

## ATTACHMENT C

### A. Modifications to Auction Rules

1. Replace the term “recess” by “time-out” when referring to a pause requested by the Auction Manager
2. Add a companion concept to a recess request, called a “round extension.” An extension increases the bidding phase of a round by 15 minutes for all bidders.
3. Incorporate into the auction rules the additional documents detailing the setting of load caps and the rules for the treatment of bidder associations and confidential information provided to interrogatory DRA-BGS-Informal-3.
4. Make any changes made necessary by the Order’s directives on Committed Supply and State licensing of suppliers.
5. Complete or clarify the description of the following:
  - The price at which disallowed switches are retained;
  - The way in which new bids at the going prices can release partially or completely switches that had been previously disallowed or previously accepted exit prices;
  - The order in which the tranche target is filled;
  - The bounds of the exit price and the fact that if a bidder does not enter an exit price, and if a tranche is retained, it is retained at the last price at which it was freely bid;
  - The way in which bidders are privately informed of disallowed switches and accepted exit prices;
  - The way in which bidders are privately informed that accepted exit prices are now rejected or that disallowed switches are now released;
  - The range of eligibilities provided at the end of each round;
  - The fact that each qualified bidder will be simultaneously provided with a list of qualified bidders;
  - The fact that each registered bidder will be simultaneously provided with a list of registered bidders and the total initial eligibility in the auction;
  - The fact that discretion could be exercised in the setting of price decrements but that bidders should expect this discretion to be used rarely if at all;

- ❑ The process for recess requests;
  - ❑ The definition of a bid to include references to the possibility that bidders will be asked to enter switching priorities and/or exit prices;
  - ❑ The time-stamp is the time at which the bid is logged into the database and that once confirmed by the database, a bid (including other bidder entries like switching preferences and exit prices) becomes a firm offer;
  - ❑ The fact that applicants to the auction may be required to post pre-auction security in addition to a bid bond;
  - ❑ The fact that if the bidder has an accepted exit price for the specific EDC for which the disallowed switch has been outbid, the exit price of the outbid switch must be the same as the accepted exit price;
  - ❑ The fact that if the Auction Manager reports to a bidder that a switch from an EDC has been partially or completely disallowed, and if this bidder decides in the next bidding phase to increase its subscription to this EDC, then the bidder will be deemed to offer all tranches retained from the disallowed switch at the going price as well;
  - ❑ The possibility that the auction volume could be adjusted after the second round of bidding.
6. Modify the algorithm for the minimum and maximum starting prices. (This information was provided as confidential and therefore, will be modified in consultation with Staff and provided to those parties that have previously signed a Confidentiality Agreement)

## **B. MODIFICATIONS TO THE BGS MASTER SERVICE AGREEMENT**

1. Modify third “Whereas” clause to indicate that the Board found that for Year 4 it would be appropriate to secure BGS through a bid process.
2. Committed Supply. Changes must be made throughout the Agreement to reflect the treatment of Committed Supply directed in the Order.
3. References to Board licensing will be deleted from the Agreement.
4. The appendix that defines the number of tranches won by the Supplier and that defines the percentage of BGS Load won must be developed.
5. Definition of BGS Peak Load Share must be clarified.
6. Definition of BGS Supply: Clarify that only PJM or another governmental body having jurisdiction may require additional services or products to be supplied in order to meet the BGS Supplier Responsibility Share under the Agreement.

7. Capacity Credits Associated With Active Load Management (“ALM”): Include a mechanism whereby capacity credits associated with ALM will be transferred to Suppliers for the purpose of assisting them in meeting PJM capacity obligations arising from their obligations as a BGS Supplier.
8. Definition of Energy: Include “Energy” as a defined term in the Agreement.
9. Wholesale Requirements: Substitute the term “Wholesale Customers’ requirements” for “wholesale requirements” and define Wholesale Customers in order to clarify the definition of BGS Load.
10. Relationship Between Suppliers and Customers: Add language to Section 2.1 to clarify that Customers will not have a direct cause of action against BGS Suppliers in connection with the Suppliers’ performance under the Agreement.
11. Payment of Auction Fees By Winning Bidders: Amend Section 2.2(a) to include a provision requiring winning bidders, on a pro rata basis, to reimburse the EDCs for the total costs of the auction.
12. Relationship Between Suppliers and the Company: Clarify that (i) the EDC’s performance under the Agreement is not contingent upon the performance of its Customers or the ability of its Customers to pay rates; (ii) that Suppliers shall in no way be responsible for the delivery or billing of Energy with respect to the EDC’s Customers and (iii) that the EDC is responsible for distribution services and that the Supplier shall not be responsible for distribution charges.
13. Record Retention and Verification of Invoices and Payments: Revise the procedures for the verification of invoices and payments to allow for verification to occur for up to one year following termination of the Agreement. Revise Sections 9.1 and 9.3 by removing the language under which the failure by a party to object to an invoice within 20 days renders the invoice conclusively accurate.
14. Company’s Representations and Warranties: Add the following representations:
  - (i) the ability of the Company to pay any and all amounts due and payable under the Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Board, the State of New Jersey or any other governmental or administrative authority; and
  - (ii) there are no actions at law, suits in equity, proceedings or claims pending or, to the Company’s knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company’s performance of its obligations hereunder.

15. Additional Events of Default: Add the following as additional Events of Default under Section 5.1 of the Agreement:
  - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
  - (iii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
16. Timing For Election of Rights Upon Default: Amend Section 5.2 by deleting “In the Event of Default” in the first line of the provision and substitute “Upon and during the continuance of an Event of Default.”
17. No Prejudice For Failure to Assume Additional Tranches Under Step-Up Provision: Add language providing that a Supplier shall not be prejudiced by turning down the opportunity to acquire additional Tranches made available under this provision of the Agreement.
18. Calculation of Termination Payment: Modify Section 5.4 to provide that the Termination Payment is equal to the single Settlement Amount determined pursuant to Section 5.4(a), net of any security available to the Non-Defaulting Party and net of amounts owing by the parties under the Agreement.
19. Closeout Setoffs: Delete Section 5.4(e).
20. PJM LSE Obligations: Move the last sentence of Section 6.3 concerning PJM obligations to the end of Section 2.3.
21. Operational Requirements: Delete the first paragraph of Section 7 and substitute the following:

The Parties must adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and must satisfy any and all PJM, MAAC and NERC criteria, when applicable. The Supplier also must adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company’s local distribution system.

22. Credit Exposure/Security Calculation: Delete the last paragraph of Section 6.4 in its entirety and substitute the following language:

If a Supplier or the Guarantor of a Supplier does not meet the Minimum Ratings listed above, security equal to \$4.3 million per Tranche for each Tranche to be served by the Supplier, shall be provided to the Company in a form set forth below.

23. Change in Credit Exposure/Security required: The EDCs should ask for additional security if there is a significant change in market conditions:
- a. if at any time during the supply period the one-month on-peak forward market price per MWh for any month covered by the Agreement exceeds \$151.40; or
  - b. if at any time during the supply period the average one-month on-peak forward market price per MWh for any two consecutive months covered by the Agreement exceeds \$102.86.

In either of these circumstances, the EDCs will recalculate the credit exposure as follows:

- a. In the first circumstance, multiply the amount by which this one-month on-peak forward market price exceeds \$151.40/MWh, by 42,408 MWh (100 MW x .57 load factor x 744 hours).
- b. In the second circumstance, multiply the amount by which this average one-month on-peak forward market price exceeds \$102.86/MWh by 83,448 MWh (100 MW x .57 load factor x 1,464 hours).

and security may then be required as set forth in section 6.4. The forward price used will be the on-peak power price determined by averaging the quotations of four independent brokers active in the electric power market. The EDCs will recalculate exposure on a daily basis when forward prices exceed these thresholds, and will be allowed (but not obligated) to ask for additional security, as long as the amount of the required additional security exceeds \$250,000.

24. Change references to the terms “minimum rating for the senior unsecured debt”, “bond rating” and “long-term minimum rating” to “senior unsecured debt rating (or, if unavailable, issuer rating)”.
25. Confidentiality: Amend Section 6.8 to provide that Suppliers will be given prompt notice of any request for confidential data.
26. Load Calculations: Formalize the detailed procedures that will be used for estimating load usage and for allocating between BGS and Third Party Supply.

27. Ancillary Services: Amend Section 7.2 to include a provision addressing the procedures for transmitting data with respect to Ancillary Services.
28. Netting: Clarify Section 9.1(e) that netting is limited to amounts payable by one party to the other only under the Agreement.
29. Payment Date: Amend Section 9.1 to provide that payments by the EDC will be made by the 19<sup>th</sup> calendar day of the month for consistency with the PJM billing cycle.
30. Delivery of Statements: Amend Section 9.1 to require delivery of statements by overnight mail or other expedited means.
31. Billings Obligations: Add the phrase: “; provided, however, that the Company will be responsible for billing the BGS Customers for BGS Service” at the end of Section 9.2.
32. Interest on Late Payments by the Company: Add a provision to Section 9.1 providing for interest on late payments at the prime rate commercial borrowers are charged by J.P. Morgan Chase.
33. Interest on Late Payments by Suppliers: Change the interest rate on late payment by Suppliers to the prime rate commercial borrowers are charged by J.P. Morgan Chase.
34. Due Date for BGS Supplier Payment Obligations: Modify Section 9.3 to provide (i) that payments by the BGS Suppliers to the EDC are due on the same date that the EDC is obligated to pay BGS Suppliers and (ii) that the amounts owed by the BGS Suppliers will be automatically netted against the payment amounts owed by the EDC.
35. Time Period For Adjustments in Supplier Payments to the Company: The time period for adjustments in Supplier payments to the EDC under Section 9.3(b) should be one year for consistency with Section 9.1(f) concerning EDC payments to the Supplier.
36. Reciprocity of Liability Waiver For Inadvertent Loss of Service: Amend the last sentence in Section 10.2 of the Agreement to make the wavier of liability for inadvertent loss of service reciprocal.
37. No Supplier Obligations to Other Suppliers Except as Expressly Provided: In Section 13.1, clarify that Suppliers have no obligations to other Suppliers except as expressly provided in the Agreement.
38. Indemnification: Add “shareholders, board members, directors, officers and employees” of the Indemnified Party to the scope of the indemnity. Clarify that the

indemnity covers only claims made by third parties. Add “penalties” to the scope of the indemnity. Correct erroneous references to “Indemnified Company” to refer to “Indemnified Supplier” in Section 14.1 (b).

39. Assignment: Amend Section 15.3 to provide that a Supplier shall not be obligated to obtain the consent of the EDC to assign accounts receivables or similar rights under the Agreement for financing purposes provided that the Supplier advises the EDC of the arrangement.
40. New Taxes: Add a provision providing that the EDCs will pay any new taxes imposed on energy after execution of the Agreement, upon the receipt of Board approval for the inclusion of the new taxes in a deferred account for subsequent recovery from Customers.
41. Binding Obligation: Add the following new provision to the Agreement:

#### **15.11 Binding Terms**

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party (including Company acting on behalf of Customers) agrees not to seek any change to such rates, terms and conditions pursuant to the Federal Power Act, including on the grounds that they are not just and reasonable.

42. Counterparts: Amend Section 15.12 to provide that each counterpart shall be considered an original but all counterparts together shall be considered one instrument.