

ANNUAL FINAL REPORT
ON THE
2008 BGS FP AND CIEP AUCTIONS

Presented to:

THE NEW JERSEY BOARD OF PUBLIC UTILITIES

Prepared By:

BOSTON PACIFIC COMPANY, INC.

Craig R. Roach, Ph.D.

Frank Mossburg

Stuart Rein

1100 New York Avenue, NW, Suite 490 East

Washington, DC 20005

Telephone: (202) 296-5520

Facsimile: (202) 296-5531

April 15, 2008

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY..... 1

 A. THE BGS FIXED PRICE (FP) AUCTION..... 1

 B. THE BGS COMMERCIAL AND INDUSTRIAL ENERGY PRICING (CIEP) AUCTION..... 6

 C. RECOMMENDATIONS..... 8

II. THE NEW JERSEY 2008 BGS-FP AUCTION 11

 A. POST-AUCTION CHECKLIST 12

 B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST 18

III. THE NEW JERSEY 2008 BGS-CIEP AUCTION..... 37

 A. POST-AUCTION CHECKLIST 38

 B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST 44

ATTACHMENTS

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 2008. 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 FP and CIEP Auctions were the Post-Auction Checklists provided to the Board on February 8, 2008. 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 Fixed Price (FP) BGS Auction. We made that recommendation for three primary reasons: (a) the Auction process was fair and transparent; (b) the Auction process was robustly competitive; and (c) the winning prices were consistent with market conditions.

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.

Fair and Transparent

The FP Auction was inherently or structurally fair and transparent for at least two reasons. First, all competing bidders were asked to provide a well-defined, standard product (full requirements service) and all winning bidders were asked to sign a standard contract. Second, because all of the non-price terms and conditions were standardized, the bid evaluation was done purely on price; this price-only bid evaluation is the ideal for achieving fairness and transparency in electricity solicitations.

Also supporting our judgment that the FP Auction was fair and transparent was the fact that Auction rules were fully explained to all potential bidders and faithfully followed by the Auction Manager. In addition, fairness and transparency were enhanced by the fact that the Auction Manager pro-actively facilitated full access to the process and results by 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 calculation of start prices and the evaluation of Part 1 and Part 2 Applications. During the Auction itself we and Board Staff, once again, were given access to the full range of information. For example, we calculated our own tables and charts based on detailed information that we requested from the Auction Manager. In addition, we were given sufficient access to conduct detailed tasks such as replicating price decrements and monitoring electronic and telephonic communication between the Auction Manager and bidders. In all of this, the Auction Manager was always accommodating.

Competitiveness

We assessed several indicators of the competitiveness of the FP Auction process. First, there were a large number of high quality bidders.

. Moreover, of those , 8 won some share of the full requirements service being solicited. While 8 winners is lower than last year's 13,

. You cannot have competition without competitors so having and 8 winners is a strong indication of the competitiveness of the FP Auction. Note, too, there were 2 new winners of this product type in this year's FP Auction, which indicates the ease of entry which itself is an indicator of competitiveness.

Second, we looked at the ratio of the quantity of electricity service offered to the quantity actually needed. Looking at the indicative bids – the number of tranches the bidders indicated they would offer at the maximum start price – the quantity offered greatly exceeded the quantity needed. Specifically,

. This excess is crucially important because it is this excess which literally drives price down as the Auction proceeds; the price “ticks down” (is decremented) if and

only if there are excess offers. 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 market shares since this is a traditional measure of competitiveness. In Table One below we show the names of the winning bidders and the number of tranches won in this auction. To start, we took the narrowest view of market shares in the sense that we looked at only the winners of this 2008 Auction. Among the 8 winners, . At first glance, we could understand someone expressing concern about this. Upon reflection, however, this is not a matter of lasting concern for several reasons. First, we like to see a bidder come in and stay in at or near the maximum tranche offer since that is what drives prices lower, and that is what these two bidders did. Second,

.Third, as will be explained later, the winning prices were consistent with broader market conditions. Fourth, the winners won because they offered the lowest price and these prices are fixed, there is no opportunity for post-Auction price manipulation. Fifth, it should also be noted that none of the bidders won the load cap (19), which is the maximum number of tranches any one bidder can win.

