



Agenda Date: 11/10/10

Agenda Item: 2E

## STATE OF NEW JERSEY

### Board of Public Utilities

Two Gateway Center, Suite 801

Newark, NJ 07102

[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

### ENERGY

IN THE MATTER OF THE PROVISION OF BASIC	)	DECISION AND ORDER
GENERATION SERVICE FOR THE PERIOD	)	
BEGINNING JUNE 1, 2011	)	DOCKET NO. ER10040287

(E-SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes actions taken by the Board of Public Utilities ("Board" or "BPU") at its November 10, 2010 agenda meeting pertaining to the provision of basic generation service ("BGS") for retail customers who continue to purchase their electric supply from their electric utility company for the period beginning June 1, 2011.

By Order dated June 21, 2010, in the within matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"); Jersey Central Power & Light Company ("JCP&L"); Public Service Electric and Gas Company ("PSE&G"); and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 1, 2010 to determine how to procure the remaining one-third of the State's BGS fixed price ("FP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2011. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On July 1, 2010, 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. A proposal was also submitted by the New Jersey Division of Rate Counsel ("Rate Counsel"). A discovery period followed. Initial Comments on the BGS proposals were filed on August 27, 2010. Final Comments were initially scheduled to be filed on September 24, 2010, but that deadline was extended to October 1, 2010 as requested by Rate Counsel.

Parties that filed either a proposal, comments, or appeared at the public hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), Rate Counsel, Retail Energy Supply Association ("RESA"), Constellation Energy Commodities Group/Constellation New Energy, Inc ("Constellation"), and PSE&G, separately.

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. ACE's public hearing was held on August 31, 2010; PSE&G's public hearing was held on September 15, 2010; RECO's Public hearing was held on September 15,

2010; and JCP&L's public hearing was held on September 20, 2010. No members of the public appeared at any of the hearings.

The Board also held a legislative-type hearing on September 21, 2010 at its Newark hearing room, chaired by Commissioner Elizabeth Randall. Commissioner Joseph Fiordaliso also participated. The purpose of the hearing was to take comments on the pending proposals.

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

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely relied on previous auctions and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. 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, this Order will summarize the main features of the July 1, 2010 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 and rendering this decision.

#### JOINT EDC PROPOSAL

On July 1 2010, the four EDCs filed a generic proposal for BGS beginning on June 1, 2011, including proposed preliminary auction rules for the auctions, Supplier Master Agreements ("SMAs"), and EDC-specific addenda.

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

One Auction would procure the service requirements for a one-year period beginning June 1, 2011, for the approximately 2600 larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an Auction to provide hourly-priced service (the "BGS-CIEP Auction"). The customers in this category represent approximately 3300 Megawatts ("MW") of load to be procured through bidding on 46 full-requirements tranches<sup>1</sup> of approximately 75 MW each<sup>2</sup>. This is the same type of Auction that the Board approved last year in Docket EO09050351.

The second Auction would procure one-third of the service requirements for all other customers of all four EDCs<sup>3</sup>, for a three-year period beginning June 1, 2011, through a fixed-price Auction ("BGS-FP Auction") for approximately 5300 MW of load to be served through 53 full-requirements

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

<sup>2</sup> The 75 MW tranche size is an approximate amount of BGS-CIEP eligible load for ACE, JCP&L and PSE&G tranches. However, RECO only has one tranche with an eligible load of about 38 MW.

<sup>3</sup> A portion of RECO's service territory lies outside of the area managed by PJM as described in footnote 9. No procurement process is needed for that area at this time.

tranches<sup>4</sup> of approximately 100 MW each. This is the same type of Auction that the Board approved last year in Docket EO09050351.

The competitive process by which the EDCs propose to procure their supply for BGS load for period beginning June, 1 2011 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 nine 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 proposed 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 seasonality and time of use indications, where appropriate and feasible, in order to provide appropriate price signals.

The EDCs proposed that payments to winning BGS-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 proposed that for BGS-CIEP tranches, rate schedules would be designed to include the transmission and ancillary service costs, and a provision to pass through the hourly PJM<sup>5</sup> 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 Standby Charge of \$0.00015/kWh. The Standby Charge would essentially act as an “option fee.” The capacity payment would be charged to all CIEP customers on BGS service, while the Standby Charge would be charged to all customers in the CIEP service category whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided for customers taking BGS-CIEP service plus the Standby Charge rate times the monthly sales to all CIEP customers, whether on BGS-CIEP or not. Under the Joint EDC Proposal, each BGS supplier would be required to assume PJM Load Serving Entity (“LSE”) responsibility for the portion of BGS load

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<sup>4</sup> The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2011 by means of Board-approved Auctions in February 2009 and February 2010.

<sup>5</sup> PJM, the Pennsylvania-New Jersey-Maryland Interconnection, is the Federal Regulatory Energy Commission approved 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 most of New Jersey.

(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 requested that the Board render a decision on the Auction process, and thereafter render a decision on the results of the Auctions. Specifically, they requested that the Board approve or reject in their entirety the results of the BGS-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 recommended that the Board clarify that, at its discretion, it may act on one completed Auction while the second is still ongoing. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

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

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

- BGS suppliers must meet all New Jersey Renewable Portfolio Standards (“RPS”) requirements, and any similar standards imposed under any federal, state or local legislation that may be applicable throughout the respective supply periods;
- as conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS 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 letter of credit or bid bond; and
- the BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-FP Auction secures one-third of each EDC’s total load requirements for three years,<sup>6</sup> with the remaining two-thirds having been secured through previous BGS-FP Auctions.

The EDCs have proposed only minor changes in their filing regarding the BGS-FP rate design this year as discussed below, with the balance of the filing essentially identical to last year.

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<sup>6</sup> While the concept is to divide the EDCs’ load requirements into thirds, the actual tranches available for any EDC for any time period may vary by EDC.

## DISCUSSION AND FINDINGS

### FP and CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2011, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework and varying procurement periods. The Board's decision at that time was developed after considering all of the comments received. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-FP and BGS-CIEP customers.<sup>7</sup> For the 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 BGS Auctions, the Board continued to approve descending-clock Auctions for the procurement of default service while continuing to adjust certain elements of the process including changing the beginning of the supply period from August to June and expanding the size of the CIEP class.<sup>8</sup>

As previously stated, for the period beginning June 1, 2011, by Order dated June 21, 2010, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-FP and the annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the FP and CIEP customer classes for the period beginning June 1, 2011. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-FP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive comments and criticism in order to improve on a process important to all of the EDCs' electric ratepayers. In making its decision, the Board has considered the suggestions that were made. The Board has attempted to reach a balance of competing interests, mindful of its statutory responsibility to ensure continued provision of BGS at just and reasonable rates. The Board will address the issues raised by the various parties during the proceeding in this Order.

Based on the experience of previous BGS Auctions, and having considered the record which has been developed in this matter, the Board concludes and FINDS that, with certain refinements and enhancements as will be discussed herein, a BGS-FP and BGS-CIEP Auction using a descending-clock Auction format should be used for the procurement period beginning June 1, 2011.

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<sup>7</sup> Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

<sup>8</sup> Board Orders dated December 2, 2003, Docket No. EO03050394; December 1, 2004, Docket No. EO04040288; December 8, 2005, Docket No. EO05040317; December 22, 2006, Docket No. EO06020119; January 25, 2008, Docket No. ER07060379; January 20, 2009, Docket No. ER08050310; and December 10, 2009, Docket No. EO09050351.

## BGS PORTFOLIO APPROACH FOR FP CUSTOMERS

As in years past, Rate Counsel has proposed the creation of a statewide Portfolio Manager to expand BGS-FP service to include, if economically attractive, a wider range of resource options than is currently available through the three-year laddered Auction. Rate Counsel has proposed that a Portfolio Manager with the authority to explore and recommend longer term contracts could take advantage of opportunities available in the evolving energy markets. Likewise, according to Rate Counsel, a Portfolio Manager could negotiate supply contracts with individual generators who may offer to serve load under contract at favorable low rates. Rate Counsel suggests that entering into supply contracts may also operate to encourage long term capacity to stay in New Jersey and thereby reduce capacity prices in the PJM market for all customers. In addition, Rate Counsel maintains that adopting a portfolio management approach could assist in the procurement of state-mandated renewable energy. Given the increasing statewide requirement for renewable energy generation, a Portfolio Manager could help retain benefits for consumers by procuring through, long-term contracting mechanisms, energy, capacity and REC/SRECs on behalf of ratepayers. This procurement would serve as a complement to the current Auction procurement process. According to Rate Counsel, long term contracts for renewable generation resources might provide the least cost solution to meeting the State's Renewable Portfolio Standard ("RPS") requirements. Including renewable energy in a portfolio approach would have the added benefit of not only reducing energy price volatility, but also potentially lowering the overall cost of renewable resources. (Rate Counsel's Initial Comments at 1-2.)

The EDCs oppose Rate Counsel's proposal for a BGS portfolio manager. The EDCs indicate that the winning bidders in the BGS Auction manage portfolios and there are approximately 16 BGS-FP providers. The EDCs point out that these providers became winners in the BGS Auction by competing to serve BGS customers, and by striving to be the best at assembling supply components (energy, capacity, etc.) in the competitive power market, while at the same time assessing and pricing the risks associated with serving a percentage of BGS load. The EDCs argue that by assembling efficient portfolios, winning BGS bidders effectively marshal competitive forces and thereby provide the benefits of portfolio management to BGS customers. Further, the EDCs contend that a portfolio manager of the type proposed by Rate Counsel would not be an entity disciplined by the market that assembles and manages a portfolio at its own risk, but rather, an entity that manages a portfolio for a fee and at the BGS customers' risk. They feel that it is not reasonable to believe that such an entity would face similarly strong incentives, would have the same competency at managing a portfolio or would be disciplined as strongly by competitive forces as are the current BGS suppliers who are already portfolio managers in the competitive marketplace. (EDCs' Final Comments at 3-4.)

Constellation recommended that the Board should again reject the Rate Counsel proposal for a portfolio management approach. According to Constellation, the current BGS structure allows for the most capable parties – wholesale suppliers – to perform the task of portfolio management. (Constellation's Initial Comments at 4.) According to Constellation, the procurement analysis attached to its comments shows that while a portfolio management approach may appear cheaper with regard to the price for supply, consumers would be faced with more costs due to increased risks. (*Id.* at 5.) Constellation also cited the recent decision of the Rhode Island Public Utilities Commission rejecting a portfolio management approach in some part due to a concern that significant incremental costs associated with long term contracts could be passed on to the customers who fail to switch and remain on default service. (Constellation's Final Comments at 6.)

RESA maintains that Rate Counsel ignores the fact that BGS suppliers are large, sophisticated energy companies that already employ portfolio managers to procure the most cost effective bids for the BGS process as defined under the current BGS structure. RESA further points out that by moving towards a portfolio manager, Rate Counsel would be substituting the expertise and experience of multiple BGS-supplier portfolio managers with a single administratively chosen manager. (RESA's Final Comments at 2.)

Based on the record presented in this proceeding, at this time the Board is concerned with how Rate Counsel's proposal could be implemented for a BGS procurement for the period beginning June 1, 2011 since Rate Counsel has conceded that the Board itself would not be contracting for BGS supply, and "the details of any energy procurement outside of the BGS Auction would need to be worked out." (Rate Counsel's Final Comments at 3.) Therefore, the Board's concerns include, but are not limited to: 1) how Rate Counsel's proposal could be implemented in time for a procurement process to obtain supplies needed for the period beginning June 1, 2011; 2) whether use of a portfolio manager, as suggested by Rate Counsel, does not undermine one of the features of the BGS Auction which puts the burden on winning bidders who have the expertise in portfolio management and do indeed use portfolios to serve their obligations to deliver full requirements service under the BGS Auction, and 3) whether a portfolio manager could outperform the market, or would such an entity be likely to enter into deals or conduct procurements at times which, with the benefit of hindsight, turn out not to be in the best interest of ratepayers. Accordingly, the Board DENIES Rate Counsel's request to include a portfolio approach, as well as the use of a portfolio manager to implement a BGS portfolio, as part of the current BGS Auction process for the period beginning June 1, 2011.

#### BGS-FP AUCTION SUPPLY PERIOD

RESA recommends that the three-year rolling term structure for BGS-FP be shortened, and that procurements be more frequent and for shorter periods of time, such as one quarter of a year. RESA believes the best way to correct the issues associated with BGS-FP is to shorten the length of the BGS-FP supply contracts to reflect quarterly, bi-annual or one year pricing terms. RESA argues that this would help align prices with more current market conditions, and avoid boom and bust cycles in TPS penetration. The current blended portfolio approach imposes artificial above-market or below market prices on consumers, and prevents TPSs from offering customers a competitive choice for energy supply and therefore should be changed. (RESA's Initial Comments at 2-3.)

The EDCs have two thirds of their BGS-FP supply under contract through May 31, 2012, and an additional one-third contracted through May 31, 2013. As stated previously, in the July 1 filing, they again propose that the 2011 BGS-FP Auction be used to procure one-third of their supply requirements for a three-year period, June 1, 2011 through May 31, 2014. The EDCs indicate that the current three-year rolling average provides some level of stability to customers unable to engage in, or uninterested in, risk management. In the past, the three-year rolling average has insulated BGS-FP customers from drastic increases in electricity costs, thus minimizing rate shock. (EDCs' Joint Proposal at 5.)

The EDCs request that the Board reject RESA's recommendations to shorten the BGS term structure. As the EDCs have observed, the rolling three-year term has been found in the past to provide the proper balance for BGS-FP customers between the need to reflect market prices and the need to protect these customers from market volatility. Additionally, as market prices have now been declining for over two years, the use of a three year term clearly has not

disadvantaged TPSs as shown by the current level of switching. (EDCs Final Comments at 13-14.)

Constellation also supports the continued use of the three-year rolling contracts as providing the proper combination of competitive prices and stable rates for consumers. (Constellation's Initial Comments at 4.) Rate Counsel opposes any movement to shorter-term energy procurements without the benefit of a comprehensive examination of wholesale market alternatives. (Rate Counsel's Final Comments at 9.)

The Board recognizes that the staggered three-year rolling procurement process currently in use for the BGS-FP Auction provides a hedge to customers in a time of increasing energy and/or capacity prices; however, it also has recognized that it may make it more difficult for retail suppliers to compete for FP customers in times of rising prices. By way of contrast, as market prices started to come down in wholesale electric markets over the last two years, retail suppliers have been able to be more competitive than the rolling three-year average Auction price, and competition appears to have increased. 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. Gauging by the results of past BGS Auctions, such Auctions could increase the short-term costs to customers. Based on the information in the record, including the results of past BGS Auctions, the Board is of the opinion that the benefits to customers' rates and rate stability associated with the staggered three-year rolling procurement process outweigh the purported benefits of short term contracts with a duration of one year or less. The recent proposal of the Illinois Power Agency for its power procurement plan, Attachment A to Rate Counsel's Final Comments, agreed that the highest probability of cost stability and lowest risk is obtained through relatively even procurement over a three-year period which represents the current period of sufficient liquidity in the wholesale energy markets. 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, 2011 to May 31, 2014 period.

#### BGS-CIEP AUCTION SUPPLY PERIOD

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

#### RENEWABLE PORTFOLIO STANDARDS ("RPS") AUCTION

Rate Counsel supports the separation of the RPS obligations from the provision of BGS supply. Rate Counsel argues there are a number of advantages to doing this. Rate Counsel notes that the Boston Pacific Inc.'s Final Report on the 2010 BGS procurement supports the potential separation of RPS obligations from the provision of BGS supply as is currently done via the Auction process. (Rate Counsel's July 1 Comments at 2-3.) Boston Pacific in its 2010 BGS Final Report<sup>9</sup> articulated a few potential benefits to conducting a separate competitive solicitation to

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<sup>9</sup> Boston Pacific, Inc. ("Boston Pacific") was retained in December 2007 on behalf of the Board, to oversee and monitor the process proposed by the four EDCs in New Jersey to procure supplies for BGS, for three years, starting with the 2008 BGS procurement process. Its contract was extended one year to include the 2011 BGS Auction. As



procure New Jersey's RPS requirements. First, there seems to be a different pool of bidders for REC solicitations that specialize in renewable energy. Second, procuring RECs in a separate solicitation provides New Jersey more flexibility in meeting its renewable requirements. Third, having a separate renewables RFP or auction would allow for shorter-term products for RECs without having to change the BGS-FP Auction. Finally, removing the RPS requirements from the Auction should not adversely affect the Auction. (Boston Pacific *2010 Annual Final Report on the 2010 BGS FP and CIEP Auctions*, Boston Pacific Company, Inc., April 21, 2010, at 7.)

Rate Counsel expects that the result of such a separation would be lower BGS-FP Auction prices, since the renewable component would no longer be part of that obligation. For the reasons noted by Boston Pacific, Rate Counsel expects this price reduction to fully offset the costs of separate EDC procurement for the renewable obligations. Thus, according to Rate Counsel, a separation should result in overall net benefits for ratepayers. Rate Counsel also notes that other, but not all, "deregulated" states have also separated renewable resource obligations from standard offer (or BGS-like) procurement mechanisms. (Rate Counsel's Initial Comments at 9.)

Based on the record presented in this proceeding, at this time the Board is concerned with how Rate Counsel's proposal could be implemented for the BGS Auction for the period beginning June 1, 2011. Accordingly, the Board DENIES Rate Counsel's request to separate the RPS requirements from the Auction as part of the current BGS procurement process for the period beginning June 1, 2011. However, the Board notes that Rate Counsel and Boston Pacific's recommendation may have some merit, and therefore, the Board DIRECTS the Division of Energy and the Board's Policy and Planning group to examine internally the viability of this option after the 2011 Auctions, and report back to the Board.

#### METHOD USED FOR SETTING SEASONAL FACTORS FOR RATE DESIGN PURPOSES

The EDCs' rate design methodology uses the current 12-month forward energy prices, and also uses actual RPM and transmission prices to calculate a summer and a winter BGS supplier payment factor. The summer payment factor is applied to the Auction price in each of the four summer months (June, July, August and September), while the winter payment factor is applied in all other months.

The pattern of 12-month forward energy prices at the time of the EDCs' July 1 filing, coupled with the actual RPM capacity and transmission prices which are not seasonally differentiated, resulted in winter payment factors that were higher than summer payment factors for some of the EDCs. In previous BGS-FP Auctions, the summer payment factors were typically higher than the winter payment factors for each of the EDCs.

The EDCs believe that using these inverted seasonal factors based on an atypical 12-month forward price pattern for the three years of the upcoming BGS-FP contract period would not accurately reflect the cost of electricity during the relevant period. The EDCs have requested that the Board allow for a possible revision to the seasonal factors. The EDCs propose to apply the methodology contained in the July 1 filing (or the methodology as approved by the Board) at the time of the compliance filing using data available at that time and provide the rate design

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part of its contract, Boston Pacific provides a Final Report to the Board on the BGS procurement process, and also provides recommendations to improve future BGS procurement processes. At its April 27, 2009 Agenda meeting, the Board accepted for filing Boston Pacific's Annual Final Report on the 2010 BGS FP and CIEP Auctions, dated April 22, 2010.

spreadsheets to the Board. The EDCs also request that the Board allow for possible revision of the seasonality factors in January with inputs that reflect the most recent data, and for the revised rate design spreadsheets to be provided to the Board at that time. If the rate design methodology using updated data continues to result in an inverted summer and winter for an EDC (i.e., a summer factor below 1.0 and a winter factor above 1.0), the EDCs request that the Board allow the affected EDC to set both its winter and summer payment factors to 1.0. If the rate design methodology using updated data results in a normal pattern of summer and winter payment factors (i.e., a summer factor above 1.0 and a winter factor below 1.0), then the EDCs will use the actual summer and winter payment factors calculated in the filed rate design methodology.

The Board believes that the EDCs' proposal is reasonable and appropriate, and therefore, APPROVES the EDCs' proposal to set the summer and winter payment factors to 1.0 in the event the approved rate design methodology would otherwise result in inverted summer and winter payment factors, and HEREBY AUTHORIZES the EDCs to provide revised rate design spreadsheets in January to reflect updated data should that be needed to accurately set the seasonal factors.

## CAPACITY PROCUREMENT

Rate Counsel supports an examination by the Board of new ways to procure capacity on behalf of BGS-FP customers. There are a number of benefits of using other vehicles to procure capacity for the BGS-FP load, according to Rate Counsel. For example, as a result of the single-clearing-price RPM construct, every new MW of capacity that would be built in New Jersey for New Jersey load would help to lower the clearing price for all capacity in New Jersey. Rate Counsel states that New Jersey is a net importer of energy and capacity resources, and since the commencement of the PJM RPM construct for capacity (2006-2007), there have been relatively low levels of new capacity construction in the State leaving capacity prices quite high for ratepayers. Rate Counsel supports initiating an analysis of whether direct capacity procurement using alternatives to the bundled BGS supply product would lower capacity costs for BGS ratepayers. (Rate Counsel's Initial Comments at 4.)

Constellation contends that any separate procurement of capacity outside the BGS Auction process would lead to added costs for New Jersey ratepayers that might be more rightly borne by the entire PJM region. If New Jersey chooses to act independently, according to Constellation, it may result in New Jersey ratepayers alone shouldering an expensive hedge for the region. Constellation looks forward to continued dialogue between the Board, PJM and all other interested parties in developing and implementing regional, market-based solutions for regional reliability. (Constellation's Final Comments at 6-9). The EDCs also believe that the BGS proceeding is the wrong forum for addressing the State's capacity needs. (EDCs Final Comments at 7.)

The Board agrees that this issue is already being examined in another Board proceeding, In the Matter of the New Jersey Board of Public Utilities Review of the State's Electric Power and Capacity Needs, Docket No. EO09110920, and therefore, the Board DENIES Rate Counsel's recommendation that this issue be decided as part of the BGS proceeding for the period beginning June 1, 2011.

## NOTIONAL QUANTITY LANGUAGE

Constellation again urges the Board to require the EDCs to revise the Notional Quantity Language in the last sentence in Section 5.4(a) of the proposed SMAs to make this optional, at the discretion of the wholesale supplier, due to what Constellation states are the specific accounting consequences to a supplier from net settling a default service contract. Constellation argues that it has become industry standard practice to make the Notional Quantity Language in the SMA optional because it broadens the pool of bidders, while continuing to allow diverse parties to participate in the BGS process. Constellation further argues that, if an SMA that is designated as a normal purchase and sale were to be net settled, it could require under certain circumstances that the SMA be rebooked as a mark-to-market contract, potentially causing significant consequences. According to Constellation, this makes the SMA unassignable for any supplier that has designated the SMA as a normal purchase or sale, and therefore suppliers would be unable to transfer obligations to other suppliers in cases of financial difficulty. As a result, Constellation claims that, without addition of the proposed change, potential bidders will limit participation in Auctions and include additional risk premiums in their bids. (Constellation's Initial Comments at 8-9.)

The EDCs request that the Board reject Constellation's suggestion of making the Notional Quantity Language optional. The EDCs do not agree that these changes are necessary, that the current provision hurts participation or that Constellation's interpretation of accounting principles is correct. The EDCs do believe that the concept of a standard contract is a hallmark of the BGS process. A contract with an optional element is not a standard contract. If the practice of alternative permitted provisions is established, the EDCs are concerned about the ability to preserve the important protection of a single standard contract. (EDCs' Final Comments at 11-12.)

This is the ninth year in which the Board has considered issues concerning the SMA. The Board remains interested in proposals that may increase the number of bidders in the BGS Auction. Additionally, given that participation in the Auction has been robust, that there is a lack of support for the proposed change, and the fact that the Board in previous BGS proceedings rejected this proposed change and has not been presented with any new evidence to support it, Board APPROVES the EDCs' BGS-FP SMA and the BGS-CIEP SMA as filed for the 2011 Auctions subject to the modifications required by this Order.

## INCREASED SWITCHING IMPLICATIONS

PSE&G submitted Supplemental Final Comments, in addition to the Joint EDC Final Comments, to make the BPU aware of a situation developing in connection with offers being made by TPSs that PSE&G believes may result in high levels of switching. According to PSE&G, the potential levels and patterns of switching could be disruptive of the intended operation of the BGS construct, and could result in a shifting of costs from those who switch from BGS to those who remain on BGS, many of whom will be customers whose credit history makes them unable to switch. PSE&G urges the BPU to monitor this situation and to consider holding a stakeholder process as developments warrant. (PSE&G's Supplemental Final Comments at 2-6.)

There has been a significant increase in switching rates over the past two years because of the decline in wholesale electricity rates, resulting in the increased ability of TPSs to offer consumers a lower price electric than the BGS-FP price. If the price of electricity in the wholesale market starts moving upwards abruptly, potentially, TPSs may no longer be able to

offer a more attractive electric price and customers may switch back to BGS-FP service. BGS suppliers presumably include this migration risk in their bid pricing in the BGS Auction. Therefore, the Board DIRECTS Staff to monitor switching trends to determine if irregularities are developing, and report back to the Board. The Board will then determine if action is needed, and provide sufficient time for notice and comment from stakeholders. Based on the information presented in this proceeding, the Board FINDS that it is premature to take any other action at this time.

#### SWITCHING EDUCATION/WEB SITE

RESA fully supports the establishment of a Web Site to facilitate enhanced customer choice and retail competition. (RESA's Initial Comments at 4.) Staff is in the process of developing a customer Web Site proposal through which all customers, particularly those who typically have never shopped for competitive services, may utilize a central database to shop for energy products and services. Staff is currently working with the State's Office of Information Technology, and expects that the project will begin implementation prior to June 1, 2011. Therefore, the Board FINDS that RESA's recommendation is currently being appropriately addressed.

#### DATA MODIFICATIONS

Constellation requests that each EDC provide more data to BGS suppliers. Constellation is requesting that each EDC be required to provide (a) historic hourly data for actual BGS-FP and BGS-CIEP load, by rate class (broken out separately between BGS-FP and BGS-CIEP categories) as well as (b) historic hourly data for eligible BGS-FP and BGS-CIEP load, by rate class (broken out separately between BGS-FP and BGS-CIEP categories). (Constellation's Initial Comments at 13-14.)

The EDCs believe that the data currently provided is sufficient, and oppose mandating the provision of any additional data absent a sufficient justification of need by BGS suppliers. In particular, with regard to Constellation's request (a), the EDCs note that the monthly data page of the BGS Web Site Data Room provides historic hourly data for both actual BGS-FP and BGS-CIEP load and eligible FP and CIEP load, although not broken down by rate class. With regard to Constellation's request (b), the EDCs note that the additional data page of the Data Room already provides the data requested by Constellation – i.e., historical granular data by rate class for eligible FP and CIEP load. In addition, the BGS website Data Room provides data on customer size distributions and switching statistics. (EDCs' Final Comments at 12-13.)

The Board agrees with the EDCs that there is sufficient publicly available information as provided by NERA on the Auction Web Site. In addition, based on the fact that there is no other support for this modification, the Board DENIES Constellation's request for additional data at this time.

#### VOLUNTARY ENROLLMENT IN CIEP

By Order dated November 22, 2010, Docket No. EO10050338, In the Matter of the Board's Review of the Retail Margin and Commercial and Industrial Pricing ("CIEP") Threshold, the Board approved the lowering of the CIEP threshold to those customers with a peak load share of at least 750 kW beginning June 1, 2011. For the 2004, 2005, 2006, 2007, 2008, 2009 and 2010 Auctions, certain Commercial and Industrial FP customers, to the extent they could be identified and metered without a material impact on the BGS Auction process, were permitted to

join the CIEP class on a voluntary basis. Voluntary enrollment in the CIEP class should again be permitted for the 2011 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 2011. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2011 to reconsider their decision for the upcoming 2011 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.

#### AUCTION CONSULTANT

The Board will utilize the services of Boston Pacific, its BGS procurement process consultant, to provide oversight of the 2011 BGS procurement process. The Board DIRECTS that the EDCs 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. Further, the Board DIRECTS the EDCs to transfer the full amount of the contract costs based on these percentages to the Department of Treasury upon written request by Board Staff.

#### CONFIDENTIALITY

The EDCs have requested that the Board approve a confidentiality order as in prior years. The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner, and results in no bidder or bidders having an advantage over any other. From the Board's experience with prior BGS Auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon Auction confidentiality issues in its December 1, 2004 Order (Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These provisions were adopted and applied in subsequent Auctions. The Board FINDS that the confidentiality provisions of its December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and HEREBY APPROVES the same confidentiality provisions for the 2011 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:<sup>10</sup>

- Bidder Information Session in Philadelphia;
- An Auction Web Site at [www.bgs-auction.com](http://www.bgs-auction.com) which publicizes new developments, allows interested parties to download documents related to the Auctions, has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed, provides potential bidders with data relevant to the bidding process, and has links to PJM and other useful sites;
- 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 noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the Auction process approved with this Order, including certification of the Auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, *Tentative Approvals and Process*,<sup>11</sup> there are a number of decisions/actions that need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule in order that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous BGS Auctions, a fundamental concern driving the approval process is that uncertainty or delay concerning the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in

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<sup>10</sup> These actions have occurred for past Auctions and in anticipation of a favorable Board ruling herein, some of these actions may have already been undertaken for the 2011 Auction.

<sup>11</sup> Attachment A is labelled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

certifying the results, the additional risk to bidders could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-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<sup>12</sup> after the last Auction closes. At its discretion and depending on circumstances, the Board may address the results of one Auction that has closed while the second Auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

Another decision that requires Board approval is acceptance of the EDCs' Compliance Filings. Because of the significance of this proceeding, the Board DIRECTS the EDCs to make a Compliance Filing by November 24, 2010. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.

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

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

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

## FINDINGS AND CONCLUSIONS

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

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

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

The Joint EDC Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for the BGS customers beginning June 1, 2011;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2011 period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-FP customers, as well as a portion of the BGS-FP service required for the 2012 and 2013 periods;

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, and may be updated by the EDCs in January to reflect the most recent data;

Recovery of increases or decreases in rates for Firm Transmission Service from both 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, subject to review and verification by the EDCs ;

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

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

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

The EDCs have designated NERA to continue to act as the Auction Manager for the 2011 Auctions;



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

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

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

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;

Boston Pacific will be the Board's Auction Advisor for the 2011 Auctions and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Two designees from the Board's Energy Division and its Policy and Planning Group, and its consultant, Boston Pacific, shall observe the Auctions for the Board;

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

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

The Board will consider the results of the BGS-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. At its discretion and depending on circumstances, the Board may address one Auction that has closed while the second continues;

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

For RPS compliance purposes, winning bidders in the 2011 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation ("NUG") RECs as would be available to them through the EDCs.

Accordingly, for the foregoing reasons, the Board APPROVES the Joint EDC Proposal, including the BGS-FP and BGS-CIEP Auction Rules, the EDC-specific addenda and the

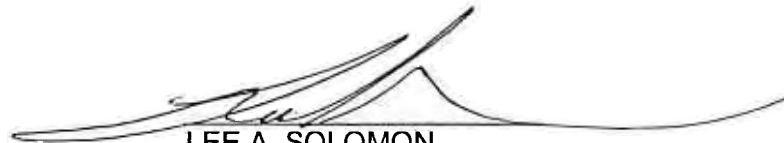
Supplier Master Agreements, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject the BGS-FP Auction results and/or the BGS-CIEP Auction results.

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 November 24, 2010. In addition, based on the Board's Order in Docket No. EO10050338 dated November 22, 2010 eliminating the Retail Margin and lowering the CIEP threshold, the Board DIRECTS that the EDCs provide amended compliance filings including changes to all of the Auction documents that are affected by that decision.

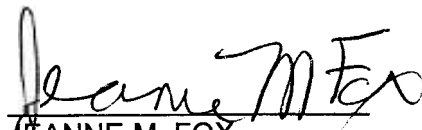
The Board FURTHER DIRECTS the EDCs to work with Staff and Boston Pacific to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

DATED: 12/6/10

BOARD OF PUBLIC UTILITIES  
BY:



LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER

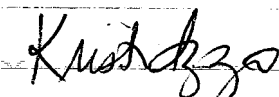


NICHOLAS ASSELTA  
COMMISSIONER



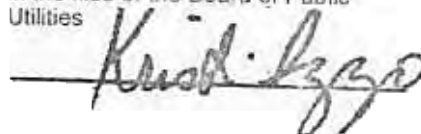
ELIZABETH RANDALL  
COMMISSIONER

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 2011 Auction Approvals and Decision Process

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

1. EDCs – These are decisions for which the EDCs are solely responsible. The EDCs may draw upon the Auction Manager (AM) or consultants as they desire.
2. EDCs/BA – These are decisions for which the EDCs are solely responsible, where the Board Advisor (Staff and/or Boston Pacific) 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 Boston Pacific) will have an opportunity to observe.
4. AM/BA – These are actions for which the Auction Manager is responsible, and on which the BA will have the opportunity to observe and advise.
5. BPU – These are actions to be taken by the Board.
6. AM/EDCs – These are actions for which the Auction Manager is responsible and for which the Auction Manager acts in concert with the EDCs.

Decision point	Decision process	Timing
Joint EDC Filing	EDCs	July 1, 2010
Decision on 2010 Process	BPU	November 10, 2010
Compliance Filing	EDCs	November 24, 2010
Approval of Compliance filing	BPU	Early December
Final Auction Rules and Supplier Agreements available	AM/EDCs	December 6, 2010
Announce minimum and maximum starting prices	AM/BA	November 12, 2010
Announce Tranche Targets	AM	November 12, 2010
Announce Load Caps	AM/BA	November 12, 2010
Information session for potential bidders	AM/EDCs	December 3, 2010
Review Part I applications	AM/BA	December 14-17, 2010
Review Part 2 applications	AM/BA	January 13-20, 2011

## ATTACHMENT A

### Tentative 2009 Auction Approvals and Decision Process

Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 25, 2011
Trial Auction	AM	January 27, 2011
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on January 31, 2011, for FP Auction on February 1, 2011
BGS-CIEP Auction starts		February 3, 2011
BGS-FP Auction starts		February 4, 2011
Provide full factual report to Board	AM/BA	Upon competition of FP Auction
Board decision on Auction results	BPU	No later than by end of 2 <sup>nd</sup> business day following the calendar day on which the last auction closes.

**ATTACHMENT B  
DOCKET NO. ER10040287**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY  
2011 BGS-CIEP AUCTION**

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

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Thursday, February 3, 2011

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.]

**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-CIEP Auction**

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

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

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

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

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

**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-CIEP Auction**

**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?	

**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-CIEP Auction**

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



**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-CIEP Auction**

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

**ATTACHMENT B  
DOCKET NO. ER10040287**

**POST-AUCTION CHECKLIST  
FOR THE NEW JERSEY 2011 BGS-FP AUCTION**

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

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on Friday, February 4, 2011

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.]

**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-FP Auction**

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".

**ATTACHMENT B  
DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-FP Auction**

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

	<b>Question</b>	<b>Comments</b>
1	BP's/NERA's recommendation as to whether the Board should certify the 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 there any hardware or software problems or errors, 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?	

**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-FP Auction**

	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 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?	

**ATTACHMENT B**  
**DOCKET NO. ER10040287**

**Post-Auction Checklist for the New Jersey 2011 BGS-FP Auction**

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)?	



Agenda Date: 10/22/04  
Agenda Item: 2A

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

**ENERGY**

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

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

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

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

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

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

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

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

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

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

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

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

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.

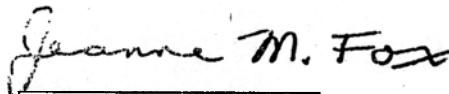
Should a request for the public bidder information provided to NERA concerning non-successful bidders be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied, since such information would identify the non-successful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

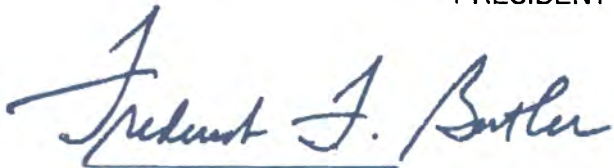
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES  
BY:



JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

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

**BPU STAFF**

Kristi Izzo, Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Fred Grygiel  
Chief Economist  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Mark Beyer  
Office of the Economist  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Nusha Wyner, Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Frank Perrotti  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Peter Vochum  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Kenneth Welch  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Thomas Langbein  
Division of Audits  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Rene Demuyne  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Dennis Moran, Asst. Director  
Division of Energy  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

**DAG**

Grace Kurdian, DAG  
Division of Law  
Dept. of Law & Public Safety  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07102

Division of Law  
Dept. of Law & Public Safety  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07102

Margaret Comes  
Division of Law  
Dept. of Law & Public Safety  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07102

**RATEPAYER ADVOCATE**

Seema M. Singh, Acting  
Ratepayer Advocate & Director  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07102

Kurt Lewandowski, ADRA  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07102

Ami Morita, Esq.  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07101

Badrin M. Ubushin, Esq.  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07101

Elaine Kaufmann, Esq.  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07101

Judith Appel, ADRA  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07102

Sarah Steindel, DRA  
Division of Ratepayer Advocate  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, New Jersey 07102

Brian Kalcic  
Excel Consulting  
225 S. Meramec Ave.  
Suite 720T  
St. Louis, Missouri  
63105

Paul Chernick  
Resource Insight, Inc.  
347 Broadway  
Cambridge, MA 02139

**CONNECTIV**

Rose Burke  
Connectiv Energy  
Christians Bldg.  
252 Chapman Road  
P. O. Box 6066  
Newark, DE 19714-6066

Charles F. Morgan, Jr.  
Connectiv Power Delivery  
(Mail Stop 63ML94)  
5100 Harding Highway  
Mays Landing, NJ 08330

Mark Mucci, Esq.  
LeBocuf, Lamb, Greene &  
MacRae  
One Riverfront Plaza  
Newark, NJ 07102

Katharine Olinchak  
Connectiv Power Delivery  
401 Eagle Run Rd.  
PO Box 9239  
Newark, DE 19714-9239

**JCP&L**

Michael J. Filippone  
JCP&L  
300 Madison Avenue  
PO Box 1911  
Morristown, NJ 07962-1911

Kevin Connelly  
JCP&L  
300 Madison Avenue  
PO Box 1911  
Morristown, NJ 07962-1911

Larry Sweeney  
JCP&L  
300 Madison Ave.  
P.O. Box 1911  
Morristown, NJ 07962-1911

Marc B. Lasky, Esq.  
Thelen Reid & Priest, LLP  
200 Campus Drive, Suite 210  
Florham Park, NJ 07932

Julie Friedberg, Esq.  
Thelen Reid & Priest, LLP  
200 Campus Drive, Suite 210  
Florham Park, NJ 07932

**PSE&G**

Francis E. Delany, Jr., Esq.  
Public Service Electric & Gas Co.  
80 Park Plaza, T8C  
Newark, N. J. 07101

Frances I. Sundheim, Esq.  
Public Service Electric & Gas Co.  
80 Park Plaza T8C  
Newark, N. J. 07101

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY, Inc.  
4 Irving Place  
New York, NY 10003

Frank P. Marino  
Consolidated Edison Co. of NY, Inc.  
Room 549-S  
4 Irving Place  
New York, NY 10003

Maria Robinson  
Con Edison Energy  
701 Westchester Avenue  
Suite 201 West  
White Plains, NY 10604

Stephen Wemple  
Con Edison Energy  
701 Westchester Avenue  
Suite 201 West  
White Plains, NY 10604

James C. Meyer, Esq.  
Riker, Danzig, Scherer, Hyland &  
Perretti, LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962

**NJ NATURAL GAS**

Dan Yardley  
Yardley Associates  
3 Apollo Circle  
Lexington, MA 02421

Tracey Thayer  
NJ Natural Gas Co.  
1415 Wyckoff Rd  
PO Box 1464  
Wall, NJ 07719

**PJM**

Richard Dron  
General Counsel & Secretary  
PJM Interconnection, L.L.C.  
955 Jefferson Avenue  
Valley Forge Corporate Center  
Norristown, PA 19103-2497

**SUPPLIERS**

Hazet Mouzon  
AEP Energy Services  
1 Riverside Plaza, 14<sup>th</sup> Floor  
Columbus, Ohio 43215-2373

Glenn Riepl  
AEP Energy Services  
1 Riverside Plaza, 14<sup>th</sup> Floor  
Columbus, OH 43215-2373

David Koenig  
Allegheny Energy  
909 3<sup>rd</sup> Avenue, 33<sup>rd</sup> Floor  
New York, NY 10022

Brian Lu  
Constellation Power Source, Inc.  
11 Market Place, Suite 500  
Baltimore, MD 21202

Murry Weaver  
Entergy Power Marketing Corp.  
Parkwood Two Building, Suite 500  
10955 Grogan's Mill Road  
The Woodlands, TN 37380

Helene Walenstein



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Page 2 of 4

Scott Brown Exelon Energy (PECO) 2600 Monroe Blvd. Nerriestown, PA 19403	Brigid Manley Williams Energy Services Co. 1 Williams Center Tulsa, OK 74172	First Energy Services 395 Ghert Road Akron, OH 44333	101 Castle Pointe Blvd Piscataway, NJ 08854
Catherine L. Flax Morgan Stanley Capital Group, Inc 1585 Broadway, 4th Floor New York, NY 10036	Shalin Shah Reliant Energy 1000 Main, Suite 2082A Houston, TX 77002	Alyssa Wienberger Amerada Hess One Hess Plaza Woodbridge, NJ 07095	James P. McCormick Strategic Energy 1940 Robert Road Meadowbrook, PA 19046
Leonard Navitsky Wholesale Market Development Northeast Utilities P. O. Box 270 Hartford, CT 06141-0270	Bill Rice Reliant Energy 1111 Louisiana Street Houston, TX 77002	Martin C. Rothfelder, Esq. Rothfelder Stern, LLC 625 Central Avenue Westfield, NJ 07090	Dana Swiesan EPEX Highland Office Center 550 Pricetown Road, Suite 232 Fort Washington, PA 19034
John Tighe NYSEG Bulk Power Sales Corporate Drive Kirkwood Industrial Park PO Box 522 Hinghamton, NY 13902	Angelo Chambrone Select Energy NY, Inc. 507 Plum Street Syracuse, NY 13204	Patrick J. Terry SmartEnergy, Inc. 300 Unicorn Park Drive, 2nd Floor Woburn, MA 01801	Steve Sheppard DTE Energy Trading 414 S. Main St., Suite 200 Ann Arbor, MI 48104
Bob Trejo PP&L Energy Plus 2 North 9th Street TW 20 Allentown, PA 18101	Leonard E. Navitsky Select Energy, Inc. 3301 Cherokee St. Emmaus, PA 18049	Mary Beth Tighe Amerada Hess Corp. 2800 Eisenhower Ave., 3rd Floor Alexandria, VA 22314	Dale Kanterman, VP Eastern Energy Service 60 Fostertown Road Medford, NJ 08057
Gary Sorenson PS&G Power 80 Park Plaza, T-21A Newark, NJ 07102	John Hodra UBS Warburg Energy, LLC 82 Smith Street Groton, MA 01450	Murray Bevan, Esq. Courter, Kobert, Laufer & Cohen 1001 Route 517 Hackettstown, NJ 07840	<b><u>OTHER PARTIES</u></b> Jack Johnson President Geophenic, Inc P.O. Box 580 Summit, NJ 07901
Ken Gfroerer Reliant Energy RR1 Box 246 Stahls town, PA 15687	<b><u>MARKETERS</u></b> Michael Drago First Energy Solutions 24 Fisher Place Trenton, NJ 08618	Michael Renier Shell Energy Services Company 1221 Lamar Street PO Box 4402 Houston, TX 77010	Roslyn Pollack Electric Mobility Corp 599 Mantua Blvd Sewell, NJ 08080
Shawn P. Leyden PS&G Energy Resources & Trade 80 Park Place, T-19 Newark, NJ 07102	Kevin Laguardia Amerada Hess Corporation One Hess Plaza Woodbridge, NJ 07095	Steven S. Goldenberg, Esq. Greenbaum, Rowe, Smith, Ravin, Davis & Himmell, LLP 99 Wood Avenue South Iselin, NJ 08830	James R. Lacey, Esq. Graham, Curtin, & Sheridan, P.A. 4 Headquarters Plaza P.O. Box 1991 Morristown, NJ 07962-1991
Ken Salamone Semptra Energy Trading Corp. 58 Commerce Road Stamford, CT 06902	Stephen Fernandes Customized Energy Solutions (for AES New Energy) 215 South Broad Street, 10th Fl. Philadelphia, PA 19107	Tom Michelman Senior Professional - XENERGY 3 Burlington Woods - 4th Floor Burlington, MA 01803-4543	Nathaniel Greene NRDC 40 W. 20th Street, 11th fl New York, NY 10011
George Johnson Dickstein Shapiro Morin & Oshinsky LLP 2101 F. Street, NW Washington DC 20037-1526	Sara O'Neill Constellation New Energy 810 Seventh Ave., Suite 400 New York, NY 10019	Lisa Ferguson Duke Energy North America 5400 Westheimer Court Houston, TX 77056	John Conway Brickfield Burchette Ritts & Stone, PC (C/o Steel) 1025 Thomas Jefferson St. NW Washington, DC 20007-5201
Eric Eversole Dickstein Shapiro Morin & Oshinsky LLP 2101 F. Street, NW Washington DC 20037-1526 Marilena Marrelli Semptra Energy Trading Corp. 58 Commerce Road Stamford, CT 06902	Steven Gabel Gabel Associates 417 Denison Street Highland Park, NJ 08904	Ben Boyd State Regulatory Affairs Reliant Energy 1111 Louisiana Houston, TX 77002	Art Maurice NJBIA 102 West State Street Trenton, NJ 08608-1199
Tim Huston Williams Energy Services Co 1 Williams Center P.O. Box 2848 Tulsa, OK 74101	John Holtz Green Mountain Energy Co. 3000 Atrium Way Mail Box 275 Mount Laurel, NJ 08054	Ike Gibbs Regulatory Specialist Reliant Resources REP-4152B 1111 Louisiana St. Houston, TX 77002	Stephen Dilts Director/Government Affairs Chemical Industry Council of New Jersey 150 W. State Street Trenton, NJ 08608
	Paul Dwyer Green Mountain Energy Co 123 Bloomingdale Ave. Suite 202 Wayne, PA 19087	Michael G. Briggs Reliant Resources, Inc. 801 Pennsylvania Ave. NW Washington, DC 20004-2604	Michael J. Mohr, Esq. Waters, McPherson, McNeill 300 Lighting Way P.O. Box 1560 Secaucus, NJ 07096-1560
	Douglas S. Elliot	SueAnne L. Harrel Pepco Energy Services	Kate McNamara Delaware River Port Authority Port Authority Transit Corp

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

---

Marvin Spira  
Food Policy Institute  
71 Lipman Drive  
New Brunswick, NJ 08901

James E. McGuire  
Reed Smith LLP  
136 Main Street  
Princeton, NJ 08540

Jack O'Connor  
Rutgers Food Policy Institute  
ASB III, 3 Rutgers Plaza  
New Brunswick, NJ 08901

James H. Lasky  
Norris McLaughlin & Marcus  
721 Route 202-208  
Bridgewater, NJ 08807

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2011  
Docket No. ER10040287  
Service List**

**BPU**

Kristi Izzo, Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 648-3426  
FAX: (973) 638-2409  
[kristi.izzo@bpu.state.nj.us](mailto:kristi.izzo@bpu.state.nj.us)

Frank Perrotti  
Board of Public Utilities  
Division of Energy  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 648-7290  
FAX: (973) 648-2467  
[frank.perrotti@bpu.state.nj.us](mailto:frank.perrotti@bpu.state.nj.us)

Jerome May, Director  
Board of Public Utilities  
Division of Energy  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 648-4950  
FAX: (973) 648-7420  
[Jerome.may@bpu.state.nj.us](mailto:Jerome.may@bpu.state.nj.us)

Alice Bator, Bureau Chief  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 648-2448  
FAX: (973) 648-7420  
[alice.bator@bpu.state.nj.us](mailto:alice.bator@bpu.state.nj.us)

Mark Beyer, Chief Economist  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 693-3414  
FAX: (973) 648-4410  
[mark.beyer@bpu.state.nj.us](mailto:mark.beyer@bpu.state.nj.us)

Rene Demuynck  
Board of Public Utilities  
Division of Energy  
Two Gateway Center  
Newark, NJ 07102  
PHONE: ( ) - -  
FAX: ( ) - -  
[rene.demuynck@bpu.state.nj.us](mailto:rene.demuynck@bpu.state.nj.us)

John Garvey  
Board of Public Utilities  
Office of the Economist  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 648-6123  
FAX: (973) 648-4410  
[john.garvey@bpu.state.nj.us](mailto:john.garvey@bpu.state.nj.us)

Stacy Peterson  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
PHONE: (973) 648-2143  
FAX: (973) 648-7420  
[stacy.peterson@bpu.state.nj.us](mailto:stacy.peterson@bpu.state.nj.us)

**DAG**

Babette Tenzer, DAG  
NJ Dept. of Law & Public Safety  
Division of Law  
124 Halsey Street  
PO Box 45029  
Newark, NJ 07101  
PHONE: (973) 648-7811  
FAX: (973) 648-3555  
[babette.tenzer@dol.lps.state.nj.us](mailto:babette.tenzer@dol.lps.state.nj.us)

**BPU's CONSULTANTS**

Craig R. Roach  
Boston Pacific Company, Inc  
1100 New York Avenue, NW  
Suite 490 east  
Washington, DC 2005  
PHONE: (202) 296-5520  
FAX: (202) 296-5531  
[croach@bostonpacific.com](mailto:croach@bostonpacific.com)

Frank Mossburg  
Boston Pacific Company, Inc  
1100 New York Avenue, NW  
Suite 490 east  
Washington, DC 2005  
PHONE: (202) 296-5520  
FAX: (202) 296-5531  
[fmossburg@bostonpacific.com](mailto:fmossburg@bostonpacific.com)

Stuart Rein  
Boston Pacific Company, Inc  
1100 New York Avenue, NW  
Suite 490 east  
Washington, DC 2005  
PHONE: (202) 296-5520  
FAX: (202) 296-5531  
[SRein@bostonpacific.com](mailto:SRein@bostonpacific.com)

**DIVISION OF RATE COUNSEL**

Stefanie A. Brand, Director  
The Division of Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101  
PHONE: (973) 648-2690  
FAX: (973) 624-1047  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Paul E. Flanagan, Litigation Manager  
The Division of Rate Counsel  
31 Clinton Street  
11th Floor  
PO Box 46005  
Newark, NJ 07102  
PHONE: (973) 648-2690  
FAX: (973) 624-1047  
[pflanagan@rpa.state.nj.us](mailto:pflanagan@rpa.state.nj.us)

Kurt Lewandowski, Esq.  
Assistant Deputy Public Advocate  
The Division of Rate Counsel  
31 Clinton Street, 11th Floor  
P.O. Box 46005  
Newark, NJ 07101  
PHONE: (973) 648-2690  
FAX: (973) 624-1047  
[klewando@rpa.state.nj.us](mailto:klewando@rpa.state.nj.us)

Ami Morita  
The Division of Rate Counsel  
Division of Rate Counsel  
31 Clinton Street - 11th Floor  
P.O. Box 46005  
Newark, NJ 07101  
PHONE: (973) 648-2690  
FAX: (973) 624-1047  
[amorita@rpa.state.nj.us](mailto:amorita@rpa.state.nj.us)

Diane Schulze  
The Division of Rate Counsel  
31 Clinton Street - 11th Floor  
P.O. Box 46005  
Newark, NJ 07101  
PHONE: (973) 648-2690  
FAX: (973) 648-2193  
[dschulze@rpa.state.nj.us](mailto:dschulze@rpa.state.nj.us)

Felicia Thomas-Friel, Esq.  
Deputy Public Advocate  
Division of Rate Counsel  
31 Clinton Street, 11th Floor  
Newark, New Jersey 07101  
PHONE: (973) 648-2690  
FAX: (973) 648-2193  
[ftomas@rpa.state.nj.us](mailto:ftomas@rpa.state.nj.us)

**ADVOCATE CONSULTANTS**

Bruce Biewald  
Synapse Energy Economics, Inc.  
22 Pearl Street  
Cambridge, MA 02139  
PHONE: ( ) - -  
FAX: ( ) - -  
[bbiewald@synapse-energy.com](mailto:bbiewald@synapse-energy.com)

Robert Fagan  
Synapse Energy Economics, Inc.  
22 Pearl Street  
Cambridge, MA 02139  
PHONE: ( ) - -  
FAX: ( ) - -  
[rfagan@synapse-energy.com](mailto:rfagan@synapse-energy.com)

**PSE&G**

Gregory Eisenstark, Esq.  
Associate General Regulatory Counsel  
PSEG Services Corporation  
80 Park Plaza, T-05  
Newark, NJ 07102  
PHONE: (973) 430-6281  
FAX: (973) 430-5983  
[gregory.eisenstark@pseg.com](mailto:gregory.eisenstark@pseg.com)

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2011  
Docket No. ER10040287  
Service List**

Jodi L. Moskowitz, Esq.  
Gen Reg Ops/Cpl Couns/Chief NERC  
Officer  
80 Park Plaza, T-05  
Newark, NJ 07102  
PHONE: (973) 430-6409  
FAX: (973) 430-5983  
[Jodi.moskowitz@pseg.com](mailto:Jodi.moskowitz@pseg.com)

Tony Robinson  
Public Service Electric & Gas Co.  
80 Park Plaza, T-8  
Newark, NJ 07101  
PHONE: (973) 430-6154  
FAX:  
[Anthony.Robinson@pseg.com](mailto:Anthony.Robinson@pseg.com)

Steve Huber  
Public Service Electric & Gas Co.  
80 Park Plaza, T-8  
Newark, NJ 07101  
PHONE: (973) 430-5860  
FAX: (973)  
[Steven.Huber@pseg.com](mailto:Steven.Huber@pseg.com)

**ATLANTIC CITY ELECTRIC CO.**

Joseph F. Janocha, Manager, Regulatory  
Affairs  
Atlantic City Electric Co. - 63ML38  
5100 Harding Highway  
Atlantic Regional Office  
Mays Landing, NJ 08330  
PHONE: (609) 625-5868  
FAX: (609) 625-5838  
[joseph.janocha@pepcoholdings.com](mailto:joseph.janocha@pepcoholdings.com)

Gregory R. Marquis  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20068-0001  
PHONE: (202) 872-2297  
FAX: (202) 872-2270  
[grmarquis@pepco.com](mailto:grmarquis@pepco.com)

Philip J. Passanante,  
Assistant General Counsel  
Atlantic City Electric Co. - 89KS42  
800 King Street, 5th Floor  
PO Box 231  
Wilmington, DE 19899-0231  
PHONE: (302) 429-3105  
FAX: (302) 429-3801  
[philip.passanante@pepcoholdings.com](mailto:philip.passanante@pepcoholdings.com)

Peter Schaub, General Manager  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20068-0001  
PHONE: (202) 872-3044  
FAX: (202) 872-2270  
[peschaub@pepco.com](mailto:peschaub@pepco.com)

**JCP&L**

Kevin Connelly  
First Energy  
300 Madison Avenue  
Morristown, NJ 07960  
PHONE: (973) 401-8708  
FAX: (973) 644-4243  
[kconnelly@firstenergycorp.com](mailto:kconnelly@firstenergycorp.com)

Michael J. Filippone  
Jersey Central Power & Light Co  
300 Madison Avenue  
P.O. Box 1911  
Morristown, NJ 07962-1911  
PHONE: (973) 401-8991  
FAX: (973) 401-8224  
[mfilippone@firstenergycorp.com](mailto:mfilippone@firstenergycorp.com)

Marc B. Lasky, Esq.  
Morgan, Lewis & Bockius LLP  
89 Headquarters Plaza North  
Suite 1435  
Morristown, NJ 07960  
PHONE: (973) 993-3133  
FAX: (877) 432-9652  
[mlasky@morganlewis.com](mailto:mlasky@morganlewis.com)

Larry Sweeney  
First Energy  
300 Madison Avenue  
P. O. Box 1911  
Morristown, NJ 07962-1911  
PHONE: (973) 401-8697  
FAX: (973) 644-4157  
[lsweeney@firstenergycorp.com](mailto:lsweeney@firstenergycorp.com)

Sally J Cheong  
First Energy  
300 Madison Avenue  
P. O. Box 1911  
Morristown, NJ 07962-1911  
Phone: (973) 401-8699  
Fax: (973) 644-4243  
[scheong@firstenergycorp.com](mailto:scheong@firstenergycorp.com)

Jim O'Toole  
First Energy  
300 Madison Avenue  
Morristown, NJ 07960  
PHONE: (973) 401-8296  
FAX: (973) 644-4243  
[jotoole@firstenergycorp.com](mailto:jotoole@firstenergycorp.com)

Gary Pleiss  
Jersey Central Power & Light Co  
2800 Pottsville Pike  
Reading, PA. 19605  
PHONE (610) 921-6417  
FAX (330) 315-9059  
[gpleiss@firstenergycorp.com](mailto:gpleiss@firstenergycorp.com)

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY  
Law Dept., Room 1815-S  
4 Irving Place  
New York, NY 10003  
PHONE: (212) 460-2097  
FAX: (212) 677-5850  
[carlevj@coned.com](mailto:carlevj@coned.com)

James C. Meyer, Esq.  
Riker, Danzig, Scherer, Hyland &  
Perretti  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962  
PHONE: (973) 451-8464  
FAX: (973) 538-0800  
[jmeyer@riker.com](mailto:jmeyer@riker.com)

Rickey Joe  
Rockland Electric  
4 Irving Place - 2nd Floor  
New York, NY 10003  
PHONE: (212) 460-4995  
FAX:  
[joer@coned.com](mailto:joer@coned.com)

William A. Atzl, Jr.  
Rockland Electric Company  
4 Irving Place - 2nd Floor SE  
New York, NY 10003  
PHONE: (212) 460-3308  
[atzlw@coned.com](mailto:atzlw@coned.com)

**NERA**

Gene Meehan  
NERA Economic Consulting  
1255 23<sup>rd</sup> St. NW  
Washington, DC 20037  
PHONE: (973) 297-0880  
FAX: (973) 297-0246  
[Gene.Meehan@NERA.com](mailto:Gene.Meehan@NERA.com)

Chantale LaCasse  
NERA Economic Consulting  
1255 23<sup>rd</sup> St. NW  
Washington, DC 20037  
PHONE: (973) 297-0880  
FAX: (973) 297-0246  
[Chantale.LaCasse@NERA.com](mailto:Chantale.LaCasse@NERA.com)

**MARKETERS**

RESA  
Murray E. Bevin, Esq.  
Bevan, Mosca, Giuditta & Zarillo, P.C.  
776 Mountain Blvd.  
Suite 202  
Watchung, NJ 07069  
PHONE: (908) 753-8300  
FAX: (908) 753-8301  
[mbevan@bmgzlaw.com](mailto:mbevan@bmgzlaw.com)

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2011  
Docket No. ER10040287**

**Service List**

Timothy Daniels  
Constellation NewEnergy  
810 Seventh Avenue  
Suite 400  
New York, NY 10019-5818  
PHONE: (212) 885-6454  
FAX: (212) 883-5888  
[timothy.daniels@constellation.co](mailto:timothy.daniels@constellation.co)

SueAnne I. Harrel  
Pepco Energy Services  
39 Crestview Drive  
Asset Mgmt Group  
Clinton, NJ 08809  
PHONE: (908) 638-6605  
FAX: (908) 638-6606  
[sharrel@pepcoenergy.com](mailto:sharrel@pepcoenergy.com)

Dale Kanterman, VP  
Eastern Energy Services  
4 Ridge Road  
Southampton, NJ 08088-3505  
PHONE: 800-708-3637  
FAX: (609) 801-9393  
[assist@easterenergyservices.com](mailto:assist@easterenergyservices.com)

Jay Kooper  
Hess Corporation  
One Hess Plaza  
Woodbridge, NJ 07095  
PHONE: (732) 750-7048  
FAX: (732) 750-7048  
[jkooper@hess.com](mailto:jkooper@hess.com)

Dana Swieson  
EPEX  
717 Constitution Drive  
Suite 110  
Exton, PA 19341  
PHONE: (610) 321-2710  
FAX: ( ) - -  
[Dana.swieson@epex.cc](mailto:Dana.swieson@epex.cc)

Marc A. Hanks  
Senior Manager, Government &  
Regulatory Affairs  
Direct Energy Services, LLC  
PHONE: 413.642.3575  
FAX:  
[Marc.Hanks@directenergy.com](mailto:Marc.Hanks@directenergy.com)

Mark S. Kumm  
Pepco Energy Services, Inc.  
1300 N. 17th, Suite 1600  
Arlington, VA 22209  
PHONE: (703) 253-1651  
FAX: (703) 253-1697  
[mkumm@pepcoenergy.com](mailto:mkumm@pepcoenergy.com)

Stacey Rantala  
National Energy Marketers Association  
3333 K Street, N.W., Suite 110  
Washington, D.C. 20007  
PHONE: (202) 333-3288  
FAX: (202) 333-3266  
[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

David B. Applebaum  
Director, Regulatory Affairs  
NextEra Energy Resources, LLC  
21 Pardee Place  
Ewing, New Jersey 08628  
PHONE: (609) 771-0894  
[david.applebaum@nexteraenergy.com](mailto:david.applebaum@nexteraenergy.com)

Kathleen Maher  
Constellation NewEnergy  
810 Seventh Avenue, Suite 400  
New York, NY 10019-5818  
PHONE: (212) 885-6422  
FAX: (212) 883-5888  
[kathleen.maher@constellation.com](mailto:kathleen.maher@constellation.com)

Bob Blake  
VP Elec. Operations & Regulatory  
Affairs  
MXenergy  
10010 Junction Dr, Suite 104S  
Annapolis Junction, MD 20701  
PHONE: (240) 456-0505 ext. 5513  
FAX: (240) 456-0510  
[rblake@mxenergy.com](mailto:rblake@mxenergy.com)

**NJLEUC**

Paul F. Forshay, Partner  
SUTHERLAND  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2415  
PHONE: (202) 383-0708  
FAX: (202) 637-3593  
[paul.forshay@sutherland.com](mailto:paul.forshay@sutherland.com)

Steven S. Goldenberg, NJLEUC, Esq.  
Fox Rothschild LLP  
Princeton Corporate Center  
997 Lenox Drive, BLDG. 3  
Lawrenceville, NJ 08648-2311  
PHONE: (609) 896-4586  
FAX: (609) 896-1469  
[SGoldenberg@foxrothschild.com](mailto:SGoldenberg@foxrothschild.com)

**SUPPLIERS**

Steven Gabel - IEPNJ  
Gabel Associates  
417 Denison Street  
Highland Park, NJ 08904  
PHONE: (732) 296-0770  
FAX: (732) 296-0799  
[steven@gabelassociates.com](mailto:steven@gabelassociates.com)

James Laskey, Esq. - IEPNJ  
Norris McLaughlin & Marcus  
721 Route 202-206  
Bridgewater, NJ 08807  
PHONE: (908) 722-0700  
FAX: (908) 722-0755  
[jlaskey@nmmlaw.com](mailto:jlaskey@nmmlaw.com)

Mark Baird, Director, Regulatory Affairs  
RRI Energy, Inc.  
7642 West 450 North  
Sharpsville, IN 46068  
PHONE: (281) 451-7526  
FAX: (713) 537-2935  
[mbaird@rrienergy.com](mailto:mbaird@rrienergy.com)

Raymond Depillo  
PSEG Energy Resources & Trade  
80 Park Plaza, T-19  
P.O. Box 570  
Newark, NJ 07101  
PHONE: (973) 430-8866  
FAX: (973) 643-8385  
[raymond.depillo@pseg.com](mailto:raymond.depillo@pseg.com)

Ken Gfroerer  
RRI Energy  
RR1 Box 246  
Stahlstown, PA 15687  
PHONE: ( ) - -  
FAX: ( ) - -  
[kgfroerer@rrienergy.com](mailto:kgfroerer@rrienergy.com)

Craig S. Blume  
Director, Power Marketing  
UGI Energy Services / UGI  
Development Company  
One Meridian Boulevard, Suite 2C01  
Wyomissing, PA 19610  
PHONE: 610-743-7010  
FAX: 610-374-4288  
[cblume@ugies.com](mailto:cblume@ugies.com)

Robert O'Connell,  
VP & Compliance Manager  
J.P. Morgan Ventures Energy Corp.  
1033 Squires Drive  
West Chester, PA, 19382  
PHONE: (484) 266-0283  
FAX:  
[robert.oconnell@jpmorgan.com](mailto:robert.oconnell@jpmorgan.com)

Deborah Hart, Vice President  
Morgan Stanley Capital Group  
2000 Westchester Avenue  
Trading Floor  
Purchase, NY 10577  
PHONE: (914) 225-1430  
FAX: (914) 225-9297  
[deborah.hart@morganstanley.com](mailto:deborah.hart@morganstanley.com)

George R. Henderson  
PSEG Energy Resources & Trade  
80 Park Plaza, T-19  
P.O. Box 570  
Newark, NJ 07101  
PHONE: (973) 430-5903  
FAX: (973) 643-8385  
[george.henderson@pseg.com](mailto:george.henderson@pseg.com)

Marcia Hissong, Director, Contract  
Administration/Counsel  
DTE Energy Trading, Inc.  
414 South Main Street  
Suite 200  
Ann Arbor, MI 48104  
PHONE: (734) 887-2042  
FAX: (734) 887-2235  
[hissongm@dteenergy.com](mailto:hissongm@dteenergy.com)

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2011  
Docket No. ER10040287  
Service List**

Don Hubschman  
American Electric Power  
155 W. Nationwide Blvd.  
Columbus, OH 43215  
PHONE: (614) 583-7019  
FAX: (614) 583-1601  
[dmhubschman@aep.com](mailto:dmhubschman@aep.com)

Roberta Konicki  
Semptra Energy Trading  
2500 City West Blvd.  
Suite 1800  
Houston, TX 77042  
PHONE: (713) 361-7765  
FAX: ( ) - -  
[roberta.konicki@rbssemptra.com](mailto:roberta.konicki@rbssemptra.com)

Gregory K. Lawrence, Esq.  
McDermott, Will & Emery  
600 13th Street, NW  
Washington, DC 20002  
PHONE: (202) 756-8068  
FAX: (202) 756-8087  
[glawrence@mwe.com](mailto:glawrence@mwe.com)

Shawn P. Leyden (BGS), Esq.  
PSEG Energy Resources & Trade  
80 Park Plaza, T-19  
P. O. Box 570  
Newark, NJ 07101  
PHONE: (973) 430-7698  
FAX: (973) 643-8385  
[shawn.leyden@pseg.com](mailto:shawn.leyden@pseg.com)

Ira G. Megdal-BGS, Esq.  
Cozen O'Connor  
457 Haddonfield Rd.  
Suite 300  
Cherry Hill, NJ 08002  
PHONE: (856) 910-5019  
FAX: (856) 910-5075  
[IMEGDAL@COZEN.COM](mailto:IMEGDAL@COZEN.COM)

Leonard Navitsky  
PPM Energy  
3301 Cherokee Street  
Emmaus, PA 18049  
PHONE: (610) 965-6856  
FAX: (860) 665-2611  
[leonard.navitsky@iberdrolausa.co](mailto:leonard.navitsky@iberdrolausa.co)

Glenn Riepl  
AEP Energy Services  
1 Riverside Plaza  
14th Floor  
Columbus, OH 43215-2373  
PHONE: (614) 324-4502  
FAX: (614) 324-4591  
[gfriep@aep.com](mailto:gfriep@aep.com)

Maria Robinson  
Con Edison Energy Solutions  
701 Westchester Avenue  
Suite 201 West  
White Plains, NY 10604  
PHONE: (914) 993-2166  
FAX: (914) 993-2111  
[robinsonm@conedenergy.com](mailto:robinsonm@conedenergy.com)

Jean-Paul St. Germain  
Semptra Energy Trading  
58 Commerce Road  
Stamford, CT 06902  
PHONE: (203) 355-5074  
FAX: ( ) - -  
[jean-paul.st.germain@rbssemptra](mailto:jean-paul.st.germain@rbssemptra)

Howard O. Thompson - BGS  
Russo Tumulty Nester Thompson  
Kelly, LLP  
240 Cedar Knolls Road  
Suite 306  
Cedar Knolls, NJ 07927  
PHONE: (973) 993-4477  
FAX: (973) 993-3103  
[hthompson@russotumulty.com](mailto:hthompson@russotumulty.com)

Sharon Weber  
PPL Energy Plus  
2 North 9th Street TW 20  
Allentown, PA 18101  
PHONE: ( ) - -  
FAX: ( ) - -  
[sjweber@pplweb.com](mailto:sjweber@pplweb.com)

Stephen Wemple  
Con Edison Energy  
701 Westchester Avenue  
Suite 201 West  
White Plains, NY 10604  
PHONE: ( ) - -  
FAX: ( ) - -  
[wemples@conedenergy.com](mailto:wemples@conedenergy.com)

Glen Thomas  
The P<sup>3</sup> Group  
GT Power Group LLC  
1060 First Avenue  
Suite 400  
King of Prussia, PA 19406  
PHONE: (610) 768-8080  
FAX:  
[GTHOMAS@GTPOWERGROUP.COM](mailto:GTHOMAS@GTPOWERGROUP.COM)  
M

Divesh Gupta  
Senior Counsel  
Constellation Energy  
111 Market Place, Suite 500  
Baltimore, Maryland 21202  
PHONE: (410) 470-3158  
FAX: (443) 213-3556  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Tom Hoatson  
LS Power Development, LLC  
2 Tower Center  
East Brunswick, NJ 08816  
PHONE: (732) 867-5911  
FAX:  
[thoatson@lspower.com](mailto:thoatson@lspower.com)

Gary Ferenz  
Conectiv Energy Supply, Inc.  
PO Box 6066, MS 92DC69  
Newark, DE 19714  
PHONE: (302) 451-5225  
FAX: (302) 709-7573  
[gary.ferenz@connectiv.com](mailto:gary.ferenz@connectiv.com)

Kelley Gabbard  
Conectiv Energy Supply, Inc.  
PO Box 6066, MS 92DC69  
Newark, DE 19714  
PHONE: (302) 451-5318  
FAX: (302) 709-7573  
[kelley.gabbard@connectiv.com](mailto:kelley.gabbard@connectiv.com)

John Citrolo  
Conectiv Energy Supply, Inc.  
PO Box 6066, MS 92DC69  
Newark, DE 19714  
PHONE: (302) 451-5450  
FAX: (302) 709-7579  
[john.citrolo@connectiv.com](mailto:john.citrolo@connectiv.com)

Terence Russell  
RRI Energy, Inc  
1000 Main Street, 2178B  
Houston, Texas 77002  
PHONE: (832) 357-5323  
FAX: (832) 357-9256  
[trussell@rrienergy.com](mailto:trussell@rrienergy.com)

Grace S. Kurdian  
McCARTER & ENGLISH, LLP  
245 Park Avenue, 27th floor  
New York, NY 10167  
PHONE: (212) 609-6815  
FAX: (212) 414-0341  
[gkurdian@mccarter.com](mailto:gkurdian@mccarter.com)

**OTHER PARTIES**

Sara Bluhm  
NJBIA  
102 West State Street  
Trenton, NJ 08608-1199  
PHONE: (609) 393-7707  
FAX: ( ) - -  
[sbluhm@njbia.org](mailto:sbluhm@njbia.org)

John Holub  
NJ Retail Merchants Assoc.  
332 West State Street  
Trenton, NJ 08618  
PHONE: (609) 393-8006  
FAX: ( ) - -  
[John@njrma.org](mailto:John@njrma.org)

Judy Misoyianis, Administrator  
New Jersey Retail Merchants Assoc.  
332 West State Street  
Trenton, NJ 08618  
PHONE: (609) 393-8006  
FAX: (609) 393-8463  
[judy.njrma@verizon.net](mailto:judy.njrma@verizon.net)

Holly Minogue  
Gabel Associates  
Energy, Environmental, and Public  
Utility Consulting  
417 Denison Street  
Highland Park, NJ 08904  
PHONE: (732) 296-0770  
FAX: (732) 296-0799  
[holly.minogue@gabelassociates.com](mailto:holly.minogue@gabelassociates.com)

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2011  
Docket No. ER10040287  
Service List**

Jack Johnson  
Geophonic Inc.  
PO Box 580  
Summit, NJ 07901  
PHONE: (973) 410-1500  
Fax:  
[johnsonx@verizon.net](mailto:johnsonx@verizon.net)

Larry Spielvogel, PE  
L. G. Spielvogel, Inc.  
21506 Valley Forge Circle  
King of Prussia, PA 19406-1137  
PHONE: 610-783-6350;  
FAX: 610-783-6349; Email:  
[spielvogel@comcast.net](mailto:spielvogel@comcast.net)

Robert Macksoud, Jr, CEP  
Director Energy Procurement  
EnergySolve  
One Executive Dr, Suite 401  
Somerset, NJ 08873  
PHONE: 732-748-4293  
FAX: 732-748-9640  
[rmacksoud@energysolve.com](mailto:rmacksoud@energysolve.com)

Jim Torpey  
Director Market Development  
SunPower Corporation  
700 S Clinton St  
Trenton NJ 08611  
PHONE: (973) 714-9388  
FAX:  
[jim.torpey@sunpowercorp.com](mailto:jim.torpey@sunpowercorp.com)