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**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF THE PROVISION OF BASIC )  
GENERATION SERVICE (BGS) FOR THE PERIOD ) DECISION AND ORDER  
BEGINNING JUNE 1, 2022 ) DOCKET NO. ER21030631

**Parties of Record:**

**Joshua Eckert, Esq.**, Attorney for Jersey Central Power & Light Company  
**Matthew Weissman, Esq.**, Attorney for Public Service Electric and Gas Company  
**Philip J. Passanante, Esq.**, Associate General Counsel for Atlantic City Electric Company  
**Margaret Comes, Esq.**, Associate Counsel for Rockland Electric Company  
**Brian O. Lipman, 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 17, 2021 agenda meeting pertaining to the provision of Basic Generation Service ("BGS") for retail customers who continue to purchase their electric supply from their electric distribution company ("EDC") for the period beginning June 1, 2022.<sup>1</sup>

By Order dated April 7, 2021 in this matter, the Board directed the EDCs and all other interested parties to file proposals by July 1, 2021 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, 2022.<sup>2</sup> The Board adopted a procedural schedule to address the proposals, and provided for initial written comments, a Legislative-Type Hearing, and final written comments.

The EDCs made a joint BGS filing on July 1, 2021 ("Proposal"). Initial Comments on the Proposal were filed on or about September 3, 2021. A Legislative-Type Hearing, chaired by President Joseph L. Fiordaliso, was held on September 27, 2021. Final Comments were filed on October 12, 2021.

<sup>1</sup> The EDCs are Atlantic City Electric Company ("ACE"), Jersey Central Power & Light Company ("JCP&L"), Public Service Electric and Gas Company ("PSE&G"), and Rockland Electric Company ("RECO").

<sup>2</sup> In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2022, BPU Docket No. ER21030631, Order dated April 7, 2021 ("April 7, 2021 Order").

Parties that filed either a proposal, comments, or appeared at the Legislative-Type 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”), and Electrify America.

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 30, 2021, JCP&L’s and PSE&G’s public hearings were held on September 13, 2021, and RECO’s public hearing was held on September 16, 2021. 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 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, 2021, the EDCs filed the Proposal for BGS, consisting of a generic proposal for procuring BGS supply beginning on June 1, 2022, 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, 2022, for the larger Commercial and Industrial (“C&I”) customers on the EDCs’ systems, through an auction to provide hourly-priced service (“BGS-CIEP Auction”). The customers in this category represent approximately 2,789 Megawatts (“MW”) of load to be procured through bidding on an expected 37 full-requirements tranches.<sup>3</sup> This is the same type of Auction that the Board approved last year in Docket No. ER20030190.

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, 2022 through an auction (“BGS-RSCP Auction”) for approximately 4,892 MW of load to be served through 54 full-requirements tranches<sup>4</sup> of approximately 89 to 92 MW each.<sup>5</sup> This is similar to the Auction the Board approved last year in Docket No. ER20030190.

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<sup>3</sup> The tranche sizes are approximate amounts of BGS-CIEP eligible load and are as follows: ACE- 79.90 MW, JCP&L- 73.73 MW, PSE&G- 76.23 MW and RECO- 54.72 MW.

<sup>4</sup> The EDCs previously secured two-thirds of their total BGS-RSCP load requirements through May 31, 2023 by means of Board-approved auctions in February 2020 and February 2021.

<sup>5</sup> This does not include procurement for the RECO customers within the company’s territory outside of PJM.

The competitive process by which the EDCs proposed to procure their supply requirements for BGS load for the period beginning June 1, 2022 is detailed in the Proposal and in Appendices A and B (Provisional BGS-CIEP and BGS-RSCP Auction Rules, respectively), which is similar to the auction process approved by the Board for the past 20 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>6</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 each 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 Interconnection, 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 and ancillary services which would be known in advance of the Auction. Under the 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 of LSEs, BGS suppliers would be physically and financially responsible for the day-to-day provision of electric supply for BGS customers. The detailed commercial terms and conditions, under which the BGS supplier would operate, including credit requirements, are set forth in the BGS-CIEP and BGS-RSCP SMAs attached to the Proposal as Appendix C and D, respectively.

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<sup>6</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.

The EDCs proposed that the 2022 BGS Auction be held remotely, similar to the 2021 BGS Auction. Additionally, the EDCs requested that the Board allow them to take the steps necessary to close and/or sublet (as possible) the physical BGS Auction office.

The EDCs requested that the Board approve a modification to the load obligation (i.e. settlement) process that would involve the transfer of responsibility for unaccounted for energy (“UFE”) from the final monthly energy allocation (“FMEA”) of BGS suppliers, TPSs, and municipalities (if applicable) to the EDCs, and approve the transfer of the responsibility for costs and/or credits related to meter corrections and inadvertent energy from BGS suppliers to the EDCs.

The EDCs proposed that similar to the approach approved by the Board in the 2020 and 2021 BGS Auctions, the Board approve the use of capacity proxy prices for each EDC, for each delivery year, to be treated as the capacity prices for the 2023/2024 and 2024/2025 delivery years.

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 in its entirety, by the end of the second full business day after the calendar day on which the last of the two (2) Auctions closes. The EDCs recommended 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;

The BGS-CIEP Auction secures supply for a period of 12 months, and the BGS-RSCP Auction secures one-third of each EDC’s total load requirements for three (3) years, with the remaining two-thirds having been secured through previous BGS-RSCP Auctions;<sup>7</sup> and

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<sup>7</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.

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

### **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. In its Company-specific addendum, RECO explained that it does not need to conduct a Request For Proposal ("RFP") for energy for the 2022 BGS Auction.

On August 16, 2013, the Federal Energy Regulatory Commission ("FERC") approved the creation of a new capacity market zone in the Lower Hudson Valley region encompassing NYISO Load Zones G, H, I, and J in FERC Docket Number ER13-1380. Lower Hudson Valley capacity is not actively traded, and the Company does not expect the above to change before the BGS Auction. As a result of the capacity market changes at the NYISO noted above, RECO will purchase the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market, and will blend its forecast of those prices into the BGS-RSCP price. This is the same proposal approved by the Board in its Order dated November 18, 2020 in Docket No. ER20030190. The impact of these capacity purchases are expected to be minimal because the Company's Central and Western Divisions constitute only about 10 percent (10%) of the Company's BGS load.

With regard to the purchase of energy, in its November 2020 Order, the Board approved an 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, 2021.<sup>8</sup> On January 26, 2021, RECO conducted its RFP for the period June 1, 2021 through May 31, 2024. As a result of the RFP, RECO entered into a three (3) year Fixed for Floating Energy Swap contract with Exelon Generation Company, LLC. The Board approved the results of the RFP in its January 27, 2021 Order in ER20030190.<sup>9</sup> The RFP price will be rolled into RECO's BGS auction price to develop a weighted average BGS-RSCP price for the period June 1, 2022 through May 31, 2023. As a result of the three (3)-year contract, RECO's energy purchases were hedged through May 31, 2024, and another procurement proposal must be made for the BGS energy year commencing June 1, 2024.

### **DISCUSSION AND FINDINGS**

#### **BGS-RSCP and BGS-CIEP AUCTION FORMAT**

In reaching our decision regarding the provision of BGS for the period beginning June 1, 2022, the Board is mindful that the current BGS Auction process contains a set of carefully crafted and well defined features, and that it is not always possible to modify one aspect of the process without disrupting the balance of the entire process. In 2001, when the Auction process was a new concept, the Board was presented with and considered many arguments for alternate processes,

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<sup>8</sup> In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1 2021, BPU Docket No. ER20030190, Order dated November 18, 2020, ("November 2020 Order").

<sup>9</sup> In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2021, BPU Docket No. ER20030190, Order dated January 27, 2021.

alternate designs within the Auction framework, and varying procurement periods. In 2002, after conducting a process open to all interested participants, the Board determined that it was appropriate to retain the basic Auction design while initiating separate Auctions for both BGS-RSCP and BGS-CIEP customers.<sup>10</sup> For the 2003 through 2021 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.<sup>11</sup>

As previously stated, for the period beginning June 1, 2022, by Order dated April 7, 2021, 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 BGS-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, 2022. 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, 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 **HEREBY FINDS** that the EDC proposed BGS-RSCP and BGS-CIEP Auctions, using a descending-clock Auction format, should be used for the procurement period beginning June 1, 2022.

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

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

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<sup>10</sup> Board Order dated December 18, 2002, Docket Nos. EO02070384 and EX01110754.

<sup>11</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 November 13, 2019, Docket No. ER19040428, and November 18, 2020, Docket No. ER20030190.

## **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 to rely on several known variables when preparing a 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. See IEPNJ Initial Comments at 2.

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

The Board 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 **HEREBY DIRECTS** the EDCs to procure the approximate one-third of the EDCs' current BGS-RSCP load not under contract for a 36-month period. The tranche-weighted average of the winning bids from the upcoming 36-month period, blended with the tranche-weighted average of the 36-month supply contracts secured previously, will be used to determine the price for BGS-RSCP rates for the June 1, 2022 to May 31, 2023 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>12</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.<sup>13</sup> The Board noted that keeping the BGS-RSCP product as a three (3) year product will help mitigate rate changes and avoid the complications of requiring a supplemental auction when the 2022/2023 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

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<sup>12</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. The 2024/2025 Delivery Year is June 1, 2024 through May 31, 2025.

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

their bids. In the 2021 BGS proceeding, the EDCs again proposed the use of a Capacity Proxy Price for each EDC, for each delivery year, to be treated as the capacity prices for the 2022/2023 and 2023/2024 delivery years. In the November 2020 Order approving the 2021 BGS Auction process, the Board approved the use of a Capacity Proxy Price.

The results of PJM's base residual auction ("BRA") for the 2022/2023 delivery year (the first year of the BGS-RSCP supply term) were made available on June 2, 2021. Additionally, as noted in the Proposal, PJM released a schedule for its capacity auctions through the 2026/2027 delivery year and the results of the BRA for the 2023/2024 delivery year (the second year of the BGS-RSCP supply term) are scheduled to be made available on December 14, 2021. However, the results of the BRA for the 2024/2025 delivery year (the third year of the BGS-RSCP supply term) are not expected to be made available until June 22, 2022, and as such, the capacity price for the 2024/2025 delivery year will not be known prior to the 2022 BGS-RSCP Auction. If the capacity price is not known for the 2024/2025 delivery year prior to the BGS-RSCP Auction, BGS-RSCP suppliers are likely to include risk premiums into their bids and with some bidders choosing not to participate altogether. This could result in higher closing prices in the BGS-RSCP Auction than would otherwise be the case, to the detriment of BGS-RSCP customers. To address this potential problem, the EDCs proposed to continue the approach approved by the Board in its November 2019 Order and November 2020 Order, and proposed to address this issue by setting a Capacity Proxy Price for the 2024/2025 delivery year. Additionally, although the results of the BRA for the 2023/2024 delivery year are scheduled to be made available on December 14, 2021, if an unforeseen schedule delay at PJM occurs, it is feasible that the capacity price for the 2023/2024 delivery year may not be known prior to the BGS-RSCP Auction. As such, the EDCs propose to set a Capacity Proxy Price for the 2023/2024 delivery year that suppliers will be able to incorporate into their bids. However, if the results of the BRA auction for the 2023/2024 delivery year or the 2024/2025 delivery year are known at least 20 business days prior to the start of the BGS-RSCP Auction, the EDCs asserted that the Capacity Proxy Price for the applicable delivery year would no longer be needed and would be voided.

In its Initial Comments, Rate Counsel indicated that the EDCs proposed methodology for setting of the Capacity Proxy Price for the 2024/2025 delivery year is reasonable given that the results of the auction will be available in late June well after the February 2022 auction date. However, with regard to the 2023/2024 delivery year, Rate Counsel is not convinced that the 20 business days advanced notice of the BRA is necessary for bidders seeking to participate in the 2022 BGS-RSCP auction. Rate Counsel recommended that the Board continue to allow the EDCs to use a capacity proxy price for the 2024/2025 Capacity Auction for this proceeding but also recommended the Board consider shortening the amount of notice that would trigger implementing the Capacity Proxy Price for the 2023/2024 delivery year. See Rate Counsel's Initial Comments ("RC Initial Comments") at 8.

In its Final Comments, Rate Counsel noted that on September 22, 2021, PJM filed a request to delay the schedule December 1, 2021 BRA for the 2023/2024 delivery year by 55 days to provide for review of unit specific offer caps resulting in the auction occurring on January 25, 2022. At this time, FERC has not responded to PJM's request for the delay. If FERC approves the 55-day delay, then BGS bidders will have much less time to incorporate the results of the delayed BRA auction into the 2022 BGS-RSCP auction. Rate Counsel continued to recommend that the Board consider shortening the amount of notice that would trigger implementing the Capacity Proxy Price for the 2023/2024 delivery year, should it occur as scheduled for December 1, 2021. In the event that FERC approves the 55-day delay, then Rate Counsel recommended that the Board continue to allow the EDCs to use a capacity proxy price for the 2023/2024 Capacity Auction for this proceeding. See Rate Counsel's Final Comments ("RC Final Comments") at 4.



In their Final Comments, the EDCs noted that given PJM's proposed timeline for its BRAs for the 2023/2024 and 2024/2025 delivery years, it appears that neither the capacity price for those delivery years will be known prior to the 2022 BGS-RSCP Auction. See EDC Final Comments at 3. The EDCs noted that the proposed construct provides certainty to BGS-RSCP suppliers that they will be fully compensated for the actual rates for capacity that they pay in the 2023/2024 delivery year and in the 2024/2025 delivery year. Id. at 4. The EDCs stated that Rate Counsel supported the EDCs' proposal regarding the implementation of Capacity Proxy Prices for the 2024/2025 delivery year. According to the EDCs, Rate Counsel's uncertainty regarding bidders' need for 20 business days to consider the results of the 2023/2024 BRA was presumably based on the fact that the PJM timeline for the 2023/2024 BRA was available at the time of the filing of Initial Comments and contemplated that results would be known in mid-December 2021. The EDCs note that in the Legislative Type Hearing, Rate Counsel supported the EDCs' proposal, stating that the use of Capacity Proxy Prices looks necessary in this Auction as well, considering PJM has already requested permission from FERC to delay the 2023/2024 BRA until January 25, 2022. Rate Counsel also supported the employed methodology used to set the values of the Capacity Proxy Prices from the EDCs Joint Proposal. The EDCs requested that the Board approve the proposed capacity proxy prices for each EDC for both the 2023/2024 and 2024/2025 delivery years, as the actual capacity prices for these delivery years are not expected to be known prior to the start of the 2022 BGS Auction. Id. at 4 to 5.

The Board continues to recognize the difficulty in setting a Capacity Proxy Price as the Reliability Pricing Model ("RPM") BRA has traditionally produced volatile results. Of late, PJM has provided more clarity regarding its BRA to set the capacity prices with its release of a schedule for capacity auctions through the 2026/2027 delivery year, providing the EDCs the chance to use the most accurate capacity prices. However, as noted by Rate Counsel and the EDCs, some uncertainty remains for the upcoming BGS-RSCP Auction in regards to the BRA results for the 2023/2024 and 2024/2025 delivery years. Since the Board cannot know the upcoming capacity auction prices, the Board **HEREBY APPROVES** the EDCs' proposed numbers in the Proposal as the Capacity Proxy Price for the 2023/2024 and 2024/2025 delivery years. However, the Board notes that should the prices for the 2023/2024 delivery years be known five (5) days prior to the BGS-RSCP Auction, the Capacity Proxy Price for the applicable delivery year will no longer be needed and will be voided.

### **REMOTE AUCTION**

As a result of successfully conducting 2021 BGS Auction remotely, the EDCs proposed conducting the 2022 BGS Auctions from a remote setting, and holding additional training opportunities for bidders. Additionally, the EDCs requested Board approval to take the steps necessary to close and/or sublet (as possible) the physical BGS Auction office. The EDCs anticipate that continuing to conduct the BGS Auctions remotely will reduce costs, to the benefit of BGS customers, by eliminating those costs associated with maintaining the physical BGS Auction office. Additionally, the EDCs noted that after having already conducted the 2021 BGS Auctions in a remote setting, the protocols that were adjusted to accommodate holding the Auctions remotely are already in place.

Rate Counsel did not object to the EDCs' proposal that the 2022 BGS Auctions be conducted remotely, as long as the security and integrity of the auction process can be maintained. While Rate Counsel is in favor of reducing the costs associated with the physical BGS Auction office while the auctions are being conducted remotely, Rate Counsel recommended that the Board reevaluate the benefits of a remote auction in subsequent BGS proceedings. See RC Initial Comments at 9.

In their Final Comments, the EDCs noted that the protocol changes put into place in response to the COVID-19 health crisis allowed for the successful remote conduct of the 2021 BGS Auctions and made the process of administering the 2021 BGS Auctions not only safer and more efficient, but also made the process more secure. EDC Final Comments at 19. The EDCs asserted that using the internet for digital review and using digital storing of the round results not only increased efficiency but arguably increased security as well. The new protocols allowed the Auction Manager to have absolute control over who had access to the digital rooms and the servers on which Auction results were stored had layers of security. The EDCs stated there was no risk that an uninvited and/or unwanted party could view the digital room where round results were reviewed or access the Auction records. Id.

The EDCs stated that, in their view, it remains necessary for the 2022 BGS Auctions to be conducted remotely, and protocols established for the 2021 BGS Auctions can be used for this purpose. As the Auctions were not harmed from the remote conduct of the process last year, the EDCs submitted that the new procedures led to increased efficiency. Id. at 20. In addition to increasing efficiency, eliminating the physical BGS Auction office, will lead to cost savings. The EDCs estimated the annual cost savings could amount to nearly \$130,000, including \$60,000 in costs associated with maintaining the physical BGS Auction office and approximately \$69,000 in annual operating expenses. The EDCs contended that closing/subletting the BGS Auction Office will not impact the ability to conduct the BGS Auctions and for the Board to monitor them. Id. 20 to 21.

The EDCs argued that, at the Legislative-Type Hearing, Rate Counsel incorrectly discounted the efficiencies that resulted from the changes made to procedures as "minor administrative efficiencies" and seemed to believe any such benefit comes at the cost of less security. In their Final Comments, the EDCs argued that the changes in procedures that led to the successful remote conduct of the 2021 BGS Auctions made the process of administering the 2021 BGS Auctions both more efficient and at least, if not more, secure. Id. 21 to 22.

The EDCs further stated that if the Board were to follow Rate Counsel's recommendation to reevaluate the benefits of a remote auction in subsequent BGS proceedings, the EDCs would not be able to close or sublet the physical BGS Auction office and BGS customers would fail to benefit from the saving in these operating costs. The EDCs do not anticipate a downside to holding the Auctions remotely in the future but if future issues warrant the return to a dedicated office-space to conduct the Auctions, the EDCs would work to identify and establish a new office at that time. However, the EDCs asserted that there is no reason for BGS customers to pay for the costs of holding the current physical BGS Auction office in the interim. Id. at 23.

The Board agrees that the remote 2021 BGS Auction was successful. Accordingly, the Board **HEREBY APPROVES** the EDCs' proposal to conduct the 2022 BGS Auction remotely. The Board agrees that the closing and/or subletting of the physical BGS Auction office could lead to reduced costs to the benefit of BGS customers, and **HEREBY FINDS** the EDCs' request to close and/or sublet the physical BGS Auction office appropriate. Furthermore, the Board **HEREBY DIRECTS** the EDCs to provide monthly reports to Board Staff ("Staff") on the progress of closing/subletting the BGS Auction Office until the office is closed or sublet to another tenant. Once the office is closed or sublet to another tenant, the EDCs are to provide a report showing the direct cost savings to BGS customers. However, with the security and operation of the Auction being paramount, the Board **HEREBY FINDS** that the Board's consultant, Bates White, and the Auction Manager, NERA, should work on a solution to conduct the Auctions from the same space to ensure that Bates White has a physical presence while the Auctions are being conducted.

### **UNACCOUNTED FOR ENERGY**

The EDCs proposed a modification that would limit the losses that are included in supplier's final load obligation (or are otherwise the financial responsibility of suppliers) solely to the loss values that are included in each EDC's tariff (as opposed to the current practice whereby suppliers are responsible for all actual losses). The EDCs asserted that this proposal would remove an element of uncertainty and variability for all suppliers.

In the Proposal, the EDCs requested that the Board approve a modification to the load obligation (i.e. settlement) process that would involve the transfer of UFE from the FMEA of BGS suppliers, TPSs, and municipalities (if applicable) to the EDCs, and approve the transfer of the responsibility for costs and/or credits related to meter corrections and inadvertent energy from BGS suppliers to the EDCs. According to the EDCs, UFE can be caused by a number of factors, including: 1) the difference between customer class average (tariff) loss factors (which are commonly a single loss value for all hours in the year) that are used to gross-up suppliers' loads and the actual losses on an EDC's system; 2) the difference between hourly loads for non-interval metered accounts and the actual hourly loads of such customers; 3) estimated bills; 4) estimates used in the submittal of generation and transmission tie-line information in determining the EDC's system load; 5) meter error; and 6) energy theft.

Regarding TPSs, the EDCs believe that such a change is permissible and consistent with the current Board-approved TPS Agreement, and the EDCs would make the necessary edits to their operating manuals to reflect the same (that are referenced in the TPS Agreement). In doing so, the EDCs argued that facilitating this transition for all suppliers would improve the wholesale settlement process across the entirety of New Jersey's PJM footprint. The EDCs proposed that this change be implemented for all suppliers [i.e. BGS suppliers winning tranches in the 2022 BGS Auction, existing BGS suppliers that have executed the UFE Amendment, TPSs, and municipalities (as applicable)] beginning on June 1, 2022. However, this proposed change is conditioned on all existing BGS-RSCP suppliers executing the UFE Amendment.

The EDCs further requested that the Board approve the deferral and recovery of all costs (or credits) associated with the transfer of UFE in the FMEA to the EDCs through an annually reconcilable non-bypassable charge, the Non-Utility Generation Charge ("NGC"). Additionally, RECO requested approval to create an NGC charge in its tariff, as it does not currently have one. The EDCs proposed to include all charges or credits related to meter corrections and inadvertent energy (that are transferred from BGS suppliers to the EDC) in their respective reconciliation charge(s).

In its Initial Comments, Rate Counsel noted that based upon discovery responses provided by the EDCs, JCP&L had much higher aggregate levels of UFE relative to the other EDCs and RECO did not provide any information on UFE, because it does not have this information available. RECO would need to install settlement software in the spring of 2022, which would allow it to obtain the information provided by the other EDCs. Rate Counsel argued that it is not clear why JCP&L's UFE values are so much larger relative to the other EDCs. RC Initial Comments at 4. Rate Counsel also noted that in response to discovery questions, the EDCs stated they have not conducted an analysis of the causes of UFE for their respective service territories and the UFE associated with meter error and energy theft provided by the EDCs appears to be small suggesting that other factors, that have not been analyzed by the EDCs at this time, appear to be a large contributor to UFE. Id. at 5. Rate Counsel stated that if UFE is an important issue to the Board, the Board should take the time to fully examine the drivers of UFE in a separate proceeding outside this BGS proceeding. Id. at 5 to 6. Accordingly, Rate Counsel recommended that the Board reject the EDCs' proposed change to make the EDCs responsible for UFE as the EDCs have not shown how ratepayers would specifically benefit from the proposed change or whether BGS suppliers, TPS Suppliers, or municipalities are in favor of this change to the BGS product. Rate Counsel recommended that the Board open a proceeding to examine the issue of UFE for all EDCs generically, but also to specifically examine the issues and/or factors affecting JCP&L. Id. at 6.

In their Final Comments, the EDCs provided further clarity that whereas UFE is incorporated in suppliers' load obligations (MWh), meter corrections and inadvertent energy are settled financially with suppliers (i.e., they are charged or credited to suppliers by PJM). See EDC Final Comments at 6.

The EDCs asserted that a new and impactful source of UFE will be generation produced from New Jersey's Community Solar Program ("Community Solar Projects"). Id. The EDCs clarified that the generation produced by Community Solar Projects will not be accounted for explicitly in the PJM marketplace on a MWh for MWh basis, but rather, from a settlements perspective, all generation from the Community Solar Projects will have to flow through UFE. Generation from Community Solar Projects will reduce zonal load target MWhs but will not be accounted for in customer load obligations on a kWh basis. As a result, there will be reduced supplier load obligations overall resulting from the Community Solar Projects. However, individual suppliers will not see this reduced obligation for the specific customers they serve because the customers subscribed to Community Solar Projects will continue to use the same amount of load as measured by their retail meters. Id.

The EDCs argued that their UFE proposal offers multiple benefits for both suppliers and customers. First, suppliers would have more certainty as to their load obligations, and as a result, BGS customers would also benefit as any risk premiums built into bidders' bids relating to UFE would be eliminated. Second, the EDCs asserted that their proposal offers an enhancement to the current settlement process, making this process more efficient. Id. at 7. The EDCs noted that the current process for making settlement corrections beyond PJM's FMEA 60-day deadline is cumbersome. Post-FMEA settlement is done through PJM Miscellaneous Bilateral transactions, and, in such circumstances, each party to any adjustment must agree, per the PJM tariff and manuals, to the wholesale transaction, and the EDC must remain in the middle of this reconciliation process in order to protect the confidentiality of all parties involved. Making UFE (in the FMEA), and charges and/or credits related to meter corrections and inadvertent energy, the responsibility of the EDCs eliminates the need to have all involved parties sign-off on the settlement transactions resulting from post-FMEA adjustments, reducing both the administrative costs and time associated with performing these settlement adjustments. Id.

The EDCs agreed that UFE proposal should be judged based on its impact to customers. However, the EDCs asserted that Rate Counsel's argument fails to acknowledge that UFE already impacts customers but in ways that are impossible for the EDCs to quantify because suppliers currently are intermediaries in that process. Id. at 7. According to the EDCs, their UFE proposal makes the impact of UFE on customers more transparent by removing suppliers (and how they account for UFE in their pricing and management of loads) from the equation. Moreover, as the marketplace changes, the EDCs asserted that UFE will materially change. The EDCs encouraged the Board to address this issue now by approving the UFE proposal and ensuring that the impact UFE has on customers is transparent as the market continues to develop. Id.

If the Board approves the UFE proposal, the EDCs asserted that the Board should also approve the EDCs' proposal to transfer these responsibilities in existing BGS-RSCP SMAs. The EDCs propose to offer existing BGS-RSCP suppliers (i.e., suppliers awarded tranches in the 2020 and 2021 BGS-RSCP Auctions) an opportunity to execute an amendment to their BGS-RSCP SMAs ("UFE Amendment"), which would permit the EDCs to become responsible for charges related to UFE (in the FMEA), meter corrections, and inadvertent energy. The EDCs would prepare amendments that BGS-RSCP suppliers holding existing BGS-RSCP SMAs can execute at their option. While the EDCs cannot anticipate what might cause a BGS-RSCP supplier currently serving BGS-RSCP load under an existing BGS-RSCP SMA not to sign the UFE Amendment, BGS-RSCP suppliers holding existing BGS-RSCP SMAs would not be required to amend their contracts. Allowing BGS-RSCP suppliers to sign the UFE Amendment at their option preserves the sanctity of the BGS-RSCP SMA. Further, if all existing BGS-RSCP suppliers from the 2020 and 2021 BGS-RSCP Auctions have not accepted the UFE Amendment on or before December 31, 2021, then the EDCs are unable to incorporate the removal of UFE from the BGS-RSCP suppliers since certain EDCs are unable to remove UFE from some BGS-RSCP SMAs and not others. To that end, the EDCs request that the Board approve the use of the UFE Amendment for existing BGS suppliers (i.e., suppliers awarded tranches in the 2020 and 2021 BGS-RSCP Auctions). Id. at 9.

As the EDCs' proposal involves both existing BGS-RSCP suppliers as well as those suppliers that will win in the 2022 BGS Auctions, the EDCs believe that the current BGS proceeding is the proper forum to judge the EDCs' UFE proposal as opposed to the creation of a separate proceeding (which would only serve to review the same information presented in the current proceeding). As such, the EDCs request that the Board judge the EDCs' proposal on its merits in the 2022 BGS proceeding and not through an additional and subsequent stakeholder process. Id. at 10 to 11.

After reviewing the EDCs Proposal and comments submitted, the Board agrees with Rate Counsel that the EDCs have not shown how ratepayers would specifically benefit from the proposed change or whether BGS suppliers, TPS suppliers, or municipalities are in favor of this change to the BGS product. The EDCs also failed to show why the change to the Auction is necessary given there have been no issues regarding UFE brought to the attention of the Board throughout the history of the BGS Auction process. With this being an issue that affects BGS suppliers, TPS suppliers and municipalities, it is important to have their thoughts on the EDCs' proposal. With the uncertainty of all current and future suppliers agreeing to the change of transferring the responsibility of UFE in the FMEA of all the TPS to EDCs, it provides additional unknowns concerning the EDCs' proposal. The EDCs have not provided enough background information supporting the proposal and as a result, the Board **HEREBY DENIES** the EDCs' UFE proposal.

## **PROPOSED CHANGES TO SMAS**

The EDCs proposed minor modifications to the SMAs clarifying language relating to statements and load obligation being made available to BGS suppliers. Additionally, the EDCs updated Appendix E of the BGS-CIEP SMA and Appendix H of the BGS-RSCP SMA to be consistent with the current list of Billing Statement Line Items as provided by PJM and to reflect the transfer of those line items pertaining to meter corrections and inadvertent energy from the BGS supplier to the EDC. In the SMAs, the EDCs added language regarding meter corrections and inadvertent energy pursuant to PJM agreements, as well as language regarding the settlement process that occurs at PJM to reflect suppliers' actual energy obligations in a supply/usage reconciliation process.

As the Board denied the EDCs' UFE Proposal, the Board **HEREBY REJECTS** the proposed changes made to the SMAs related to the UFE Proposal. These changes include the EDCs' proposed language changes regarding meter corrections and inadvertent energy pursuant to PJM agreements, as well as language regarding the settlement process that occurs at PJM to reflect suppliers' actual energy obligations in a supply/usage reconciliation process. However, the Board **HEREBY APPROVES** the EDCs' other proposed modifications to the SMAs which include: clarifying language related to statements and load obligation being made available to BGS suppliers, the updates to Appendix E of the BGS-CIEP SMA and Appendix H of the BGS-SMA regarding PJM Billing Statement Line Items, the updates to the Mark-to-Market Exposure Amount Calculation Information in Appendix B of the BGS-RSCP SMA, and the minor changes to the SMAs.

## **ELECTRIC VEHICLES BGS RATES ISSUE**

In its Initial Comments, Electrify America requested that: 1) the Board direct each of the EDCs to submit options for volumetric capacity rates for Electric Vehicle ("EV") Direct Current Fast-Charging ("DCFC") stations in this proceeding; and 2) the EDCs revise the way that they set initial capacity tags for DCFC stations. See Electrify America Initial Comments at 1. According to Electrify America, the BGS supply product provides Electrify America with a stable and transparent supply option for DCFC loads in a market where TPSs have been reluctant to provide competitive pricing options, presumably due to risk aversion attributable to uncertainties related to DCFC load patterns. In Electrify America's experience, TPSs do not provide an economical alternative to the default BGS supply, largely because TPSs will only offer DCFC loads a capacity pass through product that does not solve the principal problem. Id. at 2. Electrify America asserted that there is no competitive alternative that provides the relief necessary to meet the EV market's needs. Id. Electrify America claimed it offers DCFC services on a \$/kWh basis and, as a result, obtaining a stable and predictable price for electricity supply is critical for the ability of Electrify America to operate at a profit. Moreover, Electrify America asserted that the price of electricity directly determines whether it is capable of pricing its product at a reasonable price (for example, by achieving gasoline equivalency) to fully incentivize EV adoption and usage, as well as allow Electrify America to recover its investments. Id.

Electrify America stated that it offers uniform pricing in \$/kWh for EV charging in each state market, but the variabilities in the BGS rate design for generation and transmission capacity costs present a challenge to this operating model. Id. Electrify America asserted that the 500 kW threshold essentially penalizes EV charging companies that provide the most consumer-friendly and fastest refueling speeds, which Electrify America is capable of providing at certain stations. PSE&G is the only utility that has a complete pass through of PJM generation and transmission charges based on a customer's capacity tags. Id. at 3. According to Electrify America, crossing

the 500 kW threshold in the JCP&L and ACE territories results in a change in the supply charge from a bundled volumetric charge inclusive of generation capacity to a demand charge, which has the potential to drastically impact costs per kWh. Electrify America stated that this additional volatility does not comport with cost-causation principles in reflecting the change in costs between 499 kW and 501 kW of demand. Id.

Electrify America further argued that the high initial capacity tag assignments put DCFC station operators into an untenable commercial situation during the first year of station operations as utilization is low and the cost of capacity often exceeds \$1/kWh. When this occurs, Electrify America argued that it guarantees negative gross margins until the second year of operation. In its comments, Electrify America provided an example of a current operating station where the load factors exceeded 10% during the summer of 2021. Capacity charges fell significantly when the tags were reset, but Electrify America asserted that this type of volatility in costs is a major challenge to a capital-intensive business where stations can take up to a year to build charging traffic. Id. at 4.

Electrify America recommended that initial capacity tags for new DCFC station accounts should be set at zero or at a minimum level much lower than current practice. Electrify America stated that it has little ability to control its capacity tag exposure since restricting access to its stations during potential peak hours could leave EV drivers stranded and would be counterproductive to New Jersey's goals to promote EV adoption. Id. at 5.

Additionally, Electrify America proposed a rate design for recovery of generation and transmission capacity charges with the following characteristics: 1) revenue neutral volumetric rate to recover all generation and transmission charges; and 2) available on an opt-in basis for DCFC loads with a requirement for a multiyear commitment and portfolio enrollment. Id. at 7.

In its Final Comments, Electrify America noted that addressing demand charges within the BGS supply would benefit the private market of DCFC station operators. A robust private market for EV infrastructure is instrumental to incentivizing EV adoption and for New Jersey to achieve its transportation electrification goals. See Electrify America Final Comments at 3. Electrify America noted that, at the Legislative-Type Hearing, Rate Counsel suggested it would be premature to implement a DCFC-specific rate to BGS in this proceeding and proposed that a separate proceeding be conducted to consider such changes to allow for increased stakeholder participation. Electrify America disagreed with Rate Counsel, stating that delaying demand charge reform delays New Jersey achieving its public policy goals of transportation electrification and increased EV adoption throughout the State. By not addressing demand charges to BGS, Electrify America asserted that New Jersey has not created sufficient conditions to meet these goals. Electrify America believes that, in this proceeding, the Board has the opportunity to address the cost volatility that the present capacity charge rate designs pose for DCFC stations which will allow for greater investment in EV infrastructure and enable New Jersey to meet its goals. Id.

Additionally, in its Final Comments, Electrify America argued its proposals and the identification of the concerns with capacity charges to the BGS supply are not new. Electrify America stated that it has consistently advocated for demand charge reform and explained that meaningful demand charge reform includes changes to BGS rate design, including in multiple straw proposals, the PSE&G EV proceeding, and the ACE EV proceeding. If the Board has any hesitation about adopting the proposed volumetric rate in the context of this proceeding, then Electrify America offered two (2) proposals: 1) schedule and conduct an additional hearing and allow for additional comments within the current proceeding to assess proposed changes to the

BGS rate design for DCFC stations, which would allow any additional stakeholders who have not had the opportunity to comment yet to voice any support or concerns with Electrify America's proposals or other proposals to address demand charge reform to BGS; or 2) approve Electrify America's proposal on a temporary basis in order to assess the effects of such changes or more generally to consider other proposals and concerns before implementing a more permanent solution. Id. at 3 to 4.

Electrify America further proposed that when the EDCs set initial capacity tags for DCFC stations, these tag assignments should be based upon actual experience as opposed to demand estimates. Based upon Electrify America's analysis of data, initial capacity tags for new DCFC stations should be set at zero or at a minimum level much lower than current practice. According to Electrify America, this will address the burdensome and unwarranted costs faced by DCFC stations during their first year of operation when load factors are typically the lowest. Id. at 4. Electrify America stated that, although it has been suggested that storage reduces the impact felt by demand charges, its experience proves otherwise. While Electrify America has implemented storage at some New Jersey sites to offset the burden of demand charges, storage increases costs due in part to space and real estate constraints, and the amount saved through storage only provides fractional relief from the high capacity costs. Id.

In its Final Comments, Rate Counsel stated that it believes the policy and rate design issues raised by Electrify America should be reviewed in a separate proceeding that is open to other interested parties. Rate Counsel noted that the procedural schedule in this BGS proceeding does not afford Rate Counsel or other parties the ability to ask discovery or review testimony from a sponsoring witness. See RC Final Comments at 2.

Rate Counsel stated that it is unclear, based solely on Electrify America's comments regarding profitability, whether the issues affecting Electrify America are particular to its business model or is something more widespread. Id. at 3. However, Rate Counsel noted that electricity rates vary across New Jersey and it is not the State's responsibility to level rates to benefit a single customer. Rate Counsel believes that, like any other commercial customer, Electrify America bears the burden to find a product rate that accounts for the variability in utility rates across the State, whether through the BGS or otherwise. Id. Accordingly, Rate Counsel recommended that the Board initiate a separate proceeding to review the issues raised by Electrify America, which would invite input from the EDCs, Electrify America, Staff, Rate Counsel, and other stakeholders. The goal of the proceeding would be to explore the issues raised by Electrify America and other stakeholders and determine if an acceptable statewide solution exists that would accommodate the expansion of EV charging infrastructure for the benefit of New Jersey residents and at just and reasonable rates. Id. at 4.

In their Final Comments, the EDCs stated the process of setting initial capacity tags aims to establish values that are reflective of the projected actual loads (relative to the connected load) of the end-use being served. As customers' future use of energy (and contribution to system peak loads) are not accurately known at the time of the initiation of service and as such, must be estimated, this current process aims to efficiently develop rates that, on average, present a reasonable capacity tag to customers (understanding that some customers may ultimately have capacity tags higher or lower than these initial values). See EDC Final Comments at 12. The EDCs noted that Electrify America did not discuss station profitability past year one or address the time horizon needed to recover the initial capital investment required to build a DCFC station. Electrify America did note, however, that capacity costs decreased significantly when capacity tags reset. Id.



The EDCs do not believe there is reason, at this time, for the Board to require a general change to the process for setting capacity tags given that DCFC station load profiles are not yet well understood. Additionally, much of the data put forth by Electrify America in its Initial Comments and at the Legislative-Type Hearing span months where customer usage data may have been affected by the COVID-19 public health crisis. According to the EDCs, it is feasible that with further EV adoption, future DCFC stations will not experience the same profitability constraints as detailed in Electrify America's Initial Comments and statements made at the Legislative Type Hearing, and the issue involving the initial capacity tags faced by DCFC stations may primarily be related to the current initial low utilization rate. Id. at 13.

The EDCs, however, recognize the State's goal of increasing the use of EVs and ultimately reducing emissions from the transportation sector. The EDCs indicated that they plan to assess currently installed DCFC stations in their service territories [that have at least one (1) derived capacity tag based on actual summer data following the initial assignment of a tag] to ascertain if a change in how initial capacity tags are established is warranted and supported by data. Such an analysis would include examining the historical loads on the related accounts (taking into consideration if other non-EV charging station loads are also being served on the account). The EDCs believe that a wholesale change to the EDCs' process of setting capacity tags for EV charging stations is premature and the EDCs requested that the Board reject any change to the capacity tag setting process until such time where sufficient data has been collected and analyzed in order to determine whether such a change is supported by the data. Id. at 13 to 14.

Additionally, the EDCs questioned if altering the BGS rate design to subsidize the growth of a nascent end-use is appropriate and counter to the objectives of establishing BGS rates that are consistent with cost causation principles (and that enable parity with TPSs). The EDCs asserted that cost causation principles, where an individual rate reflects the costs caused by the customers that pay that rate, have served as the basis for the EDCs' rate design since the inception of the BGS Auctions more than 20 years ago. The BGS rate design translates auction prices into the average costs for various rate classes and this rate design consistently provided the best basis for price comparisons against TPS rates, creating an efficient and competitive retail marketplace for New Jersey's customers, consistent with the state's policy to rely on competitive market forces. The EDCs argued that Electrify America's request to create an EV station-specific rate through the BGS process (due to TPSs apparent unwillingness to offer a purely volumetric rate) by itself is an acknowledgement that what Electrify America is requesting does not support cost causation principles. Id. at 14 to 15.

The EDCs contended that the creation of a BGS rate specific to DCFC stations to accommodate Electrify America's proposal is premature at this time, would likely result in a shift of costs caused by DCFC stations onto other BGS customers, and the resulting misalignment of costs would sever parity with TPS rates for load associated with such facilities. While Electrify America acknowledges that BGS offers a transparent supply option for DCFC loads and proposes what they describe as a revenue neutral alternative for recovery of capacity costs for DCFC station operators, the EDCs argued that such a proposal would ultimately result in other BGS customers subsidizing DCFC station operators. Id. at 15.

The EDCs noted that a forum outside the current BGS proceeding can provide an opportunity for the Board to consider alternative means to provide transitional support to EVs, if so desired, as the transitional issues related to the EV market appear to be broader in scope than just the BGS cost components. The EDCs asserted that the initiation of such a process would avoid altering the current BGS rate design and the underlying cost causation principles (and the relative impacts to retaining parity with TPSs) prior to the availability of sufficient supporting data for each EDC,

and would also avoid any delay in the Board issuing its Order in this proceeding. Further, the information PSE&G is collecting consistent with its EV stipulation could also be utilized to inform considerations in such a forum. As such, the EDCs requested that the Board deny Electrify America's request to establish a volumetric rate for DCFC stations in this BGS proceeding. Id. at 16 to 17.

After carefully reviewing Electrify America's proposal and comments submitted, the Board believes more information and research is needed from the EDCs and other suppliers before substantial changes can be made to the BGS rates. The Board noted in both the PSE&G and ACE EV Board Orders that the BGS is a pass through of supply costs for customers who choose not to shop through a TPS.<sup>14</sup> There are several considerations that must be taken into account, including assuring that the appropriate customers are paying for their actual BGS supply costs. In the PSE&G EV Order, the Board ordered PSE&G to "collect EV charging data required to support the establishment of BGS rates for the rate options discussed above in a future BGS proceeding." Staff has taken steps to review the distribution rate issue in the individual EDC EV filings which have either already been approved or are pending before the Board. The Board is equally committed to reviewing the issue on the supply side. As noted by the EDCs in their Final Comments, PSE&G is just beginning the process of initiating such data collection. See EDC Final Comments at 16. As acknowledged by the EDCs, there are currently installed DCFC stations and the collection of the charging data can begin immediately, subject to customer consent. Accordingly, the Board **HEREBY DIRECTS** all EDCs to collect, subject to customer consent, the EV charging data required to support the review and potential establishment of EV specific BGS rates. The Board believes any proposal to modify the BGS rate structure related to EV charging needs to be supported by facts and is concerned an uninformed change at this time will have cost allocation implications for other BGS customers. Accordingly, the Board **HEREBY DIRECTS** the EDCs to, as part of their 2023 BGS filing, file a proposal to address BGS rates for EV charging. Therefore, the Board **HEREBY REJECTS** Electrify America's requests.

### **CONFIDENTIALITY**

The EDCs requested that the Board approve a confidentiality order as in prior years. The integrity of the Auction process depends on a fair set of rules that promotes dissemination of information in a non-discriminatory manner, and results in no bidder or bidders having an advantage over any other. From the Board's experience with prior BGS Auctions, it appears that certain information pertaining to the Auction design methodologies, including, but not limited to, the starting price and volume adjustment guidelines, if made public, could potentially distort the Auction results. Furthermore, information provided in the bidder application forms and specific bidder activity during the Auction may be information that, if disclosed, could place bidders at a competitive disadvantage and/or could also potentially distort the Auction results. The Board considered and found that certain financial and competitive information should be protected, not only as a matter of fairness to potential bidders, but also to ensure that these and any future BGS Auctions are competitive. These confidentiality provisions were adopted and applied in subsequent Auctions.<sup>15</sup> The Board **HEREBY FINDS** that the confidentiality provisions of its December 1, 2004 Order in

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<sup>14</sup> In re the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future – Electric Vehicle and Energy Storage ("CEF-EVES") Program on a Regulated Basis, BPU Docket No. EO18101111, Order dated January 27, 2021 and In re the Petition of Atlantic City Electric Company for Approval of a Voluntary Program for Plug-In Vehicle Charging, BPU Docket NO. EO18020190, Order dated February 17, 2021.

<sup>15</sup> In re the Provision of Basic Generation Service for Year Three of the Post-Transition Period, BPU Docket No. EO04040288, Order dated December 1, 2004 ("December 1, 2004 Order").

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>16</sup>

- Bidder Information Webcasts;
- 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.

During the Board's Legislative-Type Hearing, NERA noted that should the Board approve the EDCs' request that the February 2022 Auction be conducted remotely, NERA would provide additional training to bidders using the web-based interface. The training sessions would provide an opportunity for bidders to practice their bidding procedures from the location from which they anticipate they would be bidding in the actual Auction.

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

## **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

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<sup>16</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 2022 Auction.

results, needs to take place according to a pre-approved schedule. As indicated in Attachment A, Tentative Approvals and Process, there are a number of decisions/actions that need to be made after Board approval of the Auction process.<sup>17</sup> Each of these decisions/actions needs to take place according to such a schedule so that the bidders are prepared for and comfortable with participating in the Auctions, and the Auctions result in competitive market-based BGS prices.

Based upon the Board's experience with the previous BGS Auctions, uncertainty or delay in the period between the submission of bids and the approval of bid results by the Board is of substantial concern to bidders. Paramount among the actions that must be taken by the Board is prompt certification of the Auctions' results. Because of the volatility of the electric markets, bids cannot remain viable for any prolonged period of time. If bidders perceive that there may be a delay in certifying the results, this perceived additional risk could be reflected through higher bid prices. Furthermore, the Auctions have been designed to secure supply for all four (4) EDCs at the same time. The structure of the Auctions that permits and encourages bidder movement among EDC products implies to the bidders that, while being different products, tranches will be viewed on equal terms by the Board. It is important to the efficiency and economy of the process that bidders do not impute unwarranted uncertainty into the Auction results of any EDC. Therefore, as with past Auctions, the Board will consider the results of the BGS-RSCP Auction in their entirety and consider the results of the BGS-CIEP Auction in their entirety, and certify the results of each Auction for all of the EDCs or for none of them. The Board will also commit to addressing the results of the BGS-RSCP Auction and the BGS-CIEP Auction no later than the second business day after the last Auction closes.<sup>18</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 3, 2021. 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

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<sup>17</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.

<sup>18</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 Auction Manager based on its experience. In the event that these other areas need to be addressed by the Auction Manger, 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;

The Proposal, as modified herein, is consistent with the Electric Discount Energy and Competition Act, 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, 2022;

The Proposal, as modified herein, appears to be the best means to secure BGS service for the 2022 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 2023 and 2024 BGS periods;

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

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

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

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

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

The EDCs are 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 2022 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 2022 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 2022 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 Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by December 3, 2021. 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 19, 2021.

DATED: November 17, 2021

BOARD OF PUBLIC UTILITIES  
BY:

  
\_\_\_\_\_  
JOSEPH L. FIORDALISO  
PRESIDENT

  
\_\_\_\_\_  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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COMMISSIONER

  
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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, 2022

DOCKET NO. ER21030631

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# ATTACHMENT A

## Tentative 2022 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, 2021
Announce minimum and maximum starting prices	AM/BA	November 17, 2021
Announce Tranche Targets	AM	November 17, 2021
Announce Load Caps	AM/BA	November 17, 2021
Decision on 2021 Process	BPU	November 17, 2021
Information webcast for potential bidders	AM/EDCs	November 30, 2021 (tentative)
Compliance Filing	EDCs	December 3, 2021
Approval of Compliance filing	BPU	December 2021
Final Auction Rules and Supplier Agreements available	AM/EDCs	Early December 2021
Review Part I applications	AM/BA	December 14-17, 2021

## ATTACHMENT A

### Tentative 2022 Auction Approvals and Decision Process

Review Part 2 applications	AM/BA	January 12-20, 2022
Information Webcast for registered bidders	AM/EDCs	January 26, 2022 (tentative)
First Trial Auction	AM	January 27, 2022
Second Trial Auction	AM	February 1, 2022
Inform bidders of EDC-specific starting prices	EDCs/AM/BA	CIEP – February 1, 2022 RSCP – February 2, 2022
BGS-CIEP Auction starts		February 4, 2022
BGS-RSCP Auction starts		February 7, 2022
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. ER21030631**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY**  
**2022 BGS-CIEP AUCTION**

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

[Introductory comments, if any]

Auction began with the opening of Round 1    [x:xx am]    on    February 4, 2022

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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 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. ER21030631**

**POST-AUCTION CHECKLIST**  
**FOR THE NEW JERSEY 2022 BGS-RSCP AUCTION**

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

[Introductory comments, if any.]

Auction began with the opening of Round 1    [x:xx am]    on    February 7, 2022

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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 BGS-RSCP Auction**

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

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

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

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

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

**ATTACHMENT B**  
**Docket No. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 BGS-RSCP Auction**

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

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

**ATTACHMENT B**  
**Docket No. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 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?	

**ATTACHMENT B**  
**Docket No. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 BGS-RSCP Auction**

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

# Attachment C



Agenda Date: 10/22/04

Agenda Item: 2A

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

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

ENERGY

DECISION AND ORDER

DOCKET No. EO04040288

(SERVICE LIST ATTACHED)

BY THE BOARD:

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

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

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



# Attachment C

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

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

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

## DISCUSSION

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

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

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

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

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

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

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

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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,

## Attachment C

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

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

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

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

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

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

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

# Attachment C

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

Part 1 Application Form:

Bidding Agreements

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

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

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

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

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

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

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

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

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

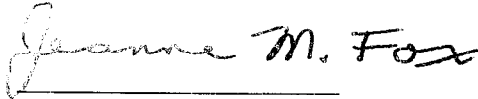
Should a request for the non-public bidder information provided to NERA be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied.

# Attachment C

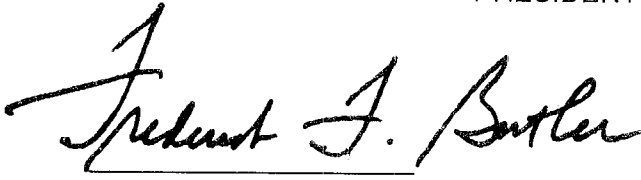
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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

DATED: 12/1/04

BOARD OF PUBLIC UTILITIES  
BY:



JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER



JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY