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# FINAL REPORT ON THE 2007 BGS FP AND CIEP AUCTIONS AND THE RECO SWAP RFP

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Presented to:

THE NEW JERSEY BOARD OF PUBLIC UTILITIES

Prepared By:

Boston Pacific Company, Inc.
1100 New York Avenue, NW, Suite 490 East
Washington, DC 20005
Telephone: (202) 296-5520
Facsimile: (202) 296-5531

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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 2007. 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]

In addition, Boston Pacific also served as an advisor to the Board on the Rockland Electric Company request for proposals for swap transactions (RECO Swap RFP) conducted in January 2007; the RECO Swap RFP is addressed herein. The Board also asked that we address in the Annual Final Report two specific issues concerning the design and implementation of the BGS Auction that were raised by the New Jersey Ratepayer Advocate. Finally, the Board Advisor is free to make recommendations to the Board for possible changes for future Auctions; we make a few recommendations herein.

It is essential for the Board to have as much information as possible about the Auctions and the RFP at the time it makes its decision on certification. The most explicit basis for the Board's certification decision on the FP and CIEP Auctions are the Post-Auction Checklists which contain (a) a factual statement of Auction results and (b) the answers to 26 questions about the conduct and results of the Auction. A similar Checklist is used for the RECO Swap RFP. 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

[1] See section 3.10, in Request for Proposal for Management Consulting: Oversight of BPU Basic Generation Service Auction Process, on page 16.

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 Auctions were fair and transparent; (b) the Auctions were robustly competitive; and (c) the winning prices were consistent with market conditions.

**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. First, there were [redacted] high quality bidders. Moreover, [redacted] 13 won some share of the full requirements service being solicited. You cannot have competition without competitors so having [redacted]13 winners is a strong indication of the competitiveness of the FP Auction. Note, too, there were 3 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 [redacted]. Specifically, [redacted] tranches were offered for each

tranche solicited. 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.

**TABLE ONE**
**WINNING BIDDERS IN THE NJ 2007 BGS FP AUCTION**

| SUPPLIER | PSEG | JCPL | ACE | RECO | TOTAL | SHARES |
|---|---|---|---|---|---|---|
| Conectiv Energy Supply Inc. | | | | | | |
| Constellation Energy Commodities Group Inc. | | | | | | |
| DTE Energy Trading Inc. | | | | | | |
| Energy America LLC | | | | | | |
| Exelon Generation Company LLC | | | | | | |
| Hess Corporation | | | | | | |
| JPMorgan Ventures Energy Corporation | | | | | | |
| Morgan Stanley Capital Group Inc. | | | | | | |
| NRG Power Marketing Inc. | | | | | | |
| PPL EnergyPlus LLC | | | | | | |
| PSEG Energy Resources & Trade LLC | | | | | | |
| Sempra Energy Trading Corp. | | | | | | |
| WPS Energy Services Inc. | | | | | | |
| **Total** | **28** | **15** | **7** | **1** | **51** | |

Third, we looked at market shares since this is a traditional measure of competitiveness. In Table One, immediately above, 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 2007 Auction. Among the 13 winners, [redacted] we like to see a bidder come in and stay in [redacted] since that drives prices lower[redacted]. Also, competitiveness is indicated by the fact that [redacted] in this sense, the FP BGS Auction appears to have an ease of entry which is essential to continued competitiveness.

**TABLE TWO**
**SUPPLIERS SERVING BGS FP LOAD IN 2007**

| SUPPLIER | PSEG | JCPL | ACE | RECO | TOTAL | SHARES |
|---|---|---|---|---|---|---|
| BP Energy Company | | | | | | |
| Conectiv Energy Supply Inc. | | | | | | |
| Consolidated Edison Energy Inc. | | | | | | |
| Constellation Energy Commodities Group Inc. | | | | | | |
| DTE Energy Trading Inc. | | | | | | |
| Energy America LLC | | | | | | |
| Exelon Generation Company LLC | | | | | | |
| Hess Corporation | | | | | | |
| JPMorgan Ventures Energy Corporation | | | | | | |
| Morgan Stanley Capital Group Inc. | | | | | | |
| NRG Power Marketing Inc. | | | | | | |
| PPL EnergyPlus LLC | | | | | | |
| PSEG Energy Resources & Trade LLC | | | | | | |
| Select Energy, Inc. | | | | | | |
| Sempra Energy Trading Corp. | | | | | | |
| Tractebel Energy Marketing, Inc. | | | | | | |
| WPS Energy Services Inc. | | | | | | |
| **Total** | **79** | **44** | **22** | **4** | **155** | **-** |

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 2007 include others who won in Auctions held in previous years. The suppliers who will actually serve in 2007 are shown in Table Two immediately above. Taking this boarder view, we see that there actually are 17 suppliers who will serve in 2007. Among these 17,

Fourth, 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. 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 1,819. Using the broader view – which includes all those supplying power in 2007 – the HHI is 1,610.

FERC uses another approach to calculating HHIs that deserves mention and can be adapted for use here. FERC includes in one of its market power tests (the delivered price test) suppliers who would supply at prices within 5% of the market (winning) price. Because the price ticks down round by round, we know the suppliers and their bids at a

price approximately 5% above the winning price. Including these suppliers' bids, the HHI would fall to 1,147; again, note that an HHI of 1,000 or less indicates an unconcentrated market according to Department of Justice guidelines.

Fifth, 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 were 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, and also the primary reason we have a range of prices rather than one specific number. 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 the reasonable range of prices. For PSEG, the winning prices were [redacted] the expected value (the mean) of the price range. For all the purchasing utilities, the Electric Distribution Companies (EDCs), together the winning prices were about [redacted] the mean of the range.

As compared to prices last year, we found that the winning prices this year were somewhat lower. For PSEG, they were lower by about 3.5%. For all the EDCs together, this year's winning prices were about 2.8% lower on average. We dug deeper into this comparison to see what caused the differences. Note that, of the many ingredients for full requirements service, energy and capacity are the two largest. We found that energy prices were down this year as compared to last year, but capacity prices were substantially higher. In effect, the rise in capacity prices and the fall in energy prices substantially offset each other.

## 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 many of 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 is less competitive than the FP Auction.

- First, there were [redacted] bidders for the CIEP Auction and 6 of those [redacted] won some share. (This contrasts to [redacted] 13 winners for the FP Auction.)

- Second, the excess quantity offered [redacted]. For the CIEP Auction, [redacted] tranches were offered at the maximum start price for each tranche needed. (This ratio was [redacted] for the FP Auction.)

