



STATE OF NEW JERSEY
Board of Public Utilities
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC) DECISION AND ORDER
GENERATION SERVICE (BGS) FOR THE PERIOD)
BEGINNING JUNE 1, 2024) DOCKET NO. ER23030124

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Philip J. Passanante, Esq., Associate General Counsel for Atlantic City Electric Company
James Meehan, Esq., Attorney for Jersey Central Power & Light Company
Aaron Karp, Esq., Attorney for Public Service Electric and Gas Company
Margaret Comes, Esq., Associate Counsel for Rockland Electric Company

BY THE BOARD:

This Decision and Order of the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the procurement process for Basic Generation Service (“BGS”) for retail customers who continue to purchase their electric supply from their electric distribution company (“EDC”) for the period beginning June 1, 2024.¹

By Order dated April 12, 2023, the Board directed the EDCs and interested parties to file proposals by July 3, 2023 to determine how to procure the remaining one-third of the State’s BGS requirements for Residential and Small Commercial Pricing (“RSCP”) customers and the annual Commercial and Industrial Energy Pricing (“CIEP”) requirements for the period beginning June 1, 2024.² The April 12, 2023 Order also ordered RECO to file a proposal as part of its BGS filing to procure the BGS energy and capacity requirements for its non-PJM Interconnection, LLC (“PJM”) service area within New Jersey for the period beginning June 1, 2024, to the extent not previously addressed.

¹ The EDCs are 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”).

² In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2024, BPU Docket No. ER23030124, Order dated April 12, 2023 (“April 12, 2023 Order”).

The EDCs made a joint BGS filing on June 30, 2023 (“Proposal”). Additionally, as part of its Company Specific Addendum, RECO made a proposal to procure the BGS energy and capacity requirements for its non-PJM service area within New Jersey for the period beginning June 1, 2024. On September 4, 2023, the Board received Initial Comments on the Proposal. The Board held a Legislative-Type Hearing, chaired by President Christine Guhl-Sadovy, on September 18, 2023. On October 6, 2023, the Board received Final Comments on the Proposal.³

Parties that filed either a proposal, comments, or appeared at the Legislative-Type hearing include the EDCs jointly, National Economic Research Associates (“NERA”), the New Jersey Division of Rate Counsel (“Rate Counsel”), the Independent Energy Producers of New Jersey (“IEPNJ”), Axpo U.S. LLC (“Axpo”), Electrify America, LLC (“EA”), JCP&L, RECO, and Electric Vehicle Service Providers (“EVSPs”).⁴

Virtual public hearings on the Proposal were held in the EDCs’ service territories to allow members of the public to present their views on the procurement process proposed by the EDCs and the potential effect(s) on customers’ rates.⁵ No members of the public commented at the public hearings.

POSITIONS OF THE PARTIES: PROPOSALS, LEGISLATIVE HEARING TESTIMONY, INITIAL AND FINAL COMMENTS

The parties’ filings largely rely on previous auctions and the Proposal as the basis for specific modifications. While this Order does not separately summarize each party’s position in detail, the Board carefully reviewed each party’s proposal and position before rendering this decision.

PROPOSAL

On June 30, 2023, the EDCs filed the Proposal for procuring BGS supply beginning on June 1, 2024, including proposed preliminary auction rules, Supplier Master Agreements (“SMAs”), and EDC-specific addenda. The EDCs proposed that the 2024 BGS Auction be held remotely, like the previous several BGS Auctions.

The EDCs jointly proposed two (2) simultaneous, multi-round, descending clock auctions for procurement of services to meet the full electricity requirements (i.e., energy, capacity, ancillary services, etc.) of retail customers that have not chosen a third-party supplier (“TPS”). One auction would procure service for a one (1)-year period, beginning June 1, 2024, for the larger Commercial and Industrial (“C&I”) customers on the EDCs’ systems, through an auction to provide hourly-priced service (“BGS-CIEP Auction”). The customers in this category represent approximately 2,842 megawatts (“MW”) of load to be procured through bidding on an expected 38 full-requirements tranches.⁶ The Board approved the same type of auction last year in Docket No.

³ A comment letter was received from Charge Ahead Partnership (“CAP”) on October 10, 2023.

⁴ The following entities comprise EVSPs that submitted a joint letter: EA, EVgo, and ChargePoint.

⁵ RECO held its public hearing on September 12, 2023; ACE held its public hearing on September 13, 2023; PSE&G held its public hearing on September 18, 2023; and JCP&L held its public hearing on September 20, 2023.

⁶ Tranche sizes are approximate amounts of BGS-CIEP eligible load and are as follows: ACE- 83.48 MW, JCP&L- 74.40 MW, PSE&G- 74.56 MW and RECO- 49.40 MW.

ER22030127.⁷ The second auction would procure one-third of the service requirements for all other customers of all four (4) EDCs for a three (3)-year period beginning June 1, 2024, through an auction (“BGS-RSCP Auction”) for approximately 5,305 MW of load to be served through 57 full-requirements tranches of approximately 83 to 105 MW each.⁸

The competitive process by which the EDCs proposed to procure their supply requirements for BGS load for the period beginning June 1, 2024, is detailed in the Proposal and in Appendices A and B (Provisional BGS-CIEP and BGS-RSCP Auction Rules, respectively), which is similar to the auction process approved by the Board for the past 22 years.

The Proposal considers each EDC’s retail load a separate “product” in each Auction. Auction participants bid by stating the number of tranches they are willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-RSCP 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 the 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, energy, ancillary services, etc.) tranche.⁹ 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-RSCP customers be designed using a generic methodology implemented as described in each Company-specific addendum. Bidders would receive a spreadsheet that converts the Auction price into customer rates for each EDC, enabling bidders to assess migration risk at various Auction price levels. BGS-RSCP tariff rates would be determined by converting Auction prices to BGS-RSCP rates in a manner that reflects seasonality and time of use indications, where appropriate and feasible, in order to provide appropriate price signals.

The EDCs proposed that payments to winning BGS-RSCP bidders for June through September may be adjusted to reflect higher summer costs, and payments to bidders for the remainder of the delivery period may be adjusted to reflect lower winter costs. The EDCs designed the proposed summer and winter factors such 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 ancillary service costs and a provision to pass through the hourly PJM real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and other payments for energy and ancillary services known in advance of the Auction. Under the Proposal, winning bidders would also receive a Standby Fee of \$0.00015/kWh to act as an “option fee.” CIEP customers who take BGS service would pay the capacity payment, while all CIEP customers would pay the Standby Fee whether they take BGS service or obtain

⁷ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2023, BPU Docket No. ER22030127, Order dated November 9, 2022 (“November 2022 Order”).

⁸ The EDCs previously secured two-thirds of their total BGS-RSCP load requirements through May 31, 2025 by means of Board-approved auctions in February 2022 and February 2023. This does not include procurement for the RECO customers within RECO’s territory outside of PJM.

⁹ In previous auctions, transmission was included in the BGS product and suppliers were responsible for changes in firm transmission rates during the term of the SMAs.

service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided to customers taking BGS-CIEP service, plus the Standby Fee rate, times the monthly sales to all CIEP customers, whether on BGS-CIEP or not.

Under the 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-RSCP) 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 BGS-CIEP and BGS-RSCP SMAs attached to the Proposal as Appendix C and D, respectively.

By its November 2022 Order, the Board directed Board Staff ("Staff") to work with interested parties to come to a consensus in an attempt to find a rate design solution before the filing of the proposal for the 2024 BGS Auctions. In the Proposal, the EDCs explained that each EDC's Company Specific Addendum contained a proposal regarding a rate design for Direct Current Fast Charging ("DCFC") stations.

Additionally, the EDCs proposed that, similar to the approach approved by the Board in the previous several BGS Auctions, the Board approve the use of capacity proxy prices for each EDC, for each delivery year, to be treated as the capacity prices for the 2025/2026 and 2026/2027 delivery years and subject to future true-ups.

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, the EDCs requested the Board approve or reject, in its entirety, the results of the BGS-RSCP Auction and separately approve or reject the results of the BGS-CIEP Auction, in its entirety, by the end of the second full business day after the calendar day on which the last of the two (2) Auctions closes. The EDCs recommended the Board clarify that it may, at its discretion, 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.

The Proposal includes numerous other Auction details, Company-specific addenda, and attachments, including the following:

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

As conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that, if they become Auction winners, they will execute the BGS SMA within three (3) 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 which, if any, bidder associations exist; if such associations exist, applicants will provide additional information as the Auction Manager may require;

Qualified bidders must post a per-tranche letter of credit or bid bond;

The BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-RSCP Auction secures one-third of each EDC's total load requirements for three (3) years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions;¹⁰ and

Each Company-specific addendum addresses the individual EDC's use of committed supply, contingency plans, accounting and cost recovery, and utility pricing and tariff sheets.

RECO CENTRAL AND WESTERN BGS CUSTOMER REQUIREMENTS

RECO's Central and Western Divisions are physically connected to the New York Independent System Operator ("NYISO"). Therefore, RECO must purchase required energy and capacity for its Central and Western BGS customers from markets administered by the NYISO.

By Order dated January 27, 2021, the Board approved the results of a Request for Proposal ("RFP") for RECO's non-PJM energy requirements through May 31, 2024.¹¹ As a result, as part of RECO's Company Specific Addendum, RECO included a proposal for the BGS year commencing June 1, 2024 to cover these requirements.

For the BGS year commencing June 1, 2024, RECO proposed the same procurement process that the Board approved in its Order dated November 18, 2020, in Docket No. ER20030190.¹² Specifically, RECO proposed to enter into a bi-lateral agreement or agreements to hedge the cost of energy purchases from the NYISO. According to RECO, the bi-lateral agreements would be a financial hedge, where no energy commodity is provided by the counterparty.

RECO proposed to conduct the bidding approximately two (2) weeks before the BGS auction. The bids would be submitted by bidders the day before a Board agenda meeting, and the bid agreement would specify that the bidder would hold the bid open until the earlier of approval of the bid by the Board or midnight the day of the Board agenda meeting.

According to the proposal, RECO would seek bids on physical and financial transactions for NYISO Zone G energy for the periods specified below. Each transaction would be a fixed-price transaction for approximately 13 MW "around-the-clock" of NYISO Zone G energy. RECO proposed to procure agreements to cover the period of June 1, 2024 through May 31, 2027 and would seek pricing for the following four (4) periods:

1. Year 1: June 1, 2024 through May 31, 2025
2. Year 2: June 1, 2025 through May 31, 2026
3. Year 3: June 1, 2026 through May 31, 2027
4. Blended price: June 1, 2024 through May 31, 2027

¹⁰ 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.

¹¹ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2021, BPU Docket No. ER20030190, Order dated January 27, 2021.

¹² In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2021, BPU Docket No. ER20030190, Order dated November 18, 2020 ("November 2020 Order").

RECO indicated that it would enter into a NYISO Zone G fixed-for-floating swap with a counterparty, whereby RECO effectively pays the fixed price monthly for the term of the transaction.

RECO proposed to review the bids received with Staff and its BGS auction advisor and select a winning bid that is most competitive and that is consistent with market conditions. RECO indicated that it would submit the winning bid to the Board for approval. In the event that the bids that RECO receives do not reflect market conditions, the Board does not approve the winning bidder, or the bidder defaults on the bid agreement, RECO would report a failed procurement and will proceed to a default procurement process. Under the default process as proposed by RECO, the company would purchase the energy needs of its BGS customers in the Central and Western Divisions in the NYISO Day-Ahead and Real Time Markets without a financial hedge.

On August 16, 2013, in Federal Energy Regulatory Commission (“FERC”) Docket Number ER13-1380, FERC approved the creation of a new capacity market zone in the Lower Hudson Valley region encompassing NYISO Load Zones G, H, I, and J. According to RECO, Lower Hudson Valley capacity is not actively traded, and RECO does not expect any change before the BGS Auction. Because of capacity market changes at the NYISO noted above, RECO proposed purchasing the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market and blending its forecast of those prices into the BGS-RSCP price. According to RECO, this is the same proposal approved in the November 2020 order. RECO expects these capacity purchases to have minimal impact because its Central and Western Divisions constitute only about 10 percent (10%) of RECO’s BGS load.

DISCUSSION AND FINDINGS

BGS-RSCP and BGS-CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2024, 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 considered many arguments for alternate processes, alternate designs within the Auction framework, and varying procurement periods. In 2002, after conducting a process open to all interested participants, the Board determined that it was appropriate to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP customers.¹³ For the 2003 through 2023 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.¹⁴

The Board afforded an opportunity for parties to file alternatives for Board consideration on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2024. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been not fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process implemented with the 2002 Auction, and since modified, 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 ratepayers. It is the Board's intent to reach a balance of competing interests, while remaining mindful of its statutory responsibility to ensure continued provision of BGS at just and reasonable rates consistent with market conditions. N.J.S.A. 48:3-57(a)(1). The Board will address the issues raised by the parties during the proceeding in this Order.

Based upon the experience of previous BGS Auctions, and having considered the record in this matter, the Board **HEREBY FINDS** that the EDC-proposed BGS-RSCP and BGS-CIEP Auctions, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2024.

¹³ In re the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., BPU Docket Nos. EO02070384 and EX01110754, Order dated December 18, 2002.

¹⁴ 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; November 20, 2012, Docket No. ER12060485; November 22, 2013, Docket No. ER13050378; November 24, 2014, Docket No. ER14040370; November 16, 2015, Docket No. ER15040482; October 31, 2016, Docket No. ER16040337; November 21, 2017, Docket No. ER17040335; November 19, 2018, Docket No. ER18040356; November 13, 2019, Docket No. ER19040428; November 18, 2020, Docket No. ER20030190; November 17, 2021, Docket No. ER21030631; and November 9, 2022, Docket No. ER22030127.

BGS-CIEP AUCTION SUPPLY PERIOD

The Board notes that no party took issue with the continued use of a 12-month period for the BGS-CIEP Auction. As such, the Board **HEREBY FINDS** that a 12-month procurement period is appropriate and reasonable, and **HEREBY APPROVES** that aspect of the EDCs' Proposal.

BGS-RSCP AUCTION SUPPLY PERIOD

IEPNJ Comments

In its comments at the Legislative-Type Hearing, IEPNJ noted its support for the three (3) year BGS auction structure. See T1 17:2 to 4.¹⁵ IEPNJ argued the three (3) year BGS auction structure strikes the appropriate balance to hedge against price spikes, while minimizing future risk to suppliers that would occur under contracts of a longer term. See T1 17:4 to 9. A three (3) year term allows the suppliers to rely on several known variables when preparing a bid and knowing these values reduces the risk to suppliers, thereby helping to keep their bid prices reasonably low. See T1 17:9 to 13. IEPNJ argued that averaging the three (3) year term contracts entered over the course of three (3) years provides stability to customer rates. See T1 17:14 to 16.

Based upon previous BGS Auctions, and having considered the record developed in this matter, the Board **HEREBY FINDS** the current staggered three (3)-year rolling procurement process used for the BGS-RSCP Auction provides a hedge to customers in a time of extreme weather events that impact prices, volatile energy prices, and the potential increased capacity prices, even though it may make it more difficult for retail suppliers to compete for RSCP customers in times of rising prices. By way of contrast, in periods where market prices started to come down in wholesale electric markets, TPSs have been able to be somewhat more competitive than the rolling three (3)-year average BGS-RSCP Auction price.

The Board **FURTHER FINDS** that 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-RSCP supply for this service while still allowing these customers the ability to choose alternative providers. As such, the Board **FINDS** the use of the staggered three (3)-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 **HEREBY DIRECTS** the EDCs to procure the approximate one-third of the EDCs' current BGS-RSCP 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-RSCP rates for the June 1, 2024 to May 31, 2025 period.

¹⁵ T1 shall refer to the Transcript of the Legislative-Type Hearing dated September 18, 2023 in this matter.

PJM CAPACITY MARKET CONSTRUCT

Capacity Proxy Price

On July 20, 2019, FERC ordered PJM not to hold the capacity auction scheduled to begin on August 14, 2019, which would have procured capacity for the 2022/2023 Delivery Year.¹⁶ In the 2020 BGS proceeding, the Board approved the use of a capacity proxy price ("Capacity Proxy Price") for each EDC to be treated as the capacity price for the 2022/2023 delivery year because the actual capacity price for that delivery year was not expected to be known prior to the 2020 BGS Auctions.¹⁷ The Board noted that keeping the BGS-RSCP structure as a three (3)-year product would help mitigate rate changes and avoid the complications of requiring a supplemental auction when the 2022/2023 capacity price becomes known. The Board further noted that, if the BGS-RSCP product is to cover three (3) years, bidders must have some set capacity price to set their bids. In the November 2020 Order, November 2021 Order, and November 2022 Order, the Board approved the use of the Capacity Proxy Price for the proposed delivery years.

The results of PJM's base residual auction ("BRA") for the 2024/2025 delivery year (the first year of the BGS-RSCP supply term) became available in early 2023. As noted in the Proposal, the results of the 2025/2026 and 2026/2027 delivery years were expected to be made available in June 2023 and December 2023, respectively. However, on April 11, 2023, PJM filed to revise its schedule for its capacity auctions for the 2025/2026 through 2028/2029 delivery years. The proposed revision would delay PJM holding its BRAs for the 2025/2026 and 2026/2027 delivery years to be held in June 2024 and December 2024, respectively. On June 9, 2023, the FERC issued an Order accepting PJM's proposed revisions to the BRA schedules for the 2025/2026 through the 2028/2029 delivery years. Additionally, the FERC required PJM to submit a compliance filing in response to the FERC's June 9, 2023 Order, and such compliance filing was to include an illustrative auction schedule for the 2025/2026 through the 2028/2029 delivery years.

As such, the capacity price for the 2025/2026 and 2026/2027 delivery years will likely not be known prior to the 2024 BGS-RSCP Auction. The EDCs argued that BGS-RSCP suppliers are likely to include risk premiums into their bids to address this uncertainty and it may be the case that some bidders choose to not participate altogether. This could result in higher closing prices in the BGS-RSCP Auction than would otherwise be the case, to the detriment of BGS-RSCP customers. As such, the EDCs proposed to continue the approach approved by the Board in its November 2019 Order, November 2020 Order, November 2021 Order, and November 2022 Order and proposed to address this issue by setting a Capacity Proxy Price for the 2025/2026 and 2026/2027 delivery years.

However, if the results of the BRA auction for the 2025/2026 delivery year or the 2026/2027 delivery year are known at least five (5) business days prior to the start of the BGS-RSCP Auction, the EDCs asserted that the Capacity Proxy Price for the applicable delivery year would no longer be needed, and it would be voided.

¹⁶ The 2022/2023 Delivery Year was June 1, 2022 through May 31, 2023. The 2023/2024 Delivery Year is June 1, 2023 through May 31, 2024. The 2024/2025 Delivery Year is June 1, 2024 through May 31, 2025. The 2025/2026 Delivery Year is June 1, 2025 through May 31, 2026.

¹⁷ In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2020, BPU Docket No. ER19040428, Order dated November 13, 2019 ("November 2019 Order").

Rate Counsel Comments

In its Initial Comments, Rate Counsel indicated that the continued use of a Capacity Proxy price is consistent with the EDCs' treatment of unknown capacity prices in the 2023 BGS Auction, so long as the results of the capacity auction are still unknown five (5) days prior to the Auction. Additionally, Rate Counsel stated that the EDCs' justification for using a capacity proxy price for the 2026/2027 delivery year currently scheduled for June 2024 is also consistent. See Rate Counsel Initial Comments ("RC Initial Comments") at 3. Rate Counsel asserted that notwithstanding the lack of evidence supporting the EDCs' claim that bidders will employ risk premiums, Rate Counsel did not object to the extension of the Capacity Proxy Price for the 2025/2026 delivery year. Id. at 8. Rate Counsel reiterated this at the Legislative-Type Hearing stating that the EDCs are unable to quantify or provide that risk premiums are being avoided by utilizing the Capacity Proxy Price. See T1 24:19 to 24. Rate Counsel also stated that it is concerned that over collection through the Capacity Proxy Price in previous years has masked some of the increases in BGS rates due to increased wholesale natural gas prices and asserted that customers need accurate pricing to make truly informed decisions. See T1 24:24 to 25:4.

EDC Comments

In their Final Comments, the EDCs reiterated that the proposed construct provides certainty to BGS-RSCP suppliers that they will be fully compensated for actual rates for capacity that they pay in the 2025/2026 and the 2026/2027 delivery years. See EDC Final Comments ("EDC Final Comments") at 15. The EDCs argued that if Capacity Proxy Prices were not used and no other mechanism was in place at the time of the BGS-RSCP Auction to address the fact that capacity prices for the 2025/2026 and 2026/2027 delivery years will not be known, bidders will likely include risk premiums in their bids and some potential bidders may choose to not participate in the BGS-RSCP Auction altogether, which could result in higher closing prices in the BGS-RSCP Auction than would otherwise be the case, to the detriment of BGS customers. Ibid. With respect to Rate Counsel's statement at the Legislative-Type Hearing regarding the EDCs' inability to prove that risk premiums are being avoided by utilizing the Capacity Proxy Prices, the EDCs claimed Rate Counsel's statement was contrary to observations made by Bates White with respect to the benchmark model for analyzing results of the 2022 BGS Auctions. Ibid. The EDCs also noted that Rate Counsel did not object to the EDCs' proposal to implement Capacity Proxy Prices for the 2025/2026 and the 2026/2027 delivery years. Id. at 16. The EDCs, therefore, requested the Board approve the proposed Capacity Proxy Prices for each EDC for both the 2025/2026 and 2026/2027 delivery years in the event actual Capacity Proxy Prices for the delivery years are not known at least five (5) business days prior to the start of the 2023 BGS-RSCP Auction. Ibid.

The Board continues to recognize the difficulty in setting a Capacity Proxy Price because the Reliability Pricing Model BRA traditionally produced volatile results. As noted by Rate Counsel and the EDCs, some uncertainty remains for the upcoming BGS-RSCP Auction regarding the BRA results for the 2025/2026 and 2026/2027 delivery years. Because the Board cannot know the upcoming capacity auction prices, the Board **HEREBY APPROVES** the EDCs' proposed numbers in the Proposal as the Capacity Proxy Price for the 2025/2026 and 2026/2027 delivery years. The Board agrees that, should the prices for the 2025/2026 or 2026/2027 delivery years be known five (5) days prior to the BGS-RSCP Auction, the EDCs will no longer need the Capacity Proxy Price for the applicable delivery year and will be voided.

REMOTE AUCTION

The EDCs proposed conducting the 2024 BGS Auctions from a remote setting, citing previous Auctions' success. Additionally, the EDCs noted that, after having already conducted recent BGS Auctions in a remote setting, the protocols adjusted to accommodate holding the Auctions remotely continue to be in place.

Rate Counsel Comments

In its Initial Comments, Rate Counsel did not object to the EDCs' continuation of the remote auction process proposal, so long as the Board finds that the integrity of the auction process can be maintained. See RC Initial Comments at 9.

Additionally, at the Legislative-Type Hearing, Rate Counsel stated that it was in favor of reducing administrative costs associated with the physical BGS Auction office while the auctions are being conducted remotely. While Rate Counsel did not object to the EDCs' continuation of the remote auction process proposal and declining to renew the sub-lease when it expires at the end of January 2025, Rate Counsel stated that the security and integrity of the auction process must be maintained. Rate Counsel stated that while it appreciates the minor administrative efficiencies achieved by a remote auction, it believes that Board approval of a remote auction be conditioned on it finding that the integrity of the auction can be maintained. See T1 25:18 to 23.

EDCs' Comments

In their Final Comments, the EDCs argued that Rate Counsel incorrectly discounts the efficiencies that resulted from the changes made to procedures as "minor administrative efficiencies" and seems to believe any such benefit comes at the cost of lessened security. See EDC Final Comments at 21. The EDCs maintained that the changes in procedures that led to the successful remote conduct of the 2021 BGS Auctions and the 2022 BGS Auctions, as well as the co-location of a subset of team members from the Auction Manager Team and the Board Advisor in conducting the 2023 BGS Auctions, made the process of administering the Auctions both more efficient and at least, if not more, secure. Ibid. The EDCs further argued that Rate Counsel's security concern is inconsistent with the Board's findings in its review of the results of the 2021 BGS Auctions, the results of the 2022 BGS Auctions, and the results of the 2023 BGS Auctions that "appropriate data back-up procedures were planned and carried out [and] no security breaches were observed during the Auction process" (Order Approving the 2021 BGS Auctions at page 4, Order Approving the 2022 BGS Auctions at page 4, and Order Approving the 2023 BGS Auctions at page 4). Additionally, the EDCs note that all parties have been using the internet to bid in the Auctions since the Auctions' inception. Further, the applications completed by bidders to apply to participate in the BGS Auctions have been submitted online since the 2015 BGS Auctions. Id. at 21 to 22. Further, the EDCs stated that they and the Auction Manager have held, and continue to hold, the integrity of the Auctions, as well as Auction security, as a top priority. The EDCs and the Auction Manager continually make investments and propose improvements to the auction process as changes to technology warrant. This includes making annual incremental updates to protocols for review by Staff and the Board Advisor. Id. at 22.

According to the EDCs, establishing a set of protocols regarding the entirety of the Auction Process each year and abiding by these protocols ultimately maintains the integrity of the Auctions, and the successful implementation of the 2021 BGS Auctions, the 2022 BGS Auctions, and the 2023 BGS Auctions was due to the changes made to an appropriate set of procedures. Further, the Auction Manager continues to commit to working with Staff and the Board Advisor so that their ability to monitor the Auction Process is maintained in a cost-effective manner. Ibid.

Accordingly, the EDCs requested that the Board approve conducting the 2024 BGS Auctions from a remote setting given the successful implementation for the 2021 BGS Auctions, the 2022 BGS Auctions, and the 2023 BGS Auctions. Ibid.

The Board agrees that the remote BGS Auctions held over the previous few years were successful. Accordingly, the Board **HEREBY APPROVES** the EDCs' proposal to conduct the 2024 BGS Auctions remotely.

PROPOSED CHANGES TO SMAS

The EDCs proposed minor modifications to the SMAs with the addition of the Capacity Supplements to the BGS-RSCP SMA for both the 2025/2026 delivery year and the 2026/2027 delivery year. Additionally, the EDCs proposed modifications to the EDCs' rate design methodology, and modifications to each EDC's Company Specific Addendum to allow for the eventual calculation of the change in the Auction price necessary to accommodate additional payments to (or from) BGS-RSCP suppliers relating the Capacity Proxy Price for the 2025/2026 and 2026/2027 delivery years.

Axpo Comments

In its Initial Comments, Axpo, similar to its comments in the 2023 BGS proceeding, requested that the EDCs and BPU consider increasing transparency regarding contract valuation as contemplated in the SMAs. See Axpo Initial Comments at 1. Specifically, Axpo sought further clarity in the Mark-to-Market ("MtM") Exposure Amount Calculation Information provided to suppliers, which includes, but is not limited to, Forward Market Price inputs with sources and volumes used for exposure calculations. Ibid. Axpo further requested the EDCs provide daily exposure calculations to BGS Suppliers. Ibid. Axpo recommended replacing the averaging of independent broker quotes with Intercontinental Exchange ("ICE") End of Day marks, which are public and transparent and have seen increased liquidity in recent years. Ibid.

Axpo noted that last year the EDCs and BPU were generally supportive, but required all current suppliers to sign an amendment updating active SMAs for consistency. Axpo noted that not all amendments were signed and suggested utilizing the same amendment this year and seeking to obtain unanimous consent from all existing suppliers.

Rate Counsel Comments

In its Final Comments, Rate Counsel stated that while it consistently recommends against post-award changes to a competitive procurement process, Rate Counsel agreed with Axpo that providing daily exposure calculations to BGS suppliers and replacing the average of independent broker quotes with publicly available ICE End of Day marks would help to enhance transparency. See Rate Counsel Final Comments ("RC Final Comments") at 3 to 4. Since increased transparency may foster additional market participation and further help the EDCs obtain reliable

supply at prices consistent with market conditions, Rate Counsel did not object to Axpo's request, so long as suppliers unanimously consent to the Amendment. Id. at 4.

EDCs' Comments

In their Final Comments, the EDCs stated that both the Board and the EDCs addressed these same Axpo requests during the 2023 BGS proceeding and that consistent with the position taken during the 2023 BGS proceeding, the EDCs did not oppose an increase in transparency. See EDC Final Comments at 7 to 8. The EDCs noted that the Board approved Axpo's request for BGS-RSCP suppliers to receive MtM credit exposure calculations conditioned with the EDCs' further recommendation that the calculated amount be sent upon receipt of a request from BGS-RSCP suppliers. Id. at 8. The EDCs requested that the Board maintain its position from the 2023 BGS proceeding and approve that the MtM credit exposure calculation be sent to BGS-RSCP suppliers only if a request is made for this calculated amount. Ibid.

With respect to Axpo's recommendation to change the way in which the forward market energy prices are determined under the BGS-RSCP SMA, the EDCs did not oppose using a single, publicly available source for calculating the BGS suppliers' daily MtM credit exposure. Id. at 9. However, similar to the position in the 2023 BGS proceeding, the EDCs requested that, should the Board approve Axpo's recommendation, the change should be made to all BGS-RSCP SMAs in effect on June 1, 2024. Id. at 11. If the recommendation is approved, the EDCs would include in their compliance filing, edits to the 2024 BGS-RSCP SMA to allow for the forward market energy prices to be determined using a single source that would be disclosed to the BGS-RSCP suppliers.

Like the method proposed by the EDCs and approved by the Board in the 2023 BGS proceeding, the EDCs would also prepare and make available to those BGS-RSCP suppliers serving tranches awarded in the 2022 and 2023 BGS-RSCP Auctions an amendment ("MtM Amendment") that could be executed at these suppliers' option that would implement this change to the 2022 and 2023 BGS-RSCP SMAs ("Prior BGS-RSCP SMAs"). Ibid. The EDCs would provide a final form of the MtM Amendment with their compliance filing should the Board approve this recommendation. As was approved by the Board in the 2023 BGS proceeding, the EDCs propose that if this recommendation is approved, that the change to the determination of the forward market energy prices only be implemented if all BGS-RSCP suppliers serving tranches won in the 2022 and 2023 BGS-RSCP Auctions elect to sign the MtM Amendment. If all previous BGS-RSCP suppliers do not elect to sign the MtM Amendment prior to the BGS-RSCP Auction according to the timeline set forth in Supplement C to the BGS-RSCP SMA, the change would not go into effect for the prior BGS-RSCP SMAs or for the BGS-RSCP SMAs to be executed following the 2024 BGS-RSCP Auction. Id. at 12.

Additionally, the EDCs stated that, if the Board approves Axpo's recommendation, and if the Board approves the EDCs' subsequent compliance filing and form of the Supplement C to the BGS-RSCP SMA and MtM Amendment, consistent with actions taken during the 2023 BGS proceeding, the EDCs would engage those BGS-RSCP Suppliers that won tranches in the 2022 and 2023 BGS-RSCP Auctions and allow these suppliers to sign the MtM Amendment. Should all BGS-RSCP Suppliers serving tranches won in the 2022 and 2023 BGS-RSCP Auctions sign the MtM Amendment, the Auction Manager would notify bidders in the 2024 BGS-RSCP Auction of this fact no later than five (5) business days prior to the 2024 BGS-RSCP Auction, or by January 29, 2024, and the terms of Supplement C of the BGS-RSCP SMA would then be in effect beginning June 1, 2024. Id. at 13. As an appendix to their Final Comments, the EDCs included a draft supplement (Supplement C), which would be appended to the 2024 BGS-RSCP SMAs.

The Board **HEREBY APPROVES** the EDCs' proposed modifications to the SMAs.

The Board appreciates Axo's comments and concerns regarding transparency of the Auction. The EDCs did not oppose the requested changes by Axo but did provide further recommendations relating to the use of a single source when calculating forward market energy prices. The Board shares the EDCs' sentiment that transparency encourages participation and further helps obtain reliable supply at prices consistent with market conditions and **HEREBY APPROVES** Axo's request to increase transparency regarding contract valuation, by providing MtM credit exposure calculations to BGS-RSCP Suppliers upon receipt of a request from a BGS-RSCP Supplier.

The Board **HEREBY APPROVES** Axo's request to adopt a single data source to determine the forward market energy prices for all BGS-RSCP Suppliers that will be serving load as of June 1, 2024. However, the Board **NOTES** ICE does not need to be the single source. The Board **HEREBY APPROVES** Supplement C of the BGS-RSCP SMA. The Board **FURTHER NOTES** that this change to the determination of the forward market energy prices will only take effect if all BGS-RSCP Suppliers serving tranches won in the 2022 and 2023 BGS-RSCP Auctions execute the MtM Amendment. If not all previous suppliers elect to sign the MtM Amendment prior to the BGS-RSCP Auction according to the timeline set forth in Supplement C to the BGS-RSCP SMA, the change would not go into effect for any BGS-RSCP supplier. The Board **HEREBY ORDERS** the EDCs to notify Staff and Rate Counsel whether or not they implement the changes by January 31, 2024.

DCFC PROPOSALS

ACE

In its Company Specific Addendum, ACE proposed to implement a two-year pilot program wherein ACE would offer to bill transmission and supply charges for Monthly General Service Secondary EV Charging ("MGS-SEVC") customers on a kWh basis. Pursuant to ACE's proposal, the kWh charge would replace the existing demand (kW) based customer charge used for the billing of both transmission and capacity costs. ACE stated that the capacity cost rate change would be addressed in this docket, while the transmission cost rate change would be addressed in ACE's transmission rate filing, which will occur on or before July 1, 2024. In order to start implementation of the pilot program by June 1, 2024, ACE indicated that it would need sign-up commitments from the charging companies that want to participate by January 1, 2024.

ACE asserted that converting these demand charges to a kWh based charge would align the amount charging companies would pay ACE for use of electricity with that in which they bill customers, as charging occurs. ACE stated that this alignment would facilitate charging companies' ability to better predict and manage site profitability and operating costs, thus reducing kWh cost volatility. ACE further claimed that, while the revenue collected from charging companies from their customers would now align with the amount they pay for that usage to ACE, a misalignment would be created between that which ACE pays for BGS customers' demand/capacity based supply costs and how it is recovered from the charging customer. ACE acknowledged that this as a known disconnect, however, proposed to maintain a rate computation basis tied to total costs expected for this specific customer group of EV charging companies over their expected total kWh usage, thus avoiding cross-subsidization outside of the customer segment. In order to further mitigate the potential for subsidization, ACE proposed that customers who qualify for this rate commit to remain so for a period of at least two (2) years and enrollment of all charging company site locations. ACE indicated that any net energy metering customers

would be excluded from participating in the program. In an effort to increase availability of this rate to a larger customer base, ACE indicated that its tariff would be expanded to include charging locations separately metered under the Company's advanced metering infrastructure.

ACE requested that all costs associated with the proposal flow through the Company's periodic BGS reconciliation charge filings. According to ACE, during the two-year pilot program, these costs would be reconciled and charged to only the charging companies that have opted into the program. Should no one opt into this program, the Company would still request cost recovery of any costs incurred through an appropriate cost recovery mechanism to be determined.

JCP&L

In its Company Specific Addendum, JCP&L proposed an optional alternative BGS-CIEP Capacity Charge for CIEP eligible customers who operate DCFC stations. According to JCP&L, these BGS-CIEP DCFC customers would be able to make a one-time election to pay BGS-CIEP Capacity Charge at a dollar per kWh (\$/kWh) rate for BGS Capacity Cost for the 2024/2025 BGS Supply Period. JCP&L stated that such election shall be made before June 1, 2024. The rate for the kWh-based charge would be derived from the capacity cost during June 1, 2024 to May 31, 2025 for all DCFC customers currently served and the total forecast charging usage in kWh for these customers during the same period. Upon the Board's certification of the BGS-CIEP Auction results in the 2024 BGS Auction for 2024/2025 supply period, JCP&L would calculate the BGS-CIEP kWh-based Capacity Charge in its tariff compliance filing rate to be effective June 1, 2024 through May 31, 2025. JCP&L further stated that all costs of implementing and administering the rate option and any difference between the BGS capacity cost and revenue recovered from customers taking this rate option would be separately tracked and recovered through BGS-CIEP Reconciliation Charge from all BGS-CIEP customers. JCP&L asserted that it would evaluate the participation of this optional offering and reserved the right to modify or terminate this offering in the future BGS year starting June 1, 2025.

PSE&G

In its Company Specific Addendum, PSE&G proposed a two-year DCFC BGS Rate pilot program wherein PSE&G would implement a cents per kWh (¢/kWh) charge for both Capacity and Transmission costs ("Average kWh DCFC Charge") for DCFC stations that are served on BGS-RSCP or BGS-CIEP and that elect to participate in the program. PSE&G's proposed DCFC BGS Rate pilot program would begin with rates effective for the billing periods beginning in June 2024 and ending in May 2026. PSE&G stated that customers participating in the optional pilot program must enroll individual metered DCFC stations for the full two-year pilot program. According to PSE&G, initial enrollment would be non-binding and must be in writing no later than December 1, 2023. Final enrollment would be fully binding and must be in writing no later than March 31, 2024. Following the 2024 BGS auction, PSE&G would provide initial enrollees with an updated rate estimate based on final auction results to inform final enrollment. Once initial DCFC charges are set for June 2024, the DCFC rates would be updated periodically.

According to its proposal, on a monthly basis, PSE&G would calculate each participating EV station's BGS-RSCP or BGS-CIEP capacity and transmission charges. PSE&G would make two (2) calculations: 1) the current BGS-RSCP or BGS-CIEP method, utilizing dollar per MW-day, which would continue to be printed on the bill; and 2) the proposed Average kWh DCFC Charge methodology that would utilize average BGS-RSCP \$/kWh or average BGS-CIEP \$/kWh charges. The result of subtracting the monthly calculated dollar amount of 1 from 2 above, would be added to each DCFC customer's total monthly BGS supply bill for which the customer is responsible, resulting in either a credit or charge.

The dollar amount for all program participants would also be deferred and accumulated in the appropriate corresponding DCFC BGS-RSCP or DCFC BGS-CIEP reconciliation charges. The DCFC Reconciliation Charges would initially be set at \$0, and PSE&G would modify the charges on a quarterly basis throughout the two-year term of the pilot as it deems appropriate. However, the company would adjust the level of the DCFC Reconciliation Charges for the second year of the pilot based upon the actual dollar difference realized in the first year of the pilot. According to PSE&G, interest would be calculated for the Reconciliation Charges similar to the manner in which interest is calculated for the BGS-RSCP and BGS-CIEP reconciliation charges.

Per PSE&G's proposal, the actual implementation costs for this program would be recovered from program participants and spread over a forecasted amount of kWh over the two (2) years of the program along with a contingency cost of \$0.01 per kWh. A contingency fee of \$0.01 per kWh would also be billed to participants for the purposes of mitigating the potential for a balance of unbilled DCFC Reconciliation Charges costs at program end. Each month, the amount collected in the DCFC rates described above would be transferred from the DCFC Reconciliation Charge Balances to the Implementation Cost Deferred Balance. PSE&G indicated that it would begin system change work on the basis of initial enrollment. If there is not sufficient enrollment, PSE&G will not pursue this program and will petition to seek recovery of prudently-incurred implementation costs. At program end, if the program is not continued and there remains a balance of DCFC Reconciliation Charges or Implementation Cost Deferred Balance, PSE&G would petition to seek recovery of these charges. PSE&G asserted that the remaining implementation cost deferred balance would be allocated to DCFC RSCP and CIEP reconciliation charge balances by their corresponding proportion of kWh sales during the entire program.

RECO

In its Company Specific Addendum, RECO proposed to provide eligible customers with an incentive of up to 75% of the BGS-CIEP capacity charge of the customer bill, with an annual cap of \$12,600 per DCFC Plug. According to RECO, incentives would be administered annually and would be available to DCFC stations taking service under the BGS-CIEP tariff. RECO proposed to operate the program from the time of Board approval until year-end 2026. RECO proposed to recover these incentives through the BGS-CIEP reconciliation charge. RECO indicated that it could implement this program upon Board approval and would incur no incremental administrative expenses in doing so. RECO asserted that its proposal addresses the immediate challenges of DCFC deployment through BGS-CIEP capacity charge relief in the near to medium term while station utilization increases to a level where such support can be lowered or eliminated. RECO stated that, as part of a joint Orange and Rockland Utilities, Inc. and Consolidated Edison Company of New York, Inc. effort, RECO planned to go live with a new customer billing system in September 2023. As part of this effort, currently there is a company-wide moratorium on billing system changes, which would last at least through the end of the year. Given these circumstances, RECO indicated that it would be unable to implement any rate design related changes until sometime in 2024, at the earliest. Moreover, given its size, RECO indicated that

the cost of implementing any rate design related changes would likely be materially in excess of the total incentives distributed over the life of RECO's proposed program.

EA Comments

In its Initial Comments, and reiterated in its comments at the Legislative-Type Hearing, EA stated that the DCFC proposals from the EDCs are a positive first step, but are no substitute to permanent DCFC rate design to overcome the claimed barrier of demand charges and capacity costs currently facing public charging companies operating in the State of New Jersey. See EA Initial Comments at 1. EA asserted that a supportive utility environment for the private market of charging companies will enable further investment in new public charging stations in New Jersey and will assist the State of New Jersey in achieving its transportation electrification goals to combat climate change. Ibid.

According to EA, capacity demand charges for generation and transmission in the PJM wholesale electric market are particularly difficult for public DCFC loads since the peak intervals are only known in hindsight and public stations must maintain high levels of uptime. Ibid. EA stated that one (1) simultaneous charging event during a system peak hour can severely impact an EV charging station's economics for the next year and the need for alternative rate designs for PJM capacity demand charges is urgent. Id. at 2.

EA requested some changes to selected items in each EDC proposal.

First, EA requested that each program allow for opt-in of new entrant EV charging stations for Program Year 2 as new EV charging stations that are in development may not be ready to take service by the proposed enrollment cutoff. EA claimed that the purpose of the optional BGS rate offering is twofold: to moderate PJM capacity demand charge exposure for existing sites; and to de-risk the operating costs for new sites to allow electric vehicle service providers to continue capital investment in New Jersey. Id. at 2. EA maintained that provisions to allow for new entrants in Year 2 of the program would also facilitate amortization of implementation costs over a larger customer base, therefore improving the programs' cost effectiveness and likelihood of success. Ibid.

Specific to the JCP&L DCFC proposal, EA submitted that it should be extended to two (2) years instead of one, consistent with the offerings by PSE&G, ACE, and RECO. Ibid. According to EA, a two-year program, at a minimum, is necessary to better gauge participation, to acquire data, and to evaluate the success and efficacy of such programs. Moreover, station construction and development can be a lengthy process, which a two-year program could better take into account for new charging stations. Id. at 5.

EA asserted that, at the conclusion of the initial program, these programs should be extended beyond two (2) years if they are successful. If they are unsuccessful, EA stated that alternative approaches to mitigate the cost impacts of PJM capacity demand charges should be considered. Id. at 2. EA stated that these programs will provide data to assess how capacity costs are imposed on this unique customer class. However, EA asserted that two (2) years will not ensure the success of the private market of charging companies, and these proposals are not a substitute for permanent alternative DCFC rate designs. EA maintained that permanent DCFC rate design is necessary to ensure a supportive utility environment for DCFC infrastructure that will enable charging companies to increase their investments and open new charging stations in the State. Id. at 6.

EA indicated that it remained concerned that some of the EDCs place costs of implementation for these programs on the charging companies themselves. According to EA, the ability of a customer class to bear the implementation costs and capacity costs as a group will dictate whether the solution addresses the barrier and if participation in these programs does not adequately address these costs, these programs will be unsuccessful. Ibid. EA claimed that this would result in a market failure for private charging companies that will make EDC-owned-and-operated charging stations in Areas of Last Resort more likely, with increased costs for ratepayers. Ibid. EA cautioned the Board and involved stakeholders that any potential lack of success for these programs should not be reason to abandon DCFC rate reform. Ibid.

EVSPs Comments

In Final Comments, the EVSPs stated that capacity demand charges for generation and transmission in the PJM wholesale power market introduce significant complexity and volatility into the operating costs of DCFC stations. See EVSP Final Comments at 1. The EVSPs further stated that the BGS proposals submitted by the EDCs for service beginning June 1, 2024, include important interim steps towards addressing these capacity demand charges. Ibid. According to the EVSPs, the optional programs proposed by the EDCs represent an important first step towards resolving the barrier that these charges pose for DCFC operator business models. Ibid. The EVSPs maintained that these two (2) year pilots should provide useful data to the Board, the EDCs, and other stakeholders regarding the impact of PJM capacity demand charges on DCFC stations and ideally lead to more permanent rate design solutions. Ibid. The EVSPs broadly urged the Board to approve the proposals with a modification to include provisions for new sites to enter the program in the second year to reduce risks for DCFC stations that may still be in development at the time of initial enrollment. Ibid.

CAP Comments

In a letter received on October 10, 2023, CAP asserted that the biggest challenge to widespread EV adoption in New Jersey is the lack of a robust, statewide EV fast charging network that is co-located with the services and amenities, such as food vendors, restrooms, lighting, and security, that consumers have come to expect when they refuel. See CAP Comments at 1. CAP further stated that DCFC stations have unique power needs that require high power capacity for charging but consume relative low amounts of energy per charge and the high demand over short periods subjects DCFCs to costly demand charges. Accordingly, CAP claimed that demand charges are a key barrier to private investment in EV charging services. Ibid.

CAP asserted that in the early stages of EV adoption, there are not enough EV drivers to offset these demand charges, making the cost to charge prohibitively expensive. CAP further claimed that demand charges are difficult to pass along to the EV driver at the time of charging because they are not posted until the end of the month when a customer pays their electric bill. Ibid.

CAP indicated that it supports the pilot programs offered by the EDCs and believes they are a step in the right direction. CAP further stated that it believes these programs should be extended for as long of a timeframe as possible. Id. at 2. According to CAP, the temporary nature of these programs does little to assuage investors' concerns that New Jersey could revert back to the current rate structure before their chargers are operational or profitable. CAP asserted that extending the pilots would provide private investors with the confidence needed to invest significant capital into New Jersey's EV charging infrastructure. Ibid.

Rate Counsel Comments

In its Initial Comments and comments at the Legislative-Type Hearing, Rate Counsel did not object to creating a separate DCFC rate. See RC Initial Comments at 5. However, Rate Counsel did not agree that the RECO and JCP&L proposed programs should be recovering the costs of implementing and administering the DCFC EV costs from all BGS-CIEP customers. According to Rate Counsel, RECO and JCP&L proposed to subsidize the costs of their DCFC incentive programs from BGS-CIEP customers that may not own or use an EV, and therefore derive no benefit from the incentive but still may see increased BGS rates. Ibid.

Additionally, Rate Counsel recommended that the EDCs continue to collect information from DCFC stations in EDC EV programs and DCFC stations owned by third parties. Rate Counsel noted that the Proposal did not specify the data on which the incentive programs were being based. Ibid. Rate Counsel reiterated its comment from earlier BGS proceedings regarding DCFC EV charging that continued and expanded collection and public reporting of DCFC station data from the individual EDCs is needed. Rate Counsel asserted that neither EA, nor any other DCFC charging company, has provided evidence to the Board that these ratepayer-funded incentives are in fact needed for further expansion of EV charging infrastructure. Ibid.

Rate Counsel recommended that the Board reconsider the DCFC EV charging programs after additional utilization data is collected and analyzed to consider whether make-ready investments more closely coordinated with third-parties, particularly in the transportation sector, might not yield better results for ratepayers. Id. at 6.

In its Final Comments, Rate Counsel asserted that it is premature to consider permanent rate design reforms given the number of variables and funding affecting DCFC infrastructure rollout in New Jersey and nationwide. See RC Final Comments at 4. Rather, Rate Counsel recommended annual reviews of all elements of EDC DCFC programs, including consideration of demand charge alternatives to assess cost-effectiveness, DCFC infrastructure buildout and operation, and impact on electric rates for nonparticipant ratepayers in order to fully understand the costs and benefits associated with EDC DCFC pilot programs. Ibid.

Additionally, Rate Counsel disagreed with EA that adopting permanent rate design reforms to address the matter of demand charges in the instant proceeding is appropriate at this time. Rate Counsel stated its belief that a more flexible iterative process of regular review of the DCFC pilots is warranted as several variables may affect initial program performance. Id. at 4 to 5.

Rate Counsel further asserted that an initial two (2) year pilot program window for all EDC DCFC charging programs may be prudent and could provide valuable information to stakeholders to inform any changes that may be warranted regarding DCFC EV charging rate design. Annual reviews of all elements of EDC DCFC programs, including consideration of demand charge alternatives to assess cost-effectiveness, DCFC infrastructure buildout and operation, and impacts on electric rates for nonparticipant ratepayers is warranted in order to fully understand the costs and benefits of these approaches. Id. at 5. According to Rate Counsel, reconsideration of EDC DCFC EV charging programs may be warranted after additional utilization data is collected and analyzed to consider whether make-ready investments more closely coordinated with third-parties, particularly in the transportation sector, might yield better results for ratepayers. Ibid.

Joint EDC Comments

In their Final Comments, the EDCs indicated that they did not oppose modifying their DCFC proposals to allow new entrants to participate during the second year of the term of the programs, but maintained that a participant's choice to partake in the DCFC program should be binding such that a customer opting to participate in an EDC's program must remain a participant through the duration of the program. See EDC Final Comments at 6.

Additionally, the EDCs did not oppose Rate Counsel's recommended continued collection of DCFC data, as this data will help to inform whether the EDCs' DCFC proposals are effective. According to their Final Comments, the EDCs already collect and report to the Board on a semi-annual basis available data and information on DCFC stations in their territory. Further, the EDCs asserted that the term lengths of their DCFC proposals should not be extended beyond the proposed term length without appropriate review of whether such proposals were effective. Ibid.

JCP&L Comments

In its Final Comments, JCP&L asserted that the Board's decision to add an alternate, volumetric rate for DCFC charging, should not, in and of itself, constitute the establishment of a separate service class. See JCP&L Final Comments at 2. According to JCP&L, the service and operating characteristics of these customers are not dissimilar to other customers that subscribe for service under JCP&L's General Service Rate Classifications GS and GST, which, depending on peak load share are eligible for either BGS-RSCP or BGS-CIEP. Additionally, JCP&L claimed that because the estimated \$23,000 to \$45,000 for billing system modifications to accommodate a BGS-CIEP volumetric rate are immaterial in the context of the BGS-CIEP class cost of service, recovering these costs through BGS-CIEP rates is not countering to cost causation principles. Ibid.

JCP&L maintained that, even if the Board decided to allocate the costs of this alternate, volumetric BGS-CIEP rate to only the program participants, it is inequitable to do so unless there is sufficient participation in the program. According to JCP&L, it has only one (1) DCFC customer that would be eligible to elect BGS-CIEP service during the 2024/2025 supply period and that customer would be solely responsible for all of the administration and implementation costs for the BGS-CIEP volumetric rate, should no other customers elect BGS-CIEP service for DCFC charging. JCP&L indicated that such result would be neither just nor reasonable. Ibid.

Further, JCP&L asserted that Rate Counsel's concerns regarding inter- and intra-class subsidization of the demand charges are presumptive. JCP&L indicated that it designed the rate to recover the BGS capacity costs caused by DCFC charging customers using the actual load factors of the 18 DCFC charging stations operating in JCP&L's service territory. The volumetric rate was not designed to include or provide an incentive or discount to the DCFC charging customers, but to recover BGS-CIEP capacity costs based on historical operation. Therefore, to the extent that the DCFC charging customers continue to operate in a manner as they have historically, the volumetric rate would recover the BGS capacity costs from the DCFC charging customers. Ibid. JCP&L stated that it proposed the rate for a one-year period so that any change in the operation can be considered and the volumetric rate may be revised, as necessary, to recover the respective cost from DCFC charging customers. Ibid.

Finally, JCP&L claimed that Rate Counsel was mistaken that other BGS customers do not receive benefits from the adoption of EVs. JCP&L stated that the benefits of EV adoption, much like rooftop solar, support New Jersey's clean energy initiatives and provide clean energy benefits to all New Jerseyans, including BGS customers. Ibid.

RECO Comments

In its Final Comments, RECO argued that Rate Counsel's position on RECO's proposed cost recovery related to its DCFC proposal is misguided and should be rejected by the Board. According to RECO, Rate Counsel would effectively prohibit RECO's payment of incentives to eligible customers. See RECO Final Comments at 2. Given the small number of participants in RECO's DCFC Program, RECO asserted that it would pay incentives to participants in one year and then collect the incentive amounts from the same customers in the following year. According to RECO, this approach is not consistent with the Board's directive to develop a DCFC rate design solution or the State's goal to expand the DCFC infrastructure in order to encourage the adoption of EVs in New Jersey. Ibid.

Moreover, given that RECO is targeting participation of 31 plugs during the term of its DCFC Program, which coincides with the number of plugs targeted for RECO's DCFC Incentive Subprogram approved in its October 12, 2022 EV Order, the total incentives paid would be modest and RECO claimed the projected impact on non-participating BGS-CIEP customers would also be modest.¹⁸ Ibid.

RECO further argued that Rate Counsel's opposition ignores a significant benefit associated with the Company's proposal, which is that it can be implemented with no incremental administrative costs. In contrast, RECO asserted that if the Company is required to develop and implement a separate DCFC BGS rate, it will incur significant administrative costs. The Company will be required to update its new billing system, which went live in October 2023, to include new rate codes for the 31 plugs. RECO argued that the incurrence of such administrative costs is plainly not cost-effective given the minimal number of customers who would take service under such rate. Accordingly, RECO urged the Board to reject Rate Counsel's objections and authorize RECO to implement its DCFC rate proposal. Ibid.

As noted above, in the November 2022 Order, the Board directed Staff to work with interested parties to come to a consensus in an attempt to find a rate design solution before the filing of the 2024 BGS proposal. As evidenced by the proposals set forth by the EDCs, the collaborative process was successful. The Board appreciates the parties' willingness to engage in discussions to come up with potential rate design solutions.

The proposals provide for pilot programs over proposed one (1)- to two (2)- year terms. As noted in previous BGS decisions, data collection and analysis of that data, is critical to making long-term rate design solutions. While previous orders have required the collection of data, the Board believes pilot programs are the appropriate course at this point. In its Final Comments, Rate Counsel agreed and stated that an initial two (2) year pilot program window for all EDC DCFC charging programs may be prudent and could provide valuable information to stakeholders to inform any changes that may be warranted regarding DCFC EV charging rate design. Accordingly, while these pilot programs are in place, the Board **HEREBY DIRECTS** the EDCs to

¹⁸ In re the Petition of Rockland Electric Company for Approval of an Electric Vehicle Program Establishment of an Electric Vehicle Surcharge, and for Other Relief, BPU Docket No. EO20110730, Order dated October 12, 2022.

continue to collect data, subject to customer consent, and submit semi-annual reports to the Board and Rate Counsel as agreed to in their EV stipulations. The Board **HEREBY ORDERS** the EDCs to continue to include the following information, for both residential EV and DCFC charging stations in those semi-annual reports: the total energy consumed, capacity and transmission tags, measured demands, connected load, and the resulting load factor.

The Board notes that JCP&L is the only EDC that did not propose a two-year pilot. While JCP&L argued that it proposed only a one-year period so that any change in operation can be considered and the volumetric rate can be revised, the Board does not believe that a two-year pilot precludes these modifications after the first year. Notably, the PSE&G proposal allows for quarterly adjustments to the DCFC Reconciliation Charge and an adjustment for the second year of the pilot. Accordingly, the Board **HEREBY DIRECTS** JCP&L, in its compliance filing, to modify its proposed DCFC pilot program to be a two-year pilot program.

With respect with the recommendation that new entrant EV charging stations be allowed to opt-in for Program Year 2, the Board believes this modification would provide a benefit to the pilot programs. This would accommodate the EV charging stations that are in development and would not be ready to sign up for Year 1 of the pilots. Accordingly, the Board **HEREBY DIRECTS** the EDCs to, as part of their compliance filings, modify the DCFC pilot program to allow new entrants prior to Year 2 of the Program, subject to the same enrollment timing as the initial year.

Rate Counsel recommended that the RECO and JCP&L proposals be modified to avoid subsidization from non-DCFC station customers. JCP&L indicated that the cost to modify the billing system to create a DCFC-specific rate class is estimated to be between \$23,000 and \$45,000. RECO can implement its proposal with no incremental administrative costs. Recognizing the different EV adoption levels and load profiles in each EDC territory, the Board believes that the RECO and JCP&L proposals are reasonable. However, the Board is cognizant of potential impacts to non-DCFC customers. The Board **HEREBY ORDERS** all EDCs to file quarterly reports to the Board and Rate Counsel related to their DCFC pilot programs. These quarterly reports should include information related to pilot program participation, calculated pilot program rates, and associated costs.

After careful consideration of the comments received from all parties, the Board **HEREBY FINDS** the EDC DCFC proposals, subject to any modifications above, reasonable. Therefore, the Board **HEREBY AUTHORIZES** the EDCs to implement two-year DCFC pilot programs. The Board **HEREBY DIRECTS** the EDCs to file an update in the 2025 BGS proposal to be filed in July 2024 on the status of the pilot programs.

CONFIDENTIALITY

The EDCs 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 potentially 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 could also potentially distort the Auction results. The Board considered and 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 confidentiality provisions were adopted and applied in subsequent Auctions.¹⁹ The Board **HEREBY 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 2024 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

Based upon a review of the record, the Board **HEREBY FINDS** 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 Auction 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:²⁰

- Bidder Information Webcasts;
- 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.

During the Board's Legislative-Type Hearing, NERA noted it would provide additional training to bidders using the web-based interface. The training sessions would provide an opportunity for bidders to practice their bidding procedures from the location from which they anticipate they would be bidding in the actual Auction.

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

¹⁹ In re the Provision of Basic Generation Service for Year Three of the Post-Transition Period – Confidentiality Issues, BPU Docket No. EO04040288, Order dated December 1, 2004 (“December 1, 2004 Order”).

²⁰ 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 2024 Auction.

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 2024 Auction Approvals and Decision Process, there are a number of decisions/actions that need to be made after Board approval of the Auction process.²¹ 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 upon 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 must 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, this perceived additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four (4) 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-RSCP 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-RSCP Auction and the BGS-CIEP Auction no later than the second business day after the last Auction closes.²² At its discretion and depending on circumstances, the Board may address the results of one (1) 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.

In recognition of the significance of this proceeding, the Board **HEREBY DIRECTS** the EDCs to submit a Compliance Filing by December 4, 2023. Further, the Board grants Staff the authority to review the EDCs' compliance filings, and to request that the Board Secretary issue compliance letters approving the filings should Staff find them in compliance with this Order.

Either the EDCs or the Auction Manager, in consultation with Staff and the Board's advisor, 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

²¹ Attachment A is labeled "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.

²² 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.

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 specific rules found in the 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 this proceeding, or are issues best addressed by the Auction Manager based on its experience. If these areas need to be addressed by the Auction Manager, the Board **HEREBY 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 **HEREBY 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 advisor shall provide a Precertification 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 upon the foregoing and after carefully reviewing the record in this proceeding, the Board **HEREBY FINDS** that:

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

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

The Proposal, as modified herein, can and should be implemented in a timely fashion to secure BGS service for BGS customers beginning June 1, 2024;

The Proposal, as modified herein, appears to be the best means to secure BGS service for the 2024 BGS period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-RSCP customers, as well as for a portion of the BGS-RSCP service required for the 2025 and 2026 BGS periods;

An Auction process for one-third of the EDCs' BGS-RSCP 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-RCSP rate designs, as modified herein, is an appropriate methodology to translate final BGS-RCSP 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;

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 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 designated NERA to continue to act as the Auction Manager for the 2024 Auctions;

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

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

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

The accounting and cost recovery processes identified in the EDC-specific Addenda to the 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;

Bates White will be the Board's Auction Advisor for the 2024 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Designees from the Board's Energy Division and/or from the Office of the Economist, and the Board's advisor, Bates White, shall observe the Auctions for the Board;

Bates White shall also provide a completed post-Auction evaluation form using the form of Attachment B to the Board, prior to Board certification of the results;

The Board will consider the results of the BGS-RCSP 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 2024 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 **HEREBY APPROVES** the Proposal, including the BGS-RSCP and BGS-CIEP Auction Rules, the EDC-specific addenda and the SMAs, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject the BGS-RSCP Auction results and/or the BGS-CIEP Auction results.

Furthermore, the Board **HEREBY ORDERS** that the Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by December 4, 2023. The Board **HEREBY AUTHORIZES** Staff, after reviewing the EDCs' above described compliance filings, to request that the Board Secretary issue a compliance letter of approval if Staff upon review finds the filings in compliance with this Order.

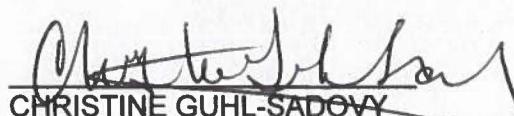
The Board **HEREBY DIRECTS** the EDCs to work with Staff and Bates White to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

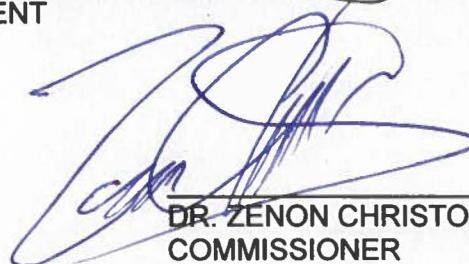
The EDCs' costs, including those related to BGS, will remain subject to audit by the Board. This Decision and Order shall not preclude, nor prohibit, the Board from taking any actions determined to be appropriate as the result of any such audit.

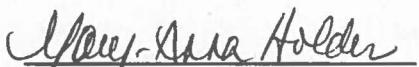
The effective date of this Board Order is November 17, 2023.

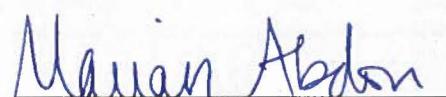
DATED: November 17, 2023

BOARD OF PUBLIC UTILITIES
BY:

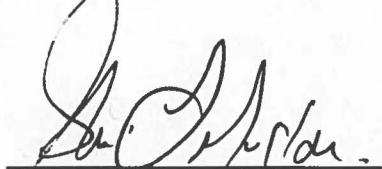

CHRISTINE GUHL-SADOWY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST:


SHERRI L. GOLDEN
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 BGS)
FOR THE PERIOD BEGINNING JUNE 1, 2024

DOCKET NO. ER23030124

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE BGS)
FOR THE PERIOD BEGINNING JUNE 1, 2024

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE BGS)
FOR THE PERIOD BEGINNING JUNE 1, 2024

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ATTACHMENT A

Tentative 2024 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 Bates White) 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 Bates White) 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	June 30, 2023
Announce minimum and maximum starting prices	AM	November 10, 2023
Announce Load Caps	AM/BA	November 10, 2023
Announce Tranche Targets	BPU	November 10, 2023
Decision on 2023 Process	AM/BA	November 17, 2023
Information webcast for potential bidders	AM/EDCs	November 28, 2023 (tentative)
Compliance Filing	EDCs	December 4, 2023
Approval of Compliance filing	BPU	December 2023
Final Auction Rules and Supplier Agreements available	AM/EDCs	December 2023
Review Part I applications	AM/BA	December 12-15, 2023

ATTACHMENT A

Tentative 2024 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 10-18, 2024
Information Webcast for registered bidders	AM/EDCs	January 24, 2024 (tentative)
First Trial Auction	AM	January 25, 2024
Second Trial Auction	AM	January 30, 2024
Inform bidders of EDC-specific starting prices	EDCs/AM/BA	CIEP – January 30, 2024 RSCP – January 31, 2024
BGS-CIEP Auction starts		February 2, 2024
BGS-RSCP Auction starts		February 5, 2024
Provide full factual report to Board	AM/BA	Upon completion of RSCP 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.

ATTACHMENT B
Docket No. ER23030124

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2024 BGS-CIEP AUCTION**

Prepared by: _____ [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 [x:xx am] on January 30, 2024

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

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

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

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 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”.

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 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?	
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?	

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 BGS-CIEP Auction

Question		Comments
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?	
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?	

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 BGS-CIEP Auction

Question		Comments
25	Were there factors exogenous to the CIEP auction (e.g., changes in market environment) that materially affected the CIEP auction in unanticipated ways?	
26	Are there any concerns with the CIEP auction's outcome with regard to any specific EDC(s)?	

ATTACHMENT B
Docket No. ER23030124

POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2024 BGS-RSCP AUCTION

Prepared by: _____ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 [x:xx am] on February 5, 2024

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

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

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

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 BGS-RSCP Auction

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

Table 1. Summary of BGS-RSCP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-RSCP 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–RSCP load)					
# Winning bidders					
Maximum # of tranches procured from any one bidder					
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **					

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

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

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 BGS-RSCP 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 RSCP auction results?	
2	Did bidders have sufficient information to prepare for the RSCP 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 RSCP auction that created material uncertainty for bidders?	
5	From what BP/NERA could observe, were there any procedural problems or errors with the RSCP 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 RSCP 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 RSCP 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 RSCP auction process?	
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 RSCP auction?	

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 BGS-RSCP Auction

Question		Comments
13	From what BP/NERA could observe, were the protocols followed for decisions regarding changes in RSCP auction parameters (e.g., volume, load caps, bid decrements)?	
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the RSCP 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 RSCP 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 RSCP auction?	
23	Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	
24	Does the RSCP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-RSCP load?	

ATTACHMENT B
Docket No. ER23030124

Post-Auction Checklist for the New Jersey 2024 BGS-RSCP Auction

Question		Comments
25	Were there factors exogenous to the RSCP auction (e.g., changes in market environment) that materially affected the FP auction in unanticipated ways?	
26	Are there any concerns with the RSCP 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
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

IN THE MATTER OF THE PROVISION OF) ENERGY
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

Attachment C

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

Attachment C

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.

Attachment C

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.

Attachment C

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.

Attachment C

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,

Attachment C

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

Attachment C

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.

Attachment C

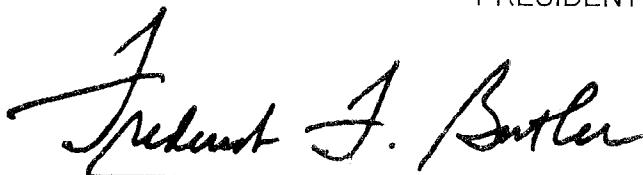
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 10/11/04

BOARD OF PUBLIC UTILITIES
BY:



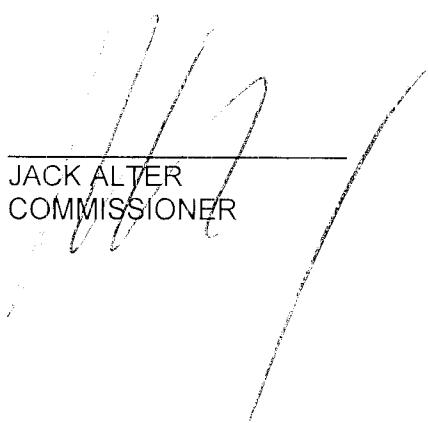
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



CONNIE O. HUGHES
COMMISSIONER


JACK ALTER
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY