

ANNUAL FINAL REPORT
ON THE
2009 BGS FP AND CIEP AUCTIONS

Presented to:

THE NEW JERSEY BOARD OF PUBLIC UTILITIES

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I. INTRODUCTION AND SUMMARY

Boston Pacific Company, Inc. served as the Advisor to the New Jersey Board of Public Utilities (Board) for the Basic Generation Service (BGS) Auction held in February 2009. We are pleased to provide this report which is the Annual Final Report required under our contract. The Board defined the purpose and content of this Annual Final Report as follows:

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

It is essential for the Board to have as much information as possible about the Auctions at the time it makes its decision on certification. To that end, the most explicit basis for the Board's certification decision on the FP and CIEP Auctions were the Post-Auction Checklists provided to the Board on February 6, 2009. These checklists contain (a) a factual statement of Auction results and (b) the answers to 26 questions about the conduct and results of the Auction. Because of the important role the Checklists play, Boston Pacific also provided what we termed a "Supplemental Checklist" which explained in detail our reasons for the yes/no answers to the 26 questions in the official Checklist. After this Introduction and Summary, the bulk of the Final Annual Report is made up of these Supplemental Checklists which, we believe, show the extensive depth and breadth of the analyses that underlie the Board's certification decisions.

A. THE BGS FIXED PRICE (FP) AUCTION

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

The overall effect of this year's Auction on FP rates is negligible, because the winning prices this year were about the same as the contracts that were being replaced from three years ago. Typically this is good news; however some may view this as a disappointing result given the current recession and rapidly sinking prices for commodities. The "person on the street" may well have set his or her expectations by

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

looking at prices at the gas pump over the last several months. They would have seen prices soaring to over \$4 a gallon last summer and dropping to under \$2 at the time of the Auction. With this in mind they may be expecting a similar cut in their electric bill.

This expectation does not apply to electric rates for four reasons. First, FP rates are based on fixed contracts which assume future price risk, therefore the price spikes that drove oil, gasoline and electricity prices to new heights last summer were not seen by FP customers. Second, the FP rates are based on bidders' expectations of the upcoming three-year period, not on current market conditions. Third, energy costs are only part of the FP product, , the rest of the product is made up of components such as capacity, ancillary services, renewable portfolio requirements and transmission costs. Fourth, the Auction only procures about one-third of the FP customer's needs, the rest will be served by fixed-price contracts previously procured in the 2007 and 2008 Auctions.

Another expectation that we have to address is that the Auction might somehow be immune from the current financial crisis. As firms restrict their business or shut down altogether and as credit becomes harder to find we expected to see, and did see, a reduction in the number of bidders participating

More generally, price volatility and higher credit costs can lead bidders to bid less aggressively. The FP Supplier Master Agreement features credit requirements that increase as projected market prices increase. As price forecasts rise, a bidder must put aside more collateral in case it should default on its obligations. This is a nice protection for ratepayers, but it means that bidders must be careful of bidding too low in a tight-credit environment, lest they be stuck with potential credit needs that they cannot fulfill. With electricity prices having shown the ability to increase by double-digit percentages in just a few months, bidders had even more reason to be more cautious in their bids.

Fair and Transparent

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

In addition, fairness and transparency were enhanced by the 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, while participation was down there still were a good number of high quality bidders. There were . This is compared to in last year's Auction. While this drop-off is unfortunate it was not unexpected, and participants still create a competitive field that makes collusion very difficult.

Second, we looked at the ratio of the quantity of electricity service offered to the quantity actually needed. This excess is crucially important because it is this excess which literally drives price down as the Auction proceeds; the price "ticks down" (is decremented) if and only if there are excess offers. For that reason, we like to see bidders come in and stay in with the maximum number of tranches offered through many rounds of bidding.

Third, we looked at the number of winners. We like to see a large number of winners for several reasons. First, it means that the Auction was competitive, with multiple parties pushing down the price at the end. Second, it sends a signal to other participants that no one party is dominating the Auction and that anyone can win supply. Third, it increases the likelihood of these bidders returning in future years. This metric saw a positive development in that the number of winners increased from last year from 8 to 10.

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

Prices Consistent with Market Conditions

We believe it is important to check that the prices in the FP Auction are not out of line with broader market conditions. In order to test the reasonableness of the winning

prices we rely on our Benchmark pricing model. In this model we attempt to view the full requirements product as a bidder might. That is to say, we look at current market prices for all the components of full requirements services (including energy, capacity, ancillary services, and other components) and add them together to create a price for the full requirements product. This price includes a hard to measure risk and credit component, which represents the credit commitments of a supplier as well as the risk a supplier takes in offering a fixed-price product.

The end result is a range of prices that we could consider “reasonable”.

In general, winning prices were within our benchmark range.

A less sophisticated check on these results can be gained by comparing the results here to other Standard Offer Service Procurements in nearby jurisdictions. This is difficult, since many states do not disclose their results and each state has slight differences in product and procurement method. With that caveat we can look at one such procurement. The week before the Auction, Delaware held the second tranche of its Standard Offer Service (SOS) RFP. Like New Jersey, Delaware solicits a three-year, full-requirements product, although bidders do not provide renewables and network transmission as in New Jersey. The average winning price in the second tranche of the Delaware SOS RFP was about 9.7 cents per kWh.

Prices were down about 8%, on average, from last year’s Auction.

TABLE ONE
PSE&G Mean Benchmark As Compared to Last Year
(\$/MWh)



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

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

Fairness and Transparency

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

Competitiveness

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

- First, there were

These numbers are similar to last year's CIEP Auction,

- Second, the excess quantity offered
- Third, there were 5 winners in the Auction, as compared to ten winners in the FP Auction. The number of winners was similar to last year's CIEP Auction, which featured 4 winners.
- Fourth, we, along with our Auction Expert, reviewed the round-by-round results and found no evidence of collusion or anti-competitive behavior.

Prices Consistent with Market Conditions

Comparing the CIEP price with expectations requires a few words of explanation. Although CIEP is a full requirements product, the Auction price primarily reflects a fixed price for only the capacity portion of that service, suppliers are paid an energy price set at the real-time market spot price and a fixed amount for ancillary services. Because of this design the portion of the CIEP product that is bid on represents only about 7% of the total price paid for by a CIEP customer, all else being equal.

This year the winning CIEP price was up significantly. For PSE&G the price almost doubled from \$103/MW-day to \$203/MW-day. While this increase seems extreme it is important to see that a doubling of this price is, roughly, a 7% increase in the total cost of the CIEP product. (A 100% increase on 7% of the price results in a 7% average price increase.) Note that this estimate again assumes a constant energy price, because suppliers are paid a spot energy price the total cost paid by ratepayers may actually be much lower if fuel prices continue to decline.

We did create a rough benchmark for the CIEP price as well and found that prices were reasonable given that benchmark.

The year-to-year difference in prices can be partially explained by increases in the RPM cost and RPS requirements.

One other change in rules that could have had an effect on bid prices is PJM's proposed switch to weekly settlements. Under this design, PJM will send out weekly bills to suppliers. The CIEP suppliers, however, will only get paid monthly. This creates a credit need for suppliers, who now must have the cash to pay their PJM bills prior to receiving cash from customers (the New Jersey EDCs). This additional cost may be driving bids up slightly.

C. RECOMMENDATIONS

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

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

Credit Levels

As mentioned above, the credit requirements for the FP product include the posting of additional credit when the projected future electricity price rises above levels seen during the Auction. This does serve as a protection for ratepayers, but, as mentioned, it increases costs for suppliers. Because of the overall tightening of the credit markets we would urge the EDCs to reexamine the credit requirements of the Supplier Master Agreement and consider making some changes that might help bidders. Two such changes the EDCs might consider are (a) putting a total cap on the amount of collateral any bidders must post and/or (b) increasing the amount of unsecured credit offered to highly-rated firms.

Impact of Weekly Settlement

As noted above, PJM's move to a weekly settlement process could create a credit need for bidders which might have an effect on prices. This effect is likely more pronounced in the CIEP product as FP suppliers are less likely to rely on the PJM spot

market to purchase supply. We suggest the Commission investigate the effect of weekly PJM settlement on bidder costs and also look into one possible remedy such as switching the Supplier Master Agreement (SMA) to weekly settlement.

II. THE NEW JERSEY 2009 BGS-FP AUCTION

A. POST-AUCTION CHECKLIST

**ATTACHMENT B
DOCKET NO. ER08050310**

**POST-AUCTION CHECKLIST
FOR THE NEW JERSEY 2009 BGS-FP AUCTION**

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 at 08:40 on Mon, February 2, 2009

Auction finished with the close of Round 26 at 11:53 on Wed, February 4, 2009

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	<u>NA</u>	<u>NA</u>	<u>NA</u>
Tranche target	<u>54</u>	<u>NA</u>	<u>NA</u>
Eligibility ratio	<u>NA</u>	<u>NA</u>	<u>NA</u>
PSE&G load cap	<u>14</u>	<u>NA</u>	<u>NA</u>
JCP&L load cap	<u>8</u>	<u>NA</u>	<u>NA</u>
ACE load cap	<u>3</u>	<u>NA</u>	<u>NA</u>
RECO load cap	<u>1</u>	<u>NA</u>	<u>NA</u>
Statewide load cap	<u>20</u>	<u>NA</u>	<u>NA</u>

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

**ATTACHMENT B
DOCKET NO. ER08050310**

Post-Auction Checklist for the New Jersey 2009 BGS-FP Auction

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

Table 1. Summary of BGS-FP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-FP peak load share (MW)	2,978.6	2,043.4	703.2	107.7	5,832.9
Total tranches needed	29	17	7	1	54
Starting tranche target in auction	29	17	7	1	54
Final tranche target in auction	29	17	7	1	54
Tranche size (%)	1.18	2.27	4.55	25	
Tranche size (approximate MW)	102.71	120.56	100.46	107.65	
Starting EDC load caps (# tranches)	14	8	3	1	
Starting statewide load cap (#tranches)	--	--	--	--	20
Final EDC load caps (# tranches)	14	8	3	1	
Final statewide load cap (#tranches)	--	--	--	--	20
Quantity procured (# tranches)	29	17	7	1	54
Quantity procured (% BGS-FP load)	100%	100%	100%	100%	100%
# Winning bidders	8	4	4	1	10
Maximum # of tranches procured from any one bidder	10	7	3	1	20
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					19.5 15.5
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **	10.372	10.351	10.536	11.270	10.403

* Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Starting tranche target in auction”.

**Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Final tranche target in auction”.

**ATTACHMENT B
DOCKET NO. ER08050310**

Post-Auction Checklist for the New Jersey 2009 BGS-FP Auction

Table 2. Overview of Findings on BGS-FP Auction

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

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

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

B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST

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

QUESTION 1:

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

ANSWER 1: Yes, certify.

CRITERIA:

a. Were all checklist questions satisfactorily answered?

Yes.

QUESTION 2:

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

ANSWER 2: Yes.

PRE-AUCTION CRITERIA

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

Yes, there were 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 was held on both October 3, 2008 and October 9, 2008 in Philadelphia and Washington DC, respectively; (ii) the second session was held on December 5, 2008 in Philadelphia; and (iii) the third session was held on January 20, 2009 in Philadelphia. The first two information sessions were open to any entities interested in participating in the Auction. The third information session was held after the Application process and, thus, was for Registered Bidders only.

Note that 21 companies attended the first information session and 18 companies attended the second information session. In total, 24 companies showed interest in the 2009 Auction by attending one of the first two bidder information sessions. This compares to 30 companies attending one of the first two sessions last year. 11 out of the _____ attended the third bidder information session. All questions asked at the information sessions were adequately answered by NERA.

For the first time this year, interested parties were given the opportunity to participate in select information sessions via Webcast rather than having to attend

in person. Webcast capability was provided as an option for information sessions held on October 9, 2008 in Washington DC and on December 5, 2008 in Philadelphia, while the other sessions remained in person attendance only. Boston Pacific recommended Webcast for select information sessions in order to make it as easy as possible for interested parties to learn about the BGS Auction. We believe that allowing these companies to participate over the Web will only serve to increase potential participation in the BGS Auctions. Many parties chose this option as 7 companies participated exclusively via Webcast in the October 9, 2008 session (2 additional companies chose to participate over Webcast but also sent representatives to physically attend the session). For the December 5, 2008 session, 13 companies participated exclusively over Webcast.

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

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

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

As of January 20, 2009, 168 questions had been asked by bidders since August 5, 2008, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The general topics of questions included: (a) the application process, (b) association and confidential information rules, (c) the Auction Rules, (d) the Supplier Master Agreement, (e) credit, (f) data provided, (g) payments and rates, and (h) other miscellaneous questions.

Bidders had the most questions concerning the association and confidential information rules. Because of the high volume of questions received, NERA issued a specific document compiling all of the FAQ's concerning associations and confidential information. NERA provided responses to all of these questions, which seemed to satisfy bidders. In addition, because of concerns over bidders being able to provide proper credit assurances in the current market, bidders were given an opportunity to seek approval for modifications to the existing letter of credit (LOC) document prior to applications being due.

Starting on January 21, 2009, the Auction Manager sent answers to questions each day to Registered Bidders via email. Boston Pacific was copied onto these emails, and reviewed these FAQs as well.

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

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

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

NERA also maintained a “data room” on their website, which contained data that was updated monthly and additional data that was updated less frequently. NERA provided a document for both of these types of data that provided a description of the data included in the “data room.” Examples of such data include load data, which was updated monthly for each EDC and covered the period through October 2008, and switching statistics that showed the percentage of load and customers that have switched to third party suppliers. This data, and other data in the “data room”, was provided to help bidders prepare their bids. Any time revisions were made to the data, NERA marked this on their website.

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

Yes, before the Trial Auction,

e. Did bidders communicate any material concerns to NERA?

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

f. Were bidders given an opportunity to provide proposals and comments concerning the 2009 Auction Process?

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2008. Furthermore, interested parties were also invited to file initial comments, final comments, and reply comments by August 22, 2008, September 26, 2008, and October 10, 2008, respectively. The Board also held a Legislative-type hearing on September 29, 2008. After reviewing all comments from the EDCs and other interested parties, the Board approved the 2009 BGS Auction Process.

QUESTION 3:

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

ANSWER 3: Yes.

PRE-AUCTION CRITERIA

a. Was the timeline followed?

Yes.

b. Were there updates to the timeline?

Yes, NERA followed the posted calendar of significant events on the BGS website.

The BGS Auction website contained a specific section at the top of the calendar that took note of the upcoming events. It included information from the initial EDC proposal in July 2008 through the Auction in February 2009. As milestones were met, the calendar was updated to reflect each event's completion. As far as Boston Pacific is aware, the Auction process was carried out according to this schedule. In addition, interested parties could sign up for an Auction update mailing list. Reminders of important dates were sent out to all potentially interested bidders and to those registered parties.