**TABLE ONE
WINNING BIDDERS IN THE NJ 2008 BGS FP AUCTION**

Supplier	PSE&G	JCP&L	ACE	RECO	Total	% Share
Conectiv Energy Supply	-	-	3	-	3	6%
Consolidated Edison Energy	-	2	-	1	3	6%
Constellation Energy Commodities Group	2	2	3	-	7	14%
FPL Energy Power Marketing	-	-	1	-	1	2%
Hess Corporation	-	-	1	-	1	2%
J. Aron & Company	-	1	-	-	1	2%
PPL EnergyPlus	13	4	-	-	17	34%
PSEG Energy Resources & Trade LLC	13	3	-	1	17	34%
Total	28	12	8	2	50	

A broader view of market shares also is important. That broader view would simply take account of the fact that the suppliers who will actually serve New Jersey BGS FP load in 2008 include others who won in Auctions held in previous years. The suppliers who will actually serve in 2008 are shown in Table Two. Taking this boarder view, we see that there actually are 16 suppliers who will serve in 2008. Among these 16, only two suppliers have market shares greater than 10%, PSEG with 36% and PPL with 18%

TABLE TWO
SUPPLIERS SERVING BGS FP LOAD IN 2008

Supplier	PSE&G	JCP&L	ACE	RECO	Total	% Share
Conectiv Energy Supply	-	-	5	-	5	3%
Consolidated Edison Energy	-	6	-	1	7	5%
Constellation Energy Commodities Group	6	2	7	-	15	10%
DTE Energy Trading	2	-	-	-	2	1%
Energy America	1	3	-	-	4	3%
Exelon Generation Company	2	2	-	-	4	3%
FPL Energy Power Marketing	-	-	1	-	1	1%
Hess Corporation	-	-	2	-	2	1%
Integrus Energy Services	-	1	-	-	1	1%
J. Aron & Company	-	1	-	-	1	1%
J.P. Morgan Ventures Energy Corporation	9	5	-	-	14	9%
Morgan Stanley Capital Group Inc.	4	-	1	1	6	4%
NRG Power Marketing Inc.	3	1	-	-	4	3%
PPL EnergyPlus	15	10	3	-	28	18%
PSEG Energy Resources & Trade LLC	38	13	3	2	56	36%
Sempra Energy Trading LLC	5	-	-	-	5	3%
Total	85	44	22	4	155	

Fourth, we looked at how many bidders had “competitive” offers in just the 2008 Auction. That is, how many bidders were still offering supply at prices *close* to the final winning prices. We looked at what supply was being offered when prices were roughly 5% from their final levels. We chose 5% because this is a standard FERC-approved measurement for defining competitive supply as used in FERC’s Delivered Price Test.

Fifth, another traditional measure of competitiveness is closely linked to market share. This indicator is the Herfindahl-Hirschman Index (HHI) which is calculated as the sum of the squares of the market shares. As a backdrop, note that the U.S. Department of Justice, for the purpose of evaluating mergers and acquisitions, characterizes an HHI in the 1,000 to 1,800 range as moderately concentrated. Above 1,800 is considered to be highly concentrated. FERC uses this same range in its merger assessment separately. FERC also uses an HHI of 2,500 as a threshold in one of its tests for granting market-based rates authority. Taking the narrow market definition noted above – which includes only the winners of this year’s Auction – the HHI is 2,592. Using the broader view – which includes all those supplying power in 2008 – the HHI is 1,888.

the

HHI for the 2008 Auction indicates robust competition.

Sixth, we looked for signs of collusive or coordinated bidding behavior. We found none. Our tools for this include a panoramic view of the bids round by round which was reviewed by our Auction expert, Professor Ken Hendricks.

Prices Consistent with Market Conditions

We believe it is important to check that the prices in the FP Auction are not out of line with market conditions. A threshold concern with such an effort is that full requirements service is not sold in any public market so one cannot simply make a simple comparison of FP Auction prices to those in another market. However, the many ingredients needed for full requirements service are sold in other markets so we can create a range of prices that can be judged to be reasonable (including energy, capacity, and ancillary services). In addition, suppliers must incorporate risk as a premium. Supplier risk is the most difficult ingredient to measure. Suppliers in the FP Auction take on significant risk, with market risk being the most important.

With these caveats about the difficulty of calculating a reasonable range of prices in mind, we found that the winning prices in the FP Auction were in line with market conditions as reflected in a reasonable range of prices. We call this reasonable range of prices a “price benchmark.”

As compared to prices last year, we found that the winning prices this year were higher.

We dug deeper into this comparison to see what caused the increases. Note that, of the many ingredients for full requirements service, energy and capacity are the two largest. We found that energy prices were up this year as compared to last year, and capacity prices were substantially higher. By our estimates, the majority of the price increase can be attributed to increases in energy costs, with increases in capacity costs also playing a significant factor.

One other, less sophisticated, way to check that prices are in line with market conditions is to check on the results of other procurements in the PJM region. This is a difficult task due to the fact that each state has different disclosure restrictions. Nonetheless we can find one public point of comparison. Delmarva Power & Light recently solicited about 300 MW of three-year residential full requirements service over

two bid days (in late November and late January). The weighted average winning bid price for that solicitation was about \$110/MWH². This bid is certainly in line with results from the FP Auction. The tranche-weighted average price for the Auction this year was \$113.28/MWH. Note too that the Delmarva solicitation price does not include Network Integration Transmission Service (NITS) charges, while New Jersey’s Auction does.

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 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 process. While we found no problems, based on these indicators the CIEP Auction process is less competitive than the FP Auction process.

- First, there were [REDACTED] Registered bidders, [REDACTED], 4 won some share. (This contrasts to [REDACTED] and 8 winners for the FP Auction.)
- Second, the excess quantity offered was substantial, [REDACTED]. For the CIEP Auction, [REDACTED].

² *Public Service Commission Announces SOS Bids on Delmarva Power’s Rates.* Press Release from Delaware PSC dated February 21, 2008. Available at <http://depsec.delaware.gov/news.shtml>

**TABLE THREE
WINNING BIDDERS IN THE NJ 2008 BGS CIEP AUCTION**

Supplier	PSE&G	JCP&L	ACE	RECO	Total	% Share
Constellation Energy Commodities Group	7	1	-	1	9	21%
DTE Energy Trading	13	1	-	-	14	33%
FPL Energy Power Marketing	6	8	-	-	14	33%
Hess Corporation	-	-	5	-	5	12%
Total	26	10	5	1	42	

- Third, among the 4 winners, 2 had market shares of 33% as can be seen in Table Three, immediately above. One winner had a market share of 21% and another a market share of 12%.
- Fourth, at a “competitive” price level (i.e. about 5% above the final price) there
- Fifth, the calculated HHI for winning bidders was 2,823. This is above FERC’s 2,500 standard for granting market-based rate authority.
- Sixth, our auction expert found no evidence of collusive or coordinated behavior.

Prices Consistent with Market Conditions

Although CIEP is a full requirements product, the Auction price primarily reflects a fixed price for the capacity portion of that service. For that reason, we would expect it to bear some relationship with the capacity price as established in PJM’s Reliability Pricing Model (RPM). Last year, the average winning bid was about \$128/MW-day and the RPM price was about \$178/MW-day. This year the RPM price decreased to about \$144/MW-day and the winning bids were about \$108/MW-day. In each case the final CIEP price was about 70%-75% of the RPM price. Note that, at the time of last year’s auction RPM prices had not been officially established, so it remains to be seen if this relationship will hold in the future.

While it is somewhat surprising that the winning CIEP price is below the RPM price, there are a couple of items to note. While CIEP suppliers bid on a capacity component they must supply other parts of the full requirements service as well. If a supplier thinks that they can earn a slight premium on the other components (for example, supplying the CIEP *energy* component at below spot-market rates which they will be paid) then they may bid less on the capacity portion. Further note that the CIEP price is in dollars per megawatt-day, and a small profit in dollars per megawatt-hour can lead to a large difference in dollars per megawatt-day. For example, at a 50% load factor

\$1/MWh translates into \$12/MW-day. Therefore, a supplier would only need to earn a small premium elsewhere to be able to dramatically lower their capacity bid.

C. RECOMMENDATIONS

The Board Advisor is free to make recommendations for changes in Auction rules that would increase benefits for New Jersey consumers. In making recommendations, we recommend that any proposed change: (a) should not materially change the number, quality and diversity of bidders; (b) should not encourage early withdrawals of tranches bid; and (c) should not presume bidder behavior would remain unchanged.

Our recommendations are simply suggested changes to be considered by stakeholders and the Board. Each of these need to be vetted through that process and all need additional study to determine whether they meet the three standards of the backdrop.

Have Increased Prices Attracted New Investment?

The price increases in the BGS-FP auction are caused by increases in both energy and capacity prices. These increases, in turn, have been driven by increases in the cost of fuels and the implementation of PJM's new RPM construct. The RPM construct is based on the premise that the prices coming from the RPM process will act as signals to locate new capacity and transmission expansion. Despite this, there are concerns that the PJM marketplace is not seeing enough new construction, and that reliability will soon be jeopardized. This concern was made most evident in a recent report by the Maryland Public Service Commission.³

Given the potential dangers of a capacity shortfall we think that it would make sense for the Board to conduct a study to investigate whether or not New Jersey is getting the capacity and transmission expansion it needs to serve future load and if not, what can be done about it. This may be a part of the Energy Master Plan process, or a separate study. With regard to the scope of such a study we would include: (a) a complete review of the quantitative basis for Maryland's conclusions, (b) for generation and transmission in PJM, a review of what has been built and what is in the queue, (c) for load, a review of load projections with the goal of seeing whether the uncertainty in future demand is so great as to adversely effect both reliability and prices, and (d) a computation of how new demand side or supply side capacity in New Jersey would affect the RPM price.

³ *Interim Report of the Public Service Commission of Maryland to the Maryland General Assembly, Part I: Options for Re-regulation and New Generation*. December 3, 2007.

CIEP Price Levels

While the 2008 CIEP Auction was a success, the actual Auction process was not as quick as it could have been. Because the opening price for the CIEP product was, in retrospect,

. We recommend that the methodology for determining the CIEP start price be revised with an eye toward the observed relationship between CIEP and RPM prices.

We would also suggest that the Auction Manager request bidders in the CIEP Auction to report the number of tranches they would desire at a minimum opening price (as is done in the FP Auction). This would give the Auction Manager a better feel of where to set the price and ensure a quicker process.

Round One Bidding

Typically, there will be a bidder or two who has registered and been cleared to bid but does not elect to participate in the Auctions. If a bidder does not participate in the first round of the Auction an automatic extension request is made on that bidder's behalf. We feel that this process has the effect of a) slowing down the Auction and b) informing other bidders that a bidder has dropped out.

One way to speed up the process and avoid revealing too much information to bidders would be to allow bidders who are not going to participate in the Auction to notify the Auction Manager prior to the start of the Auction. If this notification is given then the Auction Manager can skip the automatic first round extension triggered by an entity that is not actually bidding.

Disclosure

As energy prices climb higher the desire for public information about how those prices came to be has also increased. When ratepayers see a process as a proverbial "black box" they may rightly question the reasons behind their rate increases. Unfortunately, some things about the Auction, such as bidding patterns and bidder "supply curves" must, at least for a time, remain confidential to protect the integrity of the competitive process.

To its credit, the Board has some strong processes already in place to disclose information to the public, announcing winning bidders and prices just after the Auction ends and producing a public redacted version of this report. We believe that there might be room for even more disclosure. To that end we would recommend the Board re-examine its disclosure rules, confer with bidders and EDCs, and see if any more

information about the Auction process and results can be released to the public in a timely fashion without harming the integrity of the BGS Auction.

Web-Ex Conferences

During the run-up to the Auction the Auction Manager held multiple technical conferences for bidders in order to explain the bidding process and update bidders on any changes in the process and key documents. These meetings were highly informative and useful for all parties. The only downside was that participants had to attend the meetings in person. In other RFPs that we have been involved in, the RFP coordinators have made their meetings available to outside participants via programs such as Web-Ex. In the interest of addressing as many bidders as possible, we would recommend doing the same here.

II. THE NEW JERSEY 2008 BGS-FP AUCTION

A. POST-AUCTION CHECKLIST

**ATTACHMENT B
DOCKET NO. ER07060379**

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2008 BGS-FP AUCTION**

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 08:40 on Monday, February 4, 2008

Auction finished with the close of Round 17 14:44 on Tuesday, February 5, 2008

	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	<u> </u>	<u> NA </u>	<u> NA </u>
Tranche target	<u> 50 </u>	<u> NA </u>	<u> NA </u>
Eligibility ratio	<u> </u>	<u> NA </u>	<u> NA </u>
PSE&G load cap	<u> 13 </u>	<u> NA </u>	<u> NA </u>
JCP&L load cap	<u> 5 </u>	<u> NA </u>	<u> NA </u>
ACE load cap	<u> 3 </u>	<u> NA </u>	<u> NA </u>
RECO load cap	<u> 2 </u>	<u> NA </u>	<u> NA </u>
Statewide load cap	<u> 19 </u>	<u> NA </u>	<u> NA </u>

*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.

Post-Auction Checklist for the New Jersey 2008 BGS-FP Auction

**ATTACHMENT B
DOCKET NO. ER07060379**

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)	2,831.4	1,435.3	824.5	205.3	5,296.5
Total tranches needed	28	12	8	2	50
Starting tranche target in auction	28	12	8	2	50
Final tranche target in auction	28	12	8	2	50
Tranche size (%)	1.18	2.27	4.55	25	
Tranche size (approximate MW)	101.12	120.22	103.06	102.65	
Starting EDC load caps (# tranches)	13	5	3	2	
Starting statewide load cap (#tranches)	--	--	--	--	19
Final EDC load caps (# tranches)	13	5	3	2	
Final statewide load cap (#tranches)	--	--	--	--	19
Quantity procured (# tranches)	28	12	8	2	50
Quantity procured (% BGS-FP load)	100%	100%	100%	100%	100%
# Winning bidders	3	5	4	2	8
Maximum # of tranches procured from any one bidder	13	4	3	1	17
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					19.0 16.0
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **	11.15	11.409	11.65	12.049	11.328

* 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”.

Post-Auction Checklist for the New Jersey 2008 BGS-FP Auction

**ATTACHMENT B
DOCKET NO. ER07060379**

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 any hardware or software problems or errors observed, 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 three Pre-Bid Information Sessions and they informed bidders about Auction procedures and developments.

There were three Pre-Bid Information Sessions held: (i) the first session on both September 28, 2007 and October 5, 2007 in Washington DC and Philadelphia, respectively; (ii) the second session on December 7, 2007 in Philadelphia; and (iii) the third session on January 22, 2008 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 25 companies attended the first information session and 19 companies attended the second information session. In total, 30 companies showed interest in the 2008 Auction by attending one of the first two bidder information sessions. 14 out of the _____ 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 22, 2008, 216 questions had been asked by bidders since August 7, 2007, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The general topics of questions included: (a) the application process, (b) association and confidential information rules, (c) the Auction Rules, (d) the Supplier Master Agreement, (e) credit, (f) data provided, (g) payments and rates, and (h) other miscellaneous questions.

Bidders had the most questions concerning credit. Because of the high volume of questions received, NERA issued a specific document compiling all of the FAQ's concerning Letters of Credit and Credit Requirements. NERA provided responses to all of these questions, which seemed to satisfy bidders.

Due to the high volume of questions, NERA also compiled the FAQs regarding Associations and Confidential Information. Answers provided by NERA once again seemed to satisfy bidders.

Starting on January 23, 2008, the Auction Manager sent answers to questions each day to Registered Bidders via email.

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 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.

Load data was updated monthly for each EDC and covered the period through October of 2007 to help bidders prepare their bids. Information on classes, distribution, and switching of customers was updated as available. Any time revisions were made to the data, NERA marked this on their website.

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

Yes, before the Trial Auction, bidders received a confidential information packet containing, for the FP Auction, the CIEP Auction, and the Trial Auction:

e. Did bidders communicate any material concerns to NERA?

No. Boston Pacific reviewed all electronic messages to bidders and spot-checked phone calls with bidders during the Auction. 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 2008 Auction Process?

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2007. Furthermore, interested parties were also invited to file reply comments and final comments by August 24, 2007 and September 28, 2007, respectively. The Board also held a Legislative-type hearing on September 20, 2007. After reviewing all comments from the EDCs and other interested parties, the Board approved the 2008 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, NERA followed the posted calendar of significant events 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 2007 through the Auction in February 2008. As milestones were met, the calendar was updated to reflect each event's completion. As far as Boston Pacific is aware, the Auction process was carried out according to this schedule. 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 22, 2008 directly responded to by NERA?

Yes, questions were asked by Registered Bidders after January 22, 2008. NERA provided answers to these questions directly to bidders via email. These answers were distributed daily. 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, bidders did not raise any issues in the FAQs that indicated material uncertainty for bidders. Boston Pacific also monitored various industry news sources and did not discover any events that would produce material uncertainty for bidders.

While we believe no factors created *material* uncertainty for bidders, there were some factors that could have increased the uncertainty facing bidders to a smaller extent for this year's Auction. First, the Board Order was not released until shortly before the start of the Auction. Second, while the level of the Solar Alternative Compliance Payments (SACP) were set prior to Auction start, the Alternative Compliance Payments (ACP) for Class I and Class II were not set before the Auction. Third, the Regional Greenhouse Gas Initiative (RGGI) also provided bidders with additional uncertainty.

Finally, the Auction took place during a time of general economic uncertainty, with price increases in the energy sector (particularly oil price increases) combined with an overall economic downturn sparked by the credit collapse. While these events, again, produce uncertainty for all participants we do not believe that they produced *material* uncertainty.

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 phone calls. The list of contacts was developed from participants that registered for information on the BGS Auction website. In addition, PJM members who were identified as potential bidders but had not registered on the BGS Auction website were also added to the list of contacts. NERA ran three rounds of phone calls to potential bidders. In total, _____ companies were contacted.

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?

Therefore, to our knowledge, there were no issues with the Part One application process that knowingly prevented a bidder from becoming approved. This was also true of all Part Two applicants.

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 problems with the Auction software during testing and 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 17, 2008 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. 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 18th and January 24th 2008, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by the EDC's 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, with the exception of a brief time-out for a technical issue in Round 7, Boston Pacific did not observe any software breakdowns.

c. Was the back-up bidding process followed?

Yes, . Boston Pacific had tested the backup procedure during Trial Auctions. Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 24, 2008.

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 performed spot-checks of telephone conversations and reviewed all electronic messages.

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

Yes, after each extension, to our knowledge, the schedule for the Auction was updated accordingly.

f. Did bidders communicate any material concerns to NERA?

No, please see answer to 2e.

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 7, 2007. The Part II Application deadline was on January 8, 2008. There were a total of 179 questions posted before the Part II Application deadline. Additional questions asked by bidders were also answered by NERA following the Part II Application deadline.

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 any hardware or software problems or errors observed, either with the FP Auction system or with its associated communications systems?

ANSWER 7: No, with the exception of one temporary technical issue.

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 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 2e.

QUESTION 8:

Were there any unanticipated delays during the FP Auction?

ANSWER 8: No, with the exception of one temporary technical issue.

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 performed spot-checks of communication 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.

AUCTION WEEK CRITERIA

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

The Auction Rules prescribe two different regimes of formulas for calculating the price decrements during the calculating phase of each round. The Auction Rules also give 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 volume reductions during the Auction. There were no 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.

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 spot-checked 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 electronic messages at the end of each bidding

day. In addition, Boston Pacific also performed spot-checks of 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 3 extension requests during the Auction.

Through our review of electronic messages, there was no indication from bidders that they felt unduly rushed. Through our spot-checks of phone calls, Boston Pacific also did not receive indication that bidders were unduly rushed.

Bidders were also 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 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 2008 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2007. Furthermore, interested parties were also invited to file reply comments and final comments by August 24, 2007 and September 28, 2007, respectively. The Board also held a Legislative-type hearing on September 20, 2007.

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. Boston Pacific believes that they were helpful for bidders, as evidenced by the attendance at these sessions and the sophisticated Auction questions and answers given at these sessions.

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

having the greatest number of bidders ensures healthy competition during the Auction, maximizing the potential for the lowest rates.

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.

a. Were participation levels significantly altered from previous solicitations?

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 both the FP Auction (which includes residential customers as well as some commercial and industrial customers) and 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).

bidders and the list includes many well-known participants in the U.S. electricity business. As a group, these suppliers offered to supply a number of tranches (at the maximum starting charge set for the FP Auction)

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

Of the suppliers who bid, eight suppliers actually won the right to serve some portion of the New Jersey consumer need in the FP 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 approximately 35% 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 eight winners in the FP Auction, two had a market share over 20% (bidder PSEG at 34% and bidder PPL at 34%). All other winners won less than a 20% share.

It is worth drawing out information on specific bidders as indicators of competitiveness too. For example, we noted that PPL won a 34% share in this year's Auction; prior to this year, PPL's largest share was 11%. PPL tripled its share, which shows the Auction is open to more aggressive bidding by existing bidders. We also like to see new winners and new bidders. Two bidders had zero market share in the three previous Auctions, but won small shares this year (FPL and J. Aron).

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. An HHI at or under 1,000 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is at or below 1,000, 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 1,000 and 1,800 is said to indicate moderate concentration. An HHI over 1,800 is said to indicate a highly concentrated market. FERC uses these same standards when it assesses mergers and acquisitions. However, for market-based-rate authority, FERC 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 2,592. This puts the HHI for the FP Auction well into the highly concentrated range of the DOJ's HHI brackets. However, at 2,592 this HHI is near the 2,500 level used by FERC as an additional standard for granting a supplier the right to charge market-based prices. To include only winning bidders is a narrow focus for calculating an HHI. For example, a more appropriate focus would be the total of 16 suppliers who will serve consumers in 2008-2009; these are the winners in 2006 and 2007, as well as in the 2008 Auction. The HHI in this case would be 1,888.

A final 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 supplier 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. We assessed the moves of each bidder in each round of bidding. Looking at a panoramic view of tranches bid in each round we detected no evidence of coordination of bidding.

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. During the Auction,

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,

In addition, there are structural changes creating uncertainties in the PJM market in the New Jersey area such as the Reliability Pricing Model (RPM), RGGI and RPS requirements. Furthermore, the fact that the product has a three year duration requires the analyst to have some opinion on the state of future market conditions for cost factors such as congestion.

2008 BGS Auction						
Product	Tranches Filled	Final Price (cents/kWh)	2007 price (cents /kWh) ¹	% Increase from 2007	Price Expectation (cents/kWh) ²	% Above Final Price
PSE&G	28	11.15	9.888	13%		
JCP&L	12	11.409	9.964	15%		
ACE	8	11.65	9.959	17%		
RECO	2	12.049	10.999	10%		
Total	50					
Average³		11.328	9.942	14%		

1) Source: Boston Pacific 2007 Auction Report.

3) Tranche-Weighted average.

Note too, that the table shows the winning prices in this year’s Auction are about 14% higher than the winning prices in last year’s Auction

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. Changes from last year’s results were driven primarily by increases in energy and capacity prices. The average price for a strip of on-peak monthly energy futures matching the three-year service period on the NYMEX rose from about \$72/MWh at the time of last year’s Auction to about \$84/MWH in this Auction. We believe this rise was driven by increases in oil, coal and gas prices.

Capacity costs also played an important role in the price increase. Last year at the time of the Auction Boston Pacific received broker’s quotes putting the average capacity price for the three-year service period at about \$118/MW-day. The initial RPM Auctions for the three upcoming service years resulted in an average price for capacity of about \$169/MW-day

While these increases are unwanted, the effect that they had on prices in the Auction was in line with what was expected based on the results of our benchmark model. Also, please see answer to 24.

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 2008 BGS-CIEP AUCTION

A. POST-AUCTION CHECKLIST

Post-Auction Checklist for the New Jersey 2008 BGS-CIEP Auction

**ATTACHMENT B
DOCKET NO. ER07060379**

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)	1,908.8	737.8	336.5	38.4	3,021.5
Total tranches needed	26	10	5	1	42
Starting tranche target in auction	26	10	5	1	42
Final tranche target in auction	26	10	5	1	42
Tranche size (%)	3.85	10	20	100	
Tranche size (approximate MW)	73.42	73.78	67.3	38.4	
Starting load cap (# tranches)	--	--	--	--	14
Final load cap (# tranches)	--	--	--	--	14
Quantity procured (# tranches)	26	10	5	1	42
Quantity procured (% BGS-CIEP load)	100%	100%	100%	100%	100%
# Winning bidders	3	3	1	1	4
Maximum # of tranches procured from any one bidder	13	8	5	1	14
Minimum and maximum starting prices prior to indicative bids (\$/MW-day)					350 285
Starting price at start of auction (\$/MW-day)*					
Price paid to winning bidders (\$/MW-day)**	103.28	115.76	108.65	134.38	107.63

* 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”.

Post-Auction Checklist for the New Jersey 2008 BGS-CIEP Auction

**ATTACHMENT B
DOCKET NO. ER07060379**

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?	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 three Pre-Bid Information Sessions and they informed bidders about Auction procedures and developments.

There were three Pre-Bid Information Sessions held: (i) the first session on both September 28, 2007 and October 5, 2007 in Washington DC and Philadelphia, respectively; (ii) the second session on December 7, 2007 in Philadelphia; and (iii) the third session on January 22, 2008 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 25 companies attended the first information session and 19 companies attended the second information session. In total, 30 companies showed interest in the 2008 Auction by attending one of the first two bidder information sessions. 6 out of the _____ 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 22, 2008, 216 questions had been asked by bidders since August 7, 2007, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The general topics of questions included: (a) the application process, (b) association and confidential information rules, (c) the Auction Rules, (d) the Supplier Master Agreement, (e) credit, (f) data provided, (g) payments and rates, and (h) other miscellaneous questions.

Bidders had the most questions concerning credit. Because of the high volume of questions received, NERA issued a specific document compiling all of the FAQ's concerning Letters of Credit and Credit Requirements. NERA provided responses to all of these questions, which seemed to satisfy bidders.

Due to the high volume of questions, NERA also compiled the FAQs regarding Associations and Confidential Information. Answers provided by NERA once again seemed to satisfy bidders.

Starting on January 23, 2008, the Auction Manager sent answers to questions each day to Registered Bidders via email.

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 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.

Load data was updated monthly for each EDC and covered the period through October of 2007 to help bidders prepare their bids. Information on classes, distribution, and switching of customers was updated as available. Any time revisions were made to the data, NERA marked this on their website.

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

Yes, before the Trial Auction, bidders received a confidential information packet containing, for the FP Auction, the CIEP Auction, and the Trial Auction:

e. Did bidders communicate any material concerns to NERA?

No. Boston Pacific reviewed all electronic messages to bidders and spot-checked phone calls with bidders during the Auction. 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 2008 Auction Process?

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2007. Furthermore, interested parties were also invited to file reply comments and final comments by August 24, 2007 and September 28, 2007, respectively. The Board also held a Legislative-type hearing on September 20, 2007. After reviewing all comments from the EDCs and other interested parties, the Board approved the 2008 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, NERA followed the posted calendar of significant events 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 2007 through the Auction in February 2008. As milestones were met, the calendar was updated to reflect each event's completion. As far as Boston Pacific is aware, the Auction process was carried out according to this schedule. 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 22, 2008 directly responded to by NERA?

Yes, questions were asked by Registered Bidders after January 22, 2008. NERA provided answers to these questions directly to bidders via email. These answers were distributed daily. 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, bidders did not raise any issues in the FAQs that indicated material uncertainty for bidders. Boston Pacific also monitored various industry news sources and did not discover any events that would produce material uncertainty for bidders.

While we believe no factors created *material* uncertainty for bidders, there were some factors that could have increased the uncertainty facing bidders to a smaller extent for this year's Auction. First, the Board Order was not released until shortly before the start of the Auction. Second, while the level of the Solar Alternative Compliance Payments (SACP) were set prior to Auction start, the Alternative Compliance Payments (ACP) for Class I and Class II were not set before the Auction. Third, the Regional Greenhouse Gas Initiative (RGGI) also provided bidders with additional uncertainty.

Finally, the Auction took place during a time of general economic uncertainty, with price increases in the energy sector (particularly oil price increases) combined with an overall economic downturn sparked by the credit collapse. While these events, again, produce uncertainty for all participants we do not believe that they produced *material* uncertainty.

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 phone calls. The list of contacts was developed from participants that registered for information on the BGS Auction website. In addition, PJM members who were identified as potential bidders but had not registered on the BGS Auction website were also added to the list of contacts. NERA ran three rounds of phone calls to potential bidders. In total, _____ companies were contacted.

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?

Therefore, to our knowledge, there were no issues with the Part One application process that knowingly prevented a bidder from becoming approved. This was also true of all Part Two applicants.

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 problems with the Auction software during testing and 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 17, 2008 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. 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 18th and January 24th 2008, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by the EDC's 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, there was a brief time-out for a technical issue in Round 34.

c. Was the back-up bidding process followed?

Yes, Boston Pacific had tested the backup procedure during Trial Auctions. Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 24, 2008.

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 performed spot-checks of telephone conversations and reviewed all electronic messages.

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

Yes, after each extension, to our knowledge, the schedule for the Auction was updated accordingly.

f. Did bidders communicate any material concerns to NERA?

No, please see answer to 2e.

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 7, 2007. The Part II Application deadline was on January 8, 2008. There were a total of 179 questions posted before the Part II Application deadline. Additional questions asked by bidders were also answered by NERA following the Part II Application deadline.

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 any hardware or software problems or errors observed, either with the CIEP Auction system or with its associated communications systems?

ANSWER 7: No, with the exception of one temporary technical issue in round 34. Also, please see the answer to 5b.

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 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 2e.

QUESTION 8:

Were there any unanticipated delays during the CIEP Auction?

ANSWER 8: No, with the exception of one temporary technical issue in round 34. Also, please see the answer to 5b.

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 performed spot-checks of communication 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.

AUCTION WEEK CRITERIA

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

The Auction Rules prescribe two different regimes of formulas for calculating the price decrements during the calculating phase of each round. The Auction Rules also give 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 volume reductions during the Auction. There were no changes to the load caps during the Auction.

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 spot-checked 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 electronic messages at the end of each bidding day. In addition, Boston Pacific also performed spot-checks of 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 3 extension requests during the Auction.

Through our review of electronic messages, there was no indication from bidders that they felt unduly rushed. Through our spot-checks of phone calls, Boston Pacific also did not receive indication that bidders were unduly rushed.

Bidders were also 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 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 2008 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2007. Furthermore, interested parties were also invited to file reply comments and final comments by August 24, 2007 and September 28, 2007, respectively. The Board also held a Legislative-type hearing on September 20, 2007.

Before the Auction began, the protocols 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. Boston Pacific believes that they were helpful for bidders, as evidenced by the attendance at these sessions and the sophisticated Auction questions and answers given at these sessions.

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

having the greatest number of bidders ensures healthy competition during the Auction, maximizing the potential for the lowest rates.

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.

a. Were participation levels significantly altered from previous solicitations?

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 both the FP Auction (which includes residential customers as well as some commercial and industrial customers) and 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).

and the list includes many well-known participants in the U.S. electricity business. As a group, these suppliers offered to supply a number of tranches (at the maximum starting charge set for the CIEP Auction) which were

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

Of the suppliers who bid, four 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 approximately 33% 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 four winners in the CIEP Auction, three had a market share over 20% (Constellation at 21%, DTE at 33%, and FPL at 33%). The other winner, Hess, won a 12% share.

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. An HHI at or under 1,000 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is at or below 1,000, 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 1,000 and 1,800 is said to indicate moderate concentration. An HHI over 1,800 is said to indicate a highly concentrated market. FERC uses these same standards when it assesses mergers and acquisitions. However, for market-based-rate authority, FERC 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 2,823. This puts the HHI for the CIEP Auction well into the highly concentrated range of the DOJ's HHI brackets. However, at 2,823 this HHI is in the range of

the 2,500 level used by FERC as an additional standard for granting a supplier the right to charge market-based prices. To include only winning bidders is a narrow focus for calculating an HHI.

A broader 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 supplier 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 CIEP Auction. We assessed the moves of each bidder in each round of bidding. Looking at a panoramic view of tranches bid in each round we detected no evidence of coordination of bidding.

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. During the Auction,

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,

Last year, bidders knew RPM would be in place, but the RPM results were not known at the time of the Auction. What we observed after the fact was that the CIEP Auction price was well below the RPM price last year.

Given this, we believe the CIEP prices are consistent with broader market conditions as reflected in RPM.

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.

No. At this point, we believe changes from last year's results were driven primarily by the temporary decrease in the capacity price from RPM.

QUESTION 26:

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

ANSWER 26: No