

ANNUAL FINAL REPORT  
ON THE  
2013 BGS FP AND CIEP AUCTIONS  
AND THE RECO SWAP RFP

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 2013 as we have for the previous six years. We are pleased to provide this report which is the Annual Final Report required under our contract. The Board defined the purpose and content of this Annual Final Report as follows:

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

It is essential for the Board to have as much information as possible about the Auctions at the time it makes its decision on certification. To that end, the most explicit basis for the Board's certification decision on the Fixed Price (FP), Commercial and Industrial Energy Pricing (CIEP), and RECO Auctions were the Post-Auction Checklists provided to the Board on December 18, 2012, February 7, 2013, and April 26, 2013. These checklists contain (a) a factual statement of Auction results and (b) the answers to the questions about the conduct and results of each Auction. Because of the important role that 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 FP and CIEP checklists for the BGS Auction. After this Introduction and Summary, the bulk of the Final Annual Report is made up of these Supplemental Checklists which, we believe, show the extensive depth and breadth of the analyses that underlie the Board's certification decisions.

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

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

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

The good news is that, as a result of this year's FP Auction, residential customers of three of the four EDCs will see rate decreases of between 3.0 and 5.5 percent. These decreases were caused by replacing expiring higher-cost contracts solicited in 2010 with lower-priced supply from this year's Auction. Compared to the contracts being replaced from 2010, the tranche-weighted average winning bid in this Auction was 7.6 percent less expensive. This decrease was expected, given the lower market price of energy compared to 2010. These lower energy prices were driven in large part by lower natural gas prices resulting from the expansion of supply from shale gas.

However, PSE&G's residential rates will remain roughly unchanged, with a 0.05 percent rate increase. Though PSE&G's auction results are 3.7 percent lower than the contracts from 2010 being replaced this decrease is offset by other components of the retail rate. PSE&G's method of allocating BGS charges amongst rate classes also has an effect.

Compared to last year's winning prices, the tranche-weighted average FP winning price was up 6.3 percent. The chief driver in this increase was the PSE&G product, which increased 9.9 percent. This increase was driven primarily by increases in the cost of transmission, as PSE&G has several major projects underway. The other three EDCs only saw no or very small increases in prices.

### **Fairness and Transparency**

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

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

### Competitiveness

Our second reason for recommending certification of the FP Auction results was that the Auction was sufficiently competitive. We assessed several indicators of the competitiveness. First, we looked at the total number of bidders in the Auction. A large number of bidders is helpful because it tends to increase the total supply bid in the Auction, pushing prices down and making it harder for bidders to carry out any collusive schemes. This year there were 17 registered bidders, [REDACTED] This is a healthy number of bidders for an auction of this size [REDACTED]

Second, we looked at the ratio of the quantity of electricity service offered to the quantity actually needed at several points in the Auction process. This excess is important because it drives prices down as the Auction proceeds; the price for a given product “ticks down” (is decremented) if and only if there are excess offers for that product. For that reason, we like to see bidders come in and stay in with the maximum number of tranches offered through many rounds of bidding. [REDACTED]

Third, we looked at the number of winners. We like to see a large number of winners for several reasons. First, it means that the Auction was competitive, with multiple parties pushing down the price at the end. Second, it sends a signal to other participants that no one party is dominating the Auction and that anyone can win. Third, it increases the likelihood of these bidders returning in future years. This year there were eight winners, as compared to eleven last year and eight winners two years ago. Eight winners [REDACTED] is a large amount of diversity. Additionally, three of those winners had not won in the last four BGS Auctions, [REDACTED] The fact that a new entrant can enter, or a bidder can drop out of participation and re-enter years later, and win supply in the Auction also speaks well to the transparency and fairness of the process.

Fourth, we analyzed the results using the Herfindahl-Hirschman Index, or HHI, which looks at the market shares of each participant. The U.S. Department of Justice primarily uses a three-part standard for HHIs when judging the competitive effect of mergers and acquisitions. An HHI below 1,500 is a safe harbor of sorts because the market is said to be un-concentrated,

that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,500 and 2,500 is said to indicate moderate concentration. An HHI over 2,500 is said to indicate a highly concentrated market. FERC uses more conservative HHIs when analyzing mergers and acquisitions. FERC characterizes a market with an HHI below 1,000 as unconcentrated, HHIs between 1,000 and 1,800 indicate moderate concentration, and HHIs above 1,800 indicate a highly concentrated market.

For just the winning suppliers, the HHI was 1,838, in the moderately concentrated range by DOJ standards. If we expand the market to also include winners in the previous two auctions – to cover all winners of supply for the upcoming energy year – the HHI is 1,573, which is the low end of the moderately concentrated range.

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

[REDACTED]

Finally, we looked for signs of collusive or coordinated bidding behavior. [REDACTED]

[REDACTED] We found no evidence of any collusive or anti-competitive actions.<sup>2</sup>

**Prices Consistent with Market Conditions**

The third reason for recommending certification of the BGS FP Auction results was that winning prices were consistent with broader market conditions. As noted above, we expected that prices would be lower as compared to the contracts that are being replaced due to decreases in natural gas prices over the past few years. These decreases are due in large part to the emergence of shale gas which, alongside the recession, drove Henry Hub futures prices from over \$6/MMBtu during the 2010 Auction to less than \$4/MMBtu during this Auction. In fact this is what happened; winning prices were, on average, down 7.6 percent from the contracts procured in the 2010 Auction.

As compared to last year, prices were up 6.3 percent. This higher average price compared to last year is largely the result of increases in the cost of transmission charges specific

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<sup>2</sup> Had we detected any collusive behavior in the Auction we did have the power to call a recess and discuss the issue with the Auction Manager and Staff.

to PSE&G's zone, where the winning price increased 9.9 percent as compared to last year. PSE&G's transmission rate last year was \$76.94/MW-Day, this year it was \$115.85/MW-day. Winning prices for the three other utilities rose just 2.4 percent.

Our primary test of prices involved comparing the winning prices with the predicted ranges from our Benchmark Pricing Model. [REDACTED]

[REDACTED] The output of the model is a range of prices that we consider "reasonable".

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

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

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

### **Fairness and Transparency**

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

### **Competitiveness**

We used the same indicators of competitiveness as we did for the FP Auction. While we found no problems, based on these indicators the CIEP Auction is somewhat less competitive than the FP Auction, which is to be expected given the smaller amount of supply bid out.

- First, there were nine registered bidders [REDACTED] this is a good number of bidders for this process.
- Second, the excess quantity offered was adequate. [REDACTED]
- Third, there were six winners in the Auction. This is the same as last year's Auction.
- Fourth, the HHI for winning bids was 2,624, [REDACTED]  
[REDACTED] The number of tranches bid within 5% of the winning prices suggests a competitive result.
- Fifth, we, along with our Auction Expert, [REDACTED] found no evidence of collusion or anti-competitive behavior.