QUESTION 4:

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

ANSWER 4: No.

PRE-AUCTION CRITERIA

a. Were all questions answered in the FAQs?

Yes, please see answer to 2b.

b. Were bidder questions asked after January 20, 2009 directly responded to by NERA?

Yes, questions were asked by Registered Bidders after January 20, 2009. NERA provided answers to these questions directly to bidders via email. These answers were distributed daily. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

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

No, bidders did not raise any issues in the FAQs that indicated material uncertainty for bidders. Boston Pacific also monitored various industry news sources and did not discover any events that would produce material uncertainty for bidders.

While we believe no factors created *material* uncertainty for bidders, there were some factors that could have increased the uncertainty facing bidders to a smaller extent for this year's Auction. First, the Board Order was not released until shortly before the start of the Auction. Second, and most importantly, the Auction took place during an overall economic downturn sparked by the credit collapse. While these events, again, produce uncertainty for all participants we do not believe that they produced *material* uncertainty. As noted earlier, bidders were able to pre-screen modifications to the form LOCs.

Another factor which *could* have produced uncertainty for bidders was the fact that solicitations for full-requirements service in Maryland have been largely rejected by the Maryland Commission. To the best of our knowledge these bids were rejected because they fell above the Commission's threshold for a reasonable bid. Bidders could have not participated in the New Jersey process out of concern that their bids would be similarly rejected.

Despite these factors the level of participation and prices received reveal that while some or all of these factors may have had an impact, they did not result in the Auction failing to fill supply at acceptable prices.

d. Did bidders communicate any material concerns to NERA?

No, please see answer to 2e.

e. Was information equitably provided to bidders?

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

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

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

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

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

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

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

QUESTION 5:

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

ANSWER 5: No.

AUCTION WEEK CRITERIA

- a. Was protocol followed for the FP Auction?**

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

b. Were there problems with the electronic bidding process?

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

Boston Pacific had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during three Trial Auctions. For the first Trial Auction on January 15, 2009 Boston Pacific assumed the role of a bidder and verified that bidders' accounts had access to the correct information. We tested the Auction software by submitting problematic bids to determine if the software operated according to the rules and provided proper information to bidders. We also tested NERA's backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols. We found no major issues in our test.

For the second and third Trial Auctions, held on January 16th and January 22nd 2009, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by the EDC's and NERA in the second Trial and by registered bidders in the third Trial. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software.

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

c. Was the back-up bidding process followed?

Yes, Boston Pacific had tested the backup procedure during Trial Auctions. Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 22, 2009.

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,

In this Auction, for the first time, bidders were given an automatic extension after round one. This was done on our suggestion as a way to conceal whether any bidders had decided to not participate in the Auction. Bidders were warned that they still had to provide bids prior to the extension or they would lose an extension themselves.

f. Did bidders communicate any material concerns to NERA?

No.

QUESTION 6:

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

ANSWER 6: Yes.

PRE-AUCTION CRITERIA

a. Was confidential information properly provided to bidders?

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

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

Yes. The first FAQ was posted on the BGS website August 5, 2008. The Part II Application deadline was on January 6, 2009. There were a total of 162 questions posted before the Part II Application deadline. Additional questions asked by bidders were also answered by NERA following the Part II Application deadline.

c. Were the communication protocols followed?

Yes.

AUCTION WEEK CRITERIA

d. Was confidential information properly provided to bidders?

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

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

Yes, please see the answer to 5d.

QUESTION 7:

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

ANSWER 7: No.

AUCTION WEEK CRITERIA

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

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

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

No, all bids were successfully received by NERA.

c. Was NERA aware of any material technical issues?

No, NERA did not indicate any material technical issues.

d. Did bidders communicate any material concerns to NERA?

No, please see 5f.

QUESTION 8:

Were there any unanticipated delays during the FP Auction?

ANSWER 8: No.

QUESTION 9:

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

ANSWER 9: No.

QUESTION 10:

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

ANSWER 10: Yes.

AUCTION WEEK CRITERIA

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

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

QUESTION 11:

Were any security breaches observed with the FP Auction process?

ANSWER 11: No.

To our knowledge, there were no security breaches.

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

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

QUESTION 12:

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

ANSWER 12: Yes.

AUCTION WEEK CRITERIA

a. Were protocols followed as described by NERA?

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

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

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

QUESTION 13:

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

ANSWER 13: Yes.

PRE-AUCTION CRITERIA

a. Were notable changes made to the decrement formulas?

AUCTION WEEK CRITERIA

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

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

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

There were no volume reductions during the Auction. There were no changes to the load caps during the Auction.

QUESTION 14:

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

ANSWER 14: Yes.

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

QUESTION 15:

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

ANSWER 15: No.

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

QUESTION 16:

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

ANSWER 16: Yes.

AUCTION WEEK CRITERIA

All answers to questions reviewed by Boston Pacific seemed relevant and clear. Again, Boston Pacific reviewed electronic messages at the end of each bidding day. In addition, Boston Pacific also performed spot-checks of phone conversations between bidders and the Auction Manager.

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

QUESTION 17:

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

ANSWER 17: No.

Each bidder is permitted 1 recess request and 3 extension requests during the Auction. The Auction includes an automatic extension after round 1.

Therefore, there was no indication that bidders were rushed.

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

Bidders were also able to test the Auction Software during the Trial Auction for Registered Bidders, and therefore were comfortable with it during the actual Auction.

QUESTION 18:

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

ANSWER 18: No.

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

QUESTION 19:

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

ANSWER 19: Yes.

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

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

All interested parties were given ample opportunity to comment on the 2009 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2008. Furthermore, interested parties were also invited to file initial comments, final comments, and reply comments by August 22, 2008, September 26, 2008, and October 10, 2008, respectively. The Board also held a Legislative-type hearing on September 29, 2008.

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

Bidder information sessions were held by the Auction Manager to educate potential bidders on the Auction process. They provided an opportunity for questions to be asked in a public forum. Any questions asked pertaining to the Auction were posted on the BGS Auction website. This FAQ section ensured that all bidders had equal access to information provided to any one bidder. Boston Pacific believes that they were helpful for bidders, as evidenced by the attendance at these sessions and the sophisticated Auction questions and answers given at these sessions.

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

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

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

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

QUESTION 20:

Was there evidence of non-productive “gaming” on the part of bidders?

QUESTION 21:

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

QUESTION 22:

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

ANSWER 20: No.

ANSWER 21: No.

ANSWER 22: No.

a. Were participation levels significantly altered from previous solicitations?

Developing the information to answer these three questions and, more broadly, assessing the competitiveness of the BGS Auction was a central focus of our monitoring efforts. We assessed both structural and behavioral indicators of competitiveness in each round of bidding in both the FP Auction (which includes residential customers as well as some commercial 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).

This is a good number of 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

. 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.

If we compare these levels to previous years we find that

This may have been in response to the fact that credit must be supplied for each tranche the bidder wishes to offer. When credit was easier to come by bidders could afford to offer more tranches. In the current restricted credit environment bidders may be forced into more realistic initial offers.

Of the suppliers who bid, 10 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 37% 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 10 winners in the FP Auction, 1 had a market share over 20%. This was PSE&G Energy with a 37% share.

All other winners won less than a 20% share.

The Herfindahl-Hirschman Index (HHI) is a measure of competitiveness closely related to market shares. Again, some background on the HHI standard is useful. The U.S. Department of Justice has a three-part standard for HHIs when judging the competitive effect of mergers and acquisitions. An HHI at or under 1,000 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is at or below 1,000, it is generally thought that there is no competitive harm from the merger or acquisition; that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,000 and 1,800 is said to indicate moderate concentration. An HHI over 1,800 is said to indicate a highly concentrated market. FERC uses these same standards when it assesses mergers and acquisitions. However, for market-based-rate authority, FERC uses a threshold of 2,500 for the HHI in one of its standards.

For the FP Auction, using the winning shares as market shares, the HHI is 1,982. This puts the HHI for the FP Auction into the low end of the highly concentrated range of the DOJ's HHI brackets. However, at 1,982 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. To include only winning bidders is a narrow focus for calculating an HHI. For example, a more appropriate focus would be the total of 16 suppliers who will serve consumers in 2009-2010; these are the winners in 2007 and 2008, as well as in the 2009 Auction. The HHI in this case would be 1,899 which is only slightly lower.

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

With respect to behavioral indicators, the core of this effort was to detect any sign of collusion among bidders. No evidence of collusion was found in the FP Auction. We assessed the moves of each bidder in each round of bidding. Looking at a panoramic view of tranches bid in each round we detected no evidence of coordination of bidding.

QUESTION 23:

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

ANSWER 23: Yes.

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

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

QUESTION 24:

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

ANSWER 24: Yes.

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

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

the overall tranche-weighted average for the Auction was within our range of expected prices,

2009 BGS Auction				
Product	Tranches Filled	Final Price (cents/kWh)	2008 price (cents /kWh) ¹	% Decrease from 2008
PSE&G	29	10.372	11.15	-7%
JCP&L	17	10.351	11.409	-9%
ACE	7	10.536	11.65	-10%
RECO	1	11.27	12.049	-6%
Total	54			
Average³		10.103	11.328	8%

1) Source: Duxton Pacific 2008 Auction Report

2)

3) Tranche-Weighted average.

Comparing this year's average winning price to last year we can see that prices dropped about 8 percent.

As mentioned above, the full requirements product is not traded publicly on any market. However, other states do also solicit a full requirements product, so a rough comparison with those states can also give us a check on our results. One such state is Delaware, which solicits a full requirements product similar to New Jersey's. In their most recent solicitation, held one week before the FP Auction,

Delaware received a lowest bid price² for its Residential and Small Commercial product (a three year full requirements product similar to FP service in New Jersey) of about 9.7 cents/kWh.

QUESTION 25:

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

ANSWER 25: No.

No, please see the answer to 24. Changes from last year's results were driven primarily by decreases in energy and capacity prices. We believe the decrease in energy prices was driven by decreases in oil, coal and natural gas prices.

The current recession and accompanying credit crisis certainly had an effect on the Auction, but the effect was not unanticipated. We expected to see a drop in bidder participation as firms either reduced their power sales activities or, in extreme cases, shuttered their firm altogether.

We also expected to see an increase in the credit and risk component embedded within bid prices.

QUESTION 26:

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

ANSWER 26: No

² Delaware sought three "blocks" (i.e. tranches) of Residential and Small Commercial power in their recent procurement. The price shown, then, is the winning price for one tranche, winning prices for the other two tranches were higher.

III. THE NEW JERSEY 2009 BGS-CIEP AUCTION

A. POST-AUCTION CHECKLIST

**ATTACHMENT B
DOCKET NO. ER08050310**

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

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

Table 1. Summary of BGS-CIEP Auction

	PSE&G	JCP&L	ACE	RECO	Total
BGS-CIEP peak load share (MW)	1,696.4	821.4	323.0	37.4	2,878.2
Total tranches needed	23	11	5	1	40
Starting tranche target in auction	23	11	5	1	40
Final tranche target in auction	23	11	5	1	40
Tranche size (%)	4.35	9.09	20	100	
Tranche size (approximate MW)	73.76	74.67	64.60	37.40	
Starting load cap (# tranches)	--	--	--	--	14
Final load cap (# tranches)	--	--	--	--	14
Quantity procured (# tranches)	23	11	5	1	40
Quantity procured (% BGS-CIEP load)	100%	100%	100%	100%	100%
# Winning bidders	4	3	2	1	5
Maximum # of tranches procured from any one bidder	10	5	4	1	14
Minimum and maximum starting prices prior to indicative bids (\$/MW-day)					340 275
Starting price at start of auction (\$/MW-day)*					
Price paid to winning bidders (\$/MW-day)**	203.250	203.920	215.000	215.250	205.203

* Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Starting tranche target in auction”.

** Price shown in “Total” column is an average across the EDCs weighted by each EDC’s “Final tranche target in auction”.

**ATTACHMENT B
DOCKET NO. ER08050310**

Post-Auction Checklist for the New Jersey 2009 BGS-CIEP Auction

Table 2. Overview of Findings on BGS-CIEP Auction

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

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

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

B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST

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

QUESTION 1:

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

ANSWER 1: Yes, certify.

CRITERIA:

a. Were all checklist questions satisfactorily answered?

Yes.

QUESTION 2:

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

ANSWER 2: Yes.

PRE-AUCTION CRITERIA

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

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

There were three Pre-Bid Information Sessions held: (i) the first session was held on both October 3, 2008 and October 9, 2008 in Philadelphia and Washington DC, respectively; (ii) the second session was held on December 5, 2008 in Philadelphia; and (iii) the third session was held on January 20, 2009 in Philadelphia. The first two information sessions were open to any entities interested in participating in the Auction. The third information session was held after the Application process and, thus, was for Registered Bidders only.

Note that 21 companies attended the first information session and 18 companies attended the second information session. In total, 24 companies showed interest in the 2009 Auction by attending one of the first two bidder information sessions. This compares to 30 companies attending one of the first two sessions last year. 5 out of the _____ attended the third bidder information session. All questions asked at the information sessions were adequately answered by NERA.

For the first time this year, interested parties were given the opportunity to participate in select information sessions via Webcast rather than having to attend

in person. Webcast capability was provided as an option for information sessions held on October 9, 2008 in Washington DC and on December 5, 2008 in Philadelphia, while the other sessions remained in person attendance only. Boston Pacific recommended Webcast for select information sessions in order to make it as easy as possible for interested parties to learn about the BGS Auction. We believe that allowing these companies to participate over the Web will only serve to increase potential participation in the BGS Auctions. Many parties chose this option as 7 companies participated exclusively via Webcast in the October 9, 2008 session (2 additional companies chose to participate over Webcast but also sent representatives to physically attend the session). For the December 5, 2008 session, 13 companies participated exclusively over Webcast.

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

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

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

As of January 20, 2009, 168 questions had been asked by bidders since August 5, 2008, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The general topics of questions included: (a) the application process, (b) association and confidential information rules, (c) the Auction Rules, (d) the Supplier Master Agreement, (e) credit, (f) data provided, (g) payments and rates, and (h) other miscellaneous questions.

Bidders had the most questions concerning the association and confidential information rules. Because of the high volume of questions received, NERA issued a specific document compiling all of the FAQ's concerning associations and confidential information. NERA provided responses to all of these questions, which seemed to satisfy bidders. In addition, because of concerns over bidders being able to provide proper credit assurances in the current market, bidders were given an opportunity to seek approval for modifications to the existing letter of credit (LOC) document prior to applications being due.

Starting on January 21, 2009, the Auction Manager sent answers to questions each day to Registered Bidders via email. Boston Pacific was copied onto these emails, and reviewed these FAQs as well.

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

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

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

NERA also maintained a “data room” on their website, which contained data that was updated monthly and additional data that was updated less frequently. NERA provided a document for both of these types of data that provided a description of the data included in the “data room.” Examples of such data include load data, which was updated monthly for each EDC and covered the period through October 2008, and switching statistics that showed the percentage of load and customers that have switched to third party suppliers. This data, and other data in the “data room”, was provided to help bidders prepare their bids. Any time revisions were made to the data, NERA marked this on their website.

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

Yes, before the Trial Auction,

e. Did bidders communicate any material concerns to NERA?

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

f. Were bidders given an opportunity to provide proposals and comments concerning the 2009 Auction Process?

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2008. Furthermore, interested parties were also invited to file initial comments, final comments, and reply comments by August 22, 2008, September 26, 2008, and October 10, 2008, respectively. The Board also held a Legislative-type hearing on September 29, 2008. After reviewing all comments from the EDCs and other interested parties, the Board approved the 2009 BGS Auction Process.

QUESTION 3:

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

ANSWER 3: Yes.

PRE-AUCTION CRITERIA

a. Was the timeline followed?

Yes.

b. Were there updates to the timeline?

Yes, NERA followed the posted calendar of significant events on the BGS website.

The BGS Auction website contained a specific section at the top of the calendar that took note of the upcoming events. It included information from the initial EDC proposal in July 2008 through the Auction in February 2009. As milestones were met, the calendar was updated to reflect each event's completion. As far as Boston Pacific is aware, the Auction process was carried out according to this schedule. In addition, interested parties could sign up for an Auction update mailing list. Reminders of important dates were sent out to all potentially interested bidders and to those registered parties.

QUESTION 4:

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

ANSWER 4: No.

PRE-AUCTION CRITERIA

a. Were all questions answered in the FAQs?

Yes, please see answer to 2b.

b. Were bidder questions asked after January 20, 2009 directly responded to by NERA?

Yes, questions were asked by Registered Bidders after January 20, 2009. NERA provided answers to these questions directly to bidders via email. These answers were distributed daily. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

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

No, bidders did not raise any issues in the FAQs that indicated material uncertainty for bidders. Boston Pacific also monitored various industry news sources and did not discover any events that would produce material uncertainty for bidders.

While we believe no factors created *material* uncertainty for bidders, there were some factors that could have increased the uncertainty facing bidders to a smaller extent for this year's Auction. First, the Board Order was not released until shortly before the start of the Auction. Second, and most importantly, the Auction took place during an overall economic downturn sparked by the credit collapse. While these events, again, produce uncertainty for all participants we do not believe that they produced *material* uncertainty. As noted earlier, bidders were able to pre-screen modifications to the form LOCs.

Another factor which *could* have produced uncertainty for bidders was the fact that solicitations for full-requirements service in Maryland have been largely rejected by the Maryland Commission. To the best of our knowledge these bids were rejected because they fell above the Commission's threshold for a reasonable bid. Bidders could have not participated in the New Jersey process out of concern that their bids would be similarly rejected.

Despite these factors the level of participation and prices received reveal that while some or all of these factors may have had an impact, they did not result in the Auction failing to fill supply at acceptable prices.

d. Did bidders communicate any material concerns to NERA?

No, please see answer to 2e.

e. Was information equitably provided to bidders?

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

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

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

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

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

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

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

QUESTION 5:

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

ANSWER 5: No.

AUCTION WEEK CRITERIA

a. Was protocol followed for the CIEP Auction?

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

b. Were there problems with the electronic bidding process?

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

Boston Pacific had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during three Trial Auctions. For the first Trial Auction on January 15, 2009 Boston Pacific assumed the role of a bidder and verified that bidders' accounts had access to the correct information. We tested the Auction software by submitting problematic bids to determine if the software operated according to the rules and provided proper information to bidders. We also tested NERA's backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols. We found no major issues in our test.

For the second and third Trial Auctions, held on January 16th and January 22nd 2009, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by the EDC's and NERA in the second Trial and by registered bidders in the third Trial. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software.

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

c. Was the back-up bidding process followed?

Yes, Boston Pacific had tested the backup procedure during Trial Auctions. Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 22, 2009.

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,

In this Auction, for the first time, bidders were given an automatic extension after round one. This was done on our suggestion as a way to conceal whether any bidders had decided to not participate in the Auction. Bidders were warned that they still had to provide bids prior to the extension or they would lose an extension themselves.

f. Did bidders communicate any material concerns to NERA?

No.

QUESTION 6:

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

ANSWER 6: Yes.

PRE-AUCTION CRITERIA

a. Was confidential information properly provided to bidders?

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

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

Yes. The first FAQ was posted on the BGS website August 5, 2008. The Part II Application deadline was on January 6, 2009. There were a total of 162 questions posted before the Part II Application deadline. Additional questions asked by bidders were also answered by NERA following the Part II Application deadline.

c. Were the communication protocols followed?

Yes.

AUCTION WEEK CRITERIA

d. Was confidential information properly provided to bidders?

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

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

Yes, please see the answer to 5d.

QUESTION 7:

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

ANSWER 7: No.

AUCTION WEEK CRITERIA

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

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

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

No, all bids were successfully received by NERA.

c. Was NERA aware of any material technical issues?

No, NERA did not indicate any material technical issues.

d. Did bidders communicate any material concerns to NERA?

No, please see 5f.

QUESTION 8:

Were there any unanticipated delays during the CIEP Auction?

ANSWER 8: No.

QUESTION 9:

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

ANSWER 9: No.

QUESTION 10:

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

ANSWER 10: Yes.

AUCTION WEEK CRITERIA

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

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

QUESTION 11:

Were any security breaches observed with the CIEP Auction process?

ANSWER 11: No.

To our knowledge, there were no security breaches.

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

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

QUESTION 12:

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

ANSWER 12: Yes.

AUCTION WEEK CRITERIA

a. Were protocols followed as described by NERA?

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

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

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

QUESTION 13:

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

ANSWER 13: Yes.

PRE-AUCTION CRITERIA

a. Were notable changes made to the decrement formulas?

AUCTION WEEK CRITERIA

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

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

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

There were no volume reductions during the Auction. There were no changes to the load caps during the Auction.

QUESTION 14:

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

ANSWER 14: Yes.

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

QUESTION 15:

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

ANSWER 15: No.

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

QUESTION 16:

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

ANSWER 16: Yes.

AUCTION WEEK CRITERIA

All answers to questions reviewed by Boston Pacific seemed relevant and clear. Again, Boston Pacific reviewed electronic messages at the end of each bidding day. In addition, Boston Pacific also performed spot-checks of phone conversations between bidders and the Auction Manager.

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

QUESTION 17:

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

ANSWER 17: No.

Each bidder is permitted 1 recess request and 3 extension requests during the Auction. The Auction includes an automatic extension after round 1.

Therefore, there was no indication that bidders were rushed.

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

Bidders were also able to test the Auction Software during the Trial Auction for Registered Bidders, and therefore were comfortable with it during the actual Auction.

QUESTION 18:

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

ANSWER 18: No.

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

QUESTION 19:

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

ANSWER 19: Yes.

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

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

All interested parties were given ample opportunity to comment on the 2009 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2008. Furthermore, interested parties were also invited to file initial comments, final comments, and reply comments by August 22, 2008, September 26, 2008, and October 10, 2008, respectively. The Board also held a Legislative-type hearing on September 29, 2008.

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

Bidder information sessions were held by the Auction Manager to educate potential bidders on the Auction process. They provided an opportunity for questions to be asked in a public forum. Any questions asked pertaining to the Auction were posted on the BGS Auction website. This FAQ section ensured that all bidders had equal access to information provided to any one bidder. Boston Pacific believes that they were helpful for bidders, as evidenced by the attendance at these sessions and the sophisticated Auction questions and answers given at these sessions.

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

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

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

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

QUESTION 20:

Was there evidence of non-productive “gaming” on the part of bidders?

QUESTION 21:

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

QUESTION 22:

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

ANSWER 20: No.

ANSWER 21: No.

ANSWER 22: No.

a. Were participation levels significantly altered from previous solicitations?

Developing the information to answer these three questions and, more broadly, assessing the competitiveness of the BGS Auction was a central focus of our monitoring efforts. We assessed both structural and behavioral indicators of competitiveness in each round of bidding in both the FP Auction (which includes residential customers as well as some commercial 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).

This is a good number of 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

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

Of the suppliers who bid, 5 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 5 winners in the CIEP Auction, 2 had a market share over 20% (FPL at 35% and Consolidated Edison at 25%). The other three winners, had a market share at or below 20%.

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 2,450. This puts the HHI for the CIEP Auction well into the highly concentrated range of the DOJ's HHI brackets. However, at 2,450 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. To include only winning bidders is a narrow focus for calculating an HHI.

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

With respect to behavioral indicators, the core of this effort was to detect any sign of collusion among bidders. No evidence of collusion was found in the CIEP Auction. We assessed the moves of each bidder in each round of bidding. Looking at a panoramic view of tranches bid in each round we detected no evidence of coordination of bidding.

QUESTION 23:

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

ANSWER 23: Yes.

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

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

QUESTION 24:

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

ANSWER 24: Yes.

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

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

Although CIEP is also a full requirements product, the Auction price primarily reflects a fixed price for the capacity portion of that service, since bidders are paid the spot energy price.

QUESTION 25:

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

ANSWER 25: No.

No. We note that while effect was not material one potential effect on the CIEP Auction was the switch by PJM to weekly settlements. In the past we presumed

that a CIEP supplier would purchase spot energy and pass it on to their customers. At the end of the month they would receive their revenue from customers and use that revenue to pay for their purchases of spot energy.

With the switch to weekly settlement in PJM a CIEP supplier now must make weekly payments for their spot energy and wait until the end of the month to receive payments. In effect, this means that they must extend credit to make these purchases. Bidders may have been including the increased cost of this credit extension in their bids. This may explain why CIEP rates are not quite as low as last year.

QUESTION 26:

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

ANSWER 26: No