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**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC )  
GENERATION SERVICE FOR THE PERIOD ) DECISION AND ORDER  
BEGINNING JUNE 1, 2013 ) Docket No. ER12060485

**Parties of Record**

- Gregory Eisenstark, Esq.**, Morgan, Lewis & Bockius, LLP, on behalf of Jersey Central Power and Light Company
- Chantale LaCasse**, BGS Auction Manager, NERA Economic Consulting
- Mally Becker, Esq.**, Attorney for Public Service Electric and Gas Company
- Philip J. Passanante, Esq.**, Associate General Counsel for Atlantic City Electric Company
- Margaret Comes, Esq.**, Senior Attorney for Rockland Electric Company
- Stefanie A. Brand, Esq.**, Director, Division of Rate Counsel
- Murray E. Bevan, Esq.**, Bevan, Mosca, Giuditta & Zarillo, P.C., on behalf of the Retail Energy Supply Association
- Adam Kaufman**, Executive Director, Independent Energy Producers of New Jersey

BY THE BOARD:

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 20, 2012 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, 2013.

By Order dated June 18, 2012, in the within matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 2, 2012 to determine how to procure the remaining one-third of the State's BGS fixed price ("FP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2013. A procedural schedule to address the proposals was also adopted by the Board at that time, including an opportunity for initial written comments, a legislative-type hearing, and final written comments.

On July 2, 2012, the EDCs filed a Joint Proposal for BGS procurement ("Joint EDC Proposal"), and each EDC also filed a company-specific addendum to the Joint EDC Proposal. A discovery

period followed. Initial Comments on the BGS proposals were filed on August 31, 2012. Final Comments were filed on September 28, 2012.

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

Public hearings were held in each EDC's service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers' rates. ACE's public hearing was held on September 11, 2012; PSE&G's public hearing was held on September 12, 2012; RECO's public hearing was held on September 27, 2012, and JCP&L's public hearing was held on September 27, 2012. Members of the public only appeared at the ACE public hearing.<sup>1</sup>

The Board also held a legislative-type hearing on September 21, 2011 at its Trenton hearing room, chaired by President Hanna. The purpose of the hearing was to take additional comments on the pending proposals.

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

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

#### JOINT EDC PROPOSAL

As previously stated, on July 2, 2012, the four EDCs filed a Joint EDC Proposal for BGS, consisting of a generic proposal for procurement of BGS for the period beginning on June 1, 2013, including proposed preliminary auction rules for the Auctions, SMA and EDC-specific addenda.

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

One Auction would procure service for a one-year period beginning June 1, 2013, for the approximately 3,200 larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service (the "CIEP Auction").<sup>2</sup> The customers in this category represent approximately 3,600 Megawatts ("MW") of load to be procured through bidding

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<sup>1</sup> The South Jersey Workers Benefit Council testified at the ACE public hearing. They raised several issues unrelated to the BGS Auction process or the instant proceeding.

<sup>2</sup> The CIEP threshold was changed 750 kW to 500 kW by Board Order dated June 18, 2012 in Docket No. ER12020150. BGS customers with a Peak Load Contribution ("PLC") of 500 kW or more will be required to take service under a BGS-CIEP tariff or rate.

on 50 full-requirements tranches<sup>3</sup> of approximately 75 MW each.<sup>4</sup> This is the same type of Auction that the Board approved last year in Docket Number EO11040250.

The second auction would procure one-third of the service requirements for all other customers of all four EDCs<sup>5</sup> for a three-year period beginning June 1, 2013, through a fixed-price auction ("BGS-FP Auction") for approximately 5,100 MW of load to be served through 54 full-requirements tranches<sup>6</sup> of approximately 100 MW each. This is the same type of Auction that the Board approved last year in Docket Number EO11040250.

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

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

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

The EDCs proposed that for BGS-CIEP tranches, rate schedules would be designed to include the transmission and ancillary service costs, and a provision to pass through the hourly PJM<sup>7</sup> real-time

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<sup>3</sup> A tranche is a full-requirements product and represents a fixed percentage share of an EDC's load for a specific period.

<sup>4</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 38 MW.

<sup>5</sup> As explained below, this does not include procurement for the RECO customers within the company's territory outside of PJM. A separate procurement plan is proposed for those customers.

<sup>6</sup> The EDCs have previously secured two-thirds of their total FP load requirements through May 31, 2013 by means of Board-approved auctions in February 2011 and February 2012.

<sup>7</sup> PJM, the Pennsylvania-New Jersey-Maryland Interconnection, LLC, is the Federal Regulatory Energy Commission approved regional transmission organization that manages the wholesale competitive

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

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

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

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

- BGS suppliers must meet all New Jersey Renewable Portfolio Standards ("RPS") requirements, and any similar standards imposed under any federal, state or local legislation that may be applicable throughout the respective supply periods;
- as conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS SMA within three business days of Board certification of the results, and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;
- to qualify, applicants must disclose what, if any, bidder associations exist and if so, applicants will provide such additional information as the Auction Manager may require;
- qualified bidders are required to post a per-tranche letter of credit or bid bond; and
- the BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-FP Auction

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energy market, and coordinates the movement of electricity in all or parts of a group of states including most of New Jersey.

secures one-third of each EDC's total load requirements for three years,<sup>8</sup> with the remaining two-thirds having been secured through previous BGS-FP Auctions.

In addition, as in previous years, RECO is proposing a competitive bid process to secure the full service requirements of its Central and Western Divisions commencing June 1, 2013. Specifically, RECO proposes to utilize an auction format to seek separate proposals for (1) energy swap agreements for annual periods commencing June 1, 2013, 2014, and 2015, and (2) a capacity swap agreement for the entire three-year period (i.e., June 1, 2013 through May 31, 2016). RECO anticipates that it will issue an RFP in December 2012 setting forth the details of the auction process and providing potential bidders with the documentation that will be used. As before, one financial swap will pertain to the forecasted capacity requirement and the other financial swaps will pertain to the forecasted energy requirements of RECO's BGS customers located in RECO's Central and Western Divisions. Each of these financial swaps would be for 100% of the energy and capacity requirements of RECO's Central and Western Divisions. RECO will continue to average the RECO RFP price with the RECO BGS-FP prices to determine the rates for RECO customers taking BGS-FP service.

## **DISCUSSION AND FINDINGS**

### **FP and CIEP AUCTION FORMAT**

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2013, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features, and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework and varying procurement periods. The Board's decision at that time was developed after considering all of the comments received. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-FP and BGS-CIEP customers.<sup>9</sup> For the 2003 through 2012 BGS Auctions, the Board continued to approve descending-clock Auctions for the procurement of default service while continuing to adjust certain elements of the process including changing the beginning of the supply period from August to June and expanding the size of the CIEP class.<sup>10</sup>

As previously stated, for the period beginning June 1, 2013, by Order dated June 18, 2012, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-FP and the annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the FP and CIEP customer classes for the period beginning June 1, 2013. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have

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<sup>8</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.

<sup>9</sup> Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

<sup>10</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 and November 11, 2011, Docket No. EO11040250.

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

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

Based on the experience of previous BGS Auctions, and having considered the record which has been developed in this matter, the Board FINDS that, a BGS-FP and BGS-CIEP Auction using a descending-clock Auction format should be used for the procurement period beginning June 1, 2013.

#### BGS-CIEP AUCTION SUPPLY PERIOD

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

#### BGS-FP AUCTION SUPPLY PERIOD

RESA recommends that the Board take what it describes as the next step toward a more robust sustainable competitive retail market by implementing more frequent procurements of shorter term products held closer to the delivery date, rather than extending the current BGS-FP procurement structure. RESA asserts that such a transition will result in more market reflective default service pricing, which RESA posits will benefit customers by ensuring them continued access to a variety of innovative energy products tailored to meet their individual needs. RESA maintains that the current BGS-FP structure, where customers pay for electricity based on a three-year weighted average, can be significantly higher or lower than current market prices for an extended period of time. RESA feels that the current procurement strategy for FP customers serves as a barrier to sustainable retail competition. (RESA Initial Comments at 2).

Rate Counsel maintains that the current BGS-FP service offers customers mitigation of the risk of price volatility through the use of three year laddering and a fixed price offering throughout the term of the contract. Rate Counsel indicates that the three year term provides stability to smaller commercial and industrial customers who are unable to engage in or uninterested in, managing the risk that arises from price volatility. Rate Counsel points out that there has been no evidence in this proceeding that commercial and industrial BGS-FP customers are able to, or want to, manage the volatility of quarterly price swings. Rate Counsel also indicates that there has been no evidence introduced to suggest that residential customers would benefit from the implementation of annual contracts. (Rate Counsel Legislative Hearing Comments at 4).

Rate Counsel argues that it is essential that the process for procuring BGS is managed with the concerns of customers foremost in everyone's mind. Rate Counsel asserts that the process must be administered to assure affordable and stable electricity prices for residential customers with the goal of providing the lowest price for BGS-FP supply with reasonable price stability over the term of the procurement plan for this service. According to Rate Counsel, the driving force

for making any change to the current BGS procurement process should flow from an analysis that demonstrates that a proposed change will result in lower prices for BGS customers. Therefore, Rate Counsel recommends that the Board reject RESA's proposal that the Board abandon the laddered three year BGS-FP contracts in favor of more frequent procurements of shorter term BGS-FP contracts. (Rate Counsel Legislative Hearing Comments at 5).

IEPNJ states that the Board should once again conclude that the benefits to customers' rates and to the rate stability associated with the staggered three-year rolling procurement process outweigh the purported benefits of shorter term contracts of one year or less. IEPNJ argues that market risks and volatility would be placed upon default customers, customers without the ability and/or interest in shopping for electricity or managing such risks and volatility. IEPNJ asserts that the benefit of the three year rolling average would be lost, placing default customers at risk for more severe swings in the price of their electricity. IEPNJ takes issue with RESA's premise that Board rejection of its recommendation will result in a lack of customer choice. IEPNJ argues that there is no lack of customer choice. IEPNJ points out that customers are free to shop for their electricity provider at any time. According to IEPNJ, amending the default service to introduce market volatility in an effort to force more customers to shop hardly seems like a wise policy decision. IEPNJ points out that default service is for customers that do not shop, and that typically such customers are simply unable, unwilling, or uninterested in shopping for an electricity provider. (IEPNJ Final Comments at 3 to 4).

The EDCs request that the Board reject RESA's recommendation to alter the BGS-FP procurement structure. They argue that RESA has not provided new support for its position in this proceeding for shorter procurement periods and, thereby, for fundamental change to the BGS-FP procurement structure. Further, the EDCs point out that while RESA argues a shorter term BGS-FP contract cycle may alleviate a boom and bust cycle for retail suppliers, it is clear that shorter term contracts would also expose smaller commercial and residential customers to this very same boom and bust cycle by exposing them directly to the volatility in the market. (EDCs Final Comments 1 to 2). The EDCs further point out that while market prices have been relatively stable for the past few years, volatile conditions could re-emerge, exposing both residential-FP and commercial-FP customers to the unnecessary risks associated with market volatility should the Board adopt RESA's proposal. According to the EDCs, the current BGS procurement structure protects customers who may not have the necessary expertise or inclination to properly manage the additional risks and the volatile energy prices that are the necessary byproduct of RESA's proposal. The EDCs urge the Board to reject RESA's proposal for more frequent procurements in the absence of a specific showing of benefits that would accrue to New Jersey customers from such a change, evidence that they maintain has not been included here. (EDCs' Final Comments 4 to 5).

Based on the experience of the previous BGS Auctions, and having considered the record which has been developed in this matter, the Board continues to believe that the staggered three-year rolling procurement process currently in use for the BGS-FP Auction provides a hedge to customers in a time of increasing energy and/or capacity prices even though it may make it more difficult for retail suppliers to compete for FP customers in times of rising prices. By way of contrast, as market prices started to come down in wholesale electric markets over the last three years, retail suppliers have been able to be more competitive than the rolling three-year average FP Auction price, and competition appears to have increased. The Board is not convinced that RESA's proposals for pricing based on more frequent auctions for procurement of electricity for shorter periods than the current format would increase retail competition significantly.

Further, the Board agrees with Rate Counsel and the EDCs that there is no evidence presented by RESA that residential customers and small commercial would benefit from the implementation of shorter term procurements or that these customers want to manage the price volatility resulting from shorter term procurements. Staff agrees with Rate Counsel that it is essential that the process for procuring BGS is managed with the concerns of customers foremost in everyone's minds, requiring that the process be administered to assure affordable and stable electricity prices for residential and small commercial customers. Therefore, the goal of the BGS procurement process should be to enable smaller commercial and residential customers to benefit from both a stable yet market-based rate for BGS-FP supply over the term of the procurement plan for this service while still allowing these customers the ability to choose alternative providers. The Board believes the use of the staggered three-year rolling procurement process, ensuring price stability, is a policy decision that has value for those customers who continue to receive BGS service from the EDCs. Therefore, the Board DIRECTS the EDCs to procure the approximate one-third of the EDCs' current BGS-FP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-FP rates for the June 1, 2013 to May 31, 2016 period.

#### CIEP THRESHOLD

While RESA recognizes the significance of the reduction of the CIEP threshold to 500 kW, RESA believes that the threshold should be reduced even further to require all customers with a peak load share of 300 kW and above to be on BGS-CIEP pricing beginning in June 2015. RESA maintains that customers using 300 kW or greater have the necessary expertise and personnel to strategically monitor their energy consumption and make informed decisions about what value-added products and services best fit their particular business needs. RESA argues that when these customers are on BGS-FP service, they do not receive the price signals necessary to incentivize them to conserve energy, shift consumption patterns, or explore energy efficient or renewable alternatives. RESA argues that without sustained access to competition, these customers only have intermittent opportunities to realize the benefits of all the innovative products and services that a competitive market can deliver. Therefore, RESA recommends that the Board further reduce the BGS-CIEP threshold to 300 kW, and provide these customers with ongoing access to a robust sustainable competitive retail market. (RESA Initial Comments at 4 to 5).

Rate Counsel continues to have concerns about the wisdom of forcing mid-sized customers into the BGS-CIEP class in order to bolster competition, especially when these mid-sized customers already have the option to shop or to be served under BGS-CIEP. Rate Counsel points out that further lowering the CIEP threshold only serves to force customers onto an hourly price structure, customers who are unable to deal effectively with hourly prices and who have therefore chosen to remain as BGS-FP customers. Rate Counsel believes that small business owners are in the best position to determine for themselves whether it makes economic sense to switch to a third party supplier, and certainly many have chosen to do so. Rate Counsel argues that the Board should not force customers to make decisions that those customers have decided are not economically reasonable. Rate Counsel, therefore, recommends that the CIEP threshold not be further lowered at this time. (Rate Counsel Legislative Hearing Comments at 5). Further, Rate Counsel submits that there is no particular benefit to be gained by forcing additional customers onto hourly pricing when these customers can voluntarily switch to BGS-CIEP. Accordingly, Rate Counsel also recommends that no further changes be made to the



threshold volume for BGS-FP service until a clear customer benefit has been shown. (Rate Counsel Initial Comments at 4).

IEPNJ recommends that the Board deny the request to lower the BGS-CIEP threshold to 300 kW for the next BGS auction. IEPNJ points out that a competitive market already exists for all customers. IEPNJ asserts that customers at any threshold level, including those under the current BGS-CIEP threshold, are free to choose their electricity suppliers at any time. (IEPNJ Final Comments at 4).

The EDCs join with Rate Counsel in opposing RESA's proposal to further lower the CIEP threshold. The EDCs respectfully submit that action by the Board to commit to a future course of action with regard to CIEP expansion in the absence of input from those customers, Rate Counsel, and other stakeholders and businesses impacted by the current expansion is premature at best. The EDCs point out that the Board has not yet had the opportunity to hear from customers with peak demand of 500 kW to 750 kW, who will experience CIEP pricing for the first time beginning June 2013. (EDCs Final Comments at 5). Furthermore, the EDCs indicate that no party, including RESA, has presented evidence that FP commercial and industrial customers with peak demands between 300 kW and 499 kW would be well-served by being forced to manage the volatility of the hourly priced BGS-CIEP product. Similarly, they further point out that no party has presented evidence that those customers even have the capability to manage pricing on an hourly basis. The EDCs argue that RESA ignores a fundamental reason for the division of customer load into the BGS-FP and BGS-CIEP products. They point out that the division of customers between BGS-FP and BGS-CIEP reflects customers' relative ability to understand and manage price risk, as well as the cost to the customer and the utility of implementing and responding to such a system. The EDCs argue that RESA fails to recognize that the three-year term and fixed price nature of the BGS-FP product provide stability to those smaller commercial and industrial customers unable to engage in, or uninterested in, risk management. (EDCs' Final Comments at 6). Finally, the EDCs assert that RESA incorrectly argues that New Jersey commercial and industrial customers have fewer choices because the CIEP threshold is higher in New Jersey than it is for comparable customers in certain other states. The EDCs note that New Jersey customers in the 300 kW and above range actually have more (not fewer) choices than similarly situated customers in other northeastern states. New Jersey customers can choose BGS-FP, they can choose to opt into BGS-CIEP, or they can obtain service from a TPS. (EDCs' Final Comments at 7).

By Order dated June 18, 2012, In the Matter of the Review of the Basic Generation Service Procurement Process, Docket No. ER12020150 ("BGS Review Order"), the Board concluded that a gradual expansion of the number of customers on hourly pricing, given the record presented in that proceeding, was reasonable, prudent and warranted at that time, and approved RESA's request to lower the CIEP threshold for customers with a peak load share of 500 kW and above. As part of the decision, the Board saw a value in limiting the reduction to those customers with a peak load share of 500 kW and not immediately moving to the 300 kW range as proposed by RESA. Therefore, the Board rejected RESA's request to expand the BGS-CIEP threshold to 300 kW effective for the next BGS procurement. However, the Board, as proposed by RESA, encouraged feedback on the CIEP threshold during future BGS procurement proceedings in order to receive stakeholder input through comments and legislative-type hearings. The Board stated that through these proceedings, it can garner information, inclusive of up-to-date market data, to make an informed decision on any future lowering of the CIEP threshold that is gradual, orderly, and structured to enable a greater number of customers to respond to real-time pricing, possibly using additional conservation and energy efficiency products and services available in the marketplace.

Based on the record in this matter, the Board believes that there has been no evidence presented in this proceeding by RESA or any of the stakeholders that would indicate that further lowering the CIEP threshold to 300 kW is either desired by the relevant customers or will bring net benefits to those customers at this time. The Board continues to believe that a cautious, gradual approach to any expansion of the BGS-CIEP class remains the appropriate policy at this time, and that the appropriate cutoff for mandatory inclusion in the CIEP is a peak load share of 500 kW. Therefore, the Board REJECTS RESA's request to expand the BGS-CIEP threshold to 300 kW and above beginning in June 2015.

Further, for the 2004 through 2012 Auctions, certain C&I FP customers, to the extent they could be identified and metered without a material impact on the BGS Auction process, were permitted to join the CIEP class on a voluntary basis. Voluntary enrollment in the CIEP class should again be permitted for the 2013 Auction with similar constraints. Specifically, the choice must be made in a timely manner and, once made, must be irrevocable for the term of the CIEP contract. Staff recommends that the Board directs the EDCs to work with Staff to develop a process and schedule for identifying and converting non-residential customers that choose to be included in the BGS-CIEP category. The process developed should be based on the foregoing parameters. It should also require a customer commitment, for participation, by no later than the second business day in January 2013. Similarly, those customers that are currently part of the CIEP class on a voluntary basis should have until the second business day in January 2013 to reconsider their decision for the upcoming 2013 Auction.

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

#### ISSUES RELATED TO INTERVAL METERS

Rate Counsel maintains that if the Board wishes to consider further reductions in the CIEP threshold, it should direct that a cost/benefit analysis be performed before those further reductions in the CIEP threshold are made. In the interim, Rate Counsel asserts that the Board should direct the EDCs to provide a full accounting of the costs incurred to install the interval meters and implement necessary software upgrades for customers over 500kw as required by the BGS Review Order. In addition, Rate Counsel requests that the EDCs be directed to provide an accounting of any additional costs associated with the conversion to interval meters, such as any stranded costs, for which the EDCs intend to seek recovery from ratepayers. (Rate Counsel Legislative Hearing Comments at 2 to 3).

As discussed earlier, the EDCs agree with Rate Counsel that the Board should not further lower the CIEP threshold. However, the EDCs respectfully note that the Board has already directed the EDCs to include costs associated with interval meter installation and necessary system enhancements in the context of the EDCs' next rate proceedings. The EDCs point out that those costs, whether or not incurred during the relevant test year, should be reflected, on a pro forma basis, if necessary, in the revenue requirements on which rates will be set in those proceedings. The EDCs assert that interval meters are an integral tool needed by commercial and industrial customers with peak demands between 500 kW and 749 kW to successfully manage the volatility of the hourly priced BGS-CIEP product. While the EDCs recognize that the

costs associated with interval meter installation, including capital, operation and maintenance costs and the cost of billing system enhancements, may be reviewed, the EDCs request that the Board reiterate its direction that issues associated with CIEP-BGS interval metering costs be included in each of the EDCs next base rate case proceedings. (EDCs Final Comments 8 to 9).

As stated above, based on the record in this proceeding the Board has rejected RESA's request to expand the BGS-CIEP threshold to customers with peak loads of 300 kW and above beginning in June 2015. Rate Counsel has recommended that the Board direct that a cost/benefit analysis be performed regarding the installation of interval metering before further expansion of the CIEP class. Since the Board has not chosen to lower the CIEP threshold any further at this time, there is no need at this time for the Board to decide whether to require the requested cost/benefit analysis.

Further, Rate Counsel suggested in the interim that the Board direct the EDCs to provide a full accounting of the costs incurred to install the interval meters and implement any necessary software upgrades for customers over 500kw as required by the BGS Review Order. In addition, Rate Counsel additionally suggests that the Board direct the EDCs to provide an accounting of any additional costs associated with the conversion to interval meters for which the EDCs intend to seek recovery from ratepayers.

The Board agrees with the EDCs that the Board has already directed the EDCs, to the extent that they seek recovery of costs from ratepayers, to include costs associated with the installation of interval meters for customers at 500 kW and above, and any necessary system enhancements, within the EDCs' next base rate proceedings. The Board is its BGS Review Order dated June 18, 2012 directed that the costs associated with interval meter installation, including capital, operation and maintenance costs, and the cost of billing system enhancements, shall be determined in the context of the EDCs' next rate proceedings. The Board further indicated that those costs, whether or not incurred during the relevant test year, should be reflected, on a pro forma basis, if necessary, in the revenue requirements on which rates will be set in those proceedings. Based on the Board's prior decision on this issue, the Board DENIES Rate Counsel's request that in the interim, the Board require the EDCs to provide a full accounting of the costs incurred to install the interval meters and implement necessary software upgrades for customers over 500kw as required by the BGS Review Order.

#### EDCS' BGS ADMINISTRATIVE EXPENSES

According to Rate Counsel, in last year's BGS proceeding, the Board adopted its recommendation that BGS administrative expenses claimed by the EDCs and charged to BGS customers should be subject to additional review. Rate Counsel points out that the Board decided that this review should be undertaken in the context of the EDCs' base rate cases, and accordingly, directed Board staff to examine, as an additional area, the administrative expenses that are being charged to ratepayers relating to BGS in each of the EDC's next base rate cases. Rate Counsel states that it undertook such a review of the BGS administrative expenses within the base rate case filed by ACE on August 5, 2011. In re the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1 and for Other Appropriate Relief, BPU Docket No. ER11080469 ("ACE 2011 base rate case"). Rate Counsel indicates that in the course of this review, Rate Counsel learned that at least one utility is charging internal labor costs through the BGS administration charge. Rate Counsel believes this is inappropriate and could result in double-recovery. Rate Counsel, therefore, recommends that the Board direct the EDCs not to include utility internal labor costs in the BGS administrative

charge collected through tranche fees from BGS suppliers. Instead, Rate Counsel recommends that these costs be recovered solely in base rates to insure that there is no double counting of the utility's internal labor costs. (Rate Counsel Initial Comments at 6)

The EDCs point out that Rate Counsel in its Initial Comments cited the Board's 2012 BGS Order, and noted that the Board specified that BGS administrative expenses claimed by the EDCs and charged to BGS customers should undergo review in the context of a base rate case. The EDCs assert that Rate Counsel now inconsistently recommends that the Board direct the EDCs to take action with regard to these same administrative expenses in the absence of any base rate case review for three of the four electric utilities, and not include internal labor costs in the BGS administrative charge collected through tranche fees charged to BGS suppliers because of the potential for double recovery. The EDCs recommend that the Board reaffirm the direction in its 2012 BGS Order that BGS administrative expenses be reviewed during future base rate cases. (EDCs' Final Comments at 9).

The Board agrees with the EDCs that the Board in its 2012 BGS Order indicated that there should be a review of the administrative expenses that are being charged to ratepayers relating to BGS. The Board indicated that this type of cost review is more appropriately done in the context of a base rate case. Thus, the Board directed Staff to examine, as an additional area in any subsequent base rate case, the administrative expenses that are being charged to ratepayers relating to BGS. Rate Counsel indicates that, in the course of the ACE 2011 base rate case, it learned that at least one utility is charging internal labor costs through the BGS administration charge which Rate Counsel believes is inappropriate, and which could result in double-recovery. Rate Counsel, therefore, recommends that the Board direct the EDCs not to include utility internal labor costs in the BGS administrative charge collected through tranche fees from BGS suppliers.

The Board continues to believe that this type of cost review is more appropriately done in the context of a base rate case. However, in light of the fact that Rate Counsel may have found an instance where an EDC could be charging BGS administrative costs through both the BGS administrative charge collected through tranche fees and through base rates, the Board agrees that there is the potential for double-recovery. To get a better understanding of what type of recovery mechanism the EDCs are employing for BGS administrative costs, the Board DIRECTS the EDCs to submit to staff (with a copy to Rate Counsel) a description of the recovery mechanisms they are using including a description of all of the costs captured within that mechanism. This information should be submitted within 30 days after the conclusion of the 2013 BGS auction, and should include a report detailing how they have been collecting their BGS administrative costs for the most recent 12 months.

#### BGS RPS CALCULATION

RESA states that the new solar act signed into law by Governor Christie on July 23, 2012, exempts existing BGS contracts from the increased solar RPS requirements that exceed what was in effect when those contracts were approved. RESA also notes that prior solar legislation exempted existing BGS contracts from increases in the solar RPS beyond what was required at the time the BGS contract was approved, and that TPS were required to pick up the additional solar RPS which would otherwise have been attributed to the exempted portion of the BGS-FP load. According to RESA, since these contracts all expired by May 31, 2012, the current compliance period for EY 2012 is the last time that TPS will be forced to subsidize the solar requirements of BGS providers. (RESA Legislative Hearing comments at 2).

RESA further points out that the new solar law requires that the newly exempted BGS load be redistributed over non-exempt BGS contracts – in other words, the new contracts which will be signed as part of this BGS procurement process must account for the exempted portion of the BGS-FP load from the previous two auctions. RESA states that the legislation further provides that the Board must implement the provisions of this subsection in a manner that prevents any subsidies between suppliers and providers, and that promotes competition in the electricity supply industry. According to RESA, since this mechanism is entirely different from that used for the compliance periods for EY 2011 and EY 2012, which was calculated and determined after the close of the energy year, and which put the onus for covering the exempt BGS-FP load on the TPS, it is essential to have a mechanism in place to ensure that the prospective BGS providers are given adequate guidance on how to calculate their solar RPS obligation for EY 2014. RESA requests that the Board take immediate action in order to ensure a stable and competitively neutral BGS auction for EY 2014. (RESA Legislative Hearing comments at 2 to 3).

With regards to RESA's comments on the complications of "grandfathering" BGS suppliers from changes in the solar RPS standards, the EDCs and NERA would remind the Board that they work closely with the Office of Clean Energy and with BGS suppliers through the bidder information sessions and the frequently asked questions to ensure that the bidders fully understand the responsibilities they will be assuming with regard to the RPS standards. (EDCs' Final Comments at 8).

From prior experience, the Board agrees that the EDCs and NERA work closely with the Office of Clean Energy and with BGS suppliers through the bidder information sessions and the frequently asked questions to ensure that the bidders fully understand the responsibilities of the RPS standards. While it is expected that new rules will be proposed to establish a revised methodology for allocating the increased solar RPS to providers of non-exempt BGS-FP load, in light of the educational effects undertaken by the EDCs, NERA and Office of Clean Energy, the Board FINDS that there is no need for any immediate action by the Board on this issue.

## CONFIDENTIALITY

The EDCs have requested that the Board approve a confidentiality order as in prior years. The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner, and results in no bidder or bidders having an advantage over any other. From the Board's experience with prior BGS Auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could have the potential to distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage, and/or potentially distort the Auction results. The Board considered and ruled upon Auction confidentiality issues in its December 1, 2004 Order (Docket No. EO04040288). The Board found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These provisions were adopted and applied in subsequent Auctions. The Board FINDS that the confidentiality provisions of its December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and HEREBY APPROVES the same confidentiality provisions for the 2013 BGS Auctions, and incorporates the reasoning and relevant provisions of its December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

## AUCTION PROMOTION/DEVELOPMENT

The Board concludes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction, provided that the rules and details are specified and implemented correctly, and provided that the Auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the Auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps to be undertaken are the following:<sup>11</sup>

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

## BOARD APPROVAL PROCESS

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

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<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 2013 Auction.

<sup>12</sup> Attachment A is labelled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

Based on the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, any additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-FP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-FP Auction and the BGS-CIEP Auction no later than the second business 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 decision that requires Board approval is acceptance of the EDCs' Compliance Filings. Because of the significance of this proceeding, the Board DIRECTS the EDCs to make a Compliance Filing by November 30, 2012. The Board will consider approval of the Compliance Filings at its next scheduled Board meeting thereafter.

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

When the Auctions are complete, the Board will review and consider the results within the time frame set forth above. Prior to Board certification of the results, the Auction Manager will provide a Final Report to the Board on the results of the Auctions and how the Auctions were conducted, including the post-Auction evaluation forms in Attachment B. The Auction Manager will also provide

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<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.



a redacted version of the Final Report, consistent with the confidentiality provisions of this Order, to the EDCs and Rate Counsel. The Board's Auction consultant shall provide a Pre-certification Report to the Board, including completed post-Auction evaluation forms in the form of Attachment B to this Order, prior to Board certification of the results.

### FINDINGS AND CONCLUSIONS

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

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

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

The Joint EDC Proposal, as modified herein, can and should be implemented in a timely fashion so as to secure BGS service for BGS customers beginning June 1, 2013;

There is a BGS Reconciliation stakeholder process currently pending that is examining the methodology and timing of the calculation and collection of that charge. Therefore, approval granted by this Order does not preclude the Board from directing any changes to the EDCs' reconciliation charge methodology as a result of that proceeding.<sup>14</sup>

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2013 period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-FP customers, as well as a portion of the BGS-FP service required for the 2014 and 2015 BGS periods;

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

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

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

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

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

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<sup>14</sup> In the Matter of the Electric Distribution Companies' ("EDCs") Basic Generation Service ("BGS") Reconciliation Charge, BPU Docket No. ER11040250.



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 2013 Auctions;

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

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

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

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

The EDC-specific Contingency Plans are reasonable;

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

Boston Pacific will be the Board's Auction Advisor for the 2013 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Two designees from the Board's Energy Division, the Office of the Economist and its consultant, Boston Pacific, shall observe the Auctions for the Board;

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

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

The Board will consider the results of the BGS-FP Auction and the BGS-CIEP Auction each in its entirety and certify the results of each for all of the EDCs or for none of them no later than the

second business day after the last Auction closes. At its discretion and depending on circumstances, the Board may address one Auction that has closed while the second continues;

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

For RPS compliance purposes, winning bidders in the 2013 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation ("NUG") RECs as would be available to them through the EDCs.

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

Furthermore, the Board DIRECTS that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by November 30, 2012.

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

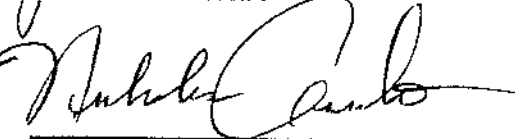
DATED: 11/20/12

BOARD OF PUBLIC UTILITIES  
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ATTEST:  
  
KRISTI IZZO  
SECRETARY

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



**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2013  
Docket No. ER12060485**

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**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2013  
Docket No. ER12060485  
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**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2013  
Docket No. ER12060485**

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**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2013  
Docket No. ER12060485**

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## ATTACHMENT A

### Tentative 2013 Auction Approvals and Decision Process

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

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

<b>Decision point</b>	<b>Decision process</b>	<b>Timing</b>
Joint EDC Filing	EDCs	July 2, 2012
Decision on 2010 Process	BPU	November 16, 2012
Compliance Filing	EDCs	November 30, 2012
Approval of Compliance filing	BPU	Mid December 2012
Final Auction Rules and Supplier Agreements available	AM/EDCs	Mid December 2012
Announce minimum and maximum starting prices	AM/BA	November 16, 2012
Announce Tranche Targets	AM	November 16, 2012
Announce Load Caps	AM/BA	November 16, 2012
Information session for potential bidders	AM/EDCs	November 30, 2012
Review Part 1 applications	AM/BA	December 11-14 2012
Review Part 2 applications	AM/BA	January 10-17, 2013

## ATTACHMENT A

### Tentative 2013 Auction Approvals and Decision Process

Setting of target limit exposure to contingency plan	EDCs/BA	Mid January
Information Session for registered bidders	AM/EDCs	January 22, 2013
Trial Auction	AM	January 24, 2013
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on January 28, 2013, for FP Auction on January 29, 2013
BGS-CIEP Auction starts		February 1, 2013
BGS-FP Auction starts		February 4, 2013
Provide full factual report to Board	AM/BA	Upon competition of FP 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.





**ATTACHMENT B**  
**Docket No. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-FP Auction**

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

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

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

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

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

**ATTACHMENT B**  
**Docket No. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-FP Auction**

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

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

**ATTACHMENT B**  
**Docket No. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-FP Auction**

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

**ATTACHMENT B**  
**Docket No. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-FP Auction**

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

**ATTACHMENT B**  
**Docket No. ER12060485**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY**  
**2013 BGS-CIEP AUCTION**

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Prepared by: [Company].

[Introductory comments, if any]

Auction began with the opening of Round 1 at [x:xx am] on Thursday, February 1, 2013

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. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 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. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 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?	



**ATTACHMENT B**  
**Docket No. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-CIEP Auction**

	<b>Question</b>	<b>Comments</b>
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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?	

**ATTACHMENT B**  
**Docket No. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-CIEP Auction**

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

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

**STATE OF NEW JERSEY**  
*Board of Public Utilities*  
Two Gateway Center  
Newark, NJ 07102  
[www.bpu.state.nj.us](http://www.bpu.state.nj.us)

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

ENERGY

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD.

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

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

- (1) **The Logic Processes and Algorithms:** The auction manager, National Economic Research Associates ("NERA"), uses logic processes and algorithms to foster a competitive auction
- (2) **Starting Prices:** EDC - specific minimum and maximum starting prices and final starting prices in effect during the bidding phase of the first round of the auction. Each EDC, in consultation with Staff, NERA, and the Board's consultant, Charles River Associates ("CRA") sets its own starting prices. The EDC-specific final starting prices are announced to approved bidders only, shortly before the start of the auction.
- (3) **Indicative Offers.** The number of tranches that a qualified bidder is willing to supply at the maximum starting price and the number of tranches a qualified bidder is willing to supply at the minimum starting price. Indicative offers are used to determine

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

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

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

### DISCUSSION

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

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

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

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

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

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

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

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

The Board has approved the use of a descending clock auction process for Year Three. The auction process, at its most basic level, includes three groups of contributors. The first group is made up of the four electric distribution companies the purchasers of the BGS supply, who rely on maximum participation by qualified bidders in order to ensure a competitive procurement for its BGS customers. The second group consists of the qualified bidders or BGS suppliers, which proffer the competitive bids to supply 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 franchises 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*

JEANNE M. FOX  
PRESIDENT

*Frederick F. Butler*

FREDERICK F. BUTLER  
COMMISSIONER

*Connie O. Hughes*

CONNIE O. HUGHES  
COMMISSIONER

*[Signature]*  
JACK ALTER  
COMMISSIONER

ATTEST:

*Kristi Izzo*

KRISTI IZZO  
SECRETARY