicated that the only downside was that participants had to attend the meetings in person. BP pointed out that in other RFPs in which it has been involved, the RFP coordinators have made their meetings available to prospective bidders via programs such as Web-Ex conferences. BP recommended that in the interest of addressing as many bidders as possible, the same should be done here (BP Final Report at 10).

The EDCs indicated that those in-person conferences have been extremely successful in stimulating participation in the BGS Auctions. They further indicate that they understand BP's point that more suppliers could potentially participate if suppliers did not need to physically attend bidder information sessions. The EDCs proposed in their 2009 BGS filing that the schedule of in-person meetings as in previous BGS Auctions be continued and that, in addition, web-based capability be added for one of the bidder information sessions before the filing as well as for the December bidder information session (EDCs BGS Filing at 17).

Accordingly, the Board APPROVES the EDCs' proposed change to continue the schedule of in-person meetings as in previous BGS Auctions, and that, in addition, web-based capability be

¹⁰ Boston Pacific, Inc. was retained in December 2007 to oversee and monitor the process proposed by the four EDCs in New Jersey to procure supplies for BGS on behalf of the Board, for three years, starting with the 2008 BGS procurement process. As part of its contract, BP provides a Final Report to the Board on the BGS procurement process, and also provides recommendations to improve future BGS procurement processes. At its May 8, 2008 Agenda meeting, the Board accepted for filing BP's Annual Final Report on the 2008 BGS FP and CIEP Auctions, dated April 15, 2008.

added for one of the bidder information sessions before the filing as well as for the December bidder information session.

FP AND CIEP AUCTION ROUND ONE BIDDING

BP in its Final Report indicated that typically, there will be a bidder or two who has registered and been cleared to bid but does not elect to participate in the Auctions. BP indicated that if a bidder does not participate in the first round of the Auction, an automatic extension request is made on that bidder's behalf. BP indicated that this process has the effect of: a) slowing down the Auction and b) informing other bidders that a bidder has dropped out. BP recommends that if a bidder were not to participate in round one, the Auction Manager should skip the automatic first round extension triggered by an entity that is not actually bidding as required under the current rules (BP Final Report at 9).

The EDCs note that nothing confirms for bidders that an extension in round one is being triggered solely because a bidder is failing to bid. The EDCs indicate that it would be common for bidders to trigger extensions in a first round as bidders may have difficulty initially logging into the software or may have forgotten their passwords. The EDCs point out that a bidder's decision of whether to submit bids in the Auction is the bidder's to make. The EDCs believe that it would be difficult and perhaps impossible to force bidders that did not want to participate in the bidding to notify the Auction Manager of that fact. Nevertheless, the EDCs propose that there be an automatic extension in the first round of bidding. They indicate that this will provide no indication whatsoever of whether a bidder has failed to bid in the first round of the Auction (EDCs BGS Filing at 16).

The Board is sensitive to BP's concern that under current rules when a round one extension is given, other bidders who remain in the Auction get some indication that a bidder has not participated in round one, and therefore the number of bidders has been reduced. In order that the competitiveness of the Auction is not jeopardized, implementing an automatic extension in round one appears to be the best course of action. Accordingly the Board APPROVES the EDCs' proposed change in the Auction rules that there be an automatic extension in the first round of bidding.

FP AUCTION SUPPLY PERIOD

The EDCs have two-thirds of their BGS-FP supply under contract through May 31, 2010, and an additional one-third contracted through May 31, 2011. They propose that the 2009 BGS-FP Auction be used to procure one-third of their supply requirements for a three year period, June 1, 2009 through May 31, 2012. The EDCs indicate that the current three year rolling average provides some level of 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 BGS-FP customers from drastic increases in electricity costs, thus minimizing rate shock.

RESA has proposed that the Board introduce, in the 2009 Auction, shorter-term procurements with the goal of achieving quarterly pricing for commercial and industrial FP customers (down to the level of 100 kW), and annual pricing for residential and small commercial customers. (RESA Initial Comments at 5). Under the RESA proposal, these new shorter-term procurements would, in the first year, make up one-third of the price for the commercial and

industrial FP load (the other two-thirds of the price having already been set in prior Auctions) and one-third of the price for the residential and small commercial load, and would fully phase in over three years. RESA maintains that moving to more frequent procurements, over a sequenced and orderly transition, rather than continuing the laddered, three-year contracts, will help to minimize the time over which the default price can become distorted and "out of market." RESA further argues that the transparency of a quarterly price signal "in the market" will inform commercial customers about changes in the underlying electricity market over time (RESA Initial Comments at 5). The EDCs respond that the Board should not introduce quarterly pricing for commercial and industrial BGS-FP customers or annual pricing for residential and small commercial customers. The EDCs argue that although the "larger" commercial and industrial customers would still be on a fixed-price plan, RESA's proposal would expose these customers to the volatility of the short term market by procuring power separately for them on a quarterly basis. Further, the EDCs argue that residential and very small commercial customers would also experience additional exposure to the volatility of the short-term market by procuring power separately for them on a one-year basis (EDC Final Comments at 5).

The Board recognizes that the staggered three-year rolling procurement process currently in use for the BGS-FP Auction provides a hedge to customers in a time of increasing energy and/or capacity 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, 2009 to May 31, 2010 period.

BGS PORTFOLIO APPROACH FOR FP CUSTOMERS

Rate Counsel recommends a portfolio management approach for BGS-FP customers. Rate Counsel indicates that a portfolio management approach would allow BGS-FP customer resources to include, if economically attractive, a wider range of resource options than is currently available. Rate Counsel recommends that these options would include potential resource contracts that would be secured at times other than just the existing once-per year Auction period, and for contract length terms other than just three years, as is done now. Rate Counsel further recommends that, if determined to be economically attractive by a portfolio manager, this portfolio could include long-term contracts exceeding three years, and could include products of duration less than three years. According to Rate Counsel, the retention of a portfolio manager would provide BGS-FP customers with the option of obtaining a more robust resource portfolio than is currently the case. Further, Rate Counsel argues that a portfolio manager would have flexibility to secure resources for BGS-FP customers that could lead to more stable and affordable prices than are seen under the current structure, which is a single

procurement vehicle (the Auction), using a single three-year product, at a single point in time each year, for all BGS-FP load (Rate Counsel Initial Comments at 1).

The EDCs oppose Rate Counsel's proposal for a BGS portfolio manager. First, the EDCs indicate that the BGS product is already supplied by portfolio managers, as the winning bidders in the BGS Auction manage portfolios. Second, the EDCs indicate that the existing BGS procurement process defines the product as a full requirements product, and that BGS suppliers are responsible for serving a percentage of an EDC's load, whatever that load may be, at any given point in time. Bidders compete to serve BGS customers by striving to be the best at assembling supply components (energy, capacity, etc.) in the competitive power markets, and assessing and pricing the risks associated with serving a percentage of BGS load. Third, the EDCs argue that Rate Counsel's unsubstantiated notion that a portfolio manager would be able to identify the "best deals" and achieve optimum timing for procurements is unrealistic. According to the EDCs, a portfolio manager is no less likely than anyone else to enter into deals that, with the benefit of hindsight, are not the best deals or conduct procurements at times that, with the benefit of hindsight, are not the best times. Additionally, the EDCs contend that Rate Counsel provides no support for the proposition that a portfolio manager could outperform the market or how such a manager would be identified. Nor, the EDCs argue, does Rate Counsel supply any reason why, if such an individual or entity did exist, it would work for a fee rather than trade for its own account. Fourth, the EDCs indicate that Rate Counsel contemplates various structures such as a public power authority or an independent agent as the portfolio manager. They argue that Rate Counsel provides no information regarding under what legal authority these transactions or contracts would be executed nor does Rate Counsel specify what entity would provide the credit and payment assurances to the sellers or what entity would sign the contract as buyer. Fifth, the EDCs point out that Rate Counsel supports a scenario where the State-established portfolio manager would consider the possibility of long-term contracts. This scenario would be a departure from the current full requirements BGS approach where suppliers, and not New Jersey customers, bear migration risk. The EDCs believe that this proposal could result in uneconomic long-term contracts and higher costs to BGS customers. (EDC Final Comments 6 – 9).

Constellation urges the Board to reject the Rate Counsel proposal for a portfolio management approach (Constellation Reply Comments at 1). Constellation argues that a diverse pool of wholesale suppliers, rather than an independent consultant or the EDCs themselves, provides the most cost-effective method of BGS supply management for the EDC load (Constellation Reply Comments at 7).

Based on the record presented in this proceeding, 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, 2009. 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; 2) whether a portfolio manager could outperform the market and is no less likely than anyone else to enter into deals or conduct procurements at times which, with the benefit of hindsight, turn out not to be in the best interest of ratepayers; and 3) 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 for BGS, including how this portfolio should be developed, is part of larger comprehensive energy policy for the State of New Jersey. There is

no doubt that the State of New Jersey must have a diverse energy portfolio to create a viable energy future with, among other things, a goal of providing greater stability of price and supply for all consumers. It has always been the Board's intent to coordinate its review of this issue with the Energy Master Plan ("EMP") proceeding. Accordingly, with the issuance of the Final New Jersey EMP and associated implementation strategies in October 2008, in the Board's view, the issue of the development of an energy portfolio as part of the State's energy supply should be examined as part of the implementation of the EMP. 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, 2009.

FP SWITCHING RESTRICTIONS

RESA states that the Board, as part of its decision regarding the 2008 BGS proceeding for the period beginning June 1, 2008, Docket No. ER07060379, raised a barrier to customer choice for the larger FP customers when it imposed restrictions on the ability of customers at 500 kW and above to switch freely between BGS-FP and TPS service, by imposing a one year restriction. RESA recommended in its comments that the Board remove any restrictions on the ability of FP customers to switch between FP and TPS service. Further, RESA also recommended that the Board reverse that portion of its 2008 BGS Order that imposed such restrictions for the BGS year which began on June 1, 2008. It is RESA's position that switching restrictions have no place in a competitive market (RESA Initial Comments at 6 -7). The EDCs have indicated that they are also opposed to switching restrictions, and are requesting the Board consider eliminating them in this BGS proceeding (EDC Reply Comments at 8).

The Board's decision in the 2008 BGS proceeding to impose switching restrictions was intended to minimize any risk premium that may be included in BGS suppliers' costs associated with serving load for BGS-FP service. After a review of this issue in the current 2009 BGS proceeding, the Board is concerned that switching restrictions imposed in the 2008 BGS proceeding have raised a barrier to customer choice by eliminating the ability of BGS-FP customers at 500 kW and above to switch freely, back and forth between BGS-FP service and TPS service. At this time the Board agrees that the potential benefits to customer choice of no switching restrictions for these customers outweigh the potential risk premium that may be included in BGS suppliers' costs associated with serving load for BGS-FP service. Therefore, the Board DIRECTS the EDCs to eliminate the switching restrictions for BGS-FP customers at 500 kW and above imposed last year so that no customer in this group should be barred from switching, with no new switching restrictions adopted for the current BGS proceeding.

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 STARTING PRICE LEVEL

BP in its Final Report recommended that the methodology for determining the starting price for the BGS-CIEP Auction be revised because the starting price for the 2008 BGS-CIEP Auction

could have been set lower. BP indicated that while, in its assessment, the 2008 BGS-CIEP Auction process was a success, the actual Auction process was not as quick as it could have been (BP Final Report at 9). The EDCs agreed that the methodology for determining the BGS-CIEP starting price and decrements should be examined for improvements for the 2009 Auction. Further, while the EDCs acknowledged that the starting price for the 2008 BGS-CIEP Auction was high, the EDCs maintained that the length of the 2008 Auction was more dependent on the pace of the decrements. The EDCs indicated that setting a lower starting price will only cause the Auction to have one or two fewer rounds. As such, the EDCs proposed a revision to both the methodology for determining the starting price and the decrement formulas for the 2009 BGS-CIEP Auction (Joint EDC Proposal at 15). The Board APPROVES the EDCs' proposed methodology for determining the starting price and the decrement formulas for the 2009 BGS-CIEP Auction.

CIEP AUCTION INDICATIVE OFFERS

BP recommended in its Final Report that, during the qualification stage of the BGS-CIEP Auction, prospective bidders be required to provide an indicative offer at the minimum starting price, in addition to the current requirement of providing an indicative offer¹¹ at the maximum starting price (as is done in the BGS-FP Auction). BP indicated that this would give the Auction Manager a better gauge of where to set the CIEP starting price, and possibly have a positive impact on the speed of the Auction (BP Final Report at 9). The EDCs agree with this recommendation, and have incorporated the new requirement into the Auction Rules and the Application forms for the 2009 BGS-CIEP Auction. The Board APPROVES the EDCs' proposed change to the BGS-CIEP Auction to have prospective bidders be required to provide an indicative offer at the minimum starting price, in addition to the current requirement of providing an indicative offer at the maximum starting price.

CIEP CUSTOMER THRESHOLD

As previously determined by the Board in connection with the 2007 and 2008 BGS Auctions, the threshold for mandatory inclusion in the CIEP class is 1,000 kW. A further mandatory expansion of this class is supported by RESA for customers with a peak load share¹² of 750 kW and above for the 2009 BGS-CIEP Auction, and for customers with a peak load share of 600 kW and above for the 2010 BGS-CIEP Auction (RESA Reply Comments at 3). RESA states that a lowering of the real-time, hourly pricing threshold is the single most effective step to delivering the benefits of a competitive retail electric market. RESA further states that enabling customers to see and respond to the prevailing market-cost of their energy consumption in as close to real time as practicable is a critical element in ensuring customer choice. RESA believes that with hourly pricing, customers can make informed decisions to conserve or become more efficient or to curtail or shift load usage at times of peak demand (RESA Reply Comments at 2).

¹¹ An indicative offer is a statement of the number of tranches a qualified bidder is willing to supply at the maximum (and minimum starting) prices.

¹² 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.

The EDCs support keeping the CIEP threshold at the current level through May 2010. The EDCs state that the results of the survey of eligible customers conducted last year by the BPU Business Ombudsperson demonstrated that customers now on BGS-FP had no desire to be moved to BGS-CIEP, which they say is borne out by the extremely small number of FP customers who have requested to move to CIEP in the last four years (EDC Final Comments at 4). Rate Counsel also supports retaining the current CIEP threshold volume levels. Rate Counsel states that no evidence has been presented that indicates a lowering of the CIEP threshold is either desired by the relevant customers or will bring net benefits to those customers (Rate Counsel Initial Comments at 1). NJBIA has opposed the expansion of the CIEP rate class that is required to shop competitively. NJBIA points out that a 2007 survey of ratepayers by the BPU Business Ombudsperson's Office found "that of customers in the 750 to 1,000 kW range, 76 percent ... thought they would experience a negative financial impact if they became eligible for hourly pricing." Additionally, NJBIA points out that the survey found that "[n]early four out of 10 customers who are now on hourly pricing said that if given the choice, they would prefer NOT to be." (NJBIA Final Comments at 1).

As the Board has stated in previous Orders,¹³ 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. Further, the Board agrees with Rate Counsel that there has been no evidence presented in this proceeding by any of the stakeholders that indicates that lowering the CIEP threshold is either desired by the relevant customers or will bring net benefits to those customers at this time. At this time the Board concludes that the energy policy implications of expending the hourly pricing threshold and the financial impact that hourly pricing will have on those businesses in the current economic climate outweigh the potential benefits of lowering the CIEP threshold. It is for these reasons that the Board still 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 2009 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 2009 BGS-CIEP Auctions. Further, the Board DIRECTS that the BPU Business 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, 2007 and 2008 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 2009 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,

¹³ Board Order dated December 1, 2004, Docket No. EO04040288; Board Order dated December 8, 2005, Docket No. EO05040317; Board Order dated December 22, 2006, Docket No. EO06020119, and Board Order dated January 25, 2008, Docket No. ER07060379.

for participation, by no later than the second business day in January 2009. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2009 to reconsider their decision for the upcoming 2009 Auction¹⁴. 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.

CUSTOMER INFORMATION

As part of this proceeding, the Board in its June 19, 2008 Order also directed the EDCs and interested stakeholders to comment on what barriers, if any, may exist that are limiting C&I customers between 1,250 and 1,000 kW from switching to TPS service . RESA responded by noting that, while there are no barriers to choice for the larger customers, third-party suppliers may encounter a barrier to entry to the market as the threshold for CIEP is lowered. As the threshold is lowered, customers in each successive CIEP block (750 kW, 600 kW, 500 kW, etc.) are less readily apparent and, therefore, less readily identifiable by suppliers. Third-party suppliers’ efforts to market to these customers may become less exact as a result. It is possible that even the best TPS marketing tools may miss some smaller customers. According to RESA, these customers may not receive the multiple offers that the larger customers receive. RESA notes that this same barrier holds true, of course, for marketing to customers on BGS-FP. RESA indicates that this problem will arise because, under the current regulatory structure, customer names and locations, usage data and other relevant information are difficult to obtain (RESA Initial Comments at 5).

As part of its comments, RESA suggests the following solutions. First, the Board should simplify the process by which a TPS may demonstrate a customer’s consent for release of the customer’s account number from an electric or gas utility. Second, to enhance outreach efforts, RESA proposes that the Board require the EDCs to establish “Market Match” programs, which make it easier for interested business customers to receive offers from energy suppliers. Participating customers can then compare prices offered by various TPS, and have the option of choosing the supplier that best meets their needs. Third, RESA proposes that the Board consider a direct mail program that would educate business customers about competitive market options and help TPS communicate with customers they might not otherwise be able to identify, all while protecting customer privacy. This program would require the EDCs to regularly provide customer information (contact name, address, service class, usage indicator, etc.) to a third-party mailing house. Suppliers would provide the mailing house with marketing materials and specific instructions about target customers, rate classes and usage levels and would bear the cost of the program. RESA indicates that this approach, which has been used in Massachusetts, would enable suppliers to reach out to customers, while protecting the confidentiality of customer-specific information. Fourth, the Board should explore a proposal previously recommended by RESA (and one which neighboring utilities, such as Philadelphia Electric Company (“PECO”), have employed) and establish a voluntary program by which interested customers may elect to make contact and usage information available to TPS on a secure website (RESA Reply Comments at 7).

¹⁴ The date of this Order succeeds the date by which the EDCs are to have notified customers eligible to be served on a BGS-FP rate that have voluntarily switched to BGS-CIEP that they may return to BGS-FP service effective on June 1, 2009. However, in conformity with their Company Specific Addendum, the EDCs have sent letters to these customers to make them aware of their option to return to BGS-FP service effective June 1, 2009.

The Board has determined in this proceeding with regard to the CIEP threshold, as it has done for the last several BGS proceedings, that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy at this time. Based on comments submitted in this proceeding, as well as information provided by the BPU Business Ombudsperson's Office, the Board remains concerned that there are a large number of customers above 1000 kW who have not switched to a TPS. As RESA's comments pointed out, if the CIEP threshold is lowered, customers in each successive CIEP block below 1000 kW are less readily apparent and, therefore, less readily identifiable by TPS. Further RESA points out that TPS' efforts to market to these customers may become less exact as a result, and as a result, these customers may not receive the multiple offers from TPS as the larger customers do (RESA Initial Comments at 5). These concerns prompt the Board to instruct Staff to start a working group as soon as possible, co-chaired by Energy Division Staff and the BPU Business Ombudsperson, to include the EDCs, Rate Counsel, RESA, NJBIA and other interested parties, to explore ways to over-come the barriers for TPS to be able to market to both FP and CIEP customers. Suggestions submitted by RESA in this proceeding should be considered as part of the working group process, in addition to exploring other ways to identify these customers to TPS, reviewing what other states that have retail choice are doing, and exploring ways to find what customers have not switched to a TPS, and educate them regarding their options regarding retail competition. Further, the Board believes as part of these efforts the working group should explore ways for these customers to take advantage of demand respond, with the possibility of designing demand response programs to help these customers control their electricity costs. Finally, the Board believes the working group should also explore the development of tariffs that would provide incentives to these customers to take advantage of demand response opportunities.

Accordingly, the Board DIRECTS the Energy Division Staff and the BPU Business Ombudsperson to convene a working group as soon as possible, with recommendations presented to the Board no later than July 2009. The Board also DIRECTS the working group to provide periodic updates to the Board regarding its progress.

JCP&L TIERED RATE STRUCTURE

JCP&L in its Company specific addendum has proposed an "inverted tariff" that would impose a Summer Peak Surcharge on customers in Service Classification RS, on all usage exceeding 2,500 kWh, and on customers in Service Classification RT, on all on-peak usage exceeding 1,000 kWh in any summer month (JCP&L Company Specific Addendum at 16). JCP&L indicates that the inverted tariff has been designed to be revenue neutral on an interclass basis, in that rates in Service Classification RS and RT will decrease during the non-summer months, when electric use is generally lower. JCP&L further points out that the inverted tariff for summer high use residential customers should encourage these customers to conserve during the summer months by imposing higher rates for the high usage levels. JCP&L indicates that these high use customers' summer bills would be offset by lower rates in the non-summer months (JCP&L Final Comments at 3).

Rate Counsel indicates that the proposed change has the potential to negatively affect some high-use customers whose consumption patterns may not be due to profligate use. Rate Counsel is concerned that there does not seem to be any provisions to exempt certain customers from the effect of the proposed change, even if it was determined that their relatively high use was due to, for example, a requirement for energy-intensive medical equipment on-

site. Rate Counsel also indicates that there may be other particular customer conditions that should also be eligible for a waiver. Further, Rate Counsel states that it would not oppose the proposed changes if the language in JCP&L's tariff allowed for such exemptions under certain conditions (Rate Counsel Initial Comments at 6). In order to address Rate Counsel's concerns JCP&L proposes that for customers who qualify for JCP&L's Life Support Program, the summer peak threshold could be increased to 3,500 kWh per month for RS customers and to 1400 kWh per month for RT customers (JCP&L Final Comments at 2).

The Board APPROVES the JCP&L tiered rate structure as a pilot project, subject to the following changes as proposed by JCP&L, that for customers who qualify for the Life Support Program, the summer peak threshold is to be increased to 3,500 kWh per month for RS customers and to 1400 kWh per month for RT customers. In addition, the Board would like information regarding whether this program actually encourages customers to curtail their electric usage during the high peak periods during the summer months. As such, the Board DIRECTS JCP&L to provide the Board with a report no later September 30, 2009, describing how customers reacted to this inverted tariff, including how many customers curtailed usage, and how much electricity usage was curtailed during implementation of the inverted tariff. Finally, the Board is also concerned with customer education regarding this program, specifically, ensuring that all customers who will be affected know the impact this program may have on their electric bills, and what measures they can take to reduce consumption during the time the inverted tariff applies. Therefore, the Board DIRECTS JCP&L to provide Board Staff and Rate Counsel with its customer education strategy by the end of March 2009. This will allow JCP&L enough time to develop a customer education strategy, consult with staff, and allow for enough time to provide information to customers.

TRANSMISSION RATES

Constellation proposes to amend the SMAs so that the EDCs rather than the BGS Suppliers would be responsible for transmission service (Constellation Initial Filing at 3). Constellation states that if BGS suppliers, rather than EDCs, remain responsible for these charges and for transmission rate increases that may occur, and if BGS suppliers must wait until the Federal Energy Regulatory Commission ("FERC") issues a final order approving such increases, and then until the Board issues a final order for the pass through of such transmission rate increases, then BGS suppliers need to factor a premium into their BGS bids for such potential rate increases regardless of whether such transmission upgrades actually occur. Constellation further states that although the Board has consistently ordered such pass throughs, prudent bidders may consider not only the risk that the Board does not continue its previous practice, but that the costs that bidders incur for paying administratively-set transmission fees may not be appropriately recouped by BGS Suppliers until many months and even years after such fees are incurred (Constellation Initial Comments at 5).

The EDCs oppose the Constellation proposal, which would make the EDCs directly responsible for transmission service and transmission-related services. The EDCs argue that under such a proposal, they would then pass such charges through to customers. The EDCs believe the existing process for the "pass-through" of increases and decreases in transmission-related service costs, which are from an established benchmark known before the BGS Auctions, remains the most efficient mechanism for minimizing the uncertainty while maintaining the full requirements nature of the BGS product (EDC Final Comments at 2). The EDCs argue that the Constellation proposal will not result in a demonstrable benefit to BGS customers, but will weaken one of the strongest features of the New Jersey BGS procurement process – a full

requirements product that obligates competitive entities to assemble all components of BGS supply at an all-in price (EDC Final Comments at 4).

Constellation provides no factual basis that its proposal would provide any benefit to ratepayers, and, as proposed, would only add complexity to the BGS Auction process. At this time, the existing process for the "pass-through" of increases and decreases in transmission-related service costs as defined in Section 15.9 of the SMA, is the most efficient mechanism for minimizing the uncertainty of collection of these costs while maintaining the full requirements nature of the BGS product. Accordingly, the Board DENIES Constellation's request to amend the SMAs so that the EDCs rather than the BGS suppliers would be responsible for transmission service.

PEAK LOAD CONTRIBUTION DATA

Constellation proposes that each EDC be required to provide separate BGS-FP and BGS-CIEP Peak Load Contribution ("PLC") data to a BGS Supplier that wins tranches to supply portions of the EDC's BGS-FP and BGS-CIEP load. Constellation points out that under current practice, EDCs provide to winning bidders of both BGS-FP and BGS-CIEP load in a particular EDC's service territory, only *one* aggregate PLC figure, even though the BGS supplier is supplying two different and unique types of load, with two different sets of shopping and usage characteristics, and under two different SMAs. The BGS supplier does not receive PLC data for each of its load obligations (BGS-FP and BGS-CIEP) separately. Constellation states that timely and well-tailored information about the EDCs' loads is key to the continuing ability to manage these portfolios, and allows suppliers to offer the most competitive prices possible in the BGS-FP and BGS-CIEP Auctions (Constellation Initial Filing at 6). No opposition was filed by the EDCs or any other stakeholders. The Board concurs that provision of this data is appropriate, and accordingly, the Board DIRECTS the EDCs to provide separate BGS-FP and BGS-CIEP PLC data to a BGS supplier that wins tranches of both the EDC's BGS-FP and BGS-CIEP load.

INTERRUPTIBLE LOAD FOR RELIABILITY CREDITS

The EDCs in their BGS filing have proposed to continue to credit an amount equal to the appropriate share of the Interruptible Load for Reliability Credit received from PJM ("ILR Credit")¹⁵ to the winning BGS-FP suppliers that are parties to one or both of the 2007 and 2008 BGS-FP SMAs. With respect to the 2009 BGS-FP SMA, the EDCs proposed in their filing that an amount equal to the appropriate share of the ILR Credit received for 2009 and beyond will be credited to ratepayers through the System Control Charge ("SCC") or a successor clause.

Rate Counsel indicated that it is pleased to see that the revenue stream from PJM for ratepayer investments in interruptible load response will be redirected to EDCs for the benefit of customers and away from BGS suppliers. Rate Counsel asserts that the benefits of PJM's ILR program include, most fundamentally, the payments made to those providing the resource. It is Rate Counsel's position that all ILR payments received from PJM or payments to be received from PJM for load response paid for by ratepayers should be directed to the EDCs for flow-through to ratepayers, including those that were previously paid to the suppliers under the prior SMAs (Rate Counsel Initial comments at 6). The EDCs indicated that they are pleased that

¹⁵ The ILR Credit is a monetary value received from PJM upon successful participation in its Interruptible Load for Reliability program.

Rate Counsel supports the EDC proposal to remove the provisions allocating ILR payments to BGS-FP suppliers from the BGS-FP SMA. However, the EDCs further indicated that this change should only be implemented on a prospective basis (EDCs Final Comments at 14).

Based on the information provided in this proceeding, the Board believes that the monetary benefits received from PJM for ILR programs should be returned to ratepayers. The Board is mindful that the 2007 and 2008 SMAs previously approved by the Board had provisions which allocated ILR program benefits to BGS suppliers. Accordingly, the Board DIRECTS the EDCs to modify their filing to allow an amount equal to the appropriate share of ILR payments to be passed on to BGS suppliers through the 2007 and 2008 SMAs, but only for programs in place at the time these agreements were executed (programs for which the EDCs were receiving a credit from PJM at that time). Further, for the 2009 SMA, an amount equal to the appropriate share of the ILR Credit is to be passed on to ratepayers. For any new demand response programs put in place by June 1, 2009 which will receive ILR or similar payments from PJM, 100% of the credit will be passed on to ratepayers.

RECO'S METHODOLOGY FOR CALCULATING INTEREST ON OVER/UNDER RECOVERIES

In a recent Board Order Approving the Extension of Recovery of Reliability Must Run ("RMR") Costs for RECO, BPU Docket No. ER07060370, the Board approved an interim methodology regarding over-collections and interest calculations for these FERC imposed costs. The Board directed that the issue of RECO's method for calculating interest should be resolved in the pending 2009 BGS proceeding. As part of the September 29, 2008 legislative-type hearing, RECO and any other party was asked to file comments on 1) how should over-collections be determined; and 2) how should the interest be calculated with respect to over-collections.

In its October 10, 2008 letter to the Board, RECO indicated that pursuant to its specific addendum in the 2009 BGS proceedings, the company calculates the monthly difference between costs related to the provision of BGS service and revenues derived from its BGS rates resulting in an over/under collection. The over/under collections, including those attributable to transmission surcharges, are credited to or recovered from BGS customers through the company's monthly BGS reconciliation charges. Regarding the application of interest, RECO indicated that its method of calculating interest on BGS reconciliations differs from that of the other EDCs. RECO further indicated that interest does not apply as long as costs are reconciled within a two-month lag period, with any over/under collections beyond a two-month lag accruing interest based in its Board approved rate-of-return. The other EDCs apply interest at the interest rate used for over- or under-recovered balances related to the Societal Benefits Charge ("SBC"). No other party filed comments regarding this issue.

In order to be consistent with the other EDCs, the Board DIRECTS RECO to revise its method for calculating interest on over/under-recoveries, and calculate interest consistent with the recently issued USF Order¹⁶. Beginning June 1, 2009, the interest rate should be based on a two-year constant maturity Treasuries as published in the Federal Reserve Statistical Release on the first day of each month (or the closest day thereafter on which rates are published), plus sixty basis points, but shall not exceed RECO's overall rate-of -return as authorized by the Board. The interest rate should be reset each month.

Docket No. ER08060455, dated October 21, 2008.

AUCTION CONSULTANT

The Board will utilize the services of BP, its BGS procurement process consultant, to provide oversight of the 2009 BGS procurement process. The Board DIRECTS that the EDCs include the cost of the Auction consultant's contract in the tranche fees collected from winning bidders. Each EDC's percentage of the cost will be based on its total load in the BGS-FP Auction. Further, the Board DIRECTS the EDCs to transfer the full amount of the contract costs based on these percentages to the Department of Treasury upon written request by Board Staff.

CONFIDENTIALITY

The EDCs have requested that the Board approve a confidentiality order as in prior years. The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner, and results in no bidder or bidders having an advantage over any other. From the Board's experience with prior BGS Auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon Auction confidentiality issues in its December 1, 2004 Order (Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These provisions were adopted and applied in subsequent Auctions. The Board FINDS that the confidentiality provisions of its December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and HEREBY APPROVES the same confidentiality provisions for the 2009 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:¹⁷

- Bidder Information Sessions in Philadelphia and Washington, D.C.

¹⁷ These actions have occurred for past Auctions and in anticipation of a favorable Board ruling herein, some of these actions may have already been undertaken for the 2009 Auction.

An Auction web site at www.bgs-auction.com which publicizes new developments, allows interested parties to download documents related to the Auctions, has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed, provides potential bidders with data relevant to the bidding process, and has links to PJM and other useful sites;

- Press releases to newspapers and trade publications; and
- Direct e-mails to interested parties to inform them of any new developments or any new documents posted to the web site.

The Board 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*,¹⁸ 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 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

¹⁸ 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.

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 21, 2008. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.¹⁹

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

FINDINGS AND CONCLUSIONS

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

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

¹⁹ Prior to issuance of this Order, the EDCs submitted the required Compliance Filings, which the Board approved at its December 8, 2008 agenda meeting. Parties were so notified by Secretary's letter of the same date.

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, 2009;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2009 period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-FP customers, as well as a portion of the BGS-FP service required for the 2010 and 2011 periods;

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 ;

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

The EDCs 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 2009 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 to fulfill their Auction obligations;

All Auction rules, algorithms and procedures that were unchanged in this proceeding, and were approved in prior Board Orders, as well as the Auction rules, algorithms and procedures that

were modified in this proceeding, including changes in the decrement formulas, are deemed reasonable for the purpose of these Auctions;

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

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;

BP will be the Board's Auction Advisor for the 2009 Auctions and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

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

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

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. At its discretion and depending on circumstances, the Board may address one Auction that has closed while the second continues;

Nothing herein is in any way intended to relieve the EDCs and/or the Auction Manager of their responsibilities to conduct the Auction in a lawful manner, including obtaining any appropriate licenses that may be required by law; and

For RPS compliance purposes, winning bidders in the 2009 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation ("NUG") RECs as would be available to them through the EDCs.

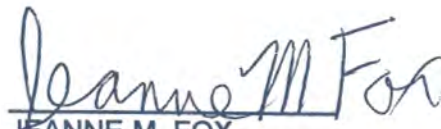
Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP and BGS-CIEP Auction Rules, the EDC-specific addenda and the Supplier Master Agreements, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject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

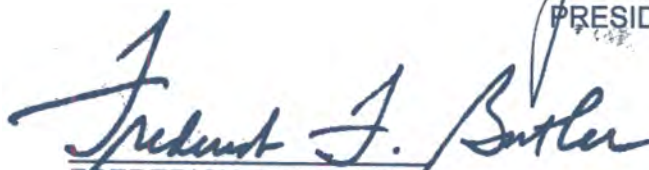
Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision, by

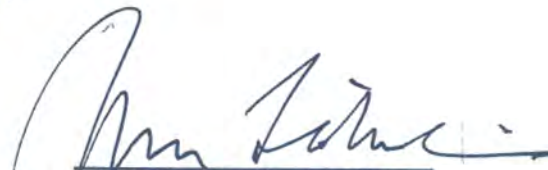
November 21, 2008.²⁰ The Board FURTHER DIRECTS the EDCs to work with Staff and BP to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

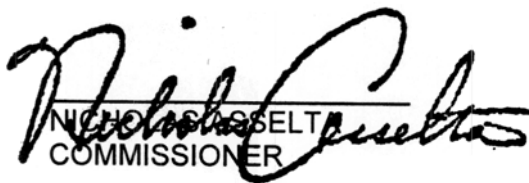
DATED: 1/20/09

BOARD OF PUBLIC UTILITIES
BY:

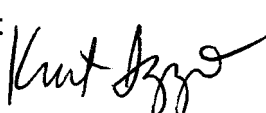

JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

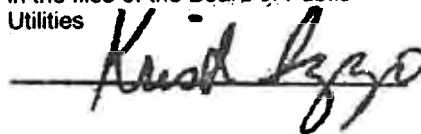

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS CASSELT
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

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



²⁰ As previously noted, in order to maintain the timeline requirements imposed by the Auction process, on November 21, 2008 the EDCs made the compliance filings based on the decision at the Board's November 7, 2008 agenda meeting. Those filings were subsequently approved on December 8, 2008.

ATTACHMENT A

Tentative 2009 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 1, 2008
Decision on 2007 Process	BPU	November 7, 2008
Compliance Filing	EDCs	November 21, 2008
Approval of Compliance filing	BPU	December 8, 2008
Final Auction Rules and Supplier Agreements available	AM/EDCs	December 8, 2008
Announce minimum and maximum starting prices	AM/BA	November 12, 2008
Announce Tranche Targets	AM	November 12, 2008
Announce Load Caps	AM/BA	November 12, 2008
Information session for potential bidders	AM/EDCs	December 5, 2008
Review Part I applications	AM/BA	December 16-19, 2008

¹ Boston Pacific Company, Inc.

ATTACHMENT A

Tentative 2009 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 6-13, 2009
Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 20, 2009
Trial Auction	AM	January 22, 2009
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on January 27, 2009, for FP Auction on January 28, 2009
BGS-CIEP Auction starts		January 30, 2009
BGS-FP Auction starts		February 2, 2009
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. ER08050310**

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2009 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 2, 2009

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	## tranches	## tranches	## tranches
Eligibility ratio		_____	_____
PSE&G load cap	## tranches	## tranches	## tranches
JCP&L load cap	## tranches	## tranches	## tranches
ACE load cap	## tranches	## tranches	## tranches
RECO load cap	## tranches	## tranches	## tranches
Statewide load cap	## tranches	## tranches	## tranches

* 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.]

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-FP Auction

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

Table 1. Summary of BGS-FP Auction

	PSE&G	JCP&L	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".

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-FP Auction

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?	

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

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

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-FP Auction

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. ER08050310**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2009 BGS-CIEP AUCTION**

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Friday, January 30, 2009

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	## tranches	## tranches	## tranches
Eligibility ratio			
Statewide load cap	## tranches	## tranches	## tranches

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

**ATTACHMENT B
DOCKET NO. ER08050310**

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

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

Table 1. Summary of BGS-CIEP Auction

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)*
Final auction price (\$/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".

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

Table 2. Overview of Findings on BGS-CIEP Auction

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

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

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

ATTACHMENT B
DOCKET NO. ER08050310

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

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



Agenda Date: 10/22/04

Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

ENERGY

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

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

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

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.

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.

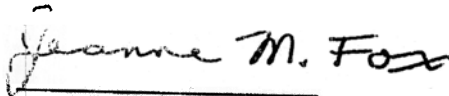
Should a request for the public bidder information provided to NERA concerning non-successful bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied, since such information would identify the non-successful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

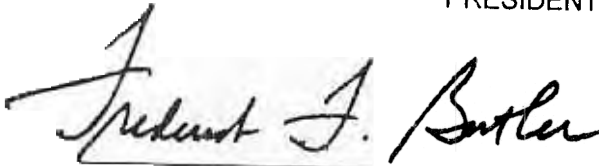
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

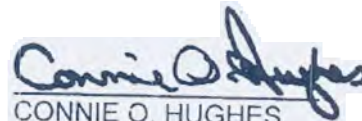
BOARD OF PUBLIC UTILITIES
BY:



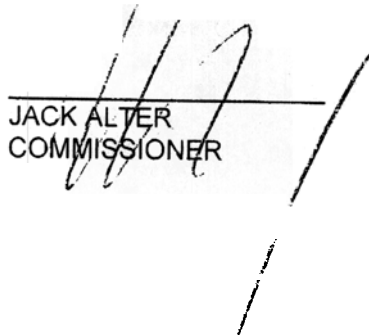
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER



JACK ALTER
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

Board of Public Utilities
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Period Beginning June 1, 2009
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Service List

BPU STAFF

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Mark Beyer
Chief Economist
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Frank Perrotti
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

John Garvey
Office of the Economist
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Alice Bator, Chief
Division of Energy
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Sam Wolfe, Chief Counsel
Counsel's Office
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

DAG
Elise Goldblat
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07102

Babette Tenzer
Division of Law
Dept. of Law & Public Safety
124 Halsey Street
P.O. Box 45029
Newark, NJ 07102

RATEPAYER ADVOCATE
Stephanie A. Brand, Director
Ratepayer Advocate & Director
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, New Jersey 07102

Paul Flanagan
Ratepayer Advocate & Director
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, New Jersey 07102

Ami Morita
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, New Jersey 07101

Diane Schulze
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, New Jersey 07101

ACE
Greg Marquis.
Bulk Power Supply Management
Pepco Holdings, Inc.
701 Ninth Street NW
Washington, DC 20068-0001

Mark Mucci, Esq.
Saul Ewing LLP
One Riverfront Plaza, 5th Floor
Newark, NJ 07102-5490

Joe Janocha
Atlantic City Electric Co.
5100 Harding Highway
Mays Landing, NJ 08330

Peter Schaub
Pepco Holdings, Inc.
701 Ninth Street NW
Washington, DC 20068-0001

JCP&L
Michael J. Filippone
JCP&L
300 Madison Avenue
PO Box 1911
Morristown, NJ 07962-1911

Kevin Connolly
JCP&L
300 Madison Avenue
PO Box 1911
Morristown, NJ 07962-1911

Larry Sweeney
JCP&L
300 Madison Ave,
P.O. Box 1911
Morristown, NJ 07962-1911

Marc B. Lasky, Esq.
Thelen Reid & Priest, LLP
200 Campus Drive, St. 210
Florham Park, NJ 07932

PSE&G
Tony Robinson
Public Service Electric & Gas Co.
80 Park Plaza, T8C
Newark, NJ 07101

Steve Huber
Public Service Electric & Gas Co.
80 Park Plaza, T8C
Newark, NJ 07101

Frances I. Sundheim, Esq.
Public Service Electric & Gas Co.
80 Park Plaza T8C
Newark, NJ 07101

ROCKLAND
John L. Carley, Esq.
Consolidated Edison Co. of NY, Inc.
4 Irving Place
New York, NY 10003

James C. Meyer, Esq.
Riker, Danzig, Scherer, Hyland & Perretti,
LLP
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962

David Hernandez
Orange & Rockland Utilities
390 West Rt. 59
Spring Valley, NY 10977-5320

Kevin Jones
Orange & Rockland Utilities
390 West Rt. 59
Spring Valley, NY 10977-5320

SUPPLIERS
Geoffrey Allen
AEP Service Corp.
155 W. Nationwide Blvd. St. 500
Columbus, OH 43215

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Service List

Scott Brown
Exelon Energy (PECO)
2315 Enterprise Drive
Westchester, IL 60154-581

David Koenig
Allegheny Energy
909 3rd Avenue, 33rd Floor
New York, NY 10022

Eric Konopacky
Constellation Power Source, Inc
111 Market Place, Suite 500
Baltimore, MD 21202

Brian Liu
Constellation Power Source, Inc
111 Market Place, Suite 500
Baltimore, MD 21202

Murry Weaver
Entergy Power Marketing Corp.
Parkwood Two Building, Suite 500
10055 Grogan's Mill Road
The Woodlands, TX 77380

David Samuels
Morgan Stanley Capital Group, Inc
2000 Westchester Ave.
Purchase, NY 10577

Deborah Hart
Morgan Stanley Capital Group, Inc
2000 Westchester Ave.
Trading Floor
Purchase, NY 10577

Catherine Flax
Morgan Stanley Capital Group, Inc
1585 Broadway, 4th Floor
New York, NY 10036

Sharon Weber
PP&L Energy Plus
2 North 9th Street TW 20
Allentown, PA 18101

Gary Sorenson
PSEG Power
80 Park Plaza, T-21A
Newark, NJ 07102

Shawn P. Leyden
PSEG Energy Resources & Trade
80 Park Place, T-19
Newark, NJ 07102

Ken Salamone
Semptra Energy Trading Corp.
58 Commerce Road
Stamford, CT 06902

Bonnie Graziano
Pepco Energy Services, Inc.
543 Valley Road
Montclair, NJ 07043

Marilena Marrelli
Semptra Energy Trading Corp.
58 Commerce Road
Stanford, CT 06902

Ike Gibbs
Reliant Energy, Inc
379 Thornal Street
Fifth Floor
Edison, NJ 08837

Ken Gfroerer
Reliant Energy
RR1 Box 246
Stahlstown, PA 15687

Bill Rice
Reliant Energy
1111 Louisiana Street
Houston, TX 77002

Shalin Shah
Reliant Energy
1111 Louisiana Street
Location 1971D
Houston, TX 77002

Leah Gibbons
Reliant Energy LLC
324 Cedar Lane
Rockville, MD 20851

Glenn Riepl
AEP Energy Services
1 Riverside Plaza, 14th Fl.
Columbus, OH 43215-2373

Angelo Chambrone
Select Energy NY, Inc.
507 Plum Street
Syracuse, NY 13204

Kuljinder Chase
Energy Trading
Merril Lynch Capital Services
4 World Financial Center 7th fl.
New York, NY 10080

Leonard E. Navitsky
Select Energy, Inc.
3301 Cherokee St.
Emmaus, PA 18049

John Llodra
UBS Warburg Energy, LLC
82 Smith Street
Groton, MA 01450

Bob Trejo
UBS
677 Washington Blvd.
Stamford, CT 06901

Steve Sheppard
DTE Energy Trading
414 S. Main St., Suite 200
Ann Arbor, MI 48104

D. Michael Cornwell
Dominion Retail, Inc.
120 Tredegar Street
Richmond, VA 23219

William Barkas
Dominion Retail, Inc.
625 Liberty Ave., 21st Floor
Pittsburgh, PA 15222

Gary Ferenz
Conectiv Energy Supply Inc.
Christiana Bldg.
252 Chapman Road
P. O. Box 6066
Newark, DE 19714-6066

Katharine Olinchak
Conectiv Power Delivery
401 Eagle Run Rd.
PO Box 9239
Newark, DE 19714-9239

Rose Burke
Conectiv Energy Supply Inc.
Christiana Bldg.
252 Chapman Road
P. O. Box 6066
Newark, DE 19714-6066

Maria Robinson
Con Edison Energy
701 Westchester Avenue
Suite 201 West
White Plains, NY 10604

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Stephen Wemple
Con Edison Energy
701 Westchester Avenue
Suite 201 West
White Plains, NY 10604

Igor Gonta
J. Aron & Co.
85 Broad Street, 9th Floor
New York, NY 10004

Christian Hnat
Edison Mission Marketing & Trading
160 Federal Street, 4th Floor
Boston, MA 02110

Robert Viola
Edison Mission Mktg. & Trading
160 Federal Street, 4th Floor
Boston, MA 02110

Gordon Sanderson
Suez Energy Marketing NA
1990 Post Oak Blvd.
Suite 1900
Houston, TX 77056-3831

Ira Megdal
Cozen, O'Connor
Libertyview, St. 300
457 Haddonfield Road
P.O. Box 5459
Cherry Hill, NJ 08002-2220

Stephen J. Humes
McCarter & English
CityPlace 1
Hartford, CT 06103

Grace Kurdian
McCarter & English
245 Park Ave.
New York, NY 10167

Jim Laskey
Norris, McLaughlin & Marcus, P.A.
721 Route 202-206
Bridgewater, NJ 08807

MARKETERS

Roger Schwartz
RESA
Issues Management LLC
101 Poor Farm Road
Princeton, New Jersey 08540

Irene Prezelj
FirstEnergy Solutions
395 Ghent Rd., Ste. 408
Akron, OH 44333

Kevin Laguardia
Amerada Hess Corporation
One Hess Plaza
Woodbridge, NJ 07095

Stephen Fernands
Customized Energy Solutions
(for AES New Energy)
215 South Broad Street, 10th Fl.
Philadelphia, PA 19107

Sara O'Neill
Constellation NewEnergy
810 7th Ave., Ste. 400
New York, NY 10019

Steven Gabel
Gabel Associates
417 Denison Street
Highland Park, NJ 08904

John Holtz
Green Mountain Energy Co.
3000 Atrium Way
Mail Box 275
Mount Laurel, NJ 08054

Paul Dwyer
Green Mountain Energy Co.
123 Bloomingdale Ave.
Suite 202
Wayne, PA 19087

Jay Kooper
Amerada Hess Corp.
One Hess Plaza
Woodbridge, NJ 07095

Tom Michelman
Senior Professional - XENERGY
3 Burlington Woods - 4th Floor
Burlington, MA 01803-4543

Lisa Ferguson
Duke Energy North America
5400 Westheimer Court
Houston, TX 77056

Michael G. Briggs
Reliant Resources, Inc.
801 Pennsylvania Ave. NW
Washington, DC 20004-2604

SueAnne I. Harrel

101 Castle Pointe Blvd.
Piscataway, NJ 08854

Dana Swieson
EPEX
102 Pickering Way, Suite 102
Exton, PA 19341-1330

Dale Kanterman, VP
Eastern Energy Services
60 Fostertown Road
Medford, NJ 08055

Marc Hanks
Select Energy, Inc.
107 Selden Street
Berlin, CT 06037

Tom Kinnane
Direct Energy
3 Bethesda Metro Center st. 700
7450 Wisconsin Ave.
Bethesda, MD 20814

Kristin A. Kreuder
Xenergy
595 Summer Street, Suite 300
Stamford, CT 06901

Pamela Melton
Strategic Energy LLC
PO Box 44-449
Ft. Washington. MD 20749

OTHER PARTIES

Jack Johnson
President
Geophonic, Inc.
P.O.Box 580
Summit, NJ 07901

Nathaniel Greene
NRDC
40 W. 20th Street, 11th fl.
New York, NY 10011

Sara Bluhm
NJBIA
102 West State Street
Trenton, NJ 08608-1199

Melanie Willoughby, VP
NJBIA
102 West State Street

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Service List

Stephen Dilts
Director/Government Affairs
Chemical Industry Council
of New Jersey
150 W. State Street
Trenton, NJ 08608

Kate McNamara
Delaware River Port Authority
Port Authority Transit Corp.
One Port Center
2 Riverside Drive
Camden, NJ 08101

Marvin Spira
Food Policy Institute
71 Lipman Drive
New Brunswick, NJ 08901

Jack O'Connor
Rutgers Food Policy Institute
ASB III, 3 Rutgers Plaza
New Brunswick, NJ 08901

Richard Santoro
NJ Retail Merchants Assoc.
332 W. State Street
Trenton, NJ 08618

James Benton
NJ Petroleum Council
150 W. State Street
Trenton, NJ 08608

David Gillespie
NJ Transit
One Penn Plaza East
Newark, NJ 07105-2246

Linda Doherty
NJ Food Council
30 W. Lafayette St.
Trenton, NJ 08608

Gregory Lawrence
McDermott Will & Emery
28 State Street
Boston, MA 02109-1775

Paul Forshay
Sutherland Asbill & Brennan
1275 Pennsylvania Ave. NW
Washington, DC 20004-2415

Steven S. Goldenberg, Esq.
Fox Rothschild
997 Lenox Drive, Bldg. 3
Lawrenceville, NJ 08648

Howard Thompson
Russo Tumulty Nester Thompson & Kelly,
LLP
240 Cedar Knolls Road, Suite 308
Cedar Knolls, NJ 07927

Daniel O'Hern, Jr.
Becker Meisel, LLC
The Galleria
2 Bridge Ave., Bldg.
Red Bank, NJ 07701

Murray Bevan
Courter, Kobert, & Cohen, P.C.
1001 Rt. 517
Hackettstown, NJ 07840

James Laskey
Norris McLaughlin & Marcus
721 Rt. 202-206
Bridgewater, NJ 08807

Dena Mottola
NJPIRG
11 N. Willow Street
Trenton, NJ 08608

Phyllis Salowe-Kaye
NJ Citizen Action
433 Market St. Suite 201
Camden, NJ 08102