**TABLE THREE**
**WINNING BIDDERS IN THE NJ 2007 BGS CIEP AUCTION**

| SUPPLIER | PSEG | JCPL | ACE | RECO | TOTAL | SHARES |
|---|---|---|---|---|---|---|
| Consolidated Edison Energy Inc. | [redacted] | | | | | |
| Constellation Energy Commodities Group Inc. | | | | | | |
| Dominion Retail Inc. | | | | | | |
| DTE Energy Trading Inc. | | | | | | |
| FPL Energy Power Marketing Inc. | | | | | | |
| PSEG Energy | | | | | | |
| **Total** | **79** | **29** | **13** | **1** | **120** | **-** |

- Third, among the 6 winners, [redacted] as can be seen in Table Three, immediately above. One winner had a [redacted]

- Fourth, the calculated HHI for winning bidders was 2,225. This is outside the moderately concentrated range, but below FERC's 2,500 standard for granting market-based rate authority. As explained above, FERC also includes suppliers willing to serve at prices within 5% of the winning prices. Calculated this way, the HHI is 2,044.

- Fifth, our auction expert found no evidence of collusive or coordinated behavior. However, he noted that, with fewer and bigger bidders, there were signs of strategic bidding with switches and withdrawals.

**Prices Consistent with Market Conditions**

The CIEP product is essentially a capacity product. We found that capacity prices have increased significantly. This is illustrated vividly by the comparing the results of the 2007 and 2005 CIEP auctions. The winning bids for the 2007 auction were about $128/MW-Day. In 2005, the last year in which this same CIEP product was solicited, the winning bids were about $25/MW-Day.

To judge consistency with current market conditions, we compared the 2007 winning bids [redacted]. We found that the winning prices for the CIEP product were consistent with market conditions [redacted] Specifically, the winning prices, on average, were [redacted]

## C. THE RECO SWAP RFP

Separate from the BGS Auction, RECO solicited offers to provide a Swap Agreement for a small section of its service territory for about 41.5 MW of customer need. Under the Swap Agreement, RECO will buy energy and capacity from short-term markets run by the New York Independent System Operator (NYISO). These purchases of energy and capacity will be short-term so the prices will vary over time. What bidders are offering to do is to guarantee those prices by swapping a fixed price offer for the variable prices from the NYISO markets. Bidders bid on four products. Three of them are one-year fixed price energy products – one for each of the next three years. The fourth product is a three-year, fixed price capacity product.

Boston Pacific recommended that the Board certify the results of the RECO Swap RFP. We did so for three primary reasons. The first was that the process was fair and transparent. The second was that there were a significant number of competitors. The third was that the winning prices were consistent with market conditions.

As to fairness and transparency, the RECO Swap RFP set out a well-defined product and most of the non-price terms and conditions were standardized. This standardization in turn allowed for a price-only bid evaluation. In addition, based on our participation in a pre-bid meeting, we believe the product, although it involves some sophisticated financial concepts, was well understood by potential bidders. In addition,

as the Board Advisor, RECO provided all the access and all the information we requested.

As to the specific number of bids, there were [redacted] tranches offered for every one tranche of energy products solicited. For the capacity product, the ratio of offers to need was [redacted]. In addition, bidders were substantial players in the business [redacted]

As to consistency with market conditions, all three winning prices for the energy products were [redacted] For the capacity price, the winning bid [redacted]

## D. ISSUES RAISED BY THE RATEPAYER ADVOCATE

The Ratepayer Advocate proposed two changes to BGS Auction rules which the Board has asked us to evaluate. The first is termed "pay-as-bid." The second is termed "tick down on ties." We recognize fully the good intent of the Ratepayer Advocate; that is, the intent of these two proposals is to eke out even lower prices for consumers. As a backdrop for our evaluation, we would like to state three broad points.[2]

- First, the BGS-FP Auction is a success because it attracts a large number of diverse, high-quality bidders. A rule should not be changed if the change would materially lower the number of bidders or lessen the diversity and quality of bidders.

- Second, persistent excess supply is what literally keeps the price ticking down so this is what achieves low prices for consumers. The rules should not be changed if the change would materially lessen excess supply by encouraging earlier or more substantial withdrawals.

- Third, a change in rules will lead to a change in bidding behavior. A change in rules should not be adopted with the assumption that bidding behavior will be unchanged. Put another way, the benefits of a change should not be estimated based on the results of bidding under existing rules.

With this backdrop in mind, let us consider each of the two proposed changes in turn.

[2] Decision And Order, Docket No. EO06020119 pages 7,8. (Dated 12/22/06)

**Pay-as-Bid**

We will first explain the proposed change by means of a very simple example, and then explain our evaluation.

Consider the example in which there are two bidders (A and B) for one product for which ten tranches are being solicited. In the previous round of bidding, the Going Price was 9.10¢/kWh and Bidder A bid 6 tranches and Bidder B bid 5 tranches. Because there is excess supply (11 tranches offered versus 10 needed), the Going Price ticks down to 9.00¢/kWh for the current round of bidding. For the current round of bidding, Bidder A withdraws 2 of his 6 tranches and sets his Exit Price at 9.09¢/kWh. Bidder B continues to bid all 5 of her tranches. To ensure supply does not fall below need, the Auction Manager must deny the withdrawal request for 1 tranche from Bidder A.

Under the current Auction rules, the final price for this product would be the Exit Price for the denied (retained) withdrawal – that is, 9.09¢/kWh. All 10 tranches would be paid this Exit Price. With the Ratepayer Advocate's proposed change, only 1 tranche would be paid the Exit Price – that is, only the tranche associated with the denied withdrawal by Bidder A would receive the Exit Price. All the other 9 tranches would be paid the current Going Price of 9.00¢/kWh.

Our evaluation of the pay as bid proposal starts with the point that the proposal, conceptually, is a fundamental change. The New Jersey BGS Auction always has been a uniform price auction – every winning bidder is paid the same price for the same product. With the proposed change, for the last round of bidding, the Auction will become a pay-as-bid auction. While it is a fundamental conceptual change, we see it as a very small change in practice so we do would not expect either major benefit or major harm from its implementation. On balance, however, we believe that the more likely outcome is minor harm to consumers rather than minor benefit. Our reasoning goes back to two of our points for backdrop: (a) bidding behavior will change and (b) the proposal could encourage earlier or more substantial withdrawals.

The motive for a change in bidding behavior by the supplier is to assure the rule change reduces their revenue as little as possible. Recall that under the current rules, a bidder would be paid the Exit Price on all of its tranches – in our example Bidder A would be paid the Exit Price of 9.09¢/kWh for all 5 of his tranches. With the proposed change, Bidder A would be paid the higher Exit Price for only 1 tranche. Our concern is that after understanding this rule change, Bidder A would withdraw more tranches in future auctions. So instead of withdrawing just 2 tranches as in the example, he might withdraw 4 or more tranches and he may do so in an earlier bidding round. The proposed rule creates another incentive for strategic withdrawals and we fear that it is an incentive for earlier and more substantial withdrawals. As stated above, changes should not be

made if, on balance, they would encourage withdrawals and lessen the ability to decrease prices.

**Tick Down On Ties**

Again, let us start with a simple example, and then present our evaluation. In contrast to the example used for the pay-as-bid proposal, the tranches freely bid in this example are assumed to be equal exactly to the needed number of tranches. We need 10 tranches for this one product and Bidder A offers 5 and Bidder B offers 5. Under the current Auction rules, the price for all tranches would be set to the current round Going Price of 9.00¢/kWh, and the Auction would be over.

Under the proposed change in rules, although the number of tranches offered is equal exactly to the number needed – there is no excess – the price would tick down another time. Let's say the price is ticked down artificially to 8.90¢/kWh. If either Bidder A or B withdraws 1 or more tranches, then the Exit Price would set the price for all tranches. For example, with an Exit Price of 8.99¢/kWh, all tranches would be paid this same price. If no withdrawals are made, then the new Going Price would be 8.90¢/kWh.

Again, to do a proper evaluation we have to anticipate changes in bidding behavior if the rules change. And, once again, our concern is that the proposed change encourages earlier or more substantial withdrawals in future auctions. The motive would be to restore the lost revenue from the rule change so bidders may withdraw more substantially in earlier rounds. As noted above, changes should be not be made if, on balance, they would encourage withdrawals.

One additional technical problem with the proposal is that the formula for price tick downs (price decrements) is driven by excess supply. There is no excess with a "tie" so a new approach would have to be developed for this last tick; this is why in our example, we reference to the last tick down as "artificial." Whatever new approach is proposed by the Ratepayer Advocate, the tick down cannot signal that there is a tie. If it did signal a tie, then bidders would all withdraw at the highest possible Exit Price (which is the previous round's Going Price) and there would be no price reduction.

## E. 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 should, of course, use the same backdrop we used for the proposals by the Ratepayer Advocate: (a) do not materially change the number, quality and diversity of bidders; (b)

do not encourage withdrawals; and (c) do not presume bidder behavior would remain unchanged.

Our recommendations are simply suggested changes to be considered by stakeholders and the Board through the BGS proceedings. 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.

**RPM and CIEP**

As has been widely discussed, PJM is currently planning to launch its new capacity market, under the Reliability Pricing Model (RPM), before the 2008 BGS Auction. The new market will differ from PJM's current market in that (a) RPM will be a locational market so that the signals to encourage generation investment where it is needed most will be sent and (b) the RPM market will be a long-term market meaning suppliers can fulfill their capacity obligations up to three years into the future.

The relationship between the CIEP Auction and RPM should be studied. One possibility is that the RPM market could potentially replace New Jersey's CIEP Auction as the means for securing capacity for New Jersey's large commercial and industrial customers. Analysis must be conducted to determine whether this would be a viable option and whether this is beneficial to New Jersey customers.

**Three One-Year Products**

Under the current FP Auction Rules, customer needs are fulfilled through rolling three-year contracts. Each year, one-third of the contracts expire and are replaced with new three-year contracts. For example, in the 2007 Auction, three-year contracts were procured to replace the expiring contracts from 2004.

The current Auction rules do attract a substantial number of high quality bidders and we do not want to lower that number. However, utilizing only three-year contracts may not attract all possible bidders. Some potential bidders may prefer to bid only on one-year supply. Others may not have resources available for the first year, but could for either the second or third year. The way to attract these bidders could be to solicit three one-year contracts instead of one three-year contract. In each auction, then, a winning bidder would guarantee supply for a twelve month period beginning in June of the first, second, or third year.

Bidders that want to serve all three years would have to win contracts for all three years. Still, New Jersey ratepayers would have fixed price contracts serving one-third of their needs for the next three years.[3]

Again, the goal would be to increase the number of bidders and the issue should be studied further to determine if this is the likely effect. For example, some might be concerned that more bidders would bid only on the first and second year, and fewer on the third year. Bidder's opinions on this should be solicited in the BGS Proceedings. The mechanics of allowing switches back and forth across the one-year products should also be assessed.

**Longer Term Products**

It is essential that sufficient incentive exists to justify new investment to ensure reliability and low costs. Indeed, general concern over the lack of new investment can lead to such proposals as (a) to switch from BGS-type Auctions to Unit Contingent RFPs with long term (20 to 30 year) contracts, or (b) to re-regulate by returning to cost plus rate making.

More specifically, for the BGS Auction there is concern that a three year term is not long enough to create the needed incentive for the full range of supply side (including renewables) and demand side options. Because new investment is such a crucial issue and recognizing that New Jersey has addressed this before, we suggest consideration of adding longer term products.

Again, the issue of longer term products should be vetted in the BGS Proceedings. Indeed, the appropriate questions about whether and how to solicit for longer-term contracts already have been put forth by staff to the BGS Working Group.

**Random Element of Decrements**

The BGS Auction currently uses pre-determined formulas to calculate price decrements from round to round. The equations use the number of target tranches and excess supply to calculate a decrement value. Bidders are made aware of these formulas before the auction, and it is public information.

In the 2007 BGS Auction, the decrement formulas were structured in a way so that bidders could determine exactly the amount of excess tranches in each product in the

[3] Boston Pacific, as the Illinois Commerce Commission's (ICC) Advisor, made a similar recommendation for the Illinois Auction. Please see the *Illinois Auction Post-Auction Public Report of the Staff* prepared by the Staff of the ICC with the assistance of Boston Pacific Company, Inc. at www.illinois-auction.com. Much of the language here is similar to that in the Illinois report.

Auction under specific circumstances which often prevail. The number of excess tranches is a very important piece of data for the bidder because it helps them formulate their bids and provides them information on what other bidders are doing. Our issue with the current format is that the information is not transparent to all bidders. A bidder who does not realize the potential for calculating excess supply would be disadvantaged; this non-transparency puts up a small barrier to entry for new bidders who must analyze Auction rules.

