



STATE OF NEW JERSEY  
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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, 2023 ) DOCKET NO. ER22030127

**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 Decision and Order of the New Jersey Board of Public Utilities (“Board” or “BPU”) considers the procurement process for 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, 2023.<sup>1</sup>

By Order dated April 6, 2022, the Board directed the EDCs and interested parties to file proposals by July 1, 2022 to determine how to procure the remaining one-third of the State’s BGS requirements for Residential and Small Commercial (“RSCP”) customers and the annual Commercial and Industrial Energy Pricing (“CIEP”) requirements for the period beginning June 1, 2023.<sup>2</sup> The EDCs made a joint BGS filing on July 1, 2022 (“Proposal”). On September 2, 2022, the Board received Initial Comments on the Proposal. The Board held a Legislative-Type Hearing, chaired by President Joseph L. Fiordaliso, on September 15, 2022. On October 11, 2022, the Board received Final Comments on the Proposal.

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<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, 2023, BPU Docket No. ER22030127, Order dated April 6, 2022 (“April 6, 2022 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”), Axpo U.S. LLC (“Axpo”), and Electrify America.

The Board held virtual public hearings on the Proposal in the EDCs’ service territories to allow members of the public to present their views on the procurement process proposed by the EDCs and the potential effect(s) on customers’ rates.<sup>3</sup> No members of the public commented at the public hearings.

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

The parties’ filings largely rely on previous auctions and the Proposal as the basis for specific modifications. While 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, 2022, the EDCs filed the Proposal for procuring BGS supply beginning on June 1, 2023, including proposed preliminary auction rules, Supplier Master Agreements (“SMAs”), and EDC-specific addenda. The EDCs proposed that the 2023 BGS Auction be held remotely, like the 2021 and 2022 BGS Auctions.

The EDCs jointly proposed two (2) simultaneous, multi-round, descending clock auctions for 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, 2023, 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 2,723 Megawatts (“MW”) of load to be procured through bidding on an expected 37 full-requirements tranches.<sup>4</sup> The Board approved the same type of auction last year in Docket No. ER21030631.<sup>5</sup> 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, 2023, through an auction (“BGS-RSCP Auction”) for approximately 4,657 MW of load to be served through 53 full-requirements tranches of approximately 82 to 91 MW each.<sup>6,7</sup>

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<sup>3</sup> The Board held virtual public hearings due to the COVID-19 Pandemic. JCP&L held its public hearing on September 1, 2022; ACE held its public hearing on September 8, 2022; RECO held its public hearing on September 12, 2022; and PSE&G held its public hearing on October 4, 2022.

<sup>4</sup> Tranche sizes are approximate amounts of BGS-CIEP eligible load and are as follows: ACE- 74.38 MW, JCP&L- 74.41 MW, PSE&G- 74.09 MW and RECO- 51.18 MW.

<sup>5</sup> In re the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2022, BPU Docket No. ER21030631, Order dated November 17, 2021 (“November 2021 Order”).

<sup>6</sup> The EDCs previously secured two-thirds of their total BGS-RSCP load requirements through May 31, 2024 by means of Board-approved auctions in February 2021 and February 2022.

<sup>7</sup> This does not include procurement for the RECO customers within RECO’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, 2023, 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 21 years.

The Proposal considers each EDC's retail load a separate "product" in each Auction. Auction participants bid by stating the number of tranches they are 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 the 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>8</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 addendum. Bidders would receive a spreadsheet that converts the Auction price into customer rates for each EDC, enabling bidders to assess migration risk at various Auction price levels. BGS-RSCP tariff rates would be determined by converting 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 be adjusted to reflect higher summer costs, and payments to bidders for the remainder of the delivery period be adjusted to reflect lower winter costs. The EDCs designed the proposed summer and winter factors such 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 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 other payments for energy and ancillary services known in advance of the Auction. Under the Proposal, winning bidders would also receive a Standby Fee of \$0.00015/kWh to act as an "option fee." CIEP customers who take BGS service would pay the capacity payment, while all CIEP customers would pay the Standby Fee whether they take BGS service or obtain service through a TPS. Winning bidders would be paid the Auction clearing price for all capacity provided to 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

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<sup>8</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.

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.

By its November 2021 Order, the Board directed the EDCs to collect, subject to customer consent, the electric vehicle (“EV”) charging data required to support the review and potential establishment of EV specific BGS rates. In the Proposal, the EDCs requested the Board maintain its position requiring factual support for any modification to the BGS rate structure. The EDCs further noted that, based on initial findings after examining limited available data, any change to the BGS rate structure related to this issue remains premature at this time.

Additionally, the EDCs proposed that similar to the approach approved by the Board in the 2020, 2021 and 2022 BGS Auctions that 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 2024/2025 and 2025/2026 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 requested 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 the Board clarify that it may, at its discretion, 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.

The Proposal includes numerous other Auction details, 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 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 which, if any, bidder associations exist; if such associations exist, applicants will provide additional information as the Auction Manager may require;

Qualified bidders must 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>9</sup> and

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<sup>9</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 Company-specific addendum addresses the individual EDC's use of committed supply, contingency plans, accounting and cost recovery, and utility pricing and tariff sheets.

## RECO CENTRAL AND WESTERN BGS CUSTOMER REQUIREMENTS

RECO's Central and Western Divisions physically connect to the New York Independent System Operator ("NYISO"). Therefore, RECO must purchase required energy and capacity 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 2023 BGS Auction because the Board approved the results of an RFP by Order dated January 31, 2021 for RECO's non-PJM energy requirements through May 31, 2024.<sup>10</sup>

On August 16, 2013, in Federal Energy Regulatory Commission ("FERC") Docket Number ER13-1380, 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. According to RECO, Lower Hudson Valley capacity is not actively traded, and RECO does not expect any change before the BGS Auction. Because of capacity market changes at the NYISO noted above, RECO proposed purchasing the capacity needs of its BGS customers in its Central and Western Divisions in the NYISO capacity market and 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.<sup>11</sup> RECO expects these capacity purchases to have minimal impact because its Central and Western Divisions constitute only about 10 percent (10%) of RECO's BGS load.

## 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, 2023, 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 considered many arguments for alternate processes, 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>12</sup> For the 2003 through 2022 BGS Auctions, the Board continued to approve

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<sup>10</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.

<sup>11</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>12</sup> In re the Provision of Basic Generation Service Pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq., BPU Docket Nos. EO02070384 and EX01110754, Order dated December 18, 2002.

descending-clock Auctions for the procurement of default service while continuing to adjust certain elements of the process.<sup>13</sup>

The Board afforded an opportunity for parties to file alternatives for Board consideration on how to procure the BGS requirements for the RSCP and CIEP customer classes for the period beginning June 1, 2023. 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 implemented with the 2002 Auction, and since modified, 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 ratepayers. It is the Board's intent to reach a balance of competing interests, while remaining 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 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, 2023.

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

The Board notes that 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.

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

##### *IEPNJ Comments*

In its comments, IEPNJ noted its support for the three (3) year BGS auction structure. See IEPNJ Initial Comments at 2. IEPNJ argued 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. Ibid. A three (3) year term allows the suppliers to rely on several known variables when preparing a bid. Ibid. Knowing these values reduces the risk to suppliers, thereby helping to keep their bid prices reasonably low. IEPNJ argued that averaging the three (3) year term contracts entered over the course of three (3) years provides stability to customer rates. Ibid.

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<sup>13</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; November 18, 2020, Docket No. ER20030190; and November 17, 2021, Docket No. ER21030631.

Based upon previous BGS Auctions, and having considered the record developed in this matter, the Board **HEREBY FINDS** the current staggered three (3) year rolling procurement process used 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 increased 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, in periods where 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 **FURTHER FINDS** 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. As such, the Board **FINDS** 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, 2023 to May 31, 2024 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>14</sup> In the 2020 BGS proceeding, 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 because the actual capacity price for that delivery year was not expected to be known prior to the 2020 BGS Auctions.<sup>15</sup> The Board noted that keeping the BGS-RSCP structure as a three (3) year product would help mitigate rate changes and avoid the complications of requiring a supplemental auction when the 2022/2023 capacity price becomes known. The Board further noted that, if the BGS-RSCP product is to cover three (3) years, bidders must have some set capacity price to set their bids. In the November 2020 Order and November 2021 Order, the Board approved the use of the Capacity Proxy Price for the proposed delivery years.

The results of PJM's base residual auction ("BRA") for the 2023/2024 delivery year (the first year of the BGS-RSCP supply term) became available on June 21, 2022. As noted in the Proposal, PJM released a schedule for its capacity auctions through the 2026/2027 delivery year. PJM scheduled the results of the BRA for the 2024/2025 delivery year (the second year of the BGS-RSCP supply term) to be made available on December 20, 2022. However, the results of the

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<sup>14</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. The 2025/2026 Delivery Year is June 1, 2025 through May 31, 2026.

<sup>15</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, 2019 ("November 2019 Order").

BRA for the 2025/2026 delivery year (the third year of the BGS-RSCP supply term) are not expected to be made available until June 2023. As such, the capacity price for the 2025/2026 delivery year will not be known prior to the 2023 BGS-RSCP Auction. If the capacity price is not known for the 2025/2026 delivery year prior to the BGS-RSCP Auction, the EDCs argued that BGS-RSCP suppliers are likely to include risk premiums into their bids, and some bidders may not 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. As such, the EDCs proposed to continue the approach approved by the Board in its November 2019 Order, November 2020 Order, and November 2021 Order and proposed to address this issue by setting a Capacity Proxy Price for the 2025/2026 delivery year.

Additionally, although the results of the BRA for the 2024/2025 delivery year are scheduled to be made available on December 20, 2022, if an unforeseen schedule delay at PJM occurs, it is feasible that the capacity price for the 2024/2025 delivery year may not be known prior to the BGS-RSCP Auction. As such, the EDCs proposed setting a Capacity Proxy Price for the 2024/2025 delivery year that suppliers may incorporate into their bids. However, if the results of the BRA auction for the 2024/2025 delivery year or the 2025/2026 delivery year are known at least five (5) business days prior to the start of the BGS-RSCP Auction, the EDCs asserted that they would no longer need the Capacity Proxy Price for the applicable delivery year would no longer be needed and it would be voided.

#### *Rate Counsel Comments*

In its Initial Comments, Rate Counsel indicated that it does not object to extending the Capacity Proxy Price for the 2025/2026 delivery year because the results of the auction will be available in late June, well after the February 2022 auction date.<sup>16</sup> See Rate Counsel Initial Comments (“RC Initial Comments”) at 7. Rate Counsel noted that, in response to discovery, the EDCs were unable to quantify or prove that risk premiums are being avoided by utilizing the Capacity Proxy Price. Ibid. With respect to the 2024/2025 delivery year, Rate Counsel stated that it believes, absent significant delays, the five (5)-business-day advanced notice of the BRA is sufficient for bidders seeking to participate in the 2023 BGS-RSCP Auction. Ibid. Rate Counsel recommended that the Board continue to allow the EDCs to use a Capacity Proxy Price for the 2025/2026 Capacity Auction for this proceeding and noted that it supported the EDCs’ five (5)-day trigger for canceling the Capacity Proxy Price for the 2024/2025 delivery year. Ibid.

#### *EDCs’ Comments*

In their Final Comments, the EDCs objected to Rate Counsel’s statement at the Legislative-Type Hearing regarding the EDCs’ inability to prove that risk premiums are being avoided by utilizing the Capacity Proxy Prices. The EDCs claimed Rate Counsel’s statement was contrary to observations made by Bates White with respect to the benchmark model for analyzing results of the 2022 BGS Auctions. See EDC Counsel Final Comments (“EDC Final Comments”) at 13. The EDCs also noted that Rate Counsel did not object to the EDCs’ proposal to implement Capacity Proxy Prices for the 2024/2025 and the 2025/2026 delivery years. Id. at 14. The EDCs, therefore, requested the Board approve the proposed Capacity Proxy Prices for each delivery year in the event actual Capacity Proxy Prices for the delivery years are not known at least five (5) business days prior to the start of the 2023 BGS-RSCP Auction. Ibid.

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<sup>16</sup> The Auction will occur in February 2023.



The Board continues to recognize the difficulty in setting a Capacity Proxy Price because the Reliability Pricing Model (“RPM”) BRA traditionally produced volatile results. Of late, PJM provided additional clarity 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 regarding the BRA results for the 2024/2025 and 2025/2026 delivery years. Because 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 2024/2025 and 2025/2026 delivery years. The Board agrees that, should the prices for the 2024/2025 or 2025/2026 delivery years be known five (5) days prior to the BGS-RSCP Auction, the EDCs will no longer need the Capacity Proxy Price for the applicable delivery year and will be voided.

### **REMOTE AUCTION**

The EDCs proposed conducting the 2023 BGS Auctions from a remote setting, citing the 2021 and 2022 remote Auctions’ success. Additionally, the EDCs noted that, after having already conducted the 2021 and 2022 BGS Auctions in a remote setting, the protocols adjusted to accommodate holding the Auctions remotely are already in place.

#### *Rate Counsel Comments*

Rate Counsel noted that the EDCs indicated the average cost of maintaining the physical BGS office space through January 2025 would average \$72,273 per year and that the EDCs have sub-leased the space through January 2025. See RC Initial Comments at 8. Rate Counsel did not object to the EDCs’ continuation of the remote auction process proposal and declining to renew the sub-lease when it expires at the end of January 2025, provided that the Board finds that the integrity of the auction can be maintained. Ibid.

#### *EDCs Comments*

In their Final Comments, the EDCs noted that Rate Counsel supported reducing costs associated with the physical BGS Auction office by conducting the Auctions remotely yet raised concerns that the Board should condition approval of a remote auction on maintaining the integrity of the Auction process. See EDC Final Comments at 23. The EDCs stated that Rate Counsel incorrectly discounts the efficiencies that resulted from the changes made to procedures as “minor administrative efficiencies” and seems to believe any such benefit comes at the cost of lower security. Ibid. The EDCs noted that the changes in the procedures that led to the successful remote conduct of the 2021 BGS Auctions and 2022 BGS Auctions made the process of administering the Auctions both more efficient and at least, if not more, secure. Id. at 23-24. The EDCs also noted that NERA committed to working with Board Staff and the Board Advisor should they wish to be located with a subset of personnel from the NERA team during the Auctions in a place other than the now sublet physical Auction office. Id. at 25.

The Board agrees that the remote 2021 and 2022 BGS Auctions were successful. Accordingly, the Board **HEREBY APPROVES** the EDCs’ proposal to conduct the 2023 BGS Auctions remotely.

## **PROPOSED CHANGES TO SMAS**

The EDCs proposed minor modifications to the SMAs with the addition of the Capacity Supplements to the BGS-RSCP SMA for both the 2024/2025 delivery year and the 2025/2026 delivery year. Additionally, the EDCs proposed modifications to the EDCs' rate design methodology, and modifications to each EDC's Company Specific Addendum to allow for the eventual calculation of the change in the Auction price necessary to accommodate additional payments to (or from) BGS-RSCP suppliers relating the Capacity Proxy Price for the 2024/2025 and 2025/2026 delivery years.

### *Axpo Comments*

In its Initial Comments, Axpo requested that the EDCs and BPU consider increasing transparency regarding contract valuation as contemplated in the SMAs. See Axpo Initial Comments at 1. Axpo sought further clarity in the Mark-to-Market ("MtM") Amount Calculation Information provided to suppliers, which includes, but is not limited to, Forward Market Price inputs with sources and volumes used for exposure calculations. Ibid. Axpo further requested the EDCs provide daily exposure calculations to BGS Suppliers. Ibid. Axpo recommended replacing the averaging of independent broker quotes with Intercontinental Exchange ("ICE") End of Day marks, which are public and transparent and have seen increased liquidity in recent years. Ibid.

### *EDCs Final Comments*

In their Final Comments, the EDCs stated that they do not oppose Axpo's request to increase contract valuation transparency. See EDC Final Comments at 15. The EDCs maintained that increasing transparency by providing MtM credit exposure calculations to BGS-RSCP Suppliers upon receipt of a request from a BGS-RSCP Supplier for this calculated amount would be a positive change given the recent span of volatility in energy prices in 2022. Ibid.

The EDCs further noted that Axpo recommended a change to how forward market energy prices are determined under the BGS-RSCP SMA. Ibid. According to the EDCs, Axpo recommended using a single data source instead of averaging three (3) sources, specifically using market data from ICE. Ibid. The EDCs do not oppose using a single source for purposes of calculating the BGS-RSCP Suppliers' daily MtM credit exposure amount. Id. at 16. The EDCs requested that, if the Board approves Axpo's recommendation that it use a single source to calculate the daily MtM credit amount, it should allow such a change for all BGS-RSCP Suppliers that will be serving load as of June 1, 2023. Ibid. Under the current BGS-RSCP SMA, for purposes of calculating any amount that a BGS-RSCP Supplier must provide in additional security during the supply period, the EDCs calculate a total exposure amount for each BGS-RSCP Supplier. Ibid. The total exposure considers exposure amounts under all BGS-RSCP SMAs in effect for a given BGS-RSCP Supplier. Ibid. For a BGS-RSCP Supplier serving tranches won in multiple BGS-RSCP Auctions for a single EDC, that EDC calculates the MtM credit exposure amount under each BGS-RSCP SMA and totals the exposure amounts for that single BGS-RSCP Supplier across all BGS-RSCP SMAs. Ibid.

As such, according to the EDCs, adopting a change to allow use of a single source of data for purposes of calculating the daily MtM credit exposure calculation for only those BGS-RSCP SMAs executed following the 2023 BGS-RSCP Auction may decrease transparency in this calculation for those BGS-RSCP Suppliers already serving tranches won in the 2021 or 2022 BGS-RSCP Auctions if a currently serving supplier also wins tranches in the 2023 BGS-RSCP Auction. Id. at 16. Adopting a change to allow for the use of a single source of data for purposes of calculating

the daily MtM credit exposure amount for only those BGS-RSCP SMAs executed following the 2023 BGS-RSCP Auction, and not allowing for the same change to be made to the 2021 and 2022 BGS-RSCP SMAs, could result in the calculation of differing credit exposure amounts for different BGS-RSCP Suppliers serving the same amount of expected load. Id. at 16-17. The EDCs argued that it would not be appropriate to use differing sets of current forward market energy price calculations [one set of forward market energy prices determined using quotations from three (3) independent brokers/sources and one (1) set of forward market energy prices determined using a single data source] to compare to those forward market energy prices that were set at the time a given BGS-RSCP Auction closed. Id. at 17.

The EDCs stated that, if the Board approves this recommendation, the EDCs will include, in their compliance filing, edits to the 2023 BGS-RSCP SMA to allow forward market energy prices to be determined using a single source disclosed to the BGS suppliers. Id. at 17. The EDCs stated that, while it would be the intention of the EDCs to use ICE as that single source, the EDCs do not want to restrict their ability to choose another source if the ICE market data is no longer available. Ibid. As an appendix to their Final Comments, the EDCs included a draft supplement (Supplement C), which would be appended to the 2023 BGS-RSCP SMAs as Appendix H. Ibid.

Similar to the method proposed by the EDCs and approved by the Board in the 2021 BGS proceeding to remove transmission-related costs from existing SMAs, the EDCs would also prepare and make available to those BGS-RSCP Suppliers serving tranches awarded in the 2021 and 2022 BGS-RSCP Auctions an amendment (“MtM Amendment”) that could be executed at these suppliers’ option. Id. at 18. The MtM Amendment would implement this change to the 2021 and 2022 BGS-RSCP SMAs (“Prior BGS-RSCP SMAs”). Ibid. The EDCs would provide a final form of the MtM Amendment with their compliance filing should the Board approve this recommendation. Ibid. The EDCs propose that if this recommendation is approved, that the change to the determination of the forward market energy prices only be implemented if all BGS-RSCP Suppliers serving tranches won in the 2021 and 2022 BGS-RSCP Auctions elect to sign the MtM Amendment for the reasons expressed above. Ibid. If not all previous suppliers elect to sign the MtM Amendment prior to the BGS-RSCP Auction according to the timeline set forth in Supplement C to the BGS-RSCP SMAs, the change would not go into effect for the Prior BGS-RSCP SMAs or for the BGS-RSCP SMAs executed following the 2023 BGS-RSCP Auction. Ibid.

The EDCs stated that if the Board approves this recommendation, and if the Board approves the EDCs’ subsequent compliance filing and form of the Supplement C to the BGS-RSCP SMA and MtM Amendment, the EDCs would engage those BGS-RSCP Suppliers that won tranches in the 2021 and 2022 BGS-RSCP Auctions and allow these suppliers to sign the MtM Amendment. Ibid. Should all BGS-RSCP Suppliers serving tranches won in the 2021 and 2022 BGS-RSCP Auctions sign the MtM Amendment, NERA would notify bidders in the 2023 BGS-RSCP Auction no later than five (5) business days prior to the 2023 BGS-RSCP Auction, or by January 30, 2023, and the terms of Supplement C of the BGS-RSCP SMA would take effect beginning June 1, 2023. Id. at 18-19.

The Board **HEREBY APPROVES** the EDCs’ proposed modifications to the SMAs, including: the changes mentioned above, the updates to the MtM Exposure Amount Calculation Information in Appendix B of the BGS-RSCP SMA, and the minor changes to the SMAs.

The Board appreciates Axpo’s comments and concerns regarding transparency of the Auction. The EDCs did not oppose the requested changes by Axpo but did provide further recommendations relating to the use of a single source when calculating forward market energy prices. The Board shares the EDCs’ sentiment that transparency encourages participation and

further helps obtain reliable supply at prices consistent with market conditions and **HEREBY APPROVES** Axpo's request to increase transparency regarding contract valuation, by providing MtM credit exposure calculations to BGS-RSCP Suppliers upon receipt of a request from a BGS-RSCP Supplier.

The Board **HEREBY APPROVES** Axpo's request to adopt a single data source to determine the forward market energy prices for all BGS-RSCP Suppliers that will be serving load as of June 1, 2023. However, the Board **NOTES** ICE does not need to be the single source. The Board **HEREBY APPROVES** Supplement C of the BGS-RSCP SMA. The Board **FURTHER NOTES** that this change to the determination of the forward market energy prices will only take effect if all BGS-RSCP Suppliers serving tranches won in the 2021 and 2022 BGS-RSCP Auctions execute the MtM Amendment. If not all previous suppliers elect to sign the MtM Amendment prior to the BGS-RSCP Auction according to the timeline set forth in Supplement C to the BGS-RSCP SMA, the change would not go into effect for any BGS-RSCP supplier. The Board **HEREBY ORDERS** the EDCs to notify Staff and Rate Counsel whether or not they implement the changes by January 31, 2023.

### **EV BGS RATES ISSUES**

The Board has approved EV programs for all EDCs, and according to the Proposal, the EDCs are in the early stages of collecting data from the programs' EV installations.<sup>17</sup> See Proposal at 22. As a result, the EDCs claimed that the data from EDC EV program installations is either not available, or is currently insufficient, to establish BGS rates for EV charging stations. Ibid. However, the EDCs used available data for DCFC installations in PSE&G's territory to identify hourly metered installations where metering load was solely related to the DCFC installations. Ibid. The Proposal did not address residential BGS EV charging rates.

With regard to volumetric capacity rates for EV DCFC stations, the EDCs reviewed the anonymized PSE&G DCFC data to determine installation cost profiles, and determined that: 1) most installations had low capacity and transmission obligations, resulting in unit costs between \$0.04/kWh and \$0.11/kWh; 2) four (4) of the 26 accounts reviewed comprised roughly 40% of the sample's kWh usage, had higher-than-average load factors, and incurred higher capacity and transmission costs compared to others, resulting in unit costs between \$0.08/kWh and \$0.11/kWh; 3) all installations were operating over a year (with capacity and transmission values based upon actual usage from the preceding year, not initial estimates); and 4) there was considerable variability across installations in terms of \$/kWh cost. Id. at 23.

In its Initial Comments, Rate Counsel agreed there is a need for continued and expanded collection of DCFC station data from the individual EDCs. See RC Initial Comments at 5. Rate Counsel did not object to the EDCs recommendation against creating a separate DCFC rate at this time and recommends that the EDCs continue to collect information from DCFC stations in EDC EV programs and DCFC stations owned by third parties. Id. at 5-6.

Electrify America commented that its investment in New Jersey depends, in part, on sustainable economics for the private Zero Emissions Vehicle ("ZEV") infrastructure market. See Electrify America Initial Comments at 2. Electrify America explained that utility rates and incentives should

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<sup>17</sup> The Proposal noted that RECO's EV filing was pending; however, the Board subsequently approved RECO's EV proposal on October 12, 2022. See In re the Petition of Rockland Electric Company for Approval of an Electric Vehicle Program, Establishment of an Electric Vehicle Surcharge, and for Other Relief (RECO EV), BPU Docket No. EO20110730, Order dated October 12, 2022.

support infrastructure development to align with State public policy and ensure financial sustainability of continued ZEV infrastructure operation. Ibid. Electrify America argued that it relies on the BGS product to operate its DCFC stations and transportation electrification is an emerging source of load growth, but the loads are highly differentiated by charging segment. Ibid. Electrify America relies on the BGS product due to the stability of the fixed price energy-based charges and unfamiliarity of competitive energy suppliers with DCFC loads. Id. at 3. Electrify America stated that TPSs are generally only willing to offer a capacity pass-through product to DCFC loads. Ibid. According to Electrify America, there is no competitive alternative that provides the necessary relief to meet the public's DCFC EV charging market's needs. Ibid. Electrify America asserted that it offers DCFC services on a \$/kWh basis, so obtaining a stable and predictable price for electricity supply is critical for Electrify America to operate in an economically sustainable way. Ibid. Electrify America further maintained that the price of electricity directly determines whether Electrify America can keep the price of charging service competitive with the cost of gasoline, which is necessary for EV adoption and usage, and to allow Electrify America to recover its investments. Ibid.

In its Final Comments, Electrify America raised concerns that the EDCs have no incentive to support the EV infrastructure industry because the EDCs stand to become providers of last resort in the event there are not enough charging stations within their service territories. See Electrify America Final Comments at 4. Electrify America noted that, if private DCFC stations operate at a loss their first year, operators cannot open more stations if operating at a loss. Id. at 5. This would stymie the State's objective of maximizing private sector investment in public charging, and the State may have to look to the EDCs to build necessary public charging infrastructure. Ibid.

Electrify America noted that the EDCs and Rate Counsel questioned the prudence of incentivizing the EV industry, and asserted that Rate Counsel should be concerned; if EDCs are permitted to open their own charging stations as providers of last resort, then New Jersey ratepayers will be disadvantaged. Ibid. According to Electrify America, this would result in ratepayers paying more to subsidize utility-owned and operated charging stations. Ibid. The competitive advantage of utilities owning and operating stations could encourage EV supply equipment infrastructure companies to seek investments in other states where charging volume will not be compromised by a competitor with a BPU-supported rate of return. Ibid.

Electrify America stated that it has consistently supported a shared responsibility approach of utility investment in make-ready infrastructure and private investment in the DCFC charger and customer experience to meet infrastructure policy goals for the State of New Jersey. Ibid. Electrify America noted that, while Rate Counsel and Board Staff share concerns over utility owned and operated charging stations, the hesitance to reform capacity demand charges in the BGS rate structure for EV charging, and continued reliance on EDCs to propose changes, leads to the status quo remaining unchanged. Ibid. According to Electrify America, this runs counter to New Jersey's decarbonization goals requiring advancement of transportation electrification. Ibid.

### ***Rate Design***

In the Proposal, the EDCs asserted that the BGS rate design should reflect market prices, remain consistent with cost causation principles, and not be specifically tailored to individual technologies or end-uses. See Proposal at 23. The EDCs stated the initial assessment of DCFC data affirms that the development of an EV-specific BGS rate is unwarranted. Ibid. The EDCs believe that establishing a rate for a group of customers with a specific end use should have relatively comparable and predictable usage characteristics across most of the group. However, the initial

analysis shows significant usage and \$/kWh cost variability across DCFC stations. Id. at 23-24.

The EDCs acknowledged that their analysis used PSE&G-specific data limited in both the number of installations and time covered. Id. at 24. As a result, the EDCs agreed to broaden the sample size and time of the DCFC station data to determine if an increased data sample size would provide additional insight. Additionally, the EDCs asserted that PSE&G, JCP&L, and ACE will initiate or continue the collection of EV data as required in their respective EV Board Orders. Ibid.

#### *Electrify America Comments*

In its Initial Comments, Electrify America proposed a rate design to recover generation and transmission capacity charges with the following characteristics: 1) a revenue-neutral volumetric rate to recover all generation and transmission charges; and 2) availability, on an opt-in basis, for DCFC loads with a requirement for a multiyear commitment and portfolio enrollment. See Electrify America Initial Comments at 7. Electrify America asserted that a volumetric capacity charge would eliminate volatility of capacity charges and provide DCFC station operators knowledge regarding station operating costs. Ibid. According to Electrify America, a revenue-neutral rate design, along with a requirement for multiyear portfolio enrollments, would reduce the risk of cross-subsidies. Ibid. By portfolio enrollments, Electrify America suggested that DCFC station operators be required to enroll all sites or no sites. Ibid. Electrify America claimed the opt-in feature prevents gaming because DCFC station operators have to choose between “all-or-nothing.” Ibid. The sites with low tags would balance those with higher tags, and EV operators opting into the program would not be able to cherry-pick sites. Ibid.

Electrify America argued that the EDCs’ effort to study and submit a BGS rate proposal to address EV charging rates was minimal and, is an argument identical to the argument made last year: that it remains premature to consider a volumetric rate or specific relief to burdensome demand charges affecting DCFC station operators. Id. at 11. Electrify America noted that, while it filed letters of non-objection in the PSE&G and ACE EV proceedings, there has been no movement from the EDCs after a year. Ibid. Additionally, Electrify America stated that further delaying demand charge reform increases the difficulty for New Jersey to achieve its public policy goals. Ibid. Electrify America argued that the Board should approve its proposed volumetric rate without delay in furtherance of New Jersey’s public policy goals. Id. at 13.

In its Final Comments, Electrify America reaffirmed that the Board should implement a volumetric rate. See Electrify America Comments at 2. Electrify America suggested the Board can order capping cost exposure from capacity tags to a reasonable level for EV charging infrastructure, such as the class average cost per kWh, which may be more readily implemented by EDCs. Ibid.

#### *Rate Counsel Comments*

In its Final Comments, Rate Counsel reaffirmed its Initial Comments and noted that Electrify America did not provide any revenue or full cost data specific to its New Jersey DCFC stations. See RC Final Comments at 2. Rate Counsel stated that Electrify America only provided a rate calculation of BGS supply charges for an illustrative DCFC station across three (3) EDCs and noted that electricity rates across the state are not the same. Id. at 2-3. Rate Counsel asserted that Electrify America bears the burden of finding a uniform rate that accommodates variability in BGS rates across the State. Id. at 3. Rate Counsel stated that, under the current BGS procedural process, Rate Counsel and other intervenors may not seek discovery or review testimony from a sponsoring witness and therefore, the Board cannot evaluate the merits of Electrify America’s claims. Ibid. Rate Counsel believes that the creation of any additional subsidy using ratepayer

funds must be supported by a demonstrable need by the beneficiary of such a subsidy, and Rate Counsel continues to recommend that the Board initiate a separate adjudicated proceeding to address the issues raised by Electrify America. Ibid.

### *EDCs Comments*

In its Final Comments, the EDCs stated that the creation of EV specific rates remains premature and requires further data. See EDC Final Comments at 6. The EDCs noted that Electrify America did not discuss station profitability past year one, nor did it address the time needed to recover the initial capital investment required to build a DCFC station. Id. at 6-7. Regarding an EV-specific rate for residential systems, the EDCs note that instituting such a rate may be hindered by the expectation that the EV load will be commingled behind a single meter. Id. at 7. As a result, the EDCs argued that even if the EDCs can collect EV charger specific data, any established rate would be applicable to all metered load which would further skew cost causation for the related loads. Id. at 7-8. The EDCs committed to updating the Board on the status of data collection and analysis efforts on a semi-annual basis. Id. at 9. The EDCs argued that while the data used to perform its analysis is limited, a DCFC station specific rate is premature at this time and would be in direct violation of cost causation principles. Ibid. Additionally, the EDCs questioned whether altering the BGS rate design to subsidize the growth of a nascent end-use is appropriate or counter to the objectives of establishing BGS rates that are consistent with cost causation principles (and that enable parity with TPSs). Id. at 10. The EDCs asserted that creating a BGS rate specific to DCFC stations to accommodate Electrify America's proposal continues to be premature at this time. Ibid. The EDCs stated it 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. Ibid.

The Board does not believe there is currently enough information to establish a revenue neutral volumetric rate design, and as such, the Board **HEREBY REJECTS** Electrify America's request.

However, the Board is concerned with the pace of the progress in proposing a vetted rate design. Therefore, the Board **HEREBY DIRECTS** Staff to work with interested parties to come to a consensus in an attempt to find a rate design solution before the filing of the proposal for the 2024 BGS Auction (i.e. the proposal due July 1, 2023). The Board **HEREBY ORDERS** the EDCs, in their next BGS filing, to make a proposal regarding rate design for DCFC stations. Additionally, the Board **FURTHER DIRECTS** the EDCs to continue to collect data, subject to customer consent, and submit semi-annual reports to the Board and Rate Counsel as agreed to in their EV stipulations. The Board **HEREBY ORDERS** the EDCs to include the following information, for both residential EV and DCFC charging stations in those semi-annual reports: the total energy consumed, capacity and transmission tags, measured demands, connected load and the resulting load factor.

The Board **HEREBY NOTES** the distribution side of residential EV charging was addressed in some of the EDCs' EV proceedings.<sup>18</sup> The Board believes a BGS Time-of-Use ("TOU") rate can

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<sup>18</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; In re the Petition of Jersey Central Power & Light Company for Approval of an Electric Vehicle Program and an Associated Cost Recovery Mechanism, BPU Docket No. EO21030630, Order dated June 8, 2022; In re the Petition of Rockland Electric Company for Approval of an Electric Vehicle Program, Establishment of an Electric Vehicle Surcharge, and for Other Relief (RECO EV), BPU Docket No. EO20110730, Order dated October 12, 2022.

be created and **HEREBY ORDERS** the EDCs to create a similar solution on the residential supply side to take effect June 1, 2023.

### ***Capacity Tags***

In the Proposal, the EDCs committed to reviewing their respective processes for establishing capacity and transmission obligations. See Proposal at 26. PSE&G asserted that it made alterations to its process by setting initial capacity and transmission obligations for DCFC stations, thereby addressing Electrify America's concerns. Ibid. JCP&L determined that there is already a process in place for a customer to dispute and offer an alternative capacity tag for the initial year of operation. Ibid. ACE and RECO explained that they do not have sufficient historical data to decide about the accuracy of their process for setting initial capacity tags, and as such, have not altered their initial capacity and transmission obligation processes. Ibid.

### ***Electrify America Comments***

In its Initial and Final Comments, Electrify America noted that there are large differences in how capacity charges are billed which may have a material impact on loads at DCFC stations. The three (3) utilities territories that Electrify America operates in, PSE&G, ACE and JCP&L, all pass-through generation capacity charges for customers over 500 kW. See Electrify America Initial Comments at 4; Final Comments at 2-3. According to Electrify America, this penalizes EV charging companies that provide the most consumer-friendly and fastest refueling speeds. See Electrify America Initial Comments at 4; Final Comments at 3. Crossing the 500 kW threshold results in a demand charge that dramatically increases costs per kWh with volatility that does not comport with cost-causation principles. Ibid. Electrify America argued that there is no justification for the significant difference in cost between 499 and 501 kW of demand other than an arbitrarily selected numerical threshold. Ibid.

Electrify America asserted that the current rate structure for recovery of capacity charges, particularly in PSE&G service territory, amounts to a storage mandate for DCFC stations because storage is the only viable way to manage capacity tags for DCFC loads. See Electrify America Initial Comments at 6. Electrify America noted that adding storage introduces complexities for construction, significantly increases capital costs, and is not possible at all site locations. Ibid.

Electrify America argued that, for new DCFC stations, initial capacity tags should be set at zero or much lower than they are currently. Id. at 14. Electrify America noted that it operates 10 stations in New Jersey that have had the generation capacity tags re-set twice based on actual summer load data in June 2021 and 2022. Ibid. In total, the capacity tags have been reset 23 times and in 22 of those instances, the actual generation capacity tag has been lower than the initial capacity tags set by PSE&G. Ibid. Electrify America noted that the Proposal suggests that high initial capacity tags are acceptable because the impact from these assignments improves after the first year of operation with revised tags based on actual usage. Id. at 15.

Electrify America disagreed with PSE&G's statement that it made alterations to the process of setting initial capacity and transmission obligations for DCFC stations. Electrify America noted that it reached out to PSE&G seeking relief based on the assignment of default capacity tags at one (1) of its stations and PSE&G defended its initial capacity tag assignment. Ibid. Electrify America believes that there is sufficient data to set lower initial capacity tags for DCFC stations based on actual experience at existing sites in the service territory. Id. at 16. Electrify America stated the Board should advise the EDCs that initial capacity tag assignments for DCFC stations should be set at zero or should be lowered based on existing sites within the EDCs service



territories. Ibid.

In its Final Comments, Electrify America stated that EV charging loads are inelastic and unpredictable at hourly levels of granularity, making it impossible to accurately predict load capacity and usage. See Electrify America Final Comments at 3. This means that DCFC stations cannot curtail or reduce loads during potential Coincident Peak event hours to manage their exposure to capacity charges. Ibid. In order to manage these event hours in a way to reduce costs, it would leave EV drivers without an ability to refuel and would reinforce concerns with further EV adoption. Ibid. Electrify America stated that the current practice of setting initial capacity tags does not reflect cost causation principles. Ibid. Electrify America stated that the EDCs have attempted to minimize the impact this has had on DCFC station operators by repeatedly emphasizing to the Board that this only affects DCFC stations during the first year of operation. Ibid. Electrify America stated that this is contrary to the State's public policy goals of transportation electrification and understates the significance of operating at a loss during the first year of operation. Ibid. Electrify America asserted that it and other DCFC station operators cannot justify opening new charging stations and further investing in New Jersey when they may be forced to operate at a loss during the first year of operation, while other states enable DCFC station operators to experience a return on their investment. Ibid. Electrify America asserted that delaying this return on investment will inhibit the private market of EV charging infrastructure in New Jersey. Ibid.

Electrify America further stated that it understands and respects the desire to wait for more data to support a change to the BGS rate structure for EV charging, but argued that the status quo penalizes the industry and will make it difficult if not impossible for the State to meet its goals. Id. at 5. According to Electrify America, the extreme volatility of capacity charges and the 500 kW threshold make it difficult to justify opening stations with the most consumer friendly fast refueling speeds and make it difficult for DCFC station operators to compete with gasoline pricing. Ibid. Arguing that the current BGS rate structure does not address demand charges that Electrify America and other DCFC station operators face in New Jersey, Electrify America noted that the Board could implement temporary changes to cap cost exposure from capacity tags while awaiting further data. Id. at 6. Electrify America asserted that waiting for the EDCs to supplement their data and create a meaningful proposal to address the BGS rate structure for EV charging is not advisable because the EDCs admit that they cannot provide any definable timetable to create such a proposal. Ibid.

#### *EDCs Comments*

In its Final Comments, the EDCs argued the Board should reject Electrify America's request to set initial capacity tags to arbitrarily low levels. See EDC Final Comments at 3. The EDCs noted that Electrify America has not voiced a concern when capacity tags are reset after the first year of operation. Ibid. The EDCs further noted that Electrify America made clear that this issue exists in the first year of operation of DCFC stations, and implied that this issue is resolved in subsequent years following the resetting of the capacity tags, but they did not address the specific time horizon needed to recover the initial capital investment associated with a DCFC station. Ibid. The EDCs reiterated that Electrify America's concerns are centered on the first year of operation of their DCFC stations, and that the capacity tag issue is resolved after capacity obligations are reset. Ibid. The EDCs noted that modifying the process related to the setting of initial capacity tags based on statements of a single entity – or arbitrarily setting the values to zero will result in cost shifting to other customers or suppliers. Id. at 4. The EDCs argued that they remain committed to continuing their review of 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

capacity tag] to ascertain if a change in how initial capacity tags are established is warranted and if a change is supported by data. Id. at 5.

After careful consideration of Electrify America's proposal, and the comments submitted by Rate Counsel and the EDCs, the Board believes it is appropriate to act now. The Board acknowledges the EDCs' and Rate Counsel's concerns regarding the need for additional information. However, the Board believes it is reasonable for the EDCs to re-evaluate the initial capacity tags for DCFC stations after six (6) months. As such, the Board **HEREBY ORDERS** that after the first six (6) months of operation of a DCFC station, the EDCs set the capacity tags for the remaining six (6) months based upon the DCFC station's actual usage.

### **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>19</sup> The Board **HEREBY FINDS** that the confidentiality provisions of its December 1, 2004 Order in Docket No. EO04040288 remain necessary and appropriate for the continued success of the BGS Auctions, and **HEREBY APPROVES** the same confidentiality provisions for the 2023 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>20</sup>

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<sup>19</sup> In re the Provision of Basic Generation Service for Year Three of the Post-Transition Period – Confidentiality Issues, BPU Docket No. EO04040288, Order dated December 1, 2004 (“December 1, 2004 Order”).

<sup>20</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 2023 Auction.

- 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 it 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 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>21</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.

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<sup>21</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.

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>22</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.

In recognition of the significance of this proceeding, the Board **HEREBY DIRECTS** the EDCs to submit a Compliance Filing by November 30, 2022. Further, the Board grants Staff the authority to review the EDCs' compliance filings, and to request that the Board Secretary issue compliance letters approving the filings should Staff find them in compliance with this Order.

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

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

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<sup>22</sup> As used in this Order, a "business day" is a day when the Board is open for business. Should weather or other conditions make the Board's offices inaccessible, the period will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

## **FINDINGS AND CONCLUSIONS**

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

This was 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 et seq., and the EDCs' Final Restructuring Orders;

The Proposal, as modified herein, can and should be implemented in a timely fashion to secure BGS service for BGS customers beginning June 1, 2023;

The Proposal, as modified herein, appears to be the best means to secure BGS service for the 2023 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 2024 and 2025 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 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 2023 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 2023 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;

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 2023 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 ORDERS** that the Proposal be modified consistent with the foregoing, and that the EDCs make compliance filings consistent with this decision by November 30, 2022. 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.

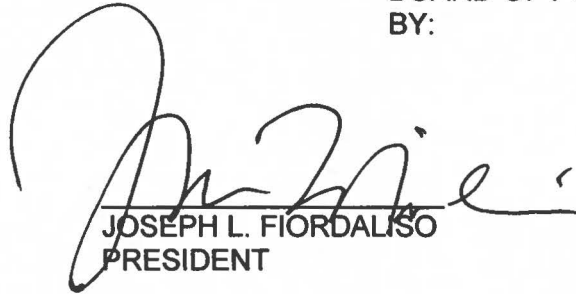
The Board **HEREBY DIRECTS** the EDCs to work with Staff and Bates White to ensure that any supplemental documents are fair and consistent with this decision, and that the review procedures for bidder applications are applied in a consistent and non-discriminatory manner.

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 16, 2022.

DATED: November 9, 2022

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER



DR. ZENON CHRISTODOULOU  
COMMISSIONER

ATTEST:   
CARMEN D. DIAZ  
ACTING SECRETARY

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

IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE (BGS) FOR THE  
PERIOD BEGINNING JUNE 1, 2023  
BPU Docket No. ER22030127

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## ATTACHMENT A

### Tentative 2023 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, 2022
Decision on 2023 Process	AM/BA	November 9, 2022
Announce minimum and maximum starting prices	AM	November 11, 2022
Announce Load Caps	AM/BA	November 11, 2022
Announce Tranche Targets	BPU	November 11, 2022
Information webcast for potential bidders	AM/EDCs	November 29, 2022 (tentative)
Compliance Filing	EDCs	November 30, 2022
Approval of Compliance filing	BPU	December 2022
Final Auction Rules and Supplier Agreements available	AM/EDCs	December 2022
Review Part I applications	AM/BA	December 13-16, 2022
Review Part 2 applications	AM/BA	January 11-19, 2023

## ATTACHMENT A

### Tentative 2023 Auction Approvals and Decision Process

Information Webcast for registered bidders	AM/EDCs	January 25, 2023 (tentative)
First Trial Auction	AM	January 26, 2023
Second Trial Auction	AM	January 31, 2023
Inform bidders of EDC-specific starting prices	EDCs/AM/BA	CIEP – January 31, 2023 RSCP – February 1, 2023
BGS-CIEP Auction starts		February 3, 2023
BGS-RSCP Auction starts		February 6, 2023
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. ER22030127**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY**  
**2023 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 3, 2023

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. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 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. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 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. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 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. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 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. ER22030127**

**POST-AUCTION CHECKLIST**  
**FOR THE NEW JERSEY 2023 BGS-RSCP AUCTION**

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

[Introductory comments, if any.]

Auction began with the opening of Round 1    [x:xx am]    on    February 6, 2023

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. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 BGS-RSCP Auction**

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

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

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

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

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

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**Docket No. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 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. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 BGS-RSCP Auction**

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

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**Docket No. ER22030127**

**Post-Auction Checklist for the New Jersey 2023 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.

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

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

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

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

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

## II. EDC-SPECIFIC STARTING PRICES

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

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

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

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

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

### III. INDICATIVE OFFERS

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

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

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

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

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

## IV. ROUND PRICES AND INDIVIDUAL BIDS

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

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

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

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

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

## V. BIDDER INFORMATION

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

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

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

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

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

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

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

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

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

Part 1 Application Form:

Bidding Agreements

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

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

Guarantor's Information

Justification for Omissions

Part 2 Application Form:

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

Qualified Bidder's Preliminary Maximum Interest in Each EDC

Additional Financial and Credit Requirements

Bidder Certifications Concerning Associations and Confidential Information

Justification for Omissions

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

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

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

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

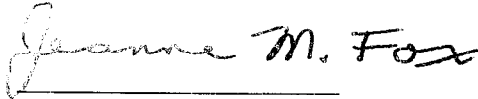
Should a request for the non-public bidder information provided to NERA be made to the Board's custodian, the Board DIRECTS that such information be treated as confidential and that all requests for access be denied.

# Attachment C

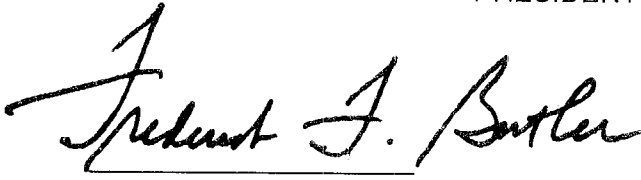
At its October 22, 2004, public agenda meeting the Board approved a descending clock Auction to procure needed BGS supplies for Year Three as well as for Year Four (supply period beginning June 1, 2006). It is anticipated that, should a request for confidentiality be made, similar reasoning to that described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