



State of New Jersey
Board of Public Utilities
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IN THE MATTER OF THE PROVISION OF)
BASIC GENERATION SERVICE FOR)
YEAR THREE OF THE POST-TRANSITION))
PERIOD)

ENERGY

DECISION AND ORDER

DOCKET NO. EO04040288

(Service List Attached)

BY THE BOARD:

This matter concerns the procurement of Basic Generation Service ("BGS") for Year Three of the post-Transition Period, beginning on June 1, 2005. As detailed in a series of previous Orders,¹ the Board of Public Utilities ("Board") has determined that the electricity requirements of BGS customers, beginning with Year 4 of the Transition Period (August 1, 2002-July 31, 2003) and for varying periods of the post-Transition Period, beginning August 1, 2003 should be obtained by the electric utilities via an Internet-based, descending clock auction process. By Order dated May 25, 2004, in the above captioned docket, the Board directed the State's four Electric Distribution Companies ("EDCs"): Atlantic City Electric Company, d/b/a Conectiv Power Delivery ("Conectiv"); Jersey Central Power & Light Company ("JCP&L"); Public Service Electric and Gas Company ("PSE&G"); and Rockland Electric Company ("Rockland"), as well as all other interested parties, to file proposals by July 1, 2004, addressing how to procure BGS for Year Three of the post-Transition Period and beyond.² Appropriate areas to be addressed in the July 1 filings included, but were not limited to: the type of procurement process, the size and make-up of the Commercial and Industrial Energy Price ("CIEP") class, the retail margin and load management. Furthermore, the Board adopted a preliminary procedural schedule to address the proposals including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On or about July 1, 2004, the EDCs filed a generic proposal on BGS procurement, with the Board. At that time, each EDC also filed a Company-specific addendum to the generic proposal. Proposals were also submitted by: Comverge, Inc. ("Comverge"); Constellation Power Source, Inc. and Constellation NewEnergy, Inc. (collectively, "Constellation"); Independent Energy Producers of New Jersey ("IEPNJ"); Mid-Atlantic Power Supply Association ("MAPSA"); Morgan Stanley Capital Group, Inc. ("Morgan Stanley"); New Jersey Large Energy Users Coalition ("NJLEUC"); PPL EnergyPlus, LLC

¹ BGS Orders dated December 11, 2001 (Docket No. EX01050303), December 18, 2002 (Docket Nos. EX01110754 and EO02070384) and December 2, 2003 (Docket No. EO03050394).

² Year Three of the post-Transition Period, for purposes of this proceeding, begins June 1, 2005 and will hereafter be referred to as "2005 Period" or the "2005 Auction".

("PPL"); Reliant Energy, Inc. ("Reliant"); Select Energy, Inc. ("Select"); and Wheelabrator Falls, Inc. and Wheelabrator Gloucester L.P. (collectively, "Wheelabrator") . A discovery period followed.

In its submission, Wheelabrator raised certain issues regarding the ownership of Renewable Energy Certificates ("RECs"). By Order dated August 27, 2004, the Board granted the motion of PSE&G to sever these issues from the instant BGS proceeding, for consideration in a separate docket.

On or about August 20, 2004, Initial Comments on the BGS proposals were filed with the Board's Secretary. Comments were received from the following parties: the EDCs; the Division of the Ratepayer Advocate ("RPA"); Conectiv Energy Supply, Inc. ("CESI"); Constellation; J. Aron & Company ("J. Aron"); MAPSA; Morgan Stanley; Reliant; Select; and Strategic Energy LLC ("Strategic").

After adequate public notice, public hearings were held in each EDC's service territory, to allow members of the public to present their views on the procurement process proposed by the EDCs, and the possible effect on customer's rates. Rockland's public hearing was held on September 8, 2004; JCP&L's public hearing was held on September 9, 2004; PSE&G's public hearing was held on September 21, 2004; and Conectiv's public hearing was held on September 22, 2004. The hearings were attended by Board Staff, the RPA, and the EDCs. No members of the public appeared to provide comments at any of the hearings.

The Board also held a "legislative-type" hearing on September 15, 2004, in its Newark office. The hearing was chaired by Commissioner Frederick F. Butler. The purpose of the hearing was to take comments on the pending proposals. The EDCs, National Economic Research Associates ("NERA")³, RPA, Strategic, Constellation, Reliant, NJLEUC,, J. Aron, and MAPSA presented comments for the record, and were questioned by the Commissioner and/or Board Staff..

Final Comments on the issues were filed with the Board on or about September 23, 2004. Final comments were submitted by: the EDCs collectively and PSE&G and JCP&L individually; the RPA; Constellation; J. Aron; MAPSA; Reliant; and Strategic.

POSITIONS OF THE PARTIES, COMMENTS AND REPLY COMMENTS

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely focused on previous auctions and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. For this reason, and because it forms the basis of much of the discussion in this Order and because, with the modifications described below, the Joint EDC Proposal contains many elements that will be incorporated into the BGS procurement process which the Board will approve herein, the Board will summarize, in this Order, the main features of the EDCs' July 1, 2004 filing. The Board will not, in this Order, separately summarize each party's position in similar detail.

JOINT EDC PROPOSAL

On July 1, 2004, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for

³ NERA has been the Auction Manager for all previous BGS Auctions.

Basic Generation Service, preliminary rules for the BGS-CIEP and BGS-FP⁴ Auctions, as described below, proposed CIEP and FP Supplier Master Agreements and EDC-specific addenda.

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

One Auction would be to procure service for the approximately 1900 larger commercial and industrial (“C&I”) customers on the utility systems through an Auction to provide hourly-priced service (“BGS-CIEP Auction”). The customers in this category would represent approximately 2800 megawatts (“Mw”) of load procured through bidding on 112 full-requirements tranches⁵ of approximately 25 Mw each. This is the same type and size auction that the Board approved last year.

The second Auction would be to procure one-third of the service requirements for all other customers of all four EDCs through a fixed price Auction (“BGS-FP Auction”) for approximately 5,300 Mw of load to be served through 53 full-requirements tranches⁶ of approximately 100 Mw each.

The competitive process by which the EDCs propose to procure their supply for BGS load for Year Three is detailed in the EDCs’ Appendices A and B (Preliminary CIEP and FP Auction Rules, respectively) and is the same type of auction process that the Board has approved for each of the past three years. Under the Joint EDC Proposal, the retail load of each EDC is considered a separate “product” in each Auction. When a participant bids in either BGS Auction, that participant would state the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-FP Auction, a price for an EDC is an amount in cents per kilowatt-hour (“kwh”) paid for each kwh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in dollars per megawatt-day (\$/Mw-day) paid for capacity for BGS-CIEP load served. A tranche of one product (*i.e.*, a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services etc.) tranche. At the end of the Auctions, the final prices for the EDCs’ tranches may be different because of differences in the products, due to each EDC’s load factor, delivery location and other factors.

The EDCs propose that rates for BGS-FP customers be designed using a generic methodology implemented as described in the utility-specific addenda. Bidders would be provided with a spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-FP rates would be fixed tariff rates resulting from the tranche-weighted average of auction prices obtained for the 2005 Auction as well as those obtained for the 2003 and 2004 auctions determined in a manner that reflects market-influenced seasonality and time of use indications, where appropriate and feasible, in order to provide efficient price signals.

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

⁴ CIEP stands for Commercial and Industrial Energy Pricing and FP means Fixed Price.

⁵ A tranche is a full-requirements product and represents a fixed percentage share of an EDC’s load for a specific period.

⁶ The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2006 by means of Board-approved auctions which were held in February 2003 and February 2004.

The EDCs propose that, for BGS-CIEP tranches, rate schedules would be designed to include the transmission obligation and ancillary service costs, and a provision to pass through the hourly PJM⁷ real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/Mw-day capacity payment and various other payments for energy, ancillary services and transmission that would be known in advance if the auction. Under the EDCs' proposal, winning bidders would also receive a Default Supply Service Availability Charge ("DSSAC") of \$.00015/kwh. The DSSAC, and the winning capacity prices, to the extent they are above market, would essentially act as an "option fee". The capacity payment would be charged to all CIEP customers on BGS service, while the DSSAC would be charged to all customers in the CIEP service category. Winning bidders would be paid the auction clearing price for the capacity provided for customers taking BGS-CIEP service plus the DSSAC rate times the monthly sales to all CIEP customers, whether on BGS-CIEP or not.

Under the Joint EDC Proposal, each BGS supplier would be required to assume PJM Load Serving Entity ("LSE") responsibility for the portion of BGS load (whether BGS-CIEP or BGS-FP) served by that supplier. In accordance with the PJM Agreements required of LSEs, BGS suppliers would be physically and/or financially responsible for the day-to-day provision of electric supply for BGS customers. The detailed commercial terms and conditions under which the BGS supplier would operate, including credit requirements, are set forth in the CIEP and FP Supplier Master Agreements attached to the Joint EDC Proposal as Attachment C and D, respectively.

The EDCs propose that the Board render a decision on the Auction process and render a decision on the Auction results. They further propose that the Board approve or reject in their entirety the results of the BGS-FP Auction and, separately, the results of the BGS-CIEP Auction, by the end of the second full business day after the calendar day on which the last of the two Auctions closes. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

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

Numerous other Auction details are explained in the Joint EDC Proposal, EDC-specific Addenda, and Attachments including that:

- ξ BGS suppliers must meet all New Jersey Renewable Portfolio Standards ("RPS") requirements that may be applicable throughout the respective supply periods;
- ξ as conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS Supplier Master Agreement within three business days of Board certification of the results and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;
- ξ to qualify, applicants must disclose what, if any, bidder associations exist and if so, applicants will provide such additional information as the Auction Manager may require;
- ξ qualified bidders are required to post a per-tranche bid bond; and
- ξ the BGS-CIEP Auction should be for a supply period of 12 months and the BGS-FP Auction

⁷ PJM is the Pennsylvania-New Jersey-Maryland Interconnection.

should secure one-third of each EDC's total load requirements for three years,⁸ with the remaining two-thirds having been secured through previous BGS-FP Auctions.

The positions and concerns expressed by the other parties who submitted proposals and/or comments with respect to the EDCs' joint proposal will be discussed below as part of the Board's Discussion and Findings section.

DISCUSSION AND FINDINGS

AUCTION RULES, DESIGN, PRODUCT AND PROCUREMENT PERIOD

The Board believes that the auction process that was implemented with the 2002 Auction and which was modified in 2003 and 2004 to include a BGS-FP and BGS-CIEP Auction has worked well and has resulted in the lowest prices possible at the time.

The Board is aware that the current auction process contains a set of carefully crafted and well defined features and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the auction process was a new concept in New Jersey, the Board heard many arguments for alternate processes, alternate designs within the auction framework and varying procurement periods. The Board's decision at that time was developed after considering all of the comments received. In 2002, after a process open to all interested participants, the Board determined to retain the basic auction design for the 2003 Auction, while initiating separate auctions for both BGS-FP and BGS-CIEP customers. By 2003, it appears that the success of the first two BGS Auctions had become apparent to the industry participants, as the arguments for an alternate form of procurement for 2004 were almost non-existent. In 2003, the Board approved another auction to be held in February 2004, moved the beginning of the supply period from August to June, to correspond with the PJM planning year, and expanded the size of the CIEP class to those customers with a peak load share of 1500kw or greater. In the current proceeding before the Board, while the Board is again faced with recommendations for modifications to certain elements of the auction process for the 2005 Period, no one has suggested any significant variations from the basic auction design. Based on the BGS Auction's past success and our experience with it, the Board continues to believe that, with certain refinements and enhancements as will be discussed herein, a similar auction process should be approved for the next procurement period, beginning June 1, 2005.

The Board appreciates the efforts of all involved to provide constructive criticism in order to improve upon a process so important to all of the State's ratepayers. In making its decision, the Board has considered the suggestions that were made, and has attempted to reach a balance of competing interests, mindful of its statutory responsibility to ensure continued provision of basic generation service at just and reasonable rates. Since the descending clock auction process, as it is used here, is relatively new, the Board's ability to make direct comparisons with other procurement processes is limited. Nonetheless, the Board, its Staff and the Auction Manager have developed some expertise in these areas, having conducted three successful auctions under basically the proposed auction structure and rules. In light of that successful experience to date, the Board is reluctant to make major changes to the basic structure of the auction process absent compelling arguments.

⁸ 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.

SUPPLY PERIOD

The EDCs currently have one-third of their FP supply under contract through May 31 2006 and another one-third through May 31, 2007. They propose that this year's FP Auction be for the remaining one-third of their supply requirements for a three-year period.

NJLEUC raised a concern that, over time, a continuing emphasis on long-term wholesale procurements could be counterproductive to efforts to foster the gradual development of a retail marketplace that encompasses increasing numbers of customers. NJLEUC urges the Board to not unintentionally frustrate the further expansion of the retail market through policies that, over a period of years, would steadily increase the proportion of BGS-FP supply locked into long-term wholesale contracts. (NJLEUC Initial Proposal at 11). J. Aron opposes any proposal to reduce or cap the extent to which BGS-FP load is supplied through three-year procurement periods. The effect of any such limitation would be to expose smaller (FP) customers to the volatility of spot market prices. J. Aron believes that such a proposal would be contrary to sound public policy. (J Aron Final Comments at 6).

For the post-Transition Year One FP Auction, the Board elected to adopt a term-averaged approach, as it would hedge the risk of unfavorable market conditions that might be present at any one point in time. This logic was continued for the Year Two FP Auction and still appears valid. Therefore, in an effort to balance the risks to ratepayers, the Board DIRECTS the EDCs to procure the approximately one-third of the EDCs' current BGS-FP load which is not under contract for a 36-month period, and continue to use a "slice of the system" as the bid product. The tranche-weighted average of the winning bids from the 36-month period, as well as the 34-month and 36-month supply secured previously will be used to determine the price for BGS-FP rates for the 2005 Period. The Board will review its hedging policy prior to making its decision for the June 1, 2006 procurement period to determine at that time how best to proceed.

