



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 3rd Floor, Suite 314**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

ENERGY

IN THE MATTER OF THE PROVISION OF BASIC ) DECISION AND ORDER  
GENERATION SERVICE (BGS) FOR THE PERIOD )  
BEGINNING JUNE 1, 2019 ) DOCKET NO. ER18040356

**Parties of Record:**

**Gregory Eisenstark, Esq.**, Windels Marx Lane & Mittendorf, LLP, on behalf of Jersey Central Power & Light Company  
**Joseph A. Shea, Jr., 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  
**Chantale LaCasse**, BGS Auction Manager, NERA Economic Consulting  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:<sup>1</sup>**

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 19, 2018 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, 2019.

By Order dated April 25, 2018, in this matter, the Board directed the electric distribution companies ("EDCs") consisting of Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO"), and invited all other interested parties, to file proposals by July 2, 2018 to determine how to procure the remaining one-third of the State's BGS requirements for residential and small commercial customers ("RSCP") and the annual Commercial and Industrial Energy Pricing ("CIEP") requirements for the period beginning June 1, 2019. 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.

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<sup>1</sup> Commissioner Robert M. Gordon recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

On June 29, 2018, 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 September 5, 2018. Final Comments were filed on October 12, 2018.

The Board also held a legislative-type hearing on September 28, 2018 at its office in Trenton, NJ, chaired by President Fiordaliso. The purpose of the hearing was to take additional comments on the pending proposals.

Parties that filed either a proposal, comments, or appeared at the legislative hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates ("NERA"), the New Jersey Division of Rate Counsel ("Rate Counsel"), Exelon Generation LLC ("ExGen"), Hartree Partners, LP ("Hartree"), Direct Energy Business, L.L.C, Direct Energy Business Marketing, L.L.C, Direct Energy Services, L.L.C., Gateway Energy Services Corporation and NJR Retail Services Company (collectively, "Direct Energy"), the Retail Energy Supply Association ("RESA") the Independent Energy Producers of New Jersey ("IEPNJ"), and the New Jersey Business & Industry Association.

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. RECO's public hearing was held on September 12, 2018; PSE&G's public hearing was held on September 13, 2018, ACE's public hearing was held on September 18, 2018, and JCP&L's public hearing was held on September 25, 2018.

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

The Board has carefully reviewed the record in this proceeding. The parties' filings have largely relied on previous auctions and on the Joint EDC Proposal as the baseline for proposing specific modifications and/or additions. This Order summarizes 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. Although this Order does not separately summarize each party's position in detail, the Board has carefully reviewed each party's proposals and positions before rendering this decision.

#### JOINT EDC PROPOSAL

On June 29, 2018, New Jersey's 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, 2019, including proposed preliminary auction rules for the auctions, Supplier Master Agreement ("SMA") and EDC-specific addenda.

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

The first Auction would procure service for a one-year period beginning June 1, 2019, for the larger Commercial and Industrial ("C&I") customers on the EDCs' systems through an auction to provide hourly-priced service (the "CIEP Auction"). The customers in this category represent approximately 3,000 Megawatts ("MW") of load to be procured through bidding on an expected 41 full-requirements tranches of approximately 75 MW each.<sup>2 3</sup> This is the same type of Auction that the Board approved on November 21, 2017 in Docket Number ER17040355.

The second Auction would procure one-third of the service requirements for all other customers of the state's four EDCs for a three-year period beginning June 1, 2019. This Residential and Small Commercial Pricing Auction ("BGS-RSCP Auction") will be for approximately 4,800 MW of load to be served through 54 full-requirements tranches of approximately 100 MW each.<sup>4 5</sup> This is the same type of Auction that the Board approved on November 21, 2017 in Docket No. ER17040355.

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 RSCP Auction Rules, respectively), and is the same type of auction process that the Board has approved for each of the past seventeen 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 set prices at that point in the Auction. In the BGS-RSCP Auction, a price for an EDC is the amount in cents per Kilowatt-Hour ("kWh") to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in dollars per Megawatt-Day (\$/MW-day) paid for the capacity obligation associated with the BGS-CIEP customers served. A tranche of one product (i.e., a tranche of the BGS load for one EDC) is a full requirements (capacity, transmission, energy, ancillary services, etc.) tranche. At the end of the Auctions, the final prices for the EDCs' tranches may be different because of differences in the products, due to each EDC's load factor, delivery location and other factors.

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

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

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<sup>2</sup> A tranche is a full-requirements product and represents a fixed percentage share of an EDC's load for a specific period.

<sup>3</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 56 MW.

<sup>4</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>5</sup> The EDCs have previously secured two-thirds of their total RSCP load requirements through May 31, 2020 by means of Board-approved auctions in February 2017 and February 2018.

The EDCs proposed that for BGS-CIEP tranches, rate schedules would be designed to include the transmission and ancillary service costs, and a provision to pass through the hourly PJM Interconnect, LLC ("PJM") real-time energy price. Bidders would indicate how many tranches they want to supply in exchange for a \$/MW-day capacity payment and various other payments for energy, ancillary services and transmission which would be known in advance of the Auction. Under the EDCs' proposal, winning bidders would also receive a Standby Charge of \$0.00015/kWh. The Standby Charge would essentially act as an "option fee." The capacity payment would be charged to all CIEP customers on BGS service, while the Standby Charge would be charged to all customers in the CIEP service category whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided for customers taking BGS-CIEP service plus the Standby Charge rate 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-RSCP) served by that supplier. In accordance with the PJM Agreements required of LSEs, BGS suppliers would be physically and financially responsible for the day-to-day provision of electric supply for BGS customers. The detailed commercial terms and conditions, under which the BGS supplier would operate, including credit requirements, are set forth in the CIEP and RSCP SMAs attached to the 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 its entirety the results of the BGS-RSCP Auction and, separately, the results of the BGS-CIEP Auction, by the end of the second full business day after the calendar day on which the last of the two Auctions closes. The EDCs also recommended that the Board clarify that, at its discretion, it may act on one completed Auction while the second is still ongoing. Upon Board approval, the Auction results would be a binding commitment on the EDCs and winning bidders.

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

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

- BGS suppliers must meet all New Jersey Renewable Portfolio Standards ("RPS") requirements, and any similar standards imposed under any federal, state or local legislation that may be applicable throughout the respective supply periods;
- As conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS SMA within three business days of Board certification of the results, and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;
- To qualify, applicants must disclose what, if any, bidder associations exist and if these associations exist, applicants will provide such additional information as the Auction Manager may require;

- Qualified bidders are required to post a per-tranche letter of credit or bid bond; and
- The BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-RSCP Auction secures one-third of each EDC's total load requirements for three years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions.<sup>6</sup>

### RECO REQUEST FOR PROPOSAL

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

With regard to the purchase of energy, in the Board's November 21, 2017 Order in Docket No. ER17040335, the Board approved a Request for Proposal ("RFP") process for RECO to solicit competitive bids from qualified bidders for fixed energy supply prices for BGS customers in RECO's Central and Western Divisions, commencing June 1, 2018. On January 30, 2018, RECO conducted its RFP. As a result of the RFP, RECO entered into a three year Fixed for Floating Energy Swap contract with Shell Trading Risk Management, LLC for the period June 1, 2018 through May 31, 2021. The Board approved this RFP result in its February 8, 2018 Order in ER17040335. The RFP price will be rolled into RECO's BGS auction price to develop a weighted average BGS-RSCP price for the period June 1, 2019 through May 31, 2020. Therefore, RECO indicated that it did not need to conduct an energy RFP for the 2019 BGS auction.

With respect to the procurement of capacity, on August 16, 2013, the Federal Energy Regulatory Commission ("FERC") approved the creation of a new capacity market zone in the Lower Hudson Valley region encompassing NYISO Load Zones G, H, I, and J in FERC Docket Number ER13-1380. Lower Hudson Valley capacity is not actively traded, and the Company does not expect the above to change before the BGS Auction. As a result of the capacity market changes at the NYISO noted above, RECO will purchase the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market and will blend its forecast of those prices into the BGS-RSCP price. This is the same proposal approved by the Board in its Order on November 21, 2017 in Docket No. ER17040355. The impact of these capacity purchases are expected to be minimal because the Company's Central and Western Divisions constitute only about ten percent of the Company's BGS load.