**Prices Consistent with Market Conditions**

Before discussing price we note that the CIEP price is not like the FP price. Winning bidders in the CIEP Auction provide a similar full requirements service but are paid the spot market price for energy delivered along with \$6/MWh for ancillary service provided. The price they offer into the CIEP Auction is meant to essentially cover (a) the cost of capacity and (b) the cost of meeting New Jersey's Renewable Portfolio Standards.

With that as a background, we begin by noting that a large increase in winning prices was expected due to the increase in the cost of capacity as set by PJM's annual RPM auction. Adjusted for the relevant incremental auctions, RPM prices for the 2012-2013 energy year were \$143.06/MW-day for ACE, JCP&L and RECO and \$157.73/MW-day for PSE&G, while for the 2013-2014 energy year, the RPM price for all four EDCs was \$250.12/MW-Day.

As expected, winning CIEP prices were much higher than last year. For PSE&G, the price increased 109.8 percent, from \$128.34/MW-day to \$269.29/MW-day. Overall the tranche-weighted average winning price across all four utilities was about \$271.52/MW-day, up 115.2 percent from last year.

We also developed a rough benchmark for the CIEP product. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C. THE ROCKLAND ELECTRIC COMPANY SWAP RFP**

Every three years Rockland Electric Company (RECO) has conducted a separate RFP to procure price hedges for its non-PJM load within New Jersey. Boston Pacific recommended that the Board certify the results of the second such RECO RFP held this past year. This RFP successfully procured financially settled “fixed for floating” futures transactions for both energy and capacity for just the 2013-2014 energy year, to be settled on the NYMEX exchange. As a result, RECO has fixed a price for the expected energy and capacity needs of its customers outside of PJM.

[REDACTED]  
[REDACTED] For the energy tranche, the winning price was

\$51.10/MWh. [REDACTED] For the capacity tranche, the winning price was \$3.81/kW-month. [REDACTED]

This was RECO's second procurement. RECO's first RFP, held December 18, 2012, [REDACTED] had sought three-year bilateral swap contracts for energy and capacity. The primary reason for the procurement's failure was a too-small pool of potential bidders due to RECO's requirement that bidders must have an existing International Swaps and Derivatives Association (ISDA) Agreement with RECO in order to bid. Uncertainty over the future of RECO's non-BGS zone due to the anticipated 2014 formation in RECO's NYISO territory of the Lower Hudson Valley capacity zone and concern over what effects Dodd-Frank would have on the swap product being offered by RECO were also contributing factors.

Because RECO did not provide a back-up procurement procedure in its July 2012 BGS filing, it had to submit a new proposal after this failure. In January, RECO filed a second RFP proposal. This auction sought one year of NYMEX exchange-cleared futures contracts in two fixed quantity tranches – one for energy and one for capacity. The use of an exchange-cleared product opened the auction to many more bidders by eliminating both the need for a pre-existing swap contract with RECO and some of the uncertainty about Dodd-Frank regulations. The process was approved by the Board in March [REDACTED]

[REDACTED] The disadvantage to this format, as compared to the first RFP, was that the products were not load following; RECO had to estimate the total number of capacity and energy contracts it would need for the upcoming year. Note that because this Auction was for a single year, RECO will need to file another proposal in 2013, as part of its BGS filing, to procure future price hedges for these customers.

RECO divided its need into two products; a bundle of on and off-peak energy contracts and a bundle of capacity contracts. Each RFP started with an opening price and continued for ten minutes. During this time bidders could see their bids as well as the lowest current bid price. When time expired the lowest-priced bidder was declared the winner.

In recommending approval of this second procurement we used the same three criteria as in our recommendations for the BGS Auction: (a) the Auction was open, fair and transparent; (b) the Auction was sufficiently competitive; and (c) the winning prices were consistent with broader market conditions. Below is a discussion of the results of this RFP.

### **Fairness and Transparency**

We believe the RECO procurement was open, fair and transparent for several reasons. First, the procurement was for a well-defined, familiar, exchange-cleared product. All elements

of the contract besides price were defined prior to the Auction, and winning bidders were selected solely 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.

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

### **Competitiveness**

We used many of the same indicators of competitiveness as we did for BGS Auction. We found the product to be competitive.

- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] This is a good number of bidders for this process.
- Second, there were two winners, one for each tranche bid out.
- Third, we reviewed each auction result and found no evidence of collusion or anti-competitive behavior.

### **Prices Consistent with Market Conditions**

The winning prices for RECO's Swap RFP were consistent with market prices for the energy and capacity product. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Winning bids were in-line with the prices-to-beat provided by RECO. [REDACTED]

[REDACTED]

Boston Pacific also developed a price benchmark for each product. [REDACTED]

[REDACTED]

**D. LONG-TERM COMPETITIVENESS**

In an effort to provide the Board with a longer-term look at the competitiveness of the FP Auction, we continue to provide a review of Auction participation over the last several years. Our findings are in the tables below.

[REDACTED]

**Table One**  
**[TABLE REDACTED]**

[REDACTED]

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

[REDACTED]

**Table Two**  
**[TABLE REDACTED]**

[REDACTED]

Both of those metrics indicate a very competitive process. Second, bidders are able to leave the process one year and re-enter later [REDACTED]. This is a good sign of the transparency of the Auction. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In terms of who is supplying the BGS-FP product, we looked at trends in FP winners. Figure One, below, displays how much load each supplier served for each energy year (i.e. June-May period) from 2008 to 2013.<sup>3</sup> Each column in Figure One is organized from the bottom up as 2008's largest supplier to smallest supplier; newer suppliers are added on top as they begin supplying. The columns then map out the growth or decline in load share through the subsequent energy years.

From this Figure we see that 24 different suppliers have provided (or will provide) supply to FP ratepayers<sup>4</sup>. For the 2013-14 year 16 suppliers will provide FP service (or 15 if Constellation and Exelon are considered as one supplier). PSEG has been the largest supplier over that period, essentially winning the load cap, around 35 percent of total supply, in each year. Beyond PSEG, however, the positions of bidders have shifted over the years. For example, PPL served roughly 19 percent of supply from 2008 to 2010, but will serve none in 2013. We also see new parties such as TransCanada taking larger shares in recent years. All this is indicative of a very competitive process.

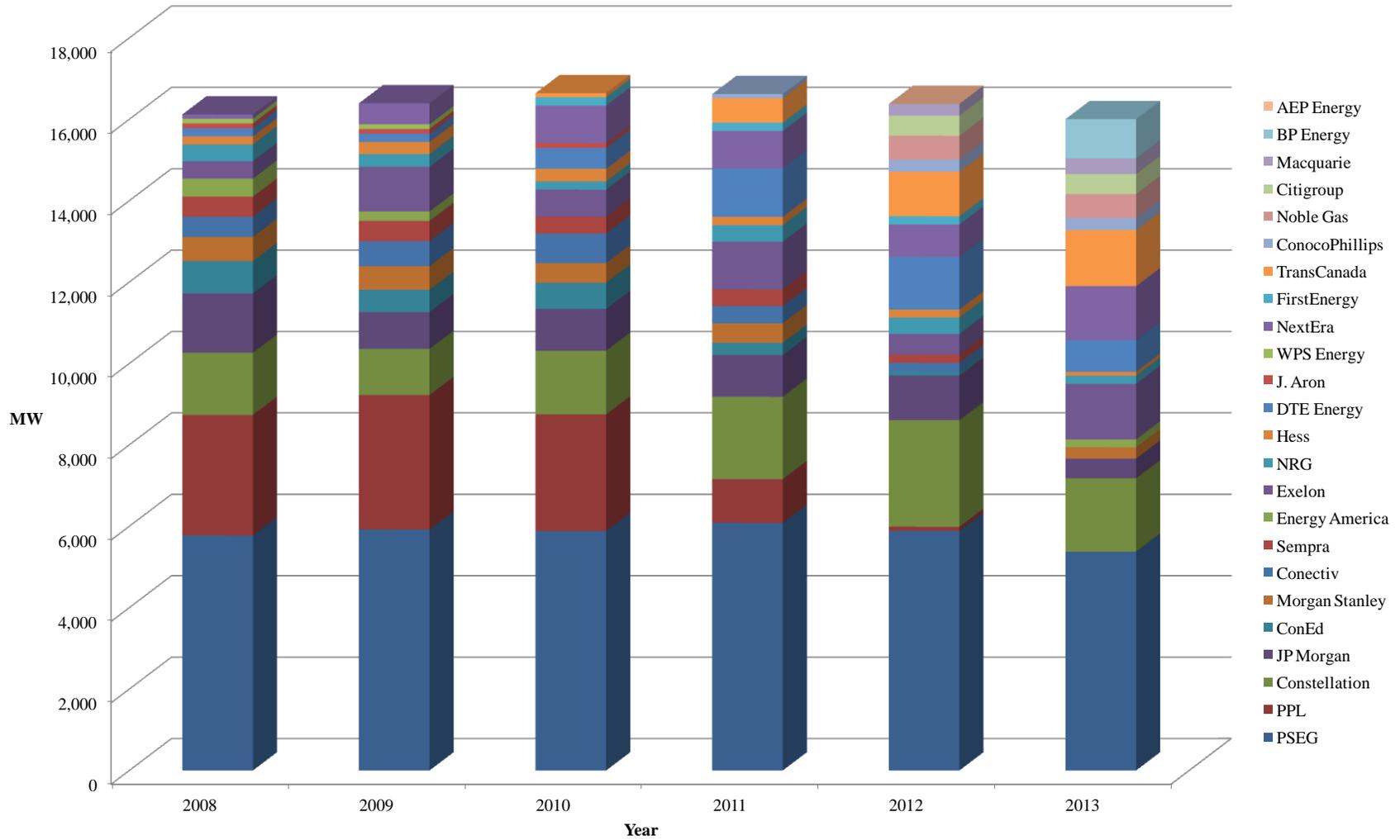
From this review we can see that the FP Auction, [REDACTED] remains a very competitive process going forward.

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<sup>3</sup> Our calculations here are based solely on the winning bidders from each Auction and do not account for mergers, such as the Exelon-Constellation merger, or any contracts that were subsequently assigned. However, we do account for any bidders who have always bid under the same parent company, such as Coral Power merging into its parent company Shell and Florida Power & Light launching its energy trading subsidiary, NextEra.

<sup>4</sup> Note that WPS and Energy America won tranches in the 2007 BGS Auction and therefore were contracted to supply load in 2008 through 2010.

**Figure One**  
**Estimated MW of FP Energy Served, by Supplier**



**E. RECOMMENDATIONS**

We are always on the lookout for ways in which to improve the BGS Auction process. As deregulated markets in PJM have begun to mature, PJM States have been looking for innovative ways to ensure their long-term reliability, develop renewable energy resources and create incentives for new technology. Ensuring that the lights stay on at a reasonable price is no longer enough.

With that as a backdrop we always want to be sure that the BGS Auction is serving New Jersey’s goals. Below we present recommendations that we believe will assist the State going forward.

**Concerns Raised by Low Demand for the RECO BGS-CIEP Product**

In this most recent CIEP Auction, RECO’s product suffered from low demand. [REDACTED]

Whereas the winning prices of the CIEP product for the other three utilities were within 2 percent of each other, the RECO CIEP winning price was about 36 percent more expensive [REDACTED]

**Table Three**  
**[TABLE REDACTED]**

The reason for the low interest in the RECO CIEP product is likely because it supplies a relatively small number of bidders and MW. We calculated at the time of the Auction that there were only nine customers, representing about six MW of load. These customers are free to leave to third-party suppliers, so this load could be even further reduced. Therefore, bidders in the CIEP Auction had very little interest in serving this load.

This lack of interest leads us to consider alternate ways of serving this load. Of course, there is the option to take no action and continue the process as is done today. However, if the Board is interested, below we list out several options along with the positives and negatives of each option:

- Remove the RECO CIEP product from the BGS Auction and have RECO procure needed supply through bilateral contracts. This option would give

RECO some ability to negotiate on behalf of the CIEP customers, but would not assure that negotiations were open, fair and transparent. The BPU would only be able to review the deal proposed (and RECO's description of its process for securing the offer) and accept or deny the result.

- Bundle the RECO CIEP product with that of another EDC. This strategy would eliminate the RECO CIEP product and bundle it with a larger, more popular product, such as the PSE&G CIEP product. This would likely guarantee that the RECO CIEP customers would get served, but would also likely cause difficulties with administering the contracts. Such difficulties could unnecessarily raise the price of the overall product or even drive bidders to not offer the product.
- Eliminate the RECO CIEP product altogether. This would simplify the BGS Auction and force the remaining RECO CIEP customers to a third-party supplier. Since EDECA's requirement is that "until the board specifically finds it to be no longer necessary and in the public interest, each electric public utility shall provide basic generation service."<sup>5</sup> It would likely require a conclusion that the service is no longer needed for RECO CIEP customers. Also, it may draw complaints from the few existing CIEP customers, who may have reasons for remaining on the schedule and it would remove the "backstop" of BGS service for larger customers should something happen in the wholesale market.
- Change the Auction method to a sealed bid process. Under the current process bidders can see if there is no excess interest in a product because the price will not "tick down." If the RECO CIEP product were procured separately, via a single-round sealed bid any interested bidders would have to offer their "best" price for the product. This option would not eliminate the central problem of the RECO CIEP product – low demand – and may be complicated to implement since it would require a separate process.

The Board is free to consider all or none of these options. At this point we would recommend keeping with the current system for another year as there is no clearly superior option. This would allow us to see if this year was simply a fluke and require the least disruption of the current process. Also, RECO does file contingency plans in case of low bidder turnout. If next year's Auction does not produce adequate turnout for this product we would recommend further consideration be given to eliminating the product altogether (or other options if the Board favors them).

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<sup>5</sup> N.J.S.A. 48:3-57.9 (a) 1.

**II. THE NEW JERSEY 2013 BGS-FP AUCTION**

A. POST-AUCTION CHECKLIST

**ATTACHMENT B  
DOCKET NO. ER12060485**

**POST-AUCTION CHECKLIST  
FOR THE NEW JERSEY 2013 BGS-FP AUCTION**

Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 at 8:55 am on Monday, February 4, 2013

Auction finished with the close of Round 21 at 1:00 pm on Tuesday, February 5, 2013

	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		NA	NA
Tranche target	54	NA	NA
Eligibility ratio		NA	NA
PSE&G load cap	13	NA	NA
JCP&L load cap	8	NA	NA
ACE load cap	3	NA	NA
RECO load cap	1	NA	NA
Statewide load cap	20	NA	NA

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

**ATTACHMENT B  
DOCKET NO. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-FP Auction**

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

**Table 1. Summary of BGS-FP Auction**

	<b>PSE&amp;G</b>	<b>JCP&amp;L</b>	<b>ACE</b>	<b>RECO</b>	<b>Total</b>
BGS-FP peak load share (MW)	2,616.64	1,789.84	640.05	90.58	5,137.11
Total tranches needed	28	18	7	1	54
Starting tranche target in auction	28	18	7	1	54
Final tranche target in auction	28	18	7	1	54
Tranche size (%)	1.18	1.89	4.55	25.00	
Tranche size (approximate MW)	93.45	99.44	91.44	90.58	
Starting EDC load caps (# tranches)	13	8	3	1	
Starting statewide load cap (#tranches)	--	--	--	--	20
Final EDC load caps (# tranches)	13	8	3	1	
Final statewide load cap (#tranches)	--	--	--	--	20
Quantity procured (# tranches)	28	18	7	1	54
Quantity procured (% BGS-FP load)	100%	100%	100%	100%	100%
# Winning bidders	7	6	4	1	8
Maximum # of tranches procured from any one bidder	11	5	3	1	15
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					16.0 12.5
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **	9.218	8.370	8.727	9.258	8.872

\* 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. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-FP Auction**

**Table 2. Overview of Findings on BGS-FP Auction**

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

	<b>Question</b>	<b>Comments</b>
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

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

**B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST**

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

**QUESTION 1:**

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

**ANSWER 1:** Yes, certify.

**CRITERIA:**

**a. Were all checklist questions satisfactorily answered?**

Yes.

**QUESTION 2:**

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

**ANSWER 2:** Yes.

**PRE-AUCTION CRITERIA**

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

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

There were three Pre-Bid Information Sessions: the first on September 28, 2012, the second on November 30, 2012, and the third on January 23, 2013. All three were held in Philadelphia.

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

Note that 11 companies attended the first information session and 5 companies attended the second information session. In total, 13 companies showed interest in the FP and/or CIEP 2013 Auction by attending one of the first two bidder information sessions. This compares to 14 companies attending one of the first two sessions last year. [REDACTED] attended the third bidder information session. This relatively low turnout, contrasted with the high turnout of actual bidders in the Auction itself, reflects the fact that the process is very stable and well-known by most of the participants. All questions asked at the information sessions were adequately answered by NERA.

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

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

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

As of January 21, 2013, 162 questions had been asked by bidders since July 30, 2012, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The topics of questions included: (a) Applications, (b) Association and Confidential Information Rules, (c) Auction Rules, (d) BGS Supplier Master Agreement, (e) Credit, (f) Data, (g) Payments and Rates, and (h) other general questions.

Bidders had the most questions concerning the association and confidential information rules. NERA provided responses to all of these questions, which seemed to satisfy bidders.

Starting on January 22, 2013, the Auction Manager sent answers to questions received regularly to Registered Bidders via email. Boston Pacific reviewed these FAQs as well.

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

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

The Auction information listed below was provided according to or earlier than the schedule posted by NERA. This information included: (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. We note that the schedule was revised at one point due to delays caused by Hurricane Sandy.

NERA also maintained a "data room" on their website, which contained data that was updated monthly and additional data that was updated less frequently. NERA provided descriptions of both types of data. This data room helped bidders prepare their bids. Examples of the data posted here included (a) load data, which was updated monthly for each EDC and most of which covered the period through December 2012, and (b)

switching statistics that showed the percentage of load and number of customers that have switched to third party suppliers. Any revisions made to the data were marked on their website.

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

Yes, before the Trial Auction, [REDACTED]

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

One issue for bidders leading up to the Auction concerned the distribution of the incremental Solar Renewable Energy Credit (“SREC”) requirements that would have fallen on suppliers exempted by the newly enacted SREC legislation, S.B. 1925. Bidders wished to know how responsibility for this incremental requirement would affect their ultimate renewable portfolio requirements. Additionally, there was some confusion about whether this responsibility would fall only on BGS-FP winning suppliers, or be spread over both BGS-FP and BGS-CIEP winners. After consulting with Boston Pacific and Staff, NERA provided a sample calculation of the ultimate SREC requirements for FP bidders. In addition NERA offered its interpretation that these additional SREC requirements would be met by both the new BGS-FP and BGS-CIEP suppliers. It was made clear to bidders that this was only an interpretation of the law, and a definitive answer would not be available until the Board ruled on who exactly would be obligated to supply these SRECs. Bidders asked for several clarifications and offered different interpretations of the legislation. NERA reiterated its understanding and that it was only providing its interpretation, as the Board had yet to rule.

Bidders also expressed concern over whether any load that suppliers won in the 2013 auction would be grandfathered under any future changes in New Jersey’s RPS law. NERA representatives responded that they were not certain, but that had been the case under the two previous revisions to the RPS law.

Neither Boston Pacific nor NERA believes that these concerns prevented bidders from participating in the Auction. Additionally, we do not believe that confusion over these issues led to any material increase in prices.

**f. Were bidders given an opportunity to provide proposals and comments concerning the 2013 Auction Process?**

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2012. Interested parties were also invited to file initial comments and final comments by August 31, 2012 and September 28, 2012, respectively. The Board also held a Legislative-type hearing on September 21, 2012. After reviewing all

comments from the EDCs and other interested parties, the Board approved the Joint EDC Proposal for the 2013 BGS Auction. Interested parties were also able to submit comments following the 2012 BGS Auction, in which the Board initiated a full review of the BGS 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, with some adjustments as detailed below.

**b. Were there updates to the timeline?**

Yes, there were some adjustments to this schedule, which we believe had no effect on the Auction results. Hurricane Sandy necessitated immediate actions by EDC personnel which in turn delayed the Board's approval of the BGS Auction Proposal as well as NERA's document finalization process. As a result NERA postponed (1) the announcement of statewide minimum and maximum starting prices, load caps, and tranche sizes; (2) the posting of the final Part 2 Application Form; (3) the posting of the Board decision on the Auction Proposal; and (4) the announcement of the tranche fee. Separately, NERA delayed the third information session one day to avoid any overlap with Martin Luther King Jr. Day and the Presidential Inauguration.

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 BGS Review Proceeding that began in the Spring of 2012 through the Auction in February 2013. As milestones were met, the calendar was updated to reflect each event's completion.

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

**QUESTION 4:**

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

**ANSWER 4: No.**

**PRE-AUCTION CRITERIA**

**a. Were all questions answered in the FAQs?**

Yes, please see answer to 2b.

**b. Were bidder questions asked after January 22, 2013 directly responded to by NERA?**

Yes, questions continued to be asked by Registered Bidders after January 22, 2013 and NERA provided answers to these questions directly to bidders via email. These answers were distributed regularly beginning on January 25, 2013. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

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

No, not by the start of the Auction. Bidders may have been uncertain about their exact SREC requirements but neither Boston Pacific nor NERA felt this concern materially affected bidder participation or final prices. For more information, please see the answer to 2e.



Bidders did not raise any other issues in the FAQs that indicated material uncertainty.

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

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

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 posted on the BGS Auction website and emailed to all bidders, and email 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 operates such that the greater the excess supply, the further prices can decrease. The supply offered in excess of need directly drives the Auction prices to “tick down” (decrease).

NERA conducted direct marketing with potential bidding companies through an email distribution list and phone calls. The list of contacts was developed from existing contact lists and from participants that registered for information on the BGS Auction website. NERA representatives stated that this year they focused direct outreach efforts on entities that showed a greater potential for participation in the BGS Auctions. This direct outreach effort began prior to the first information session at the end of September. NERA also advertised the initial bidding deadline in several industry publications during the weeks of November 26 and December 3, 2012.

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**QUESTION 5:**

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

**ANSWER 5: No.**

**AUCTION WEEK CRITERIA**

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

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

**b. Were there problems with the electronic bidding process?**

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

Boston Pacific had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during two Trial Auctions. For the first Trial Auction on January 16, 2013, 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 fax- and phone-based backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols.

For the second Trial Auction, held on January 24, 2013, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by Registered Bidders. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software. We identified minor issues with NERA's calculation of price decrements, which were immediately fixed.

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

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

Yes,

Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 24, 2013.

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

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

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

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

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

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

No.

**QUESTION 6:**

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

**ANSWER 6:** Yes.

**PRE-AUCTION CRITERIA**

**a. Was confidential information properly provided to bidders?**

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

**b. Before the Part 2 Application deadline, were questions placed on the Auction website?**

Yes. The first FAQ was posted on the BGS website June 30, 2012. The Part 2 Application deadline was on January 10, 2013, by which time there were a total of 157 questions posted. Additional questions asked by bidders were also answered by NERA following the Part 2 Application deadline. See also the answer to 2b.

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

Yes.

**AUCTION WEEK CRITERIA**

**d. Was confidential information properly provided to bidders?**

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

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

Yes, please see the answer to 5d.

**QUESTION 7:**

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

**ANSWER 7: No.**

**AUCTION WEEK CRITERIA**

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

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

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

No, all bids were successfully received by NERA.

**c. Was NERA aware of any material technical issues?**

No, NERA did not indicate any material technical issues.

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

No, please see 5f.

**QUESTION 8:**

**Were there any unanticipated delays during the FP Auction?**

**ANSWER 8: No.**

**QUESTION 9:**

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

**ANSWER 9: No.**

**QUESTION 10:**

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

**ANSWER 10: Yes.**

**AUCTION WEEK CRITERIA**

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

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

**QUESTION 11:**

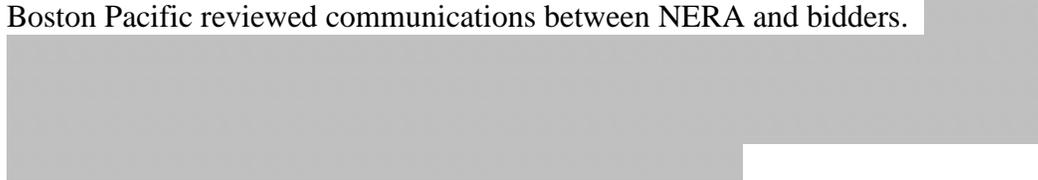
**Were any security breaches observed with the FP Auction process?**

**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 data. [REDACTED]

Boston Pacific reviewed communications between NERA and bidders.



**QUESTION 12:**

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

**ANSWER 12:** Yes.

**AUCTION WEEK CRITERIA**

**a. Were protocols followed as described by NERA?**

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

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

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

**QUESTION 13:**

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

**ANSWER 13:** Yes.

**PRE-AUCTION CRITERIA**

**a. Were notable changes made to the decrement formulas?**

Yes. NERA made adjustments to the decrement formulas for all four EDCs this year to accelerate the pace of the Auction. This was done in response to bidder concerns about the length of the Auction.

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

There were no changes to other FP Auction parameters such as volume reductions or 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 reviewed all electronic and voice communications.

**QUESTION 16:**

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

**ANSWER 16: Yes.**

**AUCTION WEEK CRITERIA**

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

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

**QUESTION 17:**

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

**ANSWER 17: No.**

NERA's changes to the decrement formulas made the Auction proceed more expeditiously than in previous years. This was done in response to bidder requests. The 2013 FP Auction lasted 21 rounds, as compared to 26 rounds last year. Despite this faster pace, we did not see evidence that bidders were unduly rushed. This may be due in part to NERA overriding the decrements where necessary [REDACTED]

Each bidder is permitted 1 recess request and 2 extension requests during the Auction. The Auction includes an automatic extension after round 1. [REDACTED]

[REDACTED]  
there was no indication from bidders that they felt unduly rushed. [REDACTED]

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

**QUESTION 18:**

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

**ANSWER 18: No.**

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

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

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

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

All interested parties were given ample opportunity to comment on the 2013 BGS process. Following the 2012 BGS Solicitation, the Board launched a full review of the BGS process, soliciting comments from interested parties addressing how the Board might improve the BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2012. Furthermore, interested parties were also invited to file initial comments and final comments by August 31, 2012 and September 28, 2012, respectively. The Board also held a Legislative-type hearing on September 21, 2012.

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

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

The Auction Manager consulted with Boston Pacific and BPU Staff concerning Part 1 and 2 Applications.



An additional factor boosting the competitiveness of the Auction is that it has been held every year for over a decade and its results have been consistently certified by the Board. This stability helps attract more bidders and better offers.

Finally, the Auction was also 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 ensured that bidders received the correct information.

**QUESTION 20:**

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

**QUESTION 21:**

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

**QUESTION 22:**

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

**ANSWER 20: No.**

**ANSWER 21: No.**

**ANSWER 22: No.**

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

Both structural and behavioral indicators give support for the specific answers provided to all three of these questions as well as support to the broader finding that the BGS Auction was competitive. Among the structural indicators were the number of bidders, the number of winners, the market share of winners, and a widely-used measure of competitiveness related to market shares called the Herfindahl-Hirschman Index (HHI).

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

[REDACTED]

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

[REDACTED] 8 actually won the right to serve some portion of the New Jersey consumer need in the FP Auction. In addition, three of these winning bidders had not won supply in either of the last two Auctions [REDACTED]. [REDACTED] Having new winners is a good sign of a competitive process.

With respect to market share of each winner, some background on standards is useful. Having a minimum of three suppliers is sometimes set as a standard of competitiveness. The BGS Auction rules help ensure at least three winners by limiting to approximately one-third (20 tranches) the portion of statewide consumer need that can be won by any single supplier. In addition, bidders are limited in the amount of supply they can win in each EDC's service territory (RECO excepted) such that there will always be at least three winners per EDC.

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 8 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 primarily uses a three-part standard for HHIs when judging the competitive effect of mergers and acquisitions. An HHI below 1,500 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is below 1,500, it is generally thought that there is no competitive harm from the merger or acquisition; that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,500 and 2,500 is said to indicate moderate concentration. An HHI over 2,500 is said to indicate a highly concentrated market. For

market-based rate authority, FERC already uses a threshold of 2,500 for the HHI in one of its standards.

For the FP Auction, using the winning shares as market shares, the HHI is 1,838. This puts the HHI for the FP Auction into the low end of the DOJ's moderately concentrated range. This compares to an HHI last year of 1,757. However, to include only winning bidders is a narrow focus for calculating an HHI. For example, a more appropriate focus would be the total of 16 suppliers who will serve consumers in 2013-2014; these are the winners in 2011 and 2012, as well as in this 2013 Auction. The HHI in this case would be 1,573, which, again, is in the low end of the moderately concentrated range under the DOJ's guidelines. This compares to an HHI of suppliers who served customers for 2012-2013 of 1,773.

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

[REDACTED]

[REDACTED]

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.

[REDACTED]

**QUESTION 23:**

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

**ANSWER 23: Yes.**

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

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

In addition, Boston Pacific reviewed communication between all Auction personnel and bidders; we had access to communications sent to all bidders through the online platform and also reviewed recording of calls between NERA and bidders. Moreover the Auction is held in a secure, separate suite of offices.

**QUESTION 24:**

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

**ANSWER 24: Yes.**

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

[REDACTED]

[REDACTED]

[REDACTED]

2013 FP BGS Auction							
Product	Tranches Filled	Final Price (cents/kWh)	2012 Price (cents/kWh) <sup>1</sup>	% Change from 2012	Price Expectations Range (cents / kWh) <sup>2</sup>		
					Average	Low	High
PSE&G	28	9.218	8.388	9.9%	[REDACTED]		
JCP&L	18	8.370	8.176	2.4%			
ACE	7	8.727	8.510	2.5%			
RECO	1	9.258	9.251	0.1%			
Total	54	-	-	-			
Average <sup>3</sup>	-	8.872	8.344	6.3%			

1) Source: Boston Pacific 2012 Auction Report

[REDACTED]

3) Tranche-weighted estimate

Comparing this year’s average winning price to last year we can see that prices increased 6.3%. This is largely as we would expect. Over the past year energy prices have increased slightly. PSE&G also saw a significant increase in transmission charges since last year, which is chiefly why its price increased more than the other EDCs.

From a rate impact standpoint, we note that this year’s prices are lower than the prices of the expiring contracts solicited in the 2010 BGS Auction. The newest winning prices are about 7.6% less expensive than these contracts, which cost 9.607 cents/kWh on a tranche-weighted average basis. This decrease is mainly attributable to decreases in energy prices since 2010. These decreases are somewhat offset by increases in capacity prices and transmission costs.

**QUESTION 25:**

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

**ANSWER 25: No.**

No, please see the answer to 24. The increase in prices from last year's results was driven primarily by small increases in energy prices along with, for PSE&G, increases in transmission charges.

**QUESTION 26:**

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

**ANSWER 26: No.**

**II. THE NEW JERSEY 2013 BGS-CIEP AUCTION**

**A. POST-AUCTION CHECKLIST**

**ATTACHMENT B  
DOCKET NO. ER12060485**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY  
2013 BGS-CIEP AUCTION**

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Prepared by: Boston Pacific Company, Inc.

Auction began with the opening of Round 1 at 8:25 am On Friday, February 1, 2013

Auction finished with the close of Round 18 at 5:20 pm on Friday, February 1, 2013

	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		NA	NA
Tranche target	50	NA	NA
Eligibility ratio		NA	NA
Statewide load cap	17	NA	NA

\* Note: No volume adjustment was made during the CIEP auction, so the pre-auction tranche target and the statewide load cap were unchanged for the auction.