We would like to suggest study of two alternative modifications to the current of decrement formulas. One option is to simply post exact excess supply values for each product in each round report. This would provide transparency and distribute auction information more uniformly. (In certain excess supply situations, exact excess supply cannot be calculated. We advocate keeping this feature.) A second option is to introduce an element of randomness into the decrement calculations. With a random element, bidders could only determine a range of excess supply similar to what is currently being reported, not the exact excess supply in each product. It is important to note that the Illinois Auction is modeled on the New Jersey BGS Auction, and Illinois utilizes a random element in its price decrement calculations.

Again, these modifications must be vetted and undergo additional study to assume they meet the three criteria in our backdrop.

## II. THE NEW JERSEY 2007 BGS-FP AUCTION

## A. POST-AUCTION CHECKLIST

**POST-AUCTION CHECKLIST**

**FOR THE NEW JERSEY 2007 BGS-FP AUCTION**

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 at 8:40 am on Monday, February 5, 2007

Auction finished with the close of Round 22 at 10:00 am on Wednesday, February 7, 2007

| | 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] | N.A. | N.A. |
| Tranche target | 51 tranches | N.A. | N.A. |
| Eligibility ratio | [redacted] | N.A. | N.A. |
| PSE&G load cap | 13 tranches | N.A. | N.A. |
| JCP&L load cap | 7 tranches | N.A. | N.A. |
| ACE load cap | 3 tranches | N.A. | N.A. |
| RECO load cap | 1 tranches | N.A. | N.A. |
| Statewide load cap | 19 tranches | N.A. | N.A. |

* 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.

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) | 2,757.9 | 1,735.9 | 668.8 | 100.7 | 5,263.3 |
| Total tranches needed | 28 | 15 | 7 | 1 | 51 |
| Starting tranche target in auction | 28 | 15 | 7 | 1 | 51 |
| Final tranche target in auction | 28 | 15 | 7 | 1 | 51 |
| Tranche size (%) | 1.18 | 2.27 | 4.55 | 25.00 | |
| Tranche size (approximate MW) | 98.50 | 115.73 | 95.54 | 100.73 | |
| Starting EDC load caps (# tranches) | 13 | 7 | 3 | 1 | -- |
| Starting statewide load cap (#tranches) | -- | -- | -- | -- | 19 |
| Final EDC load caps (# tranches) | 13 | 7 | 3 | 1 | -- |
| Final statewide load cap (#tranches) | -- | -- | -- | -- | 19 |
| Quantity procured (# tranches) | 28 | 15 | 7 | 1 | 51 |
| Quantity procured (% BGS–FP load)* | 100% | 100% | 100% | 100% | 100% |
| # Winning bidders | [redacted] | [redacted] | [redacted] | [redacted] | 13 |
| Maximum # of tranches procured from any one bidder | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Minimum and maximum starting prices prior to indicative bids (cents/kWh) | | | | | [redacted] |
| Starting price at start of auction (cents/kWh) ** | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Final auction price (cents/kWh) *** | 9.888 | 9.964 | 9.959 | 10.999 | 9.942 |

* Note that this year's auction only procured approximately one-third of the FP load for delivery in 2007-2008. The other two-thirds of the load was procured in the 2005 and 2006 auctions.
** 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".

**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 |

| | Question | Comments |
|---|---|---|
| 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 |
| 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 29, 2006 and October 6, 2006 in Philadelphia and Washington DC, respectively; (ii) the second session on December 1, 2006 in Philadelphia; and (iii) the third session on January 23, 2007 in Philadelphia.

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

Yes, the FAQs were posted and all questions were answered.

All questions asked by bidders and their answers were posted on the Question and Answer (Q&A) 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. Questions asked to Boston Pacific or Staff were passed on to NERA so that they too could be posted on the BGS website.

As of January 31, 2007, 174 questions had been asked by bidders since August 15, 2006, 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, and (g) payments and rates.

One issue to note was the potential effects of the implementation of PJM's Reliability Pricing Model (RPM). Suppliers wanted to know how it would affect them during the length of the BGS contracts. NERA provided responses that seemed to satisfy bidders.

**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 was provided according to the schedule posted by NERA: (a) minimum/maximum starting prices, (b) tranche targets, (c) load caps, (d) finalized rules, (e) finalized decrement formulas, and (f) actual starting prices.

Load data was updated monthly for each EDC to help bidders prepare their bids. Information on classes, distribution, and switching of customers was updated as available. There were a few minor errors in some of the data posted on the website; corrections were immediately posted and announced.

**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 [redacted]

**e. Did bidders communicate any material concerns to NERA?**

No. Boston Pacific reviewed all electronic messages to bidders and spot-checked phone call with bidders. NERA did not indicate that there were any unresolved, material concerns.

**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 Board decision in June 2006 through the Auctions in February 2007. 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.

**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 Part II Applications directly responded to by NERA?**

Yes, questions were asked by bidders after the Part II Applications. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

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

PJM's pending implementation of both their Reliability Pricing Model (RPM) and marginal losses pricing created some uncertainty. NERA responded to questions concerning these issues in the FAQs and bidders appeared to be comfortable with the level of uncertainty concerning these two market changes.

**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 and the FAQs provided online on the BGS Auction website. 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.)

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, [redacted] companies were contacted.

The Auction Manager consulted with Boston Pacific during each of the Application processing periods. [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 DAY 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 bid day.

Boston Pacific had full opportunities to test NERA's bidding software and backup bidding process during the two Trial Auctions held for Staff and Boston Pacific on January 18, 2007 and January 22, 2007. Boston Pacific verified that bidders' accounts had access to the correct information. We also tested the Auction software by submitting problematic bids to determine if the software operated according to the rules. [redacted]

**c. Was the back-up bidding process followed?**

Yes, [redacted] Boston Pacific had tested the backup procedure during Trial Auctions.

**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 or recess, to our knowledge, the schedules for the FP and the CIEP auctions were 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 15, 2006. The Part II Application deadline was on January 9, 2007.

**c. Were the communication protocols followed?**

Yes. [redacted]

**AUCTION DAY 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. [redacted]

**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.**

**AUCTION DAY 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 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.**

**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.**

There were no unanticipated delays.

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

**ANSWER 10: Yes.**

**AUCTION DAY 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. [redacted]

**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 software.

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 DAY 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 that we required?**

Yes, Boston Pacific and BPU Staff received all data requests 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.**

Boston Pacific independently calculated the bid decrements including the switch to the second phase (regime) for decrement calculations.

The Auction Rules prescribes 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.**

NERA confirmed calculations off-line and provided verifications. Also, Boston Pacific independently validated all price decrements for each round using its decrement software. 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. There were no unexpected delays during the auction.

**QUESTION 16:**

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

**ANSWER 16: Yes.**

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.**

[redacted]

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.

**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 process 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.

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

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 was 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. [redacted] 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.**

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 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).

[redacted] 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) which were [redacted] 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.

[redacted] thirteen 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 thirteen winners in the FP Auction, [redacted].

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 1,819. This puts the HHI for the FP Auction barely in the highly concentrated range of the DOJ's HHI brackets. However, at 1,819 this HHI is well below 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 17 suppliers who will serve consumers in 2007; these are the winners in 2005 and 2006, as well as in the 2007 auction. The HHI in this case would be 1,610.

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, [redacted]

**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, [redacted]

| 2007 BGS-FP AUCTION | | | | | | |
|---|---|---|---|---|---|---|
| **PRODUCT** | **TRANCHES FILLED[1]** | **FINAL PRICE[2] (/kWh)** | **2006 PRICE[3] (/kWh)** | **% DECREASE FROM 2006** | **PRICE EXPECTATION[4] (/kWh)** | **% BELOW EXPECTATION** |
| PSE&G | 28 | 9.888 ¢ | 10.251 ¢ | 3.5% | [redacted] | [redacted] |
| JCP&L | 15 | 9.964 ¢ | 10.044 ¢ | 0.8% | | |
| ACE | 7 | 9.959 ¢ | 10.399 ¢ | 4.2% | | |
| RECO | 1 | 10.999 ¢ | 11.114 ¢ | 1.0% | | |
| **TOTAL** | **51** | | | | | |
| **AVERAGE[5]** | | **9.942 ¢** | **10.227 ¢** | **2.8%** | [redacted] | [redacted] |

1, 2) Source: Boston Pacific 2007 reports
3) Source: BGS 2007 Auction website
4) [redacted]
5) Tranche Weighted-Average

**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.**

**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 2007 BGS-CIEP AUCTION

# A. POST-AUCTION CHECKLIST

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY**

**2007 BGS-CIEP AUCTION**

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 at 8:25 am on Friday, February 2, 2007

Auction finished with the close of Round 29 at 9:50 am on Tuesday, February 6, 2007

| | 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] | N.A. | N.A. |
| Tranche target | 120 tranches | N.A. | N.A. |
| Eligibility ratio | [redacted] | N.A. | N.A. |
| Statewide load cap | 40 tranches | N.A. | N.A. |

* 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.

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) | 1,881.2 | 720.5 | 315.7 | 37.1 | 2,954.5 |
| Total tranches needed | 76 | 29 | 13 | 2 | 120 |
| Starting tranche target in auction | 76 | 29 | 13 | 2 | 120 |
| Final tranche target in auction | 76 | 29 | 13 | 2 | 120 |
| Tranche size (%) | 1.32 | 3.45 | 7.69 | 50.00 | |
| Tranche size (approximate MW) | 24.75 | 24.84 | 24.28 | 18.55 | |
| Starting load cap (# tranches) | -- | -- | -- | -- | 40 |
| Final load cap (# tranches) | -- | -- | -- | -- | 40 |
| Quantity procured (# tranches) | 76 | 29 | 13 | 2 | 120 |
| Quantity procured (% BGS-CIEP load) | 100% | 100% | 100% | 100% | 100% |
| # Winning bidders | [redacted] | [redacted] | [redacted] | [redacted] | 6 |
| Maximum # of tranches procured from any one bidder | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Minimum and maximum starting prices prior to indicative bids ($/MW-day) | | | | | [redacted] |
| Starting price at start of auction ($/MW-day)* | [redacted] | [redacted] | [redacted] | [redacted] | [redacted] |
| Price paid to winning bidders ($/MW-day)** | 128.77 | 121.56 | 135.61 | 153.31 | 128.18 |

* 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".

**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:**
**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 29, 2006 and October 6, 2006 in Philadelphia and Washington DC, respectively; (ii) the second session on December 1, 2006 in Philadelphia; and (iii) the third session on January 23, 2007 in Philadelphia.

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

Yes, the FAQs were posted and all questions were answered.

All questions asked by bidders and their answers were posted on the Question and Answer (Q&A) 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. Questions asked to Boston Pacific or Staff were passed on to NERA so that they too could be posted on the BGS website.

As of January 31, 2007, 174 questions had been asked by bidders since August 15, 2006, 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, and (g) payments and rates.

One issue to note was the potential effects of the implementation of PJM's Reliability Pricing Model (RPM). Suppliers wanted to know how it would affect them during the length of the BGS contracts. NERA provided responses that seemed to satisfy bidders.

**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 was provided according to the schedule posted by NERA: (a) minimum/maximum starting prices, (b) tranche targets, (c) load caps, (d) finalized rules, (e) finalized decrement formulas, and (f) actual starting prices.

Load data was updated monthly for each EDC to help bidders prepare their bids. Information on classes, distribution, and switching of customers was updated as available. There were a few minor errors in some of the data posted on the website; corrections were immediately posted and announced.

**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: [redacted].

**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. NERA did not indicate that there were any unresolved, material concerns.

**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 Board decision in June 2006 through the Auctions in February 2007. 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.

**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 Part II Applications directly responded to by NERA?**

Yes, questions were asked by bidders after the Part II Applications. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

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

PJM's pending implementation of both their Reliability Pricing Model (RPM) and marginal losses pricing created some uncertainty. NERA responded to questions concerning these issues in the FAQs and bidders appeared to be comfortable with the level of uncertainty concerning these two market changes.

**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 and the FAQs provided online on the BGS Auction website. 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.)

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, [redacted] companies were contacted.

The Auction Manager consulted with Boston Pacific during each of the Application processing periods [redacted]

**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 DAY 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 bid day.

Boston Pacific had full opportunities to test NERA's bidding software and backup bidding process during the two Trial Auctions held for Staff and Boston Pacific on January 18, 2007 and January 22, 2007. Boston Pacific verified that bidders' accounts had access to the correct information. We also tested the Auction software by submitting problematic bids to determine if the software operated according to the rules. [redacted]

**c. Was the back-up bidding process followed?**

Yes, [redacted] Boston Pacific had tested the backup procedure during Trial Auctions.

**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 or recess, to our knowledge, the schedules for the FP and the CIEP auctions were 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 15, 2006. The Part II Application deadline was on January 9, 2007.

**c. Were the communication protocols followed?**

Yes. [redacted]

**AUCTION DAY 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. [redacted]

**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 observed, either with the CIEP auction system or with its associated communications systems?**

**ANSWER 7: No.**

**AUCTION DAY 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 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.**

**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.**

There were no unanticipated delays.

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

**ANSWER 10: Yes.**

**AUCTION DAY 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. [redacted]

**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 software. [redacted]

Boston Pacific performed spot-checks of communication between NERA and bidders. [redacted]

**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 DAY 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 that we required?**

Yes, Boston Pacific and BPU Staff received all data requests 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.**

Boston Pacific independently calculated the bid decrements including the switch to the second phase (regime) for decrement calculations.

The Auction Rules prescribes 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.**

NERA confirmed calculations off-line and provided verifications. Also, Boston Pacific independently validated all price decrements for each round using its decrement software. 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. There were no unexpected delays during the auction.

**QUESTION 16:**

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

**ANSWER 16: Yes.**

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?**

**ANSWER 17: No.**

[redacted]

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.

**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 process 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.

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

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 was 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. [redacted] 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.**

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 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).

[redacted] 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 [redacted] 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.

[redacted] six 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 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 six winners in the CIEP Auction, [redacted]

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 2,225. This puts the HHI for the CIEP Auction in the highly concentrated range of the DOJ's HHI brackets. However, at 2,225 this HHI is below the 2,500 level used by FERC as an additional standard for granting a supplier the right to charge market-based 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.

It should be noted that suppliers were less interested in the CIEP Auction than the FP Auction. As noted, there were [redacted] six won. However, last year, the CIEP Auction product was designed differently and suffered a volume reduction (a reduction in the number of tranches put out for bid) because of lack of interest. All due effort was placed in ensuring that the CIEP Auction products would be fully subscribed this year and they were indeed fully subscribed.

**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 [redacted]

**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, [redacted]

For the CIEP product, capacity is the primary ingredient. [redacted]

The final prices for the CIEP products are $128.77/MW-day, $121.56/MW-day, and $135.61/MW-day for PSE&G, JCP&L, and ACE, respectively; all three of these are [redacted]. At $153.31/MW-day, the final price for RECO is [redacted]. For perspective, note that the number of tranches sought after and filled are 76, 29, and 13 for PSE&G, JCP&L, and ACE, respectively. For RECO, 2 tranches were sought after and filled.

As noted, there is additional uncertainty about capacity prices at this point in time. This uncertainty is reflected in the fact that [redacted]

| 2007 BGS-CIEP AUCTION | | | | | | |
|---|---|---|---|---|---|---|
| **PRODUCT** | **TRANCHES FILLED[1]** | **FINAL PRICE[2] (/MW-day)** | **2005 PRICE[3] (/MW-day)** | **% INCREASE FROM 2005** | **PRICE EXPECTATION[4] (/MW-day)** | **% BELOW EXPECTATION** |
| PSE&G | 76 | $ 128.77 | $ 22.62 | 469% | [redacted] | [redacted] |
| JCP&L | 29 | $ 121.56 | $ 25.38 | 379% | [redacted] | [redacted] |
| ACE | 13 | $ 135.61 | $ 39.76 | 241% | [redacted] | [redacted] |
| RECO | 2 | $ 153.31 | $ 20.47 | 649% | [redacted] | [redacted] |
| **TOTAL** | **120** | | | | | |
| **AVERAGE[5]** | | **$ 128.18** | **$ 25.11** | **426%** | [redacted] | [redacted] |

1, 2) Source: Boston Pacific 2007 reports
3) Source: BGS 2007 Auction website
4) [redacted]
5) Tranche Weighted-Average

**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.**

# IV. THE NEW JERSEY 2007 RECO AUCTION

# A. POST-AUCTION CHECKLIST

## POST-AUCTION CHECKLIST FOR RECO Swap RFP

Prepared by: Boston Pacific Company, Inc.

Bids were due by 9:30am on January 23, 2007

Winners were chosen by 11:15am on January 23, 2007

Table 1 below shows pertinent indicators and measures for the RFP process.

**Table 1: Summary of RECO Swap RFP**

| | ENERGY SWAPS* | | | UCAPSWAP** |
|---|---|---|---|---|
| | 2007/2008 Tranche 1 | 2008/2009 Tranche 2 | 2009/2010 Tranche 3 | 2007/2010 Tranche 4 |
| Percent of SOS Load | 100% | 100% | 100% | 100% |
| Approximate SOS Peak*** Load (in MW) | 41.5 MW | 41.5 MW | 41.5 MW | 37 MW |
| Number of actual bidders | [redacted] | [redacted] | [redacted] | [redacted] |
| Number of bids submitted | [redacted] | [redacted] | [redacted] | [redacted] |
| Winning Price | $81.19/MWh | $83.54/MWh | $81.85/MWh | $3.40/kW-month |

* RFP at page 1: The one-year term for Tranche 1 is June 1, 2007 to May 31, 2008, for Tranche 2 it is June 1, 2008 to May 31, 2009 and for Tranche 3 it is June 1, 2009 to May 31, 2010.

** RFP at page 2: The three-year term for Tranche 4 is June 1, 2007 to May 31, 2010.

***Notional Quantity from Exhibit A of RFP; reflects 18% reserve margin and a 5% forced outage.

***Post-Auction Checklist for the RECO Swap RFP Process***

**Table 2. Overview of findings on RECO Swap RFP Process**

| | | Energy | UCAP |
|---|---|---|---|
| Question | | Comments | Comments |
| 1 | Recommendation as to whether the Board should certify the RECO Swap RFP results? | Certify | Certify |
| 2 | Did bidders have sufficient information to prepare for the RECO Swap RFP process? | Yes | Yes |
| 3 | Was the information generally provided to bidders in accordance with the published timetable? | Yes | Yes |
| 4 | Were there any issues and questions left unresolved prior to the RECO Swap RFP process that created material uncertainty for bidders? | No | No |
| 5 | Were protocols adhered to for communications among bidders, RECO/its Auction Manager, BPU Staff, and the BPU (if necessary) regarding the RECO Swap RFP process? | Yes | Yes |
| 6 | Did the RECO Swap RFP process take place according to schedule, and if not, what material impact did the deviations from the schedule have on the outcome? | Yes | Yes |
| 7 | Were any security breaches observed with the RECO Swap RFP process? | No | No |
| 8 | Was there evidence of confusion or misunderstanding on the part of bidders? | No | No |
| 9 | Were there any complaints from bidders about the process that were legitimate and unresolved? | No | No |
| 10 | Were any software or hardware errors experienced? | No | No |
| 11 | Was the RECO Swap RFP process carried out in a fair and transparent manner? | Yes | Yes |
| 12 | Was there any evidence of collusion or improper coordination among bidders? | No | No |
| 13 | Does the RECO Swap RFP process appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the RECO Swap RFP tranches? | Yes | Yes |
| 14 | Were there factors exogenous to the RECO Swap RFP process (e.g., changes in market environment) that materially affected the RECO Swap RFP process in unanticipated ways? | No | No |
| 15 | Are there any other major concerns with the RECO Swap RFP outcome? | No | No |

## B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST

**BOSTON PACIFIC COMPANY, INC.**
**SUPPLEMENT TO**
**POST-AUCTION CHECKLIST FOR**
**RECO SWAP RFP**

**QUESTION 2:**
**Did bidders have sufficient information to prepare for the RECO Swap RFP process?**

**ANSWER 2: Yes.**

**CRITERIA:**
**2a. What number of parties completed an ISDA?**

[redacted] parties completed an ISDA. [redacted] parties had showed preliminary interest in the process; [redacted]

**2b. What did the conduct of the Pre-Bid Conference reveal? (by phone on January 11, 2007)**

World Energy first provided an overview of the RFP auction process. They gave a summary of the format and rules of the auction. This was followed by a question and answer session where questions were asked anonymously.

World Energy and RECO were able to sufficiently answer most of the bidders' questions during the call. However, some questions needed additional time beyond the Pre-Bid Conference for RECO to provide accurate answers. World Energy posted answers to all questions on their website before the start of the auction. Bidders seemed to understand the process and were satisfied with the answers given.

World Energy also announced that demos of the software would given upon Bidder request. [redacted]

**2c. What did the Q&A reveal?**

All answers to questions asked by potential suppliers were posted on the RFP website before the auction began. World Energy also posted all questions and answers given to them by RECO. Bidders were notified when Q&As were posted on the RFP website. The majority of bidder questions centered upon the nature of the load being solicited by RECO. This included questions on (a) customer make-up, (b) migration data, (c) historical load data, and (d) current customer rates.

In response to questions regarding migration data, RECO added a clause to the Transaction Confirmations that states migration data will be provided on a best efforts

basis. There were also questions asked regarding the release of confidential information and auction approval by the NJ BPU. Each of these questions was answered and posted on the website. Furthermore, World Energy stated that there were no questions from bidders or signs of confusion among bidders during the auction. It appeared that bidders received the necessary information needed based upon their questions and that any confusion was alleviated by World Energy and RECO before the auction began.

**2d. Were there any complaints by bidders to World Energy, etc.?**

Boston Pacific is not aware of any complaints. All bidder questions or concerns prior to January 17th at 1:00 pm were posted on the Q&A section of the World Energy website. World Energy did not receive any complaints after this date, including on auction day.

**2e. What information was put on the website?**

Information posted on the website included (a) the RFP, (b) bidder forms, (c) Q&As, (d) RFP Software Instructions, (e) historical load data, and (f) sample settlement and substation output summaries. All the information was posted before the start of the auction.

**2f. What was the number of actual bidders?**

[redacted] bidders submitted bids in the auction. [redacted]

**QUESTION 3:**

**Was the information generally provided to bidders in accordance with the published timetable?**

**ANSWER 3: Yes.**

**CRITERIA:**

**3a. Was RFP schedule met?**

Yes. World Energy verified that the RFP process was carried out in accordance with the published schedule, which was posted on the World Energy website. The schedule is below.

(i) RFP issued January 3.
(ii) Auction website up and Supplier Notification issued on January 8.
(iii) Pre-Bid Conference and anonymous Q&A session on January 11.
(iv) Comments due on Transaction Confirmation and Pre-Bid and Post-Bid Credit January 12.

(v) Last day for questions on January 17.
(vi) Binding Bid Agreement, Pre-Bid letter of Credit, and Non-Disclosure Agreement due on January 18.
(vii) Confirmation of Bidder Access January 22.
(viii) Auction conducted on January 23 and winners chosen within 1 hour of Auction close and execution and delivery of applicable Transaction Confirmations.
(ix) New Jersey Board of Public Utilities decision on January 25 (tentatively scheduled).
(x) All Post-Bid Credit Support completed one business day after BPU Approval.

**3b. What information was promised for the website (e.g. load data)? Was it provided?**

RECO promised to provide (a) the RFP, (b) additional documents relating to the RFP, (c) information regarding the auction (i.e. structure, format, and timing of the auction), (d) a copy of questions and the answers regarding the auction, and (e) RECO's Substation Output Summaries for January 2004 through October 2006 for the load area being auctioned. RECO provided all of the materials they promised.

**QUESTION 4:**

**Were there any issues and questions left unresolved prior to the RECO Swap RFP process that created material uncertainty for bidders?**

**ANSWER 4: No.**

**CRITERIA:**

**4a. Any parties with ISDAs who did not bid? Is the specific question/concern known?**

No. [redacted] eligible bidders bid in the auction. [redacted]

**4b. Any bidder questions not answered?**

All answers to questions asked before the 1:00 pm deadline on January 17th were posted on the website before the start of the auction. According to World Energy, all questions after this deadline were answered in a timely fashion.

**4c. Any major uncertainties in the Market or ISO?**

No.

**QUESTION 5:**

**Were protocols adhered to for communications among bidders, RECO/its Auction Manager, BPU Staff, and the BPU (if necessary) regarding the RECO Swap RFP process?**

**ANSWER 5: Yes.**

**CRITERIA:**

**5a. Was RECO responsive to Staff and Boston Pacific requests for information?**

Yes.

**5b. Did World Energy provide to Boston Pacific an opportunity for a software trial/demo?**

Yes. [redacted]

**5c. Did Boston Pacific have full access to bids on Auction day through an electronic link?**

[redacted] According to World Energy, bidders did not have any issues during the auction.

**QUESTION 6:**

**Did the RECO Swap RFP process take place according to schedule, and if not, what material impact did the deviations from the schedule have on the outcome?**

**ANSWER 6: Yes.**

**CRITERIA:**

**6a. Did RECO meet its schedule?**

Yes. RECO adhered to their published schedule; the schedule is below.

(i) RFP issued January 3.
(ii) Auction website up and Supplier Notification issued on January 8.
(iii) Pre-Bid Conference and anonymous Q&A session on January 11.

(iv) Comments due on Transaction Confirmation and Pre-Bid and Post-Bid Credit January 12.
(v) Last day for questions on January 17.
(vi) Binding Bid Agreement, Pre-Bid letter of Credit and Non-Disclosure Agreement due on January 18.
(vii) Confirmation of Bidder Access January 22.
(viii) Auction conducted on January 23 and winners chosen within 1 hour of Auction close and execution and delivery of applicable Transaction Confirmations.
(ix) New Jersey Board of Public Utilities decision on January 25 (tentatively scheduled).
(x) All Post-Bid Credit Support completed one business day after BPU Approval.

**QUESTION 7:**
**Were any security breaches observed with the RECO Swap RFP process?**

**ANSWER 7: No.**

**CRITERIA:**
**7a. Any evidence bid information was leaked Pre-Auction or on Auction day?**

No. To our knowledge no confidential information was leaked. All suppliers, RECO, World Energy, and Boston Pacific signed confidentiality agreements. During the auction, bidders only had access to a supplier account. This account gave suppliers access only to their own bids and the lowest bid price if they had submitted a bid.

**7b. Did "supplier" or other accounts have correct information?**

Yes [redacted]

**7c. What security measures were in place?**

All participating entities were required to sign a confidentiality agreement. In addition, the auction software used on bid day was built to insure that all participants had controlled access to auction information. All bidders received usernames and passwords to access the auction website. [redacted]

**QUESTION 8:**

**Was there evidence of confusion or misunderstanding on the part of bidders?**

**ANSWER 8: No.**

**CRITERIA**

**8a. What number of parties actually bid?**

Please refer to answer 2f.

**8b. Did World Energy receive any indication of confusion on Auction day?**

No.

**8c. Any delays from confusion?**

No. There were no delays during the auction; it proceeded according to schedule.

**8d. Did the Q&A session reveal any confusion?**

No. All answers to questions by bidders before January 17th at 1:00 pm were posted on the website. Boston Pacific was unaware of any bidder confusion before or during the auction. World Energy stated that bidders had no major issues during the auction.

**QUESTION 9:**

**Were there any complaints from bidders about the process that were legitimate and unresolved?**

**ANSWER 9: No.**

**CRITERIA:**

**9a. What number of parties completed ISDAs?**

Please refer to answer 2a.

**9b. What did the conduct of the Pre-Bid Conference reveal?**

Please refer to answer 2b.

**9c. What did the response to questions reveal?**

Please refer to answer 2c.

**9d. What number of parties actually bid?**

Please refer to answer 2f.

**QUESTION 10:**
**Were any software or hardware errors experienced?**

**ANSWER 10: No.**

**CRITERIA:**
**10a. Did World Energy successfully receive bids?**

Yes, bids were successfully received by World Energy.

**10b. Did World Energy choose the lowest price bids for Tranches 1, 2, 3, and 4?**

Yes, the lowest priced bids were successfully identified as the winning bids.

**10c. Is there a backup bid procedure?**

No. However, World Energy did provide technical support numbers for bidders to call in.

**QUESTION 11:**
**Was the RECO Swap RFP process carried out in a fair and transparent manner?**

**ANSWER 11: Yes.**

**CRITERIA:**
**11a. What number of parties completed an ISDA?**

Please refer to answer 2a.

**11b. What did the conduct of the Pre-Bid Conference reveal?**

Please refer to answer 2b.

**11c. What did the response to questions reveal?**

Please refer to answer 2c.

**11d. What was the number of actual bidders?**

Please refer to answer 2f.

**11e. Were any bidder concerns revealed on Auction day?**

No.

**11f. Were there any significant differences in ISDAs and Transaction Confirmations among winners? Do any differences raise fairness on transparency concerns?**

[redacted]

**QUESTION 12:**
**Was there any evidence of collusion or improper coordination among bidders?**

**ANSWER 12: No.**

**CRITERIA:**
**12a. Were there a large number of bidders?**

Yes. [redacted] bidders submitted bids during the auction. [redacted] This indicates a robust level of competitiveness.

**12b. What is the implied HHI?**

An HHI calculation is not appropriate for this process since there is only one winning supplier for each product.

**12c. Was there a diversity of types of bidders (utility, IPP, financial)?**

Yes. For the three energy swap tranches, [redacted]

**12d. What is the range of bids?**

The range of bids in Tranche One was [redacted] down to $81.19/MWh (the winning bid). The range of bids in Tranche Two [redacted] down to $83.54/MWh (the winning bid). The range of bids in Tranche Three was [redacted] down to $81.85/MWh (the winning bid). The range of bids in Tranche Four was [redacted] down to $3.40/kW-month (the winning bid).

**12e. How do the winning bids for the Energy SWAPS compare to NYMEX or other energy futures prices?**

All three winning bids for the energy tranches [redacted] For Tranche One, [redacted] the winning bid was $81.19/MWh, [redacted] For Tranche Two, the [redacted] the winning bid was $83.54/MWh [redacted]. For Tranche Three, [redacted] the winning bid was $81.85/MWh [redacted]

The winning capacity bid price was $3.40/kW-month [redacted]

**QUESTION 13:**

**Does the RECO Swap RFP process appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the RECO Swap RFP tranches?**

**ANSWER 13: Yes.**

**CRITERIA:**

**13a. How many winners were there?**

There were [redacted] winners. [redacted]

**13b. How do the winning prices for Energy SWAPS compare to NYMEX or other energy futures prices?**

Please refer to answer 12e.

**QUESTION 14:**

**Were there factors exogenous to the RECO Swap RFP process (e.g., changes in market environment) that materially affected the RECO Swap RFP process in unanticipated ways?**

**ANSWER 14: No.**

**CRITERIA:**

**14a. In the month leading up to Auction day, were there major electricity, oil or natural gas price changes?**

No significant news events. However, both electricity and natural gas futures have increased in the past week, most likely due to cold weather.

**14b. Was there any significant negative news?**

No.

**QUESTION 15:**

**Are there any other major concerns with the RECO Swap RFP outcome?**

**ANSWER 15: No.**