### DISCUSSION AND FINDINGS

#### RSCP and CIEP AUCTION FORMAT

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2019, 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. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP

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<sup>6</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.

customers.<sup>7</sup> For the 2003 through 2018 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>8</sup>

As previously stated, for the period beginning June 1, 2019, by Order dated April 25, 2018, the Board directed the EDCs and invited all other interested parties to file proposals to determine how to procure the remaining one third of the EDCs' BGS-RSCP requirements and annual CIEP requirements. Specifically, the Board afforded an opportunity for parties to file alternatives to be considered by the Board on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2019. At this time, while the Board is again presented with recommendations to modify certain elements of the Auction process, there have been no fully developed, concrete proposals to change the basic descending-clock Auction design. The Board believes that the Auction process that was implemented with the 2002 Auction, and which has since been modified to include a BGS-RSCP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive comments and criticism to improve on a process that is important to all of the EDCs' 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 consistent with market conditions. N.J.S.A. 48:3-57(a)(1). The Board will address the issues raised by the various parties during the proceeding in this Order.

Based on the experience of previous BGS Auctions, and having considered the record that has been developed in this matter, the Board **FINDS** that the EDC proposed BGS-RSCP and BGS-CIEP Auctions, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2019.

#### 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-RSCP AUCTION SUPPLY PERIOD

IEPNJ recommended that the Board continue the historically successful BGS auction structure, as proposed by the EDCs. It is IEPNJ's position that the three year BGS auction structure strikes the appropriate balance to hedge against price spikes, while minimizing future risk to

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<sup>7</sup> Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

<sup>8</sup> Board Orders dated December 2, 2003, Docket No. EO03050394; December 1, 2004, Docket No. EO04040288; December 8, 2005, Docket No. EO05040317; December 22, 2006, Docket No. EO06020119; January 25, 2008, Docket No. ER07060379; January 20, 2009, Docket No. ER08050310; December 10, 2009, Docket No. EO09050351; December 6, 2010, Docket ER10040287; November 11, 2011, Docket No. EO11040250; November 20, 2012, Docket No. ER12060485; November 22, 2013, Docket No. ER13050378; November 24, 2014, Docket No. ER14040370; November 16, 2015, Docket No. ER15040482; October 31, 2016, Docket No. ER16040337, and November 21, 2017, Docket No. ER17040335.

suppliers that would occur under contracts of a longer term. IEPNJ believes that a three year term allows the suppliers bidding into the BGS auction to rely on several known variables when preparing their bids. IEPNJ points out that knowing these values reduces the risk to suppliers, thereby helping to keep their bid prices reasonably low. IEPNJ indicates that the averaging of the contracts entered over the course of three years provides stability to customer rates. It is IEPNJ's belief that the current three year structure addresses the appropriate goal of protecting consumers from price volatility in the energy markets. As a result, based on the success of this structure over the last decade, IEPNJ strongly endorses the continuation of the BGS auction structure. (IEPNJ's Legislative Hearing Comments at 2).

In its Final Comments submitted to the Board, NJBIA stated that it supported continuing the BGS auction structure as proposed by the EDCs. (NJBIA Final Comments at 1).

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-RSCP Auction provides a hedge to customers in a time of extreme weather events that impact prices as New Jersey has experienced recently, volatile energy prices and the potential of increasing capacity prices, even though it may make it more difficult for retail suppliers to compete for RSCP customers in times of rising prices. By way of contrast, as market prices started to come down in wholesale electric markets over the last several years, TPS have been able to be more competitive than the rolling three-year average RSCP Auction price.

The Board believes that the goal of the BGS procurement process should be to enable smaller commercial and residential customers to benefit from both a stable yet market-based rate for BGS-RSCP supply over the term of the procurement plan for this service while still allowing these customers the ability to choose alternative providers. The Board further believes that 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-RSCP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-RSCP rates for the June 1, 2019 to May 31, 2020 period.

#### PROPOSED SMA CHANGES

In the current filing, the EDCs did not propose modifications to the terms of the SMAs currently utilized.

In their Initial Comments, both Hartree and ExGen recommended a change to the treatment of charges for Firm Transmission Service as set forth in Section 15.9 of the existing and proposed SMAs. According to Hartree and ExGen, the current mechanism is untenable for BGS suppliers and New Jersey ratepayers as it creates uncertainty regarding the recovery of Schedule 12 transmission costs where significant and unexpected changes to the allocation of transmission costs are ordered by the Federal Energy Regulatory Commission ("FERC") and implemented by PJM. (Hartree Initial Comments at 1; ExGen Initial Comments at 1). Hartree and ExGen stated that under the current mechanism, suppliers have faced large shortfalls between the PJM collected firm transmission charges and the portion of payments made to suppliers related to these transmission specific costs, resulting in total non-reimbursed costs of approximately \$125 million since June 2017. Hartree and ExGen further state that the situation is worsening as the shortfall is

growing at a rate of over \$21 million per month. (Hartree Initial Comments at 1; ExGen Initial Comments at 1). Hartree and ExGen assert that absent the requested change in treatment, suppliers will be exposed to financing costs on the mismatch between the PJM payable and potential utility payments, which leads to the need for higher risk premiums and lower supplier participation rates in BGS auctions due to uncertainty about these non-market related costs.

Hartree and ExGen assert that the SMA should be amended to provide a transparent and direct solution that allocates these non-market related costs appropriately to the parties best able to carry such costs, the EDCs, effectively removing the firm transmission rate component from the BGS auction clearing price. According to Hartree and ExGen, such an amendment would allow suppliers to focus on market related costs and eliminate risk premiums related to supplier projected shortfalls of non-market related costs. In support of their position they cite precedent in many other competitive supply auction processes. (Hartree Initial Comments at 2; ExGen Initial Comments at 2).

Hartree and ExGen further claim that an amendment along the lines discussed above would not limit the Board's ability to contest transmission cost allocations and protect New Jersey's ratepayers from unjust allocations of Schedule 12 transmission costs. The BPU has expressed concern that any reimbursements to BGS suppliers would have to be returned by those same suppliers at a later date pending PJM tariff changes or FERC commission rulings that yield a more favorable cost allocation to the rate payers of New Jersey. Hartree and ExGen assert that by automatically passing charges and credits directly to the applicable EDC with no intervention on the part of BGS suppliers, the BPU retains full control over changing the refund and collection mechanism should FERC or PJM tariff changes yield a different cost allocation to the rate payers of New Jersey. (Hartree Initial Comments at 2; ExGen Initial Comments at 2).

Hartree and ExGen state that this solution could also be easily implemented with existing BGS supply contracts through a simple amendment, thereby reducing any challenges to participation by existing suppliers in future BGS auctions. According to Hartree and ExGen, the proposed solution would ultimately improve competitiveness in future BGS auctions thereby benefiting ratepayers as more suppliers will be willing to participate if they have reduced uncertainty about significant FERC and/or PJM changes to existing transmission project cost allocations. (Hartree Initial Comments at 2; ExGen Initial Comments at 2).

At the Legislative Type hearing held on September 28, 2018 and in its Final Comments, Rate Counsel stated that it could not support the proposal made by Hartree and ExGen because letters do not provide the necessary information for the Board to sufficiently analyze this issue or to understand its cause. (Rate Counsel Legislative Hearing Comments at 2; Rate Counsel Final Comments at 3). Rate Counsel further stated that it has long been its position that BGS suppliers have the available resources and influence to change these large increases and FERC rulings. Rate Counsel believes that the pass through of transmission rate increases to BGS customers removes any incentive for suppliers to use their resources to challenge transmission rate increases. Rate Counsel has argued in the past that the Board should eliminate this pass through. (Rate Counsel Legislative Hearing Comments at 2 to 3). Accordingly, Rate Counsel states that without greater information on the issue and identification of the steps suppliers have taken or can take to resolve it, their requested change should not be adopted. (Id. at 3).

In their Final Comments, the EDCs joined with Rate Counsel in opposing the recommendation to remove transmission from the BGS product. The EDCs believe that requiring the EDCs to become responsible for all transmission service could distort the retail market because BGS suppliers would not be providing this service while TPSs are responsible for procuring transmission service.

(EDC Final Comments at 4). Moreover, the EDCs state that the approach embodied in Section 15.9 has resulted in an effective process that not only results in a competitively-determined, market-based BGS supply, but also serves to maintain the appropriate separation between the EDCs and the provisions of BGS, as contemplated by the Electric Discount and Energy Competition Act. (Ibid.)

Nevertheless, the EDCs also expressed concern that participation in the BGS Auctions may be negatively impacted by the current treatment of certain transmission-related charges. According to the EDCs, the first issue faced by BGS suppliers is that, from their perspective, Section 15.9 is not a "pass through" and does not assure "guaranteed recovery". The EDCs state that under the Board's current practice, that only after the issuance of a final FERC Order that is not subject to refund may the EDCs begin collecting the incremental transmission-related costs, along with the Board's ability to approve collection but not payment to BGS suppliers, BGS suppliers may not view their recovery of such costs as being certain or guaranteed. (Id. at 5).

During the proceeding for the 2018 BGS Auction, the EDCs proposed amendments to Section 15.9 to address the issue of the timing of reimbursement of BGS suppliers for transmission-related increases. The Board, in its November 21, 2017 Order rejected this proposal stating that "consistent with the currently-approved language, the EDCs can, and have, petitioned the Board for authority to begin collecting and paying such charges absent a Final FERC Order on a case by case basis." The EDCs submitted that, rather than considering the drastic and unnecessary change in the very structure of the BGS Auction that Hartree/ExGen proposed, the Board could instead use its discretionary authority to approve both the EDCs' collection of transmission-related increases (or decreases) and reimbursement (or charge) to BGS suppliers prior to the issuance of a Final FERC Order in appropriate circumstances. The EDCs maintain that allowing the EDCs to reimburse BGS suppliers before the issuance of a Final FERC Order not subject to refund would address the Hartree/ExGen concern regarding the potential impact on auction participation and would reduce risk premiums in supplier bids related to the uncertainty of reimbursement for transmission costs, while maintaining the BGS auction structure. (Id. at 6).

In its Final Comments, ExGen continued to request a modification to the treatment of charges for Firm Transmission Services as set forth in Section 15.9 of the SMAs. ExGen stated that alternatively, if the Board is not prepared to adopt the pass-through approach offered by ExGen, it requested that the Board modify Section 15.9 to streamline the list recovery process, to reduce the delay before suppliers are reimbursed for these costs and mitigate the need for suppliers to add price risks associated with these charges into their BGS bids, thereby benefiting customers. (ExGen Final Comments at 1 to 2).

ExGen further argued that given the magnitude of the transmission charge increases that suppliers are facing as a result of Opinion No. 494<sup>9</sup>, and other cost allocation proceedings, the process for passing through these charges under Section 15.9 is no longer adequate. (Id. at 4). ExGen asserts that it is possible that some parties will seek to appeal the May 2018 Order and it therefore could be years before all avenues of relief have been exhausted causing BGS suppliers to pay a significant amount to PJM for charges that they may not be able to recovery from EDCs for years. (Ibid.)

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<sup>9</sup> See , e.g., PJM Interconnection, LLC, Order on Contested Settlement, 163 FERC ¶168, Docket No. E05-121-009 (May 31, 2018) ("May 2018 Order")

ExGen maintained that given the unsustainable burden that the 494 Proceedings have placed on BGS suppliers and the prospect of future proceedings with similar timelines, if the current process under Section 15.9 of the SMA remains in place, suppliers will have no choice but to price this type of regulatory risk into upcoming BGS auction offers. (Id. at 5).

In its Final Comments, RESA also expressed concern with the rising cost of firm transmission and the impact on its customers stating that according to the FERC-approved settlement, Transmission Enhancement Charges ("TECs") will be billed to the State's four EDCs in a combined amount of \$2.7 million per month for the next seven (7) years. (RESA Final Comments at 2). While RESA sympathizes with Hartree and ExGen, it submits that allowing transmission charges to be passed through to ratepayers on behalf of the BGS providers, while simultaneously requiring TPSs to shoulder these costs without a similar pass through mechanism, would have a dramatic negative effect on the competitive marketplace. (Ibid.)

RESA also commented on the Hartree/ExGen suggestion to amend the existing BGS SMAs, executed in previous years to allow this pass through of costs on a pro hoc basis. RESA stated that they are unable to quantify the financial harm to TPSs if previously-executed SMAs were changed to remove these costs from the BGS auction price. RESA submits that the impact on the competitive market in New Jersey would be unprecedented and urges the Board to reject the Hartree/ExGen proposal. (Ibid.)

In the alternative, if the Board does not outright reject the Hartree/ExGen proposal, RESA asserted that the Board could require the EDCs to pass through TECs and other non-market based charges, including Network Integration Transmission Service charge and the PJM Deactivation Charges (also known as Reliability Must Run or "RMR") on behalf of both BGS providers and TPSs. (Id. at 3).

By letter dated October 17, 2018, Rate Counsel supplemented its Final Comments in response to the inclusion of a new proposal in Final Comments filed by the EDCs and ExGen. Rate Counsel asserted that the Board should reject the proposals to modify the SMA. (Rate Counsel October 17 Letter at 1). Rate Counsel maintained that it addressed this same proposal when it was raised by the EDCs in their July 2017 filing. At that time, Rate Counsel urged the Board reject the proposal based on the concerns that excess payments made to BGS suppliers would not be returned to ratepayers in a timely manner, if at all. (Id. at 3). Rate Counsel pointed out that the Board rejected the proposal in its November 21, 2017 Order. Rate Counsel also took issue with the timing of ExGen and the EDCs modification proposal. Rate Counsel believes that the failure of the EDCs and ExGen to reveal the proposed modification at the legislative hearing violates the spirit if not the letter of the Board's directive that "Final Comments should only be used to respond to issues raised in the Initial Comments, issues raised at the legislative-type hearing or questions raised by Board Staff as part of this matter." (Id. at 4).

While understanding the concerns raised relate to this issue, the Board is not persuaded that any modifications to the SMA are necessary at this time. The current construct of Section 15.9 of the SMA allows the collection and recovery of the transmission related costs once a Final FERC Order has been issued. The Board's December 22, 2006 Order<sup>10</sup> at page 12 states, "Section 15.9 further provides that if, during the term of the SMA, a filing is made with the FERC to increase the rates for Firm Transmission Services, the EDCs will seek approval from the Board to increase the rates charged to BGS Customers by the amount of such rate increase for

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<sup>10</sup> In re the Provision of Basic Generation Service for the Period Beginning June 1, 2007, BPU Docket No. EO06020119, Order dated December 22, 2006.

Firm Transmission Services. Upon receipt of Board approval for the increase in the rates charged to BGS Customers, the EDCs will begin collecting the increase from BGS Customers, tracking that portion of the rates charged to BGS Customers attributable to the rate increase, and retaining such tracked amounts for the ultimate benefit of the BGS Suppliers. Upon approval by the FERC of a proposed rate increase, in a Final FERC Order not subject to refund, the EDCs would increase rates, by the amount approved by the Board, the BGS-FP auction price paid to BGS-FP Suppliers, and the BGS-CIEP Transmission Charge paid to BGS-CIEP Suppliers, and would pay each BGS Supplier, in proportion to its BGS Supplier Responsibility Share, the amounts tracked and retained for the benefit of BGS Suppliers until the date final FERC approval was received.”<sup>11</sup>

As has been recent experience, there have been times where PJM reallocations have been implemented prior to the receipt of a Final FERC Order. Consistent with the currently-approved language, the EDCs can, and have, petitioned the Board for authority to begin collecting and paying such changes absent a Final FERC Order on a case by case basis. The EDCs continue to retain this right going forward and may bring additional requests before the Board. The Board **FINDS** that the current construct provides a balance between the protection of ratepayers and the concerns of BGS suppliers regarding risk, while allowing the Board discretion on a case by case basis. Accordingly, the Board **HEREBY REJECTS** the proposed modifications to Section 15.9 of the SMAs proposed by the EDCs and ExGen as well as the proposal made by Hartree and ExGen.

#### PROPOSED DECREMENT FORMULA CHANGES

The decrement functions are formulas that determine the percentage change of the auction price from one round to the next on the basis of the excess supply for each EDC. In their joint proposal, the EDCs proposed to change the shape of the decrement function from a linear function to a stepwise function for PSE&G, JCP&L, and ACE (RECO already has a stepwise function for its decrement). This is the same change that was proposed and approved for the BGS-CIEP Auction in 2018 and the EDCs believe the proposal would harmonize the approach across the two Auctions. The stepwise functions, which are described in detail in the BGS-RSCP Auction Rules, closely approximate the final decrement formulas used for the 2018 BGS Auctions. These decrement functions are expected to serve their main purpose, namely to ensure that the Auction is paced appropriately, with price decreases sufficiently large when excess supply is abundant and price levels are above those consistent with the market, and with smaller price decreases as the Auction nears its end and prices approach bidders' valuations. These functions are easier for bidders to understand. Furthermore, the use of the stepwise functions for the larger EDCs, which was done for the first time in the 2018 BGS-CIEP Auction, has shown that stepwise functions minimize departures from efficient relative prices over the course of the auction. This occurs because the prices for different EDCs are more likely to decrease by exactly the same percentage from one round to the next, keeping relative prices more stable and closer to their efficient levels. Finally, these decrement functions provide less information to bidders about the excess supply of a given EDC. Less information of this type means that bidders are more likely to switch and generally change their bids considering only their valuations rather than also taking into consideration their impact on the excess supply and the price of any particular EDC. While this last benefit is more important in the BGS-CIEP Auction where a bidder controls a larger number of tranches because of the 45% statewide load

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<sup>11</sup> The Board notes that there may be increases or decreases in firm transmission costs. The EDCs are required to file with the Board for approval of increases or decreases.

cap, it is still anticipated to promote competition in the BGS-RSCP Auction and favor auction results that yield efficient market prices, to the benefit of ratepayers.

Having given consideration of the EDCs' proposal and past practice, the Board **FINDS** that approval of the proposed change in the decrement formula for the BGS-RSCP would promote competition and be beneficial to ratepayers. The proposed modification is based on observations from the past several auctions and is projected to improve the process. Accordingly, the Board **HEREBY APPROVES** the EDCs' proposal to modify the decrement formulas for the BGS-RSCP Auction.

#### ADMINISTRATIVE COSTS

In its comments submitted at the Legislative Hearing, Direct Energy stated that the EDCs do not include all costs of providing default service in the BGS prices that are charged to retail customers. (Direct Energy Legislative Hearing Comments at 1). Direct Energy further stated that under widely accepted accounting principles and standard business practices, indirect or shared costs are allocated among different functions or segments of an organization. However, according to Direct Energy, the EDCs do not allocate such costs to BGS, but rather allocate all of these costs to their distribution business. (*Id.* at 1 to 2). Direct Energy asserted that, as a result, the EDCs' BGS prices are understated and the corresponding distribution charges are over-stated. Direct Energy believes this is a significant barrier to the development of the competitive retail electric market because competitive retailers are forced to compete with artificially low prices charged for BGS. (*Id.* at 2).

Direct Energy proposed the use the revenues collected by the distribution and default service sides of each EDC's business be placed in BGS rates to arrive at an equitable reallocation of what are currently classified as distribution costs to BGS. Specifically, Direct Energy seeks to remove the subsidies from the distribution business that incentivize the customers to stay on these basic services, a result that Direct Energy purports harms the competitive market, harms customers and results in an over-consumption of energy. Direct Energy states that its proposal does not in any way impact the amount of money collected from ratepayers, nor does it in any way impact the price of commodity supply offered and procured in the BGS auction. Direct Energy further argues that without changes in the way that BGS prices are set, New Jersey will not realize the full benefits of the electric retail market that were envisioned when the Electric Discount and Energy Competition Act of 1999 ("EDECA") was enacted. (*Ibid.*)

According to the comments Direct Energy submitted at the Legislative Hearing, Direct Energy has identified a significant failure of the EDCs' rate design methodologies to properly reflect all of the costs that are incurred by them to provide BGS. Direct Energy claims that a review of each EDC's proposed rate design methodology states that the only costs that are recovered through the BGS price are energy charges, capacity charges, transmission charges and reconciliation charges. Direct Energy argues that the EDCs are omitting from the equation significant amounts of internal management or retail service-related costs that are necessarily incurred to provide BGS, which has the result of understating the price for default service. (*Id.* at 5 to 6).

Direct Energy believes that for cost allocation purposes for each EDC, the BGS business should be treated as a division or unit that is functionally separate from the distribution business, with all direct costs and an appropriate level of indirect or shared costs allocated to it and recovered from BGS customers. Specifically, Direct Energy states that the specific cost categories that need to be allocated to the BGS side of the businesses are related to the headquarters,

services, meters, general plant, common plant, intangible plant, rents, customer care and collections, billing, advertising, sales, insurance, injuries, administrative and general, employee benefits, working capital and taxes other than income taxes. Direct Energy believes it is appropriate for the EDCs to recover some level of these costs through BGS prices because their BGS businesses would not be sustainable if these resources were not utilized to support the business. (Id. at 6 to 7).

Direct Energy further argues that because no non-commodity costs are allocated to the BGS business the pricing incongruity gives EDCs an undisputable anti-competitive cost advantage when servicing retail electric customers and leads to several problems for customers, including not receiving accurate price signals which incentivizes over-consumption of energy and not receiving information to accurately or meaningfully compare the prices and services of TPSs. (Id. at 7 to 8).

In its Final Comments, Direct Energy provided additional information related to the administrative cost issue. Direct Energy asserted that by modifying the BGS price structure to reflect the full costs incurred by EDCs to provide default service, the Board can begin to rectify the problems created by the EDCS' failure to allocate sufficient costs to BGS and improperly using distribution revenues to subsidize this service. (Direct Energy Final Comments at 3).

As to the magnitude of the costs that Direct Energy claims are being improperly allocated to distribution service, Direct Energy stated that it fully examined this issue in the distribution base rate proceeding filed by PSE&G in BPU Docket Nos. ER18010029 and GR18010030. In that proceeding, Direct Energy proposed the same methodology using revenues to allocate costs to the BGS. In its Direct Energy estimated that the BGS business is approximately the same size as PSE&G's electric distribution business. Direct Energy estimated that approximately \$118.9 million should be reallocated from distribution service to BGS for the residential class. (Id. at 3 to 6). For the commercial class, Direct Energy calculated that approximately \$71.2 million should be reallocated from distribution service to BGS. (Id. at 6).

In its Final Comments, Rate Counsel stated that it believes the issue of the allocation of indirect costs is an issue more properly raised in the BGS audit proceeding rather than this BGS Auction proceeding. As noted by Rate Counsel, the Board adopted Rate Counsel's recommendation for an audit of the BGS administrative costs that are included in BGS rates. That audit report was released for comment on the August 29, 2018. (Rate Counsel Final Comments at 5). Accordingly, Rate Counsel asserted that Direct Energy's comments more properly belong in the Board's ongoing audit proceeding. (Ibid.)

Similarly, in the EDCs' Final Comments, the EDCs noted that EDECA provides that "the charges assessed to customers for basic generation service shall be regulated by the [B]oard and shall be based on the reasonable and prudent cost to the utility of providing such service, including the cost of power purchased at prices consistent with market conditions by the electric public utility in the competitive wholesale marketplace and related ancillary and administrative costs, as determined by the [B]oard." N.J.S.A. 48:3-57(a)(1). Accordingly, the EDCs asserted that contrary to Direct Energy's broad proposal for a formula-based allocation of enterprise-wide costs to BGS charges, the applicable provision of EDECA only allows BGS charges to include power purchase costs and those costs that are "related ancillary and administrative costs." (EDC Final Comments at 10 to 11). The EDCs further argued that the BGS audit proceeding is the proper forum for an examination of the EDCs' administrative costs, not the BGS [Auction] proceeding. (Id. at 11).

The EDCs asserted that Direct Energy's characterization of the EDCs' BGS obligation is incorrect and it should not be considered a "business" that is "functionally separate" from other obligations of the EDCs. Instead, the EDCs maintained that BGS is an obligation to provide a non-competitive default services that is imposed on the EDCs by EDECA that specifically requires that charges to customers can only include "related ancillary and administrative costs." (Id. at 11 to 12). The EDCs stated that, in fact, costs that are reasonably and appropriately considered "related ancillary and administrative" costs are currently included in BGS costs, including the common costs incurred by the EDCs related to conducting the annual BGS auction (including the costs of the BGS Auction Manager and the Auction Manager's office space, common legal fees, and others). Additionally, ACE allocates the BGS labor functions related to power purchasing, contract administration, daily mark-to-market monitoring, Renewable Portfolio Standards ("RPS") reporting, credit evaluations, and billing to the BGS. (Id. at 12).

With respect to Direct Energy's argument that changes are necessary in order to promote the development of the competitive retail market and to ensure that customers are receiving proper price signals, the EDCs maintained that Direct Energy's presumptions are incorrect. Along with the obligation to provide a BGS default service option for its customers, EDCs are required to provide the systems, processes, and resources to enable its customers to receive service from TPSs, and to support TPSs directly by including TPS charges in the EDCs' bills. These activities and services require that the EDCs incur a similar, if not greater, level of costs compared to the costs associated with the BGS obligation. These TPS-related costs are presently included in the EDCs' distribution rates. (Id. at 12 to 12). If these (EDC-specific) costs related to BGS are allocated to BGS rates, but similar categories of costs related to the EDC's retail access obligation are not similarly charged directly to TPSs (or directly to their customers), the EDCs purport that Direct Energy's proposal would actually create the incomparable scenario that Direct Energy is attempting to resolve. The EDCs urge the Board to adopt these changes without a full evaluation and allocation of all the costs required to support the competitive market. (Id. at 13).

Finally, the EDCs note that Direct Energy's proposal to allocate costs between distribution and BGS is at odds with N.J.S.A. 48:3-57(a)(1), which only allows costs directly related to BGS to be included in the EDCs' BGS charges. Additionally, the EDCs assert that if an allocation methodology related to the EDC specific costs is required of all EDCs with respect to commodity service, it should include an allocation of EDC costs to both BGS suppliers and TPSs. However, the EDCs note that since customers can switch suppliers monthly, the resulting allocation process would be inherently complicated and potentially detrimental to an EDC in terms of its ability to fairly recover costs. The EDCs do not believe that such a methodology is beneficial or warranted. (Ibid.)

As noted by Rate Counsel, the Board directed Staff to initiate a review of BGS administrative fees in a separate proceeding to ensure that the amounts being paid by ratepayers are just and reasonable. To conduct this review, the Board found that it would be appropriate to have an outside consultant conduct the review of BGS administrative fees and directed Staff to retain a consultant to review the BGS administrative fees. The Board notes that this review was conducted in Docket No. EA17010004.<sup>12</sup> With respect to the comments filed by Direct Energy, the Board finds that they more appropriately belong in the Audit of the BGS Administrative Costs as they pertain to the findings, conclusions, and recommendations set forth in the Audit Report. Direct Energy may file comments on the Audit Report in Docket No EA17010004.

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<sup>12</sup> In the Matter of a Financial Audit of the New Jersey Electric Distribution Companies' Basic Generation Administrative Expense and Other Related Expenses, Docket Number EA17010004.

Further, the Board understands Direct Energy's argument but does not agree with its conclusion. Rather, the Board agrees with the EDCs that general operating costs as well as BGS specific operating costs accommodating the TPSs are being allocated are identified and evaluated in the distribution base rate cases and would be double counted if allocated into the BGS Auction costs. Additionally, as the EDCs point out, there are several functions being performed by the EDCs that are not allocated to the TPSs, including consolidated billing. To the extent that, in the future, the allocation of administrative costs is modified, any appropriate allocation to TPSs must also be reviewed.

#### IMPACTS OF CLEAN ENERGY ACT

In its comments submitted at the Legislative Hearing, IEPNJ requested clarification and guidance, with specific percentages identified, to BGS suppliers regarding SREC and Class I renewable responsibilities for the three Energy Years ("EY") of the upcoming BGS-RSCP supply period (June 1, 2019 to May 31, 2022). IEPNJ states that it is essential to receive clarification on the specific Solar Renewable Energy Credit ("SREC") percentage obligations to allow BGS suppliers to offer their auction bids in a way that reflects their RPS obligations. (IEPNJ Legislative Hearing Comments at 3). IEPNJ raises an issue related to the Clean Energy Act ("CEA"), wherein the solar RPS requirement that was raised for EY 2020, as well as the following two years, includes language that exempts BGS supply contracts entered into prior to enactment, so that current BGS supply contracts are not impacted. IEPNJ states that as a result, the application of the solar RPS percentage to the BGS suppliers is not a direct application of the RPS percentages in the CEA. (Id. at 2). IEPNJ stresses that the additional allocation of the solar RPS to non-exempt suppliers will introduce uncertainty regarding the specific solar RPS obligation assumed by bidders in the upcoming BGS Auction. IEPNJ seeks a Board Order that directs the Auction Administrator and the EDCs to provide clear guidance with specific percentages to BGS suppliers regarding SREC and Class I responsibilities. (Id. at 3.)

RESA joined in the request of IEPNJ for the Board to issue guidance to retail suppliers and BGS providers so that all participants in the electric market understand their obligations under the CEA. (RESA Final Comments at 3).

In its Final Comments, Rate Counsel agreed with IEPNJ that bidders should be advised of their RPS obligations prior to the start of the BGS Auction. Rate Counsel notes that the Board, in the past, has recognized that a successful BGS procurement requires that the "rules and details are specified and implemented correctly." Rate Counsel further agrees with IEPNJ that providing BGS Suppliers specific information regarding their RPS compliance obligations is necessary and that the Board should provide the information so as to allow a competitive procurement producing the lowest BGS prices. (Rate Counsel Final Comments at 4).

In their Final Comments, the EDCs support the request for clarification as any information to BGS suppliers will reduce any risk premium in the bids; however the EDCs disagree that the BGS Auction Manager and the EDCs have the authority to provide this guidance on the proper rate of escalation, rather the Board alone has the authority. (EDC Final Comments at 7). The EDCs request the Board specify in its Order 1) a confirmation of the minimum percentage of Class I renewable energy of 21% from January 1, 2020 to May 31, 2020; 2) a determination of the minimum percentages for Class I renewable energy in effect for EY 2021 from June 1, 2020 to May 31, 2021; and 3) a determination of the minimum percentage for Class I renewable energy in effect for EY 2022 from June 1, 2021 to May 31, 2022. The EDCs also note that BGS

suppliers with existing contracts (from the 2017 and 2018 BGS-RSCP Auctions) are also subject to the Class I requirements. (ibid.)

The EDCs agree with IEPNJ that the results of the exemption the minimum percentage obligations applicable to 2019 and 2020 BGS suppliers are unclear from the language of the Act. The EDCs state that in order to meet the minimum solar percentage stated in the Act, BGS suppliers will also be required to provide SRECs to satisfy the requirements that would have been otherwise imposed on exempt providers. (Id. at 7 to 8). For example, in EY 2020, the 2019 BGS suppliers (both RSCP and CIEP) will be responsible for the shortfall in solar requirements created by the exemption given to the 2018 and 2017 BGS-RSCP suppliers. For EY 2021, the 2019 BGS-RSCP suppliers, the 2020 BGS-RSCP suppliers, and the 2020 BGS-CIEP suppliers will be responsible for the shortfall from the 2018 BGS-RSCP suppliers. The EDCs submit that providing specific percentages is not only beyond the scope of administering the BGS Auctions, but is simply impossible. However, the EDCs provide a formula to calculate the required percentage:

$$\text{Percent nonexempt providers} \\ = (\% \text{ in the Act}) + (\text{increase in } \%) \times (\text{exempt load} / \text{nonexempt load})$$

The EDCs state that under this formula, BGS suppliers will provide SRECs for the percentage as required in the Act and non-exempt BGS suppliers will provide SRECs to satisfy the increase in percentage. The EDCs explain that while this is an easy formula to provide, the percentage can only be approximated. The EDCs state rather than determine and provide specific percentages up front, the EDCs and the Auction Manager can provide a methodology to calculate percentages and each bidder will be responsible for estimating percentages using the methodology based on its own forecast of BGS load. Lastly, the EDCs request the Board confirm that the correct interpretation of the Act is that no BGS supplier will face increased solar requirements for EY 2019. (Id. at 8 to 9).

The Board is cognizant of the issues raised regarding the impact of the Clean Energy Act as described above. Both issues raised require further review and analysis. Accordingly, the Board **HEREBY DIRECTS** Staff to conduct a stakeholder meeting on both questions raised under this section and provide recommendations to the Board at the December 2018 Board Agenda Meeting.

## 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 **HEREBY FINDS** that the confidentiality provisions of its

December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and **HEREBY APPROVES** the same confidentiality provisions for the 2019 BGS Auctions, and incorporates the reasoning and relevant provisions of its December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

#### AUCTION PROMOTION/DEVELOPMENT

Based on a review of the record, the Board **HEREBY FINDS** that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction, provided that the rules and details are specified and implemented correctly, and provided that the Auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the Auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the Auction process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps to be undertaken are the following:<sup>13</sup>

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

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

#### BOARD APPROVAL PROCESS

As noted above, the Board believes that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction process, provided that the rules and details are specified and implemented correctly. Therefore, barring some unforeseen emergency, the timing of the Auction process approved with this Order, including certification of the Auction results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, Tentative Approvals and Process,<sup>14</sup> there are a number of decisions/actions that

<sup>13</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 2019 Auction.

<sup>14</sup> Attachment A is labeled "Tentative" to indicate that the Auction Manager, in consultation with Staff, has discretion to make minor adjustments to these dates in order to provide for an orderly implementation process, not to indicate that the Board anticipates any significant changes to this schedule.

need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule so that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based on the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that need to be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, this perceived 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-RSCP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-RSCP Auction and the BGS-CIEP Auction no later than the second business day<sup>15</sup> after the last Auction closes. At its discretion and depending on circumstances, the Board may address the results of one Auction that has closed while the second Auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

Another issue that requires Board review is acceptance of the EDCs' Compliance Filings. Because of the significance of this proceeding, the Board **HEREBY DIRECTS** the EDCs to submit a Compliance Filing by December 3, 2018. Further, the Board grants Staff the authority to review the EDCs' compliance filings, and to request that the Board Secretary issue compliance letters approving the filings should Staff find them in compliance with this Order.

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

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<sup>15</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.

any unforeseen circumstances occur during the Auction decision-making process, the Board **HEREBY DIRECTS** Staff to immediately bring the matter to the Board's attention.

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

### **FINDINGS AND CONCLUSIONS**

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

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

The 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, 2019;

The Joint EDC Proposal, as modified herein, appears to be the best means to secure BGS service for the 2019 BGS period for BGS-CIEP customers, and for the remaining one-third of the needs of BGS-RSCP customers, as well as for a portion of the BGS-RSCP service required for the 2020 and 2021 BGS periods;

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

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

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

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

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

The proposed modifications to Section 15.9 of the SMAs are not appropriate at this time;

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 2019 Auctions;

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

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

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

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

Bates White will be the Board's Auction Advisor for the 2019 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

Two designees from the Board's Energy Division, and two designees from the Office of the Economist, and the Board's consultant, Bates White, shall observe the Auctions for the Board;

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

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

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

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

For RPS compliance purposes, winning bidders in the 2019 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation RECs as would be available to them through the EDCs.

Accordingly, for the foregoing reasons, the Board **HEREBY APPROVES** the Joint EDC Proposal, including the BGS-RSCP 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-RSCP Auction results and/or the BGS-CIEP Auction results.

Furthermore, the Board **HEREBY DIRECTS** that the Joint EDC Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by December 3, 2018. The Board **HEREBY AUTHORIZES** Staff, after reviewing the EDCs' above described compliance filings, to request that the Board Secretary issue a compliance letter of approval if Staff upon review finds the filings in compliance with this Order.

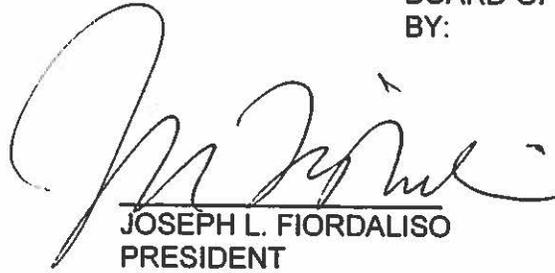
The Board **FURTHER DIRECTS** the EDCs to work with Staff and Bates White to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

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

The effective date of this Board Order is November 29, 2018.

DATED: 11/19/18

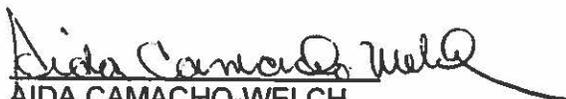
BOARD OF PUBLIC UTILITIES  
BY:

  
JOSEPH L. FIORDALISO  
PRESIDENT

  
MARY ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

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

## ATTACHMENT A

### Tentative 2019 Auction Approvals and Decision Process

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

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

<b>Decision point</b>	<b>Decision process</b>	<b>Timing</b>
Joint EDC Filing	EDCs	June 29, 2018
Announce minimum and maximum starting prices	AM/BA	November 14, 2018
Announce Tranche Targets	AM	November 14, 2018
Announce Load Caps	AM/BA	November 14, 2018
Decision on 2018 Process	BPU	November 19, 2018
Information webcast for potential bidders	AM/EDCs	November 29, 2018 (tentative)
Compliance Filing	EDCs	December 3, 2018
Approval of Compliance filing	BPU	December 2018
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2018
Review Part 1 applications	AM/BA	December 18-21, 2018
Review Part 2 applications	AM/BA	January 10-17, 2019

## ATTACHMENT A

### Tentative 2019 Auction Approvals and Decision Process

Information Webcast for registered bidders	AM/EDCs	January 22, 2019 (tentative)
Trial Auction	AM	January 24, 2019
Establish EDC-specific starting prices	EDCs/AM/BA	Announced to bidders for CIEP Auction on January 29, 2019, for RSCP Auction on January 30, 2019
BGS-CIEP Auction starts		February 1, 2019
BGS-RSCP Auction starts		February 4, 2019
Provide full factual report to Board	AM/BA	Upon completion of RSCP Auction
Board decision on Auction results	BPU	No later than by end of 2 <sup>nd</sup> business day following the calendar day on which the last auction closes.

**ATTACHMENT B**  
**Docket No. ER18040356**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY**  
**2019 BGS-CIEP AUCTION**

---

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

[Introductory comments, if any]

Auction began with the opening of Round 1 at  [x:xx am]  on  Friday, February 1, 2019

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

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

\* 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. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 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. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 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. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 BGS-CIEP 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 CIEP auction?	
13	From what BP/NERA could observe, were the protocols followed for decisions regarding changes in CIEP auction parameters (e.g., volume, load cap, bid decrements)?	
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the CIEP auction software double-checked or reproduced off-line by the Auction Manager?	
15	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	
16	From what BP/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	
18	Were there any complaints from bidders about the process that BP/NERA believed were legitimate?	
19	Was the CIEP auction carried out in an acceptably fair and transparent manner?	
20	Was there evidence of non-productive “gaming” on the part of bidders?	
21	Was there any evidence of collusion or improper coordination among bidders?	
22	Was there any evidence of a breakdown in competition in the CIEP auction?	
23	Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	

**ATTACHMENT B**  
**Docket No. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 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)?	

**ATTACHMENT B  
Docket No. ER18040356**

**POST-AUCTION CHECKLIST  
FOR THE NEW JERSEY 2019 BGS-RSCP AUCTION**

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

[Introductory comments, if any.]

Auction began with the opening of Round 1 at  [x:xx am]  on  Monday, February 4, 2018

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

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

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

**ATTACHMENT B  
Docket No. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 BGS-RSCP Auction**

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

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

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

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

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

**ATTACHMENT B**  
**Docket No. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 BGS-RSCP 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 RSCP auction results?	
2	Did bidders have sufficient information to prepare for the RSCP auction?	
3	Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?	
4	Were there any issues and questions left unresolved prior to the RSCP auction that created material uncertainty for bidders?	
5	From what BP/NERA could observe, were there any procedural problems or errors with the RSCP auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?	
6	From what BP/NERA could observe, were protocols for communication between bidders and the Auction Manager adhered to?	
7	From what BP/NERA could observe, were there any hardware or software problems or errors, either with the RSCP auction system or with its associated communications systems?	
8	Were there any unanticipated delays during the FP auction?	
9	Did unanticipated delays appear to adversely affect bidding in the RSCP auction? What adverse effects did BP/NERA directly observe and how did they relate to the unanticipated delays?	
12	Were appropriate data back-up procedures planned and carried out?	
11	Were any security breaches observed with the RSCP auction process?	

**ATTACHMENT B**  
**Docket No. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 BGS-RSCP 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 RSCP auction?	
13	From what BP/NERA could observe, were the protocols followed for decisions regarding changes in RSCP auction parameters (e.g., volume, load caps, bid decrements)?	
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the RSCP auction software double-checked or reproduced off-line by the Auction Manager?	
15	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	
16	From what BP/NERA could observe, were the communications between the Auction Manager and bidders timely and effective?	
17	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	
18	Were there any complaints from bidders about the process that BP/NERA believed were legitimate?	
19	Was the RSCP auction carried out in an acceptably fair and transparent manner?	
20	Was there evidence of non-productive “gaming” on the part of bidders?	
21	Was there any evidence of collusion or improper coordination among bidders?	
22	Was there any evidence of a breakdown in competition in the RSCP auction?	
23	Was information made public appropriately? From what BP/NERA could observe, was sensitive information treated appropriately?	

**ATTACHMENT B**  
**Docket No. ER18040356**

**Post-Auction Checklist for the New Jersey 2019 BGS-RSCP Auction**

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

# Attachment C



Agenda Date: 10/22/04

Agenda Item: 2A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

ENERGY

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

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD.

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

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

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

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

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

## Attachment C

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

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

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

### DISCUSSION

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

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

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

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

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

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

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

## Attachment C

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

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

## Attachment C

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

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

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

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

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

## II. EDC-SPECIFIC STARTING PRICES

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

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

## Attachment C

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

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

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

### III. INDICATIVE OFFERS

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

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

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

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

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

### IV. ROUND PRICES AND INDIVIDUAL BIDS

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

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

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

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

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

### V. BIDDER INFORMATION

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

## Attachment C

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

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

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

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

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

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

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

## Attachment C

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

Part 1 Application Form:

Bidding Agreements

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

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

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

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

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

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

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

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

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

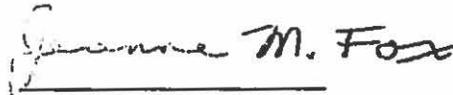
Should a request for the non-public bidder information provided to NERA be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied.

## Attachment C

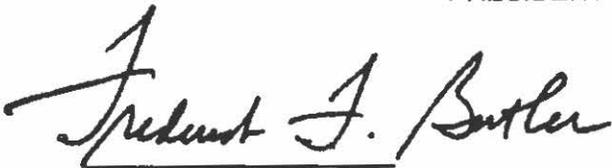
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES  
BY:



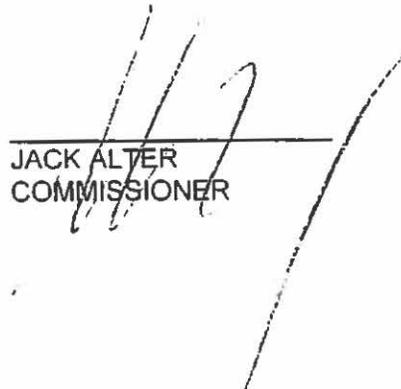
JEANNE M. FOX  
PRESIDENT



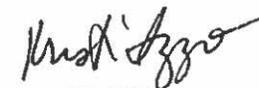
FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER

  
JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2019  
Docket No. ER18040356  
Service List**

**BPU**

New Jersey Board of Public Utilities  
44 South Clinton Ave. 3<sup>rd</sup> Fl, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350

Paul Flanagan, Executive Director  
[Paul.flanagan@bpu.nj.gov](mailto:Paul.flanagan@bpu.nj.gov)

Aida Camacho-Welch, Secretary  
[aida.camacho@bpu.nj.gov](mailto:aida.camacho@bpu.nj.gov)

Stacy Peterson  
[stacy.peterson@bpu.nj.gov](mailto:stacy.peterson@bpu.nj.gov)

Bethany Rocque-Romaine  
[Bethany.romaine@bpu.nj.gov](mailto:Bethany.romaine@bpu.nj.gov)

Dr. Benjamin Witherell  
[benjamin.witherell@bpu.nj.gov](mailto:benjamin.witherell@bpu.nj.gov)

**DAG**

Andrew Kuntz, Esq.  
Deputy Attorney General  
Division of Law  
Board of Public Utilities Section  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101  
[Andrew.kuntz@law.njoag.gov](mailto:Andrew.kuntz@law.njoag.gov)

**BPU's BGS CONSULTANTS**

Bates White, LLC  
2001 K Street, NW  
North Building, Suite 500  
Washington DC, 20006

Frank Mossburg  
Managing Director  
[frank.mossburg@bateswhite.com](mailto:frank.mossburg@bateswhite.com)

**DIVISION OF RATE COUNSEL**

140 East Front Street, 4th Floor  
Post Office Box 003  
Trenton, New Jersey 08625

Stefanie A. Brand, Esq., Director  
[sbrand@rpa.nj.gov](mailto:sbrand@rpa.nj.gov)

Celeste Clark  
[cclark@rpa.nj.gov](mailto:cclark@rpa.nj.gov)

James Glassen  
[jglassen@rpa.nj.gov](mailto:jglassen@rpa.nj.gov)

Debra Layugan  
[dlayugan@rpa.nj.gov](mailto:dlayugan@rpa.nj.gov)

Brian Lipman  
[blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)

Ami Morita  
[amorita@rpa.nj.gov](mailto:amorita@rpa.nj.gov)

Diane Schulze  
[schulze@rpa.nj.gov](mailto:schulze@rpa.nj.gov)

Lisa Gurkas  
[Lgurkas@rpa.nj.gov](mailto:Lgurkas@rpa.nj.gov)

Max Chang  
Synapse Energy Economics, Inc.  
485 Massachusetts Ave., Suite 2  
Cambridge, MA 02139  
[mchang@synapse-energy.com](mailto:mchang@synapse-energy.com)

**PSE&G**

Terrance J. Moran  
PSE&G  
80 Park Plaza, T-13  
Newark, NJ 07102-4194  
[Terrance.moran@pseg.com](mailto:Terrance.moran@pseg.com)

Joseph A. Shea, Esq.  
PSE&G  
80 Park Plaza, T-5  
Newark, NJ 07102-4194  
[Joseph.shea@pseg.com](mailto:Joseph.shea@pseg.com)

**ATLANTIC CITY ELECTRIC CO.**

Susan DeVito  
Pepco Holdings, LLC – 92DC56  
500 N. Wakefield Drive  
PO Box 6066  
Newark, DE 19714-6066  
[Susan.devito@pepcoholdings.com](mailto:Susan.devito@pepcoholdings.com)

Thomas M. Hahn  
Pepco Holdings, LLC-63ML38  
5100 Harding Highway  
Mays Landing, NJ 08330  
[Thomas.hahn@pepcoholdings.com](mailto:Thomas.hahn@pepcoholdings.com)

Joseph F. Janocha  
Pepco Holdings, LLC – 92DC56  
500 N. Wakefield Drive  
PO Box 6066  
Newark, DE 19714-6066  
[joseph.janocha@pepcoholdings.com](mailto:joseph.janocha@pepcoholdings.com)

Philip J. Passanante, Esq.  
Atlantic City Electric Company – 92DC42  
500 N. Wakefield Drive  
PO Box 6066  
Newark, DE 19714-6066  
[philip.passanante@pepcoholdings.com](mailto:philip.passanante@pepcoholdings.com)

Alison L. Regan  
Atlantic City Electric Company 92DC42  
500 N. Wakefield Drive  
PO Box 6066  
Newark, DE 19714-6066  
[alison.regan@pepcoholdings.com](mailto:alison.regan@pepcoholdings.com)

Daniel A. Tudor  
Pepco Holdings, Inc.  
701 Ninth Street NW  
Washington, DC 20001  
[datudor@pepco.com](mailto:datudor@pepco.com)

**JCP&L**

Jersey Central Power & Light Co.  
300 Madison Avenue  
Morristown, NJ 07962-1911

Sally J Cheong  
[scheong@firstenergycorp.com](mailto:scheong@firstenergycorp.com)

Jennifer Spricigo  
[jspricigo@firstenergycorp.com](mailto:jspricigo@firstenergycorp.com)

Greg Eisenstark  
Windels Marx &Mittendorf, LLP  
120 Albany Street, 6<sup>th</sup> Floor  
New Brunswick, NJ 08901  
[geisenstark@windelsmarx.com](mailto:geisenstark@windelsmarx.com)

**ROCKLAND**

John L. Carley, Esq.  
Consolidated Edison Co. of NY  
Law Dept., Room 1815-S  
4 Irving Place  
New York, NY 10003  
[carleyj@coned.com](mailto:carleyj@coned.com)

James C. Meyer, Esq.  
Riker, Danzig, Scherer, Hyland  
& Perretti  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962  
[jmeyer@riker.com](mailto:jmeyer@riker.com)

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2019  
Docket No. ER18040356  
Service List**

William A. Atzl, Jr.  
Rockland Electric Company  
4 Irving Place – Room 515-S  
New York, NY 10003  
[atzlw@coned.com](mailto:atzlw@coned.com)

Margaret Comes, Esq.,  
Consolidated Edison Co. of NY  
Law Department, Room 1815-S  
4 Irving Place  
New York, NY 10003  
[comesm@coned.com](mailto:comesm@coned.com)

**NERA**

Paul Cardona  
NERA Economic Consulting  
777 S. Figueroa, Suite 1950  
Los Angeles, CA 90017  
[Paul.Cardona@NERA.com](mailto:Paul.Cardona@NERA.com)

Chantale LaCasse  
NERA Economic Consulting  
1166 Avenue of the Americas  
New York, NY 10036  
[chantale.lacasse@nera.com](mailto:chantale.lacasse@nera.com)

Eugene Meehan  
NERA Economic Consulting  
1255 23<sup>rd</sup> Street  
Washington, DC 20037  
[Eugene.meehan@nera.com](mailto:Eugene.meehan@nera.com)

**Third Party Suppliers**

Murray E. Bevan, Esq.  
Bevan, Mosca, Giuditta & Zarillo, P.C.  
222 Mount Airy Road, Suite 200  
Basking Ridge, NJ 07920  
[mbevan@bmqzlaw.com](mailto:mbevan@bmqzlaw.com)

Dana Swieson  
EPEX  
717 Constitutional Drive  
Suite 110  
Exton, PA 19341  
[dana.swieson@epex.com](mailto:dana.swieson@epex.com)

Marc A. Hanks  
Senior Manager, Government &  
Regulatory Affairs  
Direct Energy Services, LLC  
[Marc.Hanks@directenergy.com](mailto:Marc.Hanks@directenergy.com)

Stacey Rantala  
National Energy Marketers Association  
3333 K Street, N.W., Suite 110  
Washington, D.C. 20007  
[srantala@energymarketers.com](mailto:srantala@energymarketers.com)

David B. Applebaum  
Director, Regulatory Affairs  
NextEra Energy Resources, LLC  
21 Pardee Place  
Ewing, New Jersey 08628  
[david.applebaum@nexteraenergy.com](mailto:david.applebaum@nexteraenergy.com)

David Gil  
Manager, Regulatory Affairs  
NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
[david.gil@nexteraenergy.com](mailto:david.gil@nexteraenergy.com)

Kathleen Maher  
Constellation NewEnergy  
810 Seventh Avenue, Suite 400  
New York, NY 10019-5818  
[kathleen.maher@constellation.com](mailto:kathleen.maher@constellation.com)

**NJLEUC**

Paul F. Forshay, Partner  
Eversheds-Sutherland, LLP  
700 Sixth Street, NW, Suite 700  
Washington, D.C. 20001-3980  
[paul.forshay@eversheds-sutherland.com](mailto:paul.forshay@eversheds-sutherland.com)

Steven S. Goldenberg, NJLEUC, Esq.  
Fox Rothschild LLP  
Princeton Corporate Center  
997 Lenox Drive, BLDG. 3  
Lawrenceville, NJ 08648-2311  
[SGoldenberg@foxrothschild.com](mailto:SGoldenberg@foxrothschild.com)

**BGS SUPPLIERS**

Steven Gabel - IEPNJ  
Gabel Associates  
417 Denison Street  
Highland Park, NJ 08904  
[steven@gabelassociates.com](mailto:steven@gabelassociates.com)

James Laskey, Esq. - IEPNJ  
Norris McLaughlin & Marcus  
721 Route 202-206  
Bridgewater, NJ 08807  
[ilaskey@nmmlaw.com](mailto:ilaskey@nmmlaw.com)

Raymond Depillo  
PSEG Services Corporation  
80 Park Plaza, T-19  
P.O. Box 570  
Newark, NJ 07101  
[raymond.depillo@pseg.com](mailto:raymond.depillo@pseg.com)

Shawn P. Leyden, Esq.  
PSEG Energy Resources & Trade  
80 Park Plaza, T-19  
P. O. Box 570  
Newark, NJ 07101  
[shawn.leyden@pseg.com](mailto:shawn.leyden@pseg.com)

Mark Haskell  
Cadwalader, Wickersham & Taft LLP  
700 Sixth Street, SW  
Washington, DC 20001  
[mark.haskell@cw.com](mailto:mark.haskell@cw.com)

David K Richter, Esq.  
PSEG  
Regulatory Department  
80 Park Plaza, T-5C  
P. O. Box 570  
Newark, NJ 07101  
[david.richter@pseg.com](mailto:david.richter@pseg.com)

Craig S. Blume  
Director, Power Marketing  
UGI Energy Services / UGI Development  
Company  
One Meridian Boulevard, Suite 2C01  
Wyomissing, PA 19610  
[cblume@ugies.com](mailto:cblume@ugies.com)

Marcia Hissong, Director, Contract  
Administration/Counsel  
DTE EnergyTrading, Inc.  
414 South Main Street  
Suite 200  
Ann Arbor, MI 48104  
[hissongm@dteenergy.com](mailto:hissongm@dteenergy.com)

Don Hubschman  
American Electric Power  
155 W. Nationwide Blvd.  
Columbus, OH 43215  
[dmhubschman@aepes.com](mailto:dmhubschman@aepes.com)

Christine McGarvey  
AEP Energy Partners, Inc.  
Energy Trader  
155 W Nationwide Blvd  
Suite 500  
Columbus, OH 43215  
[clmcgarvey@aepes.com](mailto:clmcgarvey@aepes.com)

Matthew Davies  
TransCanada Power Marketing Ltd.  
110 Turnpike Road, Suite300  
Westborough, MA 01581  
[Matthew.daview@transcanada.com](mailto:Matthew.daview@transcanada.com)

**In the Matter of the Provision of Basic Generation Service  
For the Period Beginning June 1, 2019  
Docket No. ER18040356**

**Service List**

Glenn Riepl  
AEP Energy Services  
1 Riverside Plaza  
14th Floor  
Columbus, OH 43215-2373  
[gfriep@aep.com](mailto:gfriep@aep.com)

Howard O. Thompson - BGS  
Russo Tumulty Nester Thompson  
Kelly, LLP  
240 Cedar Knolls Road  
Suite 306  
Cedar Knolls, NJ 07927  
[hthompson@russotumulty.com](mailto:hthompson@russotumulty.com)

Sharon Weber  
PPL Energy Plus  
2 North 9th Street TW 20  
Allentown, PA 18101  
[sjweber@pplweb.com](mailto:sjweber@pplweb.com)

Glen Thomas  
The P<sup>3</sup> Group  
GT Power Group LLC  
1060 First Avenue  
Suite 400  
King of Prussia, PA 19406  
[Gthomas@qtpowergroup.com](mailto:Gthomas@qtpowergroup.com)

Divesh Gupta, Esq.  
Exelon Business Services Corp.  
111 Market Place  
Suite 1200C  
Baltimore, Maryland 21202  
[divesh.gupta@constellation.com](mailto:divesh.gupta@constellation.com)

Tom Hoatson  
LS Power Development, LLC  
2 Tower Center  
East Brunswick, NJ 08816  
[lhoatson@lspower.com](mailto:lhoatson@lspower.com)

Adam Kaufman  
Executive Director  
Independent Energy Producers of NJ  
Five Vaughn Drive, Suite 101  
Princeton, NJ 08540  
[akaufman@kzgrp.com](mailto:akaufman@kzgrp.com)

Anthony Pietranico  
ConEdison Solutions Inc.  
Electricity Supply Specialist  
Tel: 732-741-5822 x204  
[pietranicoa@conedsolutions.com](mailto:pietranicoa@conedsolutions.com)

Aundrea Williams  
Director Regulatory Affairs  
NextEra Power Marketing LLC  
700 Universe Boulevard  
Juno Beach, Fl. 33408  
[aundrea.williams@nexteraenergyservices.com](mailto:aundrea.williams@nexteraenergyservices.com)

Ira G. Megdal  
Cozen O'Connor  
457 Haddonfield Road  
Suite 300 P.O. Box 5459  
Cherry Hill, NJ 08002  
[imegdal@cozen.com](mailto:imegdal@cozen.com)

Christi L. Nicolay  
Division Director  
Macquarie Energy LLC  
500 Dallas St., Level 31  
Houston, TX 77002  
[Christi.Nicolay@macquarie.com](mailto:Christi.Nicolay@macquarie.com)

Becky Merola  
Noble Americas Energy Solutions, LLC  
5325 Sheffield Avenue  
Powell, OH 43065  
[bmerola@noblesolutions.com](mailto:bmerola@noblesolutions.com)

**OTHER PARTIES**

Sara Bluhm  
NJBIA  
102 West State Street  
Trenton, NJ 08608-1199  
[sbluhm@njbia.org](mailto:sbluhm@njbia.org)

John Holub  
NJ Retail Merchants Assoc.  
332 West State Street  
Trenton, NJ 08618  
[John@njrma.org](mailto:John@njrma.org)

Holly Minogue  
Gabel Associates  
Energy, Environmental, and Public Utility  
Consulting  
417 Denison Street  
Highland Park, NJ 08904  
[holly.minoque@gabelassociates.com](mailto:holly.minoque@gabelassociates.com)

Larry Spielvogel, PE  
L. G. Spielvogel, Inc.  
190 Presidential Blvd # 310  
Bala Cynwyd, PA 19004-1151  
[spielvogel@comcast.net](mailto:spielvogel@comcast.net)

Robert Macksoud, Jr. CEP  
Director Energy Procurement  
EnergySolve  
One Executive Drive, Suite 401  
Somerset, NJ 08873  
[rmacksoud@energysolve.com](mailto:rmacksoud@energysolve.com)

Lyle Rawlings  
Mid-Atlantic Solar Energy Industries  
Association  
Rutgers EcoComplex, Suite 208-B  
1200 Florence-Columbus Road,  
Bordentown, NJ 08505  
[lrawlings@mseia.net](mailto:lrawlings@mseia.net)

Bruce H. Burcat, Esq.  
Executive Director  
Mid-Atlantic Renewable Energy Coalition  
208 Stonegate Way  
Camden, DE 19934  
[bburcat@marec.us](mailto:bburcat@marec.us)

Sean Gallagher  
Solar Energy Industries Association  
575 7<sup>th</sup> Street, NW  
Suite 400  
Washington, DC 20005  
[sgallagher@seia.org](mailto:sgallagher@seia.org)