



Agenda Date: 11/21/24
Agenda Item: 2A

STATE OF NEW JERSEY
Board of Public Utilities
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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, 2025) DOCKET NO. ER24030191

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
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James Meehan, Esq., Attorney for Jersey Central Power & Light Company
Aaron Karp, Esq., Attorney for Public Service Electric and Gas Company
Margaret Comes, Esq., Associate Counsel for Rockland Electric Company

BY THE BOARD:

This Decision and Order of the New Jersey Board of Public Utilities ("Board" or "BPU") considers the procurement process for Basic Generation Service ("BGS") for retail customers who continue to purchase their electric supply from their electric distribution company ("EDC") for the period beginning June 1, 2025.¹

By Order dated April 17, 2024, the Board directed the EDCs and interested parties to file proposals by July 1, 2024 to determine how to procure the remaining one-third of the State's BGS requirements for Residential and Small Commercial Pricing ("RSCP") customers and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2025.² The April 17, 2024 Order also ordered RECO to file a proposal as part of its BGS filing to procure the BGS energy and capacity requirements for its non-PJM Interconnection, LLC ("PJM") service area within New Jersey for the period beginning June 1, 2025, to the extent not previously addressed.

¹ The EDCs are 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").

² In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2025, BPU Docket No. ER24030191, Order dated April 17, 2024 ("April 17, 2024 Order").

The EDCs made a joint BGS filing on July 1, 2024 ("Proposal"). On September 4, 2024, the Board received Initial Comments on the Proposal. The Board held a Legislative-Type Hearing, chaired by President Christine Guhl-Sadovy, on September 20, 2024. On October 7, 2024, the Board received Final Comments on the Proposal.

Parties that filed either a proposal, comments, or appeared at the Legislative-Type hearing include the EDCs jointly, National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), the Retail Energy Supply Association ("RESA"), NRG Energy, Inc. ("NRG"), Electrify America, LLC ("Electrify America"), and PSE&G.

Virtual public hearings on the Proposal were held in the EDCs' service territories to allow members of the public to present their views on the procurement process proposed by the EDCs and the potential effect(s) on customers' rates.³ No members of the public commented on the Proposal at the public hearings.

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

The parties' filings largely rely on previous auctions and the Proposal as the basis for specific modifications. While this Order does not separately summarize each party's position in detail, the Board carefully reviewed each party's proposal and position before rendering this decision.

PROPOSAL

On July 1, 2024, the EDCs filed the Proposal for procuring BGS supply beginning on June 1, 2025, including proposed preliminary auction rules, Supplier Master Agreements ("SMAs"), and EDC-specific addenda. The EDCs proposed that the 2025 BGS Auction be held remotely, like the previous several BGS Auctions.

The EDCs jointly proposed two (2) simultaneous, multi-round, descending clock auctions for procurement of services to meet the full electricity requirements (i.e., energy, capacity, ancillary services, etc.) of retail customers that have not chosen a third-party supplier ("TPS"). One auction would procure service for a one (1)-year period, beginning June 1, 2025, for the larger Commercial and Industrial ("C&I") customers on the EDCs' systems, through an auction to provide hourly-priced service ("BGS-CIEP Auction"). The customers in this category represent approximately 2,649 megawatts ("MW") of load to be procured through bidding on an expected 36 full-requirements tranches.⁴ The Board approved the same type of auction last year in Docket No. ER23030124.⁵ The second auction would procure one-third of the service requirements for all other customers of all four (4) EDCs for a three (3)-year period beginning June 1, 2025, through

³ PSE&G held its public hearing on September 4, 2024; ACE held its public hearing on September 5, 2024; RECO held its public hearing on September 10, 2024; and JCP&L held its public hearing on September 16, 2024.

⁴ Tranche sizes are approximate amounts of BGS-CIEP eligible load and are as follows: ACE- 86.20 MW, JCP&L- 72.20 MW, PSE&G- 74 MW and RECO- 54.50 MW.

⁵ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2024, BPU Docket No. ER23030124, Order dated November 17, 2023 ("November 2023 Order").

an auction (“BGS-RSCP Auction”) for approximately 4,961 MW of load to be served through 54 full-requirements tranches of approximately 84 to 105 MW each.⁶

The competitive process by which the EDCs proposed to procure their supply requirements for BGS load for the period beginning June 1, 2025, is detailed in the Proposal and in Appendices A and B (Provisional BGS-CIEP and BGS-RSCP Auction Rules, respectively), which is similar to the auction process approved by the Board for the past twenty-three (23) years.

The Proposal considers each EDC’s retail load a separate “product” in each Auction. Auction participants bid by stating the number of tranches they are willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-RSCP Auction, a price for an EDC is the amount, in cents per kilowatt-hour (“kWh”), to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is the 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, energy, ancillary services, etc.) tranche.⁷ 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 each Company-specific addendum. Bidders would receive a spreadsheet that converts the Auction price into customer rates for each EDC, enabling bidders to assess migration risk at various Auction price levels. BGS-RSCP tariff rates would be determined by converting 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, and payments to bidders for the remainder of the delivery period may be adjusted to reflect lower winter costs. The EDCs designed the proposed summer and winter factors such 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 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 other payments for energy and ancillary services known in advance of the Auction. Under the Proposal, winning bidders would also receive a Standby Fee of \$0.00015/kWh to act as an “option fee.” CIEP customers who take BGS service would pay the capacity payment, while all CIEP customers would pay the Standby Fee whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided to customers taking BGS-CIEP service, plus the Standby Fee rate, times the monthly sales to all CIEP customers, whether on BGS-CIEP or not.

⁶ The EDCs previously secured two-thirds of their total BGS-RSCP load requirements through May 31, 2026 by means of Board-approved auctions in February 2023 and February 2024. This does not include procurement for the RECO customers within RECO’s territory outside of PJM.

⁷ In auctions prior to 2021, transmission was included in the BGS product and suppliers were responsible for changes in firm transmission rates during the term of the SMAs.

Under the 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 BGS-CIEP and BGS-RSCP SMAs attached to the Proposal as Appendix C and D, respectively.

Additionally, the EDCs proposed that, similar to the approach approved by the Board in the previous several BGS Auctions, the Board approve the use of Capacity Proxy Prices for each EDC, for each delivery year, to be treated as the capacity prices for the 2025/2026, 2026/2027, and 2027/2028 delivery years and subject to future true-ups.

By its November 2023 Order, the Board directed the EDCs to, in the 2025 BGS proposal, provide an update on the status of each EDC's Direct Current Fast Charging ("DCFC") two (2)-year pilot program. The November 2023 Order further directed each EDC to continue to collect data subject to customer consent, and submit semi-annual reports to the Board and Rate Counsel. The EDCs filed updated information in their individual Company Specific Addendum.

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, the EDCs requested that the Board approve or reject, in its entirety, the results of the BGS-RSCP Auction and separately approve or reject the results of the BGS-CIEP Auction, in its entirety, by the end of the second full business day after the calendar day on which the last of the two (2) Auctions closes. The EDCs recommended the Board clarify that it may, at its discretion, 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.

The EDCs proposed minor modifications to the SMAs with the addition of the Capacity Supplements to the BGS-CIEP SMA for the 2025/2026 delivery year, as well as BGS-RSCP SMA for the 2025/2026 delivery year, the 2026/2027 delivery year, and the 2027/2028 delivery year. Additionally, the EDCs proposed modifications to the EDCs' rate design methodology, and modifications to each EDC's Company Specific Addendum to allow for the eventual calculation of the change in the Auction price necessary to accommodate additional payments to (or from) BGS-CIEP suppliers relating to the Capacity Proxy Price for the 2025/2026 delivery year, and for BGS-RSCP suppliers relating the Capacity Proxy Price for the 2025/2026, 2026/2027, and 2027/2028 delivery years.

The EDCs also proposed a modification to the Part 2 Application requirements to require applicants who do not meet PJM LSE requirements to provide evidence that they have submitted all required PJM member enrollment application materials to PJM and that PJM has begun reviewing the supplier's PJM member enrollment application [i.e., they have entered the PJM ninety (90)-day review period] to ensure that the supplier will meet PJM LSE requirements before the start of the supply period. The EDCs further proposed modifications to the SMAs to make clear that a supplier not meeting PJM LSE requirements or not providing the applicable EDC their PJM short name by May 1, 2025 is an event of default under the applicable SMA (that the EDCs may act on at their discretion).⁸

⁸ The EDCs also added a definition of "PJM Short Name" to the Definitions Section of the SMAs. PJM Short Name is defined as "a unique identifier established in PJM's system that, among other things, enables the EDC load settlement processes with PJM."

The Proposal includes numerous other Auction details, Company-specific addenda, and attachments, including the following:

BGS suppliers must meet all New Jersey Renewable Portfolio Standards (“RPS”) requirements and any similar standards imposed under any federal, state or local legislation 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 (3) 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 which, if any, bidder associations exist, and if such associations exist, applicants must provide additional information as the Auction Manager may require;

Qualified bidders must post a per-tranche letter of credit or bid bond;

The BGS-CIEP Auction secures supply for a period of twelve (12) months, and the BGS-RSCP Auction secures one-third of each EDC’s total load requirements for three (3) years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions;⁹ and

Each Company-specific addendum addresses the individual EDC’s use of committed supply, contingency plans, accounting and cost recovery, and utility pricing and tariff sheets.

RECO CENTRAL AND WESTERN BGS CUSTOMER REQUIREMENTS

RECO’s Central and Western Divisions physically connect to the New York Independent System Operator (“NYISO”). Therefore, RECO must purchase required energy and capacity for its Central and Western BGS customers from markets administered by the NYISO. In its Company-specific addendum, RECO explained that it does not need to conduct procurement for energy for NYISO customers because the Board approved the results of a procurement by Order dated January 31, 2024 for RECO’s non-PJM energy requirements through May 31, 2027.¹⁰

RECO did not address the capacity needs of its customers physically connected to NYISO.

DISCUSSION AND FINDINGS

BGS-RSCP and BGS-CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2025, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and

⁹ 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.

¹⁰ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2024 – Decision and Order on RECO RFP, BPU Docket No. ER23030124, Order dated January 31, 2024.

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 considered many arguments for alternate processes, alternate designs within the Auction framework, and varying procurement periods. In 2002, after conducting a process open to all interested participants, the Board determined that it was appropriate to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP customers.¹¹ For the 2003 through 2024 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.¹²

The Board afforded an opportunity for parties to file alternatives for Board consideration on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2025. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have not been fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process implemented with the 2002 Auction, and since modified, 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 ratepayers. It is the Board's intent to reach a balance of competing interests, while remaining 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 parties during the proceeding in this Order.

Based upon the experience of previous BGS Auctions, and having considered the record in this matter, the Board **HEREBY FINDS** that the EDC-proposed BGS-RSCP and BGS-CIEP Auctions, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2025.

BGS-CIEP AUCTION SUPPLY PERIOD

The Board notes that no party took issue with the continued use of a twelve (12)-month period for the BGS-CIEP Auction. As such, the Board **HEREBY FINDS** that a twelve (12)-month procurement period is appropriate and reasonable, and **HEREBY APPROVES** that aspect of the EDCs' Proposal.

¹¹ In re the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., BPU Docket Nos. EO02070384 and EX01110754, Order dated December 18, 2002.

¹² 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; October 31, 2016, Docket No. ER16040337; November 21, 2017, Docket No. ER17040335; November 19, 2018, Docket No. ER18040356; November 13, 2019, Docket No. ER19040428; November 18, 2020, Docket No. ER20030190; November 17, 2021, Docket No. ER21030631; November 9, 2022, Docket No. ER22030127; and November 17, 2023, Docket No. ER24030191.

BGS-RSCP AUCTION SUPPLY PERIOD

The Board notes that no party took issue with the continued use of a three (3) year BGS auction structure.

Based upon previous BGS Auctions, and having considered the record in this matter, the Board **HEREBY FINDS** that the current staggered three (3)-year rolling procurement process used for the BGS-RSCP Auction provides a hedge to customers in a time of extreme weather events that impact prices, volatile energy prices, and the potential increased 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, in periods where market prices started to come down in wholesale electric markets, TPSs have been able to be somewhat more competitive than the rolling three (3)-year average BGS-RSCP Auction price. The Board **FURTHER FINDS** 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 for this service while still allowing these customers the ability to choose alternative providers.

As such, the Board **HEREBY FINDS** that the use of the staggered three (3)-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. The Board **HEREBY DIRECTS** the EDCs to procure the approximate one-third of the EDCs' current BGS-RSCP load not under contract for a thirty-six (36)-month period. The tranche-weighted average of the winning bids from the upcoming thirty-six (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, 2025 to May 31, 2026 period.

RECO NON-PJM CAPACITY REQUIREMENTS

RECO's Company-Specific Addendum did not make a proposal to procure the BGS capacity requirements for its non-PJM service area within New Jersey for the period beginning June 1, 2025.

On August 16, 2013, in Federal Energy Regulatory Commission ("FERC") Docket Number ER13-1380, FERC approved the creation of a new capacity market zone in the Lower Hudson Valley region encompassing NYISO Load Zones G, H, I, and J. According to RECO in previous proceedings, Lower Hudson Valley capacity is not actively traded. Because of capacity market changes at the NYISO noted above, RECO has previously purchased the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market and blended its forecast of those prices into the BGS-RSCP price. As noted in previous Board Orders, these capacity purchases are expected to have minimal impact because its Central and Western Divisions constitute only about ten percent (10%) of RECO's BGS load.

Accordingly, although RECO did not file a proposal related to the procurement of capacity for its non-PJM service area, the Board **HEREBY DIRECTS** RECO to modify its Company-Specific Addendum to include the same procurement process for capacity needs for its non-PJM service area as has been approved in previous BGS proceedings.

PJM CAPACITY MARKET CONSTRUCT

Capacity Proxy Price

In the 2020 BGS proceeding, the Board approved the use of a capacity proxy price ("Capacity Proxy Price") for each EDC to be treated as the capacity price for the 2022/2023 delivery year because the actual capacity price for that delivery year was not expected to be known prior to the 2020 BGS Auctions.¹³ The Board noted that keeping the BGS-RSCP structure as a three (3)-year product would help mitigate rate changes and avoid the complications of requiring a supplemental auction when the 2022/2023 capacity price becomes known. The Board further noted that, if the BGS-RSCP product is to cover three (3) years, bidders must have some set capacity price to set their bids. In the November 2020 Order, November 2021 Order, November 2022 Order, and the November 2023 Order, the Board further approved the use of the Capacity Proxy Price for the proposed delivery years where an applicable delivery year's capacity price was not expected to be known prior to the given BGS-RSCP Auction.

On April 11, 2023, PJM filed to revise its schedule for its capacity auctions for the 2025/2026 through 2028/2029 delivery years. On June 9, 2023, the FERC issued an Order accepting PJM's proposed revisions to the base residual auction ("BRA") schedules for the 2025/2026 through the 2028/2029 delivery years. Additionally, the FERC required PJM to submit a compliance filing in response to the FERC's June 9, 2023 Order, and such compliance filing was to include an illustrative auction schedule for the 2025/2026 through the 2028/2029 delivery years. On February 12, 2024, PJM filed to delay the commencement of its BRA for the 2025/2026 delivery year, and the FERC issued an Order accepting PJM's request to delay on February 26, 2024. The proposed revision delayed PJM holdings its BRAs for the 2025/2026 and 2026/2027 delivery years to be held in June 2024 and December 2024, respectively.

At the time that the EDCs filed the Proposal, the results of the BRAs for the 2025/2026, 2026/2027, and 2027/2028 delivery years [all three (3) delivery years covered by the 2025 BGS- RSCP product] were not yet available. The EDCs asserted that if the capacity price was not known for the delivery years prior to the 2025 BGS-RSCP Auction, it may be the case that BGS- RSCP suppliers are likely to include risk premiums into their bids to address this uncertainty and it may be the case that some bidders choose not to participate altogether. The EDCs asserted that this could result in higher closing prices in the BGS-RSCP Auction than would otherwise be the case, to the detriment of BGS-RSCP customers. To address this potential problem, the EDCs proposed to continue the approach approved by the Board each year since the 2020 BGS proceeding. As the EDCs believed the BRA results for delivery years 2025/2026 and 2026/2027 would be known prior to the 2025 BGS-RSCP Auction, the EDCs proposed to set a Capacity Proxy Price for the 2027/2028 delivery year that suppliers would be able to incorporate into their bids. Additionally, although the results of the BRAs for the 2025/2026 and 2026/2027 delivery years were expected to be made available in July 2024 and December 2024, respectively, if unforeseen schedule delays at PJM occur, the EDCs stated that it may be the case that the capacity prices for the 2025/2026 and 2026/2027 delivery years may also not be known prior to the 2025 BGS-RSCP Auction. As such, the EDCs proposed to set a Capacity Proxy Price for the 2025/2026 delivery year and a Capacity Proxy Price for the 2026/2027 delivery year that suppliers would be able to incorporate into their bids.

¹³ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2020, BPU Docket No. ER19040428, Order dated November 13, 2019 ("November 2019 Order").

However, if the results of the BRA for any of the delivery years are known at least five (5) business days prior to the start of the BGS-RSCP Auction, the EDCs asserted that the Capacity Proxy Price for the applicable delivery year would no longer be needed, and it would be voided.

The Capacity Proxy Prices proposed for the 2025/2026 delivery year were calculated by taking the average of the most recent incremental auction ("IA") results for the 2023/2024 delivery year and the most recent incremental auction results for the 2024/2025 delivery year. The Capacity Proxy Prices proposed above for the 2026/2027 delivery year were calculated by applying a factor of 0.9 to the most recent incremental auction results for the 2024/2025 delivery year. The EDCs asserted that this method is consistent with the method used to calculate the Capacity Proxy Prices each year since the 2020 BGS proceeding. The most recent results from the PJM capacity auctions for the two (2) delivery years prior to the year for which the Capacity Proxy Price is calculated are used (if available) and a factor of 0.9 is used to recognize the potential for lower prices in any pending PJM capacity auctions. At the time of the filing of the Proposal, the EDCs indicated that they were unable to utilize the exact methodology that has been employed in past BGS Auctions to establish the Capacity Proxy Prices for the 2027/2028 delivery year (i.e., utilizing the results of a PJM capacity auction for one or more of the delivery years that coincide with the delivery years to be served by winners in the BGS-RSCP auction to establish the Capacity Proxy Prices), as PJM had not yet held the BRAs for the 2025/2026 or the 2026/2027 delivery years. As such, the Capacity Proxy Prices proposed by the EDCs for the 2027/2028 delivery year were calculated by applying a factor of 0.9 to the most recent incremental auction results to the 2024/2025 delivery year, such that the proposed Capacity Proxy Prices for the 2027/2028 delivery year were set equal to the Capacity Proxy Prices proposed for the 2026/2027 delivery year. The EDCs asserted that by doing so, the proposed Capacity Proxy Prices for the 2027/2028 delivery year reflect the most recent results from the PJM capacity auctions and still incorporate a factor of 0.9.

The EDCs maintained that setting the Capacity Proxy Prices at a reasonable estimate of the unknown capacity price for a given delivery year is the best approach for BGS customers. In the Proposal, the EDCs did not propose a change to the methodology used to calculate the Capacity Proxy Prices. However, the EDCs asserted that the expected increase in energy demand, coupled with the anticipated generator retirements, suggests that capacity prices may continue to increase. As such, if the results of the BRA for the 2025/2026 delivery year become available, and if the results reflect significant increases in capacity prices, the EDCs asserted that it would be appropriate to adjust the calculation of the Capacity Proxy Prices for the 2026/2027 and 2027/2028 delivery years in order to achieve Capacity Proxy Prices that are more reflective of current prices. As such, the EDCs proposed that if the results of the BRA for the 2025/2026 delivery year are fifty percent (50%) (or more) higher than the Final Zonal Net Load Price for the 2024/2025 delivery year, the EDCs would adjust the proposed Capacity Proxy Prices for the 2026/2027 and 2027/2028 delivery years to no longer employ a factor of 0.9 in the calculation and would set the Capacity Proxy Prices for those two (2) delivery years at the actual BRA price realized for the 2025/2026 delivery year. In this case, the Capacity Proxy Price for the 2026/2027 delivery year would not be set equal to the average of the most recent incremental auction results for the 2024/2025 delivery year and the BRA results for the 2025/2026 delivery year, but instead would be set equal to the BRA results for the 2025/2026 delivery year. Similarly, the Capacity Proxy Price for the 2027/2028 delivery year would be set equal to the BRA for the 2025/2026 delivery year.

On July 30, 2024, PJM released the results of the 2025/2026 capacity auction. The results of the BRA for the 2025/2026 delivery year were \$270.35/MW-day, well above the EDCs' proposed

2025/2026 Capacity Proxy Price of \$53.76/MW-day.¹⁴ As a result, the EDCs adjusted the 2026/2027 and 2027/2028 Capacity Proxy Price to be \$270.35/MW-day. On October 10, 2024, PJM announced that it intended to delay the 2026/2027 BRA which was supposed to be held in December 2024 for approximately six (6) months.

Rate Counsel Comments

In its Initial Comments, Rate Counsel did not object to the extension of the Capacity Proxy Price for the 2027/2028 delivery year given the mismatch between the BGS Auction and the 2027/2028 capacity auction. See Rate Counsel Initial Comments at 8. Additionally, Rate Counsel supported the EDCs' five (5)-day trigger for canceling the Capacity Proxy Price for the 2026/2027 delivery year. Ibid. Rate Counsel reiterated this at the Legislative-Type Hearing. See T1 19:21 to 20:10.¹⁵

EDC Comments

In their Final Comments, the EDCs requested that the Board approve the proposed method for calculating, and potentially updating, the Capacity Proxy Prices for each EDC for both the 2026/2027 and 2027/2028 delivery years in the event actual capacity prices for these delivery years are not known at least five (5) business days prior to the start of the 2025 BGS-RSCP Auction. See EDC Final Comments at 18. Specifically, the EDCs requested that the Board approve the EDCs' proposal to set the values of the Capacity Proxy Prices for the 2026/2027 and 2027/2028 delivery years equal to the results of the BRA for the 2025/2026 delivery year, and that the Board approve the EDCs' proposal to update the values of the Capacity Proxy Prices for the 2027/2028 delivery year following the release of the results of the BRA for the 2026/2027 delivery year as long as the results of the BRA for the 2026/2027 delivery year are known at least five (5) business days prior to the 2025 BGS-RSCP Auction. Ibid.

The Board continues to recognize the difficulty in setting a Capacity Proxy Price because the BRA traditionally produced volatile results. As noted by Rate Counsel and the EDCs, some uncertainty remains for the upcoming BGS-RSCP Auction regarding the BRA results for the 2026/2027 and 2027/2028 delivery years. Because the Board cannot know the upcoming capacity auction prices, the Board **HEREBY APPROVES** the EDCs' proposal to use a Capacity Proxy Price equal to the 2025/2026 delivery year BRA result for the 2026/2027 and 2027/2028 delivery years. The Board agrees that, should the prices be known five (5) business days prior to the BGS-RSCP Auction, the EDCs will no longer need the Capacity Proxy Price for the applicable delivery year and will be voided.

Pass Through of Increased PJM Capacity Costs

RESA and NRG Comments

In its Initial Comments, RESA sought to have the Board amend its regulations to allow TPSs to pass through capacity cost increases to their customers on fixed price contracts arguing that BGS providers are permitted to do so. See RESA Initial Comments at 2. According to RESA, currently, TPSs are only permitted to pass through price increases mandated by operation of state law. N.J.A.C. 14:4-7.6(l); N.J.A.C. 14:4-7.12(a)(2). As a result of these regulations, RESA argued that TPSs are not on an equal footing with BGS suppliers.

¹⁴ 2025/2026 PJM Preliminary Zonal Net Load Price.

¹⁵ T1 shall refer to the Transcript of the Legislative-Type Hearing dated September 20, 2024 in this matter.

RESA maintained that this issue is particularly important now because of the extremely high capacity prices in the July 2024 BRA and the even more drastic price increases anticipated in the December 2024 BRA. Ibid. RESA argued that in this volatile market, where capacity costs are likely to continue to be significantly higher than anyone could have expected, it has become exceedingly difficult for TPSs to properly hedge for these costs, especially for fixed price contracts that are already in place and that TPSs will be at a serious competitive disadvantage compared to BGS suppliers who can pass through these costs to their customers. Ibid.

RESA stated that the Board has previously noted that the BGS is a pass through of all supply costs for customers who choose not to shop through a TPS. RESA pointed to the Board's Order in the 2015 BGS process, whereby the Board stated that maintaining the full requirements nature of the BGS product was a reasonable means of compensating BGS suppliers for un-hedgeable costs.¹⁶ RESA further claimed that this ignores the fact that TPSs have these same un-hedgeable costs which could be handled in a competitively neutral fashion by allowing TPSs to pass through capacity cost increases as BGS suppliers are permitted to do. Id. at 3.

RESA stated that the Board's website states that the Price to Compare "represents the portion of the utility bill that will be replaced by the charges of a Third Party Supplier if a customer switches to a third party supplier." Ibid. RESA argued that since the Board only allows capacity cost relief for BGS suppliers, TPSs are at a serious pricing disadvantage compared to the BGS product, which will cause more customers to opt for the default BGS option. Id. at 4.

In its comment letter, NRG supported RSA's comments and recommendations.

Rate Counsel Comments

In its comments at the Legislative-Type Hearing and in its Final Comments, Rate Counsel asserted that the Board has made clear that "[n]owhere does EDECA say that the pricing of BGS needs to meet the same requirements as TPS pricing." See T1 23:10 to 13; Rate Counsel Final Comments at 4. Rate Counsel further argued that TPSs are in control of the terms of the contracts they offer and can offer customers variable priced contracts that account for increases in capacity prices. T1 23:13 to 16; Rate Counsel Final Comments at 5. Further, Rate Counsel stated that TPSs participate in the PJM stakeholder process which provides them with notice of changes in the capacity market that affect prices. Rate Counsel's position is that TPSs are sophisticated financial entities capable of factoring in capacity price fluctuations into their contracts and RESA has not demonstrated a need to shift the risk of price fluctuations from these entities to their customers with a fixed price contract. T1 23:17 to 25; Rate Counsel Final Comments at 5.

RESA Final Comments

In its Final Comments, RESA argued that BGS providers are also "sophisticated financial entities capable of factoring in capacity price fluctuations..." into their BGS auction bids and the BPU has decided that it is appropriate to shift the risk of changes in capacity costs from BGS suppliers to New Jersey consumers on BGS service. See RESA Final Comments at 1-2.

In response to Rate Counsel's comments, RESA stated that fixed price contracts generally have a term of at least twelve (12) months, and RESA members could not have predicted a year before or even six (6) months earlier that the July 2024 PJM capacity auction would result in extremely

¹⁶ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2016, BPU Docket No. ER15040482, Order dated November 16, 2015 at 49.

high capacity prices and that there could be even more drastic price increases in future PJM auctions. RESA asserted that it is difficult for RESA members to adequately hedge in advance for such huge capacity cost increases. Id. at 2. Therefore, RESA argued that its members who have customers on fixed price contracts will not be offering these products on a level playing field with BGS supply unless the Board allows TPSs to pass through capacity cost increases as BGS suppliers are permitted to do. Ibid.

RESA maintained that if the Board does not allow TPSs to pass through these increases in capacity costs the unfortunate result may be that TPS customers may return in large numbers to BGS default service. Ibid. In addition, according to RESA, some TPSs may withdraw from the New Jersey market, limiting customer choice at a time when New Jersey customers need more, not less, commodity options, which would violate the intent of the Energy Discount and Energy Competition Act (“EDECA”). Ibid.

RESA asserted that pass through of PJM capacity market price increases, which mitigates the regulatory risk of fixed price contracts, is significantly beneficial to maintain the health of the competitive market as pass through enables TPSs to be on an equal footing with BGS suppliers who are permitted to pass along unexpected cost increases to their customers. Ibid. RESA stated that TPSs do not generally want to pass through unanticipated PJM cost increases to their customers on fixed price contracts, but having the option to pass through cost increases on a rare occasion enables TPSs to generally offer lower fixed prices to their customers since the TPSs will not have to include a risk premium. Ibid.

RESA also argued that the utilities’ Price to Compare (“PTC”) does not provide an accurate comparison between BGS and TPS pricing unless both TPSs and BGS suppliers are permitted to pass through cost increases. Instead, according to RESA, when a shopping customer compares the EDC’s BGS price with a TPS price offer, the customer is comparing apples with oranges, which violates the Board’s very intent of having a PTC. Ibid. According to RESA, contrary to Rate Counsel’s arguments, the Board has recognized that the pricing of BGS needs to meet the same requirements as TPS pricing for customers to have the knowledge required to decide whether to switch their supplier. Ibid. In addition, RESA noted that in its November 2020 Order, the Board stated “Rate Counsel noted, and the Board agrees, that the TPS price and the BGS price should be an apples-to-apples comparison so that consumers can make informed choices when shopping for a supplier.” Id. at 3.

The Board agrees with Rate Counsel that TPS are sophisticated entities with representation and participation in PJM processes. Until the current BGS proceeding, at least one (1) of the delivery year capacity prices were known at the time of the filing of the proposal for the upcoming BGS year. At this point in the proceeding, the 2025/2026 delivery year capacity price is available. As noted by several parties, the Board has authorized the use of a Capacity Proxy Price in several recent BGS proceedings. Nothing prevents TPSs from using similar proxy prices in their contract offers to customers.

The Board’s regulations at N.J.A.C. 14:4-7.6(l) indicates that a TPS may not include provisions that permit the TPS to change material terms of the contract with the customer’s affirmative authorization unless the change is required by operation of law. Further, at N.J.A.C. 14:4-7.12(a)(2) states that a TPS may not charge the customer a rate that is higher than the fixed rate during the period for which it is fixed, except as permitted pursuant to N.J.A.C. 14:4-7.6(l), without the customer’s affirmative consent. N.J.A.C. 14:4 – Energy Competition is up for re-adoption in early 2026, and the Board anticipates initiating the review and re-adoption process in 2025. The Board **HEREBY FINDS** that the review of Chapter 4, and not this proceeding, is the appropriate

venue to review these issues. Accordingly, the Board **HEREBY DENIES** RESA's proposal to amend the Board's rules at this time.

REMOTE AUCTION

The EDCs proposed conducting the 2025 BGS Auctions from a remote setting, citing previous Auctions' success. Additionally, the EDCs noted that, after having already conducted recent BGS Auctions in a remote setting, the protocols adjusted to accommodate holding the Auctions remotely continue to be in place.

Rate Counsel Comments

In its Initial Comments, Rate Counsel did not object to the EDCs' continuation of the remote auction process proposal, so long as the Board finds that the integrity of the auction process can be maintained. See RC Initial Comments at 9.

Additionally, at the Legislative-Type Hearing, Rate Counsel stated that it was in favor of reducing administrative costs associated with the physical BGS Auction office while the auctions are being conducted remotely. While Rate Counsel did not object to the EDCs' continuation of the remote auction process proposal and declining to renew the sub-lease when it expires at the end of January 2025, Rate Counsel stated that the security and integrity of the auction process must be maintained. Rate Counsel stated that while it appreciates the minor administrative efficiencies achieved by a remote auction, it believes that Board approval of a remote auction be conditioned on it finding that the integrity of the auction can be maintained. See T1 20:11 to 21:1.

EDCs' Comments

In their Final Comments, the EDCs noted that the protocol changes first established in response to the COVID-19 pandemic that ultimately allowed for the successful remote conduct of the 2021 BGS Auctions made the process of administering the 2021 and 2022 BGS Auctions not only safer, but more efficient and secure. See EDC Final Comments at 20. The EDCs argued that Rate Counsel incorrectly discounted the efficiencies that resulted from the changes made to procedures as "minor administrative efficiencies" and seems to believe any such benefit comes at the cost of lessened security. Id. at 23. The EDCs argued that Rate Counsel's security concern is inconsistent with the Board's findings in its review of the BGS Auction results in the 2021, 2022, 2023 and 2024 BGS Auctions. Further, the EDCs and the Auction Manager continue to commit to working with Staff and the Board Advisor so that their ability to monitor the Auction Process is maintained in a cost-effective manner. Id. at 24 to 25.

Accordingly, the EDCs requested that the Board approve conducting the 2025 BGS Auctions from a remote setting given the successful implementation for the 2021 BGS Auctions, the 2022 BGS Auctions, the 2023 BGS Auctions, and the 2024 BGS Auctions. Id. at 25.

The Board agrees that the remote BGS Auctions held over the previous few years were successful. Accordingly, the Board **HEREBY APPROVES** the EDCs' proposal to conduct the 2025 BGS Auctions remotely.

DCFC PILOT UPDATES

As noted above, in the November 2023 Order, the Board directed EDCs to continue to collect data, subject to customer consent, and submit semi-annual reports to the Board and Rate Counsel.

Rate Counsel Comments

In its Initial Comments, Rate Counsel stated that the semi-annual reports are required to contain: the total energy consumed, capacity and transmission tags, measured demands, connected load, and the resulting load factor. See Rate Counsel Initial Comments at 6. Rate Counsel recommended that the semi-annual reports also contain information on station utilization. See Rate Counsel Initial Comments at 6; T1 17-23 to 18-2. Rate Counsel noted that although the November 2023 Order required the EDCs to provide quarterly reports, as of September 4, 2024 only ACE had filed a quarterly report.¹⁷

Rate Counsel recommended that the EDCs continue to collect and report information as required by the Board regarding DCFC stations. See Rate Counsel Initial Comments at 6. Rate Counsel reiterated its comments from previous BGS proceedings regarding DCFC charging that continued and expanded collection and public reporting of DCFC station data from the individual EDCs is needed for the Board to determine the appropriate rate design and cost recovery mechanism for the EDCs. Rate Counsel asserted that the programs' low participation may indicate that the additional subsidy through BGS rates is not needed in the DCFC market as originally advocated by stakeholders. Ibid. In its comments at the Legislative-Type Hearing and in its Final Comments, Rate Counsel stated that it continues to have concerns about the lack of evidence that ratepayer-funded incentives are in fact needed for further expansion of electric vehicle charging infrastructure. See T1 18:17 to 21; Rate Counsel Final Comments at 3.

Electrify America

In its Final Comments, Electrify America responded to Rate Counsel's comments regarding the DCFC pilot. Electrify America cautioned the Board from making any preliminary conclusions about the need to address the cost and volatility of transmission and capacity charges for public DCFC stations at this time. See Electrify America Final Comments at 1. Electrify America stated that, from its perspective, low participation levels in this can be attributed to factors unrelated to the need to address volatility in transmission and capacity charges and are, rather, driven by program design and implementation issues. Id. at 1-2. While acknowledging that the DCFC pilot program is intended to address the high volatility of transmission and capacity charges experienced by public DCFC stations, less so the actual cost burden, Electrify America maintained that the need to address cost and volatility remains and reported participation levels should not be treated as evidence to the contrary. Id. at 2.

Joint EDC Comments

In their Final Comments, the EDCs noted that the semiannual reporting requirements set forth in the November 2023 Order is premised on information that is available to the EDCs. See EDC Final Comments at 3. With respect to "station utilization", the EDCs asserted that the load factor information provided in the semiannual reports is the most applicable data the EDCs possess

¹⁷ RECO submitted its first quarterly report on September 13, 2024. PSE&G submitted its first quarterly report on October 8, 2024. JCP&L submitted its first quarterly report on October 28, 2024.

regarding “utilization” of the DCFC facilities. Ibid. The EDCs asserted that, if Rate Counsel envisioned more detailed station operational data for the DCFC stations in the EDCs’ service territories in order to evaluate the utilization of the same, such data would be best obtained from the DCFC station operators (as it is not available to the EDCs). Ibid.

As noted in previous BGS decisions, data collection and analysis of that data, is critical to making long-term rate design solutions. In its November 2023 Order, the Board found that the EDC DCFC Proposals, as modified by the November 2023 Order, were reasonable and authorized the two (2)-year pilot programs. As the pilot programs are in the middle of their approved timelines, the Board believes it is premature to make any decision regarding the effectiveness of the pilot programs or requisite modifications. With respect to Rate Counsel’s request for station utilization information, the Board agrees with the EDCs that the utilities can only provide information that they are in possession of.

The Board **HEREBY DIRECTS** the EDCs to file an update in the 2026 BGS proceeding to be filed in July 2025 on the status of the pilot programs. The Board **FURTHER DIRECTS** the EDCs to file proposals in the 2026 BGS proceeding to implement permanent DCFC programs or provide justification for ending the programs.

PSE&G BGS- Time of Use Proposal

RESA and NRG Comments

In its BGS company specific addendum filing, PSE&G proposed time of use (“TOU”) rates for BGS customers. RESA indicated that it is generally in favor of TOU rates, but only if such rates can be offered by both TPSs and the EDCs in order to encourage competition.

RESA also indicated that it is concerned that PSE&G’s proposal locks customers into their BGS supply TOU rate for twelve (12) months and RESA asserted that it is essential that the Board issue an Order that ensures these customers can continue to exercise their right to shop for TPS service. See RESA Initial Comments at 1.

RESA further asserted that locking customers into a BGS supply TOU rate would also pose an obstacle to government energy aggregation (“GEA”) programs that automatically enroll customers in a municipality with a TPS. RESA maintained that the GEA market has delivered value to many municipalities and counties in recent years. Ibid.

Furthermore, RESA argued that the EDCs should not be permitted to offer BGS supply TOU rates until TPSs have equal access to Advanced Metering Infrastructure (“AMI”) meter data. According to RESA, in the PSE&G territory, there is no mechanism for suppliers to receive interval data for residential and small business customers. RESA further stated that the only way to access such data is by requesting customers to download and share the data at their discretion. RESA claimed that this manual process puts TPSs at significant disadvantage when establishing TOU rates. Id. at 1-2.

RESA further argued that as PSE&G has already installed over 1.5 million residential AMI meters and over 195,000 commercial AMI meters in their service territory, it is an unfair competitive advantage over TPSs who are still waiting for the Board to publish the AMI data access proposed rulemaking that will enable them to access their customers’ AMI meter data. Id. at 2. According to RESA, without access to customers’ interval usage data from AMI meters, TPSs are unable to offer supply TOU rates that are competitive with PSE&G’s BGS supply TOU rates. Ibid.

In its comment letter, NRG supported RESA's comments and recommendations.

At the Legislative-Type Hearing, RESA stated that PSE&G clarified that the customers would be able to shop and that their proposal does not in any way argue that customers should be able to shop. See T1 26:13 to 20. In its Final Comments, RESA stated that PSE&G informed RESA that it would not prevent BGS customers on the TOU rate from switching to a TPS. See RESA Final Comments at 1. RESA indicated that it had no further objection to PSE&G's TOU rate if the Board continued the momentum of the AMI Data Access rulemaking so that TPSs would will soon have access to the interval usage data that they need to offer their own TOU rates that are competitive with BGS TOU rates. Ibid.

Rate Counsel Comments

In its comments at the Legislative-Type Hearing, Rate Counsel noted that PSE&G's base rate case is still pending with the Board, so there's no guaranty that the distribution TOU rate proposal necessitating a comparable supply side BGS TOU rate will be implemented at this time. Rate Counsel also noted the Board's rules permit TPSs to charge a cancellation fee if the customer terminates their TPS contract before the end of the contract term. See T1 21:19 to 22:2. Rate Counsel recommended that the Board decline to approve PSE&G's BGS TOU proposal until more information can be provided and the pending base rate case is resolved. See T1 22:3 to 6. With respect to RESA's claim that TPSs are at a competitive disadvantage in offering TOU rates relative to PSE&G, because TPSs lack equal access to AMI meter data, Rate Counsel noted that the Board currently has two (2) ongoing proceedings addressing data transparency and access to AMI meter data in Docket Numbers EO20110716 and EX24090717, which would be a more appropriate forum to evaluate the issues raised by RESA. In the AMI data transparency docket, Rate Counsel stated that it has consistently advocated in favor of customer ownership of their AMI data, as well as convenient methods for customers to share that data. Rate Counsel suggested that should the Board choose to implement this standard, RESA's concerns about access to AMI meter data should be alleviated. See T1 22:11 to 23:5. Rate Counsel reiterated these comments in its Final Comments. See Rate Counsel Final Comments at 4.

PSE&G Comments

In its Final Comments, PSE&G provided background of its existing TOU rate, explaining that PSE&G already offers a TOU rate called Residential Load Management ("RLM") which has both distribution and BGS components. PSE&G further stated that as described in its Company Specific Addendum, PSE&G's rate case which was pending at the time of the filing of the Proposal included a proposal to close RLM and replace it with a new TOU distribution rate. See PSE&G Final Comments at 1. PSE&G stated that its BGS TOU proposal was the corresponding supply rate for the new distribution rate proposed in the rate case, which is contingent on simultaneous implementation of any new distribution TOU rate that may be separately approved in its rate case. PSE&G asserted that it is not requesting authority to implement a new BGS TOU rate independent of implementing any new distribution TOU rates that may be approved in its pending rate case. Id. at 1-2.

With respect to Rate Counsel's request to decline to approve PSE&G's BGS TOU proposal, PSE&G recommended that the Board reject Rate Counsel's request, and instead approve PSE&G's implementation of a BGS TOU rate to be contingent on PSE&G's implementation of any proposed distribution TOU rate currently pending in PSE&G's rate case. Id. at 2.

PSE&G asserted any Board approval of the distribution TOU rate in PSE&G's rate case likely will occur before June 1, 2025. Therefore, PSE&G stated that approval of the BGS TOU rate here would allow PSE&G to implement both the distribution and BGS TOU rates simultaneously on or after June 1, 2025. Ibid. PSE&G argued that to grant Rate Counsel's request would postpone PSE&G's BGS TOU proposal to next year's BGS proceeding, to be effective no earlier than June 1, 2026, to the detriment of PSE&G's customers. Ibid.

With respect to RESA's concern that PSE&G's TOU proposal would lock customers into their BGS supply TOU rate for twelve (12) months, PSE&G stated that it intends to treat customers who have chosen PSE&G's existing RLM rate: if a PSE&G customer signs up for the proposed TOU rate, there is no requirement that the customer keep the same supplier for the full year. Ibid.

PSE&G requested that the Board reject RESA's request that the Board prevent the EDCs from implementing TOU rates due to unresolved issues regarding access to AMI data. PSE&G further requested that the Board reject that request, arguing that this proceeding is not the proper venue for litigating AMI data access parameters. Id. at 3. PSE&G noted that in September 2024, the Board opened a docket to consider draft proposed amendments to N.J.A.C. 14:5 to govern AMI data access standards. PSE&G noted that a stakeholder meeting was held on September 30, 2024, with written comments on the proposal due by October 30, 2024. Ibid. PSE&G noted that all of the EDCs and several RESA members have been active in that proceeding. PSE&G asserted that those proceedings, and not the 2025 BGS proceeding, are the proper venues to discuss AMI data access issues, and PSE&G will provide AMI data pursuant to any rules and/or Orders that emerge from them. Ibid.

With respect to the issue of PSE&G's TOU proposal, the Board notes that PSE&G's rate case was approved by Order dated October 9, 2024 and included a TOU proposal.¹⁸ Accordingly, this issue is moot.

As noted by several parties, the Board has initiated proceedings intended to address AMI data access issues. Additionally, with obtained customer consent, TPSs can currently access customer AMI data. The Board **HEREBY FINDS** RESA's issues related to AMI data access are more appropriate addressed in those proceedings. Accordingly, the Board **HEREBY DECLINES** to address RESA's data access concerns in this docket.

CONFIDENTIALITY

The EDCs 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 potentially 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 could also potentially distort the Auction results. The Board considered and

¹⁸ In re the Petition of Public Service Electric and Gas Company for Approval of an Increase in Electric and Gas Rates and for Changes in the Tariffs for Electric and Gas Service, B.P.U.N.J. No. 17 Electric and B.P.U.N.J. No. 17 Gas, and for Changes in Depreciation Rates, Pursuant to N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief, BPU Docket Nos. ER23120924 and GR23120925, Order dated October 9, 2024.

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 confidentiality provisions were adopted and applied in subsequent Auctions.¹⁹ The Board **HEREBY 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 2025 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 upon a review of the record, the Board **HEREBY 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 Auction 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:²⁰

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

During the Board's Legislative-Type Hearing, NERA noted it would provide additional training to bidders using the web-based interface. The training sessions would provide an opportunity for bidders to practice their bidding procedures from the location from which they anticipate they would be bidding in the actual Auction.

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

¹⁹ In re the Provision of Basic Generation Service for Year Three of the Post-Transition Period – Confidentiality Issues, BPU Docket No. EO04040288, Order dated December 1, 2004 ("December 1, 2004 Order").

²⁰ 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 2025 Auction.

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 2025 Auction Approvals and Decision Process, there are a number of decisions/actions that need to be made after Board approval of the Auction process.²¹ 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 upon 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 must 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, this perceived additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four (4) 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 after the last Auction closes.²² At its discretion and depending on circumstances, the Board may address the results of one (1) 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.

In recognition of the significance of this proceeding, the Board **HEREBY DIRECTS** the EDCs to submit a Compliance Filing by December 5, 2024. Further, the Board grants 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 advisor, 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

²¹ 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.

²² 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.

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 specific rules found in the 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 this proceeding, or are issues best addressed by the Auction Manager based on its experience. If these areas need to be addressed by the Auction Manager, the Board **HEREBY 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 **HEREBY 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 advisor shall provide a Precertification 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 upon the foregoing and after carefully reviewing the record in this proceeding, the Board **HEREBY FINDS** that:

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

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

The Proposal, as modified herein, can and should be implemented in a timely fashion to secure BGS service for BGS customers beginning June 1, 2025;

The Proposal, as modified herein, appears to be the best means to secure BGS service for the 2025 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 2026 and 2027 BGS periods;

An Auction process for one-third of the EDCs' BGS-RSCP load for a thirty-six (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 twelve (12)-month period is appropriate;

The EDCs' BGS-RCSP rate designs, as modified herein, 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;

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 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 designated NERA to continue to act as the Auction Manager for the 2025 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 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 2025 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Designees from the Board's Revenue and Rates Division and/or from the Office of the Economist, and the Board's advisor, Bates White, shall observe the Auctions for the Board;

Bates White shall also provide a completed post-Auction evaluation form using 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 2025 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation Renewable Energy Certificates as would be available to them through the EDCs.

Accordingly, for the foregoing reasons, the Board **HEREBY APPROVES** the Proposal, including the BGS-RSCP and BGS-CIEP Auction Rules, the EDC-specific addenda and the SMAs, 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 **HEREBY ORDERS** that the Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by December 5, 2024. The Board **HEREBY 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 **HEREBY 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 November 21, 2024.

DATED: November 21, 2024

BOARD OF PUBLIC UTILITIES
BY:

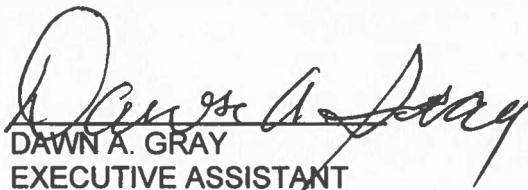

CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST:


DAWN A. GRAY
EXECUTIVE ASSISTANT

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 ("BGS")
FOR THE PERIOD BEGINNING JUNE 1, 2025

DOCKET NO. ER24030191

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE ("BGS")
FOR THE PERIOD BEGINNING JUNE 1, 2025

DOCKET NO. ER24030191

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ATTACHMENT A

Tentative 2025 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.

Decision point	Decision process	Timing
Joint EDC Filing	EDCs	July 1, 2024
Announce minimum and maximum starting prices	AM	November 15, 2024
Announce Load Caps	AM/BA	November 15, 2024
Announce Tranche Sizes	AM/BA	November 15, 2024
Decision on Auction Process	BPU	November 21, 2024
Information webcast for potential bidders	AM/EDCs	December 3, 2024 (tentative)
Compliance Filing	EDCs	December 5, 2024
Approval of Compliance filing	BPU	December 2024
Final Auction Rules and Supplier Master Agreements available	AM/EDCs	December 2024
Part 1 Applications Due		December 17, 2024 (noon)
Review Part 1 applications	AM/BA	December 17-20, 2024

ATTACHMENT A

Tentative 2024 Auction Approvals and Decision Process

Part 2 Applications Due		January 15, 2025 (noon)
Review Part 2 applications	AM/BA	January 15-23, 2025
Information Webcast for registered bidders	AM/EDCs	January 29, 2025 (tentative)
First Trial Auction	AM	January 30, 2025
Second Trial Auction	AM	February 4, 2025
Inform bidders of EDC-specific starting prices	EDCs/AM/BA	CIEP – February 4, 2025 RSCP – February 5, 2025
BGS-CIEP Auction starts		February 7, 2025
BGS-RSCP Auction starts		February 10, 2025
Provide full factual report to Board	AM/BA	Upon completion of RSCP Auction
Board decision on Auction results	BPU	No later than by end of 2 nd business day following the calendar day on which the last auction closes.

ATTACHMENT B
Docket No. ER24030191

POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2025 BGS-RSCP AUCTION

Prepared by: _____ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 [x:xx am] on February 10, 2025

Auction finished with the close of Round ## [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. Alternatively, note details of volume adjustments if they occurred.]

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-RSCP Auction

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

Table 1. Summary of BGS-RSCP Auction

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

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

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

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-RSCP Auction

Table 2. Overview of Findings on BGS-FP Auction

	Question	Comments
1	BW'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 BW/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 BW/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
7	From what BW/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 RSCP auction?	
9	Did unanticipated delays appear to adversely affect bidding in the RSCP auction? What adverse effects did BW/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?	
12	From what BW/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BW/NERA during the RSCP auction?	

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-RSCP Auction

Question		Comments
13	From what BW/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 BW/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 BW/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 BW/NERA could observe, was sensitive information treated appropriately?	
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?	

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-RSCP Auction

Question		Comments
25	Were there factors exogenous to the RSCP auction (e.g., changes in market environment) that materially affected the RSCP auction in unanticipated ways?	
26	Are there any concerns with the RSCP auction's outcome with regard to any specific EDC(s)?	

ATTACHMENT B
Docket No. ER24030191

POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2025 BGS-CIEP AUCTION

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 [x:xx am] on February 7, 2025

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

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

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

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-CIEP Auction

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

Table 1. Summary of BGS-CIEP Auction

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

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

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

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-CIEP Auction

Table 2. Overview of Findings on BGS-CIEP Auction

Question		Comments
1	BW'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 BW/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 BW/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
7	From what BW/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 BW/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?	
12	From what BW/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BW/NERA during the CIEP auction?	

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-CIEP Auction

Question		Comments
13	From what BW/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 BW/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 BW/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 BW/NERA could observe, was sensitive information treated appropriately?	
24	Does the CIEP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-CIEP load?	

ATTACHMENT B
Docket No. ER24030191

Post-Auction Checklist for the New Jersey 2025 BGS-CIEP Auction

Question		Comments
25	Were there factors exogenous to the CIEP auction (e.g., changes in market environment) that materially affected the CIEP auction in unanticipated ways?	
26	Are there any concerns with the CIEP auction's outcome with regard to any specific EDC(s)?	

Attachment C



Agenda Date: 10/22/04

Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities

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ENERGY

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

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

(1) **The Logic Processes and Algorithms:** The auction manager, National Economic Research Associates ("NERA"), uses logic processes and algorithms to foster a competitive auction.

(2) **Starting Prices:** EDC - specific minimum and maximum starting prices and final starting prices in effect during the bidding phase of the first round of the auction. Each EDC, in consultation with Staff, NERA and the Board's consultant, Charles River Associates ("CRA") sets its own starting prices. The EDC-specific final starting prices are announced to approved bidders only, shortly before the start of the auction.

(3) **Indicative Offers:** The number of tranches that a qualified bidder is willing to supply at the maximum starting price and the number of tranches a qualified bidder is willing to supply at the minimum starting price. Indicative offers are used to determine

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

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

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

DISCUSSION

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

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

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

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

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

Accordingly, the Board may make confidentiality determinations regarding information gathered in proceedings such as the within matter. In ruling on the Year Three procurement processes, the Board has determined that an auction process similar to the ones approved for the past three years are the most appropriate means for obtaining energy prices consistent with those achieved by a competitive market, as required by N.J.S.A. 48:3-57(d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. EDC-SPECIFIC STARTING PRICES

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

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

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

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

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

III. INDICATIVE OFFERS

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

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

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

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

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

IV. ROUND PRICES AND INDIVIDUAL BIDS

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

For similar reasons to those set forth above in Indicative Offers, the individual bids contain proprietary commercial and financial information. N.J.S.A. 47:1A-1.1. Furthermore, release of either the round-by-round price or the number of 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,

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

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

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

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

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

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

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

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

Part 1 Application Form:

Bidding Agreements

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

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

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

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

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

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

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

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

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

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

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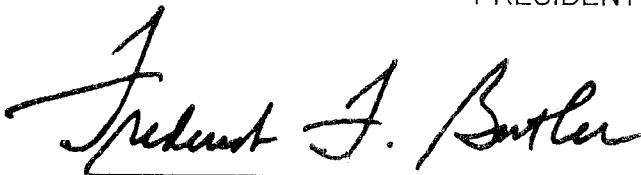
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES
BY:



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PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
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ATTEST:



KRISTI IZZO
SECRETARY