The EDCs' proposal for a 12-month period for the BGS-CIEP Auction was not opposed by any of the commentors and, thus, the Board FINDS that a 12-month procurement period remains appropriate and reasonable.

AUCTION MECHANICS

The RPA has proposed modification to the Auction rules such that bidders be paid the last price that they bid ("pay-as-bid"), rather than the potentially higher clearing price which is the current and the proposed practice. (RPA Initial Comments at 2). The EDCs oppose this proposed change to the Auction rules. The EDCs indicate that the RPA's conclusions are based on a selective reading of the literature (EDCs' Final Comments at 7).

This issue was raised by the RPA last year and addressed by the Board. The RPA offers no new arguments or evidence in this theoretical debate. Last year, the Board expressed concerns with the RPA's proposal. Specifically, that Board expressed the concern that: (1) the RPA's position would result in bidders being paid different prices for delivering the same product which may distort the perceived difference between products in the auctions; and (2) the proposal does not seem to account for alternate bidding patterns under alternate rule structures. Based on the submissions, the Board remains unpersuaded that the RPA's proposed modifications to this aspect of the auction rules would enhance the current auction process. Therefore, the Board APPROVES the auction rules as proposed by the EDCs.

BGS-FP AUCTION

RATE DESIGN

Beginning with the post-Transition Period (August 1, 2003), the prices resulting from the BGS procurement process approved by the Board are being reflected fully and directly in customer rates. For post-Transition Period Year One, the Board modified some aspects of the EDCs' proposed rate design having to do with blocking of residential summer rates and the capacity cost used in the FP rate design.

For post-Transition Period Year Two, the Board reiterated its support of the blocking concept approved for Year One and reinstated a residential time-of-use rate class in Conectiv's service territory. There are no proposed rate design changes for this year.

PJM CAPACITY & TRANSMISSION MARKETS

Select Energy points out that PJM Staff has proposed a new Reliability Pricing Model ("RPM") construct for the PJM capacity marketplace. PJM has convened a PJM-RAM Stakeholder Working Group to develop this new capacity construct. Select is concerned that the RPM will produce sufficient uncertainty as to raise the BGS price that the FP-Auction produces. The solution proposed by Select is to remove capacity from the FP bid product and pass capacity costs directly through to customers. (Select Initial Comments at 1-5). The RPA disagrees, and argues that Auction participants are better able to handle the risks associated with changing PJM markets than are ratepayers. (RPA Final Comments at 2). The EDCs do not believe that the PJM modifications, if and when implemented, would act as a detriment to participation in the BGS Auction or warrant modifications to the auction process in the manner proposed by Select (EDC's Final Comments at 14).

The Board is aware of the discussions concerning the PJM RPM. Board Staff has participated actively in those discussions and generally supports PJM's efforts to improve reliability through improved pricing signals. Over the past three years, PJM has also been supportive of the New Jersey BGS Auction process. In particular, in 2002 and 2003, PJM made adjustments to accommodate the August 1 start date that was in effect at the time for our supply contracts. In its proposed RPM structure, PJM has attempted to make allowances for existing contractual capacity obligations that resulted from our 2003 and 2004 auctions. PJM is aware that another procurement period is on the horizon and that the Board must move forward with an auction, or some other process, to secure the EDC's supply needs beginning June 1, 2005. PJM is also aware, that a three-year supply period has been proposed by the EDCs and will again be one of the options considered by the Board. Consequently, PJM has indicated to Board Staff that it is attempting to structure its RPM process to have minimum impact on existing capacity commitments for 2005-2007 and will delay adding locational constraints into the RPM until the planning year 2007/2008. (It is the Board's understanding that PJM has proposed to add just two locational constraints for the 2007/2008 commitment year). The Board believes that the modeling that PJM has done and will continue to do, to demonstrate the effects of adding the locational constraints for the planning year 2007/2008 market structure will give market participants a firm grasp of the price structure that can be anticipated. Therefore, the Board REJECTS the proposal to remove capacity from the BGS-FP bid product, at this time

The Board will continue to monitor changes in the PJM markets and particularly the progress of the RPM process as it may affect future BGS procurement periods. While the Board expects that bidders will take steps to insure that they are aware of ongoing or proposed changes in the PJM marketplace, we emphasize the need for bidders to keep abreast of PJM developments. Therefore, the Board DIRECTS the EDCs to include on the BGS Auction webpage a link to the PJM RPM Working Group

at: www.pjm.com/committees/working-groups/pjmramwg/pjmramwg.html. In addition, NERA and Charles River Associates (“CRA”)⁹ should be particularly mindful when preparing bidder information and FAQs that refer to PJM processes to steer bidders towards the most timely and relevant PJM information without interjecting their own value judgments into the process.

The RPA equates the pass-through of capacity costs proposed by Select with the decision made by the Board in post-Transition Period Year Two to pass through changes in PJM transmission rates. The RPS opposes both concepts. (RPA Final Comments at 2) The Board disagrees with the RPA’s comparison. Transmission pricing is a PJM-tariffed item, while capacity costs are, and will be, a market-based function. In the Board’s view, bidders have fewer options with transmission than they do with capacity. Capacity is a service that bidders can manage and customers might be expected to pay a premium for the risk associated therein. There is no reason for customers to pay a premium for a tariffed item. Therefore, dissimilar treatment for transmission and capacity costs is justified.

JCP&L NON-UTILITY GENERATION (“NUG”)

For post-Transition Period Year Two, in seeking to find the best way to use the output from the existing NUG contracts in order to achieve the maximum value to ratepayers, the Board adopted a limited modification to the EDCs’ practice of selling their committed NUG purchases into the spot market. As JCP&L has the largest quantity of NUG commitments and also has personnel that are experienced in supply and generation scheduling, the Board approved a pilot program for three tranches of BGS load that would otherwise have been included in JCP&L’s one-year FP Auction (covering the period from June 1, 2004 to May 31, 2005) to be withheld from that Auction to be served by JCP&L, in effect, from its available must-run NUG commitments. While only limited results are available, since the pilot program commenced on June 1, 2004, the first few months of this pilot appear to have resulted in a net benefit to JCP&L ratepayers. While to date the pilot appears to have run smoothly, with no scheduling or other operational problems, it is too soon to draw conclusions about the economics of this pilot program. However, based on the partial and very preliminary results and for the reasons cited last year, the Board FINDS that it is reasonable to maintain the status quo and continue the JCP&L NUG Pilot Program for another year. The Board will consider the future of this Pilot Program again next year, as well as its potential expansion to other EDCs.

Specifically, the Board will continue, for the June 1, 2005 through May 31, 2006 time period, a pilot program for three tranches of BGS load that would otherwise have been included in JCP&L’s three-year FP auction to be withheld from that auction to be served by JCP&L, in effect, from its available must-run NUG commitments. These three tranches (“JCP&L retained tranches”) will be priced at the winning bid price for JCP&L’s three-year FP tranches. To accomplish this objective, JCP&L will schedule on the PJM day-ahead market its forecasted load for the JCP&L retained tranches for each hour of the following day and shall offer its must-run NUG output at a zero price on the same PJM day-ahead market. JCP&L will balance any difference between: (I) the load for the JCP&L retained tranches that was scheduled on the day-ahead market; and (II) the actual amount of such load, with either purchases or sales on the PJM real-time market, as necessary. The Board has determined that it is appropriate to rely on the PJM spot market for purposes of this pilot program. Therefore, JCP&L will not engage in any other forward purchases or hedging activities with respect to the daily balancing activities of the JCP&L retained tranches. JCP&L will, however, be permitted to request PJM Financial Transmission Rights (“FTRs”) as provided in PJM rules for Load Serving Entities (“LSE”) to manage congestion risk. The Board has determined that gains or losses from acquiring FTRs are prudently incurred. JCP&L also will continue to sell the output from its dispatchable NUG commitments on the PJM market. JCP&L will retain sufficient capacity and ancillary services from its overall committed

⁹ CRA is the Board’s Auction consultant.

supply to meet its obligations as a Load Serving Entity for the three JCP&L retained tranches, and will continue to sell the remainder of such capacity and ancillary services into PJM markets. For the purposes of this pilot program, the cost of procuring the power in this manner to meet the load for the JCP&L retained tranches, including costs that may be incurred to meet its LSE obligations for capacity and ancillary services that are not met from JCP&L's committed supply, are determined to be prudent and therefore will be recoverable as BGS costs through JCP&L's deferred balance and Non-Utility Generation Charge ("NGC"). In addition, all costs incurred under the NUG contracts will continue to be recoverable through JCP&L deferred balance and NGC, with all proceeds from the sale of the NUG output to be credited to the deferred balance.

For purposes of this pilot program, JCP&L will be deemed to have retained enough renewable attributes from its overall committed supply to meet, in total, the minimum Renewable Portfolio Standards for the JCP&L retained tranches. To the extent permitted by applicable regulatory and contractual provisions, JCP&L will provide the remainder of these renewable attributes, if any, on a pro rata basis to winning bidders in the BGS-FP and BGS-CIEP auctions. In the event there is a change in PJM markets or rules, JCP&L shall consult with Board Staff as to any modifications to the foregoing procedures that would be appropriate.

BGS-CIEP AUCTION

DEFAULT SUPPLY SERVICE AVAILABILITY CHARGE ("DSSAC")

The DSSAC, which acts as an "option fee" for having BGS available as a default service, is currently assessed to all CIEP customers on a per kwh basis and paid to winning BGS-CIEP bidders. For the 2003 and 2004 auctions, the Board determined that a DSSAC fee of fifteen one-thousandths of a cent (\$.00015) per kwh should produce revenues adequate to attract bidders interested in providing BGS-CIEP service.

NJLEUC has proposed that the DSSAC be eliminated. It argues that the success of the two prior auctions calls into serious question the continuing need for the DSSAC since the DSSAC has apparently played no significant role in attracting bidders to the auction. (NJLEUC Initial Proposal at 12). The EDCs proposed maintaining the DSSAC at the current level. The DSSAC provides winning bidders with a steady revenue stream for the service provided and gives all BGS-CIEP customers the option to switch with assurance that there will be a ready provider for the customer to fall back on. The fact that the two previous CIEP Auctions have had a healthy number of qualified bidders and that all tranches have been contracted for does not necessarily support elimination of the DSSAC as NJLEUC argues. It may, in fact, be just the opposite. Reducing or eliminating the DSSAC might provide some insight into the value of this charge. However the Board is not persuaded that it is necessary to experiment with the current successful formula and is not inclined to take either of those steps at this time. The Board continues to find that CIEP customers as a whole benefit from the availability of default service, that all CIEP customers should be responsible for the DSSAC and that \$.00015/kwh is the appropriate rate.

However, for a one-year period beginning June 1, 2005, the Board believes that the DSSAC could be funded through the retail margin revenues already collected by the EDCs from all BGS-CIEP customers and BGS-FP customers with a PLS of 750kw or greater, as a means of returning a portion of the retail margin revenues to many of those same customers from whom it has been collected. In this way CIEP customers, for this supply period only, would not be charged the \$.00015/kwh although winning bidders would continue to receive the approximately \$2.3 million of annual revenues associated with the DSSAC. Therefore, the Board DIRECTS the EDCs to work with Staff to determine

the precise mechanism and manner in which to effectuate this modification. The Board will review the appropriate DSSAC level and funding source again next year.

CIEP ANCILLARY SERVICE CHARGE

Constellation argues that the ancillary services charge in the EDC's CIEP tariff should be greater than two mils in order to reflect the higher charges for scheduling load in the real-time market instead of in the day-ahead market. Constellation provided data to support its claim that, historically, the difference has been approximately \$1/MWh on an annualized basis. (Constellation Initial Proposal at 7). There has been no opposition to this suggestion. To the extent that CIEP tariffs do not accurately pass through PJM costs, bidders will reflect the differential in their capacity product bids. The Board believes that the CIEP tariffs should accurately reflect market conditions and therefore DIRECTS the EDCs to increase the cost of ancillary services in their CIEP tariffs by \$1/MWh.

BGS SUPPLIER MASTER AGREEMENT

During the past BGS proceedings, the proposed FP and CIEP Supplier Master Agreements ("Agreements") drew comments from a number of parties. In the past, Staff convened meetings with interested parties to discuss the outstanding issues and attempt to resolve differences, where possible. In addition, the EDCs hosted other meetings and conference calls to address these issues. As a result of those meetings, a number of changes were proposed and agreed to by most, if not all, of the participants. These changes were incorporated into the CIEP and FP Supplier Master Agreements and addressed in previous BGS Orders. In its Year Two Order on this subject, the Board stated:

.....all contentious areas of the Supplier Master Agreements have been resolved among the parties and/or have been fairly, properly and publicly considered by this Board. Accordingly, the Board is of the view that it is not necessary or appropriate for the parties to continue to raise the same issues that the Board has already addressed concerning the Supplier Master Agreements absent a material change in the facts related to the specific issue. Therefore, the Boardwill require that, for future auctions of this nature, parties show new or changed facts or a real or perceived change in industry structure affecting the way industry participants conduct business before it will consider revisions to these Agreements.

Some parties have raised the issue of reciprocal credit requirements in this proceeding. The Board is satisfied that this subject has been completely aired and the contracts do not require modifications in this area, at this time. The EDCs have also proposed adding a new section to the FP and CIEP Agreements; *Joint Representations and Warranties*. The addition of the language contained therein is apparently an attempt to revisit an accounting issue which was discussed and, the Board believes, resolved last year. For this reason, the Board DIRECTS that the new section on *Joint Representations and Warranties* be deleted from both Agreements.

Several other minor modifications to the Agreements have been proposed by the EDCs. Among these is inclusion in section 15.9 of the FP Supplier Master Agreement of language to account for a pass through of PJM transmission cost decreases as well as increases. In its Post -Transition Period Year Two Order, the Board found that:

The "pass through" of any changes in the network integration transmission charge, and other charges associated with the FERC-approved Open Access Transmission Tariff is appropriate;

In the compliance filings approved by the Board last year, the FP Supplier Master Agreement only reflected a pass-through of "increases" in the transmission charge. Obviously, "changes" could mean an increase or decrease and that was and is the Board's intention. Therefore, the Board APPROVES the FP and CIEP Agreements, as modified above, including the change to the FP transmission pass-through language and with other non-substantive changes outline in Attachment C to this Order.

EXPANSION OF THE CIEP CLASS

As of July 30, 2004, 1085 out of 1773 accounts, representing 82.7% of the load in the CIEP class, had switched to a third-party supplier. While this tends to support the Board's earlier decisions to establish the BGS-CIEP customer class, the data also suggests that customers that have not switched to a TPS and that continue to receive BGS-CIEP service are the smaller customers in this class.

A number of parties have provided comments concerning mandatory expansion of this class of customers. Based upon the comments received, further mandatory expansion of this class is supported by the TPSs, at least in part, because accurate pricing encourages greater cost efficiencies in the provision of energy supply and greater diversity in energy products and services for consumers. (MAPSA Initial Proposal at 1). At least some large CIEP customers also support expansion of this class in order to establish a customer class that is sufficiently broad so as to provide a strong foundation for retail competition, at least among CIEP customers. (NJLEUC Initial Proposal at 4). This position is contrasted by those parties that believe that the Board should not rush to expand the CIEP class to customers that may not be able to adjust to hourly pricing and whose competitive options are suspect. (RPA Initial Comments at 2).

The Board continues to believe that accurate market pricing reduces the possibility for inter- and intra-class subsidies, encourages customers to consider conservation, renewable energy and distributed resource alternatives, promotes load management and generally gives customers more control over their energy costs. However, the Board wants to make the transition for larger commercial and industrial customers to hourly pricing in an orderly manner that allows for an informed consumer. The Board remains concerned about the limited data concerning the decision-making of those customers that remain on BGS-CIEP service. The Board is not suggesting that BGS-CIEP is not an appropriate choice for some customers. Even with increased fuel costs and temporary operational issues surrounding the Branchburg Substation¹⁰, recent spot market energy prices would indicate that hourly pricing can be a cost effective rate structure for certain customers. However, the anecdotal information suggests that while some customers have made a conscious decision to remain on BGS, at least for the current period, others have had few or no competitive offers, and still others may not have fully understood the impact of the charge to hourly pricing and their options. It is the last two categories that continue to concern the Board.

In addition, as the switching data indicates that more of the smaller CIEP customers remain on BGS service, the Board is concerned with mandating a rapid expansion of this class without a better appreciation for the consequences. Most of the questions raised in the Board's 2003 Order concerning this subject remain unanswered. In particular, the Board is interested in tangible data concerning the adequacy of the information provided to customers, the level of understanding among customers of the possible impact of hourly pricing, the degree to which electric supply and electric supply options is important to the customer's operations, the extent to which competitive options are available to smaller customers, the reason why customers remain on BGS-CIEP service, how

¹⁰ In 2003, PJM became aware of issues with certain PSE&G transformers at its Branchburg transformers causing the load carrying capabilities of the transformers to be downgraded, at times and consequently possibly increasing zonal LMPs, at certain times.

customers on BGS-CIEP are faring compared to a BGS-FP equivalent and, as explained below, the impact of the retail margin.

While it continues to gather information, the Board believes that a cautious, gradual approach continues to be the appropriate policy at this time and accordingly, FINDS that a peak load share ("PLS")¹¹ of 1250 kw is the appropriate cutoff for further mandatory inclusion in CIEP¹² for the coming auction. Choosing a 1250 kw cutoff for the 2005 Period would expand the CIEP class by approximately 79 accounts and 95MW. Customers above 1250kw generally have electric bills of several hundred thousand dollars annually, which suggests that some forms of conservation and load management should be available to these customers. As a result of the CIEP education efforts undertaken last year, PJM reported a significant increase in the number of New Jersey customers enrolled in its load management programs. Furthermore, Staff indicates that a number of the customers that would newly be included in the CIEP class have already chosen a retail supplier for their electric needs, indicating that at least some of these customers are already familiar with the concept of retail choice. Therefore, the Board DIRECTS the EDCs to include all commercial and industrial customers with a PLS of 1250 kw and greater¹³ in the CIEP class beginning June 1, 2005. Voluntary inclusion in CIEP continues to be available consistent with the Board's Order of December 2, 2003. The Board will review this issue again next year to consider whether there should be a further mandatory expansion of the CIEP class for future procurement periods.

For the 2004 Auction, the Board permitted certain commercial and industrial customers, to the extent they could be identified and metered without a material impact on the BGS Auction process, to join the CIEP class on a voluntary basis.¹⁴ Voluntary enrollment in the CIEP class should again be permitted for the 2005 Auction with similar constraints. Specifically, the choice must be made in a timely manner and, once made, must be irrevocable for the term of the CIEP contract. Furthermore, access to CIEP by certain unmetered and other specific small commercial accounts may need to be limited, at least for the 2005 Auction. Therefore, the Board DIRECTS the EDCs to work with Staff to develop a process and schedule for identifying and converting non-residential customers that choose to be included in the BGS-CIEP category. The process developed should be based on the foregoing parameters. It should also require a customer commitment, for participation, by no later than the second business day in January 2005. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2005 to reconsider their decision for the upcoming 2005 Auction. The Board DIRECTS the EDCs to work with Staff to develop and implement a process to so notify voluntary customers of this "window of opportunity". The Board FURTHER DIRECTS the EDCs to post the conditions of the voluntary CIEP process in an appropriately conspicuous location on its webpage and to work with Staff to determine if other reasonable steps to notify customers of this process should be undertaken.

Consistent with the 2004 voluntary process, EDCs will make the necessary metering and communications installations for non-residential customers opting in to BGS-CIEP at no cost to the individual customer. The EDCs may request to recover any such costs once the number of customers and the costs associated therewith is known.

¹¹ The individual customer's capacity peak load share is that customer's portion of the total capacity assigned to the EDC's transmission zone by PJM.

¹² In 2003, mandatory inclusion in CIEP was done on a rate class basis. Mandating customers with a PLS of 1250 kw or greater to be included in the CIEP class is in addition to the rate classes that currently comprise the CIEP class.

¹³ Rockland Electric will determine all eligibility criteria by measuring when a customer's billing demand exceeds the eligibility level during any two months of a calendar year.

¹⁴ Approximately 60 customers voluntarily joined the CIEP class for the 2004 Auction

In 2003 and 2004¹⁵, the EDCs, through group meetings and individual customer contacts, afforded all CIEP customers with the opportunity to better understand the BGS-CIEP pricing structure. The Board believes that this has been a reasonable approach to attempt to educate all CIEP customers in a uniform manner. The EDCs should continue with a similar approach to reaching customers who will be required to be part of the CIEP class for 2005, as a result of this Order, or who may volunteer for CIEP now, or in the future, as well as those customers with a PLS of 750 kw or greater so that these smaller customers can begin to become familiar with hourly pricing. In addition, as discussed in CIEP EDUCATION WORKING GROUP, below, the Board will attempt to enlist expertise from all segments of the industry to enhance its efforts to inform and educate affected customers. The Board DIRECTS the EDCs and Board Staff to implement the foregoing education efforts.

RETAIL MARGIN

Currently, the retail margin, imposed on all BGS-CIEP customers and BGS-FP customers with a PLS of 750kw or greater, is 5 mills per kwh. PSE&G argues that the retail margin is not a sustainable means to increase retail competition while providing low cost electric service and recommends that the Board consider reducing or eliminating the retail margin. (EDCs' Initial Proposal, PSE&G Company Specific Addendum at 5).

As with expansion of the CIEP class, the Board has not been able to gather significant information concerning the extent to which the retail margin encourages customers to shop or encourages retail suppliers to market to these customers. In its post-Transition Period Year One Order, the Board was concerned with imposing the retail margin on smaller FP customers for fear that it would just increase the cost of electricity to most of the customers in the State with minimal resulting benefits. For larger customers, it was concerned with being able to determine how much switching activity was a result of the retail margin and how much was a result of market-based rates and unrestricted switching. Similar concerns exist today.

Before the Board makes an adjustment to its retail margin policy, it will seek an independent analysis of its current practices. While the implementation of a retail margin concept is more policy than fact driven, the Board believes that useful information and guidance could be gained from an outside analysis of the current situation. Therefore, the Board DIRECTS Staff to work with the Department of the Treasury to issue a Request For Proposals to obtain a consultant to review the current use of the retail margin in New Jersey, including whether it is serving its intended purpose, whether it is set at an appropriate level and appropriate uses for the funds collected thereunder. In addition, Staff should consider whether the concerns raised with respect to expansion of the CIEP class might be addressed by the same consultant, by a different consultant or whether Staff has the resources to internally address those issues. The RFP and the subsequent choice of consultant will be subject to Board approval. Funding for the consultant will come from the retail margin accounts currently maintained by each EDC.

LOAD MANAGEMENT

In its post-Transition Period Year Two BGS Order, on the issue of load management the Board, among other things, stated:

For the longer term, the ability to understand the impact of and to develop a cost-effective plan for PLM vis-a-vis BGS is important to the Board and the ratepayers of

¹⁵ In 2004, the EDC education effort included customers who volunteered for CIEP as well as those FP customers with a PLS??? of 750 kw and above.

this State. For this reason, the Board DIRECTS the Division of Energy and the OCE together to review, consider and make recommendations to the Board for PLM on a going forward basis.

The Division of Energy and the Office of Clean Energy continue to review this subject with industry participants and load management experts. The Board will address this area as recommendations are brought forward by Staff. Auction participants should be aware that this is an area of interest to the Board and participants should expect new programs to be tested and implemented throughout the procurement period.

CIEP EDUCATION WORKING GROUP

Reliant has proposed the creation of a CIEP Education Working Group to assist in developing and disseminating CIEP education to customers, including Board-sponsored education materials. (Reliant Final Comments at 5). The proposal is for the Working Group to be open to all interested parties provided that participants agree to assist in disseminating the final products throughout their own organizations.

For the past two years, as requested by the Board, the EDCs have sponsored regional seminars to new and existing CIEP customers in order to provide basic information on hourly pricing, including load management and customer options. While these seminars have been well attended, the Board is concerned that almost half of the customer class is still on EGS service. While the Board has not received any complaints from CIEP customers and the EDCs indicated, at the public hearing, that they also had not, the Board wants to permit customers ample opportunity to be acquainted with the concept of hourly pricing, ask questions and understand their options. It has been the Board's experience that parties that deal with customers on a daily basis often have practical and creative suggestions in the area of customer education. In addition, providing customers with the same basic facts but in different formats and communicated in different ways should increase the level of customer comprehension. The Reliant proposal also stressed the importance of timing and the ability to rapidly disseminate information. The Board believes that the requirement that parties agree to distribute all materials and information to its members is a step in addressing the timing situation.

For the foregoing reasons, the Board APPROVES the creation of a CIEP Education Working Group and DIRECTS Staff, in conjunction with the Office of Communications, to organize the Working Group prior to the end of 2004. The Working Group should consist of the EDCs, the RPA and industry trade organizations, with all other interested parties able to attend the meetings and participate in the discussions. As indicated above some participants in the Working Group may have particular expertise and/or interest in this customer education area, and their expertise and active participation may enhance the process. The Working Group should develop a work plan with initial emphasis on creating and disseminating information of interest to CIEP customers. The Board recognizes that some costs may be associated with implementation of the work plan. Staff should present the work plan and estimate of associated costs to the Board for its review and the Board will make a determination of whether and how to fund the proposal.

In addition to creating and disseminating CIEP-related information, the Working Group should consider what additional resources might be helpful to BGS-CIEP customers. In the particular, it might be worthwhile for the Board to have a Staff member dedicated to assisting the larger electric customer with pricing, contract issues, rate design, load management and distributed resource questions. In the alternative, if this type of function is desirable, it may be more cost effective for the Board to have an energy consultant on retainer to handle this function. The Board would like the Working Group's recommendations on this subject.

OTHER ISSUES

CONFIDENTIALITY

The integrity of the Auction process depends on a fair set of rules that promote dissemination of information in a non-discriminatory manner and results in no bidder or bidders having an advantage over any other. From the Board's experience with the first three BGS auctions, it appears that certain information pertaining to the Auction design methodologies, including the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon this issue at its October 22, 2004 agenda meeting. The Board found that this 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. The Board's decision on this subject is memorialized in a separate written Order.

AUCTION PROMOTION/DEVELOPMENT

The Board concludes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock auction, provided that the rules and details are specified and implemented correctly, and provided that the auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps that have¹⁶ and will be undertaken are:

- § Bidder Information Sessions in Philadelphia and Washington, D.C.;
- § An Auction web site at www.bgs-auction.com which publicizes new developments, allows interested parties to download documents related to the auction, has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed; and has links to PJM and other useful sites;
- § A virtual data room for potential bidders with data relevant to the bid and answers to questions posed by bidders about the data in the virtual data room;
- § Bidder information packets including the background information and information about the auction process;
- § 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 website.

¹⁶ These actions have occurred for past auctions and in anticipation of a favorable Board opinion, some of these actions may have already been undertaken for the 2005 auction.

The Board believes that the foregoing marketing effort by the EDCs and the Auction Manager will increase the chances that a successful BGS procurement can be achieved.

BOARD APPROVAL PROCESS

As with previous auctions, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock auction process, as described above, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the auction process being approved with this Order, including certification of the auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, *Tentative Approvals and Process*,¹⁷ there are a number of decisions/actions that would need to be made after Board approval of the auction process. Each of these decisions/actions needs to take place according to such a schedule in order that the bidders are prepared and comfortable with participating and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous three auctions, a fundamental concern driving the approval process is that uncertainty or delay concerning the period between the submission of bids and the approval of the bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auction results. Because of the volatility of the electric markets, bids cannot remain valid for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, the additional risk to bidders could show itself through higher prices. Therefore, the Board will commit to addressing the results of the BGS-FP Auction and the BGS-CIEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the second business day after the last Auction closes.

Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, the Board will consider the results of the BGS-FP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety and certify the results of each Auction for all of the EDCs or for none of them.

Another decision that requires Board approval is acceptance of the EDCs' Compliance Filing. Because of the significance of this proceeding, the Board DIRECTS the EDCs to make a Compliance Filing by November 3, 2004. The Board will consider approval of the Compliance Filing at its next scheduled Board meeting thereafter.

Either the EDCs or the Auction Manager, in consultation with Staff and the Board's consultant, CRA, may make other Auction decisions as identified in Attachment A. These decisions include determination of Contingency Plan levels, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, specific bidder application and credit issues, load cap and volume adjustment decisions, Auction price decrements and other unknown lesser decisions, which might be required throughout the implementation process. Some of

¹⁷ Attachment A is labelled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

the aforementioned areas, such as bidder application and credit issues, are subject to rules spelled out in the Joint EDC Proposal. Other areas, such as load caps and volume adjustment decisions, determination of Contingency Plan levels, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, and auction price decrements are either utility-specific concerns, are determined directly from algorithms included in and approved as part of the Joint EDC Proposal, or are areas that need to be addressed by the Auction Manager based on its experience in this field. Should any unforeseen circumstances occur during the Auction decision-making process, Staff will immediately bring the matter to the Board's attention.

For the final certification of the Auctions' results, the Board will schedule a special agenda meeting for the first day of the Auctions, as a forum to consider unforeseen circumstance, should any develop. When the Auctions are complete, the Board will review and consider the results. Prior to Board certification of the results, the Auction Manager will provide a Final Report to the Board on the results of the Auctions and how the Auctions were conducted, including the post-Auction evaluation forms in Attachment B. The Auction Manager will also provide a redacted version of the Final Report to the EDCs and the RPA. CRA shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in Attachment B, prior to Board certification of the results.

2006 PROCUREMENT PERIOD

This is the fourth year in a row that the Board will approve a descending clock auction as the mechanism by which EDCs will obtain their supply needs. This type of auction process for an entire State's default electric needs was innovative and controversial when first proposed in 2001. New Jersey was the first State to authorize such an auction process for BGS procurement and remains the only State to secure all of its default service in this manner. For the past three years, the BGS Auction has been a major force in maintaining and even reducing the electric rates seen by customers. The past BGS Auction results that have been approved by the Board, were generally praised by all segments of the electric industry and the process has become widely accepted by bidders. The success of the NJ BGS auctions has begun to generate increased interest in this process in other states. For example, this year Ohio will use a similar auction process as a potential means to serve part of its incumbent load. As a result of the success of the New Jersey process, with each passing year the proposals and comments from industry participants have focused less on alternative forms of procurement and more on fine tuning implementation and contract language issues.

Although the proposals and comments this year do not specifically address the 2006 process, the Board believes that there is merit in reaffirming its support for the descending clock auction format, barring any unforeseen circumstances that may arise in the coming year. To the extent that participants have some certainty about the process and the Board's commitment to it, they should be able to plan better, operate more economically and thereby, to some extent, make the process more efficient. To this end, and barring any unforeseen circumstances that may arise in the coming year, the Board would expect to use a substantially similar descending clock auction process to satisfy the supply needs of the EDCs for the supply period beginning June 1, 2006.

Each Auction has provided the Board with new and different issues and experiences from which the Board has been able to refine the Auction and improve upon the process. It would be naive to think that this year will be any different. Therefore, this preliminary determination will not preclude the same open discussion of auction issues with similar filing requirements, discovery and opportunity for public input as in past years. As in past years, The Board will announce a schedule and process following the conclusion of the upcoming 2005 Auction.

PATENT ISSUES

Finally, the Board is aware that the dispute between the EDCs and Geophonics, Inc. regarding an alleged patent infringement remains unresolved. 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.

FINDINGS AND CONCLUSIONS

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

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

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

The Joint EDC Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for the BGS customers beginning June 1, 2005;

The Joint EDC Proposal, as modified herein, is the best means to secure BGS service for the 2005 period, as well as a portion of the BGS service required for the 2006 and 2007 periods;

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

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

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

Voluntary enrollment in the BGS-CIEP class from non-residential customers currently in the BGS-FP class should be permitted with the strict timing and switching restrictions described herein;

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

The application of seasonal payment factors to the tranche-weighted auction prices is appropriate;

The "pass through" of any increases or decreases in the network integration transmission charge, and other charges associated with the FERC-approved Open Access Transmission Tariff is appropriate;

The cost of ancillary services in each EDC's CIEP tariff should be increased by \$1/MWh to more closely reflect actual market conditions;

It is not necessary to make adjustments to the BGS-FP bid product to adjust for the PJM RPM proposal;

A Retail Margin of 5 mils/kwh for the period from June 1, 2005 through May 31, 2006 is appropriate for those customers subject to the retail margin;

A DSSAC of .15 mils/kwh (\$.00015) continues to be reasonable for CIEP customers for the 2005 Auction to maintain a competitive BGS-CIEP Auction;

For the 2005 CIEP Auction, the DSSAC of .15 mils/kwh will be funded through existing retail margin accounts maintained by each EDC;

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

The EDCs should prepare the RPS reports required by the Board on behalf of the BGS suppliers and should contractually require the BGS suppliers to provide supplies that comply with the RPS requirements and the information on such supplies necessary to prepare the RPS reports;

It is appropriate that NERA continue to act as the Auction Manager for these Auctions;

The pilot program to serve 3 tranches of JCP&L FP load from its NUG supply and administered in the fashion described herein should be continued through May 31, 2006;

The Committed Supply methodology proposed by the EDCs, as modified herein, will continue to be used to deal with the existing utility Committed Supply obligations for the 2005 Auction;

Fulfillment of their Auction obligations will not cause successful bidders in the BGS Auction to be "Electric Power Suppliers" as defined in N.J.S.A. 48:3-51 and N.J.A.C. 14:4-2.2 and, thus, successful bidders do not need to obtain a New Jersey electric power supplier license;

Certain information and processes associated with the auction may be competitive by nature and the Board has issued a Protective Order addressing this competitive information;

The accounting and cost recovery processes identified in the utility-specific addenda to the Joint EDC Proposal are reasonable and consistent with the Board's Final Unbundling Orders;

The utility-specific Contingency Plans, adjusted where necessary to reflect the decisions in this Order, are reasonable;

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

A designee from the Board's Energy Division, from the Board's Office of the Chief Economist and CRA shall observe the Auctions for the Board;

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

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

The Board will consider the results of the BGS-FP Auction and the BGS-CIEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the second business day after the last Auction closes; and

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

Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP and BGS-CIEP Auction Rules, the EDC-specific addenda and the Supplier Master Agreement, with the modifications described herein. The Board DIRECTS the EDCs to update the Tentative Approvals and Decision Process Schedule included as Attachment B, consistent with this Order. The Board reserves the right, at the certification meeting, to reject the BGS-FP Auction results and/or the BGS-CIEP Auction results.

Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing and that the EDCs make compliance filings, including an updated Attachment B and any other changes consistent with this decision, by Wednesday, November 3, 2005¹⁸. The Board FURTHER DIRECTS the EDCs to work with Staff and CRA to ensure that any supplemental documents, such as application forms, are fair and developed consistent with this decision and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES
BY:



JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER



JACK ALTER
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

¹⁸ In order to maintain the timeline requirements imposed by the auction process, the EDCs, working with Staff, made the compliance filing based on the decision at the Board's October 22, 2004 agenda meeting which was subsequently approved on November 9, 2004.

