



State of New Jersey
Board of Public Utilities
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IN THE MATTER OF THE PROVISION OF)
BASIC GENERATION SERVICE FOR)
THE PERIOD BEGINNING JUNE 1, 2007

ENERGY

DECISION AND ORDER

DOCKET NO. EO06020119

(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 27, 2006 public agenda meeting pertaining to the provision of basic generation service ("BGS") for the period beginning June 1, 2007 and the 2007 BGS Auction.

By Order dated December 8, 2005, Docket No. EO05040317, the Board approved the 2006 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, 2007. By Order dated March 24, 2006, in this docket, the Board initiated the 2007 BGS proceeding by listing seven questions regarding the BGS process, and inviting interested parties to file comments on those questions. After receiving initial comments, holding a legislative-type hearing at its Newark office to hear additional comments, and receiving final comments, by Order dated July 10, 2006, 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 2007 BGS auctions, including any proposed modifications or comments to the current auction process, by July 10, 2006. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments. Further, the Board directed Staff to immediately initiate a stakeholder process to review the provisions of the Supplier Master Agreements ("SMA") and to provide a final recommendation for Board consideration.

On or about July 10, 2006, 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"), and the Retail Energy Supply Association ("RESA"). A discovery period followed.

On or about August 18, 2006, Initial Comments ("IC") on the BGS proposals were received from the Division of Rate Counsel ("Rate Counsel"); Constellation; RESA; Morgan Stanley Capital Group Inc. ("MSCG"), the Joint EDCs, as well as individually from PSE&G and JCP&L.

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. ACE's public hearing was held on September 11, 2006; PSE&G's public hearing was held on September 13, 2006; RECO's public hearing was held on September 14, 2006; and JCP&L's public hearing was held on September 15, 2006. The hearings were attended by Board Staff, Rate Counsel, and the EDCs. No members of the public appeared at any of the hearings.

The Board also held a legislative-type hearing ("LH") on September 21, 2006, at its Newark office, chaired by Commissioner Joseph L. Fiordaliso. Also participating were President Jeanne M. Fox, Commissioner Connie O. Hughes, and Commissioner Christine V. Bator. The purpose of the hearing was to take comments on the pending proposals. The EDCs, National Economic Research Associates ("NERA"), Rate Counsel, RESA, Constellation, the Independent Energy Producers of New Jersey ("IEPNJ"), MSCG and Dr. Fred Grygiel presented comments for the record, and were questioned by the Commissioners and Board Staff.

Final Comments ("FC") on the issues were submitted on or about September 22, 2006 by the EDCs, Rate Counsel, Constellation, RESA, the New Jersey Business & Industry Association ("NJBI"), MSCG and JCP&L.

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 10, 2006 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.

JOINT EDC PROPOSAL

On July 10, 2006, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for Basic Generation Service beginning on June 1, 2007, including proposed preliminary auction rules for the auctions, Supplier Master Agreements and EDC-specific addenda. At that time, the EDCs also posted to the BGS Auction web site draft applications and a proposed alternate guaranty process for supplier comments.

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

One auction would procure service for a one-year period beginning June 1, 2007, for the approximately

2000 larger commercial and industrial (“C&I”) customers on the EDCs’ systems through an auction to provide hourly-priced service (“BGS- Commercial and Industrial Energy Pricing (“CIEP”) Auction”). The customers in this category represent approximately 3,000 megawatts (“MW”) of load to be procured through bidding on 120 full-requirements tranches¹ of approximately 25 MW each. This is the same type and size auction that the Board approved last year in Docket No. EO05040317.

The second auction would procure one-third of the service requirements for all other customers of all four EDCs, for a three-year period beginning June 1, 2007, through a fixed-price auction (“BGS-FP Auction”) for approximately 5,300 MW of load to be served through 51 full-requirements tranches² of approximately 100 MW each.

The competitive process by which the EDCs propose to procure their supply for BGS load for 2007 is detailed in the Joint EDC Proposal and in Appendices A and B thereto (Provisional CIEP and FP Auction Rules, respectively) and is the same type of auction process that the Board has approved for each of the past five years. Under the Joint EDC Proposal, the retail load of each EDC is considered a separate “product” in each Auction. When a participant bids in either BGS Auction, that participant states the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-FP Auction, a price for an EDC is the amount in cents per kilowatt-hour (“kWh”) to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in dollars per megawatt-day (\$/MW-day) paid for the capacity obligation of BGS-CIEP customers served. A tranche of one product (*i.e.* a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services, etc.) tranche. At the end of the Auctions, the final prices for the EDCs’ tranches may be different because of differences in the products, due to each EDC’s load factor, delivery location and other factors.

The EDCs 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-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 ancillary service costs, and a provision to pass through the hourly PJM³ real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and various other payments for energy, ancillary services and transmission which would be known in advance of the auction. Under the EDCs’ proposal, winning bidders would also receive a Default Service Supply Availability Charge (“DSSAC”) of \$0.00015/kwh. The DSSAC would essentially act as an “option fee.” The capacity payment would be charged to all CIEP customers on BGS service, while the DSSAC would be charged to all customers in the CIEP service category whether

¹ A tranche is a full-requirements product and represents a fixed percentage share of an EDC’s load for a specific period.

² The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2009 by means of Board-approved auctions in February 2005 and February 2006.

³ PJM, the Pennsylvania-New Jersey-Maryland Interconnection, is the regional transmission organization that manages the wholesale competitive energy market, and coordinates the movement of electricity in all or parts of a group of states including parts of New Jersey.

they take BGS service or obtain service through a TPS. Winning bidders would be paid the auction clearing price for all capacity provided for customers taking BGS-CIEP service plus the DSSAC rate times the monthly sales to all CIEP customers, whether on BGS-CIEP or not. Under the Joint EDC Proposal, each BGS supplier would be required to assume PJM Load Serving Entity ("LSE") responsibility for the portion of BGS load (whether BGS-CIEP or BGS-FP) served by that supplier. In accordance with the PJM Agreements required of LSEs, BGS suppliers would be physically and 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, 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;
- 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,⁴ 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 2007 BGS-CIEP auction bid product that will have suppliers bidding on a capacity obligation, rather than the DSSAC as was done in the 2006 Auction. This proposed change in the BGS-CIEP auction will be discussed in detail herein.

⁴ 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.

DISCUSSION AND FINDINGS

AUCTION FORMAT

The Board is aware that the current BGS auction process contains a set of carefully crafted and well defined features and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the auction process was a new concept, the Board 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.⁵ 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, 2004, and 2005 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.⁶

By Order dated July 10, 2006 in this matter the Board again indicated that it favors a descending-clock auction procurement process to secure the EDC's BGS-FP electric requirements for the period beginning June 1, 2007. In its Order the Board instructed the four EDCs to file procurement proposals by July 10, 2006 using the descending-clock auction format for the BGS-FP auction process. The Board also indicated that while it still favors a descending-clock auction to select BGS-CIEP suppliers, it reserved final determination on the BGS-CIEP procurement process at that time.

While the Board is again faced with recommendations for modifications to certain elements of the BGS-CIEP auction process, no one has suggested changing the basic descending-clock auction design to procure the full service requirements of BGS-CIEP customers who remain with the EDCs. The Board believes that the BGS-CIEP auction process that was implemented starting with the 2003 Auctions has since worked well in subsequent auctions, and has resulted in the best prices possible at the time.

Based on the success of previous BGS Auctions and having considered the record which has been developed in this matter, the Board concludes, and HEREBY FINDS that, with certain refinements and enhancements as will be discussed herein, a BGS-CIEP auction using a descending-clock auction format should be used for the procurement period beginning June 1, 2007.

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 BGS ratepayers. In making its decision, the Board has considered the suggestions that were made, including modifying the length of the FP supply period for certain customers to an annual auction, expanding the size of the CIEP customer class, and amending the Supplier Master Agreements, 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. The Board will address each of these areas in this Order.

⁵ Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

⁶ Board Orders dated December 2, 2003, Docket No EO03050394; December 1, 2004, Docket No. EO04040288; and December 8, 2005, Docket No. EO050403317.

BGS-FP AUCTION

SUPPLY PERIOD

The EDCs currently have one-third of their FP supply under contract through May 31, 2008 and another one-third through May 31, 2009. They propose that the 2007 FP Auction be for the remaining one-third of their supply requirements for a three year period through May 31, 2010. The EDCs indicate that the current three year rolling average provides stability to those smaller commercial and industrial customers unable to engage in, or uninterested in, risk management. Further, in the past the three year rolling average has insulated FP customers from drastic increases in electricity costs, thus minimizing rate shock. RESA has proposed that the Board introduce, in the 2007 auction, a twelve-month FP product for commercial and industrial customers. (RESA FC at 3). This new FP product would serve the commercial and industrial FP load and would apply to all non-residential customers with a peak load share of between 1,000 kW (the lower limit for CIEP that the Board has previously determined to apply in June 2007) and 100 kW. RESA states that because the current prices reflect a three year rolling average, the current FP price for large customers does not reflect a true market price, and that a one year FP product will allow larger FP customers to see a market-reflective price for electricity. Further RESA states that under the current structure for BGS-FP, customers have little incentive to change, and because of barriers to entry, suppliers have little incentive to come into that market. (RESA FC at 3). Constellation recommends that the Board reject the RESA proposal to change the structure of the BGS-FP product. (Constellation IC at 2).

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; however it may make it more difficult for retail suppliers to compete for FP customers in times of rising prices. By way of contrast however, 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 the Board indicated when it adopted the current auction structure, the benefits to customer rates and rate stability associated with the staggered three-year rolling procurement process outweigh the alleged benefits of short term contracts of a duration of one year or less. Therefore, the Board DIRECTS the EDCs to procure the approximate one-third of the EDCs' current BGS-FP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the 36-month period, as well as the 36-month supply contracts secured previously, will be used to determine the price for BGS-FP rates for the June 1, 2007 to May 31, 2008 period.

PORTFOLIO APPROACH

In order to provide greater price stability for BGS-FP customers, Rate Counsel requests that the Board consider expanding the type of resources considered for the provision of BGS supply. This would include the use of longer-term contracts (i.e. the length of time for the procurement period for the BGS-FP Auction), including the use of demand response to create a portfolio of resources for BGS-FP service. Rate Counsel recommends that the Board endorse its BGS Portfolio proposal as a reasonable approach for obtaining BGS-FP supply in the future, and subject the portfolio concept to further study and analysis over the next six months by a working group. Based on the input from the working group, the Board could decide how best to proceed. (Rate Counsel FC at 5).

Comverge, Inc. in its comments dated May 2, 2006, submitted in connection with the Board's July 10, 2006 Order, supported Rate Counsel's proposal that a portfolio approach would be beneficial and should include demand response. Comverge in its comments at that time suggested having in place a specific program by October 2006 which addresses demand response as part of the BGS portfolio for the 2007 Auction.

The Board agrees with Rate Counsel that a working group should be created to study how a portfolio of resources could be created for the BGS-FP service that could provide greater price stability for BGS-FP customers. If other longer-term resources are available, and if it is feasible and economic to do so, longer term resources could be added to the BGS-FP supply mix. Further, the Board agrees that the working group should consider a portfolio approach that includes the use of demand side resources as part of the BGS-FP supply mix with the goal of reducing suppliers' peak resource needs thereby having a positive impact for all consumers. Accordingly, the Board DIRECTS Staff to convene and chair a BGS working group to review and make recommendations regarding the incorporation of a BGS Portfolio approach that includes longer-term contracts as part of the BGS-FP supply in the future. Further, it is the intent of the Board to have the BGS working group consider and make recommendations concerning the inclusion of demand-side resources and renewable energy as part of the BGS supply mix. The working group will convene upon completion of the 2007 BGS Auction, and within six months thereafter will present a report to the Board. It is the intent of the Board to coordinate these issues with the Energy Master Plan proceeding.

In this proceeding, Comverge only provided a brief description as to how to implement a portfolio program within the BGS Auction process. Without program specifics, the Board has been unable to determine whether the Comverge proposal could be implemented in the 2007 BGS Auction. However, Comverge has recognized and supports Rate Counsel's proposal that a portfolio approach would be beneficial and should include demand response alternatives. The Board DIRECTS that the Comverge proposal, as well as other relevant proposals be examined as part of the BGS working group's review of Rate Counsel's BGS portfolio approach.

AUCTION RULES

Rate Counsel has repeated its request, made with regard to prior auctions, to change two of the auction rules regarding the BGS-FP auction. The first proposal is that prices should "tick down on ties." Rate Counsel's second proposal is that bidders be paid the last price that they bid ("pay-as-bid"), rather than the higher clearing price which is the current practice.

Rate Counsel offers no new arguments or evidence to show how its proposed auction rule changes would benefit ratepayers. In previous years, the Board in approving the Auction expressed concerns with these proposals of Rate Counsel. Specifically, the Board expressed the concern that (1) Rate Counsel's position could result in bidders being paid different prices for delivering the same product which may distort the perceived difference between products in the auctions; and (2) the proposal does not seem to account for alternate bidding patterns under alternate rule structures. Based on the comments received in this current BGS proceeding, the Board continues to have the same concerns and remains unpersuaded that Rate Counsel's proposed modifications to this aspect of the auction rules would enhance the current auction process. Therefore, the Board APPROVES the auction rules as proposed by the EDCs. However, in an effort for the Board to gain additional knowledge regarding Rate Counsel's two proposed auction rule changes, "tick down on ties" and "pay-as-bid" the Board

requests that its Auction Consultant,⁷ in its Final Report to the Board on the BGS Auction, provide an assessment of these proposals and their potential impact on the BGS Auction.

BGS-CIEP AUCTION

BID PRODUCT

For the 2003, 2004 and 2005 BGS-CIEP auctions, the bid product was the “capacity charge.” The “capacity clearing price” was included in the rates of BGS-CIEP customers. In addition, a Default Service Supply Availability Charge (“DSSAC”), which acts as an “option fee” or “standby fee” for having BGS available as a default service, is currently assessed to all CIEP customers on a per kWh basis and paid to winning BGS-CIEP bidders. For the first three CIEP Auctions, the DSSAC fee was set at fifteen one-thousandths of a cent (\$.00015) per kWh. In each of these years of the BGS-CIEP Auctions, the entire load was fully subscribed.

For the 2006 BGS-CIEP Auction, the EDCs had proposed a bid product that was changed to the DSSAC from the capacity charge. The 2006 BGS-CIEP Auction was not fully subscribed. The EDCs now believe that the reduced interest in the 2006 BGS-CIEP Auction most likely stemmed from this change, which affected how bidders would be compensated for migration, coupled with a starting price that did not fully capture the volatility in the capacity and ancillary service markets. Given the importance of a fully subscribed BGS-CIEP Auction, the EDCs’ 2007 Auction Proposal includes a return to the capacity charge as the bid element to be assessed to all CIEP customers on a per kWh basis and paid to winning BGS-CIEP bidders. In addition, as in the past, the EDCs propose a DSSAC as a fixed charge of \$0.00015 per kWh. All BGS suppliers and the IEPNJ support this change.

RESA proposed that beginning with next year’s CIEP auction, the DSSAC should be eliminated so that customers that switch to a TPS would not pay that charge. In its place, RESA proposes that (1) the capacity for BGS-CIEP customers be determined within the PJM pricing structure, which at present consists of monthly capacity auctions; and (2) the BGS suppliers be determined by bidding into the annual BGS-CIEP auction a “CIEP Service Charge” comprised of ancillary services and other non-capacity marketplace risks (*e.g.*, supplier margin, scheduling, spinning reserve, quick start, secondary reserve, operating reserve, etc). Constellation request suggests that the Board reject RESA’s proposal regarding the structure of the BGS-CIEP product. (Constellation IC at 2).

The Board is mindful that the BGS-CIEP bid product that has been proposed by the EDCs was part of the auction product that was used in several of the previous CIEP auctions, in which the entire load bid in those auctions was satisfactorily procured. Given the importance of a fully subscribed BGS-CIEP Auction, the Board finds that there should be a return to this BGS-CIEP bid product. Therefore, the Board APPROVES the EDCs’ proposal to return to the capacity charge as the BGS-CIEP bid element, and the return to the use of the DSSAC as a fixed charge of \$0.00015 per kWh. Further, the Board DIRECTS the EDCs to change the name Default Service Supply Availability Charge (“DSSAC”) to “CIEP Stand-by Fee.”

⁷ Boston Pacific, Inc. (BP) has been retained as the Board’s auction consultant.

SUPPLY PERIOD

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

THRESHOLDS FOR MANDATORY INCLUSION IN THE CIEP CLASS

As previously determined by the Board in connection with the 2006 BGS Auction, the threshold for mandatory inclusion in the CIEP class is 1,000 kW for the 2007 BGS Auction. Further mandatory expansion of this class for the 2008 BGS-CIEP Auction is supported by RESA for customers with a peak load share ("PLS")⁸ of 500 kW and above. RESA claims that those customers will then be in a market where they can receive offerings of energy products and services that are tailored to their business needs and risk profiles. They will also get the real-time price signals they need to take full advantage of load management and energy conservation and efficiency programs. (RESA FC at 2). Expansion of the CIEP class to at least customers with a peak load share of 750 kW is also supported by Constellation. (Constellation FC at 8). The EDCs support keeping the BGS-CIEP threshold at the current level through the 2008 Auction, citing that many smaller BGS-CIEP eligible customers still remain on the default hourly BGS-CIEP rate, despite having years to switch to a third party supplier. The EDCs state that lowering the mandatory BGS-CIEP threshold to include smaller customers has not had the same effect on retail competition for these smaller customers that it has had for the larger, and presumably more knowledgeable, energy consumers (EDCs FC at 7). The New Jersey Business & Industry Association ("NJBIA") opposes any efforts by the Board to lower the threshold of ratepayers subject to the retail margin and mandatory competitive shopping (NJBIA FC at 1).

As the Board has stated in previous Orders,⁹ it 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 additional 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. However, while such action might encourage shopping, the Board wants to make any transition for larger commercial and industrial customers to hourly pricing in an orderly manner that allows for an informed consumer decision. The Board remains concerned about the limited data concerning the decision-making of those customers that remain on BGS-CIEP service. The Board is not suggesting that BGS-CIEP may not be an appropriate choice for some customers. However, the anecdotal information suggests that while some customers have made the conscious decision to remain on BGS, at least for the current period, others have had few or no competitive offers, and still others may not have fully understood the impact of the change to hourly pricing and their options.

As switching data indicates that more of the smaller CIEP eligible customers remain on BGS service, the Board is concerned with mandating an expansion of this class without a better appreciation for the consequences. In particular, the Board is interested in data concerning the information available to CIEP customers, the level of understanding among customers of the possible impact of hourly pricing,

⁸ 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.

⁹ Board Order dated December 1, 2004, Docket No. EO04040288, and Board Order dated December 8, 2006, Docket No. EO05040317.

hourly pricing, whether customers who were moved to the CIEP class who either remain with the utility or have switched to a TPS have lowered their electricity costs as compared to those they incurred as a FP customer, the degree to which electric supply and electric supply options are important to the customers' operations, the extent to which competitive options are available to smaller customers, the reason why customers remain on BGS-CIEP service, how customers are faring compared to BGS-FP equivalent and how interested are customers with a peak load share under 1,000 kW in being included in the CIEP class. Therefore, the Board DIRECTS that its Business Energy Ombudsperson's Office, in conjunction with Board Staff, investigate these questions, and provide its findings to the Board no later than August 21, 2007.

While it continues to gather information, the Board believes that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy at this time, to any expansion of BGS-CIEP class and accordingly FINDS that a continuation of the peak load share of 1,000 kW is the appropriate cutoff for mandatory inclusion in the CIEP class for the 2008 Auction. Therefore, the Board DIRECTS the EDCs to maintain the current structure of the CIEP class for the 2008 BGS-CIEP Auctions. Voluntary inclusion in CIEP continues to be available consistent with the Board's Order of December 2, 2003. The Board will review this issue again next year to consider whether there should be any further mandatory expansion of the CIEP class for future procurement periods.

For the 2004, 2005 and 2006 Auctions, the Board permitted certain Commercial and Industrial FP 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 2007 Auction with similar constraints. Specifically, the choice must be made in a timely manner and, once made, must be irrevocable for the term of the CIEP contract. Therefore, the Board DIRECTS the EDCs to work with Staff to develop a process and schedule for identifying and converting non-residential customers that choose to be included in the BGS-CIEP category. The process developed should be based on the foregoing parameters. It should also require a customer commitment, for participation, by no later than the second business day in January 2007. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2007 to reconsider their decision for the upcoming 2007 Auction. The Board DIRECTS the EDCs to work with Staff to develop and implement a process to so notify voluntary customers of this "window of opportunity." The Board also DIRECTS the EDCs to post the conditions of the voluntary CIEP process in an appropriately conspicuous location on their web pages.

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. RESA recommends that, in parallel with its proposal for expansion of the CIEP class for the BGS year beginning June 1, 2008, the application of the retail margin be extended to all customers with a peak load share of 300 kW and above. (RESA FC at 4). Constellation recommends that the Board retain the retail margin for service beginning on June 1, 2007 for all customers with a PLS of 750 kW and above. (Constellation FC at 9).

In its post-Transition Period Year One Order in Docket Nos. EX01110754 and EO02070384 dated December 18, 2002, the Board approved the imposition of the retail margin as a way to reflect within the BGS prices those costs of providing electric service at retail, including marketing costs and administrative expenses, that must be absorbed by third party suppliers seeking to compete for that

market. The Board imposed the retail margin on larger customers, those with a load above 750 kW, in the belief that these customers should be encouraged to shop for retail electric suppliers, and that this group of larger customers would be more attractive to licensed suppliers. At that time, the Board was concerned that imposing the retail margin on smaller FP customers would increase the cost of electricity to these customers with minimal resulting benefits due to limited available offerings from third party suppliers. Similar concerns exist today.

Before the Board makes an adjustment to the retail margin, it will seek additional information. Having established a Business Energy Ombudsperson's Office, the Board anticipates having significantly more information particularly relating to the business community, upon which to base its decision on this issue in the near future. Further, the Energy Master Plan process will be studying aspects of the retail adder, including, but not limited to, the rationale for it, its uses, and its effectiveness.

At this time, the Board does not believe it is appropriate to modify the application or size of the retail margin until the Business Energy Ombudsperson's Office has had an opportunity to provide input on this issue, and the Board has had an opportunity to review any information obtained from the Energy Master Plan process. With this in mind, 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 issue for the 2008 Auctions.

The Board has determined that the retail margin monies should be held in a State account, rather than held by the EDCs until a Board determination as to usage. Therefore, the Board HEREBY MODIFIES its prior directive to the EDCs to hold the retail margin monies pending Board directions on usage; HEREBY DIRECTS the EDCs to remit to the State Treasurer within ten (10) days of the date of this Order, all retail margin monies previously collected and required by prior Board Orders to be held by the EDCs with all accrued interest; and HEREBY FURTHER DIRECTS the EDCs to remit to the State Treasurer on a quarterly basis all retail margin monies hereafter collected with accrued interest, and pending the quarterly remittance to the State Treasurer to hold the retail margin monies in a separate interest bearing account.

BGS SUPPLIER MASTER AGREEMENT

In its March 24, 2006 Order, the Board directed the parties to revisit the terms and conditions of the Supplier Master Agreements ("SMA"). Without exception, and with only some concerns expressed by the EDCs, the parties believed at that time that it was reasonable to revisit the SMAs. The Board concurred that the SMAs need to be periodically revisited in light of lessons learned over the years, and in order to encourage a broad and deep interest in the BGS Auction among potential participants. Thus, the Board directed Staff to immediately initiate a stakeholder process to review the provisions of the SMAs. As a result of several meetings between the EDCs and interested parties, the following issues were raised that will be addressed by the Board herein.

The first issue relates to Section 15.9 of the Board-approved BGS-FP and BGS-CIEP SMAs. Section 15.9 provides a means for increasing (or decreasing) the rates paid by the EDCs to BGS Suppliers to compensate the suppliers for FERC-approved rate increases (or decreases) for Firm Transmission Services.¹⁰ The section provides that rate increases for Firm Transmission Services would include changes to any charge or surcharge imposed on customers receiving Firm Transmission Services. Section 15.9 further provides that if, during the term of the SMA, a filing is made with the FERC to increase the rates for Firm Transmission Services, the EDCs will seek approval from the Board to

¹⁰ Approved by the Board for inclusion in the SMA in its December 2, 2003 Order, Docket No. EO03050394.

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

For 2006, Rate Counsel requests that the Board eliminate Section 15.9 of the SMA. Rate Counsel argues that Section 15.9 is not consistent with the purpose of the BGS-FP Auction, which they claim is to obtain a fixed price for customers. (Rate Counsel LH at 2). MSCG urges the Board to maintain the protections of Section 15.9. MSCG states that by permitting such actual cost increases, consumers will not pay for unnecessary estimates and risk premiums and, in turn, participation by bidders will be encouraged. (MSCG FC at 2). Constellation also urges that the Board maintain Section 15.9. Constellation points out that such rate increases are fixed costs which are standard for all market participants, and changes to such costs cannot be controlled by Suppliers. Constellation contends that without Section 15.9, BGS bidders will be forced to account for the likelihood of transmission rate changes during the terms of the SMAs, and likely will include risk premiums to account for their perceived risk of rate changes. According to Constellation, BGS consumers could thus be forced to pay for BGS Suppliers' perceived risk of rate changes, regardless of whether such changes actually occur. (Constellation FC at 3). The EDCs oppose changes to the current Board-approved treatment of increases and decreases in Firm Transmission or Network Integration Transmission Service charges. (EDCs FC at 2).

The Board has also carefully considered that many suppliers in this proceeding indicated that elimination of Section 15.9 of the SMA would present serious drawbacks. BGS suppliers contend that, in order to hedge against potential increases in rates for Firm Transmission Service, they would have to include in their bids any expected or potential price increases for such service, as well as attempt to address the regulatory risk of unexpected increases. The Board is concerned that such "hedging" could result in ratepayers paying for a winning bidder's estimate of rate increases, rather than for the actual incurred costs, as is in place today by virtue of Section 15.9 of the SMA. Further, with respect to Rate Counsel's concerns, the Board is also concerned with undue volatility in rates, particularly for small customers. The Board remains just as concerned now, as it was in the past with obtaining the lowest prices possible through the BGS Auction process. If the pass through of FERC-approved changes in rates for Firm Transmission Service as effectuated by Section 15.9 of the SMA, were eliminated, then the Board, and BGS customers would be forced to rely on BGS Suppliers' "best guess" as to both the risk and size of potential rate increases. Section 15.9 removes the guesswork from the equation. For that reason, the Board believes that, based on the information available at this time, the risks to BGS customers outweigh any potential benefits of eliminating Section 15.9. Accordingly, the Board DENIES Rate Counsel's request to eliminate Section 15.9 of the SMAs, and APPROVES Section 15.9 of the SMAs as filed by the EDCs. However, in an effort to gain information regarding this issue, the Board instructs Staff to consult with industry stakeholders to determine how such potential FERC increases are handled elsewhere in the country for the consideration of the Board and interested parties in connection with the 2008 BGS Auction.

Second, certain suppliers advocate the elimination of the Independent Credit Requirement (“ICR”)¹¹ and the Market-to-Market Multiplier (“MTM”).¹² They offer two rationales for these proposals. First they argue that the combination of the current MTM multiplier and the ICR results in an over-collateralization, and increases suppliers’ costs. Second, they claim that the ICR feature does not exist in other jurisdictions.

After carefully considering this request, the Board concludes that customers should be protected from any default by suppliers providing BGS, and the ICR and the MTM multiplier provide adequate protection. Since BGS suppliers are LSEs in PJM, the EDCs have transferred the PJM market credit requirements to BGS suppliers. As a result, the primary collateral underlying the SMA is the posting of security in excess of the unsecured credit line. Such monetary security is necessary in the event that a BGS supplier encounters financial difficulties or market prices increase suddenly which could cause a BGS supplier to default on its obligations. In such an event, customers would be protected by the ICR and MTM because the EDCs would have sufficient access to funds to replace the missing supply. The monetary protection currently in the SMA provides critical protection to the EDCs and their customers in the event of a default. Therefore, the Board DENIES the request to eliminate or reduce the ICR or MTM multiplier in the BGS-FP SMA.

The third issue involves reciprocal credit between the EDCs and BGS winning suppliers. As a result of discussions between the EDCs and suppliers, the EDCs have agreed to provide for accelerated payments in the event that an EDC’s credit rating drops below investment grade during the term of the SMA. Thus, the EDCs will modify both the BGS-FP and the BGS-CIEP SMA to provide for twice per month payments, if an EDC’s credit rating drops below investment grade. The Board FINDS this modification to be reasonable and APPROVES modification of both the BGS-FP and the BGS-CIEP SMA to provide for twice per month payments, if an EDC’s credit rating drops below investment grade.

Fourth, Constellation has proposed changes to the SMA that would either delete or modify the Notional Quantity Language in Section 5.4(a). Constellation proposes two different SMAs, one designated for mark-to-market accounting treatment, and the other for accrual accounting treatment.

The existing language of Section 5.4(a) of the SMA, which has been used in the past, provides all parties with flexibility in determining the accounting treatment they seek. The BGS SMA was carefully written to allow a BGS Supplier to choose mark-to-market accounting or accrual accounting treatment using a single SMA. One of the strengths of the BGS process is a standard statewide SMA which is uniformly applied, and therefore affords no opportunity for advantages to any individual BGS Supplier. Therefore, the Board DENIES Constellation’s proposal to either eliminate or amend Section 5.4(a) of the SMA.

Rate Counsel had also previously filed comments requesting that the Board direct BGS suppliers to provide information on underlying supply contracts to the BPU in order to gauge the competitiveness of the auction. The Board in its July 2006 Order determined that it would not at that time require disclosure of suppliers’ sources of supply. Rate Counsel has modified and resubmitted its request focusing on aspects of maintaining system reliability, stating that the Board needs more information than it has today about the source of supply in order to better protect New Jersey ratepayers from uncertainties of electric generation.

¹¹ The ICR requires that winning bidders post a fixed amount of collateral to cover the risk of costs that the utility may incur during the 20 day time from the time of an event of default until the termination Payment is calculated. The fixed amount of collateral has been established as \$2.4 million per tranche, declining over the life of the contract.

¹² The MTM is used to calculate the daily exposure for each BGS-FP supplier.

The Board has always been mindful of ensuring reliability of power supply and delivery systems for New Jersey's ratepayers. PJM has also undertaken responsibility for ensuring system reliability. Each winning bidder in the New Jersey BGS Auction must become a LSE at PJM. This is a contractual requirement with PJM, where each LSE (winning bidder) is assigned a capacity obligation based on the load it will serve as a result of the BGS Auction. This capacity obligation includes not only the actual load won in the auction, but also a reserve margin. Each supplier must prove to PJM at various points in time, including up to the time it provides power as required under the SMA, that it can meet its capacity obligations. This process ensures that the necessary generation resources or supply contracts are in place to satisfy the load that is bid under the BGS Auction. Further, if a BGS supplier defaults or uncertainties arise, PJM dispatches generation on an hourly basis to maintain system reliability, ensuring that customers always receive power regardless of the underlying contractual relationships among its members.

Based on the fact that PJM has a process in place to ensure system reliability in both the long and short term, the Board remains unpersuaded by Rate Counsel's arguments that the BGS winning suppliers need to provide information on underlying supply contracts for the Board to maintain system reliability. Therefore the Board DENIES Rate Counsel's request for information concerning the underlying supply arrangements of winning bidders.

However, in recognition of the Board's statutory mandate to ensure safe, adequate, and proper utility services at just and reasonable rates for customers in New Jersey, and in recognition of the changes to the wholesale marketplace that have occurred since the initial implementation of the competitive BGS procurement process, the Board DIRECTS that, independent of the BGS Auction process, the PJM Market Monitoring Unit should be solicited to undertake a comprehensive assessment of the state of the underlying BGS wholesale market, including, but not limited to, market structure, market power and mitigation measures, current market rules, an assessment of the current BGS auction rules, and recommend improvements that might serve to enhance the competitiveness of BGS Auction. Subsequent to the consideration of this matter at the Board's October 27, 2006 meeting, on November 15, 2006, President Fox sent a letter to Dr. Bowring of the PJM MMU requesting the aforementioned assistance.

RATE COUNSEL REQUEST FOR ACCESS TO CONFIDENTIAL AUCTION INFORMATION

Rate Counsel has requested that it be provided with more details of the BGS auction that the Board's Commissioners, Staff, Staff's Consultant, and NERA have. The Board agrees that it is appropriate to give Rate Counsel a better understanding of the BGS Auction, and that it should be permitted to view the Auction as it unfolds. Each year a viewing location is provided where designated EDC staff and Board Staff can watch each round of both the BGS-FP and BGS-CIEP Auctions. The Board finds that two designated staff members from Rate Counsel should also be permitted to visit that location to see the rounds of the auction. Due to the confidential nature of the information that will therefore be available, the Board will require the designated Rate Counsel staff to individually sign the confidentiality agreement required of all other viewers. Therefore, the Board APPROVES two designated Rate Counsel Representatives to be allowed to view the Auction at the designated viewing location used by the EDCs, subject to signing the appropriate confidentiality agreement.

AUCTION CONSULTANT

The Board will utilize the services of a consultant to provide oversight of the BGS Auction process.¹³ The Board DIRECTS the EDCs to include the cost of the Auction consultant's contract in the tranche fees collected from winning bidders. Each EDC's percentage of the cost will be based on its total load in the BGS-FP Auction. The Board DIRECTS the EDCs to transfer the full amount of the contract based on these percentages to the Department of Treasury upon request.

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 Auction results. The Board considered and ruled upon Auction confidentiality issues 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. These provisions were adopted and applied in subsequent Auctions. The Board FINDS that the confidentiality provisions of its December 1, 2004 Order in Docket Number EO04040288 remain necessary and appropriate for the continued success of the BGS auctions, and APPROVES the same confidentiality provisions for the 2007 BGS Auctions and incorporates the reasoning and relevant provisions of its December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

AUCTION PROMOTION/DEVELOPMENT

The Board concludes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock auction, provided that the rules and details are specified and implemented correctly, and provided that the auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps to be undertaken are the following:¹⁴

- Bidder Information Sessions in Philadelphia and Washington, D.C.;
- An Auction web site at www.bgs-auction.com which publicizes new developments, allows interested parties to download documents related to the Auctions, has FAQs (Frequently Asked

¹³ As previously noted, prior to the issuance of this Order, Boston Pacific was retained as the Board's Auction consultant.

¹⁴ 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 2007 auction.

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 web site.

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

BOARD APPROVAL PROCESS

As with previous auctions, 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*,¹⁵ there are a number of decisions/actions that would need to be made after Board approval of the auction process. Each of these decisions/actions needs to take place according to such a schedule in order that the bidders are prepared for 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 Auctions' 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.

¹⁵ 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.

Another decision that requires Board approval is acceptance of the EDCs' Compliance Filing. Because of the significance of this proceeding, the Board DIRECTS the EDCs to make a Compliance Filing by November 3, 2006. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.¹⁶

Either the EDCs or the Auction Manager, in consultation with Staff and the Board's consultant, may make other Auction decisions as identified in Attachment A to this Order. These decisions include establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, specific bidder application and credit issues, load cap and volume adjustment decisions, Auction price decrements and other 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, the Board DIRECTS Staff to immediately bring the matter to the Board's attention.

For the final certification of the Auctions' results, the Board will schedule a special agenda meeting for the first day of the Auctions, as a forum to consider any unforeseen circumstances, should any develop. When the Auctions are complete, the Board will review and consider the results. 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 Rate Counsel. The Board's Auction consultant shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in the form of Attachment B to this Order, prior to Board certification of the results.

FINDINGS AND CONCLUSIONS

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

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

As specified in the March 24, 2006 Order, suppliers were provided an opportunity to comment on the applications and alternate guaranty process;

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, 2007;

¹⁶ Prior to issuance of this Order, the EDCs submitted the required Compliance Filings, which the Board approved at its November 9, 2006 agenda meeting. Parties were so notified by Secretary's letter of the same date.

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2007 period, as well as a portion of the BGS-FP service required for the 2008 and 2009 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, 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 non-shopping BGS-CIEP load for a 12-month period is appropriate;

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

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

Recovery of increases (or decreases) in rates for Firm Transmission Service from both FP and CIEP customers, and payment of such increases (or downward adjustments to rates paid) to BGS Suppliers, as provided in Section 15.9 of the SMAs is appropriate;

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

The EDCs shall remit to the State Treasurer all retail margin monies previously collected with accrued interest, and shall remit to the State Treasurer on a quarterly basis all retail margin monies hereafter collected with accrued interest, holding the retail margin monies in a separate interest bearing account pending such remittance;

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

The EDCs 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;

The EDCs have designated NERA to continue to act as the Auction Manager for the 2007 Auctions;

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

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

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

The EDC-specific Contingency Plans are reasonable;

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

BP will be the Board's Auction Advisor for the 2007 Auctions and will oversee the Auctions on behalf of the Board;

A designee from the Board's Energy Division and its consultant, BP, 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 Rate Counsel on the results of the Auctions and how the Auctions were conducted, prior to Board certification of the results;

BP shall also provide a completed post-Auction evaluation form in 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;

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 Rate Counsel on the results of the Auctions and how the Auctions were conducted;

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

For RPS compliance purposes, winning bidders in the 2007 BGS Auction, through the EDCs, will be credited with an equivalent level of NUG RECs as would be available to them through the EDCs, assuming the EDCs had an unappealable right to such RECs.

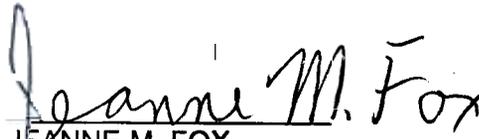
Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP and BGS-CIEP Auction Rules, the EDC-specific addenda and the Supplier Master Agreements, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject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

Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision, by Friday, November 3, 2006.¹⁷ The Board FURTHER DIRECTS the EDCs to work with Staff and the BP to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

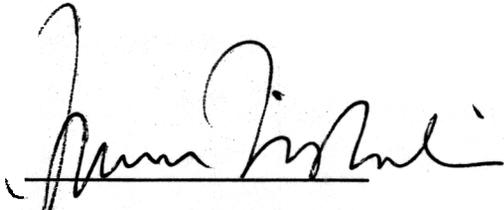
DATED: 12/22/06



BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

¹⁷ As previously noted, in order to maintain the timeline requirements imposed by the auction process, on November 3, 2006 the EDCs made the compliance filings based on the decision at the Board's October 27, 2006 agenda meeting. Those filings were subsequently approved on November 9, 2006.

SEPARATE OPINION OF COMMISSIONER CONNIE O. HUGHES JOINING IN PART
AND ABSTAINING IN PART

I respectfully abstain from the majority rulings on maintaining the 1000 kW threshold for mandatory inclusion in the CIEP class for the 2008 BGS Auction, and from the rulings on the retail margin, both as to the requirements for remittance of retail margin monies to the Department of the Treasury, and as to the continuance of the retail margin charge to customers with a peak load share of 750 kW and above.

My abstention on these issues is based upon the fact that insufficient information was provided for me to make an informed decision on these matters. I join with the majority decision with regard to all other decisions.



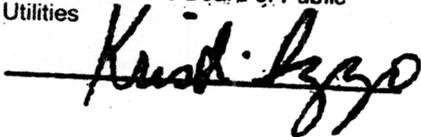
CONNIE O. HUGHES
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

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



ATTACHMENT A

Tentative 2007 Auction Approvals and Decision Process

This document sets forth a high level view of the proposed approval and interaction process. For purposes of the decision making schedule, the following abbreviations apply:

1. EDCs – These are decisions for which the EDCs are solely responsible. The EDCs may draw upon the Auction Manager or consultants as they desire.
2. EDCs/BA – These are decisions for which the EDCs are solely responsible, where the Board Advisor (Staff and/or BP¹) will have an opportunity to observe the decision process, but for which consensus or approval is not requested.
3. EDCs/AM/BA – These are decisions for which the EDCs are responsible, but where the Auction Manager may advise and the Board Advisor (Staff and/or BP) will have an opportunity to observe.
4. AM/BA – These are actions for which the Auction Manager is responsible and which the BA will have the opportunity to observe and advise.
5. BPU – These are actions to be taken by the Board.
6. AM/EDCs – These are actions for which the Auction Manager is responsible and for which the Auction Manager acts in concert with the EDCs.

Decision point	Decision process	Timing
Joint EDC Filing	EDCs	July 10, 2006
Decision on 2007 Process	BPU	October 27, 2006
Compliance Filing	EDCs	November 3, 2006
Approval of Compliance filing	BPU	November 9, 2006
Final Auction Rules and Supplier Agreements available	AM/EDCs	November 10, 2006
Announce minimum and maximum starting prices	AM/BA	November 20, 2006
Announce Tranche Targets	AM	November 20, 2006
Announce Load Caps	AM/BA	November 20, 2006
Information session for potential bidders	AM/EDCs	December 1, 2006
Review Part I applications	AM/BA	December 12-15, 2006

¹ Boston Pacific Company, Inc.

ATTACHMENT A

Tentative 2007 (beginning 6/1/07) Approvals and Decision Process

Review Part 2 applications	AM/BA	January 9-16, 2007
Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 23, 2007
Trial Auction	AM	January 25, 2007
Establish EDC-specific starting prices	EDCs/AM/BA	Third week of January (announced to bidders on January 30, 2007 for CIEP, January 31, 2007 for FP)
BGS-CIEP Auction starts		February 2, 2007
BGS-FP Auction starts		February 5, 2007
Provide full factual report to Board	AM/BA	
Board decision on auction results	BPU	No later than by end of 2 nd business day following the calendar day on which the last auction closes.

**ATTACHMENT B
Docket No. EO06020119**

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2007 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 5, 2007

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

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

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

Post-Auction Checklist for the New Jersey 2007 BGS-FP Auction

ATTACHMENT B
Docket No. EO06020119

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

Table 1. Summary of BGS-FP Auction

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

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

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

Post-Auction Checklist for the New Jersey 2007 BGS-FP Auction

ATTACHMENT B
Docket No. EO06020119

Table 2. Overview of Findings on BGS-FP Auction

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

Post-Auction Checklist for the New Jersey 2007 BGS-FP Auction

ATTACHMENT B
Docket No. EO06020119

	Question	Comments
12	From what BP/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and CRA during the FP auction?	
13	From what BP/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 BP/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	
18	Were there any complaints from bidders about the process that BP/NERA believed were legitimate?	
19	Was the 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 BP/NERA could observe, was sensitive information treated appropriately?	

Post-Auction Checklist for the New Jersey 2007 BGS-FP Auction

ATTACHMENT B
Docket No. EO06020119

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

ATTACHMENT B
Docket No. EO06020119

POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2007 BGS-CIEP AUCTION

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round at [x:xx am] on Friday, February 2, 2007

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 2007 BGS-CIEP Auction
ATTACHMENT B
 Docket No. EO06020119

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 2007 BGS-CIEP Auction

ATTACHMENT B
Docket No. EO06020119

Table 2. Overview of Findings on BGS-CIEP Auction

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

Post-Auction Checklist for the New Jersey 2007 BGS-CIEP Auction
ATTACHMENT B
Docket No. EO06020119

	Question	Comments
12	From what BP/NERA could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BP/NERA during the CIEP auction?	
13	From what BP/NERA could observe, were the protocols followed for decisions regarding changes in CIEP auction parameters (e.g., volume, load cap, bid decrements)?	
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the CIEP auction software double-checked or reproduced off-line by the Auction Manager?	
15	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	
16	From what BP/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17	Was there evidence that bidders felt unduly rushed during the process?	
18	Were there any complaints from bidders about the process that BP/NERA believed were legitimate?	
19	Was the CIEP auction carried out in an acceptably fair and transparent manner?	
20	Was there evidence of non-productive "gaming" on the part of bidders?	
21	Was there any evidence of collusion or improper coordination among bidders?	
22	Was there any evidence of a breakdown in competition in the CIEP auction?	
23	Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	
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 2007 BGS-CIEP Auction
ATTACHMENT B
Docket No. EO06020119

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



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

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

ENERGY

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. EDC-SPECIFIC STARTING PRICES

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

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

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

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

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

III. INDICATIVE OFFERS

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

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

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

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

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

IV. ROUND PRICES AND INDIVIDUAL BIDS

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

For similar reasons to those set forth above in Indicative Offers, the individual bids contain proprietary commercial and financial information. N.J.S.A. 47:1A-1.1. Furthermore, release of either the round-by-round price or the number of tranches individually bid in a round would allow the bidders to mathematically work backwards and determine the incremental algorithm used by the auction manager to make volume adjustments during the course of the auction. As explained in Section I, *supra*, revealing this methodology could impede the current and any future competitive process to the detriment of customers.

Accordingly, the Board FINDS and CONCLUDES that this information could provide an anti-competitive advantage to competitors or bidders, and shall be deemed confidential and not considered a government record pursuant to OPRA.

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

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

V. BIDDER INFORMATION

While the upcoming auction will be held in February 2005, the period of power supply being procured will not begin to flow until June 1, 2005. For all past auctions, the list of bidders obtaining contracts was announced with the Board Order approving the auction results. Approximately one month before the load was to be served, when suppliers had presumably locked up their contracts, the list of bidders with BGS contracts along with the volumes and prices for each contract were released. The reason for the delayed release of this information was to ensure that the bidders were not placed at a competitive disadvantage. As stated above,

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

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

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

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

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

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

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

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

Part 1-Application Form:

Bidding Agreements

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

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

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

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

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

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

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

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

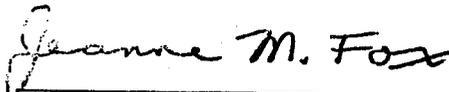
Should a request for the public bidder information provided to NERA concerning non-successful bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied, since such information would identify the non-successful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

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

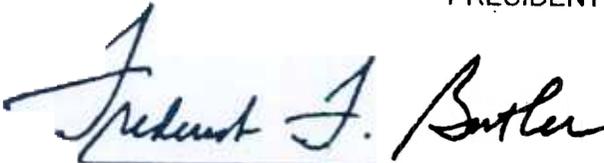
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

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BY:



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COMMISSIONER



CONNIE O. HUGHES
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Basic Generation Service ("BGS")
EO06020119
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