



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
*Two Gateway Center*  
**Newark, NJ 07102**  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

IN THE MATTER OF THE PROVISION OF )  
BASIC GENERATION SERVICE FOR )  
THE PERIOD BEGINNING JUNE 1, 2006

ENERGY

DECISION AND ORDER

DOCKET NO. EO05040317

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes actions taken by the Board of Public Utilities ("Board" or "BPU") at its regularly scheduled October 12 and October 26, 2005 public agenda meetings by a vote of four Commissioners.

By Order dated December 1, 2004, Docket No. EO04040288 the Board approved the 2005 Basic Generation Service ("BGS") Auction and reaffirmed its support for the descending-clock auction format used to secure BGS supply since August 1, 2002. At that time, the Board announced its intention to use a similar descending-clock auction process to satisfy the supply needs of the State's four electric distribution companies ("EDCs"), who are required to supply BGS to customers who have not chosen an alternate supplier, for the supply period beginning June 1, 2006. By Order dated May 5, 2005, in this docket, the Board directed the EDCs, Atlantic City Electric Company ("ACE"); Jersey Central Power & Light Company ("JCP&L"); Public Service Electric and Gas Company ("PSE&G"); and Rockland Electric Company ("RECO"), and all other interested parties to file their proposals for the 2006 auctions, including any proposed modifications to the current auction process, by July 1, 2005. The Board also directed the EDCs to include in their filings a rate design proposal that could be used for mid-sized commercial and industrial customers as a transition between fixed and hourly pricing. A preliminary procedural schedule to address the proposals, including an opportunity for initial written comments, a legislative-type hearing, and final written comments was also adopted by the Board at that time.

Subsequent to the May 5, 2005 Order, Board Staff informally asked parties to include in their July 1 filings, recommendations on how to use the retail margin funds that have already been collected. In that request, Staff indicated that the timing for how or when the Board would address this subject had not yet been established.

On or about July 1, 2005, the EDCs filed a Joint Proposal on BGS procurement ("Joint EDC Proposal") and each EDC also filed a Company-specific addendum to the Joint EDC Proposal. Proposals were also submitted by: Constellation Energy Commodities Group, Inc. and

Constellation NewEnergy, Inc. (collectively, "Constellation"); Direct Energy Services, LLC ("Direct"); New Jersey Food Council ("NJFC"); New Jersey Large Energy Users Coalition ("NJLEUC"); Reliant Energy, Inc. ("Reliant"); and Retail Energy Supply Association ("RESA"). The New Jersey Business and Industry Association ("NJBIA") informally submitted a proposal suggesting uses for the retail margin funds. A discovery period followed.

On or about August 19, 2005, Initial Comments ("IC") on the BGS proposals were received from: the Division of the Ratepayer Advocate ("RPA"); Constellation; Direct; Independent Energy Producers of New Jersey ("IEPNJ"); NJLEUC; Reliant; RESA; and Select Energy, Inc. ("Select"). The EDCs did not file Initial Comments.

The Board also held a legislative-type hearing on September 7, 2005, in its Newark office, chaired by Commissioner Connie O. Hughes. The purpose of the hearing was to take comments on the pending proposals. The EDCs, National Economic Research Associates ("NERA"), RPA, the Great Atlantic & Pacific Tea Company ("A & P"), Constellation, Direct, NJBIA, NJFC, NJLEUC, and RESA presented comments for the record, and were questioned by the Commissioner and Board Staff.

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 customers' rates. JCP&L's public hearing was held on September 8, 2005; RECO's public hearing was held on September 12, 2005; PSE&G's public hearing was held on September 13, 2005; and ACE's public hearing was held on September 15, 2005. The hearings were attended by Board Staff, the RPA, and the EDCs. No members of the public appeared at any of the hearings.

Final Comments ("FC") on the issues were submitted on or about September 13, 2005 by the EDCs, the RPA, Constellation, Direct, NJFC, Reliant, and RESA.

At its October 12, 2005 agenda meeting, the Board directed its Secretary to contact customers with a peak load share between 1000 and 1250 kilowatts ("kw"), business trade organizations and the industry in general and request, by October 21, 2005, additional input on expansion of the CIEP<sup>1</sup> class. Customers were contacted using the EDCs' mailing lists. Other parties were contacted electronically. Responses were received from Boston Properties, Medco Health Solutions, MSNBC, Polymer Group, Direct, the RPA, RESA, Pepco Energy Services, Suez Energy Resources, NJLEUC, NJBIA and the Building Owners and Managers Association.

#### POSITIONS OF THE PARTIES, COMMENTS AND REPLY COMMENTS

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely relied on previous auctions and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. For this reason, and because it forms the basis of much of the discussion in this Order and because, with the modifications described below, the Joint EDC Proposal contains many elements that will be incorporated into the BGS procurement process which the Board will approve herein, the Board will summarize, in this Order, the main features of the July 1, 2005 Joint EDC proposal. The Board will not, in this Order, separately summarize each party's position in similar detail, but has carefully reviewed each party's proposals and/or positions in reviewing the record in this matter.

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<sup>1</sup> CIEP stands for Commercial and Industrial Energy Pricing.

## JOINT EDC PROPOSAL

On July 1, 2005, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for Basic Generation Service including proposed provisional rules for the auctions, 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 a one-year period beginning June 1, 2006, for the approximately 1900 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 would represent approximately 2800 megawatts ("MW") of load procured through bidding on 112 full-requirements tranches<sup>2</sup> of approximately 25 MW each. This is the same type and size auction that the Board approved last year in Docket No. EO04040288.

The second auction would be to procure one-third of the service requirements for all other customers of all four EDCs, for a three-year period beginning June 1, 2006, through a fixed-price auction ("BGS-FP Auction") for approximately 5,300 MW of load to be served through 54 full-requirements tranches<sup>3</sup> of approximately 100 MW each.

The competitive process by which the EDCs propose to procure their supply for BGS load for 2006 is detailed in the EDCs' Joint Proposal and in Appendices A and B thereto (Provisional CIEP and FP Auction Rules, respectively) and is the same type of auction process that the Board has approved for each of the past four 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 the amount in cents per kilowatt-hour ("kWh") to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in dollars per megawatt-hour (\$/Mwh) which determines the Default Supply Service Availability Charge ("DSSAC") and represents the cost of maintaining BGS-CIEP availability for all customers eligible to take BGS on a CIEP tariff. 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 Company-specific addenda. Bidders would be provided with a spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-FP rates would be fixed tariff rates determined by converting the auction prices to BGS-FP rates in a manner that reflects market-

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

<sup>3</sup> The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2007 by means of Board-approved auctions in February 2004 and February 2005.

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 delivery period would be adjusted to reflect lower winter costs. The summer and winter factors are designed so that the overall average payment to the bidder would equal the auction clearing price.

The EDCs propose that, for BGS-CIEP tranches, rate schedules would be designed to include the transmission and capacity obligation and ancillary service costs, and a provision to pass through the hourly PJM<sup>4</sup> real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/Mwh administrative payment (the DSSAC) because the various other payments for energy, capacity, ancillary services and transmission would be known in advance of the auction. The DSSAC would be charged to all customers in the CIEP service category. Winning bidders would be paid a share of the DSSAC revenues proportional to the number of tranches won in the BGS-CIEP Auction.

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

The EDCs propose that the Board render a decision on the auction process and thereafter render a decision on the results of the Auctions. Specifically, they 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. The EDCs also recommend that the Board clarify that, at its discretion, it may act on one completed auction while the second is still ongoing. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

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

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

- BGS suppliers must meet all New Jersey Renewable Portfolio Standards (“RPS”) requirements that may be applicable throughout the respective supply periods;
- as conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS Supplier Master Agreement within three business days of Board certification of the results and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;

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<sup>4</sup> PJM is the Pennsylvania-New Jersey-Maryland Interconnection

to qualify, applicants must disclose what, if any, bidder associations exist and if so, applicants will provide such additional information as the Auction Manager may require;

qualified bidders are required to post a per-tranche bid bond; and

the BGS-CIEP Auction should be for a supply period of 12 months and the BGS-FP Auction should secure one-third of each EDC's total load requirements for three years,<sup>5</sup> with the remaining two-thirds having been secured through previous BGS-FP Auctions.

While the EDCs have only proposed a few changes to the auction process this year, significant among them is the use of the DSSAC, rather than capacity, as the CIEP bid product and elimination of the pass-through of PJM transmission rate changes to CIEP bidders. Both of these proposals will be discussed in detail herein.

## DISCUSSION AND FINDINGS

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, 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 while initiating separate auctions for both BGS-FP and BGS-CIEP customers<sup>6</sup>. By 2003, it seemed that the success of the first two BGS Auctions had become apparent to industry participants as the arguments for an alternate form of procurement were almost non-existent. Thus, in 2003 and 2004, the Board continued to approve descending-clock auctions for the procurement of default service while continuing to adjust certain elements of the process including changing the beginning of the supply period from August to June and expanding the size of the CIEP class.<sup>7</sup>

Today, while the Board is again faced with recommendations for modifications to certain elements of the auction process, no one has suggested changing the basic descending-clock auction design. The Board believes that the auction process that was implemented with the 2002 Auction and which has since been modified to include a BGS-FP and BGS-CIEP Auction has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive 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, including modifying the length of the FP supply period, expanding the size of the CIEP customer class, amending the Supplier Master Agreements and various rate design issues, 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 still essentially unique to New Jersey, the ability to make direct comparisons with other procurement processes is limited. Nonetheless, the Board, its Staff and the Auction Manager

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<sup>5</sup> While the concept is to divide the EDCs' load requirements into thirds, the actual tranches available for any EDC for any time period may vary by EDC.

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

<sup>7</sup> Board Orders dated December 2, 2003 Docket No EO03050394 and December 1, 2004, Docket No. EO04040288.

have developed some expertise in these areas, having conducted four successful auctions under the same basic auction structure and rules as that proposed here. 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.

Based on the success of previous BGS Auctions and having considered the record which has been developed in this case, the Board continues to believe, and HEREBY FINDS that, with certain refinements and enhancements as will be discussed herein, an auction process similar to the one which was used in 2005, should be approved for the procurement period beginning June 1, 2006.

## BGS-FP AUCTION

### SUPPLY PERIOD

The EDCs currently have one-third of their FP supply under contract through May 31, 2007 and another one-third through May 31, 2008. They propose that the 2006 FP Auction be for the remaining one-third of their supply requirements for a three year period. The RPA supports the EDC proposal as necessary to provide reasonable price stability to small customers. (RPA FC at 5). Constellation also supports the three-year contract approach. (Constellation FC at 5-6). However, some parties have recommended a different approach. Direct indicates that long-term supply contracts disguise the true costs of energy and mask price signals to customers. It proposes that all commercial customers below 750kw be subject to a monthly auction price. (Direct July 1, 2005 filing at 2-6). Reliant supports a reduction in the term of the FP contract to allow the default price to become more reflective of current market conditions and thereby begin to remove barriers to competition posed by the existing BGS-FP structure. (Reliant FC at 10). RESA supports an annual FP auction for customers between 100kw and 750kw. It indicates that the Board is encouraging market-responsive price signals through its expansion of the CIEP class while moving a large portion of the market farther away from market-responsive price signals through its three-year rolling average pricing scheme for BGS-FP customers. (RESA IC at 4-5).

The Board recognizes, that the staggered three-year rolling procurement process currently in use for the BGS-FP Auction provides a valuable hedge to customers in a time of increasing energy prices, but it may make it more difficult for retail suppliers to compete for FP customers in times of rising prices. By way of contrast however, if and when market prices start to come down, retail suppliers may find that their prices can be more competitive than the rolling three-year average auction price, and competition would likely increase. The Board is not convinced that the current proposals for pricing based on auctions for procurement of electricity for shorter periods than the current format would increase retail competition significantly. However, such auctions would very likely increase the short-term costs to customers. As discussed below, the Board considered and, for other reasons, rejected a transitional rate design proposal. In the context of that discussion, arguments were made that the Board should bypass a transitional rate design and go directly to hourly pricing. However, while the Board continues to examine the results and implications of hourly pricing as part of a long-term pricing strategy, it does not appear reasonable at this time to experiment with shorter-term contracts. As the Board indicated when it adopted the current auction structure, the risks to customer rates and rate stability associated with short-term contracts and the market conditions that might be present at any one point in time outweigh the alleged benefits. Therefore, the Board DIRECTS the EDCs to procure the approximate one-third of the EDCs' current BGS-FP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the 36-month period, as well as

the 36-month supply contracts secured previously will be used to determine the price for BGS-FP rates for the 2006 supply period. The Board will continue to review its use of a three-year staggered procurement process prior to the procurement for the 2007 supply period, and will determine at that time how best to proceed.

No party took issue with the continued use of a 12-month period for the BGS-CIEP Auction and, thus, the Board FINDS that a 12-month procurement period is appropriate and reasonable.

## AUCTION RULES

NJLEUC has proposed that the auction rules be revised to require that bidders disclose to the Board the sources of power to be bid into the auctions and that the Board take appropriate remedial actions to mitigate any potential market power that is determined to exist. (NJLEUC July 1, 2005 filing at 1 and 7-13). The EDCs, Constellation and IEPNJ oppose NJLEUC's proposal. (Constellation IC at 11-12, EDCs' FC at 8-15, IEPNJ IC at 3-6).

The Board has determined on four previous occasions that the BGS Auctions are the best means to obtain the needed BGS supply at the lowest cost to customers *under current market conditions*. Within the auction process are disclosure requirements and rules specifically directed at preventing collusion and gaming. In the past, the Auction Manager has had an anti-trust and auction expert monitor the round-by-round bidding. The Board's Auction Consultant also reviews the bidding activity for each round looking for, among other things, irregular or suspicious bidder activity. While these are among the safeguards to ensure a fair and competitive auction process, the process can only be as competitive as the underlying wholesale markets. In a truly competitive wholesale market, all potential suppliers to bidders will be subject to competition in the wholesale market and bidders will only contract with such a supplier if it offers them the best deal.

As developed on the record at the September 7, 2005 hearing, NJLEUC's proposal would be difficult to implement and would likely adversely affect the auction process and results. In response to questions raised by Board Staff, NJLEUC was unable to explain how its proposal would be implemented. (BGS Hearing transcript dated September 7, 2005 at 181-183). As proposed by NJLEUC, bidders would indicate during the application process from where they intend to obtain their supplies. This would either place an unnecessary limitation on the options available to bidders and would likely result in higher prices for customers or, if the indication is non-binding, would simply provide information for further speculation.

Of further concern to the Board is that, as IEPNJ observes, the NJLEUC proposal, if implemented, might actually decrease the competitiveness of the BGS Auctions. (IEPNJ IC at 5-6). Bidders who are required to disclose proprietary information, even on a confidential basis, may be less likely to participate in the auction. This is a significant concern to the Board that has not been addressed by NJLEUC.

The Board notes that Constellation, the supplier who won the most tranches in last year's BGS-FP Auction, supports IEPNJ's argument. Constellation specifically opposes NJLEUC's proposal because:

[It] will itself have an adverse impact on the auction as it would eliminate a supplier's flexibility to manage its portfolio as suppliers would now be required to identify supply sources prior to the auction. Suppliers typically manage their obligations through a variety of means: owned generation, contracted for

generation, spot market purchases, etc. It is through this very portfolio approach that suppliers are able to offer attractive, competitive prices into the auction. If such suppliers are forced to lock into supply options prior to the auction, they will lose their ability to hedge through the daily decision making process of which resources to rely on to supply the BGS load short or long-term.

[Constellation IC at 12]

In its comments, NJLEUC makes repeated references to the Exelon/PSE&G merger filing.<sup>8</sup> The Board is very much aware of the potential market power issues that may arise as a result of the merger, and will be carefully reviewing the market power issue, among many other issues in that proceeding. The Board notes that NJLEUC is a party to that proceeding and certainly may pursue its market power concerns therein. However, at the current time, and for the purposes of this proceeding, the Board HEREBY REJECTS the proposal to require bidder supply source disclosure during the application process.. This determination however, does not preclude the Board from taking such action as may be determined to be required to insure the competitiveness of the Auctions and to prevent the exercise of market power.

## RATE DESIGN

### Seasonality Factors

Beginning August 1, 2003, the prices resulting from the BGS procurement process approved by the Board are being fully reflected in customer rates. Included in each EDC's current FP rate design are seasonality factors intended to align historical market conditions with the rates charged to customers. Similarly, the payments made to suppliers are also adjusted on a seasonal basis in an attempt to reduce supplier risk by matching suppliers' costs with their revenue stream and thereby obtaining more favorable prices through the Auction.

Constellation questioned the data inputs to the methodology used by the EDCs to determine the 2006 seasonality factors and in its Final Comments proposed three modifications. (Constellation Initial Comments at 13-14 and Final Comments at 7-9). Constellation has proposed that the congestion component used in the calculation of the seasonal factors should be recalculated to include the most recent three year rolling average for congestion. The EDCs concede that they eliminated 2004 from their congestion calculation due to what they viewed to be unusual congestion issues due to certain transformer problems in New Jersey. As Constellation notes, while the transformer issues in 2004 may have been subsequently corrected, there may be congestion in the future due to a variety of other reasons and 2004 should not be considered unique. The Board concurs with Constellation that 2004 should not be considered unique and should be reinstated into the congestion calculations. The Board recognizes that, in the future, there could be situations which might, in fact, be extraordinary, one-time occurrences, requiring special handling, but this is not one of those situations. Accordingly, the Board's ruling is specific to facts of this case and, in the future, should such an issue arise again, the Board will consider the set of facts at that time. Accordingly, the Board HEREBY DIRECTS the EDCs to update the congestion component

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<sup>8</sup> I/M/O of the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of Change in Control of Public Electric and Gas Company and Related Authorizations, BPU Docket No. EM05020106, OAL Docket No. PUC-1874-05

of the seasonality calculations as of October 12, 2005 and include them in the Compliance Filings that will be required as a result of this Order.

The two other recommendations from Constellation deal with the energy component of the seasonality calculation. Constellation proposes that the EDCs disclose the source data for their energy calculations and calculate the seasonal factors based on energy data obtained closer to the date of the auction. As the EDCs indicate, the energy data is provided in the EDC's July 1, 2005 filing and on the Auction website. More importantly to the Board, no one has suggested that the energy data is not reasonable for the timeframe it represents. (EDC's Final Comments at 19-20). The Board does not find Constellation's arguments for further transparency compelling. Accordingly, the Board HEREBY REJECTS this recommendation.

The final suggestion by Constellation that prices be more reflective of the marketplace at the time of the auction does have merit. The Board would like to see seasonal factors that are as accurate as possible. However, to pick a specific time at which energy prices should be fixed has the same potential for distortion as Constellation is seeking to avoid. For example, Constellation cites Hurricane Katrina, which occurred in August, as an important influencing event since the EDCs did their proposed rate design based on June 1, 2005 forward prices. The Board concurs and also believes that as time goes on the ultimate effect of this year's hurricanes will be better known and energy markets will incorporate those effects while reducing associated unknown risk factors. However, if some other significant event were to occur prior to the Auction and just prior to the final rate design calculations the result would be the same distorted calculations that Constellation is seeking to correct. Therefore, there needs to be some flexibility in the way that the energy components are handled. Accordingly, the Board DIRECTS the EDCs to update the energy component and the seasonality calculations as of October 12, 2005 and to include them in the Compliance Filings that will be required as a result of this Order, which are subject to final Board approval. This applies both to the rate design factors and the seasonal supplier payment factors which are part of one integrated process. This will provide updated factors that improve upon the June 1, 2005 forward prices used by the EDCs in their July 1 filing. Since the EDCs, in their Final Comments, have provided seasonality factors updated to September 8, 2005, the Board could revert to these calculations should some significant event occur between now and the time of the Compliance Filing approval. Should an event occur between the time of Compliance Filing approval and the Auctions, such that the effect on the seasonality factors would be significant enough to adversely impact the auction results, Staff, in consultation with the Auction Manager and Board Consultant, could bring the issue back to the Board for further consideration.

### Transitional Rate Design

In its May 5, 2005 Order, the Board indicated an interest in exploring alternative rate designs for larger C&I BGS-FP customers. In that Order, the Board directed the EDCs to include with their July filings a proposal for such a transitional rate design which would introduce larger C&I BGS-FP customers to the hourly variations in energy costs without the uncertainties and volatility of hourly pricing. Other parties were also encouraged to either provide similar rate proposals or comment on the desirability of such a change in rate design.

The EDCs took what is generally considered the on-peak hours from 8:00 am to late evening and divided them into two sets of “medium” priced hours from 8:00am to noon and again from late afternoon to late evening. The middle of the afternoon became a “higher” peak period and over night was priced on an off-peak basis. (July 1, 2005 Company Specific Addendums) While there were some potential positive aspects indicated by the EDCs, they also indicated that the transitional rate design could be confusing to larger customers if it were only “transitional” in nature. While Reliant found the transitional proposals preferable to a fixed-price rate design, it does not want time-of-use rates to substitute for or delay expansion of hourly pricing. (Reliant IC at 10). NJFC supports the transitional rates for customers between 1000 and 1250 kw. NJLEUC supports the transitional rate design concept “in theory” but finds the actual proposals too complex for customers and too costly to be viable. (NJLEUC IC at 9-11).

The Board has been considering the issue of whether and how best to ease BGS-FP customers into hourly pricing. The EDCs provided proposals that formed the basis of a worthwhile examination of the subject. While the Board might prefer that the medium-priced periods proposed by the EDCs be longer and the higher peak period shorter, the EDC proposals were supported by a least-squares regression analysis. Both the rate design proposals and supporting data might be useful for future rate design considerations. At this time, the Board is not able to justify the likely higher costs associated with the transitional rate design proposals, which are exemplified by the data provided by ACE. ACE indicates that it would cost at least \$100,000 for the 14 customers that it serves with a size between 1000kw and 1250kw. (ACE July 1, 2005 Addendum at 24-30)

The Board, in the future, could perhaps consider extending this type of rate design to as low as 500kw or even lower. However, this raises metering issues that the Board is not ready to address at this time. A transitional rate design may require a long-term plan and commitment by the Board in order to be successful and needs to be developed in conjunction with the Board’s decisions on expansion of the hourly-priced class. At this time, however, with the current uncertainty surrounding the wholesale energy markets and the time constraints inherent in the 2006 Auction process, the Board is not ready to commit to a change in rate design for the 2006 BGS Auctions. Therefore, for purposes of the 2006 BGS Auctions, the Board HEREBY APPROVES, without modification, the filed BGS-FP rate design concept.

However, the Board believes that the transitional rate design proposals put forth by the EDCs are attractive and worthy of further consideration. Furthermore, the Board is aware that the Energy Policy Act of 2005<sup>9</sup> requires that states take a comprehensive look at time-of-use metering. Therefore, the Board DIRECTS that a Transitional Rate Design Working Group be created to study this matter further. The Working Group will be chaired by the Director of the Division of Energy and include representatives from the Office of Clean Energy, The Economist’s Office and the Board’s Business Ombudsperson. The Working Group will be open to all industry participants, as well as any other interested party. It should review the data provided by the EDCs in this proceeding and consider long term rate design philosophy in the context of the Board’s goals and the requirements of EPAct 2005, while being mindful of the concerns expressed by the Board and others over expanding hourly pricing too quickly to those customers unprepared for its implications. The Working Group should also consider how metering, customer education, and peak load management will be affected by future rate design decisions and attempt to balance its recommendations with cost considerations. The Working Group should provide the Board with a preliminary report by May 1, 2006, which should contain an outline of the issues and a schedule for completing its investigation in order to meet the time

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<sup>9</sup> Section 1252 of the Energy Policy Act of 2005.

requirements of EAct 2005 and, if possible, for a Board decision on its recommendations prior to the 2007 auctions.

### JCP&L NON-UTILITY GENERATION (“NUG”) PILOT PROGRAM

For the 2004 FP Auction, 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 practice of selling NUG output 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 proposed by Board Staff beginning June 1, 2004 for three tranches of BGS load that would otherwise have been included in JCP&L’s one-year FP auction to be withheld from that auction to be served by JCP&L, in effect, from its available must-run NUG commitments. For the 2005 FP Auction, the Board continued the JCP&L NUG program for one more year. At that time, with only a few months of actual experience, the Board indicated that while there appeared to be no scheduling or other operational problems, and the first few months of this pilot appeared to have resulted in a net benefit to JCP&L ratepayers, it was too soon to judge the overall economic impact of this program. Since then, substation problems in certain parts of New Jersey resulted in higher congestion-related spot-market prices through the first part of 2005. Subsequently, increased fuel prices including the still uncertain long-term impact of Hurricane Katrina have carried the higher spot-market electric prices, including significantly higher off-peak prices, through to the current time. Consequently, the benefits that might be expected from lower overall spot market prices have thus far not been realized. Therefore, the Board HEREBY DIRECTS JCP&L to discontinue the NUG Pilot Program for the 2006 FP Auction. At such future time as market prices stabilize, the Board may revisit this issue.

However, one of the benefits of the NUG Pilot Program has been to permit JCP&L to continue to retain its LSE status and to continue to act as the Nominal Recipient of St. Lawrence Project Power, thus ensuring that the EDCs’ customers continue to receive the benefits of such low-cost power.<sup>10</sup> Accordingly, in order to avoid the loss of such benefits, the Board DIRECTS JCP&L to continue to serve 10 MW of its residential load, using the St. Lawrence Project Power, and distribute the benefits of such power to the other EDCs.

### BGS-CIEP AUCTION

#### BID PRODUCT

For the three BGS-CIEP auctions conducted by the Board, the bid product has been the “capacity charge”. The “capacity clearing price” has been included in the rates of BGS-CIEP customers. In addition, a Default Supply Service Availability Charge (“DSSAC”), which acts as an “option fee” or “standby charge” 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 past three CIEP auctions, the DSSAC fee has been set at fifteen one-thousandths of a cent (\$.00015) per kWh.

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<sup>10</sup> New Jersey’s electric public utilities and the municipal electric utilities share the benefits of approximately 7 megawatts of low-cost power derived from the St. Lawrence hydroelectric plant. JCP&L, as the recipient of this power on behalf of these entities, needs to remain an LSE.

For 2006, the EDCs have proposed that the capacity charge be fixed and that the DSSAC act as the bid product in the BGS-CIEP Auction. The EDCs assert that the change in bid product has been proposed because the cost of capacity provided to BGS-CIEP customers can be reasonably estimated while the cost of the option to provide service to BGS-CIEP customers at a fixed capacity price is difficult to estimate and best set through competition. (EDC FC at 17).

NJLEUC opposes the DSSAC in general and specifically as the bid product in the BGS-CIEP Auction (NJLEUC IC at 2-9). NJLEUC alleges that the DSSAC is unfair and compels switching customers to pay for services that they do not receive. NJLEUC also expresses concern that the DSSAC, as the bid product, could act as a "true-up" type mechanism for fixed charges such as the capacity charge and would also have a negative effect on FP customers considering a switch to CIEP service. RESA concurs with the NJLEUC assessment that the DSSAC bid product could harm the competitive market if it acts as a true-up for capacity charges. (RESA IC at 3-4). RESA points out that when the market price for capacity is higher than the administratively determined price, BGS-CIEP bidders will have to cover those higher capacity costs in their DSSAC bids. In this instance, RESA argues that CIEP customers that switch to a TPS will pay their own supplier for capacity and will also pay for the capacity charges of those who remain on BGS when they pay the capacity hedge that is included in DSSAC. Reliant also opposes a change in bid product (Reliant FC at 6-9).

Having suppliers ready to provide BGS service is a benefit to those customers taking BGS service as well as to those customers with retail suppliers who may need to avail themselves of BGS service at any time. This has been the concept of the DSSAC from the beginning. NJLEUC claims that its constituents have switched to a TPS and have no intention of returning to BGS service. However, despite NJLEUC's assertions, NJLEUC is not in any position to guarantee that none of its constituents will ever need to or choose to return to BGS. Consequently, NJLEUC's arguments are not sufficiently convincing at this time. Under EDECA, BGS providers have a legal obligation to provide default supply service for all customers who are not served by an alternate supplier. At this time, the default service is BGS provided by the EDCs and priced through the Auction process. It is gratifying to know that the NJLEUC members are currently satisfied with their choice of TPSs and plan to remain in the competitive retail market for the foreseeable future. However, conditions always change, and the continued availability of BGS service, at the customers' option, if and when needed, provides a degree of insurance to such customers that their businesses will have continued access to electric supply in the event they need to return to BGS.

The argument that switching customers could end up paying twice for capacity is true in the situation where the tariffed rate is lower than the actual market price. No one has claimed that the proposed rates of \$30/MW-day in the summer and \$5/MW-day in the non-summer months are too low. In fact, there is reason to believe that the proposed rates are at or slightly above anticipated market levels. (BGS Hearing Transcript at 53). If it turns out that market prices are below the predetermined levels, then all customers will see an adjustment to appropriate levels through a discount on the DSSAC bid. In this situation, those CIEP customers served by TPSs will also see a similar capacity adjustment even though they supposedly are being charged true market prices through their TPS. The argument goes both ways and depends on the capacity rates determined prior to the auction compared to actual market prices. Based on the current record, the capacity rates proposed appear reasonable and not likely to disadvantage any CIEP customers for the 2006 auction. However, the Board is aware that the capacity market in the PJM region is evolving and a review of the imputed capacity rates closer to the auction date has some merit.

The bid product in the CIEP Auction, whether capacity or the DSSAC, is a place holder for the named service as well as the risks, administrative costs, profit etc. that bidders consider in being prepared to provide the service. No one believes that capacity for 2005 cost \$20/Mw-day in RECO's territory and \$39/Mw-day for ACE. Neither closing price for 2005 reflected just the actual cost of capacity. Similarly, if the DSSAC were the bid product, it would not reflect just the cost of providing the service but, as parties point out, the difference between the pre-determined and actual cost of the other elements of serving the tranche. This includes capacity but also includes the other elements of a full-requirements service, including ancillary services. While the Board is concerned with the implications of tariff rates for CIEP service that do not reflect the realities of the market, the greater concern is who shoulders the burden of paying for CIEP service.

Fixing the DSSAC rate and having "capacity" act as the bid product, which includes the risks associated with providing this service, worked well the first three years. However, as the 2005 auction demonstrated, the costs of having this "option" are increasingly falling on those few customers remaining on BGS. ACE, which has the highest percentage of customers and load with retail suppliers, had a closing price in 2005 that was 57% above the next highest closing price. Since suppliers need to recover the cost of serving and standing ready to serve BGS-CIEP customers, the smaller usage over which to recover those costs drives the per unit cost higher. Under the current construct, a handful of customers, or in the extreme, one customer, remaining on BGS service would pay the risk premium of having BGS service available for all CIEP customers, including those with retail suppliers. This is not the way that the Board envisioned the costs of BGS-CIEP service being allocated and is certainly not fair to those customers remaining on BGS service for whatever their reasons. Therefore, the Board APPROVES the change in the BGS-CIEP bid product to the DSSAC.

In order to further address the concern over the tariffed capacity rates vis-à-vis actual market conditions, the Board DIRECTS the EDCs to continue to review the market prices for capacity, in conjunction with Staff, the Auction Manager and the Board's Auction Consultant.<sup>11</sup> If, as of January 5, 2006, the market price for capacity is determined to be inconsistent with the tariff rates approved herein, to a degree that would be detrimental to the auction process, Staff will recommend revised tariff rates, for Board approval prior to the 2006 auctions.,

## BGS SUPPLIER MASTER AGREEMENT

During 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, dated December 2, 2003 (Docket No. EO03050394), 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

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<sup>11</sup> The Auction Manager is National Economic Research Associates ("NERA") and the Board's Auction Consultant is CRA International ("CRA")

material change in the facts related to the specific issue. Therefore, the Board .....will 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.

For 2006, the EDCs have proposed to eliminate automatic adjustments of transmission charges paid to BGS-CIEP suppliers for changes to PJM's Open Access Transmission Tariff ("OATT"). This adjustment, as well as a similar one for BGS-FP suppliers, was first approved for the 2004 auctions. The EDCs cite the short term (12 months) of the BGS-CIEP Agreement, the administrative burden of the adjustments and the de minimus rate changes that are likely to occur as the reasons for eliminating this provision from the CIEP Agreement. (Joint EDC Proposal at 6-7).

Constellation points out that with the EDCs proposed change, CIEP bidders would be at risk for increases in OATT rates from the time their bid is accepted not from the beginning of the supply period and that reliability-must-run contracts can be filed and OATT rate increases implemented in a relatively short time frame. (Constellation FC at 2-5). IEPNJ also supports the continued "pass-through" of OATT rate changes and characterizes the policy as consistent with obtaining the lowest prices for customers. (IEPNJ IC at 6-7).

When the Board authorized the "pass-through" of OATT changes for the 2004 auctions, there was no distinction in the reasoning between the FP and CIEP auctions. The final conclusion for both auctions was that removing the risk of OATT rate changes from bidder consideration would produce the lowest closing price for BGS customers. The Board is not persuaded by the EDCs' arguments for removing that provision from the CIEP Agreement. It is not clear why the EDCs now believe that the risk to CIEP bidders is minimal or what the administrative burdens are.

Therefore, the Board APPROVES the FP and CIEP Agreements, with the CIEP Agreement modified to pass-through OATT changes to customers and suppliers. The CIEP Agreement should treat any OATT changes in a manner consistent with the provisions for the 2006 FP Agreement.

Reliant and Constellation have proposed that the Independent Credit Requirement ("ICR") be eliminated. The ICR argument falls within the category identified above of areas that "...have been resolved among the parties and/or have been fairly, properly and publicly considered by this Board." Furthermore, the Board agrees with the EDCs' argument that the Board should not rely on references to other jurisdictions, as some parties have suggested, without considering the process in that jurisdiction in detail and in its entirety. (EDCs' FC at 4). Similarly, the Board believes that the Supplier Master Agreements that were approved as part of its 2004 Auction Order and which form the basis of the Agreements before the Board today constitute a comprehensive set of terms and conditions that represent the risk/reward relationship between the parties. While some sections of the Agreements may be conducive to individual consideration and modification, the credit sections do not appear to be of that nature. At this time, the Board is not prepared to consider the credit sections of the agreements without considering the Agreements in their entirety. Therefore, the Board APPROVES the continued use of the ICR as proposed by the EDCs.

The Board is aware that as market conditions change over time, programs, policies and contracts need to be reviewed in their entirety from time to time. Therefore, it may be appropriate to review the basic Supplier Master Agreements approved by the Board for the 2004 auctions at some point after the 2006 Auctions. The Board will consider, at a future date, if, how and when it will undertake such a review.

#### EXPANSION OF THE CIEP CLASS

The current threshold for mandatory inclusion in the CIEP class is 1250 kw. 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, dampens wholesale market volatility and helps to improve system reliability. (RESA Initial Proposal at 1). RESA also supplied a report, *Assessment of Customer Response to Real Time Pricing*, prepared by the Center for Energy, Economic and Environmental Policy at Rutgers University which indicates that real-time pricing could help to address market power issues. (ibid at 5). Expansion of the CIEP class to at least customers with a peak load share ("PLS")<sup>12</sup> of 750 kw is also supported by Constellation, Direct and Reliant. 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 create and sustain a competitive marketplace. (NJLEUC Initial Proposal at 17). 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, by so doing, creates a long-standing distrust for energy competition. (RPA IC at 3-5).

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, in a time of escalating energy prices, the hedge offered by the three-year structure of FP rates has to be attractive to most customers. This is supported by the low switching rates for non-CIEP customers. In comparison, the BGS-CIEP rate reflects current electric power market prices which have increased as a result of rising fuel prices. Forcing customers out of the BGS-FP class and into the BGS-CIEP hourly class, at this time, would likely result in increased costs relative to the alternative fixed price option. The Board is aware that the fuel markets are volatile, new electric rates do not take effect until June 2006 and a lot can happen in the wholesale markets between the time of this decision and the new rate period. Despite the possible reversal of the escalation in wholesale electric prices, the Board believes that the reasonable and prudent decision in the short term is to maintain the status quo on the size of the CIEP class for the 2006 auctions, while reiterating its long term support for accurate price signals. The Board recognizes that it is not reasonable to regularly attempt to time its decisions to match market direction. However, the Board is unable to ignore the current record prices attained by almost all fossil fuels and the resulting impact that it is having on wholesale electric prices. Although maintaining the current size of the CIEP class, the Board will commit to expanding the CIEP class to a 1000kw threshold for the 2007 auctions. Therefore, the Board DIRECTS the EDCs to maintain the current structure of the CIEP class for the 2006 Auctions, save for any smaller commercial and industrial customers that are below the mandatory threshold and may currently be or may want to become part of that class. The Board

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<sup>12</sup> 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.

FURTHER DIRECTS the EDCs to include all commercial and industrial customers with a PLS of 1000 kw and greater<sup>13</sup> in the CIEP class beginning June 1, 2007.

For the 2004 and 2005 Auctions, 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. Voluntary enrollment in the CIEP class should again be permitted for the 2006 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 non-metered and other specific small commercial accounts may need to be limited, at least for the 2006 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 2006. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2006 to reconsider their decision for the upcoming 2006 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". Lastly, the Board DIRECTS the EDCs to post the conditions of the voluntary CIEP process in an appropriately conspicuous location on its webpage.

## OTHER ISSUES

### 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. The TPSs and NJLEUC generally support maintaining the charge at this level and expanding its application to customers with a PLS of 500kw and above. RESA's position, which is representative of the TPS's, is that the retail margin is necessary to create a level playing field and to send customers accurate retail price signals. (RESA FC at 5). Customer representatives, including the NJFC, favor a reduction or elimination of the retail margin, at least for FP customers. NJFC states that for FP customers the retail margin has become a penalty and only serves to raise the energy costs of those affected. (NJFC FC at 5). PSE&G claims that the retail margin is not a sustainable way to develop competitive markets and also favors reducing or eliminating it. (PSEG addenda at 3-4).

The Board is not interested in expanding the scope or the levels of the retail margin at this time. Having created a Transitional Rate Design Working Group with this Order to provide a long-term perspective on rate design issues and with the legislative creation of the BPU Business Ombudsperson, the Board anticipates significantly more information, both factual and antidotal, and mostly focused on the business community upon which to base its decision on this issue in the near future. Furthermore, the Board is not convinced that expanding the retail margin to other customers would result in any more than an added cost to these customers. TPSs may argue that the retail margin needs to be expanded to smaller customers to "level the playing field." However, as described above, with current market conditions, the hedged FP rate should be very attractive to most of these customers. Board data indicates that the retail margin has not significantly influenced the switching patterns of customers between 750kw and 1250kw.

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<sup>13</sup> 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.

Instead, and as retail suppliers have indicated in the past, even with a retail margin, other barriers to retail competition, including the inability to easily locate customers, exist.

While a reduction in the retail margin is a more likely option, and may well be the path that the Board takes in the future, the Board does not believe it is appropriate to decrease its application or size until the Working Group and Business Ombudsperson have had an opportunity to weigh in on this issue. In addition, the Board's decision to maintain the current size of the CIEP class will provide some rate stability to larger FP customers. With this in mind, because of the change already approved for the CIEP bid product, the Board believes that maintaining the retail margin at its current levels for one more year is the better course of action. Therefore, the Board FINDS that no change in the levels or the application of the retail margin is warranted, at this time. The Board will revisit the entire retail margin subject for the 2007 Auctions.

Finally, the Board wants to address the comments on this subject of ACE. ACE has proposed increasing the level of the retail margin and expanding its application, at reduced levels, to all other rate classes. (ACE addenda at 31-33). The only discernable reason for this proposal is to increase the amount that the Company would receive under ACE's proposal for use of the retail margin. While the Board will decide how to use the retail margin funds at a later date (See *USE OF RETAIL MARGIN FUNDS*, below), it is not at all receptive to ACE's argument that the company needs to be compensated for the risks of the providing default service and the auction process. Although it was not a significant consideration when the Board approved the first descending-clock auction process in 2001, the Board has always believed that the auction process eliminates almost all EDC risk associated with procuring default service. From an EDC standpoint it is among the least risky, of all the possible procurement processes that the Board could have chosen to employ. We are equally unconvinced by ACE's argument that parts of its proposal for retail margin recovery are being employed in other jurisdictions. As we indicated before, highlighting the treatment of another jurisdiction on one particular issue without considering the entire proceeding, including the environment and politics, in that jurisdiction is of little significance to this Board. While ACE has the opportunity, as do all members of the industry, to participate in the discussion on the use of the retail margin revenues, the Board feels it is important to make clear in this Order its position as to the ACE proposal as it relates to ACE's proposal on the level of the retail margin.

#### USE OF RETAIL MARGIN FUNDS

The retail margin has been in effect since August 2003. In that time, the EDCs have collected approximately \$45<sup>14</sup> million from generally larger commercial and industrial BGS customers. To date, the Board has identified uses for less than \$3 million of those funds. In July 2005, Staff informally requested that parties include positions on the use of the retail margin funds in their comments in this proceeding. Many parties have provided suggestions on this subject. In many cases the proposals have just been recommended uses for the funds without any reasoning to support the proposal.

Since a decision on this issue has no effect on the 2006 auction process and there is no other time constraints surrounding this matter, the Board will reserve decision on this subject to a later date.

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<sup>14</sup> Through August 31, 2005.

The Board would like to consider this issue separately from the auction process. It will again provide an opportunity for parties to provide recommendations for use of the retail margin funds and requests that the recommendations include supporting data and reasoning. Accordingly, the Board DIRECTS that detailed comments on the use of the retail margin funds will be accepted through November 22, 2005.<sup>15</sup> It is the Board's intention to consider those proposals shortly thereafter.

## AUCTION CONSULTANT

NJLEUC has recommended that the Board consider replacing its Auction consultant, CRA, due to what it contends is the appearance of a conflict of interest between CRA's role as Auction Consultant to the Board and the participation of other individuals within CRA in the pending Exelon/PSEG merger proceeding at the Federal Energy Regulatory Commission ("FERC"). (NJLEUC July 1, 2005 filing at 14-16). Although the individuals involved from CRA are different in each of these proceedings and although the Auction Consultant team has signed sufficient confidentiality agreements, the Board determined that it was necessary and prudent to thoroughly review the facts and consider all of its options. Therefore, the Board began considering this issue, separate from and prior to the NJLEUC comments. CRA is not participating in the merger proceeding before the BPU. While an individual from CRA did file testimony on behalf of Exelon at the FERC, CRA has provided the Board with assurances that appropriate screening measures are in place between that individual and the CRA BGS Auction team.

While the Board was and remains satisfied that no actual conflict exists, the Board did in fact consider replacing its Auction consultant, CRA. Among the steps taken by the Board, was the issuance of a new Request for Qualifications ("RFQ") for auction consultants for this year's Auctions. An evaluation committee comprised of Board Staff and individuals from the Department of Treasury reviewed responses to the RFQ. After reviewing the limited responses to the RFQ and exploring all of the issues connected to this subject, including price, the Board, in consultation with Board Staff and the Evaluation Committee, determined that CRA should continue to act as the Board's Auction consultant with all of the duties and responsibilities attached thereto.<sup>16</sup> The BPU is satisfied that with the appropriate safeguards, screening and confidentiality measures that are in place, CRA can continue to serve as the Board's Auction consultant.

## 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 four BGS auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the

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<sup>15</sup> Staff notified the utility industry of the desire for additional information and the response date through its list server normally used for such communications.

<sup>16</sup> Board Agenda meeting of August 17, 2005, Docket No. EA05040316 - In the Matter of the Request for Qualifications to Perform Oversight of the Basic Generation Service (BGS) Auction Process – Selection of Consultant.

Auction results. The Board most recently considered and ruled upon this issue in its December 1, 2004 Order (BPU Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. In its December 1, 2004 Confidentiality Order, the Board also indicated that similar confidentiality conditions were likely to be approved for the 2006 BGS Auctions. Consequently, the Board FINDS that the confidentiality provisions of its December 1, 2004 Order in Docket Number EO04040288 are necessary and appropriate for the continued success of the BGS auctions and APPROVES the same confidentiality provisions for the 2006 BGS auctions and incorporates its December 1, 2004 Order herein.

## COST RECOVERY

For each previous BGS Auction, the Board has approved the accounting and cost recovery processes identified in the Company-specific addenda to the Joint EDC Proposal. The EDCs have again identified their proposed accounting treatment for BGS service. These sections of the EDC's filings deal generally with reconciling the revenues received from BGS customers with the costs to bidders of providing the service. No party has raised any concerns or objections with this area of the EDC's proposal.

In addition to the actual costs of the service, there are the costs of the auction process which are recovered from each winning bidder through a tranche fee. The tranche fee is factored into a bidder's price and, in effect, is recovered from customers. The tranche fee is announced right before the Auction and is intended to recover the reasonable and necessary incremental costs of conducting the Auction, including obtaining Board approval, promotional activities, bidder education sessions and the cost of the Board's Auction Consultant. These costs and charges have never been reviewed in detail by the Board. Therefore, the Board DIRECTS the Division of Audits to initiate an audit of all costs recovered through the tranche fees charged by each of the four EDCs, for all four of the previous BGS Auctions. The Board FURTHER DIRECTS the EDCs to cooperate and assist the Division of Audits with this assignment, including providing Audit Staff with any necessary office space and providing all necessary documents to perform the Audit in a reasonable time frame.

In connection with the tranche fees, the Board is aware that the EDCs have applied for a patent pertaining to the BGS Auctions. The costs associated with this patent application have been included in the tranche fees in past years. Seeking a patent on their method and system for conducting an Auction may, in fact, have been a reasonable and prudent step for the EDCs to take to protect the interests of ratepayers who paid for much of the development of the auctions and for debugging and proving the methods and the systems a success. Additionally, the Board is of the view that it is entirely appropriate that, to the extent that any proprietary rights associated with the auction process have monetary or other value, these benefits should, at least in part, flow to ratepayers if the methods and systems ratepayers paid to develop are transferred to others. At the current time, Staff has informed the Board that there are ongoing discussions and unresolved issues concerning how this should be accomplished. Until there is a satisfactory Board-approved understanding concerning this subject, the Board does not consider it appropriate for ratepayers to be paying for additional costs associated with the EDCs' pursuit of any patent rights. Since the EDCs may approach this subject differently, and since some EDCs may be able to resolve this issue with Board Staff while others may not, the Board will consider treating this portion of the tranche fees separately for each EDC. Therefore, the Board DIRECTS the EDCs, that have not resolved this issue via a Board Order prior to January 20, 2006, to exclude any costs associated with its patent application from the 2006

tranche fee calculations. This is not meant to prejudge the prudence of the EDCs' patent-related expenses or the issue of passing the costs associated therewith on to customers. It is also not meant to foreclose the ability of the EDCs to seek recovery of these and future reasonable patent costs.

## 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 have been<sup>17</sup> and are anticipated to be undertaken are:

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

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

Press releases to newspapers and trade publications; and

Direct e-mails to interested parties to inform them of any new developments or any new documents posted to the website.

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

## BOARD APPROVAL PROCESS

As with previous auctions, 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*<sup>18</sup>, there are a number of decisions/actions that would need to be made after Board approval of the auction

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<sup>17</sup> 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 2006 auction.

<sup>18</sup> 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.

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 BGS auctions, a fundamental concern driving the approval process is that uncertainty or delay concerning the period between the submission of bids and the approval of the bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the 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. Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past auctions, the Board will consider the results of the BGS-FP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-FP Auction and the BGS-CIEP Auction no later than the second business day after the last Auction closes. At its discretion and depending on circumstances, the Board may address the results of one Auction that has closed while the second auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

Another decision that requires Board approval is acceptance of the EDCs' Compliance Filing. Because of the significance of this proceeding, the Board DIRECTS the EDCs to make a Compliance Filing by October 20, 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 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 the aforementioned areas, such as bidder application and credit issues, are subject to rules spelled out in the Joint EDC Proposal. Other areas, such as load caps and volume adjustment decisions, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, and auction price decrements are either Company-specific concerns, are determined directly from algorithms included in and approved as part of the Joint EDC Proposal, or are areas that need to be addressed by the Auction Manager based on its experience in this field. 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.

## 2007 PROCUREMENT PERIOD

For several years, the Board has approved a descending clock auction as the mechanism by which EDCs will obtain their supply needs. This type of auction process for the entire State's default electric needs was innovative and controversial when first proposed in 2001. Every year, the BGS Auction has produced results which have been approved by the Board and generally praised by industry participants. Since 2004, the Board has also seen increased interest from other states who are considering this type of process. Within the New Jersey process, each year the proposals and comments from industry participants speak less of alternative forms of procurement and focus more on sharpening existing policy and rectifying technical contract issues.

Although the proposals and comments this year do not specifically address the 2007 process, the Board believes that, based on current information, there is merit in reaffirming its support for the descending clock auction format. 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, the Board HEREBY TENTATIVELY APPROVES the use of a similar descending clock auction to satisfy the supply needs of the EDCs for the supply period beginning June 1, 2007.

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. Therefore, this preliminary determination with respect to the 2007 process is in no way intended to preclude the same open discussion of auction issues with similar filing requirements, discovery and opportunity for public input as in past years. The Board will announce a formal schedule and process following the conclusion of the 2006 Auctions.

## 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, 2006;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2006 period, as well as a portion of the BGS-FP service required for the 2007 and 2008 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, the default bid rules, and the introduction of a statewide load cap in the BGS-FP Auction 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;

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

The application of seasonal payment factors to the tranche-weighted auction prices, determined in the manner prescribed herein, is appropriate;

The "pass through," to both FP and CIEP customers and suppliers, 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;

Having the DSSAC as the bid product in the CIEP Auction and assessed to all CIEP customers is consistent with the Board's policy that all CIEP customers benefit and should pay the cost of having BGS-CIEP service available;

The Division of Audits should initiate an audit of the BGS tranche fees for the 2002 through 2005 auctions;

The EDCs, that do not have a board approved resolution of the patent fees issue prior to January 20, 2006, should remove from the tranche fees all costs related to pursuit of a patent for the auction systems and processes

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 comply with the Board's RPS requirements;

It is appropriate that NERA continue to act as the Auction Manager for the 2006 Auctions;

The pilot program to serve 3 tranches of JCP&L FP load from its NUG supply should be discontinued for 2006;

JCP&L should retain 10 MW of residential load to be served using St. Lawrence Project Power, with any excess load not served with the St. Lawrence Project Power being purchased from the PJM spot market;

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 2006 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 incorporated a Protective Order addressing this competitive information;

The accounting and cost recovery processes identified in the utility-specific addenda to the Joint EDC Proposal, as modified herein, and with the exception of ACE's proposal for retention of some of the retail margin revenues, 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 A reasonably balance process efficiency with Board oversight;

CRA International will remain the Board's Auction Advisor for the 2006 Auctions and will oversee the Auctions on behalf of the Board;

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

The Auction Manager will provide the post-Auction evaluation forms in Attachment B to the Board and a redacted version to the EDCs and 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 B to the Board, prior to Board certification of the results;

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

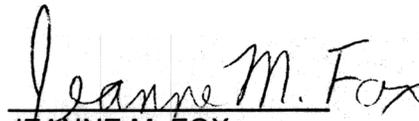
Finally, nothing herein is in any way intended to relieve the EDCs and/or the Auction Manager of their responsibilities to conduct the Auction in a lawful manner, including obtaining any appropriate licenses that may be required by law.

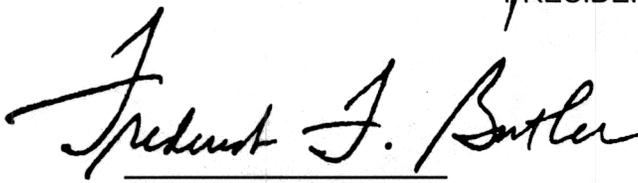
Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP and BGS-CIEP Auction Rules, the EDC-specific addenda and the Supplier Master Agreement, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject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

Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing and that the EDCs make compliance filings consistent with this decision, by Wednesday, October 26, 2005.<sup>19</sup> 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: 12/8/05

BOARD OF PUBLIC UTILITIES  
BY:

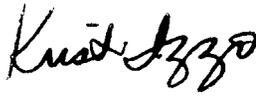
  
JEANNE M. FOX  
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FREDERICK F. BUTLER  
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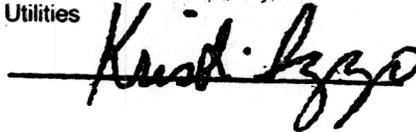
  
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JACK ALTER  
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ATTEST:

  
KRISTI IZZO  
SECRETARY

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



<sup>19</sup> 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 12, 2005 agenda meeting which was subsequently approved on November 10, 2005.

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# ATTACHMENT A

## Tentative 2006 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:

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 CRA<sup>1</sup>) 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.

<b>Decision point</b>	<b>Decision process</b>	<b>Timing</b>
Joint EDC Filing	EDCs	July 1, 2005
Decision on 2006 Process	BPU	October 12, 2005
Compliance Filing	EDCs	October 26
Approval of Compliance filing	BPU	November 10
Final Auction Rules and Supplier Agreements available	AM/EDCs	November 11
Announce minimum and maximum starting prices	AM/BA	November 21
Announce Tranche Targets	AM	November 21
Announce Load Caps	AM/BA	November 21
Information session for potential bidders	AM/EDCs	December 2
Review Part I applications	AM/BA	December 13-16

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CRA International, Inc.

## ATTACHMENT A

### Tentative 2006 (beginning 6/1/06) Approvals and Decision Process

Review Part 2 applications	AM/BA	January 10-17, 2006
Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 24
Trial Auction	AM	January 26
Establish EDC-specific starting prices	EDCs/AM/BA	Third week of January (announced to bidders on January 31 for CIEP, February 1 for FP)
BGS-CIEP Auction starts		February 3
BGS-FP Auction starts		February 6
Provide full factual report to Board	AM/BA	
Board decision on auction results	BPU	No later than by end of 2 <sup>nd</sup> business day following the calendar day on which the last auction closes.

**POST-AUCTION CHECKLIST**  
**FOR THE NEW JERSEY 2006 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 6, 2006

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

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

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

Post-Auction Checklist for the New Jersey 2006 BGS-FP Auction

ATTACHMENT B  
Docket No. EO05040317

Table below shows pertinent indicators and measures for the auction.

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

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

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

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

ATTACHMENT B  
Docket No. EO05040317

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

	Question	Comments
1	<b>CRA/NERA's recommendation as to whether the Board should certify the FP auction results?</b>	
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 2006 BGS-FP Auction

ATTACHMENT B  
Docket No. EO05040317

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 2006 BGS-FP Auction

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

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY  
2006 BGS-CIEP AUCTION**

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

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Friday, February 3, 2006

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 2006 BGS-CIEP Auction  
ATTACHMENT B  
Docket No. EO05040317

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

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

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

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

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

Post-Auction Checklist for the New Jersey 2006 BGS-CIEP Auction  
 ATTACHMENT B  
 Docket No. EO05040317

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

	Question	Comments
1	<b>CRA's/NERA's recommendation as to whether the Board should certify the CIEP auction results?</b>	
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 2006 BGS-CIEP Auction

ATTACHMENT B

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	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/NERA 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 2006 BGS-CIEP Auction

ATTACHMENT B

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