Board of Public Utilities
BGS Service List
BPU Docket No. E004040288

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Board of Public Utilities
BGS Service List
BPU Docket No. E004040288

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Board of Public Utilities
BGS Service List
BPU Docket No. EO04040288

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ATTACHMENT A
Docket No. EO04040288

Tentative 2005 Period (beginning 6/1/05) 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 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 CRA¹) 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 CRA) will have an opportunity to observe.
4. AM/BA – These are actions for which the Auction Manager is responsible and which the BA will have the opportunity to observe and advise.
5. BPU – These are actions to be taken by the Board.
6. AM/EDCs – These are actions for which the Auction Manager is responsible and for which the Auction Manager acts in concert with the EDCs.

Decision point	Decision process	Timing
Joint EDC Filing	EDCs	July 1, 2004
Decision on Post-Transition Year 3 Process	BPU	October 22, 2004
Compliance Filing	EDCs	November 3
Approval of Compliance filing	BPU	November 9
Final Auction Rules and Supplier Agreements available	AM/EDCs	November 15
Announce minimum and maximum starting prices	AM	November 22
Announce Tranche Targets	AM	November 22
Announce Load Caps	AM/BA	November 22
Information session for potential bidders	AM/EDCs	December 2

¹ Charles River Associates

Review Part I applications	AM/BA	December 14-17
Review Part 2 applications	AM/BA	January 11-18, 2005
Interim Report to the Board	AM/BA	Mid-January
Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 26
Trial Auction	AM	February 1
Establish EDC-specific starting prices	EDCs/AM/BA	Last week of January (announced to bidders on February 2)
Auction starts		February 7
Provide full factual report to Board	AM/BA	
Board decision on auction results	BPU	By end of 2 nd business day following the calendar day on which the last auction closes.

ATTACHMENT B
Docket No. EO04040288

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2005 BGS-FP AUCTION**

Prepared by: _____ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on [Monday, February 7, 2005]

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

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	## tranches	## tranches	## tranches
Eligibility ratio	_____	_____	_____
PSE&G load caps	## tranches	## tranches	## tranches
JCP&L load caps	## tranches	## tranches	## tranches
ACECO load caps	## tranches	## tranches	## tranches
RECO load caps	## tranches	## tranches	## tranches

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

Post-Auction Checklist for the New Jersey Year Three BGS-FP Auction

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

Table 1. Summary of BGS-FP Auction

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

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

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

Post-Auction Checklist for the New Jersey Year Three BGS-FP Auction

ATTACHMENT B
Docket No. EO04040288

Table 2. Overview of Findings on BGS-FP Auction

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

Post-Auction Checklist for the New Jersey Year Three BGS-FP Auction

ATTACHMENT B
Docket No. EO04040288

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

Post-Auction Checklist for the New Jersey Year Three BGS-FP Auction

ATTACHMENT B
Docket No. EO04040288

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

ATTACHMENT B
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POST-AUCTION CHECKLIST FOR THE NEW JERSEY 2005

BGS-CIEP AUCTION

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on [Monday, February 7, 2005]

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

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

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

Post-Auction Checklist for the New Jersey Year Three BGS-CIEP Auction
ATTACHMENT B
Docket No. EO04040288

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

Table 1. Summary of BGS-CIEP Auction

	PSE&G	JCP&L	ACECO	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 sold (# tranches)					
Quantity sold (% BGS-CIEP load)					
# Winning bidders					
Maximum tranches sold to any one bidder					
Minimum and maximum starting prices prior to indicative bids (\$/MW-day)					
Starting price at start of auction (\$/MW-day)*					
Price paid to winning bidders (\$/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. EO04040288

Table 2. Overview of Findings on BGS-CIEP Auction

	Question	Comments
1	CRA/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 CRA/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 CRA/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
7	From what CRA/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 CRA/NERA directly observe and how did they relate to the unanticipated delay?	
10	Were appropriate data back-up procedures planned and carried out?	
11	Were any security breaches observed with the CIEP auction process?	

Post-Auction Checklist for the New Jersey Year Three BGS-CIEP Auction

ATTACHMENT B
Docket No. EO04040288

	Question	Comments
12	From what CRA/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and CRA during the CIEP auction?	
13	From what CRA/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 CRA/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17	Was there evidence that bidders felt unduly rushed during the process?	
18	Were there any complaints from bidders about the process that CRA/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 CRA/NERA could observe, was sensitive information treated appropriately?	
24	Does the CIEP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-CIEP load?	

Post-Auction Checklist for the New Jersey Year Three BGS-CIEP Auction

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	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)?	

Summary of Material Changes to BGS Supplier Master Agreement

BGS-FP Supplier Master Agreement

- (1) Definition of “BGS-CIEP Load” clarified to include energy losses assigned by the EDC.
- (2) Section 2.2(b), Obligations of the Company. Added Subsection 2.2(b)(vi), which provides for each BGS-FP Supplier to be paid a percentage share equal to the BGS-FP Supplier Responsibility Share of that BGS-FP Supplier of all amounts received from a Third Party Supplier as damages, penalties or forfeited security, net of any amounts due to the EDC to offset costs or losses.
- (3) Clarified Section 13.1 to state expressly that the BGS-FP Supplier Master Agreement does not create any duty or liability to the BGS-FP Supplier with respect to administration of the EDC’s Third Party Supplier Agreements. Any disputed payments of security forfeited by a Third Party Supplier will be deposited into an interest-bearing account pending final disposition of such dispute.
- (4) Expanded Section 15.9, Changes in Transmission Rates for Firm Transmission, to allow for a pass through of decreases in rates for Firm Transmission Service, to benefit BGS-FP Customers.
- (5) Added Subsection 15.9(b), which provides for the EDC to seek a ruling requesting a determination from the Board of Public Utilities as to whether a filing with the FERC seeking a change in rates for Firm Transmission Service is an increase or a decrease.

BGS-CIEP Supplier Master Agreement

- (1) Definition of “Transmission Charge” clarified to include any charge or surcharge imposed on customers receiving Firm Transmission Services.
- (2) Section 2.2(b), Obligations of the Company. Added Subsection 2.2(b)(v), which provides for each BGS-CIEP Supplier to be paid a percentage share equal to the BGS-CIEP Supplier Responsibility Share of that BGS-CIEP Supplier of all amounts received from a Third Party Supplier as damages, penalties or forfeited security, net of any amounts due to the EDC to offset costs or losses.
- (3) Modified Section 6.7 to eliminate the requirement that a BGS-CIEP Supplier submit a written request for payment of simple interest on cash held by the EDC pursuant to the Supplier Master Agreement.
- (4) Clarified Section 13.1 to state expressly that the BGS-CIEP Supplier Master Agreement does not create any duty or liability to the BGS-CIEP Supplier with respect to administration of the EDC’s Third Party Supplier Agreements. Any disputed payments of security forfeited by a Third Party Supplier will be deposited into an interest-bearing account pending final disposition of such dispute.