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ANNUAL FINAL REPORT
ON THE
2012 BGS FP AND CIEP AUCTIONS

Presented to:

THE NEW JERSEY BOARD OF PUBLIC UTILITIES

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I. INTRODUCTION AND SUMMARY

Boston Pacific Company, Inc. served as the Advisor to the New Jersey Board of Public Utilities (Board) for the Basic Generation Service (BGS) Auction held in February 2012 as we have for the previous five years. We are pleased to provide this report which is the Annual Final Report required under our contract. The Board defined the purpose and content of this Annual Final Report as follows:

> The contractor shall monitor the competitiveness of the auction and provide a complete factual report to the Board on the auction results…In its Annual Report, the contractor shall detail the administration of the auction for compliance with auction rules and agreed upon procedures. The contractor shall provide the Board with an independent certification of the auction process and results to ascertain whether the auction was competitive, transparent, just and reasonable.[1]

It is essential for the Board to have as much information as possible about the Auctions at the time it makes its decision on certification. To that end, the most explicit basis for the Board's certification decision on the Fixed Price (FP) and Commercial and Industrial Energy Pricing (CIEP) Auctions were the Post-Auction Checklists provided to the Board on February 9, 2012. These checklists contain (a) a factual statement of Auction results and (b) the answers to 26 questions about the conduct and results of the Auction. Because of the important role the Checklists play, Boston Pacific also provided what we termed a "Supplemental Checklist" which explained in detail our reasons for the yes/no answers to the 26 questions in the official Checklist. After this Introduction and Summary, the bulk of the Final Annual Report is made up of these Supplemental Checklists which, we believe, show the extensive depth and breadth of the analyses that underlie the Board's certification decisions.

A. THE BGS FIXED PRICE (FP) AUCTION

As Board Advisor, Boston Pacific recommended that the Board certify the results of the FP BGS Auction. We made that recommendation for three primary reasons: (a) the Auction was open, fair and transparent; (b) the Auction was sufficiently competitive; and (c) the winning prices were consistent with broader market conditions. Before getting into detail on these three reasons, it is constructive to step back to give perspective to the Auction results.

[1] See section 3.11, in Request for Proposal 08-X-39379 for Management Consulting: Oversight of BPU Basic Generation Service Auction Process, on page 17.

The good news is that, as a result of this year's FP Auction, residential customers of each of the four EDCs will see rate decreases of between 1.0 and 6.4 percent. These decreases were caused by replacing expiring higher-cost contracts solicited in 2009 with lower-priced supply from this year's Auction. Winning bids in this Auction were almost 20% less expensive that the 2009 contracts being replaced. This decrease was expected, given the lower market price of electricity compared to 2009. Lower electricity prices were driven in large part by lower natural gas prices. As compared to last year's winning prices, FP winning prices were down 12.4%.

Fairness and Transparency

The FP Auction was inherently or structurally open, fair and transparent for at least two reasons. First, because all of the non-price terms and conditions were standardized, all suppliers signed the same supply agreement and provided the same product. This allowed bid evaluation to be done purely on the basis of price. A price-only bid evaluation is the ultimate in transparency. Second, all the rules of participation and conduct were fully explained and fairly applied by the Auction Manager (NERA).

In addition, fairness and transparency were enhanced by the Auction Manager's pro-active facilitation of full access to the process and results for the Board Advisor and Board Staff. As the Board Advisor, we and Board Staff were actively involved in the full range of pre-Auction tasks including, but not limited to, the monitoring of bid information sessions, the calculation of start prices, and the evaluation of Part 1 and Part 2 Applications. During the Auction itself, we and Board Staff were given complete access to the full range of Auction data. This allowed us to independently verify round-by-round bid offers, price decrements, winning suppliers, and winning prices, as well as to monitor bidding behavior. We also monitored incoming and outgoing communications with bidders.

Competitiveness

Our second reason for recommending certification of the FP Auction results was that the Auction was sufficiently competitive. We assessed several indicators of the competitiveness. First, we looked at the total number of bidders in the Auction. A large number of bidders is helpful because it tends to increase the total supply bid in the Auction, pushing prices down and making it harder for bidders to carry out any collusive schemes. This year there were [redacted].

Second, we looked at the ratio of the quantity of electricity service offered to the quantity actually needed. This excess is important because it drives prices down as the Auction proceeds; the price for a given product "ticks down" (is decremented) if and only if there are excess offers

for that product. For that reason, we like to see bidders come in and stay in with the maximum number of tranches offered through many rounds of bidding.

Third, we looked at the number of winners. We like to see a large number of winners for several reasons. First, it means that the Auction was competitive, with multiple parties pushing down the price at the end. Second, it sends a signal to other participants that no one party is dominating the Auction and that anyone can win. Third, it increases the likelihood of these bidders returning in future years. This year there were eleven winners, three more than last year. Eleven winners is a large amount of diversity.

Fourth, we analyzed the results using the Herfindahl-Hirschman Index, or HHI, which looks at the market shares of each participant. The U.S. Department of Justice primarily uses a three-part standard for HHIs when judging the competitive effect of mergers and acquisitions. An HHI below 1,500 is a safe harbor of sorts because the market is said to be un-concentrated, that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,500 and 2,500 is said to indicate moderate concentration. An HHI over 2,500 is said to indicate a highly concentrated market. FERC uses more conservative HHIs when analyzing mergers and acquisitions. FERC characterizes a market with an HHI below 1,000 as unconcentrated, HHIs between 1,000 and 1,800 indicate moderate concentration, and HHIs above 1,800 indicate a highly concentrated market.[2]

For just the winning suppliers, the HHI was 1,757, or on the lower end of the moderately concentrated range by DOJ standards. If we expand the market to include suppliers who won tranches in the previous two years, the HHI is 1,773, also in the moderately concentrated range.

A related method that is also employed in antitrust evaluations examines the HHI of a market when the price in the market is raised by 5%. This so-called "Delivered Price Test" gives a sense of what suppliers could offer into a market at a price level roughly consistent with market prices.

[2] FERC sought comments in 2011 on whether it should adopt the DOJ HHI thresholds. On February 16, 2012, FERC reaffirmed its existing guidelines.

Finally, we looked for signs of collusive or coordinated bidding behavior. [redacted] We found no evidence of any collusive or anti-competitive actions.[3]

Prices Consistent with Market Conditions

The third reason for recommending certification of the BGS FP Auction results was that winning prices were consistent with broader market conditions. As noted above, we expected that prices would be lower as compared to the contracts that are being replaced due to decreases in natural gas prices over the past few years. In fact this is what happened, winning prices were, on average, down 19.8% from the contracts procured in the 2009 Auction. As compared to last year, prices were down 12.4%. This decline in electricity prices is due at least in part to the emergence of shale gas. Estimates of recoverable U.S. natural gas shale resources have increased about 19-fold in recent years – from 35 trillion cubic feet in a 2003 Natural Petroleum Council estimate, to approximately 650 trillion cubic feet in MIT's 2011 Future of Natural Gas Report. This massive increase in supply, along with the recession, has driven prices down to levels not seen in the last several years.

We made several checks on the prices received in this Auction to make sure that they were consistent with market conditions. Our primary test involved comparing the winning prices with the predicted ranges from our Benchmark Pricing Model. [redacted] The output of the model is a range of prices that we consider "reasonable".

We created separate Benchmark ranges for each utility. For all utilities, winning prices were within our benchmark ranges. [redacted]

[3] Had we detected any collusive behavior in the Auction we did have the power to call a recess and discuss the issue with the Auction Manager and Staff.

B. THE BGS COMMERCIAL AND INDUSTRIAL ENERGY PRICING (CIEP) AUCTION

Boston Pacific also recommended that the Board certify the results of the Commercial and Industrial Energy Pricing (CIEP) Auction. We used the same three criteria as in our recommendation for the FP Auction.

Fairness and Transparency

We believe the CIEP Auction was open, fair and transparent for essentially the same reasons stated above for the FP Auction.

