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**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC ) DECISION AND ORDER  
GENERATION SERVICE (BGS) FOR THE PERIOD )  
BEGINNING JUNE 1, 2021 ) DOCKET NO. ER20030190

**Parties of Record**

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**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

This Order memorializes actions taken by the New Jersey Board of Public Utilities ("Board" or "BPU") at its November 18, 2020 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, 2021.

By Order dated March 27, 2020 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 all other interested parties, to file proposals by July 1, 2020 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, 2021. The Board adopted a procedural schedule to address the proposals, and provided for initial written comments, a legislative-type hearing, and final written comments.

BGS filings were received from the EDCs via a joint BGS filing ("Proposal") on July 1, 2020. Initial Comments on the Proposal were filed on or about September 4, 2020. A legislative-type hearing, chaired by President Joseph L. Fiordaliso, was held on September 11, 2020. Final Comments were filed on October 5, 2020.

Parties that filed either a proposal, comments, or appeared at the legislative hearing include the EDCs (ACE, JCP&L, PSE&G, and RECO, jointly), National Economic Research Associates (“NERA”), the New Jersey Division of Rate Counsel (“Rate Counsel”), the Independent Energy Producers of New Jersey (“IEPNJ”), Exelon Generation, LLC (“ExGen”), Vitol Inc. (“Vitol”), Hartree Partners, LC (“Hartree”), Direct Energy (“Direct”), and the Retail Energy Supply Association (“RESA”).

Telephonic public hearings were held in each EDC’s service territory to allow members of the public to present their views on the procurement process proposed by the EDCs, and the potential effect on customers’ rates. ACE’s public hearing was held on August 26, 2020, JCP&L’s public hearing was held on September 21, 2020, RECO’s public hearing was held on September 22, 2020, and PSE&G’s public hearing was held on September 24, 2020. No members of the public commented at the public hearings.

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

The Board carefully reviewed the record in this proceeding. The parties’ filings largely rely on previous auctions and on the Proposal as the baseline for proposing specific modifications and/or additions. This Order summarizes the main features of the 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 carefully reviewed each party’s proposal and position before rendering this decision.

**PROPOSAL**

On July 1, 2020, the EDCs filed the Proposal for BGS, consisting of a generic proposal for procuring BGS supply beginning on June 1, 2021, including proposed preliminary auction rules for the Auctions, Supplier Master Agreements (“SMAs”) and EDC-specific addenda.

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

One auction would procure service for a one (1)-year period, beginning June 1, 2021, 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 3,026 Megawatts (“MW”) of load to be procured through bidding on an expected 40 full-requirements tranches.<sup>1</sup> This is the same type of Auction that the Board approved last year in Docket No. ER19040428.

The second auction would procure one-third of the service requirements for all other customers of all four (4) EDCs for a three (3)-year period beginning June 1, 2021 through an auction (“BGS-RSCP Auction”) for approximately 5,122 MW of load to be served through 57 full-requirements

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<sup>1</sup> The tranche sizes are approximate amounts of BGS-CIEP eligible load and are as follows: ACE- 77.85, JCP&L- 76.98, PSE&G- 75.46 and RECO- 56.74.

tranches<sup>2</sup> of approximately 76 to 92 MW each.<sup>3</sup> This is similar to the Auction the Board approved last year in Docket No. ER19040428.

The competitive process by which the EDCs propose to procure their supply requirements for BGS load for the period beginning June 1, 2021 is detailed in the Proposal and in Appendices A and B (Provisional CIEP and RSCP Auction Rules, respectively). This is similar to the auction process the Board approved for the past 19 years. Under the Proposal, the retail load of each EDC is considered a separate “product” in each Auction. When a participant bids in either BGS Auction, that participant states the number of tranches that it is willing to serve for each EDC at the prices in force at that point in the Auction. In the BGS-RSCP Auction, a price for an EDC is the amount in cents per Kilowatt-Hour (“kWh”) to be paid for each kWh of BGS load served. In the BGS-CIEP Auction, a price for an EDC is an amount in dollars per Megawatt-Day (\$/MW-day) paid for the capacity obligation associated with the BGS-CIEP customers served. A tranche of one product (i.e. a tranche of the BGS load for one EDC) is a full requirements (capacity, energy, ancillary services, etc.) tranche.<sup>4</sup> At the end of the Auctions, the final prices for the EDCs’ tranches may be different because of differences in the products, due to each EDC’s load factor, delivery location, and other factors.

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

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

The EDCs proposed that for BGS-CIEP tranches, rate schedules would be designed to include the 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 Fee of \$0.00015/kWh. The Standby Fee would essentially act as an “option fee.” The capacity payment would be charged to all CIEP customers on BGS service, while the Standby Fee 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 Fee rate times the monthly sales to all CIEP customers, whether on BGS-CIEP or not. Under the Proposal, each BGS supplier would be required to assume PJM Load Serving Entity (“LSE”) responsibility for the portion of BGS load (whether BGS-CIEP or BGS-RSCP) served by that supplier. In accordance with the PJM Agreements required

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<sup>2</sup> The EDCs have previously secured two-thirds of their total RSCP load requirements through May 31, 2022 by means of Board-approved auctions in February 2019 and February 2020.

<sup>3</sup> This does not include procurement for the RECO customers within the company’s territory outside of PJM.

<sup>4</sup> In previous auctions, transmission was included in the BGS product and suppliers were responsible for changes in firm transmission rates during the term of the SMAs.

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 Proposal as Appendix C and D, respectively.

The EDCs proposed to remove transmission from the BGS product through the transfer of specific PJM billing line items from the BGS supplier (who would remain the load serving entity) to the EDC. Additionally, the EDCs proposed that the existing SMA contracts, entered into for the 2018, 2019 and 2020 BGS Auctions, be amended so future transmission obligations are transferred from the winning BGS Supplier to the EDCs.

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

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

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

As conditions of qualification, applicants must meet pre-bidding creditworthiness requirements; agree to comply with all rules of the Auction; and agree that if they become Auction winners, they will execute the BGS SMA within three (3) business days of Board certification of the results, and they will demonstrate compliance with the creditworthiness requirements set forth in that agreement;

To qualify, applicants must disclose what, if any, bidder associations exist and if these associations exist, applicants will provide such additional information as the Auction Manager may require;

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

The BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-RSCP Auction secures one-third of each EDC’s total load requirements for three years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions.<sup>5</sup>

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.

As part of its Company-specific addendum, PSE&G proposed to change from a monthly BGS reconciliation mechanism to a quarterly one, effective June 1, 2021. The BGS-RSCP and BGS-

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<sup>5</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.

CIEP would continue to be tracked separately and subject to deferred accounting with interest. The differences in costs and cost recovery will be computed for each quarter and assessed through the BGS-RSCP and BGS-CIEP Reconciliation Charges applied to customers' bills. The differences are comprised of the following:

1. The difference between BGS costs and the BGS revenues for each month in the quarter;
2. The difference between the total reconciliation charge revenue intended to be recovered each quarter and the actual reconciliation charge revenue recovered in each quarter. This difference will be driven by the actual kWh used in the quarter in which the reconciliation charge was assessed and will be the kWh used to calculate the charge.

Similar to the current methodology, PSE&G proposed that interest will apply to the deferred amounts based on Non-Utility Generation charge rate previously set by the Board.

Additionally, the EDCs have proposed changes to the rate design methodology, as well as modifications to each EDC's Company Specific Addendum, to reflect other proposed changes related to transmission and capacity.

### RECO REQUEST FOR PROPOSAL

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

On August 16, 2013, the Federal Energy Regulatory Commission ("FERC") approved the creation of a new capacity market zone in the Lower Hudson Valley region encompassing NYISO Load Zones G, H, I, and J in FERC Docket Number ER13-1380. Lower Hudson Valley capacity is not actively traded, and the Company does not expect the above to change before the BGS Auction. As a result of the capacity market changes at the NYISO noted above, RECO will purchase the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market, and will blend its forecast of those prices into the BGS-RSCP price. This is the same proposal approved by the Board in its Order dated November 21, 2017 in Docket No. ER17040335. The impact of these capacity purchases are expected to be minimal because the Company's Central and Western Divisions constitute only about 10 percent of the Company's BGS load.

In the November 2017 Order, with regard to the purchase of energy, the Board approved a Request for Proposal ("RFP") process for RECO to solicit competitive bids from qualified bidders for fixed energy supply prices for BGS customers in RECO's Central and Western Divisions, commencing June 1, 2018.<sup>6</sup> On January 30, 2018, RECO conducted its RFP for the period June 1, 2018 through May 31, 2021. As a result of the RFP, RECO entered into a three (3) year Fixed for Floating Energy Swap contract with Shell Trading Risk Management, LLC. The Board approved this RFP result in its February 8, 2018 Order in ER17040335. The RFP price was to be rolled into RECO's BGS auction price to develop a weighted average BGS-RSCP price for the period June 1, 2020 through May 31, 2021. As a result of the three (3)-year contract, RECO's energy purchases were hedged through May 31, 2021, and another procurement proposal must be made for the BGS energy year commencing June 1, 2021.

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<sup>6</sup> In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1 2018, BPU Docket No.ER17040335, Order dated November 21, 2017, ("November 2017 Order").

For the BGS year commencing June 1, 2021, RECO proposes the same procurement process that the Board approved in the November 2017 Order. RECO proposes to enter into a bi-lateral agreement(s) to hedge the cost of energy purchases from the NYISO. RECO proposes to conduct the bidding approximately two (2) weeks before the BGS auction.

According to the proposal, RECO will seek bids on physical and financial transactions for NYISO ZONE G energy for the periods specified below. For the energy transactions, RECO is proposing to procure agreements to cover the period of June 1, 2021 through May 31, 2024 and will seek pricing for the following four (4) periods:

- |    |                |                                   |
|----|----------------|-----------------------------------|
| 1. | Year 1:        | June 1, 2021 through May 31, 2022 |
| 2. | Year 2:        | June 1, 2022 through May 31, 2023 |
| 3. | Year 3:        | June 1, 2023 through May 31, 2024 |
| 4. | Blended price: | June 1, 2021 through May 31, 2024 |

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

## **DISCUSSION AND FINDINGS**

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

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2021, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features, and that it is not always possible to modify one (1) aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes, alternate designs within the Auction framework, and varying procurement periods. In 2002, after a process open to all interested participants, the Board determined to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP customers.<sup>7</sup> For the 2003 through 2020 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>

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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, November 21, 2017, Docket No. ER17040335, November 19, 2018, Docket No. ER18040356 and November 13, 2019, Docket No. ER19040428.

As previously stated, for the period beginning June 1, 2021, by Order dated March 25, 2020, 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, 2021. 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 since modified to include a BGS-RSCP and BGS-CIEP Auction, has worked well and has resulted in the best prices possible at the time.

The Board appreciates the efforts of all involved to provide constructive comments and criticism to improve on a process that is important to all of the EDCs' ratepayers. In making its decision, the Board considered the suggestions that were made. The Board 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 upon the experience of previous BGS Auctions, and having considered the record in this matter, the Board **FINDS** that the EDCs' proposed BGS-RSCP and BGS-CIEP Auctions, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2021.

#### **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**

In its comments, IEPNJ provided that it supports the three (3) year BGS auction structure. It is IEPNJ's position that the three (3) year BGS auction structure strikes the appropriate balance to hedge against price spikes, while minimizing future risk to suppliers that would occur under contracts of a longer term. A three (3) year term allows the suppliers bidding into the BGS auction to rely on several known variables when preparing its bid. Knowing these values reduces the risk to suppliers, thereby helping to keep their bid prices reasonably low. The averaging of the three (3) year term contracts entered over the course of three (3) years provides stability to customer rates. (IEPNJ Initial Comments at 2). IEPNJ also supports the EDCs' proposal that EDCs be responsible for transmission-related costs for BGS load, and that transmission be removed from the BGS product through the transfer of specific PJM billing line items from the BGS supplier to the EDC.<sup>9</sup> (*ibid.*)

Based upon 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 (3) year rolling procurement process currently in use for the BGS-RSCP Auction provides a hedge to customers in a time of extreme weather events that impact prices, volatile energy prices, and

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<sup>9</sup> The issue of transmission costs is discussed later in this document.

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 five (5) years, third-party suppliers (“TPSs”) have been able to be somewhat more competitive than the rolling three (3) year average RSCP Auction price, and competition appears to have increased.

The Board believes that the goal of the BGS procurement process should be to enable smaller commercial and residential customers to benefit from both a stable yet market-based rate for BGS-RSCP supply for this service while still allowing these customers the ability to choose alternative providers. The Board further believes the use of the staggered three (3) year rolling procurement process, ensuring price stability, is a policy decision that has value for those customers who continue to receive BGS service from the EDCs. Therefore, the Board **DIRECTS** the EDCs to procure the approximate one-third of the EDCs’ current BGS-RSCP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period, blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-RSCP rates for the June 1, 2021 to May 31, 2022 period.

## **PJM CAPACITY MARKET CONSTRUCT**

### *Capacity Proxy Price*

On July 20, 2019, FERC ordered PJM not to hold the capacity auction scheduled to begin on August 14, 2019, which would have procured capacity for the 2022/2023 Delivery Year.<sup>10</sup> In the 2020 BGS proceeding, the EDCs proposed, and the Board approved, the use of a capacity proxy price (“Capacity Proxy Price”) for each EDC to be treated as the capacity price for the 2022/2023 delivery year as the actual capacity price for that delivery year was not expected to be known prior to the 2020 BGS Auctions. In its Order approving the 2020 BGS Auction process, the Board approved the use of a Capacity Proxy Price. The Board noted that keeping the RSCP product as a three (3) year product will help mitigate rate changes and avoid the complications of requiring a supplemental auction when the 2022/23 capacity price becomes known and if the BGS-RSCP product is to cover three (3) years, bidders must have some set price for capacity in order to set their bids.

As noted in the Proposal, at this time, PJM has not yet held a capacity auction for the 2022/2023 delivery year or for the 2023/2024 delivery year.<sup>11</sup> Given the announced timeline in the FERC proceeding for consideration of PJM’s changes to the PJM capacity market, and given extensions to deadlines for comments provided to parties in view of emergency measures enacted in the wake of COVID-19, the EDCs believe that it is most likely that neither the capacity price for the 2022/2023 delivery year (the second year of the BGS-RSCP supply term) nor the capacity price for the 2023/2024 delivery year (the third year of the BGS-RSCP supply term) will be known prior to the 2021 BGS-RSCP Auction. Further, if the capacity prices are not known for the 2022/2023 and 2023/2024 delivery years, BGS-RSCP suppliers are likely to include risk premiums into their bids and it may be the case that some bidders choose not to participate altogether, which could result in higher closing prices in the BGS-RSCP Auction than would otherwise be the case, to the detriment of BGS-RSCP customers. To address this potential problem, the EDCs proposed to

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<sup>10</sup> The 2022/2023 Delivery Year is June 1, 2022 through May 31, 2023. The 2023/2024 Delivery Year is June 1, 2023 through May 31, 2024.

<sup>11</sup> On October 15, 2020, the FERC issued an order that could allow the mid-Atlantic grid operator PJM to restart its capacity auction by mid-2021.

continue the approach approved by the Board in the 2020 BGS proceeding and proposed to address this issue by setting a Capacity Proxy Price for the 2022/2023 delivery year and a Capacity Proxy Price for the 2023/2024 delivery year that suppliers will be able to incorporate into their bids.

In its Initial and Final comments, due to the extended uncertainty at the federal level regarding the PJM capacity market, Rate Counsel indicated that the EDC's proposed methodology for setting of the Capacity Proxy Price for each of the delivery years is reasonable under the unprecedented regulatory uncertainty facing BGS suppliers. (RC Initial Comments at 11, RC Final Comments at 5).

The Board continues to recognize the difficulty in setting a proxy capacity price as the Reliability Pricing Model ("RPM") auction has traditionally produced volatile results. Since the Board cannot know the upcoming capacity auction prices, the Board **APPROVES** the EDCs' proposed numbers in the Proposal as the capacity proxy price.

#### *Resource Adequacy Proceeding*

In the Proposal, the EDCs noted that by Order dated March 27, 2020, the Board initiated a proceeding to investigate resource adequacy alternatives to achieve New Jersey's clean energy goals as articulated in the State's Energy Master Plan from 2019.<sup>12</sup> Under PJM's current RPM, the rate paid by BGS-RSCP suppliers for capacity would be the Zonal Net Load Price. The EDCs note that several alternatives will be considered in the Resource Adequacy Proceeding, including potentially leaving the PJM capacity market. As such, in the Proposal, the EDCs indicated that the rate paid by BGS-RSCP suppliers for capacity in the 2022/2023 delivery year or the 2023/2024 delivery year referenced above may or may not be set by a PJM capacity auction pending the outcome of the Resource Adequacy Proceeding.

In its Initial Comments, Rate Counsel argued that the intent of the BGS Auction process is to provide electric generation supply services to customers who have not chosen a TPS with a price that is consistent with competitive market conditions. (Rate Counsel Initial Comments at 5). In its initial and reply comments in the Resource Adequacy Proceeding, Rate Counsel argued that the BGS auction was not intended to explicitly transform the state energy mix. (*Id.* at 10). Rate Counsel asserted that the BGS auction process should not be a primary mechanism for achieving the State's clean energy goals. (*Id.* at 10, RC Final Comments at 2).

While recognizing Rate Counsel's comments, the Board notes that the Resource Adequacy Proceeding is ongoing. Until that proceeding concludes and there is direction from the Board, this issue is not ripe for discussion.

#### **PROPOSED CHANGES TO SMAS**

In the Proposal, the EDCs have proposed several modifications to the SMAs. The proposed SMAs have been modified to list the specific PJM billing line items transferred from the BGS supplier to the EDC consistent with its proposal to remove transmission from the BGS product. As part of the proposed changes, the EDCs have modified several definitions, modified the obligations of the supplier and the EDC in several sections, and provided a sample PJM invoice to effectuate the proposed change in transmission responsibility. Additionally, the EDCs have

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<sup>12</sup> *In re BPU Investigation of Resource Adequacy Alternatives*, BPU Docket No. EO20030203, Order dated March 27, 2020 ("Resource Adequacy Proceeding").

proposed several other material changes to the BGS SMAs, including updating the letter of credit, removing facsimile as a method of communication, clarifying the concept of the credit line item in the BGS-CIEP SMA, and the removal of the transfer of RECs from Committed Supply from EDC to Supplier in the BGS-RSCP-SMA. Additionally, the EDCs have added the Capacity Proxy Price to the BGS-RSCP SMA for both the 2022/2023 delivery year and the 2023/2024 delivery year.

#### *Removal of Environmental Attribute Transfer Clause*

In Initial Comments, Rate Counsel asserted that the EDCs did not explain the basis for the deletion of the language formerly found in SMA Section 2.2(b)(iv) related to transfer provision regarding the elimination of renewable energy attributes. (Rate Counsel Initial Comments at 9). Rate Counsel further asserted that the change would serve to drive up the cost of BGS service as BGS suppliers would need to procure additional renewable energy attributes previously supplied by the EDC. (*Ibid.*) According to Rate Counsel, this change is not required to allow the EDCs to assume the transmission portion of the BGS product. Without further explanation justifying the proposed change, Rate Counsel recommended that the Board reject the proposed deletion. (*Ibid.*)

In their Final Comments, the EDCs indicated that the intent of this provision was to make available to BGS-RSCP suppliers renewable energy certificates (“RECs”) to which the EDCs have an existing physical or financial entitlement (“Committed Supply”), including supply from non-utility generation contracts. (EDC Final Comments at 15). The EDCs further stated that all such contracts from which the EDCs could receive RECs to make available to BGS-RSCP suppliers expired prior to June 1, 2017, and the EDCs no longer have any RECs from Committed Supply, rendering this provision in the BGS-RSCP SMA moot. (*Ibid.*)

Given the EDCs explanation, and the fact that any such contracts that this section would have been applicable to have expired, the Board **FINDS** that the EDCs’ proposal to delete this language is appropriate.

#### *Section 15.9 - Transmission Costs*

In the Proposal, the EDCs proposed to remove transmission from the BGS product. That is, the EDCs proposed to transfer responsibility of transmission payments from each of the BGS suppliers to the relevant EDC starting with BGS contracts executed following the 2021 BGS Auctions. Each BGS supplier would, as has been the case in past BGS auctions, assume PJM Load Serving Entity (“LSE”) responsibility for the portion of BGS load (whether BGS-CIEP or BGS-RSCP) served by that BGS supplier, be physically and financially responsible for the hour-by-hour provision of electricity to BGS customers, fulfill the obligations under the RPS, and provide any other services as may be required by PJM. However, unlike prior BGS contracts, as proposed by the EDCs, the EDCs rather than the BGS suppliers, would be responsible for the transmission and transmission-related costs set forth in the EDCs’ proposal.

Additionally, the EDCs proposed that if the Board approves the removal of transmission from the BGS product for BGS-CIEP Load, and for approximately one-third of BGS-RSCP Load auction in 2021, the Board should also approve the EDCs’ proposal to remove transmission from the BGS product for existing BGS contracts.<sup>13</sup>

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<sup>13</sup> ACE, JCP&L and PSE&G proposed to remove transmission from the BGS product effective January 1, 2021 or 20 days after Board approval. RECO proposed to amend the SMAs won in the 2019 and 2020 BGS RSCP Auctions to remove transmission from the BGS product with a target date of June 1, 2021.

In its comments, IEPNJ stated that it supports the proposal that the EDCs be responsible for transmission and transmission-related costs for BGS load, and that transmission be removed from the BGS product through the transfer of specific PJM billing line items from the BGS supplier to the EDC. (IEPNJ Initial Comments at 2). IEPNJ agreed that the proposal would address the ongoing concern that has been expressed by current and prospective BGS suppliers that the current policy to include transmission cost line items within the BGS product imposes significant financial risk on BGS suppliers, and that removal of transmission from the BGS product will reduce risk premiums and otherwise positively impact suppliers' willingness to participate in future BGS auctions. (Id. at 2 to 3).

Similarly, ExGen expressed support for the EDCs' proposed changes to shift responsibility for certain transmission costs from BGS Suppliers to the EDCs for SMAs beginning with the period starting June 1, 2021 as well as the proposal to amend existing SMAs such that responsibility for the going forward transmission costs under existing SMAs is shifted to EDCs. (ExGen Initial Comments at 1). ExGen asserted that BGS suppliers have no direct control over transmission charges, which are administratively determined through the PJM tariff, and as a result there is no competitive benefit to requiring suppliers to retain the risk associated with transmission cost charges. (Id. at 2). ExGen argued that the current mechanism is problematic because FERC transmission cost allocation proceedings can take years to resolve, noting that currently the costs collected, but not yet reimbursed to suppliers, exceed \$125 million and are growing. (Ibid.) ExGen asserted that the proposed changes will make the BGS auction more competitive by reducing the risk of lengthy delays before reimbursement for increased transmission costs, thereby obviating the need for associated risk premiums in BGS Supplier bids. (Ibid.) ExGen further stated that these changes are not expected to have any impact on customer rates and such changes will lessen economic pressure on BGS suppliers during these difficult economic times. (Id. at 3). Additionally, ExGen urged the Board to order a solution that enables the EDCs to pay out the collected historic costs to BGS suppliers as promptly as possible. (Ibid.)

Likewise, Hartree indicated that the proposed changes serve to avoid the risk of further accumulation of transmission costs owed, but not paid, by the EDCs to BGS suppliers while cases are pending at FERC. (Hartree Initial Comments at 1). Hartree asserted that if there is any delay in repayment of pass-through items which are not addressed summarily in current and future contracts, such delay will cause ongoing risk of financial harm to the BGS suppliers, creating further uncertainty around the auction process and ultimately affecting the rate payers. (Ibid.) Hartree maintained that these transmission costs are determined through regulatory processes, and that there is no market-based means available to suppliers to hedge against unanticipated regulatory change and resulting shortfalls, and as such, there is no competitive benefit derived for BGS customers by having these costs pass through BGS suppliers. Hartree further asserted that there is only exposure to potentially higher prices for BGS customers due to premiums for additional risk that BGS auction participants might include in their supply prices to mitigate risks related to costs which may not be reimbursed. (Ibid.) Additionally, Hartree supported resolving any outstanding historical items related to transmission summarily so as to not jeopardize the integrity of future auctions. (Id. at 2).

Vitol supported the EDCs' proposal to change the BGS SMAs, Section 15.9, as well as to amend the SMAs for prior BGS products to remove the same costs on a going forward basis to avoid the risk of further accumulation of transmission costs owed, but not paid, by the EDCs to BGS suppliers due to pending cases at FERC. (Vitol Initial Comments at 1). According to Vitol, the unresolved transmission cost allocation cases at FERC have led to a precarious situation for BGS suppliers who experienced significant shortfalls in reimbursements of certain pass-through

transmission costs associated with their BGS obligation with the cumulative total at least \$125,967,786 through May 31, 2020, which continues to grow. (Id. at 1 to 2). Vitol claimed that removal of transmission and transmission-related costs from the suppliers' obligation for the BGS product for the period beginning June 1, 2021 will ensure that future auctions will continue to provide competitive prices for BGS customers while eliminating an unnecessary risk element and its associated risk premium from the BGS products. (Id. at 2). Additionally, Vitol asserted that removal of transmission and transmission-related costs from the suppliers' obligation for prior BGS products on a going forward basis will stop the continuing accumulation of transmission costs owed, but not paid, by the EDCs to suppliers and it will help to provide assurance to suppliers that their risk exposure to non-payment of these costs will have a limit. (Id. at 2). Vitol requested that the BPU establish a reasonable resolution that leads to the expedited payment of the collected and not paid funds to the impacted BGS suppliers by December 31, 2020. (Id. at 3).

In its Initial Comments, Direct asserted that should the Board adopt the EDCs' proposal to remove transmission from the BGS product, the transmission costs for TPSs should also be removed. Additionally, Direct stated that the Board should further require the EDCs to collect all transmission costs from all customers via a separate line item either on the supply or distribution side of the house. (Direct Initial Comments at 1). According to Direct, this would present customers with a supply charge that is more comparable than what will occur if BGS providers are given the relief of having to include transmission in their bids. (Id. at 2). Direct claimed that the EDCs' proposal would, among other things, essentially favor the BGS product over products offered by TPSs to mass market and many C&I customers. (Id. at 1). As recognized by the EDCs in their proposal, transmission is not a hedgeable cost. Direct argued that to maintain the competitive price to the BGS Auction and not add premiums to TPS pricing, the same considerations and solutions should be applied to TPSs. (Id. at 2). Accordingly, Direct requested that the Board consider removing transmission from rate requirements for all TPSs so that customers are presented with a supply charge that is more comparable than what will occur if the Proposal is approved. (Ibid.) Additionally, Direct indicated that BGS suppliers would not have to include a premium for transmission like Direct which is disadvantageous for customers looking for price stability with a long term contract. If the premium risk is being removed for BGS providers, it should be removed from TPSs as well to maintain price competitiveness and fairness. (Ibid.)

As indicated in its Initial and Final Comments, Rate Counsel did not object to the EDCs' proposed change to the BGS product in the 2021 BGS Auction regarding transmission related costs. Rate Counsel stated the growing balance associated with collected, but not paid, transmission costs pursuant to the terms of the previous BGS SMAs translates into additional risk for potential BGS Suppliers deciding whether to bid into the 2021 BGS Auction, which has the potential to hinder participation by certain bidders and may also cause bidders to include higher risk premiums within their bids. (RC Initial Comments at 3 to 4, RC Final Comments at 3). Rate Counsel stated that, as a result, there is the potential that collect-don't pay balances may affect the BGS Auctions' competitiveness and undermine its ability to obtain supply at competitive prices consistent with market conditions. (RC Initial Comments at 4). However, Rate Counsel did object to amending the existing SMAs to apply this change to existing contracts where the bids have already been awarded as it does not believe the same concerns regarding the impact on bidding behavior apply to those contracts as the bids have already been awarded. (Id. at 4, RC Final Comments at 3 to 4). Rate Counsel contended that the EDCs' proposal to reach back and alter existing agreements does not provide any discernable benefit to ratepayers. As the EDCs acknowledged, bidders have most likely included unquantifiable risk premiums into their bids to cover the mismatch related to these costs. Rate Counsel argued that applying the change to existing contracts would

not remove any such premiums from existing contracts and any impact on bidding behavior for these prior periods has already occurred and would not be remedied by the proposed change. (RC Initial Comments at 8). In its Final Comments, Rate Counsel expressed continued concern that changing existing contracts may have the unintended consequence of introducing regulatory uncertainty for potential bidders by giving the perception that existing SMAs can be changed fairly easily. Rate Counsel asserted that this may introduce further risk for the suppliers that would be reflected in their bids. (RC Final Comments at 3).

Rate Counsel further noted that whether the proposed change will address the collected, but not paid issue or lead to increased administrative costs remains to be seen (RC Initial Comments at 7). Rate Counsel recommended that the Board order the EDCs to submit the administrative costs charged to ratepayers for review by Board Staff and Rate Counsel in their next BGS reconciliation filing. (Ibid.)

RESA, in its Final Comments, opposed the EDCs' proposal to transfer responsibility of transmission payments from the BGS suppliers to the EDCs arguing that the proposal only applies to the BGS customers rather than being offered in a uniform, competitively neutral manner to customers of BGS suppliers and TPSs. (RESA Final Comments at 1). RESA supported Direct's alternative proposal asserting that what has changed in the 2021 BGS process is an increased risk on both BGS suppliers and TPSs associated with FERC delays in approvals. RESA stated that the risk premium concern raised by the EDCs is also true for TPSs competing in the New Jersey energy supply market. (Id. at 2). RESA asserted that the consequences of only granting transmission cost relief to BGS customers will place TPS customers at a further pricing disadvantage. (Ibid.)

RESA further argued that any fears that the TPSs would take advantage of their respective transmission costs being moved into an EDC wires charge are completely unfounded, stating that in order to continue to compete effectively in a competitive energy supply market, TPSs would need to pass along the transmission costs reduction to their customers. Should a TPS continue to charge customers more for electricity supply, RESA asserted that those customers would simply migrate back to the BGS product. (Id. at 4).

RESA maintained that the pricing distortion between TPS and BGS customers that will result from adopting the EDCs' proposal will be a particularly serious problem for the government energy aggregation ("GEA") market in New Jersey as municipal and county aggregation RFPs usually require the TPS bidding on an aggregation to offer a price that is lower than the BGS rate. RESA claimed that both existing contracts and future competitive bids will be affected by adoption of the EDCs' proposal, grinding the GEA market to a halt. (Id. at 4 to 5).

RESA urged the Board to grant the same relief to TPS customers, which has been proposed by the EDCs for BGS supply, and transfer responsibility for transmission payments from the TPS suppliers to the EDCs. In the alternative, RESA stated that if the Board determined that it is constrained by the BGS procedural format from granting such relief to TPS customers, the Board should immediately move to establish a separate proceeding to address transferring TPS transmission costs to the EDCs. (Id. at 5).

In its Final Comments, Rate Counsel expressed opposition to Direct's recommendation that the Board remove the transmission costs for TPSs to mirror the BGS supplier prices. Rate Counsel pointed out that TPS' prices are not regulated and TPSs provide a different product for their customers and removal of transmission costs for TPS providers may result in unintended consequences for the Board and ratepayers and may have legal impediments. (RC Final

Comments at 4). Rate Counsel noted that it is unclear what would happen to an existing multi-year TPS supply agreement if the Board orders all transmission related services to be provided by the EDC. Rate Counsel also questioned the Board's jurisdiction to make such a change to existing contracts. Rate Counsel stated that not all TPSs in the State are represented in this BGS proceeding. (Id. at 4 to 5). Rate Counsel recommended that if the Board wished to explore taking the transmission component out of the TPS product offering and transferring the obligation to the EDCs, a separate proceeding should be initiated to open a broader inquiry with all interested parties invited to participate. (Id. at 5).

In their Final Comments, the EDCs maintained that their proposal alleviates the risks associated with the disparity in the timing between BGS suppliers' payment for transmission costs to PJM, and receipt of payment for these costs from the EDCs going forward from June 2021. (EDC Final Comments at 6).

With respect to Rate Counsel's concerns related to administrative costs, the EDCs argued that the activities and related administrative charges in both cases (under the current construct and under the EDCs' proposal) are comparable. Under the existing construct, costs include the following activities: 1) preparing the filing to the Board under Section 15.9; 2) tracking of amounts collected from customers and not yet paid to BGS suppliers; and 3) calculations and paying amounts to BGS suppliers once a Final FERC Order is available or otherwise approved by the Board. (Id. at 7). Administrative costs associated with the EDCs' proposal would be those costs associated with: 1) preparing the filings to the Board with the calculation of changes to the specific transmission charge paid by BGS customers; and 2) payment to PJM. (Id. at 7 to 8). Similar to current practice, under the EDCs' Joint Proposal, the EDCs will continue to make filings to the Board for changes in transmission rates, but the filings previously made under Section 15.9 would be replaced by filings to change the transmission charge. The EDCs would continue to pay transmission-related costs, but payments to BGS suppliers would be replaced by payments to PJM. The EDCs further noted that they did not foresee an increase in administrative costs and, if anything, anticipate that administrative costs may decrease because (for those contracts executed following the 2021 BGS Auctions) there would be no need to track amounts held-but-not-paid to BGS suppliers, and no need to ensure that those amounts are ultimately paid once the Board has authorized the EDCs to do so. (Id. at 8).

Additionally, the EDCs expressed strong opposition to Direct's assertion that TPSs and BGS suppliers are under identical circumstances with respect to transmission costs as BGS-RSCP suppliers are required to enter into a three (3)-year contract with the EDCs that is a standard agreement approved by the Board. (Id. at 14). BGS – RSCP suppliers do not control the manner in which the auction price is converted into customer rates, and they have no relationships with customers, while TPSs can enter into contracts of various lengths, elect to include provisions that would protect TPSs from changes in transmission rates and elect to have variable or fixed-term pricing. The EDCs asserted that TPSs have the ability to protect themselves from changes in transmission rates. The EDCs further contend that there is no reason to shift the responsibility of transmission for third party supply to EDCs and ultimately to move transmission charges to the distribution side of the bill. (Id. at 14).

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. In its previous Orders, the Board noted its belief that this construct provided 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. In its November 2019 Order, the Board expressed its concern about the continued delays at FERC and the growing backlog of pending matters. We are now entering the fourth BGS auction wherein a significant amount of transmission costs are not finalized by FERC. The Board is pleased with the Parties' progress and attempts to find a resolution to this issue. The Board notes the overwhelming support for the transfer of responsibility of transmission costs going forward. The Board **HEREBY APPROVES** the EDCs request to transfer the responsibility of transmission costs going forward to the EDCs.

With respect to the EDCs' request to amend existing BGS contracts, the Board notes that the EDCs will prepare amendments that current suppliers can execute at their option and suppliers will not be forced to amend their existing contracts. As noted by several parties, the amount being collected by the EDCs and held for future payment to BGS suppliers is growing at a rate of approximately \$6 million per month. Continuing with the current construct for existing contracts while modifying the procedure for future contracts has the potential to increase administrative costs that are collected from customers. Under the current construct, the EDCs must track collections from customers and the amounts due to suppliers, as well as file for recovery of changes under Section 15.9 of the SMAs. Under the EDCs' proposal for future contracts, there will be a reduced number of filings with the Board for review and a reduction in administrative functions related to tracking collected, and not yet paid amounts. This transfer will also lower the risk of supplier defaults and potentially remove additional risk premiums that current suppliers may try and recover in their offers for current or future BGS Auctions. The transfer also reduces administrative costs for suppliers who also must track any amounts owed to them. Accordingly, the Board **HEREBY APPROVES** the EDCs request to amend existing SMAs regarding the transfer of responsibility for transmission.

While the Board understands the concerns expressed by Direct and RESA, the Board agrees with the EDCs that TPSs are not in the same position as BGS suppliers. Under the current construct, BGS suppliers pay PJM for the reallocated transmission costs and they must wait until a Final FERC Order is received from FERC to receive those funds from the EDCs. TPSs do not have such restrictions as they collect their transmission costs directly from customers, not the EDCs. Additionally, as noted by Rate Counsel, under Direct and RESA's proposal, it is unclear what would happen to an existing multi-year TPS supply agreement that includes the transmission component. TPS rates are not regulated by the Board and there is no guarantee that if the proposed relief is granted that 100% of TPSs will adjust their rates to completely remove the transmission component. Furthermore, the BGS proceeding is not the forum to address removing the transmission component from the TPS product offering. Accordingly, the Board **HEREBY DENIES** Direct and RESA's request to transfer responsibility for transmission payments from the TPS suppliers to the EDCs.

#### Price to Compare

In its Initial Comments, Direct asserted that, under the Proposal, although EDCs would collect transmission charges via a separate line item in the supply portion of a customer's bill (as opposed to the distribution side of the bill), the Proposal does not mitigate Direct's concerns. Direct argued that unless there were significant changes to how the Price to Compare ("PTC") is calculated and displayed to customers, customers will likely not be able to understand that in order to have a true apples-to-apples comparison with TPS rates they need to add the supply charge plus the separate the transmission line item. (Direct Initial Comments at 1). Direct further asserted that the continued disparate treatment of BGS over TPS product offerings will continue to skew customers away from TPS offerings because of the artificial look and feel of a lower PTC. (Ibid.)

ExGen states that the proposed changes should not inadvertently disadvantage TPSs and their customers. ExGen asserted that any effect of the proposed changes on the PTC should be transparent, and that the Board should ensure all transmission costs are properly and timely reflected in the PTC. (ExGen Initial Comments at 3).

In its Final Comments, Rate Counsel agreed that the TPS and BGS price should be an apples-to-apples comparison so that consumers can make informed choices when shopping for a supplier. Rate Counsel asserted that adding the transmission cost incurred by the BGS to the BGS cost on a kWh basis should provide a useable PTC. (RC Final Comments at 4).

RESA agreed with Direct's argument that the EDCs' proposal will create an artificial look and feel to the PTC. RESA argued that the EDCs' proposal to solve the PTC issue by including the transmission costs on the supply side of the bill fails to address the far larger problem that TPSs will need to continue charging their customers a risk premium to attempt to hedge against the delayed reimbursement of transmission payments while the BGS suppliers would no longer face such a risk. (RESA Final Comments at 3). RESA asserted that this would drive down BGS pricing as compared to TPSs and would drive more customers to select BGS, which is contradictory to the intent of Energy Discount and Energy Competition Act ("EDECA"). RESA contended that the EDCs' proposal is not consistent with market conditions, which EDECA requires. (Id. at 4).

RESA noted that it has long sought a meaningful PTC that allows all customers to compare TPS and BGS pricing. Accordingly, RESA argued that if the Board goes forward with the EDCs' proposal to move only BGS transmission costs into an EDC wires charge, the Board should quickly institute a PTC proceeding to address needed modifications to the PTC requirements so it can become a useful tool for all customers when shopping for electric supply service. (Id. at 5).

In their Final Comments, the EDCs stated that while the responsibilities of BGS suppliers and TPSs will now be different, there is no impact on the continued development of retail choice because the components of the price that TPSs compete against, the PTC, will not change. (EDC Final Comments at 13). The EDCs noted that they did not propose to change the PTC provided on a customer's bill, as it includes transmission and will continue to include transmission going forward and the PTC reflects the entirety of the BGS charge, including transmission, going forward. (Id. at 13 and 14).

The Board understands the concerns expressed by both Direct and RESA related to the PTC. Rate Counsel noted, and the Board agrees, that the TPS price and the BGS price should be an apples-to-apples comparison so that consumers can make informed choices when shopping for a supplier. Additionally, as noted by the EDCs in their Final Comments, the PTC will reflect the entirety of the BGS charge, including transmission. The Board notes that PSE&G's current tariff bundles the BGS auction price with transmission costs for a combined rate. The other EDCs have separate tariffs pages and line items for transmission costs. While combined for billing and PTC purposes, the tariffs of ACE, JCP&L and RECO afford customers the opportunity to see how much they are paying for transmission. The Board **HEREBY DIRECTS** PSE&G to separate, in its tariff, the transmission costs on a per kWh or per kW basis to provide visibility for its customers of the costs of transmission.

Additionally, the Board **HEREBY DIRECTS** the EDCs to submit to Board Staff, within 60 days, their current calculations of their PTCs, and the proposed calculations of PTCs going forward, to ensure that they are reflective of all BGS costs, including transmission charges. The Board **FURTHER DIRECTS** Staff to review the NJ Power Switch website to ensure that it is updated to reflect the approved modifications.

## **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 2021 BGS Auctions, and incorporates the reasoning and relevant provisions of its December 1, 2004 Order as if set forth at length herein. A copy of that Order is attached hereto as Attachment C.

## **AUCTION PROMOTION/DEVELOPMENT**

Based upon a review of the record, the Board **HEREBY FINDS** that a successful BGS procurement can be achieved with a well-designed simultaneous descending clock Auction, provided that the rules and details are specified and implemented correctly, and provided that the Auction process provides sufficient awareness among qualified potential bidders so that a competitive procurement takes place. To maximize participation and competition, the Auction process requires a marketing and promotion plan aimed at ensuring exposure and awareness among qualified potential bidders. This year, as in past years, the EDCs and the Auction Manager will attempt to facilitate the Auction process and increase the number of prospective bidders by publicizing the Auctions and by educating potential bidders about the proposed Auctions. Among the steps to be undertaken are the following:<sup>14</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.

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<sup>14</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 2021 Auction.

During the Board's Legislative-Type Hearing, NERA noted that the February 2021 auction may need to be conducted remotely due to COVID-19 restrictions. As noted by Rate Counsel in its Final Comments, should this be the case, the auction would be the first one to be held remotely. While the auction already takes place digitally, Rate Counsel argued that bidders connecting from home office connections may not experience the stability associated with office setting connections. Rate Counsel recommended that NERA provide additional training to prospective bidders and that the mock auctions test BGS bidders' home office connectivity in order to have seamless auction in February.

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. The Board agrees with the concerns expressed by Rate Counsel regarding conduct of the entire Auction remotely and **HEREBY DIRECTS** NERA to provide additional training to prospective bidders and mock auctions to test BGS bidders' connectivity in order to have seamless auction in February.

### **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>15</sup> there are a number of decisions/actions that need to be made after Board approval of the Auction process. Each of these decisions/actions needs to take place according to such a schedule so that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based upon the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that must be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, this perceived additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four (4) EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-RSCP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-RSCP Auction and the BGS-CIEP Auction no later than the

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<sup>15</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.

second business day after the last Auction closes.<sup>16</sup> At its discretion and depending on circumstances, the Board may address the results of one (1) Auction that has closed while the second Auction continues. However, under all circumstances, the Board intends to have considered the outcome of both Auctions by no later than the second business day after the last Auction closes.

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 4, 2020. 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 Proposal. Other areas, such as load caps and volume adjustment decisions, establishing minimum and maximum starting prices, establishing specific starting prices, the resolution of association issues, and Auction price decrements are either Company-specific concerns, are determined directly from algorithms included in and approved as part of this proceeding, or are issues best addressed by the Auction Manager based on its experience. In the event that these other areas need to be addressed by the Auction Manager, the Board **HEREBY DIRECTS** that the Auction Manager include in its Final Report a description of any such actions. Should any unforeseen circumstances occur during the Auction decision-making process, the Board **HEREBY DIRECTS** Staff to immediately bring the matter to the Board's attention.

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

### **FINDINGS AND CONCLUSIONS**

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

This 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;

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<sup>16</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.

The Proposal, as modified herein, is consistent with the EDECA, N.J.S.A. 48:3-49 to -107, and the EDCs' Final Restructuring Orders;

The 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, 2021;

The Proposal, as modified herein, appears to be the best means to secure BGS service for the 2021 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 2022 and 2023 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-RSCP rate design is an appropriate methodology to translate final BGS-RSCP bids into customer rates for the purpose of this Auction;

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

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

The EDCs are 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 designated NERA to continue to act as the Auction Manager for the 2021 Auctions;

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

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

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

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

The EDC-specific Contingency Plans are reasonable;

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

Bates White will be the Board's Auction Advisor for the 2021 Auctions, and will oversee the Auctions on behalf of the Board consistent with the terms of its contract;

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

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

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

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

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

For RPS compliance purposes, winning bidders in the 2021 BGS Auction, through the EDCs, will be credited with an equivalent level of non-utility generation RECs as would be available to them through the EDCs.

Accordingly, for the foregoing reasons, the Board **HEREBY APPROVES** the Proposal, including the BGS-RSCP and BGS-CIEP Auction Rules, the EDC-specific addenda and the SMAs, with the modifications described herein. The Board reserves the right, at the certification meeting, to reject the BGS-RSCP Auction results and/or the BGS-CIEP Auction results.

Furthermore, the Board **HEREBY DIRECTS** that the Initial and Supplemental Proposals be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by December 4, 2020. 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 20, 2020.

DATED: November 18, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

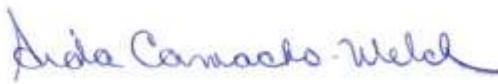


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD  
BEGINNING JUNE 1, 2021

DOCKET NO. ER20030190

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD  
BEGINNING JUNE 1, 2021

DOCKET NO. ER20030190

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IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE PERIOD  
BEGINNING JUNE 1, 2021

DOCKET NO. ER20030190

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# ATTACHMENT A

## Tentative 2021 Auction Approvals and Decision Process

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

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

<b>Decision point</b>	<b>Decision process</b>	<b>Timing</b>
Joint EDC Filing	EDCs	July 1, 2020
Announce minimum and maximum starting prices	AM/BA	November 5, 2020
Announce Tranche Targets	AM	November 16, 2020
Announce Load Caps	AM/BA	November 16, 2020
Decision on 2020 Process	BPU	November 18, 2020
Information webcast for potential bidders	AM/EDCs	December 3, 2020 (tentative)
Compliance Filing	EDCs	December 4, 2020
Approval of Compliance filing	BPU	December 2020
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2020
Review Part I applications	AM/BA	December 15-18, 2020

## ATTACHMENT A

### Tentative 2021 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 14-22, 2021
Information Webcast for registered bidders	AM/EDCs	January 26, 2021 (tentative)
Trial Auction	AM	January 28, 2021
Inform bidders of EDC-specific starting prices	EDCs/AM/BA	CIEP – February 2, 2021 RSCP – February 3, 2021
BGS-CIEP Auction starts		February 5, 2021
BGS-RSCP Auction starts		February 8, 2021
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. ER20030190**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY**  
**2021 BGS-CIEP AUCTION**

---

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

[Introductory comments, if any]

Auction began with the opening of Round 1    [x:xx am]    on    February 5, 2021

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

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	<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. ER20030190**

**Post-Auction Checklist for the New Jersey 2021 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. ER20030190**

**Post-Auction Checklist for the New Jersey 2021 BGS-CIEP Auction**

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

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

**ATTACHMENT B**  
**Docket No. ER20030190**

**Post-Auction Checklist for the New Jersey 2021 BGS-CIEP Auction**

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

**ATTACHMENT B**  
**Docket No. ER20030190**

**Post-Auction Checklist for the New Jersey 2021 BGS-CIEP Auction**

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

**ATTACHMENT B**  
**Docket No. ER20030190**

**POST-AUCTION CHECKLIST**  
**FOR THE NEW JERSEY 2021 BGS-RSCP AUCTION**

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

[Introductory comments, if any.]

Auction began with the opening of Round 1    [x:xx am]    on    February 8, 2021

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

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	_____	_____	_____
Tranche target	<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. ER20030190**

**Post-Auction Checklist for the New Jersey 2021 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”.

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**Docket No. ER20030190**

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**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?	
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?	

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**Post-Auction Checklist for the New Jersey 2021 BGS-RSCP Auction**

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

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

# Attachment C



Agenda Date: 10/22/04

Agenda Item: 2A

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

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

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

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

## DISCUSSION

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

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

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

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

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

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

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

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

The Board has approved the use of a descending clock auction process for Year Three. The auction process, at its most basic level, includes three groups of contributors. The first group is made up of the four electric distribution companies the purchasers of the BGS supply, who rely on maximum participation by qualified bidders in order to ensure a competitive procurement for its BGS customers. The second group consists of the qualified bidders or BGS suppliers, which proffer the competitive bids to supply tranches<sup>1</sup> of power to the EDCs. In order to become a qualified bidder, BGS suppliers must meet certain general, financial and credit requirements. Qualified bidders are made up of two groups: (a) those that provide direct supply and (b) those that provide supply through market purchases. The third contributor is the Auction Manager, National Economic Research Associates, who administers the auction in consultation with the EDCs, the Board Staff and the Board's consultant, Charles River Associates.

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

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

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

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

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

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

# 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.

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

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

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

### III. INDICATIVE OFFERS

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

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

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

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

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

## IV. ROUND PRICES AND INDIVIDUAL BIDS

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

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

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

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

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

## V. BIDDER INFORMATION

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

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

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

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

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

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

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

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

# 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.

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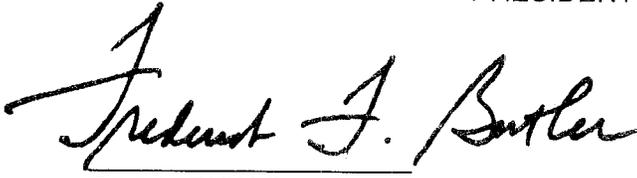
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES  
BY:



JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER



JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY