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Agenda Item: 2D

STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE BOARD'S REVIEW OF THE RETAIL MARGIN AND THE COMMERCIAL AND INDUSTRIAL ENERGY PRICING ("CIEP") THRESHOLD	)))))	DECISION AND ORDER DOCKET NO. EO10050338

(E-SERVICE LIST ATTACHED)

BY THE BOARD:

By this Order the New Jersey Board of Public Utilities ("Board") considers two issues that may have an impact on the upcoming basic generation service ("BGS") procurement for the period beginning June 1, 2011. For the reasons discussed below, the Board has determined that the additional charge known as the "Retail Margin" should be eliminated, and the threshold for hourly pricing should be lowered to include nonresidential customers with a peak load of 750 kilowatts ("kW") or more.

As part of its yearly review of the BGS procurement process, in its Order in Docket Nos. EX01110754 and EO02070384 dated December 18, 2002[1] ("Retail Margin Order"), the Board approved the imposition of an additional charge which has come to be known as the "Retail Margin."[2] The charge was intended as an incentive to encourage customers to shop for their electricity supply from third party suppliers ("TPS"), and also to reflect within the price for BGS those additional costs of providing electric service at retail, as compared to the costs of providing default service. The Board imposed a Retail Margin of 5 mils/kWh on larger customers, those with a peak load equal to 750 kW or more, in the belief that these customers should be encouraged to shop for retail electric supplies, and that this group of larger customers would be more attractive to licensed suppliers. Specifically, in the Retail Margin Order, the Board approved a charge of 5 mils/kWh for non-residential BGS-Fixed Price ("FP") customers with a peak load of 750 kWh or greater, and for all BGS-Commercial and Industrial Energy Pricing ("CIEP") customers as a means for encouraging the development of retail competition.

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[1] In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, EX01110754 and EO02070384.

[2] The Board's authority to assess the Retail Margin was subsequently codified in N.J.S.A. 48:3-57 with the definition of Retail Margin in N.J.S.A. 48:3-51.

In the 2010 BGS proceeding in Docket No. EO09050351, the Board sought information to help it determine whether the Retail Margin is still serving its intended purpose, and therefore requested comments from the Electric Distribution Companies ("EDCs")[3] and interested stakeholders on the potential reduction, phase-out, or elimination of the Retail Margin. Accordingly, the Board directed that a Secretary's Letter be issued requesting comment on the potential adjustment to the Retail Margin. The Secretary's Letter was issued on November 12, 2009, with comments due by November 20, 2009, which were received in a timely manner from the EDCs, the Retail Energy Supply Association ("RESA"), the New Jersey Business and Industry Association ("NJBIA"), the National Energy Marketers Association ("NEMA"), Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. ("Constellation"), PPL EnergyPlus LLC, and the New Jersey Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel").[4]

The comments received on the potential reduction, phase-out or elimination of the Retail Margin generated a significant response from stakeholders. In addition to addressing the merits of the Retail Margin itself, some of the comments were directed at the abbreviated timeframe of the comment period and subsequent Board decision. Both RESA and Constellation maintained that the schedule in the Secretary's Letter for the submission of comments and the rendering of a Board decision did not allow adequate time for the careful consideration of all the business issues involved, and recommended that there be additional time for comments, discovery and hearings. After reviewing the comments received from the stakeholders, the Board agreed that the complexity of the issues involved in this matter did merit a greater amount of time and consideration than the schedule would have allowed. Accordingly, in the 2010 BGS Order dated December 10, 2009, the Board directed that no change be made in the Retail Margin for the period beginning June 1, 2010. However, the Board directed Staff to initiate a proceeding regarding the Retail Margin upon conclusion of the 2010 BGS Auction which would allow all stakeholders and interested parties to submit written comments, and to present oral testimony at a legislative type hearing. Further, the Board directed Staff to expand the proceeding to include consideration of any adjustments to the CIEP threshold as part of this proceeding because of its connection to the Retail Margin issue.

On June 28, 2010, the Board issued an Order initiating the review of the Retail Margin and the CIEP threshold. Specifically, the Board asked parties to comment on the following questions: 1) whether the Retail Margin the Board imposed on larger customers with a peak load above 750 kW is still serving its intended purpose; and 2) whether there should be any adjustments to the CIEP threshold. Initial comments were due on July 9, 2010, and final comments were due on September 3, 2010. A public hearing was held on August 20, 2010 in Trenton. Comments were received in a timely manner from the EDCs, RESA, NJBIA, NEMA, Constellation, and Rate Counsel.

RETAIL MARGIN COMMENTS

EDCs

The EDCs believe that there are several reasons for the Board to reduce, phase-out, or eliminate the Retail Margin at this time. The retail margin was a tool intended to stimulate the

[3] Jersey Central Power & Light Company, Atlantic City Electric Company, Rockland Electric Co. and Public Service Electric & Gas Company.
[4] Now designated as the Division of Rate Counsel.

retail market – and it has worked, according to the EDCs. On a statewide basis, the EDCs point out that over 85% of BGS-CIEP load and approximately 70% of BGS-CIEP customers, all subject to the retail margin, have switched to TPSs. These switching levels have been relatively constant for the past five years, according to the EDCs. Moreover, the EDC's note that BGS-FP customers with peak demand above 750 kW have recently increased their switching. Currently, approximately 70% of FP customers paying the retail margin have switched (representing over 70% of BGS-FP load over 750kW). EDCs' Initial Comments at 1-2.

It seems clear, according to the EDCs, that the customers who have not switched are unlikely to do so in large numbers. Maintaining the Retail Margin when customers year after year demonstrate an unwillingness or inability to switch constitutes a penalty to these customers. The 15% of BGS-CIEP load that stays on CIEP is likely doing so for a variety of reasons, according to the EDCs. Some customers may not have the credit or payment history to obtain service or an acceptable price from a TPS or may simply be uninterested in switching and are unlikely to do so. If after eight years they have made a conscious decision not to switch, they should not be penalized for that decision, according to the EDCs. EDCs' Initial Comments at 1-2

The EDCs further argue that the Retail Margin may well be a deterrent to customers electing hourly pricing. Some customers may prefer hourly pricing and the ability to shift demand and respond to price. However, the Retail Margin may well discourage such a customer from taking hourly service because a customer who wants hourly pricing and the ease of accessing the hourly market through BGS-CIEP will have to pay the Retail Margin. Therefore, the EDCs maintain, the Retail Margin may have the perverse effect of discouraging price responsive hourly load, whereas demand responsive load may well increase if customers could have direct access to the PJM market through BGS without a Retail Margin mark-up. EDCs' Initial Comments at 1-2

The EDCs explain that the Retail Margin has encouraged switching and, more importantly, jump-started a base of competitive TPSs. It is difficult to argue that a vibrant retail market for large customers does not exist in New Jersey when approximately 85% of BGS-CIEP load and 70% of BGS-FP load over 750 kW have switched. Large customers in New Jersey have a wide array of competitive TPSs to choose from. Eliminating the Retail Margin, according to the EDCs, will not undermine that choice. We are now at the point, according to the EDCs, where the objective has been achieved and continuing the Retail Margin may well penalize customers who choose not to switch or cannot switch, and, as stated above, may have the result of discouraging a move towards price responsive hourly load. EDCs' Initial Comments at 1-2

Furthermore, the EDCs contend that the Retail Margin no longer acts as a proxy for the TPSs' marketing costs. For example, when marketing against BGS-CIEP and the attendant spot price, TPSs benefit from a customer's desire to avoid spot price risk. When marketing against BGS-FP, TPSs can offer contracts that are based on a shorter duration than the three year BGS-FP blended price, and which do not need to incorporate the price migration risks included in the standard BGS-FP offering. As previously mentioned, the Retail Margin, in conjunction with other factors, has resulted in approximately 85% migration of BGS-CIEP load and 70% of BGS-FP load over 750 kW—so TPSs are clearly more than able to cover their marketing costs. The EDCs also note that large customers in New Jersey have a wide array of competitive TPSs to choose from e.g., the BPU website lists 32 TPSs as doing business in New Jersey. Once the market was jumpstarted with the Retail Margin – which the high switching figures show that it has – TPSs should now be competing by adding value. EDCs' Initial Comments at 1-2

Rate Counsel

Rate Counsel also recommends the elimination of the Retail Margin. Rate Counsel notes that the purpose of the Retail Margin was to facilitate development of an actively competitive retail market, by encouraging customers to shop and electricity suppliers to offer attractive products and services. The Retail Margin also served to encourage TPSs to enter the market by recognizing, as stated by the Board, that "there are additional costs involved in providing retail service compared to default service."[5] The Retail Margin was not intended, as some commenters have suggested, to cover every cost of operating a TPS or "level the playing field" to add costs for those who choose not to utilize TPSs. According to Rate Counsel, in essence, by this argument, the TPSs are asking the Board to continue the Retail Margin as a premium charged to certain customers in order to enhance the competitive position of the TPSs. Rate Counsel's Final Comments at 2-3.

This is not the purpose of the Retail Margin, according to Rate Counsel. Rather, the Board's stated purpose in imposing the Retail Margin was to stimulate formation of a competitive market for TPSs in New Jersey, not to maintain an artificial competitive playing field. The Retail Margin has achieved its purpose and now should be eliminated. Rate Counsel also notes that N.J.S.A. 48:3-57(a)(1) does not require the Board to impose the Retail Margin but permits the Board to impose the additional charge to encourage customers to shop among competitive suppliers of electricity. The Board, according to Rate Counsel, should use its discretion to discontinue the Retail Margin as soon as feasible. Rate Counsel's Reply Comments at 2-3

Today, explains Rate Counsel, there are many competitive TPSs in the State offering an array of services to large users. As current data shows, about 70% of BGS-CIEP customers have switched to TPSs, representing about 85% of BGS-CIEP load, with switching levels roughly constant for the last five years. Rate Counsel also notes that the TPS market base in New Jersey serves over 5,600 MW of load in the State, in aggregate larger than the load served by many U.S. utilities. From Rate Counsel's perspective, the data shows that TPSs have made significant entry into the market for these customer classes. Rate Counsel's Initial Comments at 3-4.

With respect to the BGS-FP customers, as of June 30, 2010, 68.2% of BGS-FP customers who pay the Retail Margin, representing 86.7% of that group's load, had switched to a TPS. Numerous TPSs operate in New Jersey, including 30 in the PSE&G service territory alone. Falling energy prices will only enhance competition with BGS-FP auction prices, according to Rate Counsel. With a robust TPS participation in New Jersey already in place, any further switching by BGS-FP customers between 750 kW and 1,000 kW load can and should occur as a result of TPS offerings that are more attractive to those customers than the BGS-FP rate. This should occur naturally due to market forces without charging these customers an artificially higher rate. Since a competitive market now exists, the Retail Margin has served its purpose, according to Rate Counsel, and should be eliminated. Rate Counsel's Reply Comments at 2.

Rate Counsel also disagrees with RESA's suggestion that the Board should expand the Retail Margin to all customers regardless of size. Rate Counsel finds confusing RESA's statement at the August 20, 2010 Legislative Hearing that TPSs "do not have the ability to lock in large

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[5] In the Matter of the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., Docket Nos. EX01110754 and EO02070384, Decision and Order (Dec. 18, 2002), at 12.

amount of supply under such a laddered, blended procurement approach, because TPSs do not have the EDC's large customer base." According to Rate Counsel, a TPS is not required to use the same three-year pricing structure used by the BGS auction, but is at liberty to purchase and sell electricity with any commercially reasonable and competitive pricing structure. In fact, explains Rate Counsel, some TPSs do offer fixed price contracts. In short, Rate Counsel concludes RESA has failed to show any bias in favor of BGS-FP pricing to the competitive disadvantage of its members, especially in today's energy price environment. The substantial amount of switching that has occurred shows that some TPSs are able to offer competitive terms to New Jersey consumers, so the difficulty of the others may reflect more strongly on whether they are offering competitive terms rather than on the regulatory environment. Given that TPSs are free to set their prices at the level they deem appropriate and competitive, it is simply unfair, according to Rate Counsel, to impose an additional charge on certain customers to maintain the competitive position of certain market participants. Rate Counsel's Reply Comments at 3.

NJBIA

The NJBIA agrees with the EDCs and Rate Counsel that the Retail Margin should be eliminated. The NJBIA noted that it was disappointed that over $100 million from the Fund was not spent and instead reallocated to the general fund. In these tough economic times, the NJBIA notes, businesses are coping with the high cost of doing business in the State. The NJBIA requests that the Board look at ways to reduce energy costs and stimulate the economy. One easy way to do just that, the NJBIA notes, is to eliminate the Retail Margin. Retail switching numbers have remained relatively unchanged over the past five years. According to NJBIA, little has been done with the Retail Margin funds that provides a reason to continue to subject ratepayers to this charge when no benefit is being derived. However, should the Board decide to keep the charge, the NJBIA requests that the included rate class not be expanded as this would detrimentally impact businesses in New Jersey with additional cost burdens. NJBIA's Initial Comments at 1.

RESA

RESA argues that the Retail Margin should be retained at its current level and expanded to all customer classes. However, if the BPU decides to modify the current level of the Retail Margin, RESA recommends the establishment of a thorough and comprehensive proceeding to fully examine the Retail Margin's intended purpose and to develop its appropriate level. Because the Retail Margin was established at its current level of 5 mils per kWh in 2003, it may, in fact, be set too low, according to RESA. RESA's Initial Comments at 2.

RESA notes that the Retail Margin is a necessary component of New Jersey's competitive energy supply market. The Electric Discount and Energy Competition Act ("EDECA") established the Retail Margin as a means of leveling the competitive playing field between the EDCs and TPSs. The Retail Margin, according to RESA, accomplishes this in three ways: 1) the Retail Margin serves as a proxy for costs (such as marketing, advertising and customer acquisition costs) that TPSs incur but EDCs do not or, to the extent they are incurred by EDCs, such costs are recovered by the EDCs through electric distribution rates unavailable to TPSs but still paid by TPS customers; 2) the Retail Margin addresses the natural pricing advantage that exists due to the economies of scale and scope present when competing against any default service such as BGS, and 3) the Retail Margin serves as a proxy for fully unbundling all generation related costs (billing and collection, customer service, IT systems and infrastructure, working capital, general administrative, and other costs related to the provision of generation

service that are currently embedded in electric distribution rates) from electric distribution rates. RESA's Initial Comments at 2-3.

According to RESA, TPSs incur significant costs associated with customer acquisition that are not present for EDCs and are not otherwise reflected in BGS prices. For example, TPSs must engage in marketing and advertising campaigns and must employ sales people and customer service staff to attract customers. Similarly, EDCs are allowed a rate of return on their distribution system investments and do not factor in a return component into BGS prices. Absent a mechanism for representing these costs such as the Retail Margin, BGS service would have a natural advantage over TPS service and therefore stifle competition. In addition, continues RESA, BGS service has a pricing advantage over TPS service because of its "default" nature. For example, a wholesale supplier providing service to a class of default service customers acquires a large pool of customers all at once, which produces economies of scale and scope that do not immediately exist for a TPS. RESA's Initial Comments at 3-4

EDCs, RESA explains, are virtually guaranteed to have every customer entering its region for at least a month, whereas TPSs can only obtain customers through marketing and competitive pricing. Even if a TPS has a seemingly stable amount of customers, unforeseen market events could cause mass amounts of customers to switch back to default supply, in addition to the normal amount of switching by TPS customers. It is this risk of switching that makes it impracticable for TPSs to enter into BGS Auction-style contracts without also risking substantial and unjustifiable losses that could result in credit and reliability concerns for TPSs and their customers. The Retail Margin, according to RESA, acts to resolve this disparity by requiring the EDCs to charge their customers with a load greater than 750 kW an additional 5 mils per kWh, and is the only feasible method for doing so. Therefore, according to RESA, it is critical that the Retail Margin at least be maintained. RESA's Initial Comments at 3-4

RESA further explains that EDCs in New Jersey provide transmission and distribution ("T&D") service to all customers in their service territory and electric generation service only to those customers remaining that have not switched to TPS generation service. However, the EDCs have not gone through extensive proceedings to fully identify and unbundle all generation related administrative and operating costs from their distribution rates to ensure the proper cost allocation and assignment of generation related expenses exclusively to the BGS portion of a customer's bill. Without such unbundling, according to RESA, TPS customers essentially pay for the same generation related costs twice — once to the EDC through distribution rates, and again to their chosen suppliers. RESA recognizes, however, that it would be a very difficult undertaking, to fully identify and unbundle all of these costs from distribution rates, as evidenced by other jurisdictions' unbundling attempts. Despite the lack of unbundling, the Retail Margin continues to appropriately act as a proxy for reflecting these costs in BGS rates. This universe of generation service costs also include working capital costs, costs of regulated employees who perform functions for T&D and BGS service, insurance costs, billing and collection costs, and the administrative costs associated with supporting and maintaining each service. RESA's Initial Comments at 3-4

In addition to the EDCs' wholesale energy purchase advantage, RESA explains, any reduction in the Retail Margin will inject a high degree of regulatory and consumer uncertainty into the New Jersey retail electricity market that will adversely impact customers as well as TPSs. As discussed earlier, because of an uncertain customer base, TPSs already do business at a disadvantage relative to the EDCs. According to RESA, reducing the Retail Margin will reduce the savings to customers, upset the business model of TPSs, and ultimately cause customers to be less willing to switch to TPSs. For example, RESA continues, a customer presumably has

assessed the avoidance of paying the Retail Margin when deciding to enter into a competitive supply contract with a TPS, in some cases with a contract that extends over multiple years. Therefore, any reduction of the Retail Margin, RESA contends, would have an impact on existing contracts, limit a customer's willingness to enter into new long-term contracts, and reduce a TPS's willingness to provide the same. RESA's Initial Comments at 5.

NEMA

NEMA maintains that the Retail Margin was intended to be a proxy for marketing and administrative expenses incurred by competitive marketers to serve migrating customers. These, by their very nature, are on-going costs and should continue to be included in BGS pricing. By comparison, the utilities in New York utilize a Merchant Function Charge that works similarly to provide consumers with a basis to compare utility default service and competitive market offerings. NEMA also takes exception to the utilities' argument that seeks to limit the purpose of the Retail Margin by characterizing it having been for an "incubating purpose" and arguing that the market is sufficiently mature to justify its elimination. NEMA argues that this misses the point since the purpose of the Retail Margin is to approximate those on-going costs incurred by marketers to serve choice customers. Regardless of the state of the market, marketers will continue to incur costs to serve choice customers over and above just the pure commodity rate just as does the utility to provide default service. NEMA's Initial Comments at 1.

NEMA also disagrees with the utilities that the market has reached a point of maturation that would justify the ending of the Retail Margin. In NEMA's view, the significant lack of migration of mass market consumers belies this point, and in fact, would support the extension of the Retail Margin. Recent market changes have created favorable conditions for competition under the three-year averaged BGS pricing regime, and as such, NEMA argues, this is precisely the wrong time to inject regulatory uncertainty into the competitive marketplace that could dissuade marketers from entering the New Jersey market and make long-term plans to serve such customers. NEMA's Initial Comments at 1-2.

Constellation

Constellation recommends that the Board retain the Retail Margin and expand its application on June 1, 2013 to all customers with a peak load share of 500 kW and above. While many factors contribute to any one customer's decision to switch to a TPS, making it difficult to quantify the Retail Margin's specific impact, the Retail Margin, Constellation maintains, nevertheless continues to represent a significant element in the establishment and maintenance of the competitive electricity market in New Jersey, encouraging customers to explore supply options from TPSs. Constellation's Final Comments at 8-9.

To understand the significance of the Retail Margin, Constellation recommends that a closer examination of customer supply may be beneficial. As the Board is aware, EDCs offer two general products to customers in their respective territories: (1) distribution service for delivery of energy ("Distribution Service"); and (2) energy supply and related products necessary to serve customers ("Commodity"), which requirements are bid out to wholesale suppliers through the BGS Auctions ("BGS Commodity Service"). For those customers who do not choose a TPS, EDCs provide both Distribution Service and BGS Commodity Service. For a customer who chooses to take service from a TPS, the TPS provides Commodity, and the EDC provides only Distribution Service. As RESA mentioned at the Aug. 20, 2010 Legislative Hearing, for customers with loads of 750 kW and above, the Retail Margin "[serves] both as a proxy for costs

that TPSs incur but EDCs do not and as a proxy for fully unbundling generation related costs from distribution rates." Constellation's Final Comments at 8-9.

Constellation explains that while certain back office functions such as billing or customer service may be costs that a TPS incurs for providing only Commodity to a customer, these same types of back office functions for an EDC may be provided by personnel that support both the EDC's activities for providing BGS Commodity Service and the EDC's activities for providing Distribution Service. The costs for such back office functions, however, may be allocated to all of the EDC's customers, regardless of whether they are taking only Distribution Service from the EDC (and are taking Commodity from a TPS) or whether they are taking both Distribution Service and BGS Commodity Service. The Retail Margin serves as a "proxy" for these types of costs which a TPS incurs and must charge to its customers (that purchase only Commodity from the TPS), but which an EDC may be able to charge to all customers to which it provides Distribution Service. Constellation's Final Comments at 8-9.

While Constellation in this way agrees with NEMA's and RESA's comments as to the importance of the Retail Margin, Constellation also sees merit in the NJBIA comments regarding the use of funds that are accrued through application of the Retail Margin, including NJBIA's disappointment that over $100 million from the Retail Margin Fund was reallocated to the general fund. Constellation points out that, by delaying implementation of both CIEP expansion and Retail Margin cessation until 2013, the Board could use the transition time to allocate funds for a website to facilitate the shopping experience, as suggested by NJBIA, or to create helpful materials and support outreach events to educate commercial and industrial customers about electric competition. Constellation explains that these materials and programs, importantly and appropriately funded at least in part through the Retail Margin, could serve not only to educate existing CIEP and other commercial and industrial customers regarding their opportunities, but also to prepare customers with loads of 500 kW to 1000 kW for the upcoming change in their BGS structure pursuant to their move into the CIEP class, and inform them regarding what actions they can take to prepare and consider their options. Constellation's Final Comments at 9-10.

DISCUSSION AND FINDINGS

The Board is persuaded by the arguments presented by Rate Counsel, NJBIA and the EDCs and **FINDS** that the Retail Margin has served its intended purpose of promoting a competitive market. As Rate Counsel notes in its comments, the purpose of the Retail Margin was to "facilitate development of an actively competitive retail market, by encouraging customers to shop and electricity suppliers to offer attractive products and services" (Rate Counsel's Final Comments at 2). This interpretation comports with the Legislature's definition of the Retail Margin in N.J.S.A. 48:3-51 as an amount that the Board may authorize to be charged to certain BGS customers "for the purpose of promoting a competitive retail market for the supply of electricity."

Rate Counsel and the EDCs provide recent shopping statistics that clearly show the maturity, competitiveness, and high degree of switching in the TPS market. For example, the EDCs point out that about 70% of BGS-CIEP customers have switched to TPSs, representing about 85% of BGS-CIEP load; with respect to the BGS-FP customers, as of June 30, 2010, Rate Counsel notes that 68.2% of BGS-FP customers who pay the Retail Margin, representing 86.7% of that group's load, have switched to a TPS. Rate Counsel also points out that customers have approximately 30 TPSs to choose from in the PSE&G service territory alone. Statewide, 35 TPSs have been registered by the BPU, an almost 50% increase from the 24 registered in

2009, according to BPU records.[6] The Board agrees with Rate Counsel that additional evidence of the maturity of the TPS market base in New Jersey is the fact that over 5,600 MW of load in the State is being served by TPSs, in aggregate larger than the load served by many U.S. utilities. It is difficult to argue, based on these statistics, that a vibrant retail market does not exist in New Jersey for those customers currently paying the Retail Margin.

With robust TPS participation in New Jersey already in place, the Board concurs with the EDCs and Rate Counsel that any further switching should occur as a result of TPS offerings that are more attractive to those customers than the default rate, rather than through an artificially higher rate imposed by the Board. In fact, evidence suggests that market conditions appear to be a greater motivation than the Retail Margin in encouraging switching for larger customers. In May 2008, only 10% of customers with peak loads of 750-1000 kW bought supplies from TPSs; in June 2010, approximately 77% were buying from TPSs, according to monthly data available at www.bgs-auction.com. The Retail Margin was in effect throughout that time, indicating that the change in market conditions between 2008 and 2010 led to the increase in switching. For the 70% of customers and 85% of load above 1000 kW who have switched from BGS-CIEP hourly pricing, their motivation for switching is less attributable to market conditions since they pay the market price for electricity under BGS-CIEP. They may also be less influenced by avoiding the Retail Margin and more by their desire to avoid the volatility of hourly pricing since the TPSs can offer plans more closely tailored to these customers' needs, including fixed price contracts.

In addition to acting as an incentive to shop, the Retail Margin was also intended to increase competition by accounting for certain administrative expenses that the TPSs face in entering the market and which the EDCs providing BGS either do not incur or may not be unbundled from distribution rates. For instance, as Constellation notes, while certain back office functions such as billing or customer service may be costs that a TPS incurs for providing service, these same types of back office functions for an EDC may be provided by personnel that support both the EDC's activities for providing BGS and the EDC's activities for providing distribution service. However, with respect to these back office function cost issues, the Board must take into consideration that the electric utilities are already providing and offering consolidated bills as well as the purchase of receivables on behalf of many of the TPSs, thereby reducing TPS' billing and customer service costs and risks. The Board recognizes that certain EDCs may experience certain economies of scale with respect to centralized costs. However, TPSs may also benefit from having the same or similar economies of scale, so these efficiencies are a normal business risk in a competitive environment. Moreover, the Board **FINDS** that administrative costs attributable to the conduct of the BGS procurement process are included in the BGS price to the extent that such costs are not paid by the winning bidders through tranche fees. Other administrative costs associated with the procurement of electric power are also passed through the BGS price since the auction prices themselves inherently include those administrative costs incurred by the winning bidders for their own procurement activities. The Board also notes that there was an unbundling proceeding as part of the restructuring of the electric utility industry in New Jersey as well as base rate proceedings for each electric utility after the conclusion of the four year transition period, and most recently in the past year, base rate cases for three of the four electric utilities. It is within these proceedings where back office function costs are examined closely. The TPS have had every opportunity to participate in those proceedings and to raise issues relative to the level of costs.

The Board agrees with the EDCs that TPSs have some inherent marketing advantages over BGS-CIEP since they benefit from customers' desires to avoid spot price volatility risk. When

[6] See http://www.bpu.state.nj.us/bpu/assistance/utility/index.html.

marketing against BGS-FP, TPSs can offer contracts that are based on a shorter duration than the current three year BGS-FP blend, and which do not need to incorporate the price migration risks included in the standard BGS-FP offering. These advantages suggest that while certain costs may be incurred among TPSs that are not incurred by EDCs or may be embedded in distribution rates, those costs may be offset by certain advantages that the TPSs have in contrast to the EDCs under the present BGS procurement process.

The Board further agrees that the Retail Margin was not intended, as RESA, NEMA, and Constellation have suggested, to cover every cost of operating a TPS or to add costs for those who choose not to shop for their electric supply. The Board agrees with Rate Counsel and the EDCs that the purpose in imposing the Retail Margin was to stimulate formation of a competitive market for TPSs in New Jersey, not to maintain an artificially leveled playing field. The Board notes that N.J.S.A. 48:3-57(a)(1) does not require the Board to impose the Retail Margin, but merely permits the Board to impose the additional charge to encourage customers to shop among competitive suppliers of electricity with the goal of creating a competitive TPS market. The Board also agrees with the EDCs that the high switching rates and proliferation of competitive suppliers show that TPSs are able to cover their costs of doing business. Based on the information provided, the Board is persuaded that the Retail Margin is no longer needed as a proxy for these costs based on the proliferation of TPSs in New Jersey and the resulting economies of scale and scope available as a result of the additional load being served.

N.J.S.A. 48:3-57(a)(1) states that "[t]he charges assessed to customers for basic generation service pursuant to this subsection **may** include a retail margin, as determined by the board." (Emphasis added). Indeed, N.J.S,A. 48:2-95(d) in setting the Retail Margin as the funding source for the BPU Business Ombudsman, specifically recognizes that the Board, in its discretion, can determine to reduce or eliminate the Retail Margin. As such, it is clear that the Board has the authority to modify the level of the Retail Margin or eliminate it completely. This elimination will result in a small but real decrease in the cost of energy to some consumers in the State. In light of the economic issues cited by a number of the parties above, it is incumbent upon the Board to take reasonable and appropriate steps to help limit energy costs to ratepayers when possible. Furthermore, under current conditions, the Board does not believe it necessary to continue to compensate TPSs for any differential in marketing and other costs. Based on the information provided, the market appears to be succeeding and the Board will continue to allow that market to develop. In any event, based on the record developed in this proceeding, the Board **FINDS** that the TPS market in New Jersey is well established and appears to be functioning well. As such, the Board believes it is reasonable and appropriate to terminate the Retail Margin as of June 1, 2011.

Therefore, for the reasons stated above, Board **HEREBY ELIMINATES** the Retail Margin, effective as of June 1, 2011. The EDCs shall continue to remit to the State Treasurer on a quarterly basis all Retail Margin monies hereafter collected with accrued interest, holding the Retail Margin monies in a separate interest bearing account pending such remittance. Such remittances shall cease after all Retail Margin monies due for the period ending June 1, 2011 have been collected.

CIEP THRESHOLD

As previously determined by the Board in connection with the 2007, 2008, 2009 and 2010 BGS Auctions, the current threshold for mandatory inclusion in the CIEP class is 1,000 kW. Customers who are moved into the BGS-CIEP class are exposed to real time energy pricing, and thus have the ability to see and respond to the prevailing market-cost of their energy

consumption in close to real time. BGS-FP customers do not see the results of their energy decisions as directly. BGS-CIEP customers have more of an immediate incentive to make informed decisions to shop for fixed rates, conserve or become more efficient or to curtail or shift load usage at times of peak demand.

EDCs

The EDCs support keeping the BGS-CIEP threshold at the current level of 1,000 kW through May 2012. The EDCs believe that New Jersey customers below 1,000 kW have more choice than if the threshold were lowered. These customers can choose BGS-FP; they can choose to opt into BGS-CIEP; or they can obtain service from a TPS. The increased switching in this range of customers indicates there are TPSs willing and able to provide offers to these customers. EDCs' Initial Comments at 3-4.

Furthermore, the EDCs argue, over eight years of experience has shown that there is a significant minority of customers who, if put on BGS-CIEP, will not switch to a TPS (even with the obligation to pay the Retail Margin). Experience has also shown that the percentage of such non-switching customers increases as their size decreases. The trend of a higher percentage of CIEP load than of CIEP customers electing TPSs continues. This indicates, according to the EDCs, that lower usage customers do not have the same sophistication about energy procurement and have a lower propensity to switch. These customers could receive shocks from spot market volatility despite being lulled into complacency by recent market stability. Lowering the threshold, according to the EDCs, will exacerbate this problem. EDCs' Final Comments at 4-5.

If the Board decides to retain the Retail Margin for BGS-CIEP customers, the EDCs note that lowering the threshold below 750 kW would also expose a new group of customers to the Retail Margin. The EDCs contend that these customers are best served through maximum choice, and this is best achieved by providing larger BGS customers below 1,000 kW with three options: fixed-price BGS, the ability to opt into hourly-priced BGS, and the ability to choose a TPS. Additionally, the results of the survey of eligible customers conducted in 2007 by the Business Ombudsman demonstrated that customers now on BGS-FP had no desire to be moved to BGS-CIEP, and furthermore, only a handful of BGS-FP customers exercised their option to move to CIEP in the last four years. The trend of a higher percentage of CIEP load than of CIEP customers electing TPSs continues. This indicates, according to the EDCs, that lower usage customers do not have the same sophistication about energy procurement and have a lower propensity to switch. These customers could receive shocks from spot market volatility despite being lulled into complacency by recent market stability. Lowering the threshold will exacerbate this problem, according to the EDCs. EDCs' Initial Comments at 3-4.

The EDCs take issue with RESA's comments at the August 20 Legislative Hearing, where they claimed that customers in New Jersey will not have the same choices and options as similar customers in New York or Pennsylvania if the CIEP threshold is not lowered. RESA also claims that in neighboring states, where CIEP thresholds are lower, shopping is in the ninety to mid-ninety percentile. However, the EDCs note that all customers in New Jersey, regardless of size, have an option to take service from a TPS. Further, any non-residential customer can choose to opt-in to CIEP. Higher shopping in neighboring states may only reflect that customers in these states now have fewer, rather than more, choices. Furthermore, according to the EDCs, lowering the CIEP threshold, rather than providing customers with more choice, may only act to force customers who are averse to hourly pricing to seek a fixed-price offer from a TPS (which

may be less attractive than BGS-FP) since they would be precluded from BGS-FP service. EDCs' Final Comments at 4-5.

Rate Counsel

Rate Counsel agrees with the EDCs, arguing that users of 750 kW to 1,000 kW should continue having a choice of being served under the BGS-CIEP or BGS-FP tariff. Rate Counsel believes that the Board should focus its efforts on helping New Jersey's mid-sized commercial customers determine their most economical source of electric power supply, which could be BGS-FP supply or a TPS, rather than forcing these companies into the BGS-CIEP class. Rate Counsel's Initial Comments at 5-6

Rate Counsel also argues that New Jersey's higher threshold does not place the State at some form of economic disadvantage. The TPSs have not shown, according to Rate Counsel, that forcing more consumers into the market is necessary to sustain competition or that it will lower electricity prices. For example, Rate Counsel asserts that RESA did not show a reduction in electricity prices in those states (such as New York) with a lower CIEP threshold. The only apparent result of lowering the CIEP threshold would be to reduce consumers' pricing options from three to two. In any event, the amount of load now provided by TPSs in those states is not much higher than in New Jersey, Rate Counsel contends. For example, in the Con Ed service territory in New York, as of April 2010, 83.4% of large non-residential customers representing 90.3% of the load for that group had switched. Among New Jersey's BGS-CIEP customers, as of June 2010, 68.2% of customers representing 86.7% of the load for that group had switched. Switching by medium-sized and small non-residential customers of Con Ed was significantly lower than the rate of switching by larger customers. There is no reason to think, according to Rate Counsel, that it would be different in New Jersey. Rate Counsel's Reply Comments at 4-5

Rate Counsel notes that it has in the past consistently argued that the BGS-CIEP threshold remain unchanged, with users of 1,000 kW or more in the BGS-CIEP tariff and users of 750 kW to 1,000 kW having a choice of being served under the BGS-CIEP or BGS-FP tariff. Lowering the BGS-CIEP threshold, according to Rate Counsel, is especially ill-advised during the current economic downturn. Rate Counsel notes that the NJBIA presented testimony at a legislative-type hearing on September 10, 2009 and written comments dated September 25, 2009, opposing an "[e]fficient proliferation of retail choice" should not be confused with artificially stimulating retail choice or maximizing switching. Rather, efficient proliferation of retail choice occurs when TPSs are able to offer added value that can induce customers to switch away from a market-priced BGS offering. Rate Counsel notes that the NJBIA described the hardships created by the current economic climate and the increased interest in controlling energy costs as a result of this difficult economy. Rate Counsel's Initial Comments at 5-6

Rate Counsel notes that the NJBIA urged the Board not to change the CIEP threshold to force mid-sized customers to shop for a TPS but rather to focus its efforts on effective education and technical assistance for these customers. Rate Counsel agrees that the Board should focus its efforts on helping New Jersey mid-sized commercial customers determine their most economical source of electric power supply, which could be BGS-FP supply or a TPS, rather than forcing these customers into the BGS-CIEP class. Customers who pay the BGS-FP tariff now have three options for electricity pricing: 1) continuing in BGS-FP; 2) switching to BGS-CIEP; or 3) purchasing from a TPS. The TPSs want to narrow those three choices down to two, eliminating the BGS-FP as an option now for those over 750 kW and perhaps eliminating it entirely in the future. Rate Counsel's Initial Comments at 5-6

Rate Counsel rejects RESA's assertions that retaining the present CIEP threshold will not reduce the choices available to New Jersey customers. All electricity customers in New Jersey already have the option to purchase service from a TPS. Their decision not to shop for energy may be due to any number of business reasons. Forcing hourly pricing on more consumers, by lowering the BGS-CIEP threshold, will not necessarily reduce prices in the New Jersey electricity market but will limit consumer choice, and instead may expose consumers to greater price volatility and increased prices. The BGS auction, according to Rate Counsel, may offer BGS-FP customers more stability than TPSs can offer. The Board chose to use three-year average pricing as a partial hedge to protect consumers against energy price volatility. Forcing smaller customers to leave the auction and participate in the energy market directly may expose them to greater volatility and potentially higher energy price increases. The Board, consistent with its statutory mission, chose to establish the three-year ladder in the BGS auction, and set the CIEP threshold at the current level to allow smaller customers some protection from market volatility. Given current economic conditions and the slim margins that are sustaining many of these small businesses, Rate Counsel recommends that this is not the time to eliminate these protections. Rate Counsel's Initial Comments at 4-5.

RESA

RESA argues that the current CIEP threshold, which is currently set at 1,000 kW, should be lowered to 500 kW immediately, so that all customers at or above this level receive mandatory hourly pricing for their BGS service. RESA notes that real-time pricing has two important attributes. First, providing price signals to customers will motivate them to shift their usage from high-priced to low-priced hours of the day. Second, real-time prices are dispatched based on the real cost of electricity on a given day, so customers getting real time price signals have the opportunity to revise their usage patterns with the potential to: (1) lower the market clearing price, and (2) reduce the need for new peaking plants. In addition, real-time pricing provides these large customers with the price signals to control the cost of their electric consumption and manage their energy use effectively. Real-time pricing, according to RESA, also allows customers to take advantage of products and services such as load management, energy conservation and efficiency products as well as customized pricing plans tailored to the customer's specific needs, whether fixed or market based. Furthermore, real-time pricing for these customers avoids the need for costly and risky default service procurement plans for the larger commercial and industrial customer group. RESA's Initial Comments at 6.

Despite the many benefits achieved through real-time pricing, RESA argues that the current threshold for mandatory BGS-CIEP pricing covers fewer than 3,000 customers statewide. The remaining customers below this 1,000 kW threshold take default supply under BGS-FP which according to RESA serves as a barrier to expanded customer choice and fails to promote demand-side strategies, and subjects these customers to artificial above-market prices for their electric supply precisely during a time of severe economic recession because the price is based on past years' higher price auction results. According to RESA, under the current BGS structure most electricity customers in this State lack a clear signal – and a clear incentive – to conserve energy, shift consumption patterns or explore energy efficient or renewable alternatives that would be available to them under BGS-CIEP. With hourly or real-time pricing, customers are empowered to make informed decisions to conserve, become more efficient or even curtail or shift load usage at times of peak demand. RESA's Initial Comments at 6.

RESA believes that the best approach to expanding the use of market-reflective pricing is to lower the BGS-CIEP threshold to 500 kW effective June 1, 2011 and establish a "glide-path" for future incremental reductions based on the most current market data and information available.

To this end, RESA recommends that the Board commit to holding an annual CIEP threshold proceeding to receive stakeholder input through comments and legislative-type hearings. Through such a proceeding, the Board can utilize the information received, inclusive of relevant up-to-date market data, to make an informed decision on a future lowering of the CIEP threshold that is gradual, orderly and structured to enable a greater number of customers to access the value-added products and services provided by the competitive supply market. RESA's Initial Comments at 7.

Although it is currently under review, according to RESA the Energy Master Plan ("EMP") describes the dangers of complacency by policymakers in the "business as usual" scenario. RESA argues that the EMP calls for gradual shifts in policy that serve to foster competition, efficiency, conservation and demand side management. These goals can be achieved by a greater reliance on real-time pricing. RESA states that the EMP describes how energy prices are calculated for the majority of customers. Namely, prices for BGS-FP are determined by the highest cost of producing power, which is during peak demand, regardless of when such power is actually used. RESA claims that a real-time pricing methodology avoids this problem. Customers taking real time pricing service pay only for the peak usage they actually use, and not a rate based on peak usage that they may never use. Thus, RESA further argues that the Board has followed the business as usual approach, by having a prolonged delay of six years, in reducing the BGS-CIEP threshold to 500 KW and gradually in future years, citing the need for more information, more data and more working groups. RESA's Initial Comments at 7-8.

Despite the Board's adherence to the current BGS-CIEP threshold, RESA notes that other state public utility commissions in the PJM, New York, New England and Midwest regions have lowered their corresponding thresholds at a far more aggressive pace. For example, in New York all of the EDCs have expanded or committed to expand their mandatory hourly-price default service thresholds from 1,000 kW to levels as low as 300 kW by 2012. In 2008, the Pennsylvania Public Utility Commission adopted default service policies and regulations calling for hourly-priced default service for customers over 500 kW, and indeed, all of the recently approved individual EDC default service plans employ hourly pricing for customers over this threshold. According to RESA, three Pennsylvania EDCs employ thresholds below the 500 kW level, including Duquesne Power & Light which is at 300 kW, MetEd and Penelec at 400 kW, and Pike County Power and Light which provides hourly priced default service to all customers regardless of size. RESA's Initial Comments at 8-9.

RESA also cites to two other utilities, notably Commonwealth Edison (a member of PJM) in Illinois providing hourly-priced default service to all customers over 100 kW as of June 1, 2010, and Ameren (a member of the Midwest ISO) providing hourly priced default service to all customer over 400 kW. RESA also noted Maryland's reduction of the threshold for hourly-priced default service to 600 kW. RESA further cited that Connecticut, Massachusetts and Maryland have lowered their thresholds for quarterly priced default services. The quarterly priced default service applies to customers using 500 KW and higher in Connecticut, and medium commercial and industrial customers in Maryland and Massachusetts. Specifically customers with a demand of 25 kW or greater but less than 600 kW in demand in Maryland and using 200 kW or greater in Massachusetts are subject to quarterly pricing. RESA argues that this wholesale market design results in a price for energy that, while not as market reflective as hourly-pricing, still provides more appropriate price signals through quarterly price adjustments than the three year averaged BGS-FP contracts. RESA's Initial Comments at 8-9.

RESA further notes that with the exception of the largest commercial and industrial energy users, the current wholesale market structure as it applies to the BGS-FP classification has left

the vast majority of electricity consumers with limited competitive pricing options. In RESA's view, the retail price distortions created by a blended BGS-FP portfolio have delayed further development of a sustainable, competitive market in New Jersey and thus, should be modified to fully benefit all ratepayers inclusive of BGS-FP customers through market-responsive procurement. RESA's Initial Comments at 9.

RESA notes that both Rate Counsel and the EDCs focus their opposition to lowering the CIEP threshold on their perceived lack of sophistication of such customers. It has even been argued, according to RESA, that forcing such a switch could drive such unsophisticated businesses into bankruptcy due to unexpectedly high energy costs versus what was to be expected under BGS-FP. RESA points out that certain business in the 500 – 750 kW rate class operate businesses in other states where they are subject to hourly pricing, thereby undercutting any notion that these businesses are not sophisticated enough or are incapable of becoming sophisticated enough to understand how to benefit from hourly pricing. RESA's Final Comments at 5-6.

RESA also rejects the EDCs' argument that requiring customers in the 500 kW rate class to switch to BGS-CIEP actually eliminates choice as opposed to the Board's statutory directive to promote choice. Instead, RESA argues that BGS service does not provide the range of customer tailored choices offered by TPSs, but rather provides only two limited options. Once on BGS service, a customer is either BGS-FP, BGS-CIEP or in a small minority of ratepayers in the 750 - 1000 kW rate class that can choose to be either. While it's true that this small minority may "choose" to go between BGS-FP and BGS-CIEP, it is a choice between two fixed offerings. True choice, according to RESA, exists only in the competitive energy supply markets because such markets allow customers to tailor their energy pricing method to their specific needs. RESA notes the range of choices offered by TPSs, including varied methods of hourly pricing and quarterly fixed pricing, as opposed to the current three year rolling average BGS-FP. RESA contends that such pricing is available to customers and is contemporaneously cheaper than BGS-FP in today's market because BGS-FP rates are currently above-market. Moreover, RESA argues that lowering the CIEP threshold would create true choice for customers in not only the cost of their energy, but also the type of energy provided, demand response programs, smart metering and many other innovative and creative energy products and services that are simply not offered by the EDCs. RESA's Final Comments at 5-6.

Constellation

Constellation recommends that the Board plan ahead to transition towards expanding the BGS-CIEP class to include all customers with annual peak loads of 500 kW and above, beginning on June 1, 2013. According to Constellation, such a measured step by the Board (1) properly encourages the State's goals for competitive energy markets, including conservation and increased renewable resource development, while both (2) allowing customers that will be newly included in the CIEP class time to transition to such structure and plan for their energy futures, and (3) importantly maintaining the sanctity of BGS-FP supply contracts already entered into by EDCs and wholesale suppliers, and encouraging the BGS Auctions' continued success for the benefit of consumers. Constellation's Final Comments at 4.

Constellation notes that it has found, generally, customers in this kW-usage range – which often includes customers such as "big box" retail stores, convenience chain stores, supermarkets, mid-size office buildings, and small hospitals – to frequently have an interest in participating in demand response programs, and are sometimes ideal candidates for various types of onsite generation, both of which can be particularly useful tools where customers are able to see and react to hourly prices. Additionally, Constellation notes, given the large annual energy

expenditure of this customer size group, which can range from $250,000 to over $1,000,000, these customers generally have the sophistication to employ other more sophisticated energy management technologies and strategies that rely on hourly pricing structures. Constellation's Final Comments at 4-5.

Constellation maintains that by delaying the CIEP expansion until June 1, 2013, the Board will allow for an important transition period for consumers between 500 kW and 1000 kW (including those between 750 kW and 1000 kW that have not already opted into the CIEP class). In that transition period, customers can look at what options are available including, for instance, aggregation with other similar customers in order to seek out the best TPS service options, participation (individually or with other aggregated load) in demand response opportunities, energy efficiency assessments and projects, and/or more involved energy management strategies with TPSs. In this way, not only would a transition period until June 1, 2013 provide for the appropriate expansion of the CIEP class, but it would also allow customers time to consider the effects of such expansion and consider innovative and well-tailored solutions to enhance their energy future. Constellation's Final Comments at 5.

Constellation cautions the Board that a transition to a CIEP threshold level to 500 kW at the earliest possible time should only be pursued to the extent that the Board can ensure that any such change will not undermine existing BGS-FP contracts. For this reason, Constellation proposes a June 1, 2013 implementation date for the new threshold. Through the BGS Auctions, New Jersey's EDCs rely on competitive procurements for wholesale suppliers to serve a 'load-following' percentage of their BGS-FP supply requirements. Wholesale suppliers bidding to serve an EDC's BGS-FP supply requirements understand, accept and account for the fact that the EDC's load will change as customers at their own election choose to leave BGS for competitive retail supply from a TPS, and that such individual customers may at some point in time return to BGS-FP. Any immediate changes to the BGS CIEP level at this time would fundamentally change the pattern and way in which customers leave BGS-FP by eliminating a portion of the load that is served under existing BGS-FP contracts. Wholesale suppliers may either limit their participation in future BGS Auctions or else account for the increased risk of such a regulatory reduction in load through additional premiums in their bids. According to Constellation, reduced participation and/or additional premiums will lead only to less competitive BGS procurements. Constellation's Final Comments at 6-7.

DISCUSSION AND FINDING

The Board has determined to expand the CIEP class to include those 385[7] larger commercial and industrial customers – 89 of which who are presently not contracted with a TPS – with a peak load of between 750 kW and 1000 kW, beginning on June 1, 2011. This action is another step in the Board's commitment to gradually expand the number of customers on hourly pricing as stated in the 2002 Retail Margin Order.

Based on the record developed, the Board is persuaded that lowering the threshold from the present 1000 kW to 750 kW may encourage additional shopping and increase competition in the TPS market, and would also make New Jersey more consistent with other restructured states within PJM and New England. As RESA notes, the Board has been considering lowering the BGS-CIEP threshold to 750 kW and beyond for six years, dating back to the 2002 BGS

[7] This is number of current customers with a peak load of between 750kW and 1000kW, as of the date of this Order. It should be noted that the number of customers in a particular rate class changes over time.

proceeding[8] and has acknowledged the benefits of real-time pricing in each succeeding proceeding.[9] The Board continues to believe that one of the most critical elements in insuring customer choice is enabling customers to see and respond to the actual costs of their energy consumption. Exposing the class of customers above 750 kW to hourly or real-time pricing will allow these customers to make more informed decisions to shop, conserve, become more efficient, or even curtail or shift load usage at times of peak demand.

While the Board has formerly recognized that customers on BGS-FP have more choices than BGS-CIEP customers, developments in the wholesale market and in the TPS industry over the past year have changed that conclusion. The TPS market has become more innovative as a result of competitive pressures in that industry over the past year, and as a result BGS-CIEP customers probably have more choices than customers in the BGS-FP class. Since January 2010, New Jersey has had 11 additional electric suppliers register with the Board, an almost 50% increase over 2009. As previously mentioned, there are now 35 TPSs serving New Jersey customers, in contrast to the 24 registered in 2009. The Board agrees with RESA that BGS service does not provide the range of customer tailored choices that can be offered by TPSs, but rather provides only two limited options. Once on BGS service, a customer is either BGS-FP, BGS-CIEP or currently, in a small minority of ratepayers in the 750 - 1000 kW rate class that can choose to be either. While it's true that this small minority may choose to go between BGS-FP and BGS-CIEP, it is a choice between two fixed offerings. The Board believes, like RESA, that true choice exists only in the competitive energy supply markets because such markets allow customers to tailor their energy pricing method to their specific needs. The choices offered by TPSs include varied methods of hourly pricing and quarterly fixed pricing, as opposed to the current three year rolling average BGS-FP. The Board agrees with RESA that lowering the CIEP threshold would create true choice for customers in not only the cost of their energy, but also the types of energy provided, smart metering and many other innovative and creative energy products and services that may simply not be offered by the EDCs under BGS.

Moreover, the Board is also comforted by the fact, as Constellation points out, that electric service customers above the 750 kW peak load share are sophisticated, medium and large-sized businesses and many are part of regional or national chains that receive similar default service pricing structures in other restructured markets in the Mid-Atlantic and Northeast. Such companies include "big box" retail stores, supermarkets, mid-size office buildings, and small hospitals. The Board **CONCURS** with Constellation that these customers are very attractive to TPSs as a result of their average annual energy expenditures in the range of $250,000 to over $1,000,000 per year. The Board **REJECTS** Rate Counsel's argument that lowering the BGS-CIEP threshold for these customers is especially ill-advised during the current economic downturn because it forces them onto hourly pricing. The Board notes that perception may be harsher than reality in assessing the "harm" that hourly pricing can inflict on a business. In a

[8] *I/M/O the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq.*, Dkt. Nos. EX01110754 and EO02070384, Decision and Order, December 18, 2002, at 13.

[9] *I/M/O the Provision of Basic Generation Service for Year Two of the Post-Transition Period – CIEP Customer Class*, Dkt. No. EO03050394, Decision and Order, December 23, 2003, at 2. Variations on this theme can be found in *I/M/O the Provision of Basic Generation Service for Year Three of the Post-Transition Period*, Dkt. No. EO040288, Decision and Order, December 1, 2004, at 11; *I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2006*, Dkt. No. EO05040317, Decision and Order, December 8, 2005, at 15; *I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2007*, Dkt. No. EO06020119, Decision and Order, December 22, 2006, at 9; and *I/M/O the Provision of Basic Generation Service for the Period Beginning June 1, 2008*, Dkt. No. ER07060379, Decision and Order, January 25, 2008, at 12.

2007 survey conducted by the Ombudsman's Office, 76% of customers in the 750 to 1,000 kW group believed that going on hourly pricing would have a negative impact on their business. In a companion survey conducted among CIEP customers (who already were on hourly pricing), where 55% said it had a positive impact or no impact at all on their business.

Based upon the above discussion and review, the Board **HEREBY FINDS** that lowering the CIEP threshold to 750kW as of June 1, 2011 is appropriate. This reduction should further encourage shopping and bolster the TPS market by enabling customers to see real-time pricing. It is this exposure to the actual costs of energy consumption that, the Board believes, serves as the prime mover in shopping and energy awareness. The Board believes the continued, incremental increase in the number of customers exposed to real-time pricing, coupled with the success and vigor of the TPS market, will minimize any rate impact to the customers subject to this change. Furthermore, the Board expects that the net rate impact will be minimal and can be effectively mitigated by customers through a combination of energy efficiency, shopping, demand response and conservation. The Board does, however, recognize that this reduction may have a rate impact upon the customers now subject to BGS-CIEP, and that incremental movement has value to ensure that the rate impact is minimized. Accordingly, the Board sees value in limiting the reduction to 750kW and not immediately moving to the 500kW range. Prospectively, the Board, upon review of the outcome of this change, may seek to further reduce the CIEP threshold in the future based upon the facts and circumstances at that point in time, Given the record presented herein, the Board believes that an incremental step is reasonable, prudent and warranted at this time.

Accordingly, the Board **APPROVES** the lowering of the CIEP threshold to those customers with a peak load share of at least 750kW beginning June 1, 2011.

DATED: 11/22/10

BOARD OF PUBLIC UTILITIES
BY:

LEE A. SOLOMON
PRESIDENT

JOSEPH L. FIORDALIO
COMMISSIONER

NICHOLAS ASSELTA
COMMISSIONER

ELIZABETH RANDALL
COMMISSIONER

Dissent of Commissioner Jeanne M. Fox

I concur in part and dissent in part to the Board's decision to modify the Retail Margin and BGS-Commercial and Industrial Pricing ("BGS-CIEP") threshold. I concur with the recommendation to eliminate the Retail Margin. I dissent, however, from the Board's decision to reduce the BGS-CIEP threshold to 750 kW.

The initial purpose of the Retail Margin was to encourage shopping and to cover marketing and administrative costs of the third party suppliers ("TPS"). While shopping is going on now, this may be due primarily to the current state of the economy and the development of new shale gas supplies. At some future point, if the current market changes dramatically, the Board may want to bring back the Retail Margin to further reinforce shopping.

I would prefer that the Retail Margin be kept but lowered, even substantially, because third party suppliers still have administrative and marketing costs. In addition, the Retail Margin supports important functions such as the Board's Business Ombudsman's office. Also, TPS contracts are in effect until 2013; a reduction or phase out the Retail Margin would have made it easier for TPS to deal with any uncertainty of the market. In addition, I strongly encourage Board staff to develop and implement the previously discussed website to help connect customers to TPS and I would suggest that the website be completed as soon as possible. Nevertheless, I concur with the majority decision to terminate the Retail Margin.

I do not, however, agree with the Board's decision to reduce the BGS-CIEP threshold to 750 kW. Although I understand staff's position and recommendation, I believe we need to retain the 1000 kW threshold. I agree with the electric distribution companies, Business and Industry Association, and Ratepayer Advocate about the negative impact associated with this change. While staff indicated that companies using less than 1000 kW would benefit from the requirement to shop, in fact, lowering the BGS-CIEP leaves less choice for these 89 impacted customers.

I do not think the BPU or the government should be playing "big brother" in this case, especially in this economy. All companies, including these Commercial and Industrial customers, are already allowed to shop; most Commercial and Industrial 750 kW to 1000 kW customers are businesses looking at their bottom line. The businesses who shop do so for their own financial benefit; likewise, I assume those businesses that choose not to shop also do so with their eye on their bottom line.

The purpose of the competitive supply procurement system is not just competition for competitions sake– it is to have lower electricity prices for business customers. If they can shop and save money, they will. It is our job to help educate them. That is why we have a Business Ombudsman's Office. That is why we should develop and implement a website. I think it is much better for these businesses and New Jersey's economy to provide education, through a variety of methods, rather than to force them to shop through regulatory fiat.

Therefore, I respectfully dissent from the decision to lower the BGS-CIEP threshold from 1000 kW to 750 kW.

Jeanne M. Fox

JEANNE M. FOX
COMMISSIONER

ATTEST:

Kristi Izzo

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

Kristi Izzo