



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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**ENERGY**

IN THE MATTER OF THE PROVISION OF BASIC  
GENERATION SERVICE (BGS) FOR THE PERIOD  
BEGINNING JUNE 1, 2020

) DECISION AND ORDER  
)  
) DOCKET NO. ER19040428

**Parties of Record**

**Gregory Eisenstark, Esq., Cozen O'Connor**, on behalf of Jersey Central Power and Light Company

**Matthew Weissman,, Esq.**, Attorney for Public Service Electric and Gas Company

**Philip J. Passanante, Esq.**, Associate General Counsel for Atlantic City Electric Company

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**BY THE BOARD:**

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 13, 2019 agenda meeting pertaining to the provision of Basic Generation Service ("BGS") for retail customers who continue to purchase their electric supply from their electric utility company for the period beginning June 1, 2020.

By Order dated April 18, 2019, in this matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 2, 2018 to determine how to procure the remaining one-third of the State's BGS requirements for residential and small commercial customers ("RSCP"), and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2020. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

BGS filings were received from the EDCs via a joint BGS filing ("Initial Proposal") on July 1, 2019. Initial Comments on the Initial Proposal were filed on or about September 4, 2019. A legislative-type hearing, chaired by President Joseph L. Fiordaliso, was held on September 19,

2019. The EDCs filed a Supplemental Proposal ("Supplemental Proposal") on October 8, 2019. Final Comments were filed on October 25, 2019.

Parties that filed either a proposal, comments, or appeared at the legislative hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), the Independent Energy Producers of New Jersey ("IEPNJ"), TransAlta Corporation ("TransAlta"), Exelon Generation, LLC ("ExGen"), Vitol Inc. ("Vitol"), and PSEG Services Corporation ("PSEG").

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. JCP&L's public hearing was held on September 18, 2019, PSE&G's public hearing was held on September 20, 2019, RECO's public hearing was held on September 25, 2019; and ACE's public hearing was held on September 26, 2019. No members of the public attended any of the public hearings.

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

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely relied on previous auctions and on the Initial Proposal as the baseline for proposing specific modifications and/or additions. This Order summarizes the main features of the Initial and Supplemental Proposals because it forms the basis of much of the discussion in this Order, and because with the modifications described below, it is the basis for the BGS procurement process that the Board will approve through this Order. Although this Order does not separately summarize each party's position in detail, the Board has carefully reviewed each party's proposals and positions before rendering this decision.

#### **INITIAL PROPOSAL**

On July 1, 2019, the EDCs filed the Initial Proposal for BGS, consisting of a generic proposal for procuring BGS supply beginning on June 1, 2020, including proposed preliminary auction rules for the Auctions, SMAs and EDC-specific addenda.

The EDCs jointly proposed two (2) simultaneous, multi-round, descending clock auctions for the procurement of services to meet the full electricity requirements (i.e., energy, capacity, ancillary services, transmission, etc.) of retail customers that have not chosen a third party supplier ("TPS").

One auction would procure service for a one-year period, beginning June 1, 2020, for the larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service (the "CIEP Auction"). The customers in this category represent approximately 3,071 Megawatts ("MW") of load to be procured through bidding on an expected 41 full-requirements tranches of approximately 75 MW each.<sup>1</sup> This is the same type of Auction that the Board approved last year in Docket No. ER18040356.

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<sup>1</sup> The 75 MW tranche size is an approximate amount of BGS-CIEP eligible load for ACE, JCP&L and PSE&G tranches. However, RECO only has one tranche with an eligible load of about 56MW.

The second auction would procure one-third of the service requirements for all other customers of all four EDCs<sup>2</sup> for a three-year period beginning June 1, 2020, through an auction ("BGS-RSCP Auction") for approximately 4,576 MW of load to be served through 53 full-requirements tranches<sup>3</sup> of approximately 80 to 90 MW each. This is similar to the Auction the Board approved last year in Docket No. ER18040256.

The competitive process by which the EDCs propose to procure their supply requirements for BGS load for the period beginning June 1, 2020 is detailed in the Initial Proposal and in Appendices A and B (Provisional CIEP and RSCP Auction Rules, respectively). This is the same auction process the Board approved for each of the past 18 years. Under the Initial Proposal, the retail load of each EDC is considered a separate "product" in each Auction. When a participant bids in either BGS Auction, that participant states the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-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 an amount in dollars per Megawatt-Day (\$/MW-day) paid for the capacity obligation associated with the BGS-CIEP customers served. A tranche of one product (i.e. a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services, etc.) tranche. At the end of the Auctions, the final prices for the EDCs' tranches may be different because of differences in the products, due to each EDC's load factor, delivery location, and other factors.

The EDCs proposed that rates for BGS-RSCP customers be designed using a generic methodology implemented as described in the Company-specific addenda. Bidders would be provided with a spreadsheet that converts the Auction price into customer rates for each EDC, to enable bidders to assess migration risk at various Auction price levels. BGS-RSCP rates would be tariff rates determined by converting the 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. Payments to bidders for the remainder of the delivery period may be adjusted to reflect lower winter costs. The summer and winter factors are designed so that the overall average payment to the bidder would equal the Auction clearing price.

The EDCs proposed that for BGS-CIEP tranches, rate schedules would be designed to include the transmission and ancillary service costs, and a provision to pass through the hourly PJM Interconnect, LLC ("PJM") real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and various other payments for energy, ancillary services and transmission, which would be known in advance of the Auction. Under the EDCs' proposal, winning bidders would also receive a Standby Charge of \$0.00015/kWh. The Standby Charge would essentially act as an "option fee." The capacity payment would be charged to all CIEP customers on BGS service, while the Standby Charge would be charged to all customers in the CIEP service category whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided for customers taking BGS-CIEP service plus the Standby Charge rate

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<sup>2</sup> This does not include procurement for the RECO customers within the company's territory outside of PJM.

<sup>3</sup> The EDCs have previously secured two-thirds of their total RSCP, load requirements through May 31, 2021 by means of Board-approved auctions in February 2018 and February 2019.

times the monthly sales to all CIEP customers, whether on BGS-CIEP or not. Under the Initial 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 CIEP and RSCP SMAs attached to the Initial Proposal as Appendix C and D, respectively.

The EDCs requested that the Board render a decision on the Auction process, and thereafter render a decision on the results of the Auctions. Specifically, they requested that the Board approve or reject in its entirety the results of the BGS-RSCP Auction and, separately, the results of the BGS-CIEP Auction, by the end of the second full business day after the calendar day on which the last of the two (2) Auctions closes. The EDCs also recommended that the Board clarify that, at its discretion, it may act on one completed Auction while the second is still ongoing. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

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

Numerous other Auction details are explained in the Initial Proposal, 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 that may be 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 what, if any, bidder associations exist and if these associations exist, applicants will provide such additional information as the Auction Manager may require;

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

The BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-RSCP Auction secures one-third of each EDC's total load requirements for three years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions.<sup>4</sup>

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<sup>4</sup> 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.

## **RECO REQUEST FOR PROPOSAL**

RECO's Central and Western Divisions are physically connected to the New York Independent System Operator ("NYISO"). Therefore, RECO must purchase the energy and capacity it requires for its Central and Western BGS customers from markets administered by the NYISO. According to RECO's Company-specific addendum, RECO explained that it does not need to conduct an RFP for the 2020 BGS Auction.

In the Board's November 21, 2017 Order in Docket No. ER17040335, with regard to the purchase of energy, the Board approved a Request for Proposal ("RFP") process for RECO to solicit competitive bids from qualified bidders for fixed energy supply prices for BGS customers in RECO's Central and Western Divisions, commencing June 1, 2018. On January 30, 2018, RECO conducted its RFP for the period June 1, 2018 through May 31, 2021. As a result of the RFP, RECO entered into a three (3) year Fixed for Floating Energy Swap contract with Shell Trading Risk Management, LLC. The Board approved this RFP result in its February 8, 2018 Order in ER17040335. The RFP price will be rolled into RECO's BGS auction price to develop a weighted average BGS-RSCP price for the period June 1, 2020 through May 31, 2021. Therefore, RECO indicated that it did not need to conduct an RFP for the 2020 BGS auction.

On August 16, 2013, the Federal Energy Regulatory Commission ("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 in FERC Docket Number ER13-1380. Lower Hudson Valley capacity is not actively traded, and the Company does not expect the above to change before the BGS Auction. As a result of the capacity market changes at the NYISO noted above, RECO will purchase the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market, and will blend its forecast of those prices into the BGS-RSCP price. This is the same proposal approved by the Board in its Order dated November 13, 2018 in Docket No. ER18040356. The impact of these capacity purchases are expected to be minimal because the Company's Central and Western Divisions constitute only about 10 percent of the Company's BGS load.

## **DISCUSSION AND FINDINGS**

### **RSCP and CIEP AUCTION FORMAT**

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2020, 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 (1) aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework and varying procurement periods. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP customers.<sup>5</sup> For the 2003 through 2019 BGS Auctions, the Board continued to approve descending-clock Auctions for the procurement of default service while continuing to adjust

<sup>5</sup> Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

certain elements of the process including changing the beginning of the supply period from August to June and expanding the size of the CIEP class.<sup>6</sup>

As previously stated, for the period beginning June 1, 2020, by Order dated April 18, 2019, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-RSCP requirements and annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2020. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-RSCP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive comments and criticism to improve on a process that is important to all of the EDCs' ratepayers. In making its decision, the Board considered the suggestions that were made. The Board attempted to reach a balance of competing interests, 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 various parties during the proceeding in this Order.

Based on the experience of previous BGS Auctions, and having considered the record developed in this matter, the Board **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, 2020.

#### **BGS-CIEP AUCTION SUPPLY PERIOD**

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

#### **BGS-RSCP AUCTION SUPPLY PERIOD**

In its comments, IEPNJ provided that it supports the highly successful three (3) year BGS auction structures. It is IEPNJ's position that 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. However, IEPNJ stated that the capacity proceeding currently underway at FERC and the delay of the Reliability Pricing Model ("RPM")

<sup>6</sup> 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, and November 19, 2018, Docket No. ER18040356.

auction creates significant uncertainty in Energy Year ("EY") 2023, the third auction year.<sup>7</sup> (IEPNJ Legislative Type Hearing Comments at 2). IEPNJ pointed out that the PJM capacity auction for EY 2023 would normally have occurred earlier this year and bidders would include the capacity price results in their offers. However, due to FERC inaction, this year the auction has been delayed, and it is unknown what FERC will decide and when that auction will occur. IEPNJ requested that the Board recognize this risk in its auction design since the capacity price for EY 2023 will be unknown.<sup>8</sup> (*Ibid.*)

Based on the experience of the previous BGS Auctions, and having considered the record developed in this matter, the Board continues to believe that the staggered three (3) year rolling procurement process currently in use 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 of increasing 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, as market prices came down in wholesale electric markets over the last five (5) years, third-party suppliers ("TPSs") have been able to be somewhat more competitive than the rolling three (3) year average RSCP Auction price, and competition appears to have increased.

The Board believes 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. The Board further believes 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 **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, 2020 to May 31, 2021 period.

## PROPOSED CHANGES TO AUCTION TIMELINE

In the Initial Proposal, the EDCs proposed to change the schedule so that the two (2) separate auctions would start at the same time. Historically, BGS Auctions have occurred over a period of three (3) or more days, with the BGS-CIEP auction starting on the first Friday in February, and the BGS-RSCP auction starting on the first Monday, thereafter. Additionally, the EDCs proposed to move the Part 1 Application Date to January 9, 2020 to avoid the holidays.

The EDCs maintain that the proposed changes would help in reducing the time and costs borne by the bidders' participation in the two (2) separate auctions, and foster an increase in the number of auction participants.

In its Initial Comments and Legislative Type Hearing Comments, Rate Counsel indicated that it supported the idea of increasing the number of bidders that could result in lower supply costs for ratepayers. (Rate Counsel Initial Comments at 3; Rate Counsel Legislative Type Hearing Comments at 1). However, Rate Counsel stated that the EDCs have not provided any empirical evidence to support their assertion that the schedule changes are needed and/or would result in more bidders participating in the 2020 BGS Auction. (Rate Counsel Initial Comments at 3).

<sup>7</sup> EY 2023 is June 1, 2022 through May 31, 2023.

<sup>8</sup> The issue of the capacity auction for EY 2023 is discussed later in this document.

Additionally, Rate Counsel pointed out that there are no indications that potential bidders requested that the auction schedule be changed in the manner proposed by the EDCs, and believes it is unclear whether the proposed schedule changes will result in more participants. (Ibid.)

The EDCs provided evidence demonstrating that the changes would likely result in more bidder participation. In its comments at the Legislative Type Hearing, Rate Counsel asserted that such a change to the schedule may not even be necessary or welcomed by potential bidders, pointing out that the EDCs did not endeavor to seek any input from potential bidders before proposing these changes to the Board. (Rate Counsel Legislative Type Hearing Comments at 1). Rate Counsel recommended the Board deny the EDCs request for schedule changes at this time because the Initial Proposal does not establish these proofs. (Rate Counsel Initial Comments at 3, Rate Counsel Legislative Type Hearing Comments at 1.)

In their Final Comments, the EDCs reiterated their assertion that the proposed schedule changes share the objective of reducing the cost of participation for suppliers, potentially increasing participation in the BGS Auctions, and increasing competition to the benefit of BGS customers. (EDC Final Comments at 13). The EDCs argued that the proposed change to conduct the application process entirely in January 2020 is not a fundamental change to the structure of the BGS Auction process, and is in the nature of an enhancement to the current timeline of events as it reduces the likelihood of potential schedule conflicts for suppliers during the holiday season. (Id. at 14). The EDCs stated that in recent years, suppliers had roughly two (2) weeks to submit the Part 1 Application. Thus while, under the EDCs proposal, the deadline to submit the Part 1 Application is proposed to fall in January 2020, the Part 1 Application portal will still be made available to BGS suppliers as soon as the final documents are available, which is expected to be in December 2019. The EDCs asserted that the proposed timeline provides three (3) to four (4) weeks in which a supplier may submit the Part 1 Application and still grant flexibility for suppliers to submit their qualification materials before the end of 2019 if the supplier wished to do so. (Ibid.) While the EDCs did not communicate with other parties to gather their views on the proposed schedule change, the EDCs asserted that they made the proposal on the basis of past auction experience, wherein the Auction Manager received feedback from at least one (1) BGS supplier that the current timeline for the application process is inconvenient due to its proximity to the holidays. (Ibid.) The EDCs further asserted that the proposal would actually provide a greater window during which the Board can review the EDCs' proposal, any comments submitted by other parties, and the EDCs' compliance filing and approve any changes that were made in response to any Board Order. The EDCs noted that in the 2019 BGS Auction proceeding, the Board and Board Staff had less than two (2) weeks to consider the EDCs' compliance filing and issue the acceptance of those documents. (Id. at 15 to 16).

With respect to the EDCs' proposed change to hold the BGS-CIEP and BGS-RSCP Auctions simultaneously, the EDCs asserted that suppliers would be able to log in to one instance of the auction software to submit bids for both auctions, thereby streamlining bid submissions and eliminating the need for additional time in the schedule for suppliers to navigate between two (2) separate instances of the auction software. (Id. at 16). The EDCs stated that BGS Auctions over the last five (5) years have been conducted over three (3) days. The EDCs performed a comparison of these auctions and the number of rounds each year with holding simultaneous auctions (assuming 30 rounds could be conducted per day). The EDCs maintained that under their proposed construct, all but the 2018 Auctions could have been held in one (1) day of simultaneous bidding. (Id. at 17). The EDCs further asserted that approving the change to the Auction schedule would increase the likelihood that the Auctions will be completed in one (1)



day and would make the length of the BGS Auction process comparable to other jurisdictions, including Pennsylvania and Ohio. (*Id.* at 17 to 18). The EDCs also indicated that the Auction Manager has received informal feedback from BGS suppliers that the BGS Auctions are too long and the Auction Manager confirmed this feedback with BGS suppliers prior to the EDCs' filing of the Initial Proposal. (*Id.* at 18).

In its Final Comments, Rate Counsel stated that there continues to be a lack of demonstrated support for the proposed change to the auction schedule, including from potential bidders who appeared before the Board at the Legislative Type Hearing. (Rate Counsel Final Comments at 2 to 3). Given the apparent indifference from potential bidders on the subject and the lack of any additional justification for the change, Rate Counsel continued to urge the Board to deny the EDCs' request for the schedule change at this time. (*Id.* at 3). Rate Counsel also expressed concern that the EDCs appear to have already posted the proposed schedule changes to the BGS Auction website. Rate Counsel asserted that posting the schedule is imprudent at this time. Rate Counsel further stated that potential bidders could be confused by, or unaware of, changes to the application deadlines for participation and fewer bidders may participate in the BGS Auction. Rate Counsel recommended that the Board order the EDCs to refrain from posting the proposed schedule changes until the changes have been approved by the Board, or at a minimum, identify the changes in the BGS schedule as "subject to Board approval". (*Ibid.*)

The Board is not convinced that the EDCs' proposal to conduct simultaneous BGS Auctions would improve the BGS Auction process. As noted by Rate Counsel, potential bidders have not previously expressed this concern. The Board also notes that no potential bidder or current supplier expressed this concern in its final comments. The current process allows bidders to focus on one (1) BGS Auction at a time, with the exception of a small window of time where the two (2) auctions overlap. It also allows the Auction Manager and Board Advisor time to review round by round results, and review and confirm key decisions like decrement calculations and review bidder movements. The review process is increasingly critical as the auctions enter the later rounds, the length of the bid window shrinks and the auction manager seeks to bring the auction to a close with the required number of tranches procured. The current process, overlapping the initial (longer) rounds of one auction with the closing (shorter) rounds of the second auction, ensures that reviews for both auctions can be conducted properly. Additionally, the EDCs have not been able to quantify any potential savings the proposed simultaneous BGS Auctions would produce. Moving the timing of the Part 1 Application process also impacts the trial auction. Under the EDCs' Initial Proposal, assuming the real auction was to start on Friday, the trial auction would be the day before the actual auctions began. Should something problematic occur in the trial auction, it could prove difficult to remedy before the actual Auctions. Accordingly the Board **DENIES** the EDCs' requests to modify the schedule for the BGS Auctions.

## PROPOSED CHANGES TO SMAS

### *RECS and SRECS*

In the current filing, the EDCs proposed modifications to the terms of the SMAs which would require each BGS supplier to provide Renewable Energy Certificates ("RECs") and Solar Renewable Energy Certificates ("SRECs") to the EDCs after each of the first three (3) quarters of the Energy Year; or post collateral for the value associated with such RECs and SRECs. Previously, the RECs and SRECs were provided to the EDCs at the end of the Energy Year. According to the EDCs, the proposed SMA amendments were aimed at mitigating the risk of RPS compliance by the EDCs, in the event that a BGS supplier defaults on its RPS obligation.

In its Initial Comments and Legislative Type Hearing Comments, Rate Counsel expressed concerns regarding the proposed changes to provide RECs, SRECs, collateral on a quarterly basis. Rate Counsel stated that although the EDCs stated their proposed change is in response to the increased levels of RPS requirements in future years, none of the EDCs experienced a shortfall of RECs in the past five (5) years. (Rate Counsel Initial Comments at 4, Rate Counsel Legislative Type Hearing Comments at 2). Rate Counsel further asserted that the Initial Proposal does not demonstrate that the changes to the SMA are crucial to mitigate the perceived risk of a higher RPS obligation on the part of the BGS suppliers and the small RPS compliance window, and increased collateral exposure are additional obligations that have the potential to discourage smaller BGS suppliers from participating in the auction at all. Accordingly, Rate Counsel recommended that the Board reject the EDCs' proposal at this time. (Rate Counsel Initial Comments at 4).

In its Final Comments, Rate Counsel maintained that the EDCs' proposal should be rejected at this time as the EDCs have not shown that a higher RPS obligation necessarily results in a greater risk of default on behalf of this year's BGS suppliers. Additionally, Rate Counsel asserted that the additional obligation may potentially undermine the competitiveness of the BGS Auctions by discouraging smaller BGS suppliers from participating in the auction, rather than "assure" RPS compliance through the term of the SMA. (Rate Counsel Final Comments at 4). In its Final Comments, TransAlta agreed with Rate Counsel that the requirement to transfer RECs and SRECs quarterly or provide collateral is unnecessary and burdensome. (TransAlta Final Comments at 2).

In their Final Comments, the EDCs stated that their proposal mitigates the risk that, if a BGS supplier defaults under the BGS SMA prior to complying with the RPS, or if the assignment of a BGS SMA were to take place during the course of the Energy Year, the EDCs would have neither the RECs and SRECs required for RPS compliance, nor the funds to buy the required RECs and SRECs. (EDC Final Comments at 11). While acknowledging that there have not been any defaults by BGS suppliers in the last five (5) years, the EDCs do not believe that is a compelling rationale for failing to provide protection to BGS customers to ensure that customers get the benefit from the BGS bargain. (*Ibid.*) With regard to RECs and SRECs, the EDCs estimate that the 2020 BGS-RSCP suppliers will be responsible for \$3.5 million per tranche per year, and the 2020 BGS-CIEP suppliers will be responsible for \$1 million per tranche per year. The EDCs believe that this opens up the possibility that BGS customers would be paying twice for compliance with the RPS: once through the bid prices of BGS suppliers at the auction and a second time through the cost of replacement RECs and SRECs after an event of default or transfer. (*Id.* at 12). The EDCs argued that BGS suppliers can make their own decision as to the path that suits their business model the best and the flexibility afforded to BGS suppliers by the proposed amendments will not materially impact the BGS suppliers' cost of meeting the collateral requirements (and any resultant impact to pricing in the BGS Auctions), while mitigating risk as the RPS compliance becomes a larger cost component of overall BGS supply. (*Id.* at 12 to 13).

As noted by both Rate Counsel and the EDCs, in the previous five (5) years, there have not been any defaults by BGS suppliers. Additionally, the EDCs have not been able to demonstrate that their proposed change will not have an adverse impact on potential BGS suppliers. Accordingly, the Board **REJECTS** the EDCs' request.

### *Credit Requirements*

In its Initial and Final Comments, TransAlta recommended that the SMAs, specifically Article 6, should allow suppliers with a credit rating below BBB-/BAA3/bbb to use unsecured credit subject to specified limits instead of the currently proposed limit of 0. TransAlta asserted that this is consistent with other auctions and would increase the competitiveness of the BGS Auctions. (TransAlta Initial Comments at 1, TransAlta Final Comments at 1). Additionally, TransAlta provides that the bidding process should include a step to allow a bidder with a Foreign Guarantor to discuss the required draft legal opinion, as it would improve the bidding process's efficiency. (*Ibid.*)

Article 6 of the SMAs allow a supplier to use unsecured credit from the EDCs up to a specified limit, the Independent Credit Threshold ("ITC") and the Maximum Credit Line ("MCL"), based upon the suppliers credit rating. If the supplier's credit is below BBB-/Baa3/bbb, the SMAs do not provide a supplier with access to any unsecured credit. Instead, the supplier would have to meet the credit requirements by posting cash or a letter of credit, which TransAlta indicated increases a supplier's costs that would be passed through to ratepayers in the form of higher bid prices. (TransAlta Initial Comments at 2; TransAlta Final Comments at 2).

TransAlta believes that the sharp reduction in the access to unsecured credit (the MCL and ICT in the SMAs moves from 6% to 0%) is not commensurate with the risk associated with a one notch change in a supplier's credit rating. TransAlta provided that auctions in other jurisdictions do not have sharp reductions in unsecured credit limits for a one notch change in credit rating. TransAlta asserted that procurements in these states (Maryland, Delaware, Ohio, and Pennsylvania) have seen high levels of participation without any noticeable increase in credit risk to consumers. (TransAlta Initial Comments at 2 to 3). Accordingly, TransAlta recommended that New Jersey's BGS adopt unsecured credit limits similar to these other jurisdictions because it would make the BGS more competitive by allowing additional suppliers to effectively compete in the BGS. According to TransAlta, the additional competition would be expected to reduce prices to consumers without increasing risks, as described earlier. (TransAlta Initial Comments at 3).

Currently, the bidding process requires a bidder with a foreign guarantor to submit several documents including: 1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the guarantor is incorporated or otherwise formed that the guarantee has been duly authorized, executed and delivered and is the legal, valid and binding obligation of the guarantor in the jurisdiction in which it has incorporated or otherwise; 2) the sworn certificate of the corporate secretary (or similar officer) of such BGS-RSCP supplier that the person executing the SMA on behalf of the BGS-RSCP supplier has the authority to execute the SMA, and that the governing body of such BGS-RSCP supplier has approved the execution of the agreement; and 3) the sworn certification of the corporate secretary (or similar officer) of such BGS-RSCP supplier that the BGS-RSCP supplier has been authorized by its governing body to enter into agreements of the same type as the SMA. TransAlta also recommended that the timeline of the submission of the legal opinion and officer certificate be clarified and the addition of a process step to allow the EDCs to review a draft legal opinion and officer certificate for a Bidder's foreign guarantor be added to the process. (*Id.* at 3). TransAlta stated that neither the exact form of the legal opinion and officer certificate, nor the timing of its submission is specified as part of the bidding process. TransAlta recommended that the submission of a draft legal opinion be due by the end of the Part 1 Application process and that the guarantor and EDCs agree on a form of legal opinion by the end of the Part 2 Application process. TransAlta further recommended that

the execution of the legal opinion should only be required if a bidder is awarded tranches, and the execution of the two (2) documents should occur concurrently with the SMA and guaranty. (*Id.* at 4). As part of the BGS process, TransAlta recommended that a teleconference between the EDCs and counsel drafting the legal opinion (between Part 1 and Part 2 Applications) be permitted in order to discuss any questions or concerns that may arise on the part of the EDCs after reviewing the draft legal opinion. (*Ibid.*)

In their Final Comments, the EDCs strongly opposed TransAlta's recommendation to alter the credit rating requirements needed to obtain unsecured credit under the SMAs. The EDCs maintained that it is essential that BGS customers be protected and realize the benefit of the bargain obtained through the Auction. The primary security behind the SMA is financial and is necessary because the EDCs do not receive the rights to the underlying sources of the BGS suppliers' electricity. In the event that a supplier encounters financial difficulties, or market prices rise suddenly and a supplier elects to default and deploy its supply elsewhere, the EDCs asserted that customers must be protected and the EDCs must have sufficiency security to replace the default supply. (EDC Final Comments at 6).

Additionally, the EDCs stated that TransAlta is incorrect that the timing of submission of the documents related to a foreign guarantor is not specified as part of the process, which occurs at the time of Part 1 Application submissions. The evaluation by the EDCs is then provided to the supplier with the notification of registration, which is the notification of the Part 2 Application results. (*Id.* at 7). The EDCs agree with TransAlta that enhancements to the current application process should include (i) an opportunity for the supplier to submit two (2) rounds of draft documents rather than just one (1); and (ii) an offer to make counsel available should the EDCs have questions regarding the draft legal opinion. (*Ibid.*) Accordingly, the EDCs proposed that foreign applicants or applicants relying on a foreign guarantor be required to submit draft documents when the online application portal is made available to bidders. The EDCs would provide the results of their review of the draft documents with the notification of the Part 1 Application results. At that time, if the EDCs have questions for counsel who drafted the legal opinion, a teleconference may be requested by the EDCs. Foreign applicants or applicants relying on a foreign guarantor would then have an opportunity to revise the draft documents incorporating changes required by the EDCs by the Part 2 Application deadline. The EDCs would then review the revised documents and provide their assessment of any further required changes for the documents to be acceptable to the EDCs before the start of the Auctions. (*Id.* at 8).

The Board agrees with the EDCs that the provisions of the SMAs provide essential protection for BGS customers. At this time, the Board does not see a need to modify the unsecured credit limits set forth in the SMAs. Accordingly, the Board **DENIES** TransAlta's request to modify the unsecured credit limits set forth in the SMAs.

With respect to the modification, TransAlta requested related to the draft legal opinion, the Board notes that the EDCs agree that this would enhance the current application process. No other party provided comments on this issue. The Board believes that the EDCs proposal is reasonable and **HEREBY ADOPTS** the EDCs' proposal related to this process.

#### *Section 15.9- Transmission Costs*

In its comments, IEPNJ asserted that the Board should recognize and address the significant transmission costs incurred by BGS participants. (IEPNJ Legislative Type Hearing Comments at 2). IEPNJ stated that due to several unresolved proceedings at FERC, there are a series of

transmission costs that have yet to be finalized. IEPNJ noted that these proceedings can take years to be decided, and while the EDCs are collecting these funds from ratepayers, under current Board policy, the BGS suppliers are not paid. As a result, BGS suppliers must pay these costs to PJM, but do not recover these costs for an indeterminate period. IEPNJ asserted that suppliers are left uncompensated for millions of dollars for open-ended periods of time. (Id. at 2 to 3). Accordingly, IEPNJ requested that the Board amend its policy in this area and provide more certainty to cost recovery for these costs to BGS suppliers. (Id. at 3).

ExGen expressed similar concerns in its comments stating that significant delays in reimbursement to BGS suppliers of increased Transmission Enhancement Charges ("TECs") assessed by PJM hurt the competitiveness of the BGS auction by forcing suppliers to shoulder significant additional costs for an undefined period. (ExGen Legislative Type Hearing Comments at 1). ExGen proposed a change to the treatment of charges for Firm Transmission Service as set forth in Section 15.9 of the existing and proposed SMAs to either (i) require EDCs to pay TECs directly to PJM without any pass-through to suppliers as is done in some other jurisdictions; or (ii) allow EDCs, subject to Board approval, to reimburse BGS suppliers at the time PJM bills those increased charges. (ExGen Legislative Type Hearing Comments at 1; ExGen Final Comments at 1). ExGen asserted that either of those changes would remove the significant uncertainty suppliers currently face regarding TECs that BGS suppliers pay, but cannot account for, in its auction bids, but would not increase costs to customers. Conversely, ExGen believes it would accomplish exactly the opposite by reducing risk for suppliers and making the auction more competitive. (ExGen Legislative Type Hearing Comments at 1). ExGen maintained that rather than requiring suppliers to carry those increase TECs for an additional, undefined period, the Board should exercise its discretion to allow the EDCs, as requested, to pay suppliers now for the amounts billed and collected. ExGen noted that this would be consistent with the Board's treatment of the increased TECs related to the "Seventh Circuit Settlement" in the November 2018 Order. ExGen believes the Board should take similar action with respect to the millions of dollars of increased charges related to the Linden VFT and ConEd Wheel proceedings. (Id. at 2 to 3, ExGen Final Comments at 5). ExGen stated that timely reimbursement will help ensure that BGS suppliers, when establishing their bid prices, can rely on the provision of the SMA that permits BGS suppliers to be made whole for increased PJM charges. In the alternative, ExGen stated that having EDCs pay TECs directly to PJM, as is done in some other jurisdictions, would address this issue even more directly. (ExGen Legislative Type Hearing Comments at 3).

Similarly, Vitol requested transmission charges be removed from the BGS suppliers' obligation, and that the EDCs serve as the interface with PJM Settlements as well as the BGS customers. (Vitol Legislative Type Hearing Comments at 1, Vitol Final Comments at 5 to 6). Vitol stated that while the regulatory proceedings regarding these costs remain pending at FERC and the EDCs collect the charges from customers, BGS suppliers have been, and continue to be, billed for these costs by PJM, creating an adverse financial situation for BGS suppliers with no relief in sight. (Vitol Legislative Type Hearing Comments at 1 to 2). Vitol estimated that the impact on New Jersey customers of these transmission-related cost changes is approximately \$139.2 million from May 2017 through August 2019, most of which is in the PSE&G zone. Of that amount, roughly 60% has been billed by PJM to BGS-RSCP suppliers, but has not yet been reimbursed by the EDCs. (Id. at 2).

Vitol asserted that if these transmission costs continue to be passed through BGS suppliers, and if the EDCs continue to withhold the money from suppliers, it is very reasonable to expect that auction participants will add greater risk premiums to their offers in the upcoming auction, which will translate into higher rates for BGS customers. Vitol believes this could result in

customers paying millions of dollars in premiums and previous auction participants opting out of participating to completely avoid the risk of not being reimbursed for several years for significant pass-through charges that they incur. (Ibid.)

Vitol asserted that both scenarios can be avoided by the Board removing pass-through transmission costs from BGS suppliers' obligations. Vitol maintained that there is no value to customers in having transmission costs passed through BGS suppliers, particularly when these costs aren't determined through competitive markets but rather through regulatory proceedings. (Id. at 2 to 3).

Vitol requested that the Board consider removing all pass through transmission costs from the BGS suppliers' obligation or, in the alternative, removing the BGS suppliers' obligation for the portion of the PJM TECs associated with the pending cases at FERC specific to the ConEd Wheel and the HTP and Linden VFT transmissions service changes. (Id. at 3, Vitol Final Comments at 7). In its Final Comments, ExGen similarly requested that the Board approve the current reimbursement of increased costs related to Linden VFT and ConEd Wheel proceedings. (ExGen Final Comments at 5).

At the Legislative Type Hearing, Rate Counsel maintained that until FERC acts, the exact amount of money that would either be refunded or paid to the BGS suppliers is unknown and would be harder for the ratepayers to get back. (Legislative Type Hearing Transcript at 63-8 to 12). Rate Counsel asserted that ratepayers are not in a position to absorb the risk. (Id. at 64-16 to 19). Rate Counsel also stated that with respect to rising transmission costs, the Board could take back some of the authority, which is currently limited to siting. Rate Counsel admitted that to do so would take a legislative solution, but a lot of other states still have Certificate of Public Necessity ("CPN") requirements. (Id. at 67-19 to 68-15).

In its Final Comments, TransAlta supported the comments of ExGen, IEPNJ and Vitol regarding uncertainty and risks associated with FERC approval of transmission enhancement charges and the lag between when suppliers are charged by PJM and when they receive payment from the EDCs. (TransAlta Final Comments at 3). Similarly, TransAlta supported the proposal of ExGen and Vitol to end the pass-through of these transmission costs and instead have the EDCs pay them direct to PJM. TransAlta also indicated that it would support the alternative proposal of allowing EDCs to reimburse suppliers at the time PJM bills supplier for transmission enhancement charges. (Ibid.)

In its Final Comments, Rate Counsel noted that the Board has repeatedly considered and rejected this type of change in the past, most recent in the 2018 BGS proceeding. (Rate Counsel Final Comments at 4 to 5). Rate Counsel asserted that the same actors which supported the Board's decision in the 2018 BGS proceeding are still relevant today and urged the Board to maintain the safeguard within Section 15.9 and reject the commenters' request to pass-through payment of non-final transmission rate increases and interim rates. (Id. at 5).

The EDCs acknowledged the concerns expressed by the parties regarding the disparity in timing between the BGS suppliers' payment to PJM for transmission costs and the receipt of payment for such costs from the EDCs, and expressed their own concerns regarding with testimony at the hearing that a supplier may include a risk premium in its auction bid as a result. The EDCs indicated that they are supportive of working with the Board and stakeholders to identify opportunities to reduce this disparity and the potential risks that accrue from the same to BGS suppliers and the EDCs' customers, but believe it is inappropriate to change the long-standing "full requirements" BGS product in this proceeding. (EDC Final Comments at 21). The

EDCs suggested that the Board explore other mechanisms to address the payment lag concerns raised at the Hearing before making any fundamental changes to the BGS product. (*Ibid.*)

As has been recent experience, there have been times where PJM reallocations have been implemented prior to the receipt of a Final FERC Order. Consistent with the currently-approved language, the EDCs can, and have, petitioned the Board for authority to begin collecting and paying such changes absent a Final FERC Order on a case by case basis. The EDCs continue to retain this right going forward and may bring additional requests before the Board. The Board believes that the current construct provides a balance between the protection of ratepayers and the concerns of BGS suppliers regarding risk, while allowing the Board discretion on a case by case basis. Accordingly, the Board **REJECTS** the proposed modifications to Section 15.9 of the SMAs proposed in this matter. However, the Board is concerned about the continued delays at FERC and the growing backlog of pending matters. We are now entering the third BGS auction wherein a significant amount of transmission costs are not finalized by FERC. Concerns previously expressed by parties regarding the ability to find suppliers who may no longer be participants in the BGS Auction are growing. The Board agrees with the EDCs that this issue should be addressed in future proceedings. Accordingly, the Board **HEREBY DIRECTS** Staff to work with the parties prior to the filing of the 2021 BGS Auction proposals in an attempt to find a resolution to this issue.

With respect to parties' requests to modify the Board's orders related to the ConEd Wheel and HPT and Linden VFT payments, at this time the Board **DENIES** such requests. The purpose of the instant proceeding is to determine the 2020 BGS Auction process. Any requests related to previous Board orders should be filed within those dockets.

## **ISSUES RELATED TO RENEWABLE PORTFOLIO STANDARDS**

### *Solar Transition Program*

In its comments, IEPNJ requested that the Board make a decision as soon as possible regarding its Solar Transition Program, and clearly state the percentage obligation of BGS suppliers in advance of the 2020 BGS Auction. (IEPNJ Legislative Type Hearing Comments at 3). IEPNJ noted that as part of a current stakeholder process to determine the structure of the Solar Transition Program as part of the solar program set forth in the Clean Energy Act, the Board is expected to set a new RPS requirement to cover an interim program. In the interim program, Transition Renewable Energy Certificates ("TRECs") would need to be purchased by BGS suppliers. In order to avoid uncertainty in the market and increase BGS rates, IEPNJ believes it is imperative that the Board determine the Transition Program solar RPS requirement as soon as possible to provide guidance to suppliers as they prepare for the 2020 BGS Auction. (*Ibid.*) IEPNJ also asserted that the Board must clearly state the RPS solar obligation associated with the Transition Program as a defined percentage to provide clarity to BGS suppliers on the amount they will need to purchase. IEPNJ believes that leaving it open-ended will create uncertainty and that it is critical that BGS suppliers have complete transparency regarding their specific TREC percentage obligations in each year of the affected EYs inside the BGS auction to allow them to offer their auction bids in a way that reflects their RPS obligations. IEPNJ asserted that in the absence of this clarity, BGS suppliers will put a price premium in their bids which will unnecessarily raise costs to ratepayers. IEPNJ further stated that in the event any true-ups are necessary, they would be rectified in the 2021 BGS Auction. (*Ibid.*)

In their Final Comments, the EDCs supported IEPNJ's request for clarification, stating that any information provided to BGS suppliers will reduce any risk premium in the BGS bids. (EDC Final Comments at 9). The EDCs further stated that such clarification should take into account the three (3) year supply term of the RSCP product and should also take into consideration that BGS suppliers preparing to bid on the BGS-RSCP and/or the BGS-CIEP product should have clarity with respect to these obligations for the full term of the applicable SMA. The EDCs recognize the lengthy regulatory process surrounding this issue, but requested that the Board provide clarity with respect to these obligations prior to the start of the BGS Auctions, and with sufficient time for BGS suppliers to evaluate the costs of these obligations and integrate them into their bids. (*Ibid.*)

The Board recognizes the need for clarity regarding this issue. However, the Solar Transition Program is still under development and until the Board makes a decision, guidance cannot be given to suppliers. At the time a decision is made regarding the Solar Transition Program, guidance will be provided to potential BGS suppliers regarding the Transition Program solar RPS requirement.

#### *RPS Obligation Calculations*

In its comments, IEPNJ claimed that a disparity currently resides in the auction format in which RPS obligations for BGS suppliers are calculated at the wholesale meter, while third party suppliers ("TPS") are calculated at the retail meter. (*Id.* at 4). IEPNJ asserted that in order to correct this inequity between BGS suppliers and TPSs, the Board should provide clear direction that all calculations related to RPS obligations are based at the retail meter. IEPNJ believes this would create a level playing field, cure an imbalance, and reduce the rate impact and help the State meet its rate cap obligations. (*Ibid.*)

In its Final Comments, Rate Counsel stated that while IEPNJ did not quantify the dollar difference, Rate Counsel assumed that the difference is attributable to line losses, which will vary slightly between each EDC. (Rate Counsel Final Comments at 6). Rate Counsel also noted that the BGS and TPS suppliers operate under different requirements, wherein BGS suppliers are wholesale providers to the EDCs with an obligation to be the default provider and not retail sellers to end use customers. (*Ibid.*) Rate Counsel maintained that without additional opportunities in the proceeding to investigate the issue, IEPNJ's recommendation should be denied at this time. (*Ibid.*)

The EDCs acknowledged that there is a difference in the way RPS obligations of BGS suppliers and TPSs are calculated, and that is necessary given the difference in the nature of the relationship that each type of supplier has with retail customers. (EDC Final Comments at 9 to 10). TPSs have a direct relationship with their retail customers and bill these customers for their consumption at the retail meter, as established by meter reading within each customer's billing cycle. While BGS is electric generation service that is provided at retail, the BGS supplier has no direct relationship with retail customers and serves a percentage of the BGS load. The amounts upon which BGS suppliers are paid are calculated based upon the PJM settlement data at the wholesale meter, reflecting the BGS suppliers' actual energy obligations. This settlement occurs on a weekly or monthly cycle that is completely divorced from the meter readings or billing cycles of individual customers. Those amounts from the PJM settlement data are the only data available to BGS suppliers and thus the only basis that can be used to calculate their RPS obligations. (*Id.* at 10).



The EDCs note that the volumes used to calculate the RPS obligations of BGS suppliers were accepted and termed "Retail Sales" in the RPS Compliance Reports available on the Office of Clean Energy's website. As the term "retail sales" is not otherwise defined in the Clean Energy Act, the EDCs respectfully request that the Board confirm that "retail sales" are to be understood to be the volumes upon which suppliers are paid – retail sales for TPSs and PJM settlement data for BGS suppliers. (*Ibid.*)

The Board believes that at this point, given the different supplier relationships and access to data, the current format is appropriate. Because the BGS supplier serves at the wholesale meter, this is the data available to BGS suppliers and the most accurate way for a supplier to assess their obligation and price their offers into the BGS Auction. Also, as noted, the NJ Division of Clean Energy has accepted the difference in their Compliance Reports. Accordingly, the Board **DENIES** IEPNJ's requested change in the RPS obligations.

### **PJM CAPACITY MARKET CONSTRUCT**

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.<sup>9</sup> In its Initial Comments, Rate Counsel stated it is unaware how the delay will impact the current BGS auction, since the BGS supplier commitment period runs from June 1, 2020 through May 31, 2023. (Rate Counsel Initial Comments at 5). Rate Counsel further stated that while it is unlikely that FERC and PJM will indefinitely delay the Base Residual Auction ("BRA"), the delay introduces a level of uncertainty for potential BGS bidders which may adversely affect the bids seen at the February 2020 BGS auctions. (*Id.* at 5 to 6).

In its comments at the Legislative Type hearing, PSEG commented on the PJM capacity market construct proceeding that is currently ongoing at FERC. PSEG anticipates that FERC will approve a mechanism that will allow resources receiving state support to be removed from the PJM capacity auction, while still being counted as capacity resources serving the State. (PSEG Legislative Type Hearing Comments at 1). As noted by PSEG, as of the end of September, the industry is still awaiting FERC action which will impact New Jersey's efforts to address climate change and the programs recently developed to preserve nuclear and promote offshore wind and new solar development. (*Ibid.*)

PSEG stated that the Board will have the opportunity and responsibility to address the new construct on behalf of New Jersey customers, but the challenge will be to integrate the new capacity construct in a way that will allow New Jersey's public policy goals to be met while minimizing the cost to New Jersey customers (*Id.* at 2). PSEG asserted that the BGS procurement mechanism could be a vehicle for implementing FERC's new construct in New Jersey, but stated that if the Board decides that BGS is not suitable, New Jersey will need to seek a legislative solution. PSEG urged the Board to proactively study all potential options for integrating a new FERC-approved construct to accommodate State public policy goals, including BGS, even before the final detailed rules are known. (*Ibid.*)

At the Legislative Type Hearing, Rate Counsel recognized that there is uncertainty regarding the capacity auction which may lead to risk premiums. Regardless, Rate Counsel maintained that the Board should not modify the BGS auction and create greater uncertainty as this could lead to even greater risk premiums. (Legislative Type Hearing Transcript at 64-22 to 65-15). Stated

<sup>9</sup> The 2022/2023 Delivery Year is June 1, 2022 through May 31, 2023.

differently, Rate Counsel opined that to act on the unknown and create greater uncertainty could lead to higher risk premiums for the ratepayers. (Id. at 65-20 to 25).

*October 8, 2019 Supplemental Proposal*

On October 2, 2019, the EDCs filed a joint motion for an extension of the deadline for submission of final comments in this matter. In the letter, the EDCs indicated that in light of recent actions taken by FERC, the EDCs intended to submit an amended filing, on or before October 8, 2019, proposing enhancements to the proposal to address concerns related to unknown capacity prices for EY 2023.

On October 8, 2019, the EDCs submitted the Supplemental Proposal related to the capacity price for EY 2023. In the Supplemental Proposal, the EDCs proposed a change to the EDCs' Initial Proposal to address the fact that the capacity price for the third year for the BGS-RSCP Auction will likely be unknown prior to the start of the BGS-RSCP Auction. (October 8 Supplemental Proposal at 1). In the Supplemental Proposal, the EDCs urged the Board to provide certainty to the BGS-RSCP suppliers regarding the capacity price in the 2022/2023 Delivery Year to protect BGS customers from higher rates due to risk premiums embedded in the BGS bids. The Supplemental Proposal proposed: 1) a capacity proxy price ("Capacity Proxy Price") for each EDC; 2) a supplement to the BGS-RSCP SMA to allow payment to (or "from") the BGS-RSCP suppliers of the difference between the actual 2022/2023 capacity price and the Capacity Proxy Price; and 3) a worksheet and a line item to Table A of the rate design methodology in 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. (Id. at 6).

The EDCs explained that if the capacity price is unknown for the 2022/2023 Delivery Year, bidders are likely to include risk premiums in their bids and some potential bidders may choose to not participate in the BGS-RSCP Auction altogether. The EDCs maintained that this could result in higher closing prices in the BGS-RSCP Auction. (Id. at 2). To address this, the EDCs propose to use the below Capacity Proxy Prices for each EDC for the 2022/2023 Delivery Year that bidders can incorporate into their bids:

EDC	Capacity Proxy Price (\$/MW-
PSE&G	162.13
JCP&L	152.06
ACE	152.06
RECO	152.06

The EDCs further proposed that the winning BGS-RSCP suppliers would be paid the closing price (cents/kWh) in the BGS-RSCP Auction for the load served. Further, the EDCs proposed that in the 2022/2023 Delivery Year BGS-RSCP suppliers would be paid the difference between the value of the actual capacity price charged by PJM, and the Capacity Proxy Price set by the EDCs (or their payment for load served would be reduced by this difference if the Capacity Proxy Price be greater than the actual capacity price). While the actual capacity price may be known prior to the start of the 2022/2023 Delivery Year, the EDCs stated that the payments (or adjustments to payments) would only occur in the 2022/2023 Delivery Year, as they believe this

will remove the need for bidders to include risk premiums into their bids to protect themselves from an unknown capacity price, to the benefit of BGS customers. (Ibid.)

The EDCs calculated the Capacity Proxy Price by averaging the actual capacity prices for the last two (2) years for each EDC zone using the most recent data available from PJM, multiplied by a factor of 0.9 to account for the lower capacity prices seen in the 2019/2020 Delivery Year relative to previous years. (Id. at 3).

The EDCs considered the options used by other states, including Ohio and the District of Columbia. In Ohio, Duke Energy Ohio, Inc. was authorized to remove the third year (the 22/23 delivery year) from its product and procure supply for a two (2) year term. In the District of Columbia, the commission approved a proxy price of \$0 for the 22/23 delivery year, meaning that suppliers would be reimbursed for the entirety of the actual capacity price once determined as charges are incurred. (Ibid.) The EDCs believe setting a capacity proxy price at a reasonable estimate of the capacity price is the best approach for BGS customers. (Id. at 3 to 4).

To implement the Capacity Proxy Price, the EDCs proposed two mechanisms, one mechanism to pay BGS-RSCP suppliers the difference between the actual capacity price charged to BGS-RSCP suppliers by PJM, and the Capacity Proxy Price in the 2022/2023 Delivery Year, and a second mechanism to recover such additional payments from BGS-RSCP customers. The EDCs proposed to append to the BGS-RSCP SMA a "supplement" that describes the payment to suppliers for the 2022/2023 Delivery Year, and to add a worksheet to the EDCs' rate design spreadsheets to show how auction prices will be adjusted for rate design purposes to reflect these additional supplier payments. (Id. at 4). The supplement to the SMA would replace paragraph 9 of the BGS-RSCP SMA to provide that payments to suppliers will increase (or decrease) the difference between the PJM RPM Zonal Net Load Price actually charged. (Id. at 5).

In its Final Comments, ExGen indicated that it shared the concerns raised by several parties regarding the delay of the PJM BRA for the 2022-2023 Delivery Year. ExGen stated that it supports the Supplemental Proposal, including the Capacity Proxy Price, as a reasonable way to address the timing problem resulting from the postponement of the PJM BRA. (ExGen Final Comments at 6). TransAlta and Vitol also supported the Supplemental Proposal in their Final Comments as a way to address the capacity price uncertainty faced by bidders. (TransAlta Final Comments at 2, Vitol Final Comments at 2).

In its Final Comments, IEPNJ highlighted what it believes to be two (2) material risks associated with the EDCs' Supplemental Proposal that will affect the pricing of BGS supply to the detriment of ratepayers if not addressed by the Board. (IEPNJ Final Comments at 2). According to IEPNJ, while the EDCs have tried to present a reasonable methodology, a significant amount of uncertainty remains regarding FERC's ruling and how it will impact the capacity auction structure and the resultant pricing. Use of the 90% adjustment creates a proxy that is at the lower end of likely results, with suppliers incurring risk for receiving capacity costs above that amount. (Id. at 2 to 3). IEPNJ urged the Board to implement additional measures to mitigate this risk. Specifically, IEPNJ recommended that the Board ensure that its order in this proceeding include specific clarity as to when and how BGS suppliers will be paid by the EDCs for the actual capacity prices on a timely and expeditious basis stating that it is imperative that the Board provides specific direction; otherwise, this price risk and the uncertainty surrounding when compensation will occur will manifest into higher bid prices from BGS suppliers. (Id. at 3).

Additionally, IEPNJ asserted that the Board should address the new volume risk that will occur since the quantity of capacity (MWs) that PJM is procuring will not be known until the EY 2023 PJM BRA occurs. IEPNJ argued that until the outcome of the PJM auction is known, it is impossible to know the quantity of capacity (MWs) that PJM is going to buy and BGS suppliers will not know what share of capacity they will be responsible for. (*Ibid.*) IEPNJ recommended that the Board direct in its order that payment to BGS suppliers be adjusted to reflect PJM's final determination of the "Obligation Peak Load Scaling Factor" and the "Forecast Pool Requirement," to avoid increased bid prices to account for risk. (*Id.* at 4).

In its Final Comments, Rate Counsel submitted comments on the development of the Capacity Proxy Price, the rate design component to true-up differences between the actual EY 2023 PJM capacity prices and the Capacity Proxy Price, and new SMA language [Section 9.1 (I)] that passes through any charges for the purchase of capacity from the load serving entity to the BGS supplier. (Rate Counsel Final Comments at 8).

Rate Counsel pointed out that the Capacity Proxy Price proposed by the EDCs is based upon the average of the Zonal Net Load price established in the second Incremental Auction for the 2020-2021 Delivery year, and the first Incremental Auction for the 2021-2022 Delivery Year, which is the most recent data available for the PJM load zones. (*Id.* at 8 to 9). Rate Counsel estimated that the EDCs' proposed Capacity Proxy Price will cover approximately \$627 million of the capacity cost component of the BGS-RSCP product for EY 2023. Rate Counsel asserted that while the Incremental Auctions represent the most recent data for PJM zones, the BRA results are the largest component of the Zonal Net Load Price and should be used as the starting point for developing the Capacity Proxy Price. (*Id.* at 10 to 11). Rate Counsel also has concerns that the Capacity Proxy Price may be set higher than the actual capacity price for the 2022-2023 Delivery Year and recommended lowering the factor for developing the Capacity Proxy Price from 0.9 to 0.8. (*Id.* at 11). On October 28, 2019, Rate Counsel filed corrected Tables and Figures, including its proposed Capacity Proxy prices, which are in the table below:

EDC	2020-2021 BRA PJM Zonal Net Load Price (\$/MW-Day)	2021-2022 BRA PJM Zonal Net Load Price (\$/MW-Day)	Average PJM Zonal Net Load Price (\$/MW-Day)	Rate Counsel Adjusted Capacity Proxy Price
	A	B	$C=(A+B)/2$	$D=C*0.8$
PSE&G	174.85	184.04	179.44	143.55
JCP&L	174.85	163.08	168.97	135.17
ACE	174.85	163.08	168.97	135.17
RECO	174.85	163.08	168.97	135.17

Rate Counsel also asserted that intentionally setting the Capacity Proxy Price below the Average PJM Zonal Net Load Price may adversely impact New Jersey's Government Energy Aggregation ("GEA") programs which, under certain circumstances, require the GEA price to be lower than the BGS price. GEA participating municipalities will need to have certainty of the BGS-RSCP price prior to awarding their GEA program contracts. Similarly, TPSs competing for BGS customers may also be adversely affected by the artificially low BGS price implemented following the 2020 BGS auction. Rate Counsel recommended that the BGS "Price to Compare" following the 2020 BGS Auction use 100% of the Average PJM Zonal Net Load Price

of the previous two (2) BRAs rather than the proposed Capacity Proxy Price, until the BGS-RSCP is adjusted to reflect the results of the BRA for the 2022-2023 Delivery Year. (Id. at 13).

Rate Counsel also expressed concerns regarding the rate design component of the EDCs' Supplemental Proposal. Payments of the additional line item "will only occur in the 2022/2023 delivery year even if the true value of the capacity price for that delivery year is known prior to the start of the 2022-2023 Delivery Year." Based on these terms, Rate Counsel estimated that an illustrative \$10/MW-day difference between the actual PJM RPM Zonal Net Load price and the EDC's proposed Capacity Proxy Price would result in the over or under-collection of approximately \$38.7 million between BGS-RSCP ratepayers and suppliers over the course of EY 2023 under the EDCs' Supplemental Proposal. (Id. at 13 to 14).

Rate Counsel expressed two (2) concerns regarding the proposed rate design process under the Supplemental Proposal. First, the Supplemental Proposal language allows the pass through of PJM Zonal Net Load Prices that have not been previously included in the BGS-RSCP product due to the timing of the BGS-RSCP auction. Second, the Supplement Proposal's rate design unnecessarily concentrates adjustment of the Capacity Proxy Price into EY 2023, which, according to Rate Counsel, will cause a greater impact on BGS-RSCP customer rates, especially when combined with the below-average Capacity Proxy Price. (Id. at 14). Rate Counsel proposed an alternative billing mechanism that it purported would eliminate the pass through of the additional PJM zonal price adjustments, and spreads the Capacity Proxy Price difference over a longer period than the single energy year proposed by the EDCs. (Id. at 14 to 15). Rate Counsel voiced concerns that the described true-up process for BGS suppliers has the unintended consequence of passing through risks that the BGS suppliers have traditionally assumed when submitting their BGS-RSCP bids. Under the Supplemental Proposal, BGS-RSCP suppliers would receive the difference between the actually incurred PJM Zonal Net Load Price and the Capacity Proxy Price for the 2023 Deliver Year. The phrase "actually charged for load served on the day for the Company's PJM zone" is problematic to Rate Counsel since, in prior BGS auctions, the BGS suppliers have only had knowledge of the PJM Zonal Net Load Price from the BRA for the third energy year in formulating their respective bids. In a deviation from prior BGS Auctions, the EDCs' Supplemental Proposal would pass through the Zonal Net Load Price from subsequent Incremental Auctions for the third energy year. While the difference between the BRA Zonal Net Load Price and the Final Zonal Net Load Price at the end of the third Incremental Auction may vary by a slight amount, Rate Counsel believes that the EDCs' Supplemental Proposal could have a precedential impact on future BGS auctions. (Id. at 15). Rate Counsel acknowledged that the prolonged suspension of the 2022-2023 BRA is unprecedented and resulted in the Supplemental Proposal. However, as with prior BGS Auctions, the BRA price remains the most transparent price signal. Rate Counsel cautioned the Board against creating a precedent where the risk from minor changes in market prices, which have historically been assumed by the BGS Suppliers, would now be passed to BGS-RSCP ratepayers through a true-up mechanism. The Supplemental Proposal's true-up process would provide BGS Suppliers with more profit. Rate Counsel recommends the Board consider an alternative true-up process that spreads the difference between the BRA Zonal Net Load Price and Capacity Proxy Price over a longer period than the one-year period proposed by the EDCs. As stated in the EDCs' proposal, Rate Counsel believes their true-up process would occur in EY 2023, "even if the true value of the capacity price for that delivery year is known prior to the start of the 2022/2023 delivery year." Rate Counsel believes that the BRA Zonal Net Load Price for the New Jersey zones will be determined before June 1, 2022 in order to allow time for capacity market participants to plan for future capacity requirements. Making the tariff changes to reflect the 2022-2023 Delivery Year BRA results as soon as possible would help mitigate the rate shock for BGS-RSCP ratepayers. In the event that subsequent true-ups are determined to be

necessary, the charges could be reconciled through the EDCs' respective BGS Reconciliation Charges. (Id. at 15 to 16).

Rate Counsel is also concerned with new proposed SMA language, specifically Section 9.1(l). As proposed, Rate Counsel asserted that the pass through of such costs will create a precedent that any risks assumed by BGS suppliers will now immediately be passed through to ratepayers. Rate Counsel further stated that the EDCs' proposed SMA Supplement language is overly broad and vague since any additional charge relating to changes in the PJM capacity markets could be included. Rate Counsel does not believe it provides for a review process for the Board to approve any charges on LSEs. If the charges are substantial in nature, the Board may need to consider other mechanisms than the BGS auction process or BGS-RSCP product, rather than merely passing through such costs to ratepayers, if and when such changes are made to the PJM Capacity Market. (Id. at 16 to 17).

The Board agrees that keeping the RSCP product as a three (3) year product will help mitigate rate changes and avoid the complications of requiring a supplemental auction when the 2022/23 capacity price becomes known. The Board also acknowledges and agrees that it is unknown when the capacity price for the 2022/23 delivery year will be set. Additionally, if the BGS-RSCP product is to cover three (3) years, bidders must have some set price for capacity in order to set their bids.

The Board recognizes the difficulty in setting a proxy capacity price as the RPM auction has traditionally produced volatile results. The main difference in the two proposed (2) methods for creating a proxy price is that Rate Counsel offered a lower adjustment factor (of 0.8) than is proposed by the EDCs (0.9). The Board notes that simply averaging the most recent prices from the most recent three (3) delivery years provides prices that are very similar to the values proposed by the EDCs. Since the Board cannot know the upcoming capacity auction price, and since the EDCs numbers more clearly reflect recent prices, the Board **APPROVES** the EDCs' proposed numbers as the capacity proxy price.

While the Board recognizes the concerns related to price to compare raised by Rate Counsel, adopting Rate Counsel's recommendation may actually confuse the price to compare calculation. Using Rate Counsel's recommendation, there would be the actual price, the calculated price using the Capacity Proxy Price, and then a third calculation for the price to compare. Accordingly, the Board does not believe there should be a change in the way that the EDCs calculate price to compare at this time and **DENIES** Rate Counsel's request.

With respect to IEPNJ's concerns regarding volume risk, the Board notes that BGS is always for a percentage of supply and priced per kWh so bidders have traditionally taken on such risk. As long as the capacity price is in \$/MW-day then bidders should be able to scale into a cents per kWh bid. Accordingly, the Board does not believe this is an issue that needs to be addressed.

Further, the Board agrees with Rate Counsel that the proposed language in Section 9.1(l) is overly broad. While the Board understands that other changes may come from whatever solution PJM and FERC devise, to authorize a full pass through of any charges "in connection" with the purchase of capacity may be too broad at this stage. Accordingly, the Board **REJECTS** the EDCs' proposed language in Section 9.1(l) and **DIRECTS** that any such charges be filed for Board approval so that the Board can consider their nature and impact prior to authorizing collection.

## **EMP**

The Draft 2019 Energy Master Plan ("EMP"), released for comments on June 10, 2019, mentions the possibility of including "a carbon-neutrality requirement" for BGS load to achieve 100% clean energy by 2050.<sup>10</sup> Rate Counsel indicated that it has concerns about including such a requirement in the BGS Auction without clear coordination with other New Jersey legislation. (Rate Counsel Initial Comments at 5). Rate Counsel believes that the BGS auction has been working well for many years by providing reliable, competitively-priced electricity to New Jersey's residential and small commercial customers. Rate Counsel asserted that adding a carbon neutrality requirement for BGS load would severely limit competition within the BGS auction because the only carbon-neutral generation available to serve a significant portion of residential load would be nuclear power. Since there is really only one (1) or two (2) potential bidders of nuclear power, there may be no competition for this portion of the BGS load. (*Ibid.*) Even if there are a few bidders, Rate Counsel maintained that there will be little competition, which will result in much higher rates for BGS customers. A carbon-neutral requirement would not be effective at achieving the State's 100% clean energy goal because customers could then just flee the higher BGS rates for the lower rates of third-party suppliers. (*Ibid.*)

While recognizing Rate Counsel's concern, the Board notes that the final EMP has yet to be released. Until the final EMP is released and there is direction from the Board regarding the possibility of a carbon-neutrality requirement for BGS, this issue is not ripe for discussion.

## **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 have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon Auction confidentiality issues in its December 1, 2004 Order (Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These provisions were adopted and applied in subsequent Auctions. The Board **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 2020 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,

<sup>10</sup> 2019 Draft Energy Master Plan, at page 48.

provided that the rules and details are specified and implemented correctly. Additionally, the Auction process must provide 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:<sup>11</sup>

- Bidder Information Sessions;
- An Auction Web Site at [www.bgs-auction.com](http://www.bgs-auction.com) which publicizes new developments, allows interested parties to download documents related to the Auctions, has FAQs (Frequently Asked Questions with answers) so all bidders are similarly informed, provides potential bidders with data relevant to the bidding process, and has links to PJM and other useful sites;
- Press releases to newspapers and trade publications; and
- Direct e-mails to interested parties to inform them of any new developments or any new documents posted to the web site.

The Board **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.

## **BOARD APPROVAL PROCESS**

As noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the Auction process approved with this Order, including certification of the Auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, Tentative Approvals and Process,<sup>12</sup> there are a number of decisions/actions that need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule so that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and Board approval of bid results is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in

<sup>11</sup> 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 2020 Auction.

<sup>12</sup> 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.



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<sup>13</sup> after the last Auction closes. At its discretion and depending on circumstances, the Board may address the results of one Auction that has closed while the second Auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

Another issue that requires Board review is acceptance of the EDCs' Compliance Filings. Because of the significance of this proceeding, the Board **HEREBY DIRECTS** the EDCs to submit a Compliance Filing by November 29, 2019. 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 consultant, may make other Auction decisions as identified in Attachment A to this Order. These decisions include establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, specific bidder application and credit issues, load cap and volume adjustment decisions, Auction price decrements, and other decisions which might be required throughout the implementation process. Some of the aforementioned areas, such as bidder application and credit issues, are subject to specific rules found in the Joint EDC Proposal. Other areas, such as load caps and volume adjustment decisions, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, and Auction price decrements are either Company-specific concerns, are determined directly from algorithms included in and approved as part of the this proceeding, or are issues best addressed by the Auction Manager based on its experience. In the event that these other 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 consultant shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in the form of Attachment B to this Order, prior to Board certification of the results.

<sup>13</sup> 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.

## **FINDINGS AND CONCLUSIONS**

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

This has been 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 Initial Proposal and Supplemental Proposal, as modified herein, are consistent with the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to -107, and the EDCs' Final Restructuring Orders;

The Initial Proposal and Supplemental Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for BGS customers beginning June 1, 2020;

The Initial Proposal and Supplemental Proposal, as modified herein, appear to be the best means to secure BGS service for the 2020 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 2021 and 2022 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 design 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;

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

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

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

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

The EDCs have designated NERA to continue to act as the Auction Manager for the 2020 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 Initial Proposal and the Supplemental 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 2020 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 consultant, Bates White, shall observe the Auctions for the Board;

The Auction Advisor will provide the completed post-Auction evaluation forms in Attachment B to the Board, and a redacted version to the EDCs and Rate Counsel, with the results of the Auctions and how the Auctions were conducted, prior to Board certification of the results;

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 2020 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 Initial and Supplemental Proposals, 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 DIRECTS** that the Initial and Supplemental Proposals be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by November 29, 2019. 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.

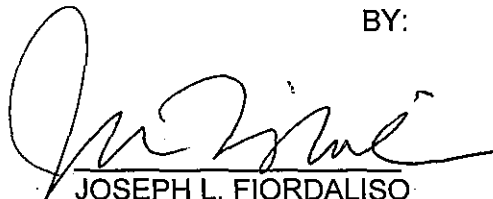
The Board **FURTHER DIRECTS** the EDCs to work with Staff and Bates White to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

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.

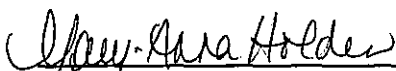
The effective date of this Board Order is November 15, 2019.

DATED: 11/13/19

BOARD OF PUBLIC UTILITIES  
BY:




JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

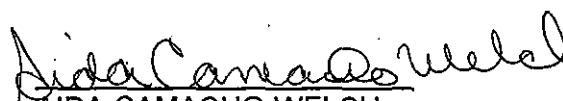


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
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, 2019  
DOCKET NO. ER19040428  
**Service List**

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR  
THE PERIOD BEGINNING JUNE 1, 2019  
DOCKET NO. ER19040428  
**Service List**

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR  
THE PERIOD BEGINNING JUNE 1, 2019  
DOCKET NO. ER19040428  
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## **ATTACHMENT A**

### **Tentative 2020 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.

<b>Decision point</b>	<b>Decision process</b>	<b>Timing</b>
Joint EDC Filing	EDCs	July 1, 2019
Announce Tranche Targets	AM	November 13, 2019
Announce Load Caps	AM/BA	November 13, 2019
Decision on 2020 Process	BPU	November 13, 2019
Announce minimum and maximum starting prices	AM/BA	November 13, 2019
Information webcast for potential bidders	AM/EDCs	December 3, 2019 (tentative)
Compliance Filing	EDCs	November 29, 2019
Approval of Compliance filing	BPU	December 2019
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2019
Review Part 1 applications	AM/BA	December 17-20, 2020
Review Part 2 applications	AM/BA	January 9-16, 2020



## ATTACHMENT A

### Tentative 2020 Auction Approvals and Decision Process

Information Webcast for registered bidders	AM/EDCs	January 21, 2020 (tentative)
Inform bidders of EDC-specific starting prices	EDCs/AM/BA	CIEP January 28, 2020 RSCP January 29, 2020
Trial Auction	AM	January 23, 2020
BGS-CIEP Auction starts		January 31, 2020
BGS-RSCP Auction starts		February 3, 2020
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 <sup>nd</sup> business day following the calendar day on which the last auction closes.

## POST-AUCTION CHECKLIST FOR THE NEW JERSEY 2020 BGS-CIEP AUCTION

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

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

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

**ATTACHMENT B**  
**Docket No. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 BGS-CIEP Auction**

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

**Table 1. Summary of BGS-CIEP Auction**

	<b>PSE&amp;G</b>	<b>JCP&amp;L</b>	<b>ACE</b>	<b>RECO</b>	<b>Total</b>
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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 BGS-CIEP Auction**

**Table 2. Overview of Findings on BGS-CIEP Auction**

	<b>Question</b>	<b>Comments</b>
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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 BGS-CIEP Auction**

	<b>Question</b>	<b>Comments</b>
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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 BGS-CIEP Auction**

<b>Question</b>		<b>Comments</b>
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. ER19040428**

**POST-AUCTION CHECKLIST**  
**FOR THE NEW JERSEY 2020 BGS-RSCP AUCTION**

Prepared by: \_\_\_\_\_ [Company]

[Introductory comments, if any.]

Auction began with the opening of Round 1 at [x:xx am] on Monday, February 3, 2020

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

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	## tranches	## tranches	## tranches
Eligibility ratio	_____	_____	_____
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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 BGS-RSCP Auction**

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

**Table 1. Summary of BGS-RSCP Auction**

	<b>PSE&amp;G</b>	<b>JCP&amp;L</b>	<b>ACE</b>	<b>RECO</b>	<b>Total</b>
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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 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. ER19040428**

**Post-Auction Checklist for the New Jersey 2020 BGS-RSCP Auction**

<b>Question</b>		<b>Comments</b>
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**  
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**ENERGY**

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

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

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

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

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

## 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. 43:3-57(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 tranches<sup>1</sup> 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

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

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

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

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

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

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

### II. EDC-SPECIFIC STARTING PRICES

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

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

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

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

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

### III. INDICATIVE OFFERS

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

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

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



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

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

### IV. ROUND PRICES AND INDIVIDUAL BIDS

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

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

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

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

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

### V. BIDDER INFORMATION

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

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

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

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

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

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

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

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

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

### Part 1 Application Form:

#### Bidding Agreements

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

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

#### Guarantor's Information

#### Justification for Omissions

### Part 2 Application Form:

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

#### Qualified Bidder's Preliminary Maximum Interest in Each EDC

#### Additional Financial and Credit Requirements

#### Bidder Certifications Concerning Associations and Confidential Information

#### Justification for Omissions

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

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

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

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

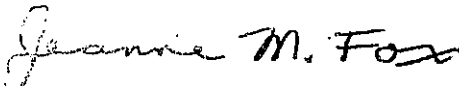
Should a request for the non-public bidder information provided to NERA be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied.

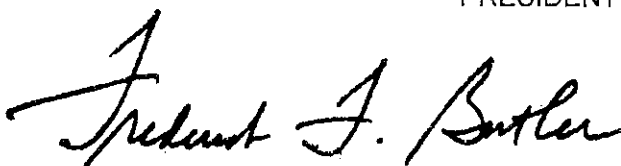
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At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY