



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Ave. P.O. Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE PROVISION OF BASIC)
GENERATION SERVICE FOR THE PERIOD)
BEGINNING JUNE 1, 2012)

DECISION AND ORDER
Docket No. EO11040250

Gregory Eisenstark, Esq., Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power & Light Company

Chantale LaCasse, BGS Auction Manager, NERA Economic Consulting

Mally Becker, Esq., Attorney 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, Director, Division of Rate Counsel

Murray E. Bevan, Esq., Bevan, Mosca, Giuditta & Zarillo, P.C., on behalf of the BGS Supplier Group and the Retail Energy Supply Association

Christopher P. Orzel, Director, Regulatory Affairs, NextEra Energy Power Marketing, LLC

Divesh Gupta, Esq., Managing Counsel - Regulatory Constellation Energy on behalf of Constellation Energy Commodities Group and Constellation New Energy, Inc.

Colleen A. Foley, Esq., Saul Ewing LLP, for Exelon Generation Company

BY THE BOARD:

This Order memorializes actions taken by the Board of Public Utilities ("Board" or "BPU") at its November 9, 2011 agenda meeting pertaining to the provision of basic generation service ("BGS") for retail customers who continue to purchase their electric supply from their electric utility company for the period beginning June 1, 2012.

By Order dated May 16, 2011, in the within matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"); Jersey Central Power & Light Company ("JCP&L"); Public Service Electric and Gas Company ("PSE&G"); and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 1, 2011 to determine how to procure the remaining one-third of the State's BGS fixed price ("FP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2012. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On July 1, 2011, the EDCs filed a Joint Proposal on BGS procurement ("Joint EDC Proposal") and each EDC also filed a company-specific addendum to the Joint EDC Proposal. A proposal was also submitted by the New Jersey Division of Rate Counsel ("Rate Counsel"). A discovery period followed. Initial Comments on the BGS proposals were filed on September 2, 2011. Final Comments were filed on September 30, 2011.

Parties that filed either a proposal, comments, or appeared at the public hearing included the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), Rate Counsel, the Retail Energy Supply Association ("RESA"), Constellation Energy Commodities Group/Constellation New Energy, Inc. (collectively, "Constellation"), the BGS Supplier Group,¹ Hess Corporation, Consolidated Energy Solutions, Inc., NextEra Energy Resources LLC ("NextEra"); and Exelon Generation.

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. ACE's public hearing was held on September 22, 2011; PSE&G's public hearing was held on September 22, 2011; RECO's public hearing was held on September 14, 2011; and JCP&L's public hearing was held on September 12, 2011. No members of the public appeared at any of the hearings.

The Board also held a legislative-type hearing on September 26, 2011 at its Trenton hearing room, chaired by President Solomon. Commissioner Nicholas Asselta and Commissioner Joseph Fiordaliso also participated. The purpose of the hearing was to take comments on the pending proposals.

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

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely relied on previous auctions and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. For this reason, and because it forms the basis of much of the discussion in this Order, and because, with the modifications described below, the Joint EDC Proposal contains many elements that will be incorporated into the BGS procurement process which the Board will approve herein, this Order will summarize the main features of the July 1, 2010 Joint EDC Proposal. The Board will not, in this Order, separately summarize each party's position in similar detail, but has carefully reviewed each party's proposals and/or positions in reviewing the record in this matter and rendering this decision.

¹ The BGS Suppliers group is comprised of Integrys Energy Services, Consolidated Edison energy, Inc., Energy America, LLC, a wholly owned subsidiary of Direct Energy Services, LLC and Hess Corporation.

JOINT EDC PROPOSAL

On July 1 2011, the four EDCs filed a generic proposal for BGS beginning on June 1, 2012, including proposed preliminary auction rules for the auctions, Supplier Master Agreements (“SMAs”), and EDC-specific addenda.

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

One Auction would procure the service requirements for a one-year period beginning June 1, 2011, for the approximately 2000 larger Commercial and Industrial (“C&I”) customers on the EDCs’ systems through an Auction to provide hourly-priced service (the “BGS-CIEP Auction”). The customers in this category represent approximately 2950 Megawatts (“MW”) of load to be procured through bidding on 42 full-requirements tranches² of approximately 75 MW each³. This is the same type of Auction that the Board approved last year in Docket ER10040287.

The second Auction would procure one-third of the service requirements for all other customers of all four EDCs⁴, for a three-year period beginning June 1, 2012, through a fixed-price Auction (“BGS-FP Auction”) for approximately 5300 MW of load to be served through 57 full-requirements tranches⁵ of approximately 100 MW each. This is the same type of Auction that the Board approved last year in Docket ER10040287.

The competitive process by which the EDCs propose to procure their supply for BGS load for period beginning June, 1 2012 is detailed in the Joint EDC Proposal and in Appendices A and B thereto (Provisional CIEP and FP Auction Rules, respectively), and is the same type of Auction process that the Board has approved for each of the past ten years. Under the Joint EDC Proposal, the retail load of each EDC is considered a separate “product” in each Auction. When a participant bids in either BGS Auction, that participant states the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-FP Auction, a price for an EDC is the amount in cents per Kilowatt-Hour (“kWh”) to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in Dollars per Megawatt-Day (“\$/MW-day”) paid for the capacity obligation of BGS-CIEP customers served. A tranche of one product (i.e. a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services, etc.) tranche. At the end of the Auctions, the final prices for the EDCs’ tranches may be different because of differences in the products due to each EDC’s load factor, delivery location, and other factors.

The EDCs proposed that rates for BGS-FP customers be designed using a generic methodology implemented as described in the Company-specific addenda. Bidders would be provided with a

² A tranche is a full-requirements product and represents a fixed percentage share of an EDC’s load for a specific period.

³ The 75 MW tranche size is an approximate amount of BGS-CIEP eligible load for ACE, JCP&L and PSE&G tranches. However, RECO only has one tranche with an eligible load of about 38 MW.

⁴ A portion of RECO’s service territory lies outside of the area managed by PJM as described in footnote 9. No procurement process is needed for that area at this time.

⁵ The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2012 by means of Board-approved Auctions in February 2010 and February 2011.

spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-FP rates would be fixed tariff rates determined by converting the Auction prices to BGS-FP rates in a manner that reflects seasonality and time of use indications, where appropriate and feasible, in order to provide appropriate price signals.

The EDCs proposed that payments to winning BGS-FP bidders for June through September be adjusted to reflect higher summer costs. Payments to bidders for the remainder of the delivery period would be adjusted to reflect lower winter costs. The summer and winter factors are designed so that the overall average payment to the bidder would equal the Auction clearing price.

The EDCs proposed that for BGS-CIEP tranches, rate schedules would be designed to include the transmission and ancillary service costs, and a provision to pass through the hourly PJM⁶ real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and various other payments for energy, ancillary services and transmission which would be known in advance of the Auction. Under the EDCs' proposal, winning bidders would also receive a Standby Charge of \$0.00015/kWh. The Standby Charge would essentially act as an "option fee." The capacity payment would be charged to all CIEP customers on BGS service, while the Standby Charge would be charged to all customers in the CIEP service category whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided for customers taking BGS-CIEP service plus the Standby Charge rate times the monthly sales to all CIEP customers, whether on BGS-CIEP or not. Under the Joint EDC Proposal, each BGS supplier would be required to assume PJM Load Serving Entity ("LSE") responsibility for the portion of BGS load (whether BGS-CIEP or BGS-FP) served by that supplier. In accordance with the PJM Agreements required of LSEs, BGS suppliers would be physically and financially responsible for the day-to-day provision of electric supply for BGS customers. The detailed commercial terms and conditions, under which the BGS supplier would operate, including credit requirements, are set forth in the CIEP and FP Supplier Master Agreements attached to the Joint EDC Proposal as Appendix C and D, respectively.

The EDCs requested that the Board render a decision on the Auction process, and thereafter render a decision on the results of the Auctions. Specifically, they requested that the Board approve or reject in their entirety the results of the BGS-FP Auction and, separately, the results of the BGS-CIEP Auction, by the end of the second full business day after the calendar day on which the last of the two Auctions closes. The EDCs also recommended that the Board clarify that, at its discretion, it may act on one completed Auction while the second is still ongoing. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

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

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

BGS suppliers must meet all New Jersey Renewable Portfolio Standards ("RPS") requirements, and any similar standards imposed under any federal, state or local legislation that may be applicable throughout the respective supply periods;

⁶ PJM, the Pennsylvania-New Jersey-Maryland Interconnection, LLC, is the Federal Regulatory Energy Commission approved regional transmission organization that manages the wholesale competitive energy market, and coordinates the movement of electricity in all or parts of a group of states including most of New Jersey.

as conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS SMA within three business days of Board certification of the results, and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;

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

qualified bidders are required to post a per-tranche letter of credit or bid bond; and

- the BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-FP Auction secures one-third of each EDC's total load requirements for three years,⁷ with the remaining two-thirds having been secured through previous BGS-FP Auctions.

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

DISCUSSION AND FINDINGS

FP and CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2012, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features, and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework and varying procurement periods. The Board's decision at that time was developed after considering all of the comments received. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-FP and BGS-CIEP customers.⁸ For the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011 BGS Auctions, the Board continued to approve descending-clock Auctions for the procurement of default service while continuing to adjust certain elements of the process including changing the beginning of the supply period from August to June and expanding the size of the CIEP class.⁹

As previously stated, for the period beginning June 1, 2012, by Order dated June May 16, 2011, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-FP and the annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the FP and CIEP customer classes for the period beginning June 1, 2012. At this time, while the Board is again

⁷ While the concept is to divide the EDCs' load requirements into thirds, the actual tranches available for any EDC for any time period may vary by EDC.

⁸ Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

⁹ Board Orders dated December 2, 2003, Docket No. EO03050394; December 1, 2004, Docket No. EO04040288; December 8, 2005, Docket No. EO05040317; December 22, 2006, Docket No. EO06020119; January 25, 2008, Docket No. ER07060379; January 20, 2009, Docket No. ER08050310; December 10, 2009, Docket No. EO09050351 and December 6, 2010, Docket ER10040287.

presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-FP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

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

Based on the experience of previous BGS Auctions, and having considered the record which has been developed in this matter, the Board concludes and FINDS that, with certain refinements and enhancements as will be discussed herein, a BGS-FP and BGS-CIEP Auction using a descending-clock Auction format should be used for the procurement period beginning June 1, 2012.

BGS PROCUREMENT REVIEW PROCESS

Rate Counsel indicated in its comments that in early 2006, after five BGS auctions had been approved by the Board, by Order dated March 24, 2006, the Board initiated a BGS procurement review process seeking comments from "industry participants and the public" on the subject of "the appropriate vehicle for BGS procurement." Rate Counsel believes that another review of the BGS procurement process is now warranted. Rate Counsel indicates that since the first auction in February 2002, ten auctions have been approved by the Board and implemented by the EDCs with only minor modifications to the procurement process in the early stages. Rate Counsel believes that the Board should continue to periodically review the procurement process to ensure that New Jersey ratepayers are receiving the best possible deal for energy purchases and that New Jersey's energy policies are fully reflected in the BGS procurement process. (Rate Counsel's Initial Comments 1-2).

As part of the current BGS proceeding, RESA has proposed that the Board should reduce the CIEP threshold to 300 kw for the next BGS auction, as well as establish a "glide-path" approach to further lower the CIEP threshold in subsequent BGS auctions. (RESA Initial Comments at 4). Further, RESA proposed that the Board should take steps to implement more frequent BGS procurements with shorter term contracts, rather than continuing the laddered-three-year contracts currently used in the BGS-FP auction. (RESA Initial Comments at 4). Rate Counsel, in response to RESA's request, pointed out that other issues surrounding the BGS full requirements product, such as the lowering the BGS-CIEP threshold could be further scrutinized in the additional proceeding it has recommended be initiated by the Board. (Rate Counsel's Oral Testimony at 4).

Regarding the proceeding that Rate Counsel has recommended that the Board initiate, the EDCs note that many of the specific ideas suggested for exploration have been considered in depth in the past. The EDCs maintain that such an exploration is unlikely to be a prudent use of resources unless there is a concerted focus on a limited number of key issues and a broad participation by stakeholders, including BGS Suppliers. Hence, the EDCs request that, should the Board establish a proceeding to examine the procurement of supply for BGS customers, the Board carefully define the scope of issues suggested by Rate Counsel and limit the focus to only those issues where changed circumstances may merit a fresh look, and to include issues

that may be of particular interest to existing and potential BGS Suppliers. Additionally, the EDCs recommend that the timeframe for any such exploration should be after the 2012 BGS Auction, with resolution by the end of May 2012, so that the BGS procurement process can stay on schedule. (EDCs' Final Comments at 6).

Constellation respectfully suggests that Rate Counsel's proposal is unnecessary and duplicative, as both the Board and its independent consultant, with the input of interested stakeholders, review the BGS Auction structure annually. Each year, the Board has found the BGS Auction structure, relying on full requirements contracts, to be the best solution to meet New Jersey ratepayer's default service requirements. However, in the event that the Board accepts Rate Counsel's proposal for an extensive review of the BGS procurement process, the Board should be careful to assure BGS Suppliers that any decisions that the Board makes as a result of such a proceeding will in no way affect the sanctity of current BGS SMAs or those that are executed during the course of the current proceeding. Constellation maintains that regulatory changes that affect the benefit of the bargain reached pursuant to executed SMAs will negatively affect the marketplace's views of the BGS process, to the detriment of New Jersey's consumers. (Constellation's Final Comments at 8-9).

After five BGS auctions¹⁰ had been approved by the Board, by Order dated March 24, 2006, the Board initiated a BGS procurement review process seeking comments from "industry participants and the public" on the subject of "the appropriate vehicle for BGS procurement." As a result of that review, the Board by Order dated July 10, 2006, Docket No. EO06020119, found that a descending-clock auction was an appropriate procurement process to secure the EDC's BGS-FP electric requirements for the period beginning June 1, 2007.

Since the Board's 2006 decision, the EDCs have jointly proposed five BGS procurement processes that were approved by the Board, with modifications, to implement two simultaneous, multi-round, descending clock auctions for the procurement of services to meet the full electricity requirements (i.e., energy, capacity, ancillary services, transmission, etc.) of FP and CIEP retail customers that have not chosen a TPS¹¹. Rate Counsel believes that another review of the BGS procurement process is now warranted.

It should be noted that in each year the Board approved the EDCs' BGS filing, a procedure was followed that included the Board directing the EDCs to file proposals to procure the State's remaining BGS FP requirements and the annual CIEP requirements. Most importantly, the Board has also invited all other interested stakeholders to concurrently file alternative BGS proposals. This process has also included an opportunity for participation by all interested parties through opportunity for discovery, both written comments and oral testimony at public hearings which resulted in a wide range of BGS suggestions, a timely Board decision and what the Board has ultimately determined was a successful procurement process.

While the Board has annually examined the EDCs' BGS procurement process filings in an open and transparent manner, Rate Counsel believes that the Board should conduct an additional review of the BGS procurement process outside of the strict procedural confines of the BGS schedule adopted by the Board from year to year. Rate Counsel proposes that this review process should take the opportunity to examine various aspects of the BGS procurement process to ensure that the current procurement process continues to be New Jersey's best option for BGS supply, and consider changes to improve this process in ways that can benefit BGS customers.

¹⁰ This included the 2002, 2003, 2004, 2005 and 2006 BGS auctions.

¹¹ This includes the 2007, 2008, 2009, 2010 and 2011 BGS auctions.

Based on a review of the record in this proceeding, the Board FINDS some merit in conducting the BGS review proceeding as suggested by Rate Counsel. The Board feels that the elements of the BGS procurement process have always been, and will always be, subject to periodic review and potential revision by the Board. The Board further believes that the focus of the recommended proceeding should be on consideration of the procurement process, policy issues directly related thereto, and issues that are of particular interest to the Board that warrant individual consideration outside the yearly BGS review process. With regards to RESA's request regarding the CIEP threshold and shorter term BGS procurements, the Board concludes that these issues are intricately related and/or possibly influenced by the issues that will be examined during this review proceeding, and therefore it would be premature for the Board to address these proposals within this BGS proceeding.

In addition, the Board agrees with the EDCs' suggestion that the timeframe for any such exploration should be after the 2012 BGS procurement, with resolution by the end of May 2012 so that the BGS process can stay on schedule. Further, the Board agrees with the suggestion made by Constellation that the Board should be careful to assure BGS Suppliers at the outset that any decisions that the Board makes as a result of such a proceeding would be prospective only and will in no way affect current BGS SMAs or those that are executed during the course of the current proceeding.

Therefore, the Board DIRECTS 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. Further, the Board is deferring any decision in the current proceeding on RESA's requests regarding the CIEP threshold and shorter term BGS procurements to the BGS review proceeding. Finally, any action that the Board may take as a result of the BGS review proceeding to modify its BGS procurement process will in no way affect the current BGS SMAs or those that are executed during the course of the current BGS procurement proceeding.

BGS-FP AUCTION SUPPLY PERIOD

The Board FINDS that a 36-month procurement period for the approximate one-third of the EDCs' current BGS-FP load not under contract is appropriate and reasonable and APPROVES that aspect of the EDCs' proposal. Further, the tranche-weighted average of the winning bids from the 36-month period, as well as the 36-month supply contracts secured previously, will be used to determine the price for BGS-FP rates for the June 1, 2012 to May 31, 2015 period.

~~BGS-CIEP AUCTION SUPPLY PERIOD~~

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

SECTION 15.9 OF THE SMA AND THE MEANING OF "FINAL FERC ORDER"

The EDCs are proposing a change to Section 15.9 of each of the filed draft BGS-CIEP and BGS-FP SMAs, as well as the related definition of "Final FERC Order," to provide greater certainty to BGS Suppliers regarding payments for changes in FERC approved transmission rates. The EDCs indicate that Section 15.9 provides that a change in firm transmission rates from the base Network Integration Transmission Service ("NITS") level results in a filing by the

EDCs to the Board requesting permission to collect the amount of the increase from customers (or reduce rates, in the event of a decrease) and, after such change has been approved by the Board and is the subject of a Final FERC Order and no longer subject to refund, to adjust the BGS payment to suppliers. (Joint EDC Proposal at 14-15).

The EDCs point out that the BGS SMA defines a "Final FERC Order" as a "final order issued by FERC which is no longer subject (either actually or potentially) to rehearing or judicial review and is not subject to proceedings at FERC on remand from any court." The EDCs indicate that unanticipated procedural developments at FERC have created uncertainty as to whether some FERC Orders should be considered final under this definition, and thus should result in changes in payments to BGS suppliers. The EDCs indicate that a currently pending remand to FERC concerning transmission cost allocation¹² has resulted in a situation where the EDCs have different interpretations of the SMA language while agreeing substantively that no harm would come from payment since no decrease in the charge is expected from any decision in the pending case. The EDCs indicate that the proposed language change in their filing will resolve this issue. Thus, the EDCs propose to modify Section 15.9 and to clarify the definition of "Final FERC Order" in a manner that they maintain would reduce the uncertainty as to when a FERC Order is considered final for purposes of payment of charges collected from BGS customers to BGS Suppliers, and thus would correspondingly reduce the uncertainty of BGS suppliers regarding payment under Section 15.9. (Joint EDC Proposal at 14-15).

Further, the EDCs also intend to seek the consent of BGS suppliers under prior and existing BGS SMAs to similar modifications, which would also facilitate payments to, and thereby benefit, those suppliers. (Joint EDC Proposal at 15).

The BGS Supplier Group points out that pursuant to the definition of "Final FERC Order" in the current SMA, several EDCs have not reimbursed changes in transmission rates to BGS suppliers who were required to begin paying the transmission rate to fund the construction of four new transmission projects located within PJM territory. (BGS Supplier Group Initial Comments at 2). The BGS Supplier group, in its Final Comments, urges the Board to adopt the proposal of the EDCs to change the definition of "Final FERC Order" in Section 15.9 of each of the BGS-CIEP and BGS-FP SMAs, as provided in the EDCs' Joint proposal for BGS to be procured effective June 1, 2012. The BGS Supplier Group asserts that the proposed change will provide greater certainty to potential BGS suppliers regarding their ability to recover changes in transmission rates from the EDCs in a timely manner going forward. (BGS Supplier Group Final Comments at 1). In addition, the BGS Supplier Group urges the Board to direct the EDCs to provide prompt payment for actual TECs, regardless of which SMA (these would be SMAs for which a BGS supplier is still entitled to changes in transmission rates from the EDCs) they are associated with. (BGS Supplier Group's Final Comments at 2).

NextEra indicates it fully supports the position taken by the BGS Supplier Group regarding the change in definition of "Final FERC Order" as proposed by the EDCs. NextEra believes that the current definition of "Final FERC Order" creates uncertainty and added risk to potential BGS suppliers. NextEra believes that the changes proposed by the EDCs, and advocated by the BGS Suppliers Group will provide greater certainty to potential BGS suppliers regarding their ability to recover changes in transmission rates from the EDCs in a timely manner, NextEra urges the Board to adopt the EDCs' proposal. (NextEra Final Comments at 1).

In addition, Constellation indicates that, as currently structured, the SMA Section 15.9 sets out a process through which, in the event of a transmission service rate increase, the EDCs will

¹² Illinois Commerce Commission, et al. v. Federal Energy Regulatory Commission, 576 F.3d 470 (7th Cir. 2009), rehearing and rehearing en banc denied (Oct. 20, 2009).

petition the Board for approval for 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 such increased 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. Constellation has in the past strongly backed the language in SMA Section 15.9 and continues to support its terms and intentions. However, Constellation asks that the Board provide direction at this time to encourage the EDCs to utilize a consistent approach in implementing and providing reimbursements to BGS Suppliers of amounts collected pursuant to the language in SMA Section 15.9, particularly with respect to what type of FERC action the EDCs must accept as a "Final FERC Order" that would allow them to begin reimbursing BGS Suppliers. (Constellation's Initial Comments at 1-2).

The EDCs are proposing a change to Section 15.9 of the BGS-CIEP and BGS-FP SMAs, as well as the related definition of "Final FERC Order," to provide greater certainty to BGS suppliers regarding payments for changes in FERC approved transmission rates. The BGS Supplier Group, NextEra and Constellation have all urged the Board to adopt the EDCs' proposal, with no stakeholder objecting. Based on the comments provided regarding this issue the Board FINDS the EDCs' proposal would clarify the definition of "Final FERC Order" in a manner that would reduce the uncertainty, and is therefore accepting the changes to Section 15.9 and the definition of "Final FERC Order" as proposed by the EDCs.

Further, the EDCs also seek Board authorization to obtain the consent of BGS suppliers under prior and existing BGS SMAs to similar modifications, which would also facilitate payments to, and thereby benefit, those suppliers. According to the EDCs, this would require a modification of any existing or prior SMA to facilitate this change. The Board is of the opinion that there is no need to modify any prior or existing BGS SMA where transmission rates have been collected but withheld due to certain of the EDCs' interpretation of the meaning of "Final FERC Order." The Board believes as a matter of fairness that the proposal made by the EDCs to modify future BGS-CIEP and BGS-FP SMAs should also apply as a clarification to prior and existing BGS SMAs where the EDCs have already collected the charges for the benefit of the suppliers. The Board understands that members of the BGS Supplier Group claim to have been owed this money in some cases since 2008, and that they have not been paid for costs which they have already remitted to PJM as part of obtaining transmission service to serve BGS load.

Therefore, the Board DIRECTS the EDCs to apply their proposed changes to Section 15.9 of the filed draft BGS-CIEP and BGS-FP SMAs, as well as the related definition of "Final FERC Order," to be used for the current procurement process, and as a clarification to those BGS contracts where a BGS supplier is owned any transmission related costs either under the terms of a current SMA or under the provisions of Section 4.3 of a previous SMA which preserves the ~~right to final billings and adjustments~~ where amounts were tacked and retained by the EDCs under Section 15.9.

EDCS' BGS ADMINISTRATIVE EXPENSES

Rate Counsel requests that the Board review the EDCs' administrative expenses that are being charged to ratepayers. According to Rate Counsel, in discovery responses provided in this proceeding, the EDCs acknowledged that included in the administrative costs are such things as "legal costs of BGS patent claim expense" and various "meeting rooms" and "refreshments." Rate Counsel believes that the Board should review these costs and advise the EDCs exactly which expenses associated with the BGS auction are properly recoverable from ratepayers. (Rate Counsel's Initial Comments at 6).

The Board agrees with Rate Counsel that there should be a review of the administrative expenses that are being charged to ratepayers relating to BGS. However, the Board FINDS that this type of cost review is more appropriately done in the context of a base rate case. Therefore, the Board DIRECTS Staff to examine, as an additional area, the administrative expenses that are being charged to ratepayers relating to BGS in each of the EDC's next base rate cases.

EDCS' BGS RECONCILIATION CHARGE

Rate Counsel also requests that the Board review the EDCs' accounting for the BGS reconciliation charge¹³. Rate Counsel indicates that the calculation is not done consistently by the four EDCs. For example, PSE&G files monthly and uses "BGS revenues from Customers less BGS costs" in its reconciliation calculation. ACE, on the other hand, files "periodically," and uses "billed revenues" in its calculation. While the question may be one of semantics, Rate Counsel offers that the calculations should be reviewed for correctness and consistency. Rate Counsel also recommends that the Board direct each EDC to calculate the reconciliation charge in the same manner and frequency. (Rate Counsel's Initial Comments at 6).

The Board agrees with Rate Counsel that the methodology and timing of the calculation and collection of the reconciliation charge should be reviewed. The Board further agrees with Rate Counsel that each of the EDC's reconciliation charge calculations should be reviewed for correctness and consistency. As part of its recommendation in this proceeding Staff has informed the Board that it has already begun a stakeholder process to review the EDCs' BGS reconciliation charge. Further, Staff has indicated that it has invited all stakeholders to participate in an informal process to better understand the EDCs' current reconciliation charge calculations and to provide input. Upon the completion of this stakeholder review process, the Board DIRECTS Staff to report its findings to the Board, including any potential recommendations to resolve the inconsistencies among the four EDCs, if needed. Therefore, the Board DENIES any request for changes to an EDC's reconciliation charges as proposed in its BGS Company Specific Addendum included as part of the Joint 2012 BGS filing, and defers the matter for review in the reconciliation charge stakeholder proceeding.

ACE TRANSMISSION RATE DESIGN

In its company specific Addendum, ACE proposes to modify its retail rate design structure to a dollar per kW of transmission peak load basis. ACE indicates that customers will be billed based on their contribution to the transmission peak load, rather than be billed using a customer class contribution to the transmission peak load. ACE maintains that this modification to the rate structure provides several advantages to both the customer and the company. ACE asserts that this modification will improve the overall transparency of the rate, and the new rate structure promotes a flattening of the monthly transmission portion of the customer's bill. ACE indicates that, if approved by the Board, the company will implement its new rate design in its 2012 Retail Transmission filing. (ACE Company Specific Addendum at 10-11).

Rate Counsel indicates it has no issue with ACE's intended goal, to more closely align transmission rates with cost incurrence. However, a potential issue that Rate Counsel may have with ACE's proposed rate modification is with the company's ability to accurately estimate individual residential customer contribution to the transmission peak load. In addition, it is not

¹³ The reconciliation charge accounts for the difference between amounts paid to BGS suppliers and amounts collected from BGS customers.

clear to Rate Counsel what the range of bill impacts will be for residential customers if the proposed rate modification is adopted by the Board. Rate Counsel points out that this information was not provided in ACE's BGS filing. Rate Counsel indicates that since the Company seeks to implement its new rate design in its 2012 Retail Transmission filing, this should give ACE sufficient time to provide a more detailed rate impact analysis to Rate Counsel and the Board before a decision is made on whether to approve the rate modification as part of ACE's 2012 Retail Transmission Rate filing. Accordingly, Rate Counsel recommends that the Board direct ACE to provide this additional information to the Board and to Rate Counsel in advance of its 2012 Retail Transmission Rate filing. (Rate Counsel's Initial Comments at 6-7).

After reviewing Rate Counsel's concern regarding ACE's transmission rate design proposal, the Board agrees that ACE should provide a more detailed rate impact analysis to Rate Counsel and the Board before a decision is made on whether to approve the rate modification as part of ACE's recently filed 2012 Retail Transmission Rate filing. Further, as indicated by ACE in its description of the charges that can influence the calculation of the reconciliation charge, the Board believes that this issue might be better examined in the stakeholder process mentioned above to review the EDCs' reconciliation charges. Therefore the Board DENIES ACE's transmission rate design proposal in its BGS Company Specific Addendum included as part of the Joint 2012 BGS filing. Further, the Board DIRECTS Staff to include this issue to be examined as part of the stakeholder process to review the EDC's reconciliation charge with any decision on the rate design modification deferred to that proceeding. As part of that process, it is expected that ACE will provide a more detailed rate impact analysis of what the range of bill impacts will be for residential customers.

PJM ECONOMIC LOAD RESPONSE ("ELR") COSTS

Constellation asks that the Board order the EDCs to revise and submit for Board approval a modified SMA that reflects that makes the EDCs responsible for charges resulting from PJM's implementation of its revised ELR program in compliance with FERC Order No. 745, as those charges may finally be identified by PJM. Constellation maintains that the Board should require the EDCs to take on the responsibility at the outset for these charges, so long as the Board assures that the EDCs are able to pass such charges through to customers. Constellation argues that this will serve to reduce a new and unpredictable risk to BGS Suppliers, which will in turn lead to more competitive bids to provide BGS supply to meet EDCs' customers' load requirements, as BGS Suppliers will not have a need to predict and account for such new costs in their bids. (Constellation's Initial Comments at 2).

The EDCs request that the Board reject Constellation's suggestion to amend the BGS SMAs regarding PJM's revised ELR Program. The EDCs argue that the rationale underlying this request is that removing uncertainty from BGS Suppliers lowers costs, leaving less risk to be priced into the BGS product. The EDCs point out that the argument has been advanced in the past with respect to a variety of uncertainties, and overlooks the fact that Constellation's ELR proposal shifts the uncertainty of these costs to customers. As more pass-through items are added to the SMAs, or as responsibilities are shifted to the EDCs, the fixed-price nature of the BGS product is eroded. The EDCs feel the full requirements product is designed so that all those aspects of BGS supply that can be provided through the competitive market, including risk assessment and management, are provided and priced through the competitive market. (EDCs Final Comments at 12).

Rate Counsel objects to Constellation's suggestion that the Board carve out one piece of the full requirements product solely to protect BGS suppliers from costs associated with PJM's implementation of the ELR program. Rate Counsel argues that shifting the cost risks of ELR

implementation onto ratepayers while BGS suppliers retain the benefits associated with the implementation is not fair. Rate Counsel believes that the costs associated with PJM's revised ELR program should stay with the load-serving entity, the BGS supplier. (Rate Counsel's Final Comments at 3).

The Board is not persuaded that Constellation's proposal will serve to reduce a new and unpredictable risk to BGS Suppliers, which will in turn lead to more competitive bids to provide BGS supply to meet EDCs' customers' load requirements. The Board agrees with the EDCs that this argument has been advanced in the past with respect to a variety of uncertainties, and that Constellation's ELR proposal shifts the uncertainty of these costs to customers. The Board agrees that where more pass-through items are added to the SMAs, or as responsibilities are shifted to the EDCs, the fixed-price nature of the BGS product is eroded. The Board feels that any risks associated with the ELR program can be managed through the competitive market. For this reason the Board DENIES Constellation's request to order the EDCs to revise and submit for Board approval a modified SMA that makes the EDCs responsible for charges resulting from PJM's implementation of its revised ELR program.

VOLUNTARY ENROLLMENT IN CIEP

By Order dated November 22, 2010, Docket No. EO10050338, In the Matter of the Board's Review of the Retail Margin and Commercial and Industrial Pricing ("CIEP") Threshold, the Board approved the lowering of the CIEP threshold to those customers with a peak load share of at least 750 kW beginning June 1, 2011. For the 2004, 2005, 2006, 2007, 2008, 2009, 2010 and 2011 Auctions, certain Commercial and Industrial FP customers, to the extent they could be identified and metered without a material impact on the BGS Auction process, were permitted to join the CIEP class on a voluntary basis. Voluntary enrollment in the CIEP class should again be permitted for the 2012 Auction with similar constraints. Specifically, the choice must be made in a timely manner and, once made, must be irrevocable for the term of the CIEP contract. Therefore, the Board DIRECTS the EDCs to work with Staff to develop a process and schedule for identifying and converting non-residential customers that choose to be included in the BGS-CIEP category. The process developed should be based on the foregoing parameters. It should also require a customer commitment, for participation, by no later than the second business day in January 2012. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2012 to reconsider their decision for the upcoming 2012 Auction. Therefore, the Board DIRECTS the EDCs to work with Staff to develop and implement a process to so notify voluntary customers of this "window of opportunity." The Board also DIRECTS the EDCs to post the conditions of the voluntary CIEP process in an appropriately conspicuous location on their web pages.

AUCTION CONSULTANT

The Board will utilize the services of Boston Pacific, its BGS procurement process consultant, to provide oversight of the 2012 BGS procurement process. The Board DIRECTS that the EDCs include the cost of the Auction consultant's contract in the tranche fees collected from winning bidders. Each EDC's percentage of the cost will be based on its total load in the BGS-FP Auction. Further, the Board DIRECTS the EDCs to transfer the full amount of the contract costs based on these percentages to the Department of Treasury upon written request by Board Staff.

CONFIDENTIALITY

The EDCs have requested that the Board approve a confidentiality order as in prior years. The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner, and results in no bidder or bidders having an advantage over any other. From the Board's experience with prior BGS Auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon Auction confidentiality issues in its December 1, 2004 Order (Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These provisions were adopted and applied in subsequent Auctions. The Board FINDS that the confidentiality provisions of its December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and HEREBY APPROVES the same confidentiality provisions for the 2012 BGS Auctions, and incorporates the reasoning and relevant provisions of its December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

AUCTION PROMOTION/DEVELOPMENT

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

Bidder Information Session in Philadelphia;

An Auction Web Site at www.bgs-auction.com which publicizes new developments, ~~allows interested parties to download documents related to the Auctions,~~ has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed, provides potential bidders with data relevant to the bidding process, and has links to PJM and other useful sites;

Press releases to newspapers and trade publications; and

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

¹⁴ These actions have occurred for past Auctions and in anticipation of a favorable Board ruling herein, some of these actions may have already been undertaken for the 2012 Auction.

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

BOARD APPROVAL PROCESS

As noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the Auction process approved with this Order, including certification of the Auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, *Tentative Approvals and Process*,¹⁵ there are a number of decisions/actions that need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule in order that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, any additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-FP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-FP Auction and the BGS-CIEP Auction no later than the second business day¹⁶ after the last Auction closes. At its discretion and depending on circumstances, the Board may address the results of one Auction that has closed while the second Auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

Another decision that requires Board approval is acceptance of the EDCs' Compliance Filings. Because of the significance of this proceeding, the Board DIRECTS the EDCs to make a Compliance Filing by November 23, 2011. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.

Either the EDCs or the Auction Manager, in consultation with Staff and the Board's consultant, may make other Auction decisions as identified in Attachment A to this Order. These decisions

¹⁵ Attachment A is labelled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

¹⁶ As used in this Order, a "business day" is a day when the Board is open for business. Should weather or other conditions make the Board's offices inaccessible, the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

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

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

FINDINGS AND CONCLUSIONS

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

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

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

The Joint EDC Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for BGS customers beginning June 1, 2012;

~~The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2012 period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-FP customers, as well as a portion of the BGS-FP service required for the 2013 and 2014 periods;~~

An Auction process for one-third of the EDCs' BGS-FP load for a 36-month period balances risks and provides a reasonable opportunity for price stability under current conditions;

An Auction process for procurement of the entire non-shopping BGS-CIEP load for a 12-month period is appropriate;

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

The application of seasonal payment factors to the tranche-weighted Auction prices, determined in the manner prescribed herein is appropriate, and may be updated by the EDCs in January to reflect the most recent data;

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

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

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

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

The EDCs have designated NERA to continue to act as the Auction Manager for the 2012 Auctions;

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

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

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

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

The EDC-specific Contingency Plans are reasonable;

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

Boston Pacific will be the Board's Auction Advisor for the 2012 Auctions and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

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

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

Auctions were conducted, prior to Board certification of the results

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

The Board will consider the results of the BGS-FP Auction and the BGS-CIEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the second business day after the last Auction closes. At its discretion and depending on circumstances, the Board may address one Auction that has closed while the second continues;

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

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

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

Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by November 23, 2011.

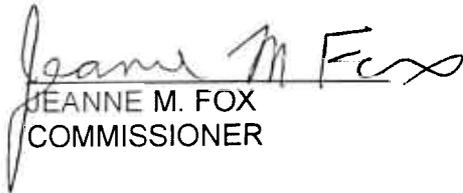
The Board FURTHER DIRECTS the EDCs to work with Staff and Boston Pacific to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

DATED: 11/9/11

BOARD OF PUBLIC UTILITIES
BY:



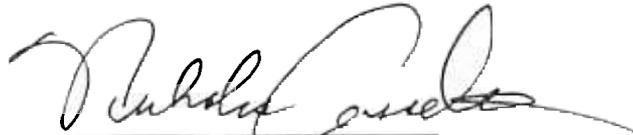
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER

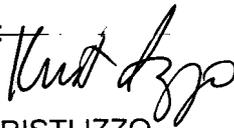


JOSEPH L. FIORDALIO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER

ATTEST:



KRISTI IZZO
BOARD SECRETARY

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