Competitiveness

We used the same indicators of competitiveness as we did for the FP Auction. While we found no problems, based on these indicators the CIEP Auction is somewhat less competitive than the FP Auction.

- First, there were [redacted]. This is a good number of bidders for this process.
- Second, the excess quantity offered was adequate. [redacted]
- Third, there were 6 winners in the Auction. This is the same as last year's Auction.
- Fourth, the HHI for winning bids was 2,109, [redacted]
- Fifth, we, along with our Auction Expert, [redacted] found no evidence of collusion or anti-competitive behavior.

Prices Consistent with Market Conditions

This year the winning CIEP prices were somewhat higher than last year. For PSE&G the price increased 10.2%, from about $116/MW-day to about $128/MW-day. Overall the tranche-weighted average winning price across all four utilities was about $126/MW-day, up 7.2% from

last year. An increase from last year was expected due to the increase in RPM prices from last year's $110.04/MW-day to the 2012-2013 prices of $139.82/MW-day for ACE, JCP&L and RECO and $162.87/MW-day for PSE&G.

Creating any sort of benchmark price for the CIEP product is more difficult than it is for the FP Auction.

C. LONG-TERM COMPETITIVENESS

Table One
[TABLE REDACTED]

To further examine long term competitiveness, we looked at trends in Auction participation and in who was actually supplying New Jersey's BGS market.

Table Two
[TABLE REDACTED]

From this review we can see that the FP Auction remains a very competitive process going forward.

Figure One
[FIGURE REDACTED]

D. RECOMMENDATIONS

We are always on the lookout for ways in which to improve the BGS Auction process. Today, states are taking a much more active role in setting their energy policy, working to encourage the growth of renewables, demand side management and energy efficiency technologies, and new technologies such as "clean coal." Ensuring that the lights stay on at a reasonable price is no longer enough.

With that as a backdrop we always want to be sure that the BGS Auction is serving New Jersey's goals. Below we present recommendations that we believe will assist the State going forward. Note that we focus on new recommendations here. In past reports we have suggested other changes, most notably separating out the Renewable Portfolio Standard. We continue to believe that there may be value in this action for the reasons laid out in those same reports such as price transparency and policy flexibility. However, we recognize that this action is subject to the Board weighing these benefits against the costs of altering the current procurement and would require a good deal of effort from all parties to implement should the Board desire to do so.

Providing Information for Merging Entities

Bidders participating in the BGS process must sign a number of certifications as they register to bid, including certifications about not being associated with other bidders. The bidders must also remain the "Same Entity" throughout the process, roughly two months, to ensure that the entity signing the certifications and other registration materials is the same entity that bids and signs the contract.

However, during registration some bidders may be preparing to participate in a merger or acquisition, either with another BGS bidder or with an outside entity. If the timing of the merger is unknown but may occur before contracts are signed, then the bidders who attempt to register as stand-alone bidders may not be the Same Entity though the entire process, putting them at risk of violating their certifications and becoming ineligible to bid.

There are ways for bidders in such situations to stay in the process such as joint bidding arrangements. To make such bidders aware of how they may be able to register and maintain eligibility, information on the options that merging bidders have for moving through or exiting from the registration process should be presented early on, in the information sessions. This information could cover a variety of cases, such as when (a) a qualified bidder may merge with an external entity and potentially no longer be the Same Entity, (b) parent companies of two bidders may merge, making the bidders sister companies, (c) two bidders may merge, one maintaining its entity and the other being subsumed, or (d) two bidders may merge into a new

entity. Bidders should also be informed of how their options for confronting potential mergers may change before and after the Part 1 or Part 2 bidder qualification and registration deadlines. The goal of presenting this information is to give bidders as much flexibility as possible so that as many bidders as possible remain in the process.

To provide this information, we would recommend that the Auction Manager add a slide and a couple minutes discussion to its bidder information session presentations. The Auction Manager should also consider allowing merging bidders the opportunity to make limited amendments to bidder applications after the Part 1 application to account for a change in status. This might allow merging bidders to not violate their certifications and instead let at least one entity in a merger remain as a bidder.

II. THE NEW JERSEY 2012 BGS-FP AUCTION

A. POST-AUCTION CHECKLIST

ATTACHMENT B
DOCKET NO. EO11040250

POST-AUCTION CHECKLIST

FOR THE NEW JERSEY 2012 BGS-FP AUCTION

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 8:40am on Fri, February 3, 2012

Auction finished with the close of Round 26 10:00am on Tues, February 7, 2012

	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	[redacted]	NA	NA
Tranche target	57	NA	NA
Eligibility ratio	[redacted]	NA	NA
PSE&G load cap	14	NA	NA
JCP&L load cap	9	NA	NA
ACE load cap	3	NA	NA
RECO load cap	1	NA	NA
Statewide load cap	21	NA	NA

*Note: No volume adjustment was made during the FP auction, so the pre-auction tranche target and EDC-specific load caps were unchanged for the auction.

ATTACHMENT B
DOCKET NO. EO11040250

Post-Auction Checklist for the New Jersey 2012 BGS-FP Auction

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

Table 1. Summary of BGS-FP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-FP peak load share (MW)	2,892.92	1,932.44	666.75	99.55	5,591.66
Total tranches needed	29	20	7	1	57
Starting tranche target in auction	29	20	7	1	57
Final tranche target in auction	29	20	7	1	57
Tranche size (%)	1.18	1.93	4.55	25.00	
Tranche size (approximate MW)	99.76	96.62	95.25	99.55	
Starting EDC load caps (# tranches)	14	9	3	1	
Starting statewide load cap (#tranches)	--	--	--	--	21
Final EDC load caps (# tranches)	14	9	3	1	
Final statewide load cap (#tranches)	--	--	--	--	21
Quantity procured (# tranches)	29	20	7	1	57
Quantity procured (% BGS–FP load)	100%	100%	100%	100%	100%
# Winning bidders	6	8	4	1	11
Maximum # of tranches procured from any one bidder	14	5	3	1	20
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					16.0 12.5
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **	8.388	8.176	8.510	9.251	8.344

* 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. EO11040250

Post-Auction Checklist for the New Jersey 2012 BGS-FP Auction

Table 2. Overview of Findings on BGS-FP Auction

	Question	Comments
1	**BP's recommendation as to whether the Board should certify the FP auction results?**	Yes, certify
2	Did bidders have sufficient information to prepare for the FP auction?	Yes
3	Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?	Yes
4	Were there any issues and questions left unresolved prior to the FP auction that created material uncertainty for bidders?	No
5	From what BP could observe, were there any procedural problems or errors with the FP auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?	No
6	From what BP could observe, were protocols for communication between bidders and the Auction Manager adhered to?	Yes
7	From what BP could observe, were there any hardware or software problems or errors, either with the FP auction system or with its associated communications systems?	No
8	Were there any unanticipated delays during the FP auction?	No
9	Did unanticipated delays appear to adversely affect bidding in the FP auction? What adverse effects did BP directly observe and how did they relate to the unanticipated delays?	No
10	Were appropriate data back-up procedures planned and carried out?	Yes
11	Were any security breaches observed with the FP auction process?	No

	Question	Comments
12	From what BP could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BP during the FP auction?	Yes
13	From what BP could observe, were the protocols followed for decisions regarding changes in FP auction parameters (e.g., volume, load caps, bid decrements)?	Yes
14	Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the FP auction software double-checked or reproduced off-line by the Auction Manager?	Yes
15	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	No
16	From what BP could observe, were the communications between the Auction Manager and bidders timely and effective?	Yes
17	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	No
18	Were there any complaints from bidders about the process that BP believed were legitimate?	No
19	Was the FP auction carried out in an acceptably fair and transparent manner?	Yes
20	Was there evidence of non-productive “gaming” on the part of bidders?	No
21	Was there any evidence of collusion or improper coordination among bidders?	No
22	Was there any evidence of a breakdown in competition in the FP auction?	No
23	Was information made public appropriately? From what BP could observe, was sensitive information treated appropriately?	Yes
24	Does the FP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-FP load?	Yes

	Question	Comments
25	Were there factors exogenous to the FP auction (e.g., changes in market environment) that materially affected the FP auction in unanticipated ways?	No
26	Are there any concerns with the FP auction's outcome with regard to any specific EDC(s)?	No

B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST

BOSTON PACIFIC SUPPLEMENT TO NEW JERSEY BGS AUCTION CHECKLIST: FP AUCTION

QUESTION 1:
Boston Pacific's recommendation as to whether the Board should certify the FP Auction results?

ANSWER 1: Yes, certify.

CRITERIA:

a. Were all checklist questions satisfactorily answered?

Yes.

QUESTION 2:
Did bidders have sufficient information to prepare for the FP Auction?

ANSWER 2: Yes.

PRE-AUCTION CRITERIA

a. Were there Pre-Bid sessions and were they informative?

Yes, there were Pre-Bid Information Sessions and they informed bidders about Auction procedures and developments.

There were three Pre-Bid Information Sessions; the first on September 30, 2011, the second on December 2, 2011, and the third on January 24, 2012. All three were held in Philadelphia.

The first two information sessions were open to any entities interested in participating in the Auction. The third information session was held after the Application process and, thus, was for Registered Bidders only.

Note that 11 companies attended the first information session and 7 companies attended the second information session. In total, 14 companies showed interest in the FP and/or CIEP 2012 Auction by attending one of the first two bidder information sessions. This compares to 18 companies attending one of the first two sessions last year. [redacted] attended the third bidder information session. This relatively low turnout, contrasted with the high turnout of actual bidders in the Auction itself, reflects the fact that the process is well known by several of the participants. All questions asked at the information sessions were adequately answered by NERA.

b. Were frequently asked questions (FAQs) posted on the BGS website and were all questions answered?

Yes, the FAQs were posted and all questions asked in a timely manner were answered.

All questions asked by bidders and their answers were posted on the FAQ section of the BGS website pursuant to NERA's FAQ Protocols. These protocols called for a specific process for answering bidder questions to ensure that all bidders had access to the same information at the same time.

As of January 24, 2012, 173 questions had been asked by bidders since August 10, 2011, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The topics of questions included: (a) Applications, (b) Association and Confidential Information Rules, (c) Auction Rules, (d) BGS Supplier Master Agreement, (e) Credit, (f) Data, (g) Payments and Rates, and (h) General questions.

Bidders had the most questions concerning the association and confidential information rules. NERA provided responses to all of these questions, which seemed to satisfy bidders. The questions centered around the certifications made in the Part 1 and Part 2 applications that bidders are independent (i.e. not "associated"). The bidders who make these certifications need to be the same entities as the winners who sign the Supplier Master Agreements.

Starting on January 26, 2012, the Auction Manager sent answers to questions received each day to Registered Bidders via email. Boston Pacific reviewed these FAQs as well.

c. Was required information and data provided on the website?

Yes, the BGS Auction website provided required data for bidders to prepare for the Auction.

The following Auction information, among other things, was provided according to or earlier than the schedule posted by NERA: (a) Application forms, (b) minimum/maximum starting prices, (c) tranche targets, (d) load caps, (e) finalized rules, (f) final Supplier Master Agreements, and (g) finalized decrement formulas.

NERA also maintained a "data room" on their website, which contained data that was updated monthly and additional data that was updated less frequently. NERA provided descriptions of both types of data. This data room helped bidders prepare their bids. Examples of data include load data, which was updated monthly for each EDC and most of which covered the period through December 2011, and switching statistics that showed the percentage of load and customers that have switched to third party suppliers. Any revisions made to the data were marked on their website.

d. Did Bidders receive Auction logistics information (i.e. Confidential Bidder Information packet) on time?

Yes, before the Trial Auction,

e. Did bidders communicate any material concerns to NERA?

No. As far as we are aware, all questions asked by bidders were answered. NERA did not indicate that there were any unresolved, material concerns.

f. Were bidders given an opportunity to provide proposals and comments concerning the 2012 Auction Process?

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2011. Furthermore, interested parties were also invited to file initial comments and final comments by September 2, 2011 and September 30, 2011, respectively. The Board also held a Legislative-type hearing on September 26, 2011. After reviewing all comments from the EDCs and other interested parties, the Board approved the 2012 BGS Auction Process.

QUESTION 3:
Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?

ANSWER 3: Yes.

PRE-AUCTION CRITERIA

a. Was the timeline followed?

Yes.

b. Were there updates to the timeline?

Yes, there was one minor update to this schedule, which we believe had no effect on the Auction. NERA postponed the announcement of transmission rates from January 6, 2012 to January 19, 2012, in order to incorporate any decisions taken by the Board at its January 18, 2012 agenda meeting. Other than this, NERA had no need to update the published timeline, because they followed the posted calendar on the BGS website.

The BGS Auction website contained a specific section at the top of the calendar that took note of the upcoming events. It included information from the initial EDC proposal in July 2011 through the Auction in February 2012. As milestones were met, the calendar was updated to reflect each event's completion. Aside from the minor update discussed above, the only changes were three items on this schedule that occurred one or more days earlier than expected, compared to the schedule shown to bidders at the first information session: the Board decision on Auction proposal, EDC Compliance Filing, and Board Decision on Compliance Filing. If these changes had any effect on the process, it was a positive one.

In addition, interested parties could sign up for an Auction update mailing list. Reminders of important dates were sent out to all potentially interested bidders and to those registered parties.

QUESTION 4:
Were there any issues and questions left unresolved prior to the FP Auction that created material uncertainty for bidders?

ANSWER 4: No.

PRE-AUCTION CRITERIA

a. Were all questions answered in the FAQs?

Yes, please see answer to 2b.

b. Were bidder questions asked after January 24, 2012 directly responded to by NERA?

Yes, questions were asked by Registered Bidders after January 24, 2012 and NERA provided answers to these questions directly to bidders via email. These answers were distributed daily beginning on January 26, 2012. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

c. Did other events or issues produce any material uncertainty for bidders?

No, not at the time of the Auction.

Boston Pacific also monitored various industry news sources and did not discover any events that would produce material uncertainty for bidders.

d. Did bidders communicate any material concerns to NERA?

No, please see answer to 2e.

e. Was information equitably provided to bidders?

Yes, information was provided to bidders equally. This was done through Pre-Bid Information Sessions, FAQs provided online on the BGS Auction website, and announcements of upcoming important events and milestones. Also, please see answers to 2a-2d.

f. Was information provided to maximize the number of bidders for the Auction?

Yes, before bidders were registered, NERA conducted extensive marketing efforts in order to maximize bidder participation. Maximum bidder participation is important since the Auction is such that the more excess supply, the further prices can decrease. The supply offered in excess of need directly drives the "tick down" (the decrease) in Auction prices.

NERA conducted direct marketing with potential bidding companies through an email distribution list and phone calls. The list of contacts was developed from existing contact lists and from participants that registered for information on the BGS Auction website. In addition, PJM members and NERC participants who were identified as potential bidders but had not registered on the BGS Auction website were also added to the list of contacts.

The Auction Manager consulted with Boston Pacific during each of the Application processing periods.

g. From Boston Pacific's observation, were there any pre-qualification requirements which directly prevented bidder participation?

[redacted]

QUESTION 5:
From what Boston Pacific could observe, were there any procedural problems or errors with the FP Auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?

ANSWER 5: No.

AUCTION WEEK CRITERIA

a. Was protocol followed for the FP Auction?

Yes, to our knowledge, the Auction was carried out according to the Auction Rules as approved by the Board.

b. Were there problems with the electronic bidding process?

No, there were no major problems with the Auction software during testing or trials.

Boston Pacific had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during three Trial Auctions. For the first Trial Auction on January 18, 2012 Boston Pacific assumed the role of a bidder and verified that bidders' accounts had access to the correct information. We tested the Auction software by submitting problematic bids to determine if the software operated according to the rules and provided proper information to bidders. We also tested NERA's backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols. [redacted]

For the second and third Trial Auctions, held on January 25 and January 26 2012, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by the EDCs and NERA in the second Trial, and by Registered Bidders in the third Trial. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software.

During the Auction, Boston Pacific did not observe any software breakdowns.

c. Was the back-up bidding process followed?

Yes [redacted]. Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 26, 2012.

d. Did communications between bidders and the Auction Manager follow procedure?

Yes, communications between bidders and the Auction Manager followed procedure.

Bidders were given two ways of communicating with the Auction Manager during the Auction. Bidders had a telephone number for technical assistance and they could also send electronic messages through the online platform. Both of these forms of communication were logged. All telephone conversations were taped and all electronic messages and the answers given by the Auction Manager were saved. Boston Pacific reviewed all telephone conversations and electronic messages.

e. Were Auction schedule protocols followed with regard to extensions and recesses?

Yes [redacted]. In addition, bidders were given an automatic extension after round one. Bidders were warned that they still had to provide bids prior to the extension or they would lose an extension themselves.

f. Did bidders communicate any material concerns to NERA?

No.

QUESTION 6:
From what Boston Pacific could observe, were protocols for communication between bidders and the Auction Manager adhered to?

ANSWER 6: Yes.

PRE-AUCTION CRITERIA

a. Was confidential information properly provided to bidders?

Yes. Boston Pacific did not observe any release of confidential information or inappropriate communication that could impair the integrity of the Auction.

b. Before the Part II Application deadline, were questions placed on the Auction website?

Yes. The first FAQ was posted on the BGS website August 10, 2011. The Part II Application deadline was on January 12, 2012 by which time there were a total of 152 questions posted. Additional questions asked by bidders were also answered by NERA following the Part II Application deadline. See also the answer to 2b.

c. Were the communication protocols followed?

Yes.

AUCTION WEEK CRITERIA

d. Was confidential information properly provided to bidders?

Yes, the Auction software was built to ensure that all participants had controlled access to Auction information.

e. Did communications between bidders and the Auction Manager follow procedure?

Yes, please see the answer to 5d.

QUESTION 7:
From what Boston Pacific could observe, were there any hardware or software problems or errors, either with the FP Auction system or with its associated communications systems?

ANSWER 7: No.

AUCTION WEEK CRITERIA

a. What problems, if any, were there with the Auction or communications system on NERA's end?

Boston Pacific is unaware of any material issues with NERA's communication systems based on our review of electronic and voice communications.

b. Did bidders experience any computer or communications problems that appeared to be the fault of NERA?

No, all bids were successfully received by NERA.

c. Was NERA aware of any material technical issues?

No, NERA did not indicate any material technical issues.

d. Did bidders communicate any material concerns to NERA?

No, please see 5f.

QUESTION 8:
Were there any unanticipated delays during the FP Auction?

ANSWER 8: No.

QUESTION 9:
Did unanticipated delays appear to adversely affect bidding in the FP Auction? What adverse effects did Boston Pacific directly observe and how did they relate to the unanticipated delays?

ANSWER 9: No.

QUESTION 10:
Were appropriate data back-up procedures planned and carried out?

ANSWER 10: Yes.

AUCTION WEEK CRITERIA

a. Was Auction data backed-up during the Auction?

According to the Auction Manager Protocols, NERA ensured that no Auction information would be lost if there was a problem with the Auction software during the Auction.

QUESTION 11:

Were any security breaches observed with the FP Auction process?

ANSWER 11: No.

To our knowledge, there were no security breaches.

During the Auction, many security measures were in place. The Auction software used on bid day was built to ensure that all participants had controlled access to Auction data.

Boston Pacific reviewed communications between NERA and bidders.

QUESTION 12:
From what Boston Pacific could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and Boston Pacific during the FP Auction?

ANSWER 12: Yes.

AUCTION WEEK CRITERIA

a. Were protocols followed as described by NERA?

Yes. As far as Boston Pacific is aware, the Communication Protocols were followed during the Auction. Also, please see answer to 5d.

b. Did BPU Staff and Boston Pacific get all the information that we required?

Yes, Boston Pacific and BPU Staff received all data requested from NERA in a timely and professional fashion during the Auction.

QUESTION 13:
From what Boston Pacific could observe, were the protocols followed for decisions regarding changes in FP Auction parameters (e.g., volume, load caps, bid decrements)?

ANSWER 13: Yes.

PRE-AUCTION CRITERIA

a. Were notable changes made to the decrement formulas?

[redacted]

AUCTION WEEK CRITERIA

b. During the Auction, did the Auction Manager impose any changes on the FP Auction parameters?

[redacted]

Boston Pacific independently calculated the bid decrements for each round. The Auction Rules prescribe two different regimes of formulas for calculating the price decrements during the calculating phase of each round and the conditions used to change from Regime One to Regime Two. Boston Pacific validated NERA's decision to switch from Regime One to Regime Two.

There were no changes to other FP Auction parameters such as volume reductions or changes to the load caps during the Auction.

QUESTION 14:
Were the calculations (e.g., for bid decrements or bidder eligibility) produced by the FP Auction software double-checked or reproduced off-line by the Auction Manager?

ANSWER 14: Yes.

[redacted]

Boston Pacific and NERA found no errors in the Auction software calculations.

QUESTION 15:
Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the Auction?

ANSWER 15: No.

There was no evidence of confusion or misunderstanding that caused delays; as noted, Boston Pacific reviewed all electronic and voice communications.

QUESTION 16:
From what Boston Pacific could observe, were the communications between the Auction Manager and bidders timely and effective?

ANSWER 16: Yes.

AUCTION WEEK CRITERIA

All answers to questions Boston Pacific was able to review seemed relevant and clear. Again, Boston Pacific reviewed all electronic messages. In addition, Boston Pacific also reviewed the phone conversations between bidders and the Auction Manager.

Boston Pacific believes answers to bidders' questions were provided in a timely fashion, and NERA made all possible efforts to ensure bids were placed on time.

QUESTION 17:
Was there evidence that bidders felt unduly rushed during the process? Should the Auction have been conducted more expeditiously?

ANSWER 17: No.

Each bidder is permitted 1 recess request and 2 extension requests during the Auction. The Auction includes an automatic extension after round 1. [redacted] there was no indication [redacted] that bidders were rushed.

Through our review of electronic messages and phone calls, there was no indication from bidders that they felt unduly rushed. In addition, all bids were received by NERA.

We do not believe that there was a need to conduct the Auction more expeditiously. The 2012 FP Auction lasted 26 rounds, as compared to 25 rounds last year.

Note that bidders were able to test the Auction software during the Trial Auction for Registered Bidders, and therefore were comfortable with it during the actual Auction.

QUESTION 18:
Were there any complaints from bidders about the process that Boston Pacific believed were legitimate?

ANSWER 18: No.

Boston Pacific believes there were no legitimate complaints about the Auction. That is, there were no questions raised by bidders that were not resolved.

QUESTION 19:
Was the FP Auction carried out in an acceptably fair and transparent manner?

ANSWER 19: Yes.

Speaking broadly, the New Jersey Auction is structured to be fair and transparent. The two key features in this regard are (a) the precisely defined product being solicited and (b) the price-only evaluation. These assure that all bidders are supplying the same product and no bidder can gain an advantage over another except by offering a lower price. Because the product and evaluation method are clearly spelled out, any bidder that meets the qualification requirements may participate.

In addition, as approved by the BPU, the BGS Auction had several mechanisms in place to ensure a fair and transparent process.

All interested parties were given ample opportunity to comment on the 2012 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2011. Furthermore, interested parties were also invited to file initial comments and final comments by September 2, 2011 and September 30, 2011, respectively. The Board also held a Legislative-type hearing on September 26, 2011.

Before the Auction began, the procedures were approved and made public. For instance, Auction rules were approved by the Board. Contracts and master agreements were standardized, approved, and made public before the Auction. Any optional changes in the language of these agreements were standardized, approved, and made public before the Auction as well. Finally, application and credit requirements to become a bidder in the BGS Auction were also standardized, approved, and made public before the Auction.

Bidder information sessions were held by the Auction Manager to educate potential bidders on the Auction process. They provided an opportunity for questions to be asked in a public forum. Any questions asked pertaining to the Auction were posted on the BGS Auction website. This FAQ section ensured that all bidders had equal access to information provided to any one bidder.

The Auction Manager consulted with Boston Pacific and BPU Staff concerning Part I and II Applications. [redacted]

An additional factor helping the Auction is that it has been going on for over a decade and its results have been consistently certified by the Board. This consistency of process helps attract more bidders and better offers.

Finally, the Auction was carried out in a fair and transparent manner in the sense that the Auction adhered to the Auction Rules. The Auction rules and the Auction software were designed to produce a fair and transparent Auction. The rules were made public and approved by the BPU. The Auction software assured that bidders received the correct information.

QUESTION 20:
Was there evidence of non-productive "gaming" on the part of bidders?

QUESTION 21:
Was there any evidence of collusion or improper coordination among bidders?

QUESTION 22:
Was there any evidence of a breakdown in competition in the FP Auction?

ANSWER 20: No.

ANSWER 21: No.

ANSWER 22: No.

Developing the information to answer these three questions and, more broadly, assessing the competitiveness of the BGS Auction was a central focus of our monitoring efforts. We assessed both structural and behavioral indicators of competitiveness in each round of bidding in the FP Auction (which includes residential customers as well as some commercial customers). Although we go into some detail here, these indicators are just that, indications of competitiveness; they are not hard and fast numerical standards.

Both structural and behavioral indicators give support for the specific answers provided to all three of these questions as well as support to the broader finding that the BGS Auction was competitive. Among the structural indicators were the number of bidders,

the number of winners, the market share of winners, and a widely-used measure of competitiveness related to market shares called the Herfindahl-Hirschman Index (HHI).

This is a good number of bidders and the list includes many well-known participants in the U.S. electricity business.

This excess in offers is important because it is the excess which results in the price decreasing round-by-round to the benefit of New Jersey consumers.

11 actually won the right to serve some portion of the New Jersey consumer need in the FP Auction. In addition, three of these winning bidders had not won supply in either of the last two Auctions. Having "new" winners speaks well to the openness and transparency of the process.

With respect to market share of each winner, some background on standards is useful. Having a minimum of three suppliers is sometimes set as a standard of competitiveness. The BGS Auction rules help assure at least three winners by limiting to approximately one-third (21 tranches) the portion of statewide consumer need that can be won by any single supplier.

Another standard for judging market share comes from a FERC standard for granting the right for a supplier to sell at market-based prices (as opposed to regulated cost-based rates.) In one of two FERC threshold tests for granting the right to sell at market-based prices, FERC asks that the supplier have no more than a 20% share of the market. If the market share is 20% or less, it is presumed the supplier cannot exercise market power. If the market share exceeds 20%, the supplier can conduct an additional test or point to mitigation for market power, such as the mitigation measures and monitoring of the PJM Interconnection or the Midwest ISO – that is, the 20% is not a hard and fast limit to market-based rate authority.

Among the 11 winners in the FP Auction,

The Herfindahl-Hirschman Index (HHI) is a measure of competitiveness closely related to market shares. Again, some background on the HHI standard is useful. The U.S. Department of Justice primarily uses a three-part standard for HHIs when judging the competitive effect of mergers and acquisitions. An HHI below 1,500 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is below 1,500, it is generally thought that there is no competitive harm from the

merger or acquisition; that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,500 and 2,500 is said to indicate moderate concentration. An HHI over 2,500 is said to indicate a highly concentrated market. FERC is considering an update to use these same standards when it assesses mergers and acquisitions. For market-based rate authority, FERC already uses a threshold of 2,500 for the HHI in one of its standards.

For the FP Auction, using the winning shares as market shares, the HHI is 1,757. This puts the HHI for the FP Auction into the low end of the DOJ's moderately concentrated range. This compares to an HHI last year of 2,310. However, to include only winning bidders is a narrow focus for calculating an HHI. For example, a more appropriate focus would be the total of 18 suppliers who will serve consumers in 2012-2013; these are the winners in 2010 and 2011, as well as in the 2012 Auction. The HHI in this case would be 1,773, which, again, is in the low end of the moderately concentrated range under the DOJ's guidelines.

A final method that is also employed by FERC in antitrust evaluations examines the HHI of a market when the price is within 5% of the final market price. This so-called "Delivered Price Test" gives a sense of what suppliers would have participated at a price level roughly consistent with market prices.

With respect to behavioral indicators, the core of this effort was to detect any sign of collusion among bidders. No evidence of collusion was found in the FP Auction.

QUESTION 23:
Was information made public appropriately? From what Boston Pacific could observe, was sensitive information treated appropriately?

ANSWER 23: Yes.

Yes, Pre-Auction information was treated appropriately pursuant to the communication protocols. Please see answers 6a-6c.

To our knowledge, no confidential information was leaked while the Auction was conducted. All suppliers, NERA, EDCs, and Boston Pacific signed confidentiality agreements.

In addition, Boston Pacific reviewed communication between all Auction personnel and bidders; we reviewed both tapes of calls and emails. Moreover the Auction is held in a secure, separate suite of offices.

QUESTION 24:
Does the FP Auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-FP load?

ANSWER 24: Yes.

Although the acceptance or rejection of Auction results is not based on any assessment of price levels, Boston Pacific attempted to develop an expectation of the final Auction prices

[redacted]

2012 BGS Auction							
Product	**Tranches Filled**	**Final Price (cents/kWh)**	**2011 price (cents /kWh)[1]**	**% Decrease from 2011**	**Price Expectation Range (cents/kWh)[2]**		
					Average	**Low**	**High**
PSE&G	29	8.388	9.430	-11%	[redacted]		
JCP&L	20	8.176	9.256	-12%			
ACE	7	8.510	10.095	-16%			
RECO	1	9.251	10.684	-13%			
Total	57						
Average[3]		8.344	9.528	-12%			

1) Source: Boston Pacific 2011 Auction Report

[redacted]

3) Tranche-weighted estimate

Comparing this year's average winning price to last year we can see that prices decreased about 12 percent. This is largely as we would expect. Over the past year there has been a large decrease in energy prices. This decrease has been driven, in large part, by a decrease in natural gas prices. The decrease in natural gas prices is the result of the expansive discoveries of Shale gas throughout the United States as well as the current economic slump.

QUESTION 25:
Were there factors exogenous to the FP Auction (e.g., changes in market environment) that materially affected the FP Auction in unanticipated ways?

ANSWER 25: No.

No, please see the answer to 24. The decline in prices from last year's results were driven primarily by decreases in energy prices. These decreases, in turn, were driven by decreases in natural gas prices.

QUESTION 26:
Are there any concerns with the FP Auction's outcome with regard to any specific EDC(s)?

ANSWER 26: No.

III. THE NEW JERSEY 2012 BGS-CIEP AUCTION

A. POST-AUCTION CHECKLIST

ATTACHMENT B
DOCKET NO. EO11040250

POST-AUCTION CHECKLIST FOR THE NEW JERSEY
2012 BGS-CIEP AUCTION

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 at 8:30 am on Thurs, February 2, 2012

Auction finished with the close of Round 30 at 4:20pm on Fri, February 3, 2012

	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	[redacted]	NA	NA
Tranche target	42	NA	NA
Eligibility ratio	[redacted]	NA	NA
Statewide load cap	14	NA	NA

* 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.

DOCKET NO. EO11040250

Post-Auction Checklist for the New Jersey 2012 BGS-CIEP Auction

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

Table 1. Summary of BGS-CIEP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-CIEP peak load share (MW)	1,820.77	789.00	315.20	42.80	2,967.77
Total tranches needed	25	11	5	1	42
Starting tranche target in auction	25	11	5	1	42
Final tranche target in auction	25	11	5	1	42
Tranche size (%)	4.00	9.09	20.00	100.00	
Tranche size (approximate MW)	72.83	71.73	63.04	42.80	
Starting load cap (# tranches)	--	--	--	--	14
Final load cap (# tranches)	--	--	--	--	14
Quantity procured (# tranches)	25	11	5	1	42
Quantity procured (% BGS-CIEP load)	100%	100%	100%	100%	100%
# Winning bidders	4	3	1	1	6
Maximum # of tranches procured from any one bidder	14	5	5	1	14
Minimum and maximum starting prices prior to indicative bids ($/MW-day)					300 220
Starting price at start of auction ($/MW-day)*					
Final auction price ($/MW-day)**	128.34	126.40	113.26	133.25	126.15

* 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. EO11040250

Post-Auction Checklist for the New Jersey 2012 BGS-CIEP Auction

Table 2. Overview of Findings on BGS-CIEP Auction

	Question	Comments
1	**BP's recommendation as to whether the Board should certify the CIEP auction results?**	Yes, certify
2	Did bidders have sufficient information to prepare for the CIEP auction?	Yes
3	Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?	Yes
4	Were there any issues and questions left unresolved prior to the CIEP auction that created material uncertainty for bidders?	No
5	From what BP 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?	No
6	From what BP could observe, were protocols for communication between bidders and the Auction Manager adhered to?	Yes
7	From what BP could observe, were there any hardware or software problems or errors, either with the CIEP auction system or with its associated communications systems?	No
8	Were there any unanticipated delays during the CIEP auction?	No
9	Did unanticipated delays appear to adversely affect bidding in the CIEP auction? What adverse effects did BP directly observe and how did they relate to the unanticipated delay?	No
10	Were appropriate data back-up procedures planned and carried out?	Yes
11	Were any security breaches observed with the CIEP auction process?	No

	Question	Comments
12	From what BP could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BP during the CIEP auction?	Yes
13	From what BP could observe, were the protocols followed for decisions regarding changes in CIEP auction parameters (e.g., volume, load cap, bid decrements)?	Yes
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?	Yes
15	Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the auction?	No
16	From what BP could observe, were the communications between the Auction Manager and bidders timely and effective?	Yes
17	Was there evidence that bidders felt unduly rushed during the process? Should the auction have been conducted more expeditiously?	No
18	Were there any complaints from bidders about the process that BP believed were legitimate?	No
19	Was the CIEP auction carried out in an acceptably fair and transparent manner?	Yes
20	Was there evidence of non-productive “gaming” on the part of bidders?	No
21	Was there any evidence of collusion or improper coordination among bidders?	No
22	Was there any evidence of a breakdown in competition in the CIEP auction?	No
23	Was information made public appropriately? From what BP could observe, was sensitive information treated appropriately?	Yes
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?	Yes

	Question	Comments
25	Were there factors exogenous to the CIEP auction (e.g., changes in market environment) that materially affected the CIEP auction in unanticipated ways?	No
26	Are there any concerns with the CIEP auction's outcome with regard to any specific EDC(s)?	No

B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST

BOSTON PACIFIC SUPPLEMENT TO NEW JERSEY BGS AUCTION CHECKLIST: CIEP AUCTION

QUESTION 1:
Boston Pacific's recommendation as to whether the Board should certify the CIEP Auction results?

ANSWER 1: Yes, certify.

CRITERIA:

a. Were all checklist questions satisfactorily answered?

Yes.

QUESTION 2:
Did bidders have sufficient information to prepare for the CIEP Auction?

ANSWER 2: Yes.

PRE-AUCTION CRITERIA

a. Were there Pre-Bid sessions and were they informative?

Yes, there were Pre-Bid Information Sessions and they informed bidders about Auction procedures and developments.

There were three Pre-Bid Information Sessions; the first on September 30, 2011, the second on December 2, 2011, and the third on January 24, 2012. All three were held in Philadelphia.

The first two information sessions were open to any entities interested in participating in the Auction. The third information session was held after the Application process and, thus, was for Registered Bidders only.

Note that 11 companies attended the first information session and 7 companies attended the second information session. In total, 14 companies showed interest in the 2012 Auctions by attending one of the first two bidder information sessions. This compares to 18 companies attending one of the first two sessions last year. [redacted] attended the third bidder information session. All questions asked at the information sessions were adequately answered by NERA.

b. Were frequently asked questions (FAQs) posted on the BGS website and were all questions answered?

Yes, the FAQs were posted and all questions asked in a timely manner were answered.

All questions asked by bidders and their answers were posted on the FAQ section of the BGS website pursuant to NERA's FAQ Protocols. These protocols called for a specific process for answering bidder questions to ensure that all bidders had access to the same information at the same time.

As of January 24, 2012, 173 questions had been asked by bidders since August 10, 2011, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The topics of questions included: (a) Applications, (b) Association and Confidential Information Rules, (c) Auction Rules, (d) BGS Supplier Master Agreement, (e) Credit, (f) Data, (g) Payments and Rates, and (h) General questions.

Bidders had the most questions concerning the association and confidential information rules. NERA provided responses to all of these questions, which seemed to satisfy bidders. The questions centered around the certifications made in the Part 1 and Part 2 applications that bidders are independent (i.e. not "associated"). The bidders who make these certifications need to be the same entities as the winners who sign the Supplier Master Agreements.

Starting on January 26, 2012, the Auction Manager sent answers to questions received each day to Registered Bidders via email. Boston Pacific reviewed these FAQs as well.

c. Was required information and data provided on the website?

Yes, the BGS Auction website provided required data for bidders to prepare for the Auction.

The following Auction information, among other things, was provided according to or earlier than the schedule posted by NERA: (a) Application forms, (b) minimum/maximum starting prices, (c) tranche targets, (d) load caps, (e) finalized rules, (f) final Supplier Master Agreements, and (g) finalized decrement formulas.

NERA also maintained a "data room" on their website, which contained data that was updated monthly and additional data that was updated less frequently. NERA provided descriptions of both types of data. This data room helped bidders prepare their bids. Examples of data include load data, which was updated monthly for each EDC and most of which covered the period through December 2011, and switching statistics that showed the percentage of load and customers that have switched to third party suppliers. Any revisions made to the data, were marked on their website.

g. Did Bidders receive Auction logistics information (i.e. Confidential Bidder Information packet) on time?

Yes, before the Trial Auction,

h. Did bidders communicate any material concerns to NERA?

No. All questions asked by bidders were answered. NERA did not indicate that there were any unresolved, material concerns.

i. Were bidders given an opportunity to provide proposals and comments concerning the 2012 Auction Process?

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2011. Furthermore, interested parties were also invited to file initial comments and final comments by September 2, 2011 and September 30, 2011, respectively. The Board also held a Legislative-type hearing on September 26, 2011. After reviewing all comments from the EDCs and other interested parties, the Board approved the 2012 BGS Auction Process.

QUESTION 3:
Was the information generally provided to bidders in accordance with the published timetable? Was the timetable updated appropriately as needed?

ANSWER 3: Yes.

PRE-AUCTION CRITERIA

a. Was the timeline followed?

Yes.

b. Were there updates to the timeline?

Yes, there was one minor update to this schedule, which we believe had no effect on the auction. NERA postponed the announcement of transmission rates from January 6, 2012 to January 19, 2012, in order to incorporate any decisions taken by the Board at its January 18, 2012 agenda meeting. Other than this, NERA had no need to update the published timeline, because they followed the posted calendar on the BGS website.

The BGS Auction website contained a specific section at the top of the calendar that took note of the upcoming events. It included information from the initial EDC proposal in July 2011 through the Auction in February 2012. As milestones were met, the calendar was updated to reflect each event's completion. Aside from the minor update discussed above, the only changes were three items on this schedule that occurred one or more days earlier than expected, compared to the schedule shown to bidders at the first information session: the Board decision on Auction proposal, EDC Compliance Filing, and Board Decision on Compliance Filing. If these changes had any effect on the process, it was a positive one.

In addition, interested parties could sign up for an Auction update mailing list. Reminders of important dates were sent out to all potentially interested bidders and to those registered parties.

QUESTION 4:
Were there any issues and questions left unresolved prior to the CIEP Auction that created material uncertainty for bidders?

ANSWER 4: No.

PRE-AUCTION CRITERIA

a. Were all questions answered in the FAQs?

Yes, please see answer to 2b.

b. Were bidder questions asked after January 24, 2012 directly responded to by NERA?

Yes, questions were asked by Registered Bidders after January 24, 2012 and NERA provided answers to these questions directly to bidders via email. These answers were distributed daily beginning on January 26, 2012. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

c. Did other events or issues produce any material uncertainty for bidders?

No, not at the time of the Auctions.

Boston Pacific also monitored various industry news sources and did not discover any events that would produce material uncertainty for bidders.

d. Did bidders communicate any material concerns to NERA?

No, please see answer to 2e.

e. Was information equitably provided to bidders?

Yes, information was provided to bidders equally. This was done through Pre-Bid Information Sessions, FAQs provided online on the BGS Auction website, and announcements of upcoming important events and milestones. Also, please see answers to 2a-2d.

f. Was information provided to maximize the number of bidders for the Auction?

Yes, before bidders were registered, NERA conducted extensive marketing efforts in order to maximize bidder participation. (Maximum bidder participation is important since the Auction is such that the more excess supply, the further prices can decrease. The supply offered in excess of need directly drives the "tick down" (the decrease) in Auction price.)

NERA conducted direct marketing with potential bidding companies through an email distribution list and phone calls. The list of contacts was developed from existing contact lists and from participants that registered for information on the BGS Auction website. In addition, PJM members and NERC participants who were identified as potential bidders but had not registered on the BGS Auction website were also added to the list of contacts.

The Auction Manager consulted with Boston Pacific during each of the Application processing periods.

g. From Boston Pacific's observation, were there any pre-qualification requirements which directly prevented bidder participation?

QUESTION 5:
From what Boston Pacific 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?

ANSWER 5: No.

AUCTION WEEK CRITERIA

a. Was protocol followed for the CIEP Auction?

Yes, to our knowledge, the Auction was carried out according to the Auction Rules as approved by the Board.

b. Were there problems with the electronic bidding process?

No, there were no major problems with the Auction software during testing or trials.

Boston Pacific had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during three Trial Auctions. For the first Trial Auction on January 18, 2012 Boston Pacific assumed the role of a bidder and verified that bidders' accounts had access to the correct information. We tested the Auction software by submitting problematic bids to determine if the software operated according to the rules and provided proper information to bidders. We also tested NERA's backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols.

For the second and third Trial Auctions, held on January 25 and January 26 2012, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by the EDCs and NERA in the second Trial, and by Registered Bidders in the third Trial. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software.

During the Auction, Boston Pacific did not observe any software breakdowns.

c. Was the back-up bidding process followed?

Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 26, 2012.

d. Did communications between bidders and the Auction Manager follow procedure?

Yes, communications between bidders and the Auction Manager followed procedure.

Bidders were given two ways of communicating with the Auction Manager during the Auction. Bidders had a telephone number for technical assistance and they could also send electronic messages through the online platform. Both of these forms of communication were logged. All telephone conversations were taped and all electronic messages and the answers given by the Auction Manager were saved. Boston Pacific reviewed all telephone conversations and electronic messages.

e. Were Auction schedule protocols followed with regard to extensions and recesses?

Yes In addition, bidders were given an automatic extension after round one. Bidders were warned that they still had to provide bids prior to the extension or they would lose an extension themselves.

f. Did bidders communicate any material concerns to NERA?

No.

QUESTION 6:
From what Boston Pacific could observe, were protocols for communication between bidders and the Auction Manager adhered to?

ANSWER 6: Yes.

PRE-AUCTION CRITERIA

a. Was confidential information properly provided to bidders?

Yes. Boston Pacific did not observe any release of confidential information or inappropriate communication that could impair the integrity of the Auction.

b. Before the Part II Application deadline, were questions placed on the Auction website?

Yes. The first FAQ was posted on the BGS website August 10, 2011. The Part II Application deadline was on January 12, 2012 by which time there were a total of 152 questions posted. Additional questions asked by bidders were also answered by NERA following the Part II Application deadline. See also the answer to 2b.

c. Were the communication protocols followed?

Yes.

AUCTION WEEK CRITERIA

d. Was confidential information properly provided to bidders?

Yes, the Auction software was built to ensure that all participants had controlled access to Auction information.

e. Did communications between bidders and the Auction Manager follow procedure?

Yes, please see the answer to 5d.

QUESTION 7:
From what Boston Pacific could observe, were there any hardware or software problems or errors, either with the CIEP Auction system or with its associated communications systems?

ANSWER 7: No.

AUCTION WEEK CRITERIA

a. What problems, if any, were there with the Auction or communications system on NERA's end?

Boston Pacific is unaware of any material issues with NERA's communication systems based on our review of electronic and voice communications.

b. Did bidders experience any computer or communications problems that appeared to be the fault of NERA?

No, all bids were successfully received by NERA.

c. Was NERA aware of any material technical issues?

No, NERA did not indicate any material technical issues.

d. Did bidders communicate any material concerns to NERA?

No, please see 5f.

QUESTION 8:
Were there any unanticipated delays during the CIEP Auction?

ANSWER 8: No.

QUESTION 9:
Did unanticipated delays appear to adversely affect bidding in the CIEP Auction? What adverse effects did Boston Pacific directly observe and how did they relate to the unanticipated delays?

ANSWER 9: No.

QUESTION 10:
Were appropriate data back-up procedures planned and carried out?

ANSWER 10: Yes.

AUCTION WEEK CRITERIA

a. Was Auction data backed-up during the Auction?

According to the Auction Manager Protocols, NERA ensured that no Auction information would be lost if there was a problem with the Auction software during the Auction.

QUESTION 11:

Were any security breaches observed with the CIEP Auction process?

ANSWER 11: No.

To our knowledge, there were no security breaches.

During the Auction, many security measures were in place. The Auction software used on bid day was built to ensure that all participants had controlled access to Auction data.

Boston Pacific reviewed communications between NERA and bidders.

QUESTION 12:
From what Boston Pacific could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and Boston Pacific during the CIEP Auction?

ANSWER 12: Yes.

AUCTION WEEK CRITERIA

a. Were protocols followed as described by NERA?

Yes. As far as Boston Pacific is aware, the Communication Protocols were followed during the Auction. Also, please see answer to 5d.

b. Did BPU Staff and Boston Pacific get all the information that we required?

Yes, Boston Pacific and BPU Staff received all data requested from NERA in a timely and professional fashion during the Auction.

QUESTION 13:
From what Boston Pacific could observe, were the protocols followed for decisions regarding changes in CIEP Auction parameters (e.g., volume, load caps, bid decrements)?

ANSWER 13: Yes.

PRE-AUCTION CRITERIA

a. Were notable changes made to the decrement formulas?

AUCTION WEEK CRITERIA

b. During the Auction, did the Auction Manager impose any changes on the CIEP Auction parameters?

There were no changes to other CIEP Auction parameters such as volume reductions or changes to the load caps during the Auction.

Boston Pacific independently calculated the bid decrements for each round. Also, the Auction Rules prescribe two different regimes of formulas for calculating the price decrements and the conditions used to change from Regime One to Regime Two. Boston Pacific validated NERA's decision to switch from Regime One to Regime Two.

QUESTION 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?

ANSWER 14: Yes.

Boston Pacific and NERA found no errors in the Auction software calculations.

QUESTION 15:
Was there evidence of confusion or misunderstanding on the part of bidders that delayed or impaired the Auction?

ANSWER 15: No.

There was no evidence of confusion or misunderstanding that caused delays; as noted, Boston Pacific reviewed all electronic and voice communications.

QUESTION 16:
From what Boston Pacific could observe, were the communications between the Auction Manager and bidders timely and effective?

ANSWER 16: Yes.

AUCTION WEEK CRITERIA

All answers to questions reviewed by Boston Pacific seemed relevant and clear. Again, Boston Pacific reviewed all electronic messages. In addition, Boston Pacific also reviewed the phone conversations between bidders and the Auction Manager.

Boston Pacific believes answers to bidders' questions were provided in a timely fashion, and NERA made all possible efforts to ensure bids were placed on time.

QUESTION 17:
Was there evidence that bidders felt unduly rushed during the process? Should the Auction have been conducted more expeditiously?

ANSWER 17: No.

Each bidder is permitted 1 recess request and 2 extension requests during the Auction. The Auction also includes an automatic extension after round 1. there was no indication that bidders were rushed.

Through our review of electronic messages and phone messages, there were also no indications from bidders that they felt unduly rushed. In addition, all bids were received by NERA.

The 2012 CIEP Auction did close in fewer rounds than has been typical. The 30 rounds this year compare to 55 last year.

Note that bidders were able to test the Auction software during the Trial Auction for Registered Bidders, and therefore were comfortable with it during the actual Auction.

QUESTION 18:
Were there any complaints from bidders about the process that Boston Pacific believed were legitimate?

ANSWER 18: No.

Boston Pacific believes there were no legitimate complaints about the Auction. That is, there were no questions raised by bidders that were not resolved.

QUESTION 19:
Was the CIEP Auction carried out in an acceptably fair and transparent manner?

ANSWER 19: Yes.

Speaking broadly, the New Jersey Auction is structured to be fair and transparent. The two key features in this regard are (a) the precisely defined product being solicited and (b) the price-only evaluation. These assure that all bidders are supplying the same product and no bidder can gain an advantage over another except by offering a lower price. Because the product and evaluation method are clearly spelled out, any bidder that meets the qualification requirements may participate.

In addition, as approved by the BPU, the BGS Auction had several mechanisms in place to ensure a fair and transparent process.

All interested parties were given ample opportunity to comment on the 2012 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2011. Furthermore, interested parties were also invited to file initial comments and final comments by September 2, 2011 and September 30, 2011, respectively. The Board also held a Legislative-type hearing on September 26, 2011.

Before the Auction began, the procedures were approved and made public. For instance, Auction rules were approved by the Board. Contracts and master agreements were standardized, approved, and made public before the Auction. Any optional changes in the language of these agreements were standardized, approved, and made public before the Auction as well. Finally, application and credit requirements to become a bidder in the BGS Auction were also standardized, approved, and made public before the Auction.

Bidder information sessions were held by the Auction Manager to educate potential bidders on the Auction process. They provided an opportunity for questions to be asked in a public forum. Any questions asked pertaining to the Auction were posted on the BGS Auction website. This FAQ section ensured that all bidders had equal access to information provided to any one bidder.

The Auction Manager consulted with Boston Pacific and BPU Staff concerning Part I and II Applications. [redacted]

An additional factor helping the Auction is that it had been going on for several years and that its results have been consistently certified by the Board. This fairness and consistency of process helps attract more bidders and better offers.

Finally, the Auction was carried out in a fair and transparent manner in the sense that the Auction adhered to the Auction Rules. The Auction rules and the Auction software were designed to produce a fair and transparent Auction. The rules were made public and approved by the BPU. The Auction software assured that bidders received the correct information.

QUESTION 20:
Was there evidence of non-productive "gaming" on the part of bidders?

QUESTION 21:
Was there any evidence of collusion or improper coordination among bidders?

QUESTION 22:
Was there any evidence of a breakdown in competition in the CIEP Auction?

ANSWER 20: No.

ANSWER 21: No.

ANSWER 22: No.

Developing the information to answer these three questions and, more broadly, assessing the competitiveness of the BGS Auction was a central focus of our monitoring efforts. We assessed both structural and behavioral indicators of competitiveness in each round of bidding in the CIEP Auction (which includes larger commercial and industrial customers). Although we go into some detail here, these indicators are just that, indications of competitiveness; they are not hard and fast numerical standards.

Both structural and behavioral indicators give support for the specific answers provided to all three of these questions as well as support to the broader finding that the BGS Auction was competitive. Among the structural indicators were the number of bidders,

the number of winners, the market share of winners, and a widely-used measure of competitiveness related to market shares called the Herfindahl-Hirschman Index (HHI).

This is a good number of bidders and the list includes many well-known participants in the U.S. electricity business.

This excess in offers is important because it is the excess which keeps the price decreasing round-by-round to the benefit of New Jersey consumers.

Of the suppliers who bid, 6 suppliers actually won the right to serve some portion of the New Jersey consumer need in the CIEP Auction. With respect to market share of each winner, some background on standards is useful. Having a minimum of three suppliers is sometimes set as a standard of competitiveness. The BGS Auction rules assures this by limiting to one-third (14 tranches out of 42 total tranches needed) the portion of statewide consumer need that can be won by any single supplier.

Another standard for judging market share comes from a FERC standard for granting the right for a supplier to sell at market-based prices (as opposed to regulated cost-based rates.) In one of two FERC threshold tests for granting the right to sell at market-based prices, FERC asks that the supplier have no more than a 20% share of the market. If the market share is 20% or less, it is presumed the supplier cannot exercise market power. If the market share exceeds 20%, the supplier can conduct an additional test or point to mitigation for market power, such as the mitigation measures and monitoring of the PJM Interconnection or the Midwest ISO – that is, the 20% is not a hard and fast limit to market-based rate authority.

Among the 6 winners in the CIEP Auction,

The Herfindahl-Hirschman Index (HHI) is a measure of competitiveness closely related to market shares. Again, some background on the HHI standard is useful. The U.S. Department of Justice has a three-part standard for HHIs when judging the competitive effect of mergers and acquisitions – which it has just updated. An HHI below 1,500 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is below 1,500, it is generally thought that there is no competitive harm from the merger or acquisition; that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,500 and 2,500 is said to

indicate moderate concentration. An HHI over 2,500 is said to indicate a highly concentrated market. FERC is considering an update to use these same standards when it assesses mergers and acquisitions. For market-based rate authority, FERC already uses a threshold of 2,500 for the HHI in one of its standards.

For the CIEP Auction, using the winning shares as market shares, the HHI is 2,109. This puts the HHI for the CIEP Auction into the moderately concentrated range of the DOJ's HHI brackets but notably below the 2,500 level used by FERC as an additional standard for granting a supplier the right to charge market-based prices. However, to include only winning bidders is a narrow focus for calculating an HHI.

With respect to behavioral indicators, the core of this effort was to detect any sign of collusion among bidders. No evidence of collusion was found in the CIEP Auction.

QUESTION 23:
Was information made public appropriately? From what Boston Pacific could observe, was sensitive information treated appropriately?

ANSWER 23: Yes.

Yes, Pre-Auction information was treated appropriately pursuant to the communication protocols. Please see answers 6a-6c.

To our knowledge, no confidential information was leaked while the Auction was conducted. All suppliers, NERA, EDCs, and Boston Pacific signed confidentiality agreements.

In addition, Boston Pacific reviewed communication between all Auction personnel and bidders; we reviewed both tapes of calls and emails. Moreover the Auction is held in a secure, separate suite of offices.

QUESTION 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?

ANSWER 24: Yes.

Although the acceptance or rejection of Auction results is not based on any assessment of price levels, Boston Pacific attempted to develop an expectation of the final Auction prices

Bidders who win the right to serve CIEP load must provide a full requirements product (i.e. energy, capacity, ancillary services, RPS requirements, etc.) to CIEP customers. Winning bidders are paid their winning bid price, plus the spot energy price per MWh delivered, plus $6/MWh for ancillary services, plus the standby fee of $0.15 per MWh.

Although CIEP is also a full requirements product, the Auction price primarily reflects a fixed price for the capacity portion of that service, and the cost of meeting the RPS; bidders are paid the PJM spot energy price to cover the energy portion of the service.

QUESTION 25:

Were there factors exogenous to the CIEP Auction (e.g., changes in market environment) that materially affected the CIEP Auction in unanticipated ways?

ANSWER 25: No.

QUESTION 26:
Are there any concerns with the CIEP Auction's outcome with regard to any specific EDC(s)?

ANSWER 26: No.