



Agenda Date: 11/22/13
Agenda Item: 2C

STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC)
GENERATION SERVICE FOR THE PERIOD)
BEGINNING JUNE 1, 2014)
)
) DOCKET NO. ER13050378

Parties of Record

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Philip J. Passanante, Esq., Associate General Counsel for Atlantic City Electric Company
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Sara Blum, New Jersey Business and Industry Association
David Gil, NextEra Energy Resources, LLC
Assemblymen Upendra J. Chivukula, Chairman of the Assembly Telecommunications and Utilities Committee

BY THE BOARD:

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 22, 2013 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, 2014.

By Order dated May 29, 2013, 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 2, 2012 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, 2014. 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, 2013, the EDCs filed a Joint Proposal for BGS procurement ("Joint EDC Proposal"), and each EDC also filed a company-specific addendum to the Joint EDC Proposal. Also NextEra Energy Power Marketing, LLC ("NEPM") also file a proposal on July 1, 2013. A discovery period followed. Initial Comments on the BGS proposals were filed on August 30, 2013. Final Comments were filed on September 27, 2013.

Parties that filed either a proposal, comments, or appeared at the public hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), the Retail Energy Supply Association ("RESA"), Nextera Energy Power Marketing, LLC ("NEPM"), Assemblyman Upendra J. Chivukula, and the Independent Energy Producers of New Jersey ("IEPNJ").

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 17, 2013; PSE&G's public hearing was held on September 17, 2013; RECO's public hearing was held on September 25, 2013, and JCP&L's public hearing was held on September 18, 2013.

The Board also held a legislative-type hearing on September 19, 2013 at its Trenton hearing room, chaired by President Hanna. The purpose of the hearing was to take additional 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. This Order will summarize the main features of the Joint EDC Proposal because it forms the basis of much of the discussion in this Order, and because, with the modifications described below, it is the basis for the BGS procurement process that the Board will approve through this Order. The Board will not separately summarize each party's position in similar detail, but has carefully reviewed each party's proposals and/or positions in reviewing the record in this matter and rendering this decision.

JOINT EDC PROPOSAL

As previously stated, on July 1, 2013, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for procurement of BGS for the period beginning on June 1, 2014, including proposed preliminary auction rules for the Auctions, SMA and EDC-specific addenda.

The EDCs have jointly proposed 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 retail customers that have not chosen a third party supplier ("TPS").

One Auction would procure service for a one-year period beginning June 1, 2014, for the larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service (the "CIEP Auction")¹. The customers in this category represent approximately 3,400 Megawatts ("MW") of load to be procured through bidding on 44 full-requirements tranches² of approximately 75 MW each.³ This is the same type of Auction that the Board approved last year in Docket Number ER12060485.

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, 2014, through a fixed-price auction ("BGS-FP Auction") for approximately 5,100 MW of load to be served through 53 full-requirements tranches⁵ of approximately 100 MW each. This is the same type of Auction that the Board approved last year in Docket Number ER12060485.

The competitive process by which the EDCs propose to procure their supply requirements for BGS load for the BGS period 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 twelve 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 associated with the BGS-CIEP customers served. A tranche of one product (i.e. a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services, etc.) tranche. At the end of the Auctions, the final prices for the EDCs' tranches may be different because of differences in the products, due to each EDC's load factor, delivery location and other factors.

The EDCs proposed that rates for BGS-FP customers be designed using a generic methodology implemented as described in the Company-specific addenda. Bidders would be provided with a spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-FP rates would be fixed tariff rates determined by converting the Auction prices to BGS-FP rates in a manner that reflects seasonality and time of use indications, where appropriate and feasible, in order to provide appropriate price signals.

¹ The CIEP threshold was changed from 750 kW to 500 kW by Board Order dated June 18, 2012 in Docket No. ER12020150. BGS customers with a Peak Load Contribution ("PLC") of 500 kW or more will be required to take BGS service under a BGS-CIEP tariff or rate.

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 As explained below, this does not include procurement for the RECO customers within the company's territory outside of PJM. A separate procurement plan is proposed for those customers.

⁵ The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2013 by means of Board-approved auctions in February 2011 and February 2012.

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.

In addition, RECO is proposing to secure the full service requirements of its Central and Western Divisions commencing June 1, 2014. RECO filed a proposal to conduct an auction where it would solicit competitive bids from qualified bidders for "fixed for floating" financially settled NYMEX futures transactions with respect to an energy tranche ("Energy Transaction"). RECO also proposes to purchase the capacity needs of BGS customers located in its Central and Western Divisions in the NYISO monthly capacity market and blend its forecast of those prices into the BGS-FP price ("Capacity Transaction"). The term of the Energy Transaction and Capacity Transaction will be June 1, 2014 to May 31, 2015. For its Energy Transaction, RECO proposes to conduct an auction similar to the auction approved by the Board in its March 20, 2013 Order in Docket No ER12060485. RECO will solicit competitive bids from qualified bidders for "fixed for floating" financially settled NYMEX futures transactions with respect to an Energy Transaction. The Energy Transaction is a NYMEX NYISO Zone G Day-Ahead (Peak and Off-Peak) product. At the end of the Energy Transaction auction, RECO will evaluate the proposals submitted by bidders to determine which proposals are in the best economic interests of its BGS customers, and recommend those bids to the Board for approval. Due to changes in the New York market, RECO will purchase the capacity needs for these customers ("Capacity Transaction") in the NYISO monthly capacity market. RECO will blend the winning auction price for the Energy Transaction and the price for the Capacity Transaction with the RECO BGS-FP price to determine the rates for those customers in RECO's service territory taking BGS-FP service.

DISCUSSION AND FINDINGS

FP and CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2014, 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

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.

basic Auction design while initiating separate Auctions for both BGS-FP and BGS-CIEP customers.⁸ For the 2003 through 2013 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, 2014, by Order dated May 29, 2013, 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, 2014. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-FP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive comments and criticism 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 that has been developed in this matter, the Board **FINDS** that a BGS-FP and BGS-CIEP Auction using a descending-clock Auction format should be used for the procurement period beginning June 1, 2014.

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.

BGS-FP AUCTION SUPPLY PERIOD

RESA recommends that the Board should encourage a more competitive marketplace by transitioning the BGS procurement process away from the laddered-three-year contracts currently employed in the BGS-FP Auction and towards more frequent procurements held closer to the delivery date, of shorter term products. RESA asserts that an auction system comprised of more frequent procurements would promote retail competition by generating more reflective

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; December 6, 2010, Docket ER10040287; November 11, 2011, Docket No. EO11040250 and November 20, 2013, Docket No. ER12060485.

default service pricing because it would minimize the time over which the default price can diverge from actual market prices. (RESA Initial Comments at 4).

Assemblymen Chivukula requested that the Board promote more market-reflective pricing for BGS-FP customers by replacing three-year laddered contracts with contracts that represent more frequent procurements held closer to the date of delivery. He states that by shifting to more frequent procurements for BGS-FP customers of shorter-term products, the Board will enable these customers to finally realize the full benefits of more market reflective pricing. (Assemblymen Chivukula Initial Comments at 2).

Rate Counsel indicates that there has been no evidence in this proceeding to show that BGS-FP residential and commercial customers want to manage the volatility of price swings or would benefit from more frequent procurements as suggested by RESA. Rate Counsel recommends that the Board reject RESA's recommendation to abandon the laddered three-year BGS-FP contracts in favor of more frequent procurements of shorter-term BGS-FP contracts. Rate Counsel maintains that the use of the current three-year rolling supply contract enables smaller commercial and residential customers to benefit from more stable prices while paying market-based rates. Further, Rate Counsel indicates that if the Board is considering changing the procurement process, the Board should reconsider Rate Counsel's position that New Jersey BGS-FP ratepayers would benefit from the establishment of a Portfolio Manager approach to BGS-FP supply procurement. (Rate Counsel Legislative Hearing comments at 4 - 6). Finally, Rate Counsel asserts that it is essential that the process for procuring BGS is managed with the concerns of customers foremost in everyone's mind. Rate Counsel maintains that the process must be administered to assure affordable and stable electricity prices for residential customers. The goal must be the lowest price for BGS-FP supply with reasonable price stability over the term of the procurement plan for this service. According to Rate Counsel, the driving force for making any change to the current BGS procurement process should flow from an analysis that demonstrates that a proposed change will result in lower prices for BGS customers. Rate Counsel asserts that RESA's proposals for a lower CIEP threshold and for more frequent, shorter term FP contracts do not meet this standard and should be rejected by the Board. (Rate Counsel Initial Comments at 4)

IEPNJ indicated its support for the three-year Auction structure. IEPNJ asserts that shorter than three-year procurements subjects residential consumers and small commercial and industrial consumers to market risk while anything longer than three-year procurements increases the risk on the suppliers. IEPNJ indicates that a three-year procurement term is perfect because there are a lot of variables and unknowns that increase the risk to the suppliers if the period is extended, thereby increasing the price to the consumer. IEPNJ maintains that the three-year procurement process is the right structure, right balance for consumers leading IEPNJ to support the current three-year procurement process structure. (IEPNJ Legislative Hearing Oral comments transcript at 48 - 49).

The EDCs request that the Board reject RESA's recommendation to alter the current BGS-FP procurement structure. They indicate that RESA ignores the benefits of the three-year term procurement structure, which have been affirmed repeatedly by the Board. They indicate that the Board has found consistently that a rolling three-year term provides the proper balance for BGS-FP customers between the need to reflect market prices and the need to protect these customers from market volatility. The EDCs further indicate that while market prices have been relatively stable the past few years, unstable energy market conditions could re-emerge, exposing both residential-FP and commercial-FP customers to the unnecessary risk associated

with energy price fluctuations and increases should the Board adopt RESA's proposal. They argue that the current BGS procurement structure protects customers who may not have the necessary expertise or inclination to properly manage the additional risk and the volatile energy prices that are the necessary by-product of RESA's proposal. Finally, the EDCs agree with Rate Counsel that there has been no evidence in this proceeding to show that BGS-FP residential and commercial customers want to manage the volatility of price swings or would benefit from more frequent procurements as suggested by RESA. (EDCs' Final Comments at 3 - 5).

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 even though 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 three years, retail suppliers have been able to be more competitive than the rolling three-year average FP Auction price, and competition appears to have increased. The Board is not convinced that RESA's proposals for pricing based on more frequent auctions for procurement of electricity for shorter periods than the current format would increase retail competition significantly.

Further, the Board agrees with Rate Counsel and the EDCs that there is no evidence presented by RESA that residential customers and small commercial customers would benefit from the implementation of shorter-term procurements or that these customers want to manage the price volatility resulting from shorter term procurements. The Board further agrees with Rate Counsel that it is essential that the process for procuring BGS is managed with the concerns of customers foremost in everyone's mind, requiring that the process be administered to assure affordable and stable electricity prices for residential and small commercial customers. Therefore, the goal of the BGS procurement process should be to enable smaller commercial and residential customers to benefit from both a stable yet market-based rate for BGS-FP supply over the term of the procurement plan for this service while still allowing these customers the ability to choose alternative providers. The Board believes the use of the staggered three-year rolling procurement process, ensuring price stability, is a policy decision that has value for those customers who continue to receive BGS service from the EDCs. Therefore, the Board **DIRECTS** the EDCs to procure the approximate one-third of the EDCs' current BGS-FP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-FP rates for the June 1, 2014 to May 31, 2017 period. Finally, the Board believes there is no reason to reconsider Rate Counsel's position that New Jersey BGS-FP ratepayers would benefit from the establishment of a Portfolio Manager approach to BGS-FP supply procurement. Rate Counsel's request is based on the premise that the Board would consider altering the current BGS-FP procurement structure to shorter term procurements, a recommendation by RESA that the Board does not support.

CIEP THRESHOLD

RESA recommends that the Board reduce the BGS-CIEP threshold to require all customers using 400 kw and above to be on BGS-CIEP pricing beginning in June 1, 2014, and to require

all customers using 100 kW and above to be on BGS-CIEP pricing by June 1, 2016. (RESA Initial Comments at 2).

Assemblymen Chivukula asked the Board to lower the BGS-CIEP threshold from 500 kW to 400 kW, a policy that would require all customers with a peak load of at least 400 kW to be on hourly CIEP pricing. He maintains that these customers have the means to understand and make informed decisions regarding their energy provider, as in many cases, they are already doing so in other states where they operate. (Assemblymen Chivukula Initial Comments at 2).

Rate Counsel continues to have concerns about the wisdom of forcing mid-sized customers into the BGS-CIEP class in order to bolster competition, especially when these mid-sized customers already have the option to shop or to be served under BGS-CIEP. Rate Counsel asserts that the further lowering of the CIEP threshold only serves to force customers onto an hourly pricing structure, customers who are unable to deal effectively with hourly prices and who have therefore chosen to remain as BGS-FP customers. Rate Counsel maintains that business owners are in the best position to determine for themselves whether it makes economic sense to switch to a TPS, and certainly many have chosen to do so. Rate Counsel indicates that the Board should not force customers to make decisions that those customers have decided are not economically reasonable. (Rate Counsel Legislative Hearing Comments at 2).

NJBIA, like Rate Counsel, is against mandatory lowering of the threshold and forcing small businesses and mid-sized businesses to shop. Further, NJBIA indicates that it hasn't seen the evidence to support forcing everyone to shop. NJBIA would rather keep a voluntary system where third-party suppliers are an option, but BGS is there as a hedge against volatility in the market. (NJBIA Legislative Hearing Oral Comments, transcript at 46).

The EDCs agree with Rate Counsel in opposing RESA's proposal to further lower the CIEP threshold. The EDCs point out that no party has presented evidence that the BGS-FP commercial and industrial customers with peak demands between 100 kW and 499 kW would be well served by being forced to manage the volatility of the hourly priced BGS-CIEP product. Further, the EDCs indicate that RESA's proposal would limit customers' choice, again ignoring the fact that all commercial and industrial customers already have the option to select BGS-CIEP on an optional basis if they would like an hourly-priced service. The EDCs assert that simply charging customers on an hourly basis would not provide them with the necessary skills to make informed decisions with regard to their electricity purchases. The EDCs see no benefit in forcing customers of this size to be served under BGS-CIEP, given that they may not be able to hire a facilities manager, may not have systems in place to manage load in response to volatile hourly prices in an automatic fashion, and may not be able to afford the distractions from their businesses that would come with managing such risks themselves. Finally, the EDCs indicate that they agree with Rate Counsel in that smaller, commercial customers continue to be better served by a fixed-price, three-year product. (EDCs Final Comments at 7 - 8).

By Order dated June 18, 2012, In the Matter of the Review of the Basic Generation Service Procurement Process, Docket No. ER12020150 ("BGS Review Order"), the Board concluded that a gradual expansion of the number of customers on hourly pricing, given the record presented in that proceeding, was reasonable, prudent and warranted at that time, and approved RESA's request to lower the CIEP threshold for customers with a peak load share of 500 kW and above. As part of the decision, the Board saw a value in limiting the reduction to those customers with a peak load share of 500 kW and not immediately moving to the 300 kW range as proposed by RESA. Therefore, the Board rejected RESA's request to expand the

BGS-CIEP threshold to 300 kW effective for the next BGS procurement. However, the Board, as proposed by RESA, encouraged feedback on the CIEP threshold during future BGS procurement proceedings each year in order to receive stakeholder input through comments and legislative-type hearings. The Board stated that through these BGS proceedings, it 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.

Based on the record in this matter, the Board agrees with Rate Counsel and the EDCs that there has been no evidence presented in this proceeding by RESA or any of the stakeholders that would indicate that further lowering the CIEP threshold to 400 kw beginning in June 1, 2014 and that requiring all customers using 100 kw and above to be on BGS-CIEP pricing by June 1, 2016, is either desired by the relevant customers or will bring net benefits to those customers at this time. The Board continues to believe that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy, and that the appropriate cutoff for mandatory inclusion in the CIEP is a peak load share of 500 kW. Therefore, the Board **REJECTS** RESA's request to expand the BGS-CIEP threshold to 400 kw beginning in June 1, 2014, and to require all customers using 100 kw and above to be on BGS-CIEP pricing by June 1, 2016.

Further, for the 2004 through 2013 Auctions, certain C&I-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 2014 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. Staff recommends that 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 2014. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2014 to reconsider their decision for the upcoming 2014 Auction.

The Board has reviewed the submissions and Staff's recommendations, and **FINDS** the Staff recommendations to be reasonable. Therefore, the Board **DIRECTS** the EDCs to work with Staff to develop and implement a process similar to that used in the past to notify customers of this "window of opportunity" to voluntarily transfer into the BGS-CIEP class. Further, the Board also **DIRECTS** the EDCs to post the conditions of the voluntary CIEP process in a conspicuous location on their web pages.

ISSUES RELATED TO INTERVAL METERS

RESA, in conjunction with lowering the BGS-CIEP threshold to 400 kw beginning in June 1, 2014, argues that the Board must require the EDCs to implement the installation of interval meters for all customers above this threshold who do not currently have them. RESA indicates that without interval meters, customers have no means to gauge their energy use or respond to the price signals associated with it. RESA maintains that requiring the applicable EDC to install interval meters for customers using more than 400 kw will provide customers with the opportunity to actively monitor and respond to the cost of electricity on a real-time or hourly

basis, and will enable New Jersey customers to better manage their energy consumption and costs. (RESA Initial Comments at 3).

Rate Counsel argues that before forcing even more customers onto hourly pricing and interval meters, the Board should establish a formal review process to determine whether the move to real-time pricing was beneficial to BGS customers with a peak load share above 500 kw. Rate Counsel further recommends that the Board should also solicit information from the EDCs regarding the all-in costs of replacing currently functioning traditional meters with interval meters, including any stranded costs. Finally Rate Counsel maintains that the Board should require RESA and any other party calling for lowering the BGS-CIEP threshold to demonstrate the benefits and associated costs to customers before ordering such a change. (Rate Counsel Legislative Hearing Comments at 3 to 4).

The EDCs argue that the Board should reject RESA's proposal to require the EDCs to install interval meters by June 1, 2014. They indicate that interval meters have a cost (including capital, operation and maintenance costs, and the cost of billing system enhancements), and RESA provides no analysis to demonstrate that the cost would be justified; furthermore, they point out that RESA has not proposed a mechanism to ensure EDC recovery of those costs. The EDCs point out that, as noted by Rate Counsel in the 2012 BGS Review Proceeding, RESA argued that higher costs of the meters would be recovered many times over by cost savings and the ability to respond to real time prices. The EDCs assert that RESA has abandoned this argument and has not provided any evidence that these meters would pay for themselves through energy savings. (EDCs Final Comments at 9).

RESA requests that in conjunction with lowering the BGS-CIEP threshold to 400 kw beginning in June 1, 2014, the Board must require the EDCs to install interval meters for all customers above this threshold who do not currently have them. Since the Board has rejected RESA's request to expand the BGS-CIEP threshold to 400 kW and above beginning in June 1, 2014, the Board believes that this issue is a moot point.

In regards to Rate Counsel's request that 1) the Board conduct a formal review process to determine whether the move to real-time pricing was beneficial to BGS Customers above 500 kw before further expansion of the CIEP class, and 2) the EDCs provide the all-in costs of replacing currently functioning traditional meters with interval meters, including stranded costs, since the Board has not chosen to lower the CIEP threshold any further at this time, the Board believes there is no need at this time to perform the requested review process as suggested by Rate Counsel.

RESA PRICING PARITY

RESA asserts that there should be a level playing field between BGS-FP pricing and TPS pricing. RESA asserts that it is important to ensure that TPSs have a thorough and clear understanding of the various BGS-FP pricing components. RESA has outlined two examples of what it sees as discrepancies between BGS pricing and TPS pricing. (RESA Initial Comments at 5). Therefore, RESA recommends that the Board convene a stakeholder process for three purposes: 1) a briefing by NERA and the EDCs to TPS and other interested stakeholders with respect to the details of the BGS process, including an examination of how various non-energy pricing components are handled; 2) identification of differences in the pricing component for BGS services versus the prevailing rate for the pricing component at PJM; and 3) stakeholder

discussion where such differences exist around whether and how to modify the BGS pricing treatment to ensure parity with respect to TPS prices. (RESA Initial Comments at 7).

The EDCs indicate they understand that individual TPS representatives may initially be unfamiliar with New Jersey BGS Tariffs and require assistance in understanding the derivation of rate components. The EDCs question the need for a stakeholder process on BGS rate components when these answers are already available from the individual EDC itself through the EDCs' TPS liaisons, or from the EDCs' tariffs, or from responses to BGS Auction web site FAQs. To support their position that a stakeholder process is not needed to respond to RESA's two rate examples, the EDCs provided additional information which they assert satisfies RESA's concerns. The EDCs believe a stakeholder process is not needed to respond to inquiries from individual TPSs requesting clarification of individual tariff components already reviewed and approved by the Board. (EDCs Final Comments at 12 to 13).

RESA, in making its request, asserted that it is important to ensure that TPSs have a thorough and clear understanding of the various BGS-FP pricing components. RESA calls for the Board to conduct a stakeholder proceeding regarding 1) the details of the BGS process, 2) the differences in the pricing component for BGS services versus the prevailing rate for the pricing component at PJM, and 3) stakeholder discussion where such differences exist around whether and how to modify the BGS pricing treatment to ensure parity with respect to TPS prices. As part of the request, RESA provided two examples which RESA maintains demonstrate discrepancies between BGS pricing and TPS pricing. In response, the EDCs point out that there already is a process/mechanism by which TPSs can obtain answers to questions they may have, which are already available from the individual EDC itself through the EDCs' TPS liaisons, or from the EDCs' tariffs, or from responses to BGS Auction web site FAQs. The EDCs also provided responses to RESA examples based on information readily available in their filings and tariffs. Based on the record in this matter, the Board believes that the appropriate mechanisms for a TPS to obtain answers to questions about various BGS-FP pricing components should be through the EDCs' TPS liaisons, or from the EDCs' tariffs, or from responses to BGS Auction web site FAQs. Therefore, the Board **DENIES** RESA's request that a stakeholder proceeding be initiated.

EDCS' BGS ADMINISTRATIVE EXPENSES

Rate Counsel indicates that in responses to discovery provided by the EDCs in this proceeding, it was acknowledged that BGS Administrative Fees, recovered from ratepayers, include certain legal costs associated with the BGS patent claim defense. Rate Counsel states it is unclear exactly how much New Jersey BGS customers have paid over the years to protect the BGS auction patent; thus, Rate Counsel suggests that this issue deserves the Board's attention. Accordingly, Rate Counsel requests that the Board direct the EDCs to provide the Board and Rate Counsel with the total amount of BGS auction patent legal fees paid to date and the legal basis for the recovery of these fees from ratepayers. (Rate Counsel Initial Comments 4 to 5).

The EDCs assert that this proceeding is not the appropriate forum to review these patent claim issues, which may be the subject of litigation. The EDCs suggest that if the Board wishes to review these BGS Auction Patent issues, it do so in a separate review process under a suitable confidentiality agreement. (EDCs Final Comments at 14).

The Board agrees with Rate Counsel that the Board should review the BGS auction patent legal fees paid to date and the recovery of these fees from ratepayers. However, the Board agrees

with the EDCs that this particular issue, which is the subject of litigation, is more appropriately handled in a separate review process, subject to a suitable confidentiality agreement if requested by the EDCs. Therefore, the Board **DIRECTS** that within 60 days after the conclusion of the 2014 BGS auction, the EDCs be directed to submit a report to Staff and Rate Counsel detailing the total amount of BGS auction patent legal fees paid to date and the recovery of these fees from ratepayers. After receipt and review of this information by Staff, Staff will inform Rate Counsel and the EDCs how it plans to proceed before making any recommendation to the Board.

According to Rate Counsel, ACE has acknowledged including internal labor costs in the BGS Administrative fees charged to BGS customers. According to the BGS Administrative Cost filings made by the other EDCs earlier this year, ACE is the only EDC to do so. Rate Counsel recommends that the Board direct ACE to discontinue charging internal labor costs through the BGS Administrative fee. Rate Counsel maintains that BGS administrative costs charged to customers should be consistent among the four EDCs. Rate Counsel suggests that the Board make clear exactly what expenses can be flowed through to ratepayers as BGS Administrative costs. (Rate Counsel Initial Comments at 5 to 6).

The EDCs respond that ACE fully accounts for and reconciles internal labor costs for shared (service company) employees involved in the BGS process in the context of its base rate filings, making it inappropriate to review BGS administrative expenses during this 2014 BGS proceeding. The EDCs therefore recommend that the Board reaffirm its June 2012 Order that BGS administrative expenses should be reviewed during future base rate cases. (EDCs Final Comments at 14 to 15).

Consistent with the Board's November 19, 2011 Order in Docket EO11040250 regarding this subject matter, the Board continues to believe 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 the administrative expenses that are being charged to ratepayers relating to BGS in each of the EDCs' next base rate cases.

BGS COLLATERAL REQUIREMENT

NEPM argues that the current supplier collateral requirements in the BGS-FP auctions lead to overcollateralization, which reduces competition among suppliers and increases prices to customers. NEPM further argues that the present collateralization scheme features an Independent Credit Requirement ("ICR") to post a static amount of collateral in case of certain defaults in addition to the utility credit exposure whereby a supplier posts margin to cover the Total Exposure Amount above the credit threshold. NEPM maintains that as the supplier is never given the benefit of the posted ICR when the Total Exposure Amount is calculated; the ICR collateral basically just sits there after being posted. Additionally, NEPM points out that the Total Exposure Amount calculation contains a 110 percent multiplier which, of itself, yields an above market collateralization requirement. NEPM seeks modification of the credit terms to yield a collateral requirement more closely aligned with what it sees as the actual exposures. NEPM proposes that Independent ICR amounts be factored into the Total Exposure Amount calculation by modifying the definition of the Mark-to-Market ("MtM") Exposure Amount. According to NEPM, this change maintains the ICR as collateral in case of certain defaults, but doesn't require suppliers to post additional collateral in the event the utility is net exposed to the supplier in the normal course due to market conditions, payables due the supplier, etc.

NEPM asserts that the modification could be made quite easily by modifying the definition of MtM Exposure Amount in the BGS-FP Supplier Master Agreement ("SMA") to be an amount calculated daily for each BGS-FP Supplier reflecting the total MtM credit exposure to the Company due to fluctuations in market prices for Energy minus the sum of (i) amounts due pursuant to the Agreement to such BGS-FP Supplier for the delivery of BGS-FP Supply and the (ii) amounts the BGS-FP Supplier has posted to cover the ICR. The total MtM credit exposure will be equal to 1.1 times the sum of the MtM credit exposures for each Billing Month as set forth in Section 6.5 of the SMA. (NEPM Initial Filing at 2 to 3).

The EDCs contest NEPM's argument that the current BGS-FP collateral requirements lead to supplier over-collateralization, in turn resulting in higher bid prices and reduced supplier participation. The EDCs argue that there is no evidence that the current BGS-FP collateral requirements have in fact led to these outcomes. They indicate that the Auction Manager, the Board's Consultant, and the Board have consistently found that prices were reasonable and competition robust. The EDCs believe that the determination of what BGS-FP collateral requirements are appropriate must first start with the question of what BGS-FP collateral requirements are needed to ensure that customers are protected and get the benefit of the bargain struck at the Auction.

