

among others, physical processes involved in conversion layers, power deposition for temperature profile control, and interaction of waves of different frequencies to produce specific effects on the plasma. Applications for modeling radio frequency launchers and their coupling to the edge plasma will also be considered.

#### 5. Innovative/Integrating Concepts

Grant applications are desired for theoretical and computational research on innovative concepts that have the possibility of leading to improved magnetic fusion systems. Increased theoretical and computational research is needed to help in the analysis of experimental data and aid in planning innovative fusion related experiments. Topics of interest include: equilibrium and stability of 3D systems, including island formation; extension of turbulence models to 3D systems; improvement in extended MHD modeling of RFPs; increased understanding of turbulent transport in RFPs; and spheromak formation. Applications are also desired for theoretical and computational research on integrated studies that include multiple topics.

#### 6. Atomic and Molecular Processes in Plasmas

Grant applications will be considered for theoretical research relevant to the description of atomic processes in plasmas. In addition to overall scientific merit, emphasis will be given to work that promises to aid the understanding of the basic atomic processes that are important for modeling of magnetically confined plasmas. Basic atomic processes that are important for modeling high energy density plasmas produced by high power lasers or ion beams may also be considered. The program has found understanding electron-atom and electron-ion collisions and the radiation emitted by atoms and ions to be of importance for the modeling of plasma behavior in experiments. Some current areas where atomic processes are considered to be important include the effects of transport, the effects of impurities and the understanding of diagnostics.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605).

Issued in Washington DC, on January 31, 2003.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 03-3046 Filed 2-6-03; 8:45 am]

**BILLING CODE 6450-01-P**

### DEPARTMENT OF ENERGY

#### Office of Science; Basic Energy Sciences Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Tuesday, February 25, 2003, 8 a.m. to 5 p.m., and Wednesday, February 26, 2003, 8 a.m. to 12 p.m.

**ADDRESSES:** Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Sharon Long; Office of Basic Energy Sciences; U. S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874-1290; Telephone: (301) 903-5565.

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

*Tentative Agenda:* Agenda will include discussions of the following:

- Tuesday, February 25, 2003
  - Welcome and Introduction
  - Office of Science Highlights
  - Office of Basic Energy Sciences Highlights
  - Review of the FY 2004 Budget
  - Report of the Workshop on Basic Research Needs to Assure a Secure Energy Future
  - Summary of the 20-Year Basic Energy Sciences Facilities Roadmap
- Wednesday, February 26, 2003
  - Status of BESAC Activities
- Report on the Biomolecular Materials Workshop
- Update on the Catalysis Report

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301-903-6594 (fax) or [sharon.long@science.doe.gov](mailto:sharon.long@science.doe.gov) (e-

mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E-190, Forrestal Building; 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on February 4, 2003.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 03-3045 Filed 2-6-03; 8:45 am]

**BILLING CODE 6450-01-P**

### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket No. ER03-304-000]

**Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell: Consolidated Edison Energy, Inc. and Rockland Electric Company; Order Granting Authorization To Make Affiliate Sales**

Issued January 30, 2003.

#### I. Introduction

1. In this order, we grant an application under section 205 of the Federal Power Act (FPA) <sup>1</sup> by Consolidated Edison Energy, Inc. (CEE) and Rockland Electric Company (RECO) (collectively, Applicants), requesting that the Commission grant authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the statewide auction bidding process approved by the New Jersey Board of Public Utilities (BPU). This order concludes that the BPU-approved bidding process as described below alleviates the Commission's concerns regarding affiliate abuse. This order benefits customers by permitting power to be bid into the BPU-approved auction while protecting against affiliate abuse.

<sup>1</sup> 16 U.S.C. 824d (2000).

## II. Background

2. On December 20, 2002, Applicants filed the instant application, stating that "Commission approval is sought because both CEE and RECO have codes of conduct and electric tariffs that generally prohibit wholesale sales of electric power to affiliates absent approval from the Commission under [section] 205 of the FPA."<sup>2</sup>

Accordingly, they request, to the extent necessary, waiver of the applicable provisions of Applicants' market-based rate tariffs, codes of conduct and any other applicable Commission regulations. Applicants request expedited consideration to allow them to participate in the BPU-sponsored statewide auction that will commence on February 3, 2003.

3. CEE and RECO are corporate affiliates and subsidiaries of Consolidated Edison, Inc. (Con Ed). CEE has on file a Commission-approved market-based rate tariff and code of conduct. RECO is a wholly-owned subsidiary of Orange and Rockland Utilities, Inc. (O&R) and provides retail electric service in New Jersey.

4. Applicants state that the BPU approved two statewide bidding auctions as the means for procuring Basic Generation Service (BGS)<sup>3</sup> for electric customers in New Jersey, the first of which was concluded in February 2002.<sup>4</sup> They state that in December 2002, the BPU approved an auction design for a statewide auction to commence on February 3, 2003, for the provision of all the BGS requirements for the period of August 1, 2003 to May 31, 2004 and a portion of the BGS requirements for the period of June 1, 2004 through May 31, 2006.

## III. Notice of Filing and Pleadings

5. Notice of Applicants' filing was published in the **Federal Register**, 68 FR 554 (2003), with protests and motions to intervene due on or before January 10, 2003. Public Service Electric and Gas Company (PSE&G) filed a timely motion to intervene<sup>5</sup> and protest. On January 17, 2003, Applicants filed an answer.

## IV. Discussion

### A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>6</sup> PSE&G's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213 of the Commission's Rules of Practice generally prohibits answers to protests unless otherwise ordered by the decisional authority.<sup>7</sup> We will permit Applicants' answer because it has aided us in understanding the issues.

### B. Substantive Matters

7. As noted, Applicants ask the Commission to permit CEE to participate in the BPU-approved statewide auction process to the extent that CEE may bid to supply the electric load requirements of its affiliate RECO. Applicants also request, if necessary, waiver of the provisions of the applicable codes of conduct and market-based rate tariffs that, among other things, prohibit wholesale sales of electric power to affiliates absent approval from the Commission under section 205 of the FPA.<sup>8</sup>

8. Applicants assert that the proposed sale in this case would originate through a competitive bid process supervised by the state regulatory authority with jurisdiction over the rates of the purchasing utility and that the auction process is designed to prevent affiliate abuse. They describe the auction process as follows:

The auction process is a completely competitive one based entirely on price. The bids are submitted electronically through the internet. During the bidding process, there is no contact outside of the process between any one supplier and an [electric distribution company (EDC)] concerning the bids. Indeed, during the auction process, the EDCs do not know which suppliers are bidding to supply their BGS customer load. Only the auction manager, National Economic Research Associates, Inc. ("NERA"), an independent consultant, is privy to such information. The auction commences by an EDC setting, in consultation with the BPU and the auction manager, a starting price. Suppliers bid the percentage of the EDC's BGS customer load that they are willing to supply at that price. They do this by bidding the number of tranches, each of which is equal to a set percentage of the EDC's overall BGS customer load, that they are willing to supply

at the applicable price. Generally speaking, the auction manager then gradually lowers the price and suppliers continue to bid the volume they are willing to supply until the price is at the lowest point where one hundred percent of the EDC's BGS customer load is still covered by the suppliers' volumetric bids. Once the lowest price is determined, and the BPU approves it, the EDC and each of the winning suppliers are required to enter into the applicable BGS Supplier Master Agreement that was approved by the BPU in its decision and order issued on December 4, 2002 in Docket No. EX01110754.<sup>9</sup> There is no individualized negotiation of the BGS Supplier Master Agreement between the winning suppliers and the EDC. The price described above is the price that is paid under the BGS Supplier Master Agreement for the supply of BGS.<sup>10</sup>

9. The Commission has approved affiliate sales based upon a competitive bidding process only after the Commission has evaluated the bidding process and determined that, based on the evidence, the proposal was a result of direct head-to-head competition between the affiliates and competing unaffiliated suppliers in a formal solicitation or informal negotiation process.<sup>11</sup> In *Conectiv Energy Supply, Inc.*,<sup>12</sup> the Commission accepted for filing, among other things, a service agreement between Conectiv Energy Supply, Inc. (CESI) and its affiliate Atlantic City Electric Company (Atlantic) pursuant to which CESI would make sales of capacity, energy and ancillary services to Atlantic under CESI's market-based rate tariff. In that case, the Commission evaluated the first BPU bid process and determined that the process "alleviates our concerns regarding affiliate abuse."

10. PSE&G states that it does not oppose CEE's proposal to bid in the BGS auction. However, PSE&G requests that Applicants' filing be rejected, arguing that the Commission lacks jurisdiction over the BGS auction. It argues that BGS is a retail service subject to the BPU's jurisdiction because the underlying BGS supply contract, the BGS Master Supply Agreement (Agreement), creates a direct supply arrangement between the BGS supplier and the end-user of electricity

<sup>9</sup> There are two applicable BGS Master Supplier Master Agreements (BGS-FP for Basic Generation Service—Hourly Energy Pricing and BGS-HEP for Basic Generation Service—Fixed Pricing). Applicants attached two *pro forma* BGS Supplier Master Agreements (one for BGS-FP and one for BGS-HEP) to their filing.

<sup>10</sup> Applicants' Transmittal Letter at 3-4.

<sup>11</sup> See Connecticut Light & Power Company and Western Massachusetts Electric Company, 90 FERC ¶ 61,195 at 61,633-34 (2000); Aquila Energy Marketing Corp., 87 FERC ¶ 61,217 at 61,857-58 (1999); MEP Pleasant Hill, LLC, 88 FERC ¶ 61,027 at 61,059-60 (1999); Boston Edison Co. Re: Edgar Electric Energy Co., 55 FERC ¶ 61,382 at 62,167-69 (1991).

<sup>12</sup> 91 FERC ¶ 61,076 at 61,269 (2000).

<sup>2</sup> Applicants' Transmittal Letter at 4.

<sup>3</sup> BGS is electric generation service that is provided by a New Jersey electric distribution company to any customer who has not chosen an alternative power supplier. BGS is known in other states as provider of last resort service or default service.

<sup>4</sup> See Electric Discount and Energy Competition Act of 1999, N.J.S.A. 48:3-49 *et seq.*, which provides the framework for the transition from a regulated to a competitive market place in New Jersey.

<sup>5</sup> PSE&G states that it is the major supplier of electricity in New Jersey. It further states that it is a major distributor of electricity in New Jersey and a transmission-owning member of the PJM

Interconnection LLC regional transmission organization and a provider of wholesale transmission service to surrounding regions.

<sup>6</sup> 18 CFR 385.214 (2002).

<sup>7</sup> 18 CFR 385.213 (2002).

<sup>8</sup> As noted above, CEE has a market-based rate tariff on file with the Commission. RECO is governed by the tariffs and code of conduct filed by O&R with the Commission on behalf of the Orange and Rockland System.

and that RECO's role would be that of an agent for BGS customers. PSE&G states that section 13.2 of the Agreement provides that "[E]ach BGS-FP Supplier shall at all times be deemed to hold title to electric energy until delivery to the retail meter of the Customer at which time title shall be deemed to pass to such Customer." Thus, PSE&G argues that Commission approval is not required in order for CEE to bid in the BGS auction to sell to RECO.

Alternatively, if the Commission does assert jurisdiction over BGS Agreements, PSE&G requests that it grant blanket waivers to all similarly-situated companies.

11. In response to PS&G's protest, Applicants state:

In view of the February 3, 2003 date for submitting bids in New Jersey's BGS auction, [Applicants] simply seek to clarify that the Commission does not have to resolve the wholesale-retail jurisdictional issue raised by PSE&G prior to February 3rd in order for CEE to participate in the RECO auction. It would suffice for the Commission to simply waive any affiliate-transaction limitations of [Applicants'] electric tariffs or codes of conduct insofar as they might apply. Granting such waivers prior to February 3rd would serve the public interest by enabling CEE to participate in the auction and thereby would increase overall participation and competition in the BGS auction. [Applicants] have no objection to PSE&G's alternative proposal that the Commission grant blanket waivers to permit participation in the BGS auction to all companies that are similarly situated to CEE and RECO.<sup>13</sup>

12. As noted above, Applicants' transmittal letter assumes that, if CEE is a successful bidder, the proposed transaction would involve a wholesale sale by CEE to its affiliate RECO that requires Commission approval. In these circumstances, we will assume (without deciding) that we have jurisdiction.<sup>14</sup>

<sup>13</sup> Applicants' Answer at 2.

<sup>14</sup> We note that the *pro forma* Agreements contain several indicia that would suggest a finding that entry by a successful bidder into the requisite BPU-approved supply agreement and performance thereunder will result in a wholesale sale. (The relevant provisions are the same in the BGS-FP Agreement and the BGS-HEP Agreement.) As an initial matter, the parties to the Agreements are the BGS Supplier (here, CEE) and the electric distribution company (here, RECO). There is no provision in the Agreements that establishes privity of contract between the retail customers and the BGS Supplier; retail customers cannot enforce the contract against the BGS Supplier, nor can the BGS Supplier enforce the contract against the retail customer. (E.g., BGS-FP Agreement, Article 2.1). Further, the electric distribution company (here, RECO) would execute the contract in its own name and be obligated to pay the BGS Supplier from its own funds. (E.g., BGS-FP Agreement, Article 2.2). The Agreements also provide that the agreement is a "legal and binding obligation of the Company [i.e., RECO]." (E.g., BGS-FP Agreement, Article 3.2). In addition, the "Company's performance under this agreement is not contingent upon the

The BGS competitive bid process described by Applicants alleviates the Commission's concerns regarding affiliate abuse. Therefore, we will grant Applicants' request for authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the BPU-approved statewide auction process.

13. Because we believe that the BPU auction process alleviates our concerns as to affiliate abuse, the Commission would authorize similarly-situated public utilities (with Commission-approved market-based rate tariffs and with tariff prohibitions on affiliate sales absent prior Commission authorization) to make sales to their affiliates as part of their participation in the BPU-approved auction. Such similarly-situated public utilities must either make an appropriate section 205 filing<sup>15</sup> or file a petition explaining why they believe we lack jurisdiction.<sup>16</sup>

#### *The Commission orders:*

(A) Applicants' application for authorization for CEE to make sales to its affiliate RECO, pursuant to CEE's market-based rates tariff, as part of CEE's participation in the BPU-approved statewide auction process is hereby granted, as discussed in the body of this order.

(B) The Secretary shall promptly publish this order in the **Federal Register**.

performance of [the retail] Customers or the ability of [the retail] Customers to pay rates;" the Company's non-payment, insolvency, illegality (including Federal Energy Regulatory Commission obligations), or material breach are all events of default for the Company and upon default, the BGS Supplier would receive damages from RECO, including liquidation and termination; and certain PJM penalties and costs are allocated among the BGS Supplier and the Company. (E.g., BGS-FP Agreement, Articles 3.2, 5.1 and 5.3). Further, the Agreements provide that to the extent that the Agreement is deemed to be subject to the Commission's jurisdiction, the standard of review for changes to any sections of the Agreement specifying the rate(s) or other material economic terms and conditions will be the *Mobile-Sierra* "public interest" standard of review. (E.g., BGS-FP Agreement, Article 11.2).

<sup>15</sup> See *Aquila, Inc.*, 101 FERC ¶ 61,331 at P 12 (2002).

<sup>16</sup> In the Prior Notice Order, the Commission advised that "[t]o the extent a utility remains uncertain, even after consulting this order and the Appendix, as to its obligation to file rates and charges for a particular transaction or type of transaction, it should assume the initiative to seek a specific ruling. The easiest and most efficient way to do this is to file the agreement pursuant to part 35 of the Commission's regulations \* \* \* and simultaneously request the Commission to disclaim jurisdiction." See Prior Notice and Filing Requirements Under part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,977-78 (1993) (Prior Notice Order) (emphasis deleted).

By the Commission.

**Magalie R. Salas,**  
*Secretary.*

[FR Doc. 03-3114 Filed 2-6-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL02-88-000, et al.]

#### Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell; Pacific Gas and Electric Company et al.; Order Partially and Fully Granting Rehearings and Partially Granting Complaints

Issued January 29, 2003.

In the matter of: ER02-1330-002, EL02-88-000, EL03-3-000 and ER02-1472-001, EL03-4-000 and ER02-1151-001, EL03-5-000 and ER02-1069-001, EL03-13-000 and ER02-2243-002, EL03-12-000; Pacific Gas and Electric Company, Wrightsville Power Facility, LLC v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Services, Inc., Entergy Services, Inc., Kinder Morgan Michigan, LLC v. Michigan Electric Transmission Company, LLC; Order Partially and Fully Granting Rehearings and Partially Granting Complaints.

1. In this order, we partially and fully grant the requests for rehearing and partially grant the complaints in the above-captioned proceedings and hold that the interconnection agreements (IAs) in these dockets must be modified to conform with our recent decision in *Duke Hinds II*.<sup>1</sup> Our holdings here benefit the public interest by assuring that the rates, terms, and conditions for interconnection service are just and reasonable, and provide the parties with a reasonable means to ensure the reliable operation, protection, and integrity of their transmission systems.

2. More specifically, we partially grant rehearing in *Pacific Gas and Electric Company*<sup>2</sup> (Docket No. ER02-1330-002) and find that the IA in this docket is unjust and unreasonable. We also partially grant the rehearings in *Entergy Gulf States, Inc.*<sup>3</sup> (Docket No. ER02-1472-001); *Entergy Services, Inc.*<sup>4</sup> (Docket No. ER02-1151-001); *Entergy Services, Inc.*<sup>5</sup> (Docket No. ER02-1069-001); and fully grant the rehearing in *Entergy Services, Inc.*<sup>6</sup> (Docket No. ER02-2243-002) and find that the IAs

<sup>1</sup> *Entergy Services, Inc.*, EL02-107-000, et al. (January 28, 2003) (*Duke Hinds II*).

<sup>2</sup> 101 FERC ¶ 61,079 (2002) (PG&E).

<sup>3</sup> 99 FERC ¶ 61,234 (2002).

<sup>4</sup> 99 FERC ¶ 61,097 (2002).

<sup>5</sup> 99 FERC ¶ 61,077 (2002).

<sup>6</sup> 100 FERC ¶ 61,397 (2002).