**ATTACHMENT B**  
**DOCKET NO. ER12060485**

**Post-Auction Checklist for the New Jersey 2013 BGS-CIEP Auction**

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

**Table 1. Summary of BGS-CIEP Auction**

	<b>PSE&amp;G</b>	<b>JCP&amp;L</b>	<b>ACE</b>	<b>RECO</b>	<b>Total</b>
BGS-CIEP peak load share (MW)	2,158.25	1,042.14	372.60	76.70	3,649.69
Total tranches needed	29	14	5	2	50
Starting tranche target in auction	29	14	5	2	50
Final tranche target in auction	29	14	5	2	50
Tranche size (%)	3.45	7.14	20.00	50.00	
Tranche size (approximate MW)	74.42	74.44	74.52	38.35	
Starting load cap (# tranches)	--	--	--	--	17
Final load cap (# tranches)	--	--	--	--	17
Quantity procured (# tranches)	29	14	5	2	50
Quantity procured (% BGS-CIEP load)	100%	100%	100%	100%	100%
# Winning bidders	4	4	1	2	6
Maximum # of tranches procured from any one bidder	14	8	5	1	17
Minimum and maximum starting prices prior to indicative bids (\$/MW-day)					500 375
Starting price at start of auction (\$/MW-day)*					
Final auction price (\$/MW-day)**	269.29	265.00	265.33	365.00	271.52

\* 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”.

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**Post-Auction Checklist for the New Jersey 2013 BGS-CIEP Auction**

**Table 2. Overview of Findings on BGS-CIEP Auction**

	<b>Question</b>	<b>Comments</b>
1	<b>BP's recommendation as to whether the Board should certify the CIEP auction results?</b>	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

<b>Question</b>		<b>Comments</b>
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)?	Yes, with the RECO outcome.

**B. BOSTON PACIFIC SUPPLEMENTAL CHECKLIST**



**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 21, 2013, 162 questions had been asked by bidders since July 30, 2012, the first day FAQs were posted. All of these questions were answered in a timely fashion by NERA. The topics of questions included: (a) Applications, (b) Association and Confidential Information Rules, (c) Auction Rules, (d) BGS Supplier Master Agreement, (e) Credit, (f) Data, (g) Payments and Rates, and (h) general questions. NERA provided responses to all of these questions, which generally seemed to satisfy bidders.

Starting on January 22, 2013, the Auction Manager sent answers to questions received regularly to Registered Bidders via email. Boston Pacific reviewed these FAQs as well.

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

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

The Auction information listed below was provided according to or earlier than the schedule posted by NERA, though the schedule was adjusted to reflect delays caused by Hurricane Sandy. This information included: (a) Application forms, (b) minimum/maximum starting prices, (c) tranche targets, (d) load caps, (e) finalized rules, (f) final Supplier Master Agreements, and (g) finalized decrement formulas.

NERA also maintained a "data room" on their website, which contained data that was updated monthly and additional data that was updated less frequently. NERA provided descriptions of both types of data. This data room helped bidders prepare their bids. Examples of the data posted here included (a) load data, which was updated monthly for each EDC and most of which covered the period through December 2012, and (b) switching statistics that showed the percentage of load and number of customers that have switched to third party suppliers. Any revisions made to the data were marked on their website.

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

Yes, before the Trial Auction, [REDACTED]

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

One issue for bidders leading up to the Auction concerned the distribution of the incremental Solar Renewable Energy Credit (“SREC”) requirements that would have fallen on suppliers exempted by the newly enacted SREC legislation, S.B. 1925. Bidders wished to know how responsibility for this incremental requirement would affect their ultimate renewable portfolio requirements. Additionally, there was some confusion about whether this responsibility would fall only on BGS-FP winning suppliers, or be spread over both BGS-FP and BGS-CIEP winners. After consulting with Boston Pacific and Staff, NERA provided a sample calculation of the ultimate SREC requirements for FP bidders. In addition NERA offered its interpretation that these additional SREC requirements would be met by both the new BGS-FP and BGS-CIEP suppliers. It was made clear to bidders that this was only an interpretation of the law, and a definitive answer would not be available until the Board ruled on who exactly would be obligated to supply these SRECs. Bidders asked for several clarifications and offered different interpretations of the legislation. NERA reiterated its understanding and that it was only providing its interpretation, as the Board had yet to rule.

Neither Boston Pacific nor NERA believes that these concerns prevented bidders from participating in the Auction. Additionally the winning prices were generally consistent with the interpretation of the legislation provided by NERA. Therefore, we do not believe that confusion over these issues led to any material increase in prices.

**f. Were bidders given an opportunity to provide proposals and comments concerning the 2013 Auction Process?**

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2012. Furthermore, interested parties were also invited to file initial comments and final comments by August 31, 2012 and September 28, 2012, respectively. The Board also held a Legislative-type hearing on September 21, 2012. After reviewing all comments from the EDCs and other interested parties, the Board approved the Joint EDC Proposal for the 2013 BGS Auction. Interested parties were also able to submit comments following the 2012 BGS Auction, in which the Board initiated a full review of the BGS 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, with some adjustments as detailed below.

**b. Were there updates to the timeline?**

Yes, there were some adjustments to this schedule, which we believe had no effect on the Auction results. Hurricane Sandy necessitated immediate actions by EDC personnel which in turn delayed the Board's approval of the BGS Auction Proposal as well as NERA's document finalization process. As a result NERA postponed (1) the announcement of statewide minimum and maximum starting prices, load caps, and tranche sizes; (2) the posting of the final Part 2 Application Form; (3) the posting of the Board decision on the Auction Proposal; and (4) the announcement of the tranche fee. Separately, NERA delayed the third information session one day to avoid any overlap with Martin Luther King Jr. Day and the Presidential Inauguration.

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 BGS Review Proceeding that began in the Spring of 2012 through the Auction in February 2013. As milestones were met, the calendar was updated to reflect each event's completion.

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

**QUESTION 4:**

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

**ANSWER 4: No.**

**PRE-AUCTION CRITERIA**

**a. Were all questions answered in the FAQs?**

Yes, please see answer to 2b.

**b. Were bidder questions asked after January 22, 2013 directly responded to by NERA?**

Yes, questions continued to be asked by Registered Bidders after January 22, 2013 and NERA provided answers to these questions directly to bidders via email. These answers were distributed regularly beginning on January 25, 2013. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answers to 2b and 2e.

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

No, not by the start of the Auction. Bidders may have been uncertain about their exact SREC requirements but neither Boston Pacific nor NERA felt this concern materially affected bidder participation or final winning prices. For more information, please see the answer to 2e.

Bidders did not raise any other issues in the FAQs that indicated material uncertainty.

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

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

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 posted on the BGS Auction website and emailed to all bidders, and email 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 operates such that the greater the excess supply, the further prices can decrease. The supply offered in excess of need directly drives the Auction price to “tick down” (decrease).

NERA conducted direct marketing with potential bidding companies through an email distribution list and phone calls. The list of contacts was developed from existing contact lists and from participants that registered for information on the BGS Auction website. NERA representatives stated that this year they focused direct outreach efforts on entities that showed a greater potential for participation in the BGS Auctions. This direct outreach effort began prior to the first information session at the end of September. NERA also advertised the initial bidding deadline in several industry publications during the weeks of November 26 and December 3, 2012.

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

[REDACTED]

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

[REDACTED]

[REDACTED]

[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 WEEK CRITERIA**

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

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

- b. Were there problems with the electronic bidding process?**

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

Boston Pacific had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during two Trial Auctions. For the first Trial Auction on January 16, 2013 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 fax- and phone-based backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols.

[REDACTED]

[REDACTED]

For the second Trial Auction, held on January 24, 2013, Boston Pacific moved to the evaluation side. We monitored and evaluated bids submitted by Registered Bidders. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software. We identified minor issues with NERA's calculation of price decrements, which were immediately fixed.

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

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

[REDACTED]

Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auction for Registered Bidders on January 24, 2013.

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

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

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

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

Yes [REDACTED]

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

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

No.

**QUESTION 6:**

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

**ANSWER 6: Yes.**

**PRE-AUCTION CRITERIA**

**a. Was confidential information properly provided to bidders?**

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

**b. Before the Part 2 Application deadline, were questions placed on the Auction website?**

Yes. The first FAQ was posted on the BGS website June 30, 2012. The Part 2 Application deadline was on January 10, 2013 by which time there were a total of 157 questions posted. Additional questions asked by bidders were also answered by NERA following the Part 2 Application deadline. See also the answer to 2b.

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

Yes. 

**AUCTION WEEK CRITERIA**

**d. Was confidential information properly provided to bidders?**

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

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

Yes, please see the answer to 5d.

**QUESTION 7:**

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

**ANSWER 7: No.**

**AUCTION WEEK CRITERIA**

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

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

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

No, all bids were successfully received by NERA.

- c. Was NERA aware of any material technical issues?**

No, NERA did not indicate any material technical issues.

- d. Did bidders communicate any material concerns to NERA?**

No, please see 5f.

**QUESTION 8:**

**Were there any unanticipated delays during the CIEP Auction?**

**ANSWER 8: No.**

**QUESTION 9:**

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

**ANSWER 9: No.**

**QUESTION 10:**

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

**ANSWER 10: Yes.**

**AUCTION WEEK CRITERIA**

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

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

[REDACTED]

Boston Pacific reviewed communications between NERA and bidders. [REDACTED]

[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 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?**

Yes. NERA made adjustments to the decrement formulas for all four EDCs this year to accelerate the pace of the Auction. This was done in response to bidder concerns about the length of the Auction.

**AUCTION WEEK CRITERIA**

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



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

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

**QUESTION 14:**

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

**ANSWER 14: Yes.**



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

**QUESTION 15:**

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

**ANSWER 15: No.**

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

**QUESTION 16:**

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

**ANSWER 16: Yes.**

**AUCTION WEEK CRITERIA**

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

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

**QUESTION 17:**

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

**ANSWER 17: No.**

Each bidder is permitted 1 recess request and 2 extension requests during the Auction. The Auction also includes an automatic extension after round 1. [REDACTED]

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

The 2013 CIEP Auction did close much faster than has been typical. The 18 rounds this year compare to 30 last year.



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

**QUESTION 18:**

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

**ANSWER 18: No.**

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

**QUESTION 19:**

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

**ANSWER 19: Yes.**

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

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

All interested parties were given ample opportunity to comment on the 2013 BGS process. Following the 2012 BGS Solicitation, the Board launched a full review of the BGS process, soliciting comments from interested parties addressing how the Board might improve the BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 2, 2012. Furthermore, interested parties were also invited to file initial comments and final comments by August 31, 2012 and September 28, 2012, respectively. The Board also held a Legislative-type hearing on September 21, 2012.

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

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

The Auction Manager consulted with Boston Pacific and BPU Staff concerning Part 1 and 2 Applications. 

An additional factor boosting the competitiveness of the Auction is that it has been held every year for over a decade and its results have been consistently certified by the Board. This stability helps attract more bidders and better offers.

Finally, the Auction was also 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 ensured that bidders received the correct information.

**QUESTION 20:**

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

**QUESTION 21:**

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

**QUESTION 22:**

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

**ANSWER 20: No.**

**ANSWER 21: No.**

**ANSWER 22: No.**

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

Both structural and behavioral indicators give support for the specific answers provided to all three of these questions as well as support to the broader finding that the BGS Auction was competitive. Among the structural indicators were the number of bidders, the number of winners, the market share of winners, and a widely-used measure of competitiveness related to market shares called the Herfindahl-Hirschman Index (HHI).

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

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

Of the suppliers who bid, 6 suppliers actually won the right to serve some portion of the New Jersey consumer need in the CIEP Auction. With respect to market share of each winner, some background on standards is useful. Having a minimum of three suppliers is sometimes set as a standard of competitiveness. The BGS Auction rules assures this by limiting to one-third (17 tranches out of 50 total tranches needed) the portion of statewide consumer need that can be won by any single supplier.

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

Among the 6 winners in the CIEP Auction, [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 below 1,500 is a safe harbor of sorts because the market is said to be un-concentrated. If, after a merger or acquisition, the HHI is below 1,500, it is generally thought that there is no competitive harm from the merger or acquisition; that is, the merger or acquisition does not make the exercise of market power more likely. An HHI between 1,500 and 2,500 is said to indicate moderate concentration. An HHI over 2,500 is said to indicate a highly concentrated market. For market-based rate authority, FERC already uses a threshold of 2,500 for the HHI in one of its standards.

For the CIEP Auction, using the winning shares as market shares, the HHI is 2,624. This puts the HHI for the CIEP Auction into the highly concentrated range of the DOJ's HHI brackets. However, to include only winning bidders is a narrow focus for calculating an HHI.

[REDACTED]

[REDACTED]

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.

[REDACTED]

**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. [REDACTED]

In addition, Boston Pacific reviewed communication between all Auction personnel and bidders; we had access to communications sent to all bidders through the online platform and also reviewed recording of calls between NERA and bidders. Moreover the Auction is held in a secure, separate suite of offices.

**QUESTION 24:**

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

**ANSWER 24: Yes.**

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

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

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



**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: Yes, with the RECO outcome.**

As noted above, the price for the RECO product was much higher than for the other EDCs. We believe that this is a fair price, reflecting as it does the unwillingness of bidders to serve the product. Given this, we believe that future Auctions should consider other ways to supply the few RECO customers that are eligible for these rates. One

potential way is to put these customers on market based rates, which should not be too different as the CIEP product already has energy prices that are market-based. We will offer other solutions with our final report.