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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC ) DECISION AND ORDER  
GENERATION SERVICE (BGS) FOR THE PERIOD )  
BEGINNING JUNE 1, 2018 ) DOCKET NO. ER17040335

**Parties of Record:**

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**Hesser G. McBride Esq.**, Attorney for Public Service Electric and Gas Company  
**Philip J. Passanante, Esq.**, Associate General Counsel for Atlantic City Electric Company  
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**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel  
**Holly Reed**, Gabel Associates, on behalf of IEPNJ

**BY THE BOARD:**

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 21, 2017 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, 2018.

By Order dated April 21, 2017, in this matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 1, 2017 to determine how to procure the remaining one-third of the State's BGS requirements for residential and small commercial customers ("RSCP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2018. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On June 30, 2017, the EDCs filed a Joint Proposal for BGS procurement ("Joint EDC Proposal"), and each EDC also filed a company-specific addendum to the Joint EDC Proposal. A discovery period followed. Initial Comments on the BGS proposals were filed on September 6, 2017. Final Comments were filed on October 13, 2017.

The Board also held a legislative-type hearing on September 28, 2017 at its office in Trenton, NJ, chaired by President Mroz. The purpose of the hearing was to take additional comments on the pending proposals.

Parties that filed either a proposal, comments, or appeared at the legislative hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), and the Independent Energy Producers of New Jersey ("IEPNJ").

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. PSE&G's public hearing was held on September 14, 2017; ACE's public hearing was held on September 19, 2017, JCP&L's public hearing was held on September 26, 2017, and RECO's public hearing was held on September 27, 2017.

#### POSITIONS OF THE PARTIES: PROPOSALS, LEGISLATIVE HEARING TESTIMONY, INITIAL COMMENTS AND FINAL COMMENTS

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

#### JOINT EDC PROPOSAL

As previously stated, on June 30, 2017, New Jersey's four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for procurement of BGS for the period beginning on June 1, 2018, including proposed preliminary auction rules for the auctions, Supplier Master Agreement ("SMA") and EDC-specific addenda.

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

The first Auction would procure service for a one-year period beginning June 1, 2018, for the larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service (the "CIEP Auction"). The customers in this category represent approximately 3,200 Megawatts ("MW") of load to be procured through bidding on 43 full-

requirements tranches of approximately 75 MW each.<sup>1, 2</sup> This is the same type of Auction that the Board approved on October 31, 2016 in Docket Number ER16040337.

The second Auction would procure one-third of the service requirements for all other customers of the state's four EDCs for a three-year period beginning June 1, 2018. This Residential and Small Commercial Pricing Auction ("BGS-RSCP Auction") will be for approximately 5,200 MW of load to be served through 57 full-requirements tranches of approximately 100 MW each.<sup>3, 4</sup> This is the same type of Auction that the Board approved on October 31, 2016 in Docket No. ER16040337.

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

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

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

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

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

<sup>2</sup> 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 57.7 MW.

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

<sup>4</sup> The EDCs have previously secured two-thirds of their total RSCP load requirements through May 31, 2019 by means of Board-approved auctions in February 2016 and February 2017.

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

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

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

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

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

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<sup>5</sup> 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.

## RECO REQUEST FOR PROPOSAL

In addition, RECO is proposing to secure the capacity requirements for BGS customers in that portion of the Company's service territory that lies outside of the area served through PJM, its Central and Western Divisions, commencing June 1, 2018. RECO is proposing to purchase the capacity needs of its BGS customers in the New York Independent System Operator ("NYISO") capacity market and blend its forecast of those prices into the BGS-RSCP price. This is the same proposal approved by the Board in its October 31, 2016 Order in BPU Docket No. ER16040337.

With regard to the procurement of energy for these same customers, by Order dated April 15, 2015 in Docket No. ER140403370, the Board approved RECO's proposal to secure a hedging contract for its electric procurement through bi-lateral contracts. On May 18, 2015, RECO conducted its procurement process and selected a winning bidder for a financial hedging contract commencing June 1, 2015 and extending through May 31, 2018. For the 2018 BGS year, RECO proposed to enter into a bi-lateral agreement or agreements to hedge the cost of energy purchase from the NYISO. The bi-lateral agreements may be either a financial hedge, where no energy commodity is provided by the counterparty, or a physical hedge in which the counterparty will provide the energy commodity.

According to the proposal, RECO will seek bids on physical and financial transactions for NYISO ZONE G energy for the periods specified below. For the Energy Transactions, RECO is proposing to procure agreements to cover the period of June 1, 2018 to May 31, 2021 and will seek pricing for the following four periods:

1. Year 1: June 1, 2018 through May 31, 2019;
2. Year 2: June 1, 2019 through May 31, 2020;
3. Year 3: June 1, 2020 through May 31, 2021; and
4. Blended price: June 1, 2018 through May 31 2021

RECO is proposing to review the bids received with Board Staff and its BGS auction consultant and select a winning bid that is most competitive and that is consistent with market conditions. RECO is proposing to submit the winning bid(s) to the Board for approval. In the event that the bids that RECO receives do not reflect market conditions, the Board does not approve the winning bidder, or the bidder defaults on the bid agreement, RECO will report a failed procurement and will proceed to a default procurement process. Under the default process as proposed by RECO, the company will purchase the energy needs of its BGS customers in the Central and Western Divisions in the NYISO Day-Ahead and Real-Time Markets without a financial hedge.

## DISCUSSION AND FINDINGS

### **RSCP and CIEP AUCTION FORMAT**

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2018, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features, and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework and varying procurement periods. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP

customers.<sup>6</sup> For the 2003 through 2017 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.<sup>7</sup>

As previously stated, for the period beginning June 1, 2018, by Order dated April 21, 2017, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-RSCP and the annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2018. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-RSCP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

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

Based on the experience of previous BGS Auctions, and having considered the record that has been developed in this matter, the Board **FINDS** that the EDC proposed BGS-RSCP and BGS-CIEP Auction, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2018.

#### BGS-CIEP AUCTION SUPPLY PERIOD

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

#### BGS-RSCP AUCTION SUPPLY PERIOD

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

<sup>6</sup> Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

<sup>7</sup> Board Orders dated December 2, 2003, Docket No. EO03050394; December 1, 2004, Docket No. EO04040288; December 8, 2005, Docket No. EO05040317; December 22, 2006, Docket No. EO06020119; January 25, 2008, Docket No. ER07060379; January 20, 2009, Docket No. ER08050310; December 10, 2009, Docket No. EO09050351; December 6, 2010, Docket ER10040287; November 11, 2011, Docket No. EO11040250; November 20, 2012, Docket No. ER12060485; November 22, 2013, Docket No. ER13050378; November 24, 2014, Docket No. ER14040370; November 16, 2015, Docket No. ER15040482; and October 31, 2016, Docket No. ER16040337.

thereby helping to keep their bid prices reasonably low. IEPNJ indicates that the averaging of the contracts entered over the course of three years provides stability to customer rates. It is IEPNJ's belief that the current three year structure addresses the appropriate goal of protecting consumers from price volatility in the energy markets. As a result, based on the success of this structure over the last decade, IEPNJ strongly endorses the continuation of the BGS auction structure. (IEPNJ's Legislative Hearing Comments at 2).

Based on the experience of the previous BGS Auctions, and having considered the record which has been developed in this matter, the Board continues to believe that the staggered three-year rolling procurement process currently in use for the BGS-RSCP Auction provides a hedge to customers in a time of extreme weather events that impact prices as we have seen recently, volatile energy prices and the potential of increasing capacity prices, even though it may make it more difficult for retail suppliers to compete for RSCP customers in times of rising prices. By way of contrast, as market prices started to come down in wholesale electric markets over the last four years, TPS have been able to be more competitive than the rolling three-year average RSCP Auction price, and competition appears to have increased.

The Board believes that the goal of the BGS procurement process should be to enable smaller commercial and residential customers to benefit from both a stable yet market-based rate for BGS-RSCP supply over the term of the procurement plan for this service while still allowing these customers the ability to choose alternative providers. The Board further believes that the use of the staggered three-year rolling procurement process, ensuring price stability, is a policy decision that has value for those customers who continue to receive BGS service from the EDCs. Therefore, the Board **DIRECTS** the EDCs to procure the approximate one-third of the EDCs' current BGS-RSCP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-RSCP rates for the June 1, 2018 to May 31, 2021 period.

#### PROPOSED SMA CHANGES

In the current filing, the EDCs have proposed a modification to the terms of Section 15.9 of the SMA to include situations where there is no change in the Firm Transmission Rate but where there is a PJM implemented cost reallocation or other change that effectively increases or decreases the transmission costs for BGS suppliers. The proposed modification would allow Board approval of a payment to BGS suppliers for PJM-implemented cost reallocations to take effect ahead of a Final Federal Energy Regulatory Commission ("FERC") Order. In addition, the EDCs proposed that Section 4.3 be modified to require BGS suppliers to return to the EDCs any payments received by BGS suppliers that are greater than the amounts due to them as a result of a Final FERC Order.

In its Initial Comments, Rate Counsel objected to the proposed modifications stating that in the past, the pass through of these increases has been decided by the Board on a case by case basis with input from Rate Counsel. (Rate Counsel Initial Comments at 3). Rate Counsel further argues that the proposed process would allow an EDC, at its own discretion, to apply to the Board for approval to pay BGS suppliers rate increases not yet adjudicated by FERC. (*Ibid.*) Rate Counsel asserts that the current provision that no payments are made until a Final FERC Order has been issued is the best protection for ratepayers. According to Rate Counsel if FERC eventually approves a lower amount or no increase at all, the EDCs are then in the position of having to recover the over payment from BGS suppliers, which could be difficult if a supplier is no longer involved in the BGS process or if there are disputes about the amount owed. (*Id.* at 4). Rate Counsel believes that the use of the BGS reconciliation charge as the

means to return over-collection to ratepayers is an additional complication, as the reconciliation charge has been extremely volatile in the past resulting in quarterly or monthly changes in the BGS rate. (Ibid.)

At the legislative-type hearing, IEPNJ supported the EDCs' proposed modifications to Section 15.9 of the SMAs. With respect to the modification to allow for payments prior to a Final FERC Order, IEPNJ stated that ratepayers are fully protected since the proposal contains a provision that any payments in excess of the Final FERC Order would be refunded. (T 34-3 to 6). Regarding the second proposed modification, IEPNJ stated that given the wide range of rate changes that FERC authorizes, including Reliability Must Run payments as well as others, BGS suppliers could be at risk for carrying significant costs for an indeterminate amount of time. (Id. at 34-9 to 35-3). IEPNJ further argues that absent these provisions, BGS suppliers will put a price premium on their bid, to reflect the carrying cost of paying these FERC charges, the uncertainty of how long it will take for these cases to become final, and the risk associated with additional changes to PJM transmission costs. (Id. at 35-3 to 10). IEPNJ believes that it is in the best interest of ratepayers to approve the EDCs' modifications to eliminate uncertainty and preserve the robust balanced nature of the BGS Auction. (Id. at 35-21 to 25).

In their Final Comments, the EDCs state that they are not proposing to change the mechanism itself. The EDCs would still file with the Board and the Board may then authorize the EDCs to pay BGS suppliers, and to recover from BGS customers, the changes to transmission related costs. (EDC Final Comments at 3). The EDCs stated that they have further clarified that the proposed modification recognizes that cost reallocations or other transmission charge related changes may be implemented prior to the issuance of a Final FERC Order, particularly when additional and sometimes lengthy litigation can be expected to ensue. (Id. at 4). The EDCs assert that with the proposed clarification, Section 15.9 will continue to protect New Jersey ratepayers by avoiding bids that are based on estimates of transmission-related charges with a premium to allow for uncertainty. (Ibid.) Additionally, the EDCs stated that the Board's own advisor, Bates White, recognizes the importance of transmission cost reallocation to New Jersey ratepayers and BGS suppliers citing Bates White's Final Report regarding the 2017 BGS Auction which identified "cost allocation of transmission projects" as one of the "developments in the regulatory and competitive environment, which could influence the functioning and/or results of the Auction." (Ibid.) The EDCs continue to assert that the Board would maintain full authority over transmission related payments to BGS suppliers and that the proposal seeks to expressly recognize that changes in transmission related charges (paid for by BGS suppliers) may also include cost reallocations or other charges implemented by PJM and may occur ahead of a Final FERC Order. (Id. at 5). With respect to Rate Counsel's concern about overpayments and obtaining refunds from BGS suppliers, the EDCs state that Rate Counsel appears to be concerned with an event that has only a small chance of occurring. Citing that for the most part, since recent cost reallocations have generally been contemplated and/or implemented on a going-forward basis, the EDCs believe Rate Counsel's concerns are negated. However, when considering a scenario that could include retroactivity, the EDCs note that a vast majority of BGS suppliers are BGS-RSCP suppliers with a relationship with the EDCs that spans three-year contracts, or are otherwise suppliers that regularly participate. (Id. at 5 to 6). Even though the EDCs believe the likelihood of such an occurrence to be small, the EDCs have proposed a companion change to the SMA that the obligation of BGS suppliers to reimburse any overpayments under Section 15.9 survives the termination of the agreement. (Id. at 6). Finally, with respect to Rate Counsel's concern regarding the impact on the BGS reconciliation charges of the proposed modifications, the EDCs disagree stating that it is reasonable to expect that the amounts collected from BGS suppliers would closely offset the rate reductions provided to customers, and not result in a material impact to the reconciliation charge. (Ibid.)

In its Final Comments, Rate Counsel continued to urge the Board to reject the proposed modifications to the SMA stating that Rate Counsel is not as concerned about the threat of a risk premium as it is about potential excess payments made to BGS suppliers not being returned to ratepayers in a timely manner, if at all. (Rate Counsel Final Comments at 2). Rate Counsel further stated that in previous attempts to modify Section 15.9 of the SMA, the Board rejected proposed modifications finding that Section 15.9 of the SMA is “a well-crafted balance” that “provides for a reasonable means of compensating BGS suppliers for unhedgeable costs approved in advance by the Board.” (*ibid.*)

Rate Counsel’s position is that ratepayers could be harmed by the implementation of these modifications. Should FERC approve a lower increase or no increase at all, the EDCs would then be charged with collecting over-payments from current or former BGS suppliers who may no longer be available to recover the overpayment from. (*Id.* at 4). Rate Counsel believes that the proposed modifications offer more complex processing and the elimination of an important ratepayer protection with no ratepayer benefit solely to accelerate payments to BGS suppliers. (*ibid.*)

While understanding the concerns raised by the EDCs and IEPNJ related to this issue, the Board is not persuaded that the proposed modifications are necessary at this time. The current construct of Section 15.9 of the SMA allows the collection and recovery of the transmission related costs once a Final FERC Order has been issued. The Board’s December 22, 2006 Order<sup>8</sup> at page 12 states,

“Section 15.9 further provides that if, during the term of the SMA, a filing is made with the FERC to increase the rates for Firm Transmission Services, the EDCs will seek approval from the Board to increase the rates charged to BGS Customers by the amount of such rate increase for Firm Transmission Services. Upon receipt of Board approval for the increase in the rates charged to BGS Customers, the EDCs would begin collecting the increase from BGS Customers, tracking that portion of the rates charged to BGS Customers attributable to the rate increase, and retaining such tracked amounts for the ultimate benefit of the BGS Suppliers. Upon approval by the FERC of a proposed rate increase, in a Final FERC Order not subject to refund, the EDCs would increase, by the amount approved by the Board, the BGS-FP auction price paid to BGS-FP Suppliers, and the BGS-CIEP Transmission Charge paid to BGS-CIEP Suppliers, and would pay each BGS Supplier, in proportion to its BGS Supplier Responsibility Share, the amounts tracked and retained for the benefit of BGS Suppliers until the date final FERC approval was received.”

As has been recent experience, there have been times where PJM reallocations have been implemented prior to the receipt of a Final FERC Order. Consistent with the currently-approved language, the EDCs can, and have, petitioned the Board for authority to begin collecting and paying such changes absent a Final FERC Order on a case by case basis. For example, by Order<sup>9</sup> dated July 26, 2017, the Board allowed the EDCs to collect from BGS customers the costs associated with certain transmission related rate changes and track such collections until receipt of Final FERC Order (while at the same time, denying the request to immediately pass those collections to suppliers) (July 2017 Order at 4). The EDCs still retain this right going

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<sup>8</sup> In re the Provision of Basic Generation Service for the Period Beginning June 1, 2007, BPU Docket No. EO06020119 (December 22, 2006).

<sup>9</sup> In the Matter of the Provision of Basic Generation Service and Compliance Tariff Filing Reflecting Changes to Schedule 12 Charges in PJM Open Access Transmission Tariff, BPU Docket No. ER17050499 (July 26, 2017). (“July 2017 Order”)

forward and may bring additional requests before the Board. The Board **FINDS** that the current construct provides a balance between the protection of ratepayers and the concerns of BGS suppliers regarding risk, while allowing the Board discretion on a case by case basis. Accordingly, the Board **HEREBY REJECTS** the EDCs proposed modifications to Section 15.9 of the SMAs.

#### PROPOSED DECREMENT FORMULA CHANGES

The decrement functions are formulas that determine the percentage change of the auction price from one round to the next on the basis of the excess supply for each EDC. In their joint proposal, the EDCs proposed adjustments in the decrement formulas which the EDCs categorized as a complement to the higher load cap that was implemented in the 2016 Auction. In general, the higher the excess supply for an EDC, the greater the percentage reduction in the price per tranche for the subsequent round of bidding. The main purpose of the decrement formulas is to ensure that the Auction is paced appropriately, with price decreases sufficiently large when excess supply is abundant and price levels are above those consistent with the market, and with small decrements as the Auction nears its end and prices approach bidders' valuations. Each year, the Board has approved the Auction Rules as filed, including decrement formulas that are provisional, only recognizing that the final decrement formulas cannot be determined until other parameters of the auction are also determined. As has been past practice, the BGS Auction Manager prepares the final decrement formulas and each year the formulas are reviewed by the Board's Advisor before they are released to bidders. The Auction Manager must also manage the interface during the actual Auctions to ensure that the decrements are set appropriately, either by using the formulas as provided to the bidders, or by overriding the formulas as necessary in consultation with Staff and the Board Advisor.

In its initial comments, and reiterated in their final comments, Rate Counsel expressed concern that the impact of the proposed change has not been quantified. Rate Counsel stated that the EDCs have not provided sufficient reasons for this change or if there is any actual benefit to ratepayers. Absent more information as to the impact of the proposed change to the auction participants and to ratepayers, Rate Counsel urged the Board to reject the proposed change. (Rate Counsel Initial Comments at 5, Rate Counsel Final Comments at 4).

In their final comments, the EDCs noted that there has been a change only with respect to two (2) EDCs (PSE&G and JCP&L) as the shape of the decrement function for the other two EDCs (ACE and RECO) already has been stepwise rather than linear in prior BGS-CIEP Auctions. (EDC Final Comments at 7). Additionally, the EDCs point out that for PSE&G and JCP&L, the stepwise function proposed in this year's filing, closely approximates the final decrement formulas used for the 2017 BGS Auction. (*Id.* at 7 to 8). Third, the EDCs note that when a stepwise function was introduced for ACE in all regimes starting in 2015, no adverse impacts were noted in the results for ACE compared to the other EDCs. (*Id.* at 9).

The EDCs stated that the difference between a stepwise function and a linear function is that bidders have less information regarding excess supply conditions when the function is stepwise, meaning that bidders are more likely to switch and generally change their bids considering only their valuations rather than also taking into consideration their impact on the excess supply and the price of any particular EDC. This would have the effect of promoting competition, which would benefit to New Jersey ratepayers. (*Id.*)

Having given consideration of the EDCs' proposal, past practice, and the comments submitted by the EDCs and Rate Counsel, the Board **FINDS** that approval of the proposed change in the decrement formula for the BGS-CIEP would promote competition and be beneficial to

ratepayers. As noted above, in the past both Staff and the Board Advisor have reviewed the final decrement formula and have monitored their need to be overridden during the Auctions. The proposed modification is based on observations from the past several auctions and is an attempt to improve the process. Accordingly, the Board **HEREBY APPROVES** the EDCs' proposal to modify the decrement formulas for the BGS-CIEP Auction.

#### 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 2017 BGS Auctions, and incorporates the reasoning and relevant provisions of its December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

#### AUCTION PROMOTION/DEVELOPMENT

Based on a review of the record, the Board **FINDS** that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction, provided that the rules and details are specified and implemented correctly, and provided that the Auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the Auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps to be undertaken are the following:<sup>10</sup>

- Bidder Information Sessions;
- An Auction Web Site at [www.bgs-auction.com](http://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;

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<sup>10</sup> 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 2018 Auction.

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

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

#### BOARD APPROVAL PROCESS

As noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the Auction process approved with this Order, including certification of the Auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, Tentative Approvals and Process,<sup>11</sup> there are a number of decisions/actions that need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule so that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, any additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-RSCP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-RSCP Auction and the BGS-CIEP Auction no later than the second business day<sup>12</sup> 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

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<sup>11</sup> Attachment A is labeled "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.

<sup>12</sup> As used in this Order, a "business day" is a day when the Board is open for business. Should weather or other conditions make the Board's offices inaccessible, the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

Compliance Filing by December 4, 2017. Further, the Board gives Staff the authority to review the EDCs' compliance filings, and to request that the Board Secretary issue compliance letters approving the filings should Staff find them in compliance with this Order.

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

When the Auctions are complete, the Board will review and consider the results within the time frame set forth above. Prior to Board certification of the results, the Auction Manager will provide a Final Report to the Board on the results of the Auctions and how the Auctions were conducted, including the post-Auction evaluation forms in Attachment B. The Auction Manager will also provide a redacted version of the Final Report, consistent with the confidentiality provisions of this Order, to the EDCs and Rate Counsel. The Board's Auction consultant shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in the form of Attachment B to this Order, prior to Board certification of the results.

### **FINDINGS AND CONCLUSIONS**

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

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

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

The Joint EDC Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for BGS customers beginning June 1, 2018;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2018 BGS period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-RSCP customers, as well as for a portion of the BGS-RSCP service required for the 2019 and 2020 BGS periods;

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

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

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

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

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

However, the proposed modifications to Section 15.9 of the SMAs are not appropriate at this time;

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

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

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

The EDCs have designated NERA to continue to act as the Auction Manager for the 2018 Auctions;

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

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

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

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

The EDC-specific Contingency Plans are reasonable;

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

Bates White will be the Board's Auction Advisor for the 2018 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Two designees from the Board's Energy Division, the Office of the Economist, and its consultant, Bates White, 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;

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

The Board will consider the results of the BGS-RCSP Auction and the BGS-CIEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the second business day after the last Auction closes. At its discretion and depending on circumstances, the Board may address one Auction that has closed while the second continues;

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

For RPS compliance purposes, winning bidders in the 2018 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation RECs as would be available to them through the EDCs.

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

Furthermore, the Board **DIRECTS** that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by December 4, 2017. The Board **AUTHORIZES** Staff, after reviewing the EDCs' above described compliance filings, to request that the Board Secretary issue a compliance letter of approval if Staff upon review finds the filings in compliance with this Order.

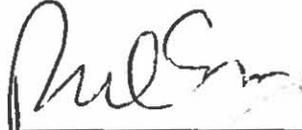
The Board **FURTHER DIRECTS** the EDCs to work with Staff and Bates White to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

The EDCs costs, including those related to BGS, will remain subject to audit by the Board. This Decision and Order shall not preclude, nor prohibit, the Board from taking any actions determined to be appropriate as the result of any such audit.

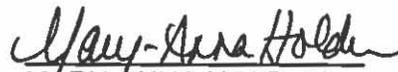
The effective date of this Board Order is December 1, 2017.

DATED: 11/21/17

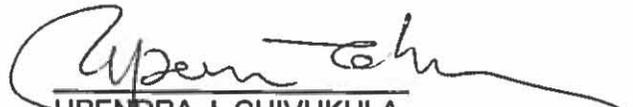
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BY:

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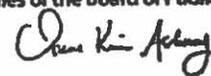
  
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I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities  


**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2018  
Docket No. ER17040335  
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**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2018  
Docket No. ER17040335  
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**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2018  
Docket No. ER17040335  
Service List**

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**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2018  
Docket No. ER17040335  
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## ATTACHMENT A

### Tentative 2018 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 Bates White) 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 Bates White) will have an opportunity to observe.
4. AM/BA – These are actions for which the Auction Manager is responsible, and on which the BA will have the opportunity to observe and advise.
5. BPU – These are actions to be taken by the Board.
6. AM/EDCs – These are actions for which the Auction Manager is responsible and for which the Auction Manager acts in concert with the EDCs.

<b>Decision point</b>	<b>Decision process</b>	<b>Timing</b>
Joint EDC Filing	EDCs	June 30, 2017
Decision on 2017 Process	BPU	November 21, 2017
Announce minimum and maximum starting prices	AM/BA	November 15, 2017
Announce Tranche Targets	AM	November 15, 2017
Announce Load Caps	AM/BA	November 15, 2017
Information webcast for potential bidders	AM/EDCs	November 28, 2017
Compliance Filing	EDCs	December 4, 2017
Approval of Compliance filing	BPU	December 2017
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2017
Review Part I applications	AM/BA	December 12-15, 2017
Review Part 2 applications	AM/BA	January 10-18, 2018

## ATTACHMENT A

### Tentative 2018 Auction Approvals and Decision Process

Setting of target limit exposure to contingency plan	EDCs/BA	Mid-January 2018
Information Session for registered bidders	AM/EDCs	January 23, 2018 (tentative)
Trial Auction	AM	January 25, 2018
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on January 31, 2018, for RSCP Auction on February 2, 2018
BGS-CIEP Auction starts		February 2, 2018
BGS-RSCP Auction starts		February 5, 2018
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 <sup>nd</sup> business day following the calendar day on which the last auction closes.

**ATTACHMENT B  
Docket No. ER17040335**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY  
2018 BGS-CIEP AUCTION**

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Prepared by: \_\_\_\_\_ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Friday, February 2, 2018

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

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

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

**ATTACHMENT B  
Docket No. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-CIEP Auction**

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

**Table 1. Summary of BGS-CIEP Auction**

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

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

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

**ATTACHMENT B**  
**Docket No. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-CIEP Auction**

**Table 2. Overview of Findings on BGS-CIEP Auction**

<b>Question</b>		<b>Comments</b>
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. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-CIEP Auction**

	<b>Question</b>	<b>Comments</b>
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. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-CIEP Auction**

	<b>Question</b>	<b>Comments</b>
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)?	

**ATTACHMENT B  
Docket No. ER17040335**

**POST-AUCTION CHECKLIST  
FOR THE NEW JERSEY 2018 BGS-RSCP AUCTION**

Prepared by: \_\_\_\_\_ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on Monday, February 5, 2018

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 RSCP auction, so the pre-auction tranche target and EDC-specific load caps were unchanged for the auction. / Or alternatively, note details of volume adjustments if they occurred.]

**ATTACHMENT B  
Docket No. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-RSCP Auction**

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

**Table 1. Summary of BGS-RSCP Auction**

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

\* Price shown in "Total" column is an average across the EDCs weighted by each EDC's "Starting tranche target in auction".

\*\* Price shown in "Total" column is an average across the EDCs weighted by each EDC's "Final tranche target in auction".

**ATTACHMENT B**  
**Docket No. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-RSCP Auction**

**Table 2. Overview of Findings on BGS-FP Auction**

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

**ATTACHMENT B**  
**Docket No. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-RSCP Auction**

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

**ATTACHMENT B**  
**Docket No. ER17040335**

**Post-Auction Checklist for the New Jersey 2018 BGS-RSCP Auction**

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

# Attachment C



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

## Attachment C

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

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

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

### DISCUSSION

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

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

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

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

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

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

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

## Attachment C

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 tranches<sup>1</sup> of power to the EDCs. In order to become a qualified bidder, BGS suppliers must meet certain general financial and credit requirements. Qualified bidders are made up of two groups: (a) those that provide direct supply and (b) those that provide supply through market purchases. The third contributor is the Auction Manager, National Economic Research Associates, who administers the auction in consultation with the EDCs, the Board Staff and the Board's consultant, Charles River Associates.

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

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

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

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

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

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<sup>1</sup> 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.

## Attachment C

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.

## Attachment C

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.

## Attachment C

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,

## Attachment C

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

## Attachment C

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.

## Attachment C

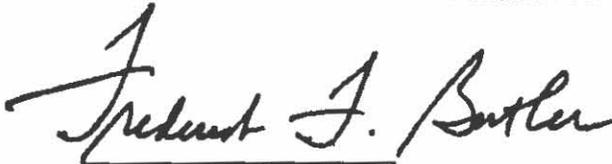
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES  
BY:



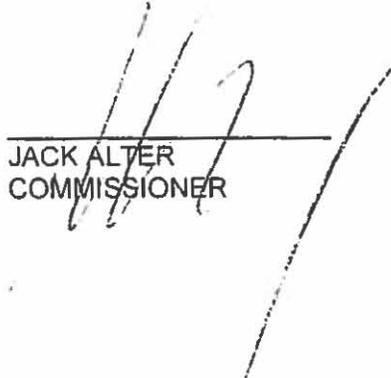
JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY