Agenda Date: 06/18/12
Agenda Item: 2D-1

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE REVIEW OF THE BASIC GENERATION SERVICE PROCUREMENT PROCESS	)))))	DECISION AND ORDER DOCKET NO. ER12020150

Parties of Record:

Gregory Eisenstark, Esq., Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power & Light Company
Chantale LaCasse, NERA Economic Consulting
Mally Becker, Esq., for Public Service Electric and Gas Company
Philip J. Passanante, Esq., Associate General Counsel for Atlantic City Electric Company
Margaret Comes, Esq., Senior Attorney for Rockland Electric Company
Stefanie A. Brand, Esq. Director, Division of Rate Counsel
Murray E. Bevan, Esq., Bevan, Mosca, Giuditta & Zarillo, P.C., on behalf of the Retail Energy Supply Association
David Gil, Manager, Regulatory Affairs, NextEra Energy Power Marketing, LLC
Divesh Gupta, Esq., Managing Counsel - Regulatory Constellation Energy on behalf of Constellation Energy Commodities Group and Exelon Generation
Lyle Rawlings, President and CEO, Advanced Solar Products, Inc. and the Mid-Atlantic Solar Energy Industries Association
Katie Bolcar, Mid-Atlantic Director, Solar Energy Industries Association
Adam Kaufman, Executive Director, Independent Energy Producers of New Jersey
Deborah M. Franco, Esq., Cullen and Dykman LLP, on behalf of TransCanada Power Marketing Ltd.
Bruce H. Burcat, Esq., Executive Director, Mid-Atlantic Renewable Energy Coalition
Sara Bluhm, Vice President Energy Environmental & Federal Affairs, New Jersey Business & Industry Association

BY THE BOARD:

By Order dated November 9, 2011 in Docket No. EO11040250, the New Jersey Board of Public Utilities ("Board") indicated that the elements of the basic generation service ("BGS") procurement process have always been, and will always be, subject to periodic review and potential revision by the Board. Therefore, the Board directed Staff to initiate a proceeding to review aspects of the BGS procurement process at the conclusion of the 2012 BGS procurement, with an expected resolution by the end of May 2012. As part of this review, the Board indicated that the focus of the proceeding should be on the procurement process itself, policy issues directly related to the procurement process, and any other issues that warrant individual consideration outside of the yearly BGS review process. Finally, the Board indicated that any action that may be taken as a result of the BGS review proceeding to modify the BGS procurement process will not modify the existing BGS Supplier Master Agreements ("SMA") and those that were currently being executed.

On February 29, 2012, Staff initiated this proceeding to allow interested parties to voice any concerns about the current BGS procurement process using the following procedural schedule:

Initial Comments	March 30, 2012
Reply Comments	April 20, 2012
Legislative-Type Hearing	May 4, 2012
Final Comments[1]	May 18, 2012

Parties that filed comments or appeared at the Legislative-type hearing include:

- NextEra Energy Power Marketing, LLC; NextEra Energy Services New Jersey, LLC; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group, Inc.; and Exelon Generation Company, LLC (collectively, the "Joint Suppliers Group");

- Retail Energy Supply Association ("RESA"): Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.

- Advanced Solar Products

- The Independent Energy Producers of New Jersey ("IEPNJ")

- The Solar Energy Industries Association ("SEIA")

- The Division of Rate Counsel ("Rate Counsel")

- Mid-Atlantic Solar Energy Industries Association ("MSEIA")

- TransCanada Power Marketing LTD ("TransCanada")

[1] Final Comments could only be used to respond to issues raised in the Initial Comments, Reply Comments, and comments raised at the Legislative-type hearing.

- Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc. and Exelon Generation Company, LLC ("Exelon")
- NextEra Energy Power Marketing, LLC and NextEra Energy Services New Jersey, LLC ("NextEra")
- Atlantic City Electric Company ("ACE"), Jersey Central Power and Light Company ("JCP&L"), Public Service Electric & Gas Company ("PSE&G"), Rockland Electric Company ("RECo") (collectively, "EDCs") and National Economic Research Associates Economic Consulting ("NERA")
- Mid-Atlantic Renewable Energy Coalition ("MAREC")
- New Jersey Business & industry Association (NJBIA")

Key Issues Raised During the Proceeding

BGS Auction Process

The Joint Supplier Group indicated that the Board had successfully been able to promote a competitive market through use of the descending clock auction process for procurement of a full-requirements wholesale supply. The Joint Supplier Group further asserted that the process benefits from a non-discriminatory structure, in which bidders generally are allocated appropriate risks as wholesale suppliers and are provided with sufficient information to tailor their bids more specifically to the EDCs' load requirements, and provide competitive wholesale prices for the benefit of the EDCs' customers. The Joint Supplier Group stated that the previous BGS Auctions have resulted in prices that are generally reflective of the market, but insulate customers from the volatility of any given procurement period through a structure which bids out only one-third of the EDCs' load for three-year periods at each procurement cycle. The Joint Supplier Group asserted that the 10-year successful track record of the BGS Auction process has instilled confidence in the stability of this process such that bidders can offer prices generally without undue risk premiums associated with an uncertain regulatory process. They feel this confidence in the process has resulted in efficient pricing in the Auction process. (Joint Supplier Group Initial Comments at 3 to 4).

IEPNJ maintains that ratepayers served under BGS rates have benefited from the structure and competition that the BGS process provides. IEPNJ maintains that the BGS Auction is efficient and cost effective for BGS customers in that the BGS winners are suppliers that can provide the lowest cost full requirements product that results from an auction that continues to be highly competitive. Further IEPNJ indicates that the auction rules are transparent, objective, and fair, have attracted many bidders and have resulted in quick and non-controversial auction approvals by the Board. IEPNJ feels that the auction process has been very successful, and that the consistency of its success should not be discounted or ignored. (IEPNJ Initial Comments at 3 to 4). IEPNJ feels that making significant changes to the BGS procurement process runs a risk of increasing risk premiums in supplier bids and increasing rates to end use customers, resulting in non-competitive outcomes. IEPNJ requests that the Board reaffirm the current BGS procurement process because the process is very successful. IEPNJ further states that significant changes to the BGS procurement process should not be contemplated unless currently unforeseen circumstances make the results of BGS procurement process unjust and unreasonable. (IEPNJ Initial Comments at 6).

The EDCs indicate that the broad policy goal of the BGS procurement process is reiterated and expanded upon by a number of specific goals that have been presented to – and accepted by – the Board on numerous occasions. These specific goals are as follows:

- To obtain reliable supply on behalf of BGS customers at prices consistent with market conditions.

- To establish a fair and transparent competitive process that will maximize participation. The process should be transparent in terms of the requirements for participation, the supply contract, the retail rates that will result from the Auction, the manner in which final auction prices are determined, and the manner in which winners emerge at the Auction. The process should be fair and transparent in terms of providing timely and equal access to information for all bidders.

- To allocate supply responsibility efficiently over the loads of the multiple EDCs. An efficient allocation of supply helps to ensure that prices best reflect the market, so that any market perceptions regarding differences in serving various EDCs are reflected in the prices.

- To have competitive entities take, manage, and price BGS risks. BGS is a price-risk management service where competitive entities assemble supply components in the competitive power market and assess and price these risks. Opening the price-risk management function to competitive discipline ensures that customers obtain the full benefits of competition.

- To implement BGS at market rates that reflect class, seasonal and time-of-day market differences in order to encourage efficient consumption and conservation decisions and in order to encourage the development of efficient retail competition.

- To minimize customer confusion by presenting customers who stay on BGS with the appropriate type of retail rate structure and design.

- To design a BGS product consistent with the ability of various customer classes to react to price and manage energy price risks.

The EDCs and NERA believe that the elements of the Board's existing BGS procurement process work together to fully satisfy all of these goals. They point out that these elements include the product definition, auction format, qualification procedures, competitive safeguards, rate design, term structure, process administration, Board oversight and its scope, as well as the contract between the suppliers and the EDC as agent for their customers and its credit provisions. They feel that it is essential that, in considering any alternative, modification or refinement of the Board's current BGS procurement process, that the Board view that process in its entirety and consider how all elements of the process and any suggested refinements will work together to achieve the appropriate goals of the BGS procurement process and other appropriate policy goals established by the Board. The EDCs and NERA urge the Board not to be misled by *ad hoc* proposals for change that may seem harmless in isolation but that are inconsistent with the goals of the BGS procurement process or that will fracture the harmonized whole of the BGS procurement process. (Joint EDCs Reply Comments at 5 to 6).

Based on the experience of the previous eleven BGS Auctions and having considered the record which has been developed in this matter, the Board feels that the BGS Auction procurement process, including the use of an independent third party overseer, has resulted in a process that has served customers well and has been implemented in a non-discriminatory and highly transparent manner. The Board further feels that the auction rules are transparent, objective and fair, have attracted many bidders and have resulted in quick and non-controversial auction approvals by the Board. The Board also feels that this is a credit to the fact that all of the non-price terms and conditions are standardized, all suppliers sign the same supply agreement and provide the same product allowing bid evaluation to be done purely on price. A price-only bid evaluation is the most transparent means of choosing suppliers. The rules of participation and conduct are fully explained and fairly applied by the Auction Manager.

In addition, the Board believes that the process benefits from a nondiscriminatory structure in which bidders generally are allocated appropriate risks as wholesale suppliers, and are provided with sufficient information to tailor their bids more specifically to EDCs' load requirements, and therefore provide competitive wholesale prices for the benefit of the EDCs' customers. The Board further believes that the eleven year successful track record of the BGS Auction process has instilled confidence in the stability of this process, and feels that bidders can offer prices generally without undue risk premiums associated with an uncertain regulatory process. In fact, the Board has found the process to be competitive for all eleven years, without any indication of any problems. This confidence in the process has resulted in efficient pricing in the Auction process.

As a result, the Board agrees with the Joint Supplier Group that the previous eleven BGS Auctions have resulted in prices that are reflective of the market, a conclusion that has been incorporated into each of the Board's orders approving the BGS Auction results. Further, the Board agrees with IEPNJ that ratepayers served under BGS rates have benefited from the structure and competition that the current BGS procurement process provides. For the above stated reasons, the Board is persuaded that the BGS-FP and BGS-CIEP Auction format remains an appropriate procurement process for BGS.

Auction Format -- "Descending Clock Auction"

In its comments, Advanced Solar Products indicated that while not professing expertise in the area of auction design, it is possible that an auction design that starts with a low price and increases in increments and that pays all successful bidders their price as bid, would result in lower energy prices compared to an auction design that starts with a high price and reduces in decrements, and that pays all successful bidders the same market clearing price. (Advanced Solar Products Initial Comments at 1).

Rate Counsel, in response to Advanced Solar Products, has indicated that it has not been provided with any evidence of ratepayer benefits or lower average auction prices that might result from the proposed change to the BGS auction pricing mechanism. Rate Counsel indicates that it would not support this form of auction price determination without evidence of its anticipated effects on average BGS prices or other forms of ratepayer benefit. (Rate Counsel Reply Comments at 10).

The Board agrees with Rate Counsel that Advanced Solar Products has not provided any evidence to demonstrate that its proposed change to the BGS auction pricing mechanism would lower average auction prices and would benefit ratepayers. Therefore, the Board FINDS no evidence to support Advanced Solar Products' proposal.

Auction Rules

TransCanada indicates that the current construct of the BGS auction certainly provides the opportunity for the decision/approval period to be brief. It also indicates that the current rules can create circumstances near the closing of an auction that unnecessarily prolong the decision period. TransCanada recommends that enhancements should be made to the Auction rules to ultimately reduce the decision period in this circumstance. (TransCanada Initial Comments at 2). Rate Counsel has no objections to TransCanada's request that the Board explore with the Auction Manager whether or not a shortened decision period could improve the overall efficiency of the Auction. (Rate Counsel Reply Comments at 8).

The EDCs have no objection to examining adjustments to the implementation of the BGS process that would address TransCanada's comments. The EDCs are willing to make specific proposals in their July filing within the context of the yearly BGS docket that would address these comments. (Joint EDC Reply Comments at 20).

Therefore, the Board DIRECTS that the EDCs make a specific proposal to address TransCanada's comments about the length of the decision process in their next BGS procurement process filing should the EDCs continue to propose some form of an Auction process.

BGS Three Year Procurements/More Frequent Procurements

RESA recommends that the Board further develop and expand New Jersey's competitive energy marketplace by implementing transitional steps towards requiring more frequent procurements held closer to the delivery date of shorter term products, rather than continuing the laddered-three-year contracts used in the BGS-FP auction. According to RESA, an auction system comprised of more frequent procurements would result in more market reflective default service pricing because it would minimize the time over which the default price can diverge from actual market prices. (RESA Initial Comments at 6).

In response, IEPNJ indicates that if the Board implements such a change, many of the benefits of the BGS-auction would be lost. Market risks and volatility would be placed upon default customers, customers without the ability and/or interest in shopping for electricity or managing such risks and volatility. Additionally, IEPNJ maintains that the benefit of the three year rolling average would be lost, placing default customers at risk for more severe swings in the price of their electricity. (IEPNJ Reply Comments at 6). Rate Counsel believes that RESA's proposal is the wrong approach and that it provides no benefit to New Jersey ratepayers. Rate Counsel has argued for more stability and less risk; therefore, it believes that the Board should reject RESA's proposed changes to the BGS procurement process. (Rate Counsel Reply Comments at 7). Exelon indicates that the carefully structured New Jersey BGS Auction process using "laddered" three-year contracts for BGS-FP supply best serves to mitigate the impacts of price fluctuations in market prices from year-to-year, thereby achieving the stability appropriate for FP customers. (Exelon Reply Comments at 7).

The EDCs believe that the current BGS-FP product procured on a three-year rolling portfolio is in the best interest of customers. They feel that a shorter term BGS-FP contract cycle would create a boom and bust cycle for smaller customers, who would be exposed to the volatility of the market. The EDCs believe the use of an appropriate term structure enables smaller commercial and residential customers to benefit from a stable yet market-based rate that is appropriate for these customers. The EDCs feel RESA ignores the benefits of the three-year term structure, which have repeatedly been affirmed by the Board. The EDCs believe that the existing term structure of the BGS product should be maintained. The EDCs claim the rolling three-year term has consistently provided the proper balance for BGS-FP customers between the need to reflect market prices and the need to protect these customers from market volatility. (Joint EDC Reply Comments at 13 to 14).

Based on the experience of the previous BGS Auctions, and having considered the record which has been developed in this matter, the Board continues to believe 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 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 RESA's proposals for pricing based on auctions for procurement of electricity for shorter periods than the current format would increase retail competition significantly. The Board is still persuaded that the benefits to customers' rates and to the rate stability associated with the staggered three-year rolling procurement process outweigh the purported benefits of shorter term contracts with duration of one year or less. Therefore, the Board at this time will not direct that the EDCs implement RESA's proposal for more frequent procurements held closer to the delivery date of shorter term products, rather than continuing the laddered-three-year contracts used in the BGS-FP Auction.

Non-Bypassable Rider

The Joint Supplier Group recommends that the Board order each EDC to propose and submit for approval a new non-bypassable rider ("PJM Charges Rider") under which an EDC will recover certain PJM charges that the suppliers maintain are unhedgeable ("Proposed Rider Charges") from all consumers, whether shopping for supply from a Third Party Supplier ("TPS") or taking BGS supply service through the EDCs. The Joint Suppliers claim as currently structured that SMA Section 15.9 sets out a complex and lengthy process through which, in the event of a Firm Transmission Service rate increase, the EDCs will petition the Board for approval for a pass-through of such increase, and after Board approval, collect such increase from consumers for the benefit of BGS Suppliers. BGS Suppliers continue to pay the increased Firm Transmission Service rates, and are reimbursed by the EDCs only once a "Final FERC Order" which is "not subject to refund" is issued by FERC. The Joint Suppliers' PJM Charges Rider Proposal would require the EDCs to simply bill all distribution customers directly for the actual amounts of the Proposed Rider Charges including, but not limited to, transmission service and transmission-related services, rather than attempting to embed such charges into BGS supply costs. According to the Joint Suppliers Group, the PJM Charges Rider proposal will reduce the administrative costs incurred by both the EDCs and BGS suppliers in applying for, litigating, and administering "pass-throughs" for increases and decreases to such transmission rates, as currently established under SMA Section 15.9. In this manner, the Joint Suppliers Group asserts that the proposal for a PJM Charges Rider will add efficiency to the BGS Auction process. (Joint Supplier Group Initial Comments at 5 to 7).

Rate Counsel recommends that the cost components proposed by the Joint Suppliers Group be considered separately by the Board when considering whether it is in ratepayers' interests to deconstruct the BGS product, and how such a deconstruction should go forward. It indicates that regulated transmission cost components are the most easily separable because they do not affect the costs of the two core components of BGS supply – energy and capacity. Rate Counsel indicates that the latter two components of the Proposed Rider Charges, RMR charges and ELR program charges, are directly related to the costs of energy and capacity. Rate Counsel would not support removal of these cost components from the BGS product unless the Board also considers changes to the way capacity and energy make up the core of the BGS product itself. (Rate Counsel Reply Comments at 2 to 3).

The EDCs indicate that implementation of the Joint Suppliers' proposal would be a complicated undertaking, and would undermine the fixed-price nature of BGS. They point out that each EDC would have to change its tariff to include a non-bypassable rider that would cover all variations in these charges. Each TPS agreement also would need to change to specify the PJM services provided to TPS customers by the EDCs. The EDCs are skeptical that such changes would be possible for the 2013 Auction. More importantly, they indicate that the changes would undermine the fixed-price nature of the BGS-FP rates and fixed-price nature of the non-energy portions of the BGS-CIEP rates. The EDCs assert that currently, these rates are set in advance, and absent reconciliation charges, customers know what rates they will pay. Approved changes under Section 15.9 are established in advance, and the retail rates that reflect Section 15.9 are approved by the Board and known in advance. The EDCs claim that under the Joint Suppliers' recommendation, the charges will constantly vary and roll through the rider. The EDCs do not believe that this is what the Board had in mind in approving the BGS rate structure. They feel that the alleged benefits of the recommendation would come at the cost of eroding the fixed-price nature of BGS. They further indicate that Section 15.9 was developed as a practical middle ground. According to the EDCs, BGS suppliers receive protection against network integration transmission service ("NITS"), regional transmission expansion planning ("RTEP") and reliability must run ("RMR') changes that, while perhaps not 100% perfect, is reasonable. The EDCs further assert that while there may well be premiums for residual risk, competition limits those premiums. In return for the premiums, customers have a fixed price. Transmission rate changes are approved in advance by the Board. The EDCs indicate that while it is true that Section 15.9 is complex and does result in administrative costs, it represents a well-crafted balance that preserves in large part the fixed-price nature of BGS and provides a reasonable pass-through of unhedgeable costs approved in advance by the Board. For these reasons, the EDCs recommend that the Board reject the proposal of the Joint Suppliers. Were the Board to find that Section 15.9 is too complex, the EDCs would favor simply removing any pass-through and rely on competitive forces to ensure that the premium paid for obtaining a fixed price was reasonable. (Joint EDC Reply Comments at 16 to 17).

The Board agrees with the EDCs that Section 15.9 of the SMA was developed as a practical middle ground. The purpose of Section 15.9 was that BGS suppliers receive protection against NITS, RTEP and RMR changes that, while perhaps not 100% perfect, is reasonable. While there may well be premiums for residual risk, the Board believes that competition limits those premiums. In return for the premiums, customers have a fixed price for these costs. Further, while it is true that Section 15.9 can be complex at times and does result in administrative costs, it represents a well-crafted balance that preserves in large part the fixed-price nature of BGS and provides for a reasonable pass-through of unhedgeable costs approved in advance by the Board. The Board feels that the Joint Suppliers Group provides no factual basis that its proposal would provide any benefit to ratepayers, and as proposed, would only add complexity to the BGS procurement process. At this time, the existing process for the "pass-through" of increases and decreases in these costs, as defined in Section 15.9 of the SMA, is the most efficient mechanism for minimizing the uncertainty of collection of these costs while maintaining the full requirements nature of the BGS product. For these reasons, the Board REJECTS the proposal of the Joint Suppliers Group to direct the EDCs to create a new non-bypassable PJM Charges Rider applicable to all distribution customers.

BGS Data

The Joint Supplier Group also recommends that the Board order the EDCs to make improvements to the types and frequency of energy and capacity data provided to BGS auction bidders and BGS suppliers. According to the Joint Suppliers Group, of particular concern to BGS suppliers in meeting their obligations is the ability to obtain clear and timely data on the load that they must serve for each EDC. The Joint Suppliers ask that the Board order additional improvements to the types of data that each of the EDCs provides to BGS Auction bidders and BGS Suppliers. (Joint Supplier Group Initial Comments at 8).

Rate Counsel points out that essentially the Joint Suppliers Group is requesting the rate-class level disaggregation of EDC data. The BGS product (FP and CIEP) is by definition an aggregate, wholesale level product, inclusive of all rate classes within the FP and CIEP definitions. Rate Counsel feels that the Joint Suppliers Group has not shown a clear ratepayer benefit as to why this level of information should be provided. (Rate Counsel Reply Comments at 3). The EDCs indicate that all three requests involve providing data by rate class. The EDCs argue that with one exception, all of the data requested by the Joint Suppliers Group is available and provided for BGS-CIEP and BGS-FP in the aggregate, but not for the rate classes that comprise the BGS-CIEP or BGS-FP groups. The EDCs further argue that the Joint Suppliers Group is requesting data by rate class, but such data is not readily available. The EDCs indicate that they do make available on an annually-updated basis hourly load profiles for certain rate groups, but do not routinely develop hourly loads by rate class. The EDCs further indicate that this would involve applying load profiles to each customer's metered consumption. The EDCs maintain that they do not develop this data in the normal course of business. The EDCs oppose mandating the provision of any additional data by rate class. Further, regarding the exception to the availability of data for aggregate BGS-CIEP or BGS-FP is the request that the EDCs provide, prior to the auctions, peak load contribution data for the upcoming planning year for both eligible and actual BGS-FP and BGS-CIEP load by rate class. The EDCs indicate in this case, not only is the rate class data not readily available, but the data itself does not exist before the Auctions. (Joint EDC Reply Comments at 15 to 16).

Based on the record in this proceeding, the EDCs have pointed out that in two of the three data requests by the Joint Suppliers Group, the data is available and provided for BGS-CIEP and BGS-FP in the aggregate, but not by rate class for the rate classes that comprise the BGS-CIEP or BGS-FP groups. The EDCs argue that the Joint Suppliers Group is requesting data by rate class, but such data is not readily available. In addition, as to the third data request, the EDCs indicate in this case, not only is the rate class data not readily available, but the data itself does not exist before the Auctions. As pointed out by Rate Counsel the Joint Suppliers Group is requesting the rate-class level disaggregation of EDC data. The BGS product (FP and CIEP) is by definition an aggregate, wholesale level product, inclusive of all rate classes within the FP and CIEP definitions. The Board agrees with Rate Counsel that the Joint Suppliers Group has not shown a clear ratepayer benefit as to why this level of information should be provided. Therefore, the Board DENIES the Joint Suppliers Group's request to direct the EDCs to provide the additional information due to the increased cost and burden of creating this data without a showing of any commensurate ratepayer benefit.

CIEP Threshold

In its comments, RESA asserts that real-time pricing provides customers with the price signals and incentives they need to take advantage of various energy products and services offered by different energy providers. RESA believes that the best way to expand the use of real-time pricing is to lower the BGS-CIEP threshold to 300 kW effective for the next BGS procurement 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 seek feedback on the CIEP threshold during the BGS auction proceeding each year in order to receive stakeholder input through comments and legislative-type hearings. According to RESA, through these proceedings, the Board can garner information, inclusive of 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 competitive retail suppliers. (RESA Initial Comments at 5).

Rate Counsel indicates it continues to have concerns about the wisdom of forcing mid-sized customers, (i.e., customers with peak usage of 300 kW or higher) into the BGS CIEP class in order to bolster retail competition. Rate Counsel feels that there is no particular benefit to be gained by forcing this class of customers onto hourly pricing, particularly when these customers can voluntarily switch to CIEP. Rate Counsel therefore recommends that no change be made to the threshold volume for BGS-FP service at this time. (Rate Counsel Reply Comments 4 to 6). IEPNJ indicates that the Board should not lower the CIEP threshold. IEPNJ argues that RESA ignores the fact that a competitive market already exists for customers. IEPNJ points out that a customer at any threshold level, including those under the current BGS-CIEP threshold, are free to choose their electricity supplier. (Reply Comments 5 to 6). The EDCs indicate that RESA suggests that the Board lower the CIEP line from the current threshold of 750 kW to 300 kW immediately, as well as establish a "glide path" approach to further lower the CIEP threshold in upcoming years. The EDCS feel RESA ignores a fundamental reason for the division of the products to occur at a higher kW threshold. It indicates that the division of customers between BGS-FP and BGS-CIEP reflects customers' relative ability to understand and manage price risk, as well as the cost to the customer and the utility of implementing and responding to such a system. In its July 1, 2011 filing, it points out "the Board recognizes that some customer classes are able to understand the risks of price movements in competitive markets and will be able to absorb risks or contract for management of those risks. The EDCs indicate on the other hand, other customer classes may neither understand nor be able to manage these price risks". The EDCs feels that the three-year term and fixed-price nature of the BGS-FP product provides stability to those smaller commercial and industrial customers unable to engage in, or uninterested in, risk management. The EDCs assert that RESA has not presented evidence that the FP commercial and industrial customers with peak demands between 300 kW and 749 kW would be well served by being forced to manage the volatility of the hourly priced BGS-CIEP product. (Joint EDC Reply Comments at 12). NJBIA opposes the RESA proposal to require a mandatory lowering of the CIEP threshold to 300 kW, and progressively lower the threshold in future years. (NJBIA Final Comments at 1).

The Board agrees that one of the elements in insuring customer choice is enabling customers to see and respond to the actual costs of their energy consumption. Furthermore, it is this exposure to the actual costs of energy consumption that serves as an important impetus to customer shopping and energy awareness. Based upon the record in this proceeding, the Board has determined that it is appropriate to gradually expand the CIEP class to include those 858[2] larger commercial and industrial customers - 156 of which are presently not contracted with a TPS - with a peak load of between 500 kW and 750 kW, beginning on June 1, 2013.

The Board feels that this gradual expansion of the number of customers on hourly pricing, given the record presented herein, is reasonable, prudent and warranted at this time. Exposing the class of customers above 500 kW peak load share 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. 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, given the relatively large size of the customers added to the CIEP classification by this move, the Board expects that the net rate impact will be minimal and can be effectively mitigated by these commercial and industrial customers through a combination of energy efficiency, shopping, demand response, and conservation.

The Board sees value in limiting the reduction to 500 kW and not immediately moving to the 300 kW range as proposed by RESA. It has always been the Board's belief that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy. Therefore, the Board REJECTS RESA's request to expand the BGS-CIEP threshold to 300 kW effective for the next BGS procurement, and at this time establish a "glide-path" for future incremental reductions. However, the Board, as proposed by RESA, encourages feedback on the CIEP threshold during future BGS procurement proceedings each year in order to receive stakeholder input through comments and legislative-type hearings. Through these proceedings, the Board can garner information, inclusive of 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 respond to real-time pricing, possibly using additional conservation and energy efficiency products and services available in the marketplace.

Accordingly, the Board DIRECTS the EDCS to lower the CIEP threshold to those customers with a peak load share of at least 500kw beginning June 1, 2013.

Interval Meters

In its comments, RESA has recommended that in conjunction with lowering the BGS-CIEP threshold effective for the next BGS procurement, the Board should require the EDCs to install interval meters for all customers above the threshold who do not currently have them. According to RESA, it was acknowledged during the last BGS proceeding that many customers using more than 500 kW do not currently have access to interval meter technology. Accordingly, RESA points out that these customers have no means to gauge their energy use or respond to the price signals associated with it. RESA feels that requiring the applicable EDC to install interval meters for customers using more than 500 kW will provide them the opportunity to actively monitor and respond to the cost of their electricity on a real-time or hourly basis, which for the reasons detailed above, provides a myriad of value-added energy products and services to New Jersey customers to enable them to better manage their energy consumption and costs. (RESA Initial Comments 5 to 6).

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[2] This is number of current customers with a peak load of between 500 kW and 750 kW, as of the date of this Order. It should be noted that the number of customers in a particular rate class changes over time.

In its comments, Rate Counsel indicates that RESA suggests that the higher costs of these meters "will be recovered many times over as customers are able to take advantage of the cost savings afforded to them through the added ability to monitor and respond to real time pricing." Rate Counsel suggests that RESA has failed to provide any support for this assertion. Rate Counsel feels that RESA has not provided even the most basic cost-benefit analysis to support its argument that the interval meters would pay for themselves through energy savings. Rate Counsel recommends that the Board not adopt this recommendation but rather allow New Jersey commercial and industrial customers to determine for themselves when the cost associated with the interval meter and the implementation of the necessary technology makes good business sense. (Rate Counsel Reply Comments 6 to 7). IEPNJ indicates that the Board should not require the EDCs to install interval meters. It feels that these customers should have the opportunity to choose and pay for an advanced interval meter. IEPNJ argues that the EDCs should not be required to install such meters for customers that do not want them. Further, IEPNJ argues that the remaining customers in the service territory should not be required to pay for the meter of the customer that desires the new interval meter. (IEPNJ Reply Comments at 6). The EDCs indicate that most of the EDCs only have interval metering in place down to 750 kW, and a mechanism to recover costs of adding more meters, as well as time to install the meters, would be required. (Joint EDC Reply Comments at 13). NJBIA claims that RESA has not provided any cost benefit analysis to support the installation of interval meters. It believes these costs should not be an additional charge paid by ratepayers already burdened by high energy costs. (NJBIA Final Comments at 1).

The Board has previously directed the EDCs herein that the CIEP threshold should be lowered to 500 kW. RESA has indicated that it was acknowledged during the last BGS proceeding, as well as by the EDCs in this proceeding, that many customers with a peak load share of 500 kW do not currently have access to interval meter technology. Without interval meters, these customers have no means to gauge their real time energy use or respond to the price signals associated with their ability to monitor and respond to real time pricing. With the lowering of the CIEP threshold, the appropriate metering should be in place so these customers can take advantage of real-time pricing, thus allowing 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. The Board agrees with RESA that in conjunction with lowering the BGS-CIEP threshold effective for the next BGS procurement that the Board should require the EDCs to install interval meters for all customers above this threshold who do not currently have them. The Board also agrees with the EDCs that since most of the EDCs only have interval metering in place down to 750 kW, a mechanism to recover the costs of adding more meters, as well as time to install the meters, would be required.

During the Legislative-type hearing in this matter, there was a discussion regarding the level of interval meters for each of the EDCs. Its was indicated that ACE, JCP&L and RECO have interval meters installed for customers above 750 kW, and that PSE&G has interval meters installed for customers above 500 kw. However, it was uncertain if the telecommunications was turned on for all of the PSE&G customers above 500 kW who had an interval meter. Based on the information provided in this proceeding by the EDCs, the Board DIRECTS the EDCs to install interval meters for all BGS eligible customers with a peak load share equal to and above 500 kW. In conjunction with the installation of these meters, the EDCs shall implement any data management improvements necessary to enable these customers to be transitioned to the CIEP class by no later than June 1, 2013. The Board further DIRECTS that the costs associated with interval meter installation, including capital, operation and maintenance costs and the cost of billing system enhancements, shall be determined in the context of the EDCs' next rate proceedings. Those costs, whether or not incurred during the relevant test year, should be reflected, on a pro forma basis, if necessary, in the revenue requirements on which rates will be set in those proceedings.[3]

Renewable Portfolio Standard

Rate Counsel recommends that the Board consider removing the renewable attributes from the BGS product definition in the SMA, either with respect to all of the Renewable Energy Portfolio Standards ("RPS") (Solar, Class I, and Class II) or with respect to one or two of those standards. Rate Counsel asserts that the obligation should instead be placed on the EDCs. (Rate Counsel Initial Comments at 4). Rate Counsel believes that given the increasing statewide requirements for renewable energy generation, the Board should consider whether to direct the EDCs to procure renewable energy requirements on behalf of ratepayers, as a complement to the BGS procurement. (Rate Counsel Initial Comments at 5). Rate Counsel believes that the EDCs are heavily involved in solar programs that lead to Solar Renewable Energy Certificates (SREC) generation to meet the solar RPS requirements. Furthermore, Rate Counsel indicates that the EDCs are potentially the best counter party for long-term contracts to support development of, for example, offshore wind resources. Rate Counsel has proposed moving the RPS requirement out of the SMA and onto EDCs in order to meet RPS goals at the lowest cost to ratepayers. It is therefore Rate Counsel's recommendation that the Board establish a working group of interested stakeholders to review the alternatives presented here, and to report to the Board in detail on the various alternatives available to the Board and how the alternatives could be implemented. The working group report could also make a recommendation to the Board on the cost and the benefits of the various alternatives. (Rate Counsel Reply Comments 9 to 10).

MAREC agrees with Rate Counsel that it is a substantial benefit to place the obligation of RPS compliance directly in the hands of the EDCs. MAREC feels that by changing the obligation, the EDC' should then have the ability to enter into long-term contracts to help meet the RPS obligations. It further indicates that with out long-term contracting opportunities, it will be unlikely that renewable energy develops and will be able to make the necessary investments to keep pace with increasing requirements. MAREC believes it is prudent to develop an approach for long-term contracting for purposes of RPS compliance, without the time and contracting restrictions of the BGS auction process. It strongly supports Rate Counsel's call for the Board to start a working group to review this issue. (MAREC Final Comments at 2).

SEIA encourages the Board to take this opportunity to specifically consider the potential benefits of segregating the procurement of renewable energy credits from the broader BGS market and to institute a gradual transition to this approach. SEIA believes the separate procurement of SRECs may hold a key to greater securitization of the SREC market, unlocking significant new sources of private capital at competitive rates and reducing much of the present uncertainty and volatility that is antithetical to the sustained and orderly development of the New Jersey solar marketplace. (SEIA Initial Comments at 1).

In its comments, MSEIA referenced Rate Counsel's suggestion that the supply of SRECs be separated from the supply of electric energy in the BGS procurement process. MSEIA believes that there are possible structures for such a separation that could have very positive effects for all stakeholders in New Jersey's solar energy program. But MSEIA also believes that there are

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[3] This direction continues the policy as adopted by the Board in connection with the creation of the CIEP class. See, In re the Provision of Basic Generation Service ("BGS") Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49, et seq., BPU Docket. No. EX1110754 (Order dated 12/18/2002).

possible structures for such a separation that could have negative effects for stakeholders in the solar energy program, including the creation of undue complications, administrative costs, questions regarding feasibility and efficacy, and problems regarding potential market concentration. In particular, MSEIA believes that it is worth exploring the creation of a statewide entity, either a governmental, quasi-governmental, or non-profit entity, that is responsible for procuring SRECs separately from the BGS auction. Such an entity could competitively procure 10-year contracts from solar generators of all sizes to supply SRECs into a pool. Load Serving Entities would then be ordered to buy their proportionate share of SRECs from that pool, at the cost of supply plus administrative costs. Such a statewide entity could be made to procure SRECs in a manner that produces desirable characteristics, including: being open to all market participants, ensuring participation by all market segments, encouraging diversity and discouraging market concentration, reducing risk premiums inherent to a volatile SREC market through securitization, and thus producing lower SREC prices, driving down costs through robust competition, and paying bidders their price as bid (as opposed to a higher market clearing price), and encouraging projects that provide dual benefits or accomplishing policy goals. (MSEIA Initial Comments at 1).

NextEra requests that the Board consider removing from BGS procurement the requirement to obtain SRECs. BGS suppliers as a whole are generally capable of evaluating risk and appropriately incorporating said risk into their competitive offers. However, the volatility associated with New Jersey's solar market – when integrated within the BGS procurement process – creates a measure of uncertainty which may not translate into the best possible outcome for ratepayers. (NextEra Reply Comments at 4).

Exelon, in response to statements from Rate Counsel, MSEIA, and SEIA supporting the use of long term contracts with EDCs for renewable resource generation, as well as removing some or all of the RPS requirements from the full requirements BGS Auction products, states that such long term contracts are not necessary to encourage investment in renewable technologies, and may in fact be detrimental to consumers. Exelon feels that the RPS for retail and wholesale suppliers, such as those utilized in New Jersey's current market structure, provide the best method for encouraging investment in renewable resources. Under existing market structures and without the need for including long term renewable generation contracts in BGS supply, Exelon itself has entered into several long term agreements for renewable generation which have helped to develop renewable resources. Finally, Exelon indicates that given that the legislature and Board are both considering means by which to stabilize the over supply in New Jersey's solar market, it is clear that the current market structures used in New Jersey already provide adequate incentives to market participants to invest in and encourage the development of renewable resources. (Exelon Reply Comments 7 to 8).

According to IEPNJ, it is unclear why Rate Counsel and SEIA believe that it is necessary to separately procure renewable supply to facilitate longer-term contracts and what benefit this would provide to the overall marketplace. IEPNJ indicates that renewable supply, or RECs and SRECs, are a tradable commodity just like any other tradable commodity, and similar to any other tradable commodity, there are market participants that desire and/or need longer-term contracts to make their product financeable. IEPNJ argues that either way, moving the RPS requirement away from the BGS suppliers and to the EDCs or to a separate renewable tranche in order to achieve longer-term contracts is not necessary and would be counter-productive to a successful market. In fact, there are already many BGS and non-BGS suppliers that are free to enter into long term contracts to meet their RPS requirements. It further feels that if renewable supply is willing to sell its RECs or SRECs at a competitive, long-term price, BGS suppliers would enter into such contracts in an attempt to obtain a competitive advantage over their fellow

BGS suppliers. (IEPNJ Reply Comments 4 to 5).

RESA indicates that is does not support transferring the obligation to procure renewable energy to meet the State's RPS from BGS suppliers to the EDCs. It feels that as a cost of supplying BGS service, procurement of renewable energy should be reflected in BGS prices through suppliers' bids. RESA believes that transferring this obligation may be legally and logistically unworkable through the current BGS auction format, leading to confusion and inconsistency among how EDCs acquire these renewable energy attributes and recover their costs from ratepayers. Furthermore, RESA asserts that the suggestions made by some solar developers and Rate Counsel could place Third Party Suppliers (TPSs) at a further competitive pricing disadvantage to BGS. Further RESA argues that suggestions by some solar developers and Rate Counsel that renewable development is enhanced by longer term contracts falls flat in the context of a robust, over-developed solar market in New Jersey. (RESA Reply Comments at 2).

The EDCs indicate that consistent with legislation, TPSs and BGS suppliers are required to meet RPS requirements annually. They indicate that this creates a demand for renewable energy that is satisfied by the market. In particular, placing the requirement to satisfy the RPS on both TPS and BGS providers creates market demand and supply (with many willing buyers and many willing sellers), and does not create a concentrated regulated demand only from the EDCs. This approach facilitates a creative and competitive supply of renewable energy. Where appropriate, the Board has further stimulated renewable development on a targeted basis through programs like the solar financing programs. They feel that the renewable market place is working well in New Jersey and that TPSs and BGS suppliers have been able to comply with RPS requirements. The EDCs conclude that isolating the RPS obligation from the BGS product would lead to a centralization of the demand, and centralization means a diminished role for market forces. (EDC Joint Reply Comments at 7). SEIA proposes that the Board materially alter the BGS process by establishing a separate procurement process for tranches of SRECs and by authorizing execution of long-term contracts for these attributes. SEIA presents a "concept" in its Initial Comments that would involve a phase-in of this recommendation and invites others – through a proposed stakeholder process – to "fill in the blanks." The EDCs dispute the implication that removal of SRECs from the BGS full requirement product would result in lower rates for ratepayers and respectfully urge the Board to reject SEIA's recommendation. In fact, the EDCs believe that executing long-term contracts for SRECs could lead to higher rates for customers. (Joint EDC Reply Comments at 17 to 18).

Based on the record presented in this proceeding, at this time, the Board is concerned with how Rate Counsel's, MAREC's, SEIA's and MSEIA's proposals could be implemented. In fact, at the Legislative-type hearing, there were divergent opinions among many of the entities advocating for some action regarding the RPS requirement as it relates to the provision of BGS. However, the Board's own BGS consultant, Boston Pacific Inc., issued a Final Report on the 2010 BGS procurement that supports the potential separation of RPS obligations from the provision of BGS supply as it is currently done via the Auction process. Boston Pacific in its 2010 BGS Final Report[4] articulated a few potential benefits to conducting a separate

[4] 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 for two one year periods to include the 2011 and 2012 BGS Auctions. As 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, 2010 Agenda meeting, the Board accepted for filing Boston Pacific's Annual Final Report on the 2011 BGS FP and CIEP Auctions, dated April 21, 2010.

competitive solicitation to procure New Jersey's RPS requirements. These suggestions included: (1) increasing transparency, and (2) showing ratepayers what they are paying for renewables as well as removing this uncertainty from the full requirements product. Removing the RPS from the BGS product could also allow the State more flexibility in implementing policy with regards to renewables. As nothing will be tied to the three-year BGS procurement contracts, and there does not have to be any concern with bidders misinterpreting legislation or adding additional risk premiums to compensate for the risk of changes in renewables laws. Most importantly, by directly dealing with renewable suppliers, rather than relying on BGS suppliers to do so themselves, there is a possibility of getting lower prices for renewable supply. Boston Pacific asserts that separate renewable energy credit ("REC") procurements draw a different crowd of bidders as compared to full requirements procurements. By directly challenging these suppliers to offer lower costs, Boston Pacific believes that the result could be lower overall costs to ratepayers.

Rate Counsel and Boston Pacific's recommendations may have some merit. Coupled with the fact that the RPS requirement has the potential to increase as a result of pending legislation, further exploration of separation of the RPS requirement and the BGS procurement may be warranted. Therefore, the Board DIRECTS Staff to initiate a study to explore the possibility of removing the RPS requirement from the BGS procurement process. The Board also DIRECTS Staff to seek the help of a consultant to complete this task. Finally, the Board DIRECTS that any potential future recommendations regarding the RPS requirement not impact the 2013 BGS procurement.

Portfolio Manager

Rate Counsel has consistently taken the position that New Jersey BGS-FP ratepayers would benefit from diversity of supply, and that the implementation of a portfolio approach with a Portfolio Manager is the best way to achieve that objective. Rate Counsel continues to believe in this proposal, as outlined in its previous submissions, as the best way to insure the State's goal of lower prices and price stability while addressing environmental concerns. In previous comments, 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. While Rate Counsel believes that the current three-year laddered auction approach is an effective procurement mechanism for some portion of the BGS-FP load, 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. This entity would be charged with ensuring that the "best deals" available for longer-term procurement are analyzed and that the timing of procurements best ensures low prices and increased price stability for BGS-FP customers. Rate Counsel recognizes that the procedural schedule established by Board Staff for this BGS review does not allow sufficient time to fully explore this issue for implementation in the 2013 BGS auction. Accordingly, Rate Counsel recommends that the Board establish a working group to produce a well thought out and fully vetted proposal to address New Jersey's unique energy supply needs. Rate Counsel requests that the Board establish a process which would provide the Board with one or more options for alternative procurement mechanisms to supplement the existing BGS auction and direct interested parties, with Board Staff's guidance, to discuss how those mechanisms could be implemented in New Jersey. (Rate Counsel Initial Comments at 1 to 3).

Exelon feels the Board should again reject Rate Counsel's proposal for a portfolio management approach. Exelon believes that requiring the state to hire outside consultants or some other

"BGS-FP Portfolio Manager" and expend resources to manage an energy portfolio by making and managing longer term purchases is an inefficient way to achieve competitive BGS prices for consumers. As the EDCs' load must always be met with full requirements products in order to manage its load obligations and try to "ensure that the best deals for procurement are analyzed, and that the timing of procurements best ensure low prices and increased price stability," the state's BGS-FP Portfolio Manager would have to retain individual experts who understand and follow not only electric energy and other commodity markets, but also ancillary services, capacity and renewable products markets. A diverse pool of wholesale/BGS suppliers, rather than independent consultants or some other sort of statewide "BGS-FP Portfolio Manager", provides the most cost-effective method of BGS supply management for EDC load. Exelon maintains that wholesale/BGS suppliers are experts in the area of portfolio management, and have greater resources, expertise, and ability to appropriately manage portfolios of supply at the least possible cost, by allocating the costs for their operations over much larger load obligations throughout the country. These wholesale suppliers pass on the savings they achieve due to their sophisticated risk management skills in the form of more competitive bids for BGS products in the BGS Auctions. Wholesale suppliers have already invested in experts in each specific type of market which makes up full requirements BGS supply. (Exelon Reply Comments 3 to 4).

With respect specifically to the inclusion of longer term contracts in the mix of BGS supply, as proposed by Rate Counsel, Exelon reiterates that the Board has established a rational and balanced approach by allowing rolling three-year contract terms for averaging prices and a three-year contract term for the FP class as a whole, and urges the Board to maintain this structure, rather than including longer-term contracts. Over a three-year supply period, suppliers have access to a wide variety of market products and time periods with which to serve the BGS-FP load. They have the flexibility to hedge load over time in various near-term and long-term markets. By allowing the supplier to respond to market signals over a three-year period of time, the supplier has flexibility with which to procure its supply. This in turn allows the supplier to offer more competitively-priced products. Moreover, Exelon believes that the carefully structured New Jersey BGS Auction process using "laddered" three-year contracts for BGS-FP supply best serves to mitigate the impacts of price fluctuations in market prices from year-to-year, thereby achieving the very stability appropriate for FP customers. (Exelon Reply Comments 6 to 7).

IEPNJ indicates that BGS suppliers are currently competing to take advantage of such opportunities available in the PJM wholesale markets, including the energy market, so it is unclear what specific advantage Rate Counsel believes a Portfolio Manager might have. As an example, Rate Counsel suggests that a Portfolio Manager could negotiate supply contracts with individual generators who may offer to serve load under contract at favorable rates and provide much needed rate stability. IEPNJ feels that there are several flaws with this rationale. IEPNJ indicates that first, suppliers already have the ability to negotiate supply contracts with individual generators, and in the regular course of business are looking for the most favorable contract in order to obtain a competitive advantage over other suppliers. If an individual generator is willing to offer a long- term contract at a favorable rate, current suppliers would be competing for such a contract. Second, one individual generator cannot, by itself, provide the full requirements product that BGS suppliers provide, which includes energy, capacity, and ancillary services. IEPNJ points out that these services are provided by a portfolio of diverse resources in the wholesale market. Rate Counsel's comments appear to ignore this fact. (IEPNJ Reply Comments at 2).

Also IEPNJ suggests, because Rate Counsel's proposal contemplates that the Board would need to approve specific procurement transactions, it would place the Board into a role it was not designed to fulfill. Market conditions are dynamic and because the Board would not "be in the market" on a regular basis, it cannot be expected to be able to effectively evaluate whether a specific transaction is consistent with or better than current market conditions. Similarly, to the extent that Rate Counsel contemplates the use of individually negotiated agreements, the Board would appear to lack the resources and experience to evaluate the non-price terms of such arrangements. (IEPNJ Reply Comments 3 to 4).

The EDCs indicate that Rate Counsel suggests, as it has many times in the past, that the Board adopt a portfolio manager approach. As the EDCs have previously commented, BGS suppliers are in fact portfolio managers and are portfolio managers disciplined by the competitive market. The EDCs point out that typically and currently, there are well over 15 BGS-FP suppliers. They indicate that these suppliers became winners in the BGS Auction by competing to serve BGS customers and by striving to be the best at assembling supply components (energy, various price hedges, RECs, 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 assert that by assembling multiple independently managed efficient portfolios, BGS suppliers effectively marshal competitive forces, take on the risks for the customers and thereby provide the benefits of portfolio management to BGS customers. (Joint EDC Reply Comments 8 to 9). The EDCs maintain 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. The EDCs assert 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, which are already portfolio managers in the competitive marketplace. (Joint EDC Reply Comments 9 to 10).

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 BGS. The Board's concerns include, but are not limited to: 1) 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 2) 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 interests of ratepayers. Accordingly, the Board declines to direct the EDCs to include a portfolio approach, as well as the use of a portfolio manager, in their proposed procurement process for BGS.

Further, for the same concerns, the Board is not persuaded that Rate Counsel has provided information in this proceeding that would lead the Board to believe that it should start a working group to evaluate and develop a portfolio approach proposal to address New Jersey's energy supply needs.

Supplier Pricing/Contract Disclosure

Rate Counsel states that while it may be true that the BGS procurement is reasonably successful and that New Jersey's BGS customers are paying the lowest possible price for BGS-FP service, parties not in the BGS inner circle have no way of confirming this. Rate Counsel posits that there is no way of knowing, for example, what price is included in the BGS-FP price for SRECs or just how much of a risk premium BGS-FP ratepayers are paying. Rate Counsel asserts that the BGS process is a black box. It suggests that one way to increase transparency would be to provide BGS-FP documents from winning bidders in past auctions. It further suggests that contracts that have been completed could be reviewed to see the various components of the BGS-FP price from previous auctions. Rate Counsel feels that the cost of the various components of wholesale electricity (energy, capacity, transmission, renewable energy requirements, and ancillary services) could be calculated and compared to what would have happened had procurement been directly from the spot market. Rate Counsel maintains that this comparison could also give an indication of how much supplier overhead, risk premium, and profit are included in the BGS-FP price, and what the ultimate ratepayer cost is for the relative rate stability promoted as a core benefit of the BGS-FP product as now configured. Rate Counsel urges that this information on underlying supply arrangements should be available to the Board and to those who are privy to detailed information on the BGS-FP auction. (Rate Counsel Final Comments 1 to 3).

TransCanada indicates that although contracts contain bid formulations made for supply periods that have already expired, they still contain commercially sensitive information regarding pricing models, cost assumptions and related strategic techniques that, if disclosed, would adversely affect the disclosing suppliers' ability to negotiate similar agreements in the future. TransCanada indicates that this information, which is maintained in secrecy by suppliers, would likely be of significant value to competing BGS auction bidders and would put disclosing suppliers at a competitive disadvantage with respect to future bids, to the detriment of New Jersey BGS customers. Thus, TransCanada asserts that previous contracts should not be subject to disclosure as suggested by Rate Counsel. According to TransCanada, to do otherwise could have consequences that are counterproductive to obtaining the lowest prices possible for BGS customers. (TransCanada Final Comments 3 to 4). TransCanada also asserts that if suppliers were somehow forced to make public their pricing models, cost assumptions, and risk analyses for regulatory review, many suppliers may decline to participate in future BGS auctions. TransCanada feels since the product of supplying electricity is standardized, suppliers differentiate themselves by their approaches to estimating certain cost elements. Further it indicates that suppliers may well have unique, novel, or sophisticated approaches to such forecasting -- competitive advantages relative to other suppliers -- that they simply cannot afford to lose by making them public. TransCanada indicates if forced to disclose their pricing models, fewer competitive supplier will participate in the auction, which will negatively impact BGS customers. Accordingly, TransCanada believes the terms of these contracts, which are confidential trade secrets as defined by New Jersey law, should not be subject to disclosure. (TransCanada Final Comments at 5).

The EDCs indicate that Rate Counsel's desire to take a look at past auctions is an attempt to associate what parts of the price were allocated for different components of the supply product. However, the EDCs maintain that the BGS price is a single, all-in price for a full requirements product, and there is no way to go back and determine which portion of the price was intended to cover which component of the full requirements product. According to the EDCs, the information does not exist, and Rate Counsel fails to recognize that it is impossible to do what it wants to do. (Joint EDC Final Comments at 6 to 7).

Of concern to the Board is that, as TransCanada indicates, the Rate Counsel proposal, if implemented, might actually decrease the competitiveness of the BGS procurement. Bidders who are required to disclose proprietary information, even on a confidential basis, may be less likely to participate in future auctions. This is a significant concern to the Board. Further as indicated by TransCanada, although contracts contain bid formulations made for supply periods that have already expired, they may still contain commercially sensitive information regarding pricing models, cost assumptions and related strategic techniques that, if disclosed, could adversely affect the disclosing suppliers' ability to negotiate similar agreements in the future.

TransCanada indicates that this information, which is maintained in secrecy by suppliers, would likely be of significant value to competing BGS auction bidders and would put disclosing suppliers at a competitive disadvantage with respect to future bids, to the detriment of New Jersey BGS customers. Rate Counsel has provided no evidence to the contrary.

This is not the first time the Board has been presented with a request to examine the underlying supply contracts of BGS winners. What Rate Counsel fails to provide is how the Board would examine the underlying supply contracts of winning bidders. Suppliers typically manage their obligations through a variety of means: owned generation, contracted for generation, spot market purchases, etc. It is through this very portfolio approach that suppliers provide the FP requirement product which, as the EDCs point out, is a single, all-in price for a full requirements product.

Further, what Rate Counsel fails to take into account is that to ensure the winning prices are competitive, the Board's BGS consultant certifies the BGS FP and BGS CIEP Auction results – indicating that the winning prices were consistent with broader market conditions. Boston Pacific, in recommending that the winning process be certified, makes several checks on the prices received in the Auction to make sure that they were consistent with market conditions. Boston Pacific's primary test involves comparing the winning prices with the predicted ranges from its Benchmark Pricing Model. With this model, it attempts to view the full requirements product as a bidder might. That is, it looks at current market data for all the components of full requirements service (e.g. energy, capacity, ancillary services, etc.) and puts them together, along with a credit and risk component, in order to create what Boston Pacific thinks of as a reasonable price for a full requirements product. Because bidders can differ on the valuation of many of the components, Boston Pacific allows key variables to fluctuate in its model. The output of the model is a range of prices that Boston Pacific considers "reasonable".

Based on the record developed in this proceeding, the Board DENIES Rate Counsel's request that information on underlying supply arrangements be disclosed to those who are privy to detailed information on the BGS-FP auction.

FINDINGS AND CONCLUSIONS

The intent of this proceeding was to focus on the BGS procurement process, policy issues directly related to the procurement process, and any other issues that warrant individual consideration outside of the yearly BGS review process. In directing the commencement of this proceeding, the Board indicated that any action that may be taken as a result of the BGS review proceeding to modify the BGS procurement process will not modify the existing SMAs and those that were executed as a result of the 2012 BGS Auction. 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 Board's conclusions on the various issues raised by the parties in this proceeding are stated within the body of this Order. Without summarizing all of them here, based on the record in this proceeding for the upcoming BGS Procurement, the Board HEREBY DIRECTS the following:

> that the CIEP threshold be lowered to those customers with a peak load share of at least 500kw beginning June 1, 2013 for any BGS procurement process;

that the EDCs install interval meters for all customers above 500 kW by June 1, 2013 with the costs to be recovered within their next base rate proceedings; and

that the EDCs make a specific proposal to address TransCanada's comments about the length of the decision process in their next BGS procurement process filing.

Additionally, the Board hereby DIRECTS that Staff convene a study to explore the possibility of removing the RPS requirement from the BGS procurement.

DATED: 6/18/12

BOARD OF PUBLIC UTILITIES
BY:

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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

In the Matter of the Review of the
Basic Generation Service Procurement Process
Docket No. ER12020150
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