The EDCs indicate that the current BGS-FP collateral requirements are in place to protect customers in the event of supplier default. They believe it is essential that customers be protected and realize the benefit of the bargain obtained through the BGS-FP Auction. They indicate that the primary collateral underlying the SMA is monetary – through the use of unsecured credit lines and the posting of security in excess of the unsecured line of credit. They further indicate that such monetary security is necessary because, in the event that a BGS-FP Supplier encounters financial difficulties, or market prices rise suddenly and a BGS-FP Supplier elects to default and deploy its supply sources elsewhere, customers must be protected. The EDCs argue that NEPM's proposal limits the effectiveness of this monetary security and weakens the protections provided to customers by the BGS-FP Auction collateral framework. They contend that the ICR is needed to cover market movements between the time of default and the time at which the EDCs will replace the defaulted supply. The EDCs argue that they must have access to sufficient funds to replace the defaulted supply and monetary security to provide critical protection to the EDCs and their customers in the event of a default.

Finally the EDCs point out that the netting recommended by NEPM would not matter when the BGS-FP MtM amount was negative. It would only be a factor as the MtM amount became positive. They further point out that it would leave customers with zero ICR protection when the MtM amount exceeded or exactly equaled the ICR. They believe that the chance of default is greatest when there is a large MtM exposure. They further believe that the problem occurs exactly when customers need protection most and precisely when NEPM's netting proposal would remove the protection. (EDC Final Comments at 9 - 11).

After carefully considering of this request by NEPM, the Board concludes that customers should be protected from any default by suppliers providing BGS, and the ICR and the MtM multiplier provide adequate protection. Since BGS suppliers are Load Serving Entities ("LSEs") in PJM, the EDCs have transferred the PJM market credit requirements to BGS suppliers. As a result, the primary collateral underlying the SMA is the posting of security in excess of the unsecured credit line. Such monetary security is necessary in the event that a BGS supplier encounters financial difficulties, market prices increase suddenly or if, for whatever reason, a BGS supplier defaults on its obligations. In such an event, customers would be protected by the ICR and MtM

because the EDCs would have sufficient access to funds to replace the missing supply. The monetary protection currently required by the SMA provides critical protection to the EDCs and their customers in the event of a default. The Board remains interested in proposals that may increase the number of bidders in the BGS-FP Auction. Given that: 1) participation in the BGS-FP Auction has been robust; 2) there is a lack of support for the proposed change; and 3) the Board in previous BGS proceedings rejected this proposed change and has not been presented with any new evidence to support it, the Board **DENIES** the request made by NEPM to modify the BGS collateral requirement.

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 2014 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:¹⁰

- Bidder Information Session in Philadelphia;

¹⁰ 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 2014 Auction.

- 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.

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** the 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*,¹¹ 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 so 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

¹¹ 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.

Auction no later than the second business day¹² 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 December 2, 2013. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.

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

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;

¹² 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.

The Joint EDC Proposal, as modified herein, is consistent with the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to -107, 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, 2014;

There is a BGS Reconciliation stakeholder process currently pending that is examining the methodology and timing of the calculation and collection of that charge. Therefore, approval granted by this Order does not preclude the Board from directing any changes to the EDCs' reconciliation charge methodology as a result of that proceeding;¹³

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2014 BGS period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-FP customers, as well as for a portion of the BGS-FP service required for the 2015 and 2016 BGS 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 2014 Auctions;

¹³ In the Matter of the Electric Distribution Companies' ("EDCs") Basic Generation Service ("BGS") Reconciliation Charge, BPU Docket No. ER11040250.

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 as Attachment C;

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 2014 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, the Office of the Economist 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 2014 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation RECs as would be available to them through the EDCs.

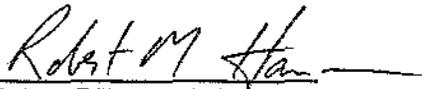
Accordingly, for the foregoing reasons, the Board **APPROVES** the Joint EDC Proposal, including the BGS-FP and BGS-CIEP Auction Rules, the EDC-specific addenda and the Supplier Master Agreements, with the modifications described herein. The Board reserves the right, at the certification meeting, to 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 December 2, 2013

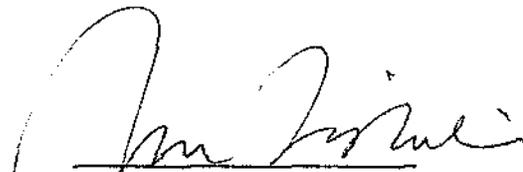
The Board **FURTHER DIRECTS** the EDCs to work with Staff and Boston Pacific to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

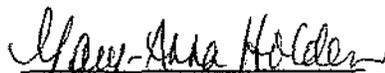
DATED: 11/22/13

BOARD OF PUBLIC UTILITIES
BY:

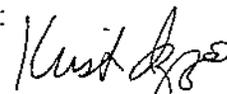

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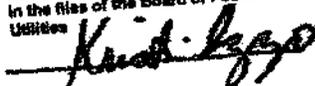

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ATTEST:

KRISTI IZZO
SECRETARY

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



**In the Matter of the Provision of Basic Generation Service
For the Period Beginning June 1, 2014
Docket No. ER13050378
Service List**

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**In the Matter of the Provision of Basic Generation Service
For the Period Beginning June 1, 2014
Docket No. ER13050378
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**In the Matter of the Provision of Basic Generation Service
For the Period Beginning June 1, 2014
Docket No. ER13050378
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ATTACHMENT A

Tentative 2014 Auction Approvals and Decision Process

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

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

Decision point	Decision process	Timing
Joint EDC Filing	EDCs	July 1, 2013
Decision on 2014 Process	BPU	November 22, 2013
Compliance Filing	EDCs	December 2, 2013
Approval of Compliance filing	BPU	Early December 2013
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2013
Announce minimum and maximum starting prices	AM/BA	November 15, 2013
Announce Tranche Targets	AM	November 15, 2013
Announce Load Caps	AM/BA	November 15, 2013
Information session for potential bidders	AM/EDCs	December 6, 2013
Review Part I applications	AM/BA	December 17-20, 2013

ATTACHMENT A

Tentative 2013 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 15-23, 2014
Setting of target limit exposure to contingency plan	EDCs/BA	Mid-January 2014
Information Session for registered bidders	AM/EDCs	January 28, 2014
Trial Auction	AM	January 30, 2014
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on February 4, 2014, for FP Auction on February 5, 2014
BGS-CIEP Auction starts		February 7, 2014
BGS-FP Auction starts		February 10, 2014
Provide full factual report to Board	AM/BA	Upon completion of FP Auction
Board decision on Auction results	BPU	No later than by end of 2 nd business day following the calendar day on which the last auction closes.

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POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2014 BGS-FP AUCTION

Prepared by: _____ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on Friday, February 10, 2014

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

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

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

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Docket No. ER13050378**

Post-Auction Checklist for the New Jersey 2014 BGS-FP Auction

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

Table 1. Summary of BGS-FP Auction

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

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

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

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Post-Auction Checklist for the New Jersey 2014 BGS-FP Auction

Table 2. Overview of Findings on BGS-FP Auction

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

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Post-Auction Checklist for the New Jersey 2014 BGS-FP Auction

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

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Post-Auction Checklist for the New Jersey 2014 BGS-FP Auction

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

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POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2014 BGS-CIEP AUCTION

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Thursday, February 7, 2014

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

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

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

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Post-Auction Checklist for the New Jersey 2014 BGS-CIEP Auction

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

Table 1. Summary of BGS-CIEP Auction

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

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

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

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Post-Auction Checklist for the New Jersey 2014 BGS-CIEP Auction

Table 2. Overview of Findings on BGS-CIEP Auction

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

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Post-Auction Checklist for the New Jersey 2014 BGS-CIEP Auction

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

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Post-Auction Checklist for the New Jersey 2014 BGS-CIEP Auction

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

Attachment C



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

STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

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

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

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

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

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. EDC-SPECIFIC STARTING PRICES

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

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

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

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

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

III. INDICATIVE OFFERS

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

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

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

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

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

IV. ROUND PRICES AND INDIVIDUAL BIDS

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

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

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

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

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

V. BIDDER INFORMATION

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

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

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

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

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

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

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

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

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

Part 1 Application Form:

Bidding Agreements

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

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

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

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

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

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

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

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

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

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

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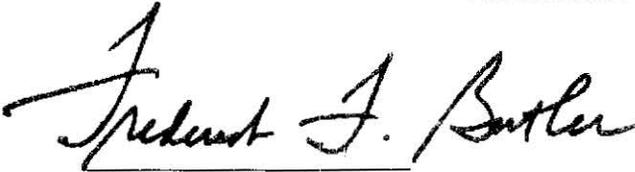
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: *12/1/04*

BOARD OF PUBLIC UTILITIES
BY:



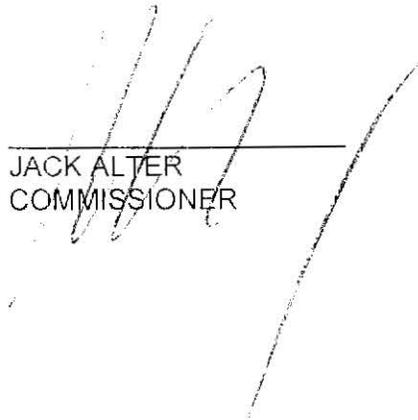
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY