



ANNUAL FINAL REPORT  
ON THE  
2022 BGS RSCP AND CIEP AUCTIONS

Presented to:

THE NEW JERSEY BOARD OF PUBLIC UTILITIES

Prepared By

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## I. INTRODUCTION AND SUMMARY

Bates White, LLC (Bates White) served as the Advisor to the New Jersey Board of Public Utilities (Board or BPU) for the Basic Generation Service (BGS) Auctions held on February 4<sup>th</sup> and February 7<sup>th</sup>, 2022. Bates White personnel have performed this function in each of the previous fifteen years.<sup>1</sup> We are pleased to provide this Annual Final Report as required under our contract. The Board defined the purpose and content of this Annual Final Report as follows:

The contractor shall submit... the annual report... including a summary of the auction process and all recommendations in accordance with the contract schedule... 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 and transparent and is consistent with market conditions. The Annual Report shall also include any recommendations on how to improve future BGS procurements.<sup>2</sup>

As the Board Advisor, we recommended that the Board certify the results of both the Residential Small Commercial Pricing (RSCP) and Commercial and Industrial Energy Pricing (CIEP) Auctions. Each Auction (a) was open, fair and transparent, (b) was sufficiently competitive, and (c) saw winning prices in line with market conditions. The Board certified the results of both Auctions on February 9, 2022. The most explicit evidence for the Board's certification decisions were the Post-Auction Checklists that we provided to the Board on February 8, 2022. These checklists, which are included in this report, contain a factual record of Auction results and answers to the questions about the conduct and results of each Auction.

Because of the important role that the checklists play, Bates White also provided supplemental checklists which explained in detail our reasons for the yes/no answers to the 26 questions in the official RSCP and CIEP checklists. These Supplemental Checklists are included in this report as well. We believe that the Post-Auction and Supplemental Checklists demonstrate the extensive scope of the analyses that underlie our work and support the Board's certification decisions.

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<sup>1</sup> Bates White personnel have extensive hands-on experience monitoring many of the major full requirements solicitations throughout the country, including solicitations for the District of Columbia, Illinois, Maryland, New Jersey, Ohio, Delaware, and part of Pennsylvania.

<sup>2</sup> The State of New Jersey Board of Public Utilities, "Request for Proposals for New Jersey Board of Public Utilities (BPU) Basic Generation Services (BGS) Auction Consulting and Monitoring," April 21, 2017, p. 10.

## A. THE BGS RESIDENTIAL SMALL COMMERCIAL PRICING (RSCP) AUCTION

The BGS RSCP product is a 3-year, fixed price, load-following product that supplies the majority of New Jersey’s residential and small commercial customers who decide not to choose a competitive third-party electric supplier. RSCP suppliers provide what is called a “full-requirements” product, which means that the product includes nearly all of the components (energy, capacity, ancillary services, etc.) necessary for the New Jersey Electric Distribution Companies (EDCs), to provide service to their ratepayers. Each RSCP supplier provides a fixed percentage of an EDC’s residential and small commercial BGS load, whatever that amount turns out to be, as load varies over the course of the contract. This year, as in past years, the EDCs bid out roughly one-third of their RSCP supply needs for the period of June 1, 2022 to May 31, 2025. The remaining two-thirds of RSCP load for the upcoming June 2022 to May 2023 period will be served under contracts procured in the 2020 and 2021 BGS Auctions.

Bates White attended the BPU Board meeting, conducted via Zoom on February 9, 2022, two days after the close of the RSCP Auction, and recommended that the Board certify the results. Before getting into detail on our reasons for making this recommendation, it is constructive to step back and provide an overview of the Auction results.

### RSCP Auction Results

Table 1 shows the winning prices in this year’s RSCP Auction, as well as the winning prices from last year’s Auction. Compared to last year, the winning prices showed significant increases anywhere from 17.7% to 22.6% depending on the product. This is due mainly to increases in energy prices. Over the past year, energy prices have increased significantly, driven by increases in the price of natural gas. Table 1 shows the winning prices in this year’s RSCP Auction, as well as the winning prices from last year’s Auction.

**Table 1: 2022 Winning RSCP Prices Compared to 2021 Winning RSCP Prices**

EDC	2022 Winning Price ¢/kWh	2021 Winning Price ¢/kWh	% Change
Atlantic City Electric	7.557	6.420	17.7%
Jersey Central Power & Light	7.750	6.477	19.7%
Public Service Electric & Gas	7.630	6.480	17.7%
Rockland Electric Company	8.206	6.692	22.6%
<b>Tranche Weighted Average</b>	7.671	6.475	18.5%

With respect to the individual companies, compared to last year Public Service Electric and Gas Company (PSE&G) and Atlantic City Electric Company (ACE) saw a price increase of 17.7 percent. The winning price for Jersey Central Power & Light Company (JCP&L) increased by 19.7 percent and the winning price for Rockland Electric Company (RECO) increased by 22.6 percent. As mentioned before, prices were affected by significant increases in energy costs. Costs have risen even more since the Auction – a factor we address later in this report.

Table 2 compares the prices of the new contracts to the prices of the expiring contracts procured three years ago. This comparison is the starting point for any discussion of rate impacts resulting from the RSCP Auction. Prices in earlier years must be adjusted to exclude the cost of transmission in order for comparisons to be drawn. Beginning with the 2021 BGS Auction, the responsibility of transmission costs was transferred from the BGS suppliers to the EDCs. This change was proposed by the EDCs for last year’s auction and approved by the Board.<sup>3</sup> Ratepayers still pay for this service, but it is now provided by the EDCs directly.

**Table 2: Winning 2022 RSCP Prices Compared to Expiring Contracts from the 2019 RSCP Auction**

EDC	2022 Winning Price ¢/kWh	2019 Winning Price ¢/kWh	% Change	2019 Winning Price ¢/kWh No Transmission	% Change
Atlantic City Electric	7.557	8.740	-13.5%	7.177	5.3%
Jersey Central Power & Light	7.750	7.715	0.5%	7.020	10.4%
Public Service Electric & Gas	7.630	9.804	-22.2%	6.935	10.0%
Rockland Electric Company	8.206	8.803	-6.8%	7.301	12.4%
<b>Tranche Weighted Average</b>	7.671	8.951	-14.3%	7.001	9.6%

The adjusted winning prices for all four EDCs are higher than the winning prices from the 2019 Auction with increases ranging from 5.3 to 12.4 percent. Factors driving price changes include increases in energy prices driven by increases in natural gas costs and increases in risk premiums driven by increased price volatility.

### Bill Impact

The starting point for assessing any rate impact is a comparison between winning prices in this Auction and the contracts that are being replaced. In this case, that would be contracts from the 2019 BGS Auction. Prices in this Auction are roughly 14% lower, on a weighted average basis, than those in 2019. This is mainly due to the fact that the 2019 contracts included

<sup>3</sup> Board of Public Utilities, *Decision and Order In the Matter of the Provision of Basic Generation Service (BGS) for the Period Beginning June 1, 2021*, November 18, 2020.

the cost of transmission, which was removed from the product starting with the 2021 BGS Auction. If we remove the estimated cost of the transmission component from the 2019 winning price, we see that the winning prices in this Auction ranged from 5.3% to 12.4% higher than 2019 winning prices.

This would generally lead us to expect an increase in the average bill. However, the winning contracts for the 2020 and 2021 BGS Auctions included proxy capacity prices for the upcoming June 2022 to May 2023 time frame. In June 2021, the results of PJM's Base Residual Auction for the 2022-2023 delivery year (the first year of the 2022 BGS-RSCP Auction supply term) were made available. The proxy capacity prices incorporated in bids in 2020 and 2021 were generally \$50 to \$60/MW-day higher than the actual price of capacity for that time period, meaning that winning suppliers will refund the excess, or pay a true-up, to ratepayers. This true up, along with changes in the rate allocation factors used to convert the winning Auction prices to residential rates, ultimately resulted in a decrease in average bills.

Table 3 shows the estimated monthly bill impacts of the 2022 BGS-RSCP Auction as forecasted by the EDCs for a residential customer with an annual monthly average usage of 650 kWh.<sup>4</sup>

**Table 3: Forecast Residential Monthly Bill Impacts from 2022 BGS-RSCP Auction**

EDC	% Change in Monthly Bill
Atlantic City Electric	-1.9%
Jersey Central Power & Light	-1.1%
Public Service Electric & Gas	-2.8%
Rockland Electric Company	-2.4%

As a result of this year's Auction, residential ratepayers at each of the four EDCs are forecast to see a slight decrease in their estimated monthly bill for the June 2022 to May 2023 period. Specifically, PSE&G forecasts a bill decrease of 2.8%; ACE forecasts a bill decrease of 1.9%; JCP&L forecasts a bill decrease of 1.1%; and RECO forecasts a bill decrease of 2.4%.

### **Recommendation**

Bates White recommended that the Board certify the results of the BGS-RSCP Auction for three primary reasons: (a) the Auction was open, fair and transparent; (b) the Auction was

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<sup>4</sup> The calculation reflects the impact on a customer using 574 kWh in the winter for 8 months and 802 kWh in the summer for 4 months.

sufficiently competitive; and (c) the winning prices were consistent with broader market conditions. Below, we discuss each reason in detail.

### **Openness, Fairness and Transparency**

Our first reason for recommending acceptance of the results of the 2022 RSCP Auction was that the Auction was open, fair and transparent. All of the non-price terms and conditions were standardized; therefore, all suppliers, including any EDC affiliates, signed the same supply agreement and provided the same product. This allowed bid evaluation to be based solely on price. A price-only bid evaluation provides maximum transparency. In addition, all rules of participation and conduct were fully explained and fairly applied by the Auction Manager, NERA Economic Consulting (NERA).

As has been the case for the last two BGS Auctions, the capacity price for some years under the supply contract was unavailable as PJM had yet to conduct its capacity auction for those years. The EDCs proposed to address this uncertainty in the same manner approved by the Board the last two years, by using capacity proxy prices for these delivery years. Under an addendum to the Supplier Master Agreement winning bidders in the RSCP Auction would be paid (or would pay) any difference between the final capacity price and these proxy prices when charges were actually incurred. After reviewing all comments from the EDCs and other interested parties, the Board approved this as part of the EDCs' Joint Proposal for the 2022 BGS Auction.

We had hoped that, at the time of the Auction, only one year of proxy prices would be needed. The results of PJM's BRA for capacity for the June 2022 – May 2023 delivery year (the first year of the 2022 BGS-RSCP Auction supply term) were made available in June 2021. At that time, the BRA for the June 2023 to May 2024 period was to be held in December. However, on September 22, 2021, PJM filed a request to delay for 55 days the scheduled BRA for the 2023-2024 delivery year, and on December 22, 2021, FERC ordered PJM to revise its reserve market rules which further delayed the BRA capacity auction. As a result, at the time of the 2022 BGS Auction the BRA for the 2023-2024 and the 2024-2025 delivery years had not yet taken place and proxy prices were used.

In addition, due to ongoing COVID-19 restrictions all bidding and bid evaluation were conducted remotely. NERA provided extra opportunities for bidders to practice using the bidding software and for evaluators to practice in a remote environment. During the Auction, we kept in contact with NERA via phone, e-mail, and online chat functions. NERA sent us round by round bidding data via secure file transfer.

Fairness and transparency were also enhanced by the Auction Manager's proactive facilitation of full access to the process and results for the Board Advisor and BPU Staff. As the

Board Advisor, we, along with BPU Staff, were actively involved in the full range of pre-auction tasks including, but not limited to, (a) the monitoring of bid information sessions, (b) the calculation of starting prices, and (c) the evaluation of Part 1 and Part 2 Applications. During the Auction itself, we 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, winning prices, and to monitor bidding behavior. We also monitored incoming and outgoing communications with bidders.

In addition, Bates White reviewed all of the EDCs' RSCP Pricing spreadsheets and average bill calculation models and conducted testing with the models to ensure accuracy. Once winning prices were determined, we reviewed each EDC's calculation of the new projected rates and impact on average residential bills to ensure they were correct.

### **Competitiveness**

Our second reason for recommending certification of the RSCP Auction results was that the Auction was sufficiently competitive. We assessed five indicators of competitiveness. First, we looked at the total number of bidders in the Auction. A large number of bidders is helpful because it increases the total supply bid in the Auction, pushing prices down. It also makes it harder for bidders to carry out any collusive schemes. This year there were 15 registered bidders

[REDACTED] Fifteen is a good number of bidders [REDACTED]

Second, we looked at the ratio of tranches offered to tranches needed at several points in the process. A tranche represents the obligation to serve a fixed percentage of an EDC's full requirements load, whatever that load turns out to be, in any hour.<sup>5</sup> Having excess tranches offered is important because the excess drives prices down as the Auction proceeds; the price for a given product "ticks down" (is decremented) only if there are excess tranches offered 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]

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<sup>5</sup> Each tranche was sized to be roughly 100 MW of the peak load of each EDC. Because each EDC has a different peak load, tranches for each EDC equate to a different percentage of each EDC's load.



[REDACTED]  
This points to the fact that all bidders stayed in the process for many rounds, driving prices lower and competing for supply. [REDACTED]

[REDACTED] All of the above supports the conclusion that this Auction was competitive.

Third, we looked at the number of winners. We like to see a large number of winners because it means that the auction was competitive, with multiple parties pushing down the price at the end. Having a large number of winners also signals to other participants that no one party is dominating the auction and that anyone can win, increasing the likelihood that winning bidders will return in future years. This year there were ten winners, one more than the number of winners last year. [REDACTED]

Fourth, we analyzed the results using the Herfindahl-Hirschman Index, or HHI. HHI is based on the market shares of each participant (technically it is the sum of the squares of the market shares). The U.S. Department of Justice (DOJ) 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, meaning that 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 un-concentrated; HHIs between 1,000 and 1,800 indicate moderate concentration, and HHIs above 1,800 indicate a highly concentrated market.

Calculated with the market shares of just the winning suppliers for this year, the HHI was 1,475. This is similar to last year's HHI of 1,444 and is in the un-concentrated range by DOJ standards and above the mid-point of the moderately concentrated range by the more conservative FERC standards.

However, to include only winning bidders may be too narrow a focus for this exercise. A more appropriate focus would be to expand the calculation of the HHI to include all 15 suppliers who will serve consumers from June 2022 to May 2023. This includes in the analysis the market shares of all winners in the 2020 and 2021 Auctions. The HHI calculated in this manner is 1,113. As shown by the table below, in general, the supplier pool has grown less concentrated in recent years.

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[REDACTED]

**Table 4: HHI in Recent RSCP Auctions**

RSCP Auction Year	HHI for Winning Bidders	HHI for All Parties Serving Load
2012	1757	1773
2013	1838	1573
2014	1912	1533
2015	1739	1683
2016	1722	1620
2017	1463	1515
2018	1505	1307
2019	1598	1263
2020	1299	1292
2021	1444	1156
2022	1475	1113

Fifth, we also employed a method used by FERC in antitrust evaluations, which examines the HHI of a market when the price is within 5 percent of the final market price. This so-called “Delivered Price Test” gives a sense of what suppliers could have offered supply at a price level roughly consistent with market prices. [REDACTED]

In addition, we looked for signs of collusive or coordinated bidding behavior by closely examining all bids by all bidders on a round by round basis. Bidding behavior was also reviewed by our Auction Theory Expert, Professor Ken Hendricks of the University of Wisconsin, subsequent to the close of the Auction and before the results were certified. We found no evidence of any collusive or anti-competitive actions.<sup>7</sup>

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

The third reason for recommending certification of the BGS RSCP Auction results was that winning prices were consistent with broader market conditions. Our primary test of prices involved comparing the winning prices with the predicted ranges from our Benchmark Pricing Model. [REDACTED]

<sup>7</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.

[REDACTED]

The output of the model is a range of prices that we consider reasonable. We created separate benchmark ranges for each EDC. Table 5 below shows our projections as compared to actual results.

**Table 5: Winning RSCP Prices compared to Expectations**

2022 BGS Auction					
Product	Tranches Filled	Final Price (cents/kWh)	Price Expectation Range (cents/kWh) <sup>1</sup>		
			Average	Low	High
PSE&G	28	7.630	[REDACTED]	[REDACTED]	[REDACTED]
JCP&L	18	7.750	[REDACTED]	[REDACTED]	[REDACTED]
ACE	7	7.557	[REDACTED]	[REDACTED]	[REDACTED]
RECO	1	8.206	[REDACTED]	[REDACTED]	[REDACTED]
<b>Total</b>	<b>54</b>				
<b>Average<sup>2</sup></b>		<b>7.671</b>			

[REDACTED]

[REDACTED]

These results give us a great deal of confidence that winning prices were reflective of current market conditions. We note that the benchmark model utilized the proposed proxy capacity prices for the June 2023-May 2024 and the June 2024-May 2025 periods, so these results indicate that bidders also utilized these numbers in pricing their offers and did not add any additional risk premiums into their offers.

As noted above, comparing this year’s prices to last year’s prices shows increases, anywhere from 17.7% to 22.6% depending on the product. This is due mainly to the increase in energy prices.

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

The BGS CIEP product is a one-year, load following, full requirements product for larger commercial and industrial customers. Each CIEP supplier provides a fixed percentage of an

EDC's commercial and industrial load, whatever that amount turns out to be, as load varies over the contract period. The CIEP contract period runs from June 1, 2022 through May 31, 2023. Each year the EDCs bid out 100 percent of their CIEP supply needs.

Bates White recommended that the Board certify the results of the CIEP Auction. We used the same three criteria as in our recommendation for the RSCP Auction.

### **Fairness and Transparency**

We believe the CIEP Auction was open, fair and transparent for the same reasons stated above for the RSCP Auction. Since the CIEP product did not cover the 2023-2024 and 2024-2025 PJM service years there was no need for a proxy price for capacity in this auction. As with the RSCP Auction, the CIEP Auction was carried out remotely.

### **Competitiveness**

We used the same five indicators of competitiveness as we did for the RSCP Auction. Note that the CIEP Auction, while still competitive, is somewhat less competitive than the RSCP Auction. This is to be expected given the smaller amount of supply bid out.

- First, there were six registered bidders, [REDACTED]  
[REDACTED]
- Second, the excess quantity offered was sufficient. [REDACTED]  
[REDACTED]
- Third, five [REDACTED] bidders were winners in the Auction. This is one less than the number of winners last year with all five winners in this Auction also having won last year.

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[REDACTED]

- Fourth, the HHI using the market shares of the winning bidders was 2,549, [REDACTED]
- Fifth, we, along with our Auction Theory Expert, reviewed the round-by-round results and 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 RSCP price. Winning bidders in the CIEP Auction provide a similar full requirements product but are paid the spot market price for providing energy, \$6/MWh for providing ancillary services, and a standby fee of \$0.15/MWh. The Auction price primarily reflects a fixed price for the capacity portion of that service, and the cost of meeting the State Renewable Portfolio Standard (RPS). Bidders are paid the PJM spot energy price to cover the energy portion of the service.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **C. LONG-TERM COMPETITIVENESS**

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

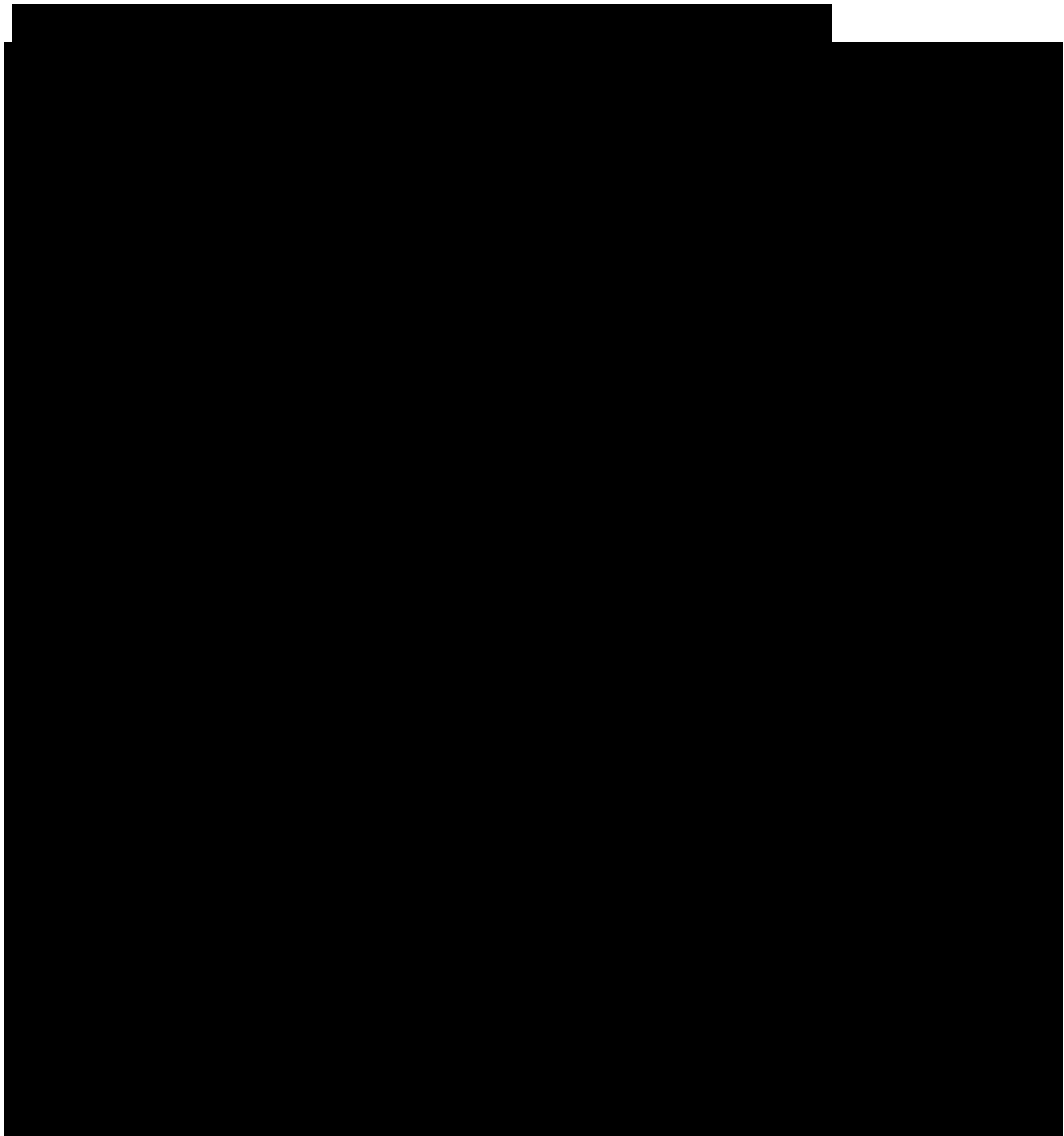
[REDACTED]

[REDACTED]

[REDACTED]

To further examine long term competitiveness, we looked at trends in both Auction participation and winning bidders. [REDACTED]

[REDACTED]

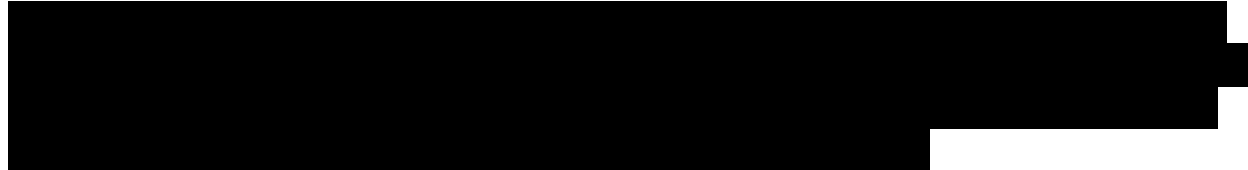


[redacted] we can make several observations. [redacted]

[redacted] These metrics indicate a very competitive process. Second, the Auction continues to have new winners [redacted]

[redacted] This is a good indicator of the transparency of the Auction process. [redacted]





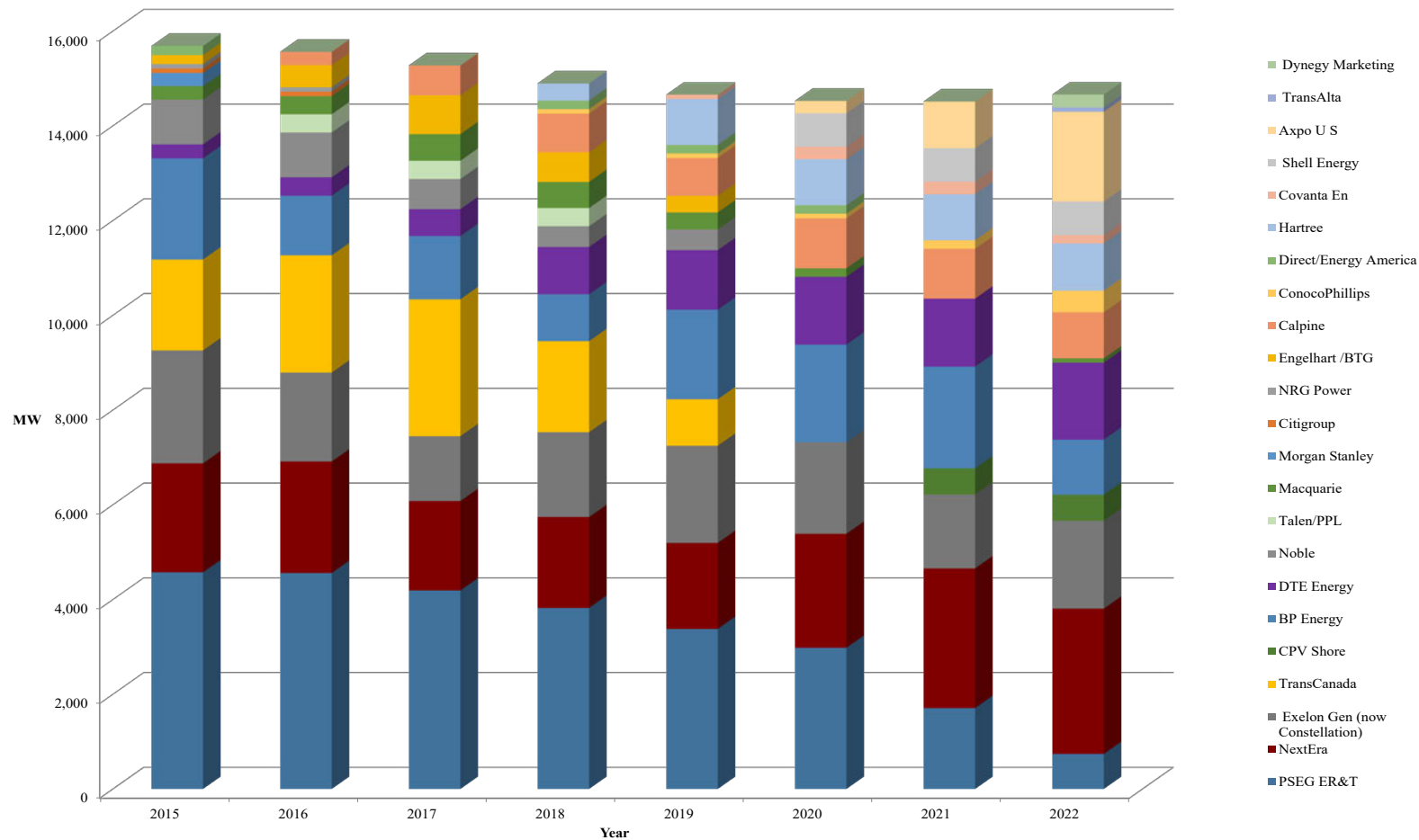
In terms of who is supplying the BGS-RSCP product, we looked at trends in RSCP winners. Figure One displays how much load each supplier served for each energy year (i.e., June-May period) from 2015-2016 to 2022-2023.<sup>9</sup> The columns then map out the growth or decline in load share through the energy years.

From this figure we see that 23 different suppliers have provided (or will provide) supply to RSCP ratepayers over the period 2015-2016 to 2022-2023. For the 2022-2023 year, 15 suppliers will provide RSCP service. NextEra Energy Marketing, LLC (NextEra) will be the largest supplier and will serve approximately 20% of the RSCP load in the upcoming year. Other bidders have made significant inroads over the last few years, notably Axpo U.S. LLC, BP Energy Company, and DTE Energy Trading.

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<sup>9</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 or sold to other parties.

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



For additional context, we also examined winning prices over the past several years. The table below shows the winning PSE&G price as well as the average energy and natural gas futures prices at the time of the Auction for the three-year RSCP delivery period.

**Table 8: Winning RSCP Prices, Energy and Natural Gas Futures Costs**

	Price During 2012 Auction	Price During 2013 Auction	Price During 2014 Auction	Price During 2015 Auction	Price During 2016 Auction	Price During 2017 Auction	Price During 2018 Auction	Price During 2019 Auction	Price During 2020 Auction	Price During 2021 Auction	Price During 2022 Auction
PSE&G Final Price (cents/kWh)	8.388	9.218	9.739	9.954	9.638	9.078	9.177	9.804	10.216	6.48	7.63
Western Hub Peak Futures (\$/MWh)	\$44.72	\$46.75	\$46.40	\$44.26	\$40.06	\$37.85	\$35.37	\$37.26	\$30.14	\$32.88	\$51.33
Henry Hub Natural Gas Futures (\$/MMBtu)	\$3.77	\$4.13	\$4.26	\$3.36	\$2.71	\$3.07	\$2.83	\$2.68	\$2.33	\$2.56	\$3.65

Keep in mind that the 2021 Auction removed transmission costs from the RSCP product. What we see here is that the stable levels of competition above have led to stable prices – though other factors such as congestion costs and changes in RPS requirements have also affected prices. We see that energy markets have also been fairly stable and, since 2015, relatively low-priced. Prices did begin to increase in this Auction and – as we address in the next section – have continued to increase.

## D. RECOMMENDATIONS

In this section we present recommendations that we believe will assist the BPU going forward. At this point we have no specific recommendations for the Auction process itself, but we do present some observations regarding the market that the BPU should continue to monitor.

First, a continuing concern relevant to our monitoring of these auctions has been the failure of PJM to establish a capacity price for periods beyond June 2023. As has been the case for the last two BGS Auctions, the capacity price for some years under the supply term contract was unavailable. The results of PJM’s base residual auction for the 2022-2023 delivery year (the first year of the 2022 BGS-RSCP Auction supply term) were made available in June 2021. At that time, PJM also released a schedule for its capacity auctions through the 2026-2027 delivery year. However, on September 22, 2021, PJM filed a request to delay for 55 days the scheduled December 1, 2021 BRA for the 2023-2024 delivery year, and on December 22, 2021 FERC ordered PJM to revise its reserve market rules which delayed the BRA capacity auction even more.

On January 21, 2022, in compliance with FERC's December 22, 2021 Order, PJM proposed to revise the base residual auctions for the upcoming years. As such, the capacity auction for the 2023-2024 delivery year is scheduled occur in June 2022. After that, following auctions will take place approximately every six months through 2024:

- The 2023/2024 Delivery Year auction will take place in June 2022;
- The 2024/2025 Delivery Year auction will take place in December 2022;
- The 2025/2026 Delivery Year auction will take place in June 2023;
- The 2026/2027 Delivery Year auction will take place in November 2023; and
- The 2027/2028 Delivery Year auction will take place in May 2024, in line with the traditional timing.<sup>10</sup>

Per this schedule, absent additional delays, the 2023 BGS Auction will still need a proxy capacity price for the RSCP product. That product will cover a time period from June 2023 through May 2026 and the PJM capacity auction for June 2025 through May 2026 will occur in June of 2023. We would recommend that the BPU continue to employ a proxy capacity price for the June 2025 through May 2026 period as this method has proven to be an effective way to incent bidder participation.

As the Board is likely aware, since the end of the Auctions, energy prices have increased at a rate not seen in roughly a decade. For example, as shown above, when the Auction was conducted the average cost to purchase monthly energy futures for delivery during peak hours at the PJM Western Hub on the ICE exchange for the June 2022 to May 2025 period (i.e. the period of delivery for the RSCP contract) was about \$51/MWh. Currently that same product costs almost \$81/MWh, almost a 60% increase.<sup>11</sup> Off-peak prices have followed a similar pattern. Because these increases are so rapid, they also increase the risk to suppliers of offering a fixed-price product - putting additional upward pressure on the price of a default service product. This has caused disruptions in other markets as bidders increased their offer prices and limited participation in order to reduce their own risk exposure.

The primary driver of these increases is an increase in natural gas prices. During the RSCP Auction the average price for the June 2022-May 2025 period for Henry Hub futures was about \$3.65/MMBtu. Currently the same product costs about \$5.75/MMBtu. This increase has been driven by several factors including limited production, supply

<sup>10</sup> <https://insidelines.pjm.com/pjm-compliance-filing-proposes-new-capacity-auction-timelines/>

<sup>11</sup> References to current data are to data from May 23. Source: <https://www.theice.com/marketdata/reports>

chain disruptions, weather, limited coal supply and the Russian invasion of Ukraine and resulting sanctions.

Looking more closely at market prices we see that the most severe increases are confined to the June 2022 to May 2023 period. Turning back to the current PJM Western Hub peak futures, the average cost for the June 2022 to May 2023 period is about \$117/MWh and the average price declines to \$68/MWh from June 2023 to May 2024 and to \$57/MWh from June 2024 to May 2025. This indicates that the market is uncertain about the long-term nature of the current high-priced environment.

While that is somewhat reassuring, we would recommend that the EDCs and the BPU monitor the market this fall as the Auction process begins and prepare for the potential of higher prices next year. This could include ensuring the continued use of partial or reduced payment plans, backup plans in case the auction does not meet its full targets and more. As Advisors, we will continue to monitor the market effects on other default service auctions and notify the Board if there is further need to adjust the process.

We do emphasize that the BGS RSCP procurement design does help slow price increases by only replacing one-third of the RSCP portfolio in each year, so this alone will certainly help reduce the impact of price increases to ratepayers.

**I. THE NEW JERSEY 2022 BGS-RSCP AUCTION**

A. POST-AUCTION CHECKLIST

**ATTACHMENT B  
DOCKET NO. ER21030631**

**POST-AUCTION CHECKLIST  
FOR THE NEW JERSEY 2022 BGS-RSCP AUCTION**

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Prepared by: Bates White, LLC

Auction began with the opening of Round 1 at 8:25 am on Monday, Feb. 7, 2022

Auction finished with the close of Round 18 at 5:30 pm on Monday, Feb. 7, 2022

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	<u>█</u>	<u>NA</u>	<u>NA</u>
Tranche target	<u>54</u>	<u>NA</u>	<u>NA</u>
Eligibility ratio	<u>█</u>	<u>NA</u>	<u>NA</u>
PSE&G load cap	<u>13</u>	<u>NA</u>	<u>NA</u>
JCP&L load cap	<u>8</u>	<u>NA</u>	<u>NA</u>
ACE load cap	<u>3</u>	<u>NA</u>	<u>NA</u>
RECO load cap	<u>1</u>	<u>NA</u>	<u>NA</u>
Statewide load cap	<u>20</u>	<u>NA</u>	<u>NA</u>

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



**ATTACHMENT B  
DOCKET NO. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 BGS-RSCP Auction**

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

**Table 9. Summary of BGS-RSCP Auction**

	PSE&G	JCP&L	ACE	RECO	Total
BGS-RSCP peak load share (MW)	2,564.24	1,631.70	632.10	93.35	4,921.39
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	25.0	
Tranche size (approximate MW)	91.58	90.65	90.30	93.35	
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-RSCP load)	100%	100%	100%	100%	100%
# Winning bidders	7	8	5	1	10
Maximum # of tranches procured from any one bidder	11	5	2	1	11
Minimum and maximum starting prices prior to indicative bids (cents/kWh)					10.5 12.5
Starting price at start of auction (cents/kWh) *					
Final auction price (cents/kWh) **	7.630	7.750	7.557	8.206	7.671

\* 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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 BGS-RSCP Auction**

**Table 10. Overview of Findings on BGS-RSCP Auction**

	Question	Comments
1	<b>BW's recommendation as to whether the Board should certify the RSCP auction results?</b>	Yes, certify
2	Did bidders have sufficient information to prepare for the RSCP 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 RSCP auction that created material uncertainty for bidders?	No
5	From what BW could observe, were there any procedural problems or errors with the RSCP auction, including the electronic bidding process, the back-up bidding process, and communications between bidders and the Auction Manager?	No
6	From what BW could observe, were protocols for communication between bidders and the Auction Manager adhered to?	Yes
7	From what BW could observe, were there any hardware or software problems or errors, either with the RSCP auction system or with its associated communications systems?	No
8	Were there any unanticipated delays during the RSCP auction?	No
9	Did unanticipated delays appear to adversely affect bidding in the RSCP auction? What adverse effects did BW 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 RSCP auction process?	No

	Question	Comments
12	From what BW could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BW during the RSCP auction?	Yes
13	From what BW could observe, were the protocols followed for decisions regarding changes in RSCP 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 RSCP 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 BW 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 BW believed were legitimate?	No
19	Was the RSCP 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 RSCP auction?	No
23	Was information made public appropriately? From what BW could observe, was sensitive information treated appropriately?	Yes
24	Does the RSCP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-RSCP load?	Yes

Question		Comments
25	Were there factors exogenous to the RSCP auction (e.g., changes in market environment) that materially affected the RSCP auction in unanticipated ways?	Due to restrictions related to COVID-19, the auction was conducted remotely by the Auction Manager team. There were no issues in conducting the auction remotely.
26	Are there any concerns with the RSCP auction's outcome with regard to any specific EDC(s)?	No

B. BATES WHITE SUPPLEMENTAL CHECKLIST

**BATES WHITE SUPPLEMENT TO NEW JERSEY BGS AUCTION  
CHECKLIST: RSCP AUCTION**

**QUESTION 1:**

**Bates White's recommendation as to whether the Board should certify the RSCP 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 RSCP 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 was held on October 1, 2021, the second on November 30, 2021, and the third was held January 26, 2022. All sessions were conducted as webcasts. As a result, bidder confidentiality was maintained.

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 was complete and was restricted to Registered Bidders only. Because the session was conducted as a webcast NERA was able to conduct just one session for both RSCP and CIEP bidders.

Fourteen companies attended the first information session, and 15 companies attended the second information session. Between the two sessions, 21 unique companies attended. The slide decks and audio from the first two sessions were posted on the BGS Auction website. 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 February 4, 2022, 146 questions had been asked by bidders since August 12, 2021, 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) Pre-Auction Security and Credit, (f) Rates and (g) Data. NERA provided responses to all of these questions, which seemed to satisfy bidders.

Answers to FAQs were posted publicly on the BGS website through mid-January. Starting on January 19, 2022, the Auction Manager sent answers to questions received only to Registered Bidders via email. Bates White 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 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.

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 covered the period up to October 2020 or later, 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 the website.

NERA also posted models which translated potential winning prices for each EDC into customer rates. As we did last year, Bates White conferred with each EDC to go over their rate models and average bill calculations. We audited each

sheet posted on the website to ensure it was correct and double-checked the EDCs calculation of rate and average bill impacts resulting from the actual Auction.

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

Yes, before the Trial Auctions, [REDACTED]

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

Please see answer to 2b.

**f. Were bidders given an opportunity to provide proposals and comments concerning the 2022 Auction Process?**

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2021. Interested parties were also invited to file initial comments and final comments by September 3, 2021 and October 12, 2021, respectively. The Board also held a legislative-type hearing on September 27, 2021.

As it has been the case for the last two BGS Auction, the capacity price for some years under the supply term contract was unavailable. The results of PJM's base residual auction for the 2022/2023 delivery year (the first year of the 2022 BGS-RSCP Auction supply term) were made available in June 2021. PJM also released a schedule for its capacity auctions through the 2026/2027 delivery year. However, on September 22, 2021, PJM filed a request to delay for 55 days the scheduled December 1, 2021 BRA for the 2023/2024 delivery year, and on December 22, 2021 FERC ordered PJM to revise its reserve market rules which delayed the BRA capacity auction even more.

As a result, at the time of the 2022 BGS Auction, the BRA for the 2023/2024 and the 2024/2025 delivery years had not yet taken place and neither capacity price was known. The EDCs proposed to address this uncertainty in the same manner approved by the Board the last two years, by using capacity proxy prices for both delivery years. Under an addendum to the Supplier Master Agreement winning bidders in the RSCP Auction would be paid (or would pay) any difference between the final capacity price and these proxy prices.

After reviewing all comments from the EDCs and other interested parties, the Board approved the EDC's Joint Proposal for the 2022 BGS Auction.



**QUESTION 3:**

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

**ANSWER 3: Yes.**

**PRE-AUCTION CRITERIA**

**a. Was the timeline followed?**

Yes.

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

No.

**QUESTION 4:**

**Were there any issues and questions left unresolved prior to the RSCP 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 19, 2022 directly responded to by NERA?**

Yes, questions continued to be asked by Registered Bidders after January 19, 2022 and NERA provided answers to these questions directly to bidders via email. These answers were distributed regularly beginning on January 20, 2022. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answer to 2b.

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

No questions about the Auction were left unresolved by the start of the Auction.

In recent years, bidders have expressed concern over the implementation of the Clean Energy Act and the responsibilities of winning suppliers in the BGS Auction. The 2018 Clean Energy Act significantly increased RPS requirements for suppliers. Of greater concern to potential BGS suppliers was that the Act exempted existing supply contracts from increases in the solar RPS requirement and required non-exempt contracts to make up this missing supply. Prior to the

2019 BGS Auction the BPU held hearings regarding the implementation of this requirement and BPU Staff developed a proposed method to allocate avoided solar RPS increases to non-exempt contracts. The Board approved a method in December of 2018.

Subsequent to the 2019 BGS Auction, on August 2019 the Board adopted the amendments to New Jersey Administrative Code 14:8-2.3 to conform current RPS rules to provisions of the Clean Energy Act. These sections of the code were published on September 2019. As it did in the past, the Auction Manager posted an example calculation using the approved method on the BGS website on January 24, 2022.

Based on the levels of participation and prices received it appears that bidders were able to understand and implement the approved calculation method and the Act did not ultimately create material uncertainty by the time of the Auction.

Due to the ongoing Covid-19 restrictions all bidding and bid evaluation was conducted remotely. Per BPU Order, NERA provided extra opportunities for bidders to practice using the bidding software and for evaluators to practice in a remote environment.

Please also see the answer to 2f regarding use of a capacity proxy price.

Bates White also monitored various industry news sources and did not discover any other 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 supply offered in excess of need is what drives Auction prices to “tick down” (i.e. decrease) from round to round.

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. This outreach effort began prior to the first information session. NERA also advertised the bidding opportunity by running four ads in Platts publications, two in *Megawatt Daily* on November 16, 2021 and November 30, 2021 and two in *Energy Trader* on November 18, 2021 and December 2, 2021.

The Auction Manager consulted with Bates White during each of the application processing periods. [REDACTED]

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

[REDACTED]

**QUESTION 5:**

**From what Bates White could observe, were there any procedural problems or errors with the RSCP 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 RSCP Auction?**

Yes, to our knowledge, the Auction was carried out according to the Auction Rules as approved by the Board and NERA's internal protocols.

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

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

Bates White had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during three Trial Auctions.

Given the ongoing COVID-19 related restrictions, the trial auctions and the auction were conducted, administered and monitored remotely. During the trial auctions and the auction itself, Bates White team members and BPU Staff kept in contact with the auction manager via email, phone and online platforms throughout the day. In addition, because there could be connectivity issues associated with a work-from-home environment, the EDCs proposed and the Board directed additional training and trial auctions to prospective bidders to test bidding procedures prior to the actual auction.

For the first Trial Auction on January 21, 2022, Bates White 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 phone-based backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols. [REDACTED]

For the second and third Trial Auctions, held on January 27, 2022 and February 1, 2022 respectively, Bates White 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.

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

Yes. [REDACTED] Further, Registered Bidders also had the opportunity to practice the back-up bid procedure during the Trial Auctions for Registered Bidders on January 27, 2022 and February 1, 2022.

**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 text messages and electronic messages through the online platform. All forms of communication were logged. All telephone conversations were taped and all texts, electronic messages, and the answers given by the Auction Manager were saved. Bates White reviewed all telephone conversations, texts 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.

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

No.

**QUESTION 6:**

**From what Bates White 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. Bates White 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 August 12, 2021. The Part 2 Application deadline was on January 12, 2022, by which time there were a total of 108 questions posted and answered. 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. [REDACTED]

**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. [REDACTED]



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

Yes, please see the answer to 5d.

**QUESTION 7:**

**From what Bates White could observe, were there any hardware or software problems or errors, either with the RSCP 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?**

Bates White is unaware of any material issues with NERA's communication systems based on our monitoring of the Auction via online platforms and 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?**

Bidders did not communicate any material technical concerns to NERA.

**QUESTION 8:**

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

**ANSWER 8: No.**

**QUESTION 9:**

**Did unanticipated delays appear to adversely affect bidding in the RSCP Auction? What adverse effects did Bates White 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?**

[REDACTED] 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 RSCP 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]

Bates White reviewed communications between NERA and bidders. [REDACTED]

**QUESTION 12:**

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

**ANSWER 12: Yes.**

**AUCTION WEEK CRITERIA**

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

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

**b. Did BPU Staff and Bates White get all the information that we required?**

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

**QUESTION 13:**

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

**ANSWER 13: Yes.**

**PRE-AUCTION CRITERIA**

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

NERA made some adjustments to the decrement formulas in order to ensure a smooth and more uniform price reduction during the auction.

**AUCTION WEEK CRITERIA**

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



**QUESTION 14:**

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



**ANSWER 14: Yes.**



**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, Bates White reviewed all electronic and voice communications.

**QUESTION 16:**

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

**ANSWER 16: Yes.**

**AUCTION WEEK CRITERIA**

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


Bates White 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.**

The Auction proceeded relatively smoothly. The 2022 RSCP Auction ended after 18 rounds, which compares to 22 rounds last year and the year before.

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 Auctions 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 Bates White believed were legitimate?**

**ANSWER 18: No.**

Bates White believes there were no legitimate complaints about the Auction. That is, we are not aware of any questions raised by bidders that were not resolved.

**QUESTION 19:**

**Was the RSCP 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 Board, 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 2022 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2021. Furthermore, interested parties were also invited to file initial comments and final comments by September 3, 2021 and October 12, 2021, respectively. The Board also held a legislative-type hearing on September 27, 2021.

Before the Auction began, the rules and contracts were approved and made public. Auction rules were approved by the Board. Contracts and Supplier 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 as FAQs. This FAQ section ensured that all bidders had equal access to information provided to any one bidder.

The Auction Manager consulted with Bates White and BPU Staff concerning Part 1 and 2 Applications. [REDACTED]

An additional factor boosting the competitiveness of the Auction is that this is the 21<sup>st</sup> year it has been held 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 Board. 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 RSCP 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 RSCP Auction (which solicits supply for residential customers as well as some small 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 shares of winners, and a widely-used measure of competitiveness related to market shares called the Herfindahl-Hirschman Index (HHI).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] list includes many well-known participants in the U.S. electricity business. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 ratepayers. [REDACTED]

[REDACTED]

[REDACTED] ten actually won the right to serve some portion of the New Jersey RSCP load. This is one more than the number of winners last year.

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

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[REDACTED]

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 ten winners in the RSCP Auction, only one bidder, NextEra Energy Marketing, LLC, has a market share over 20% (at 20.4%.) Including winners from the 2020 and 2021 RSCP Auctions, each of whom will provide BGS-RSCP supply over the June 2022 to May 2023 period, NextEra Energy Marketing, LLC remains the only supplier with a market share over 20% (20.7%).

The 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 RSCP Auction, using the winning shares as market shares, the HHI is 1,475. This puts the HHI for the RSCP Auction in the un-concentrated range. However, to include only winning bidders is a narrow focus for calculating an HHI. For example, a more appropriate focus would be the 15 suppliers who will serve consumers in 2022-2023; these are the winners in 2020 and 2021, as well as in this 2022 Auction. The HHI in this case would be 1,113. This compares to an HHI of suppliers who served customers for 2021-2022 of 1,156.

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]

[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 RSCP Auction. Bates White and its Auction expert, Professor Ken Hendricks, [REDACTED] [REDACTED] we detected no evidence of explicit coordination of bidding.

**QUESTION 23:**

**Was information made public appropriately? From what Bates White 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 Bates White signed confidentiality agreements. [REDACTED]

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

**QUESTION 24:**

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

**ANSWER 24: Yes.**

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2022 BGS Auction					
EDC	Tranches Filled	Final Price (cents/kWh)	Price Expectation Range (cents/kWh) <sup>1</sup>		
			Average	Low	High
PSE&G	28	7.630			
JCP&L	18	7.750			
ACE	7	7.557			
RECO	1	8.206			
<b>Total</b>	<b>54</b>				
<b>Average<sup>2</sup></b>		<b>7.671</b>			

Comparing this year’s prices to last year’s prices shows increases, anywhere from 17.7% to 22.6% depending on the product. This is due mainly to the increase in energy prices. Over the past year energy prices have increased dramatically, driven by increases in the price of natural gas.

From a rate impact standpoint, as a starting point, we generally compare the winning prices in this Auction to the contracts that are being replaced. In this case that would be contracts from the 2019 BGS Auction. Prices are roughly 14% lower, on a weighted average basis. This is mainly due to the fact that the 2019 contracts included the cost of transmission, which was removed from the product starting with the 2021 BGS Auction. If we remove the estimated cost of the transmission component from the 2019 winning price, we see that the winning prices in this Auction ranged from 5.3% to 12.4% higher than 2019 winning prices. Factors affecting prices included higher energy costs and higher RPS requirements.

This would generally lead us to expect an increase in the average bill, however, as noted above, the winning contracts for the 2020 and 2021 BGS Auctions included proxy capacity prices for the upcoming June 2022 to May 2023 time frame. The proxy prices were generally \$50 to \$60/MW-day higher than the actual price of capacity for that time period, meaning that winning suppliers will pay a true-up to ratepayers. This true up, along with changes in the rate allocation factors used to convert the winning Auction prices to residential rates, ultimately creates an overall decrease in average bills.

In sum, all EDCs forecast a small rate decrease in the average residential bill for the upcoming June to May period. Specifically, PSE&G forecasts a bill decrease of 2.8%; ACE forecasts a bill decrease of 1.9%; JCP&L forecasts a bill decrease of 1.1%; and RECO forecasts a bill decrease of 2.4%.

**QUESTION 25:**



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

**ANSWER 25: No.**

No, as noted elsewhere, due to the ongoing COVID-19 pandemic the auction was conducted remotely. This did not affect the outcome of the auction.

**QUESTION 26:**

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

**ANSWER 26: No.**

**II. THE NEW JERSEY 2022 BGS-CIEP AUCTION**

A. POST-AUCTION CHECKLIST

**ATTACHMENT B  
DOCKET NO. ER21030631**

**POST-AUCTION CHECKLIST FOR THE NEW JERSEY  
2022 BGS-CIEP AUCTION**

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Prepared by: Bates White, LLC

Auction began with the opening of Round 1 at 8:25 am on Friday, February 4, 2022  
 Auction finished with the close of Round 28 at 6:30 pm on Friday, February 4, 2022

	Start of Round 1	Start of Round 2 * (after volume reduction in Round 1, if applicable)	Start of Round n * (after post-Round 1 volume reduction, if applicable)
# Bidders	<u>█</u>	<u>NA</u>	<u>NA</u>
Tranche target	<u>37</u>	<u>NA</u>	<u>NA</u>
Eligibility ratio	<u>█</u>	<u>NA</u>	<u>NA</u>
Statewide load cap	<u>17</u>	<u>NA</u>	<u>NA</u>

\* 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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 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)	1,682.87	739.42	297.60	45.22	2,765.11
Total tranches needed	22	10	4	1	37
Starting tranche target in auction	22	10	4	1	37
Final tranche target in auction	22	10	4	1	37
Tranche size (%)	4.55	10.00	25.00	100.00	
Tranche size (approximate MW)	76.49	73.94	74.40	45.22	
Starting load cap (# tranches)	--	--	--	--	17
Final load cap (# tranches)	--	--	--	--	17
Quantity procured (# tranches)	22	10	4	1	37
Quantity procured (% BGS-CIEP load)	100%	100%	100%	100%	100%
# Winning bidders	4	3	2	1	5
Maximum # of tranches procured from any one bidder	10	5	2	1	12
Minimum and maximum starting prices prior to indicative bids (\$/MW-day)					410 520
Starting price at start of auction (\$/MW-day)*	■	■	■	■	■
Final auction price (\$/MW-day)**	276.26	254.80	284.85	260.48	270.96

\* 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. ER21030631**

**Post-Auction Checklist for the New Jersey 2022 BGS-CIEP Auction**

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

Question		Comments
1	<b>BW'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 BW 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 BW could observe, were protocols for communication between bidders and the Auction Manager adhered to?	Yes
7	From what BW 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 BW 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 BW could observe, were protocols followed for communications among the EDCs, NERA, BPU staff, the Board (if necessary), and BW during the CIEP auction?	Yes
13	From what BW 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 BW 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 BW 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 BW could observe, was sensitive information treated appropriately?	Yes
24	Does the CIEP auction appear to have generated a result that is consistent with competitive bidding, market-determined prices, and efficient allocation of the BGS-CIEP load?	Yes

Question		Comments
25	Were there factors exogenous to the CIEP auction (e.g., changes in market environment) that materially affected the CIEP auction in unanticipated ways?	Due to restrictions related to COVID-19, the auction was conducted remotely by the Auction Manager team. There were no issues in conducting the auction remotely.
26	Are there any concerns with the CIEP auction's outcome with regard to any specific EDC(s)?	No



B. BATES WHITE SUPPLEMENTAL CHECKLIST

**BATES WHITE SUPPLEMENT TO NEW JERSEY BGS AUCTION  
CHECKLIST: CIEP AUCTION**

**QUESTION 1:**

**Bates White's recommendation as to whether the Board should certify the CIEP Auction results?**

**ANSWER 1:** Yes, certify.

**CRITERIA:**

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

Yes.

**QUESTION 2:**

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

**ANSWER 2:** Yes.

**PRE-AUCTION CRITERIA**

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

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

There were three Pre-Bid Information Sessions: the first was held on October 1, 2021, the second on November 30, 2021, and the third was held January 26, 2022. All sessions were conducted as webcasts. As a result, bidder confidentiality was maintained.

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 was complete and was restricted to Registered Bidders only. Since the session was conducted via webcast, NERA was able to conduct just one session for both RSCP and CIEP bidders.

Fourteen companies attended the first information session and 15 companies attended the second information session. Between the two sessions, 21 unique companies attended. The slide decks and audio from both sessions were posted on the BGS Auction website. 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 February 4, 2022, 146 questions had been asked by bidders since August 12, 2021, 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) Pre-Auction Security and Credit, (f) Rates and (g) Data. NERA provided responses to all of these questions, which seemed to satisfy bidders.

Answers to FAQs were posted publicly through mid-January. Starting on January 20, 2022, the Auction Manager sent answers to questions received regularly to Registered Bidders via email. Bates White 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 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.

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 covered up to at least October 2021, 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 the 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?**

No.

**f. Were bidders given an opportunity to provide proposals and comments concerning the 2022 Auction Process?**

Yes. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2021. Interested parties were also invited to file initial comments and final comments by September 3, 2021 and October 12, 2021, respectively. The Board also held a legislative-type hearing on September 27, 2021.

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 State RPS. Bidders are paid the PJM spot energy price to cover the energy portion of the service. As noted in discussion of the RSCP Auction above, for the 2022 BGS Auction, the BRA for the 2023/2024 and the 2024/2025 delivery years was postponed and neither capacity price was known prior to this year's BGS Auction. This issue did not impact the CIEP Auction since the product only covered the June 2022 through May 2023 period.

Please see answer to 24.

**QUESTION 3:**

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

**ANSWER 3: Yes.**

**PRE-AUCTION CRITERIA**

**a. Was the timeline followed?**

Yes.

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

No, there were no adjustments to this schedule.

**QUESTION 4:**

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

**ANSWER 4: No.**

**PRE-AUCTION CRITERIA**

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

Yes, please see answer to 2b.

**b. Were bidder questions asked starting on or about January 19, 2022 directly responded to by NERA?**

Yes, questions continued to be asked by Registered Bidders after January 19, 2022 and NERA provided answers to these questions directly to bidders via email. These answers were distributed regularly beginning on January 20, 2022. Bidders did not indicate any concerns with the answers provided by NERA. Also, please see answer to 2b.

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

In recent years, bidders have expressed concern over the implementation of the Clean Energy Act and the responsibilities of winning suppliers in the BGS Auction. The 2018 Clean Energy Act significantly increased RPS requirements for suppliers. Of greater concern to potential BGS suppliers was that the Act exempted existing supply contracts from increases in the solar RPS requirement and required non-exempt contracts to make up this missing supply. Prior to the 2019 BGS Auction the BPU held hearings regarding the implementation of this requirement and BPU Staff developed a proposed method to allocate avoided solar RPS increases to non-exempt contracts. The Board approved a method in December of 2018.

Subsequent to the 2019 BGS Auction, on August 2019 the Board adopted the amendments to New Jersey Administrative Code 14:8-2.3 to conform current RPS rules to provisions of the Clean Energy Act. These sections of the code were published on September 2019. As it did in the past, the Auction Manager posted an example calculation using the approved method on the BGS website on January 24, 2022.

Based on the levels of participation and prices received it appears that bidders were able to understand and implement the approved calculation method and the Act did not ultimately create material uncertainty by the time of the Auction.

Bates White also monitored various industry news sources and did not discover any other events that would produce material uncertainty for bidders. The failure of PJM to establish a capacity price for the June 2023-May 2024 and June 2024-

2025 periods, while important for the RSCP Auction, was not a factor in this Auction due to the time period covered by the CIEP product.

**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. 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 also advertised the bidding opportunity by running four ads in Platts publications, two in *Megawatt Daily* on November 16, 2021 and November 11, 2021 and two in *Energy Trader* on November 18, 2021 and December 2, 2021.

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

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

[REDACTED]

**QUESTION 5:**

**From what Bates White 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.

Bates White had full opportunity to test NERA's bidding software, backup bidding process, and bid recording systems during three Trial Auctions.

Given the ongoing COVID-19 related restrictions, the trial auctions and the auction were conducted, administered and monitored remotely. During the trial auctions and the auction itself, Bates White team members and BPU Staff kept in contact with the auction manager via email, phone and online platforms throughout the day. In addition, because there may be connectivity issues associated with a work-from-home environment, the Board directed additional training and trial auctions to prospective bidders to test bidding procedures prior to the actual auction.

For the first Trial Auction on January 21, 2022, Bates White 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 phone-based backup bidding systems by submitting backup bids and creating situations to test NERA's bidder notification protocols. [REDACTED]

For the second and third Trial Auctions, held on January 27, 2022 and February 1, 2022 respectively, Bates White monitored and evaluated bids submitted by Registered Bidders using a secured online platform. We received and tested bid reports from NERA's software and formulated reports and checked price decrements using our own bid evaluation software.

During the actual CIEP Auction, Bates White 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 Auctions for Registered Bidders on January 27, 2022 and February 1, 2022.

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

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

Bidders were given three ways of communicating with the Auction Manager during the Auction. Bidders had a telephone number for technical assistance, an email address and they could also send electronic messages through the online platform. All forms of communication were logged. All telephone conversations were taped and all electronic messages, texts and the answers given by the Auction Manager were saved. Bates White reviewed all telephone conversations, texts and electronic messages.

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

Yes. There was one extension requested by bidders.

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

No.

**QUESTION 6:**

**From what Bates White 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. Bates White 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 August 12, 2021. The Part 2 Application deadline was on January 12, 2022 by which time there were a total of 108 questions posted and answered. 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. [REDACTED]

**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. [REDACTED]

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

Yes, please see the answer to 5d.

**QUESTION 7:**

**From what Bates White 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?**

Bates White is unaware of any material issues with NERA's communication systems based on our monitoring of the Auction via online platforms, and 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 Bates White 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?**

[REDACTED] 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]

Bates White reviewed communications between NERA and bidders.

[REDACTED]

**QUESTION 12:**

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

**ANSWER 12: Yes.**

**AUCTION WEEK CRITERIA**

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

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

**b. Did BPU Staff and Bates White get all the information that we required?**

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

**QUESTION 13:**

**From what Bates White 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?**

No.

**AUCTION WEEK CRITERIA**

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



**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.**



Bates White 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, Bates White reviewed all electronic and voice communications.

**QUESTION 16:**

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

**ANSWER 16: Yes.**

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

Bates White 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.**

In general, NERA's decrement formulas made this year's CIEP Auction proceed smoothly [REDACTED]

The 2022 CIEP Auction ended after 28 rounds, which compares to 29 rounds last year. [REDACTED]

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

[REDACTED] there were also no indications 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 Bates White believed were legitimate?**

**ANSWER 18: No.**

Bates White believes there were no legitimate complaints about the Auction. That is, we are not aware of any 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 Board, 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 2022 BGS process. In its Procedural Order, the Board invited all interested parties to file procurement proposals by July 1, 2021. Furthermore, interested parties were also invited to file initial comments and final comments by September 3, 2021 and October 12, 2021, respectively. The Board also held a legislative-type hearing on September 27, 2021.

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 as FAQs. These FAQs ensured that all bidders had equal access to information provided to any one bidder.

The Auction Manager consulted with Bates White and BPU Staff concerning Part 1 and 2 Applications. [REDACTED]

[REDACTED]

An additional factor boosting the competitiveness of the Auction is that this is the 21<sup>st</sup> year that it has been held 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 Board. 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 targets 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 an acceptable number of bidders for an auction this size.

[REDACTED]

Five of the six bidders won the right to serve at least some portion of the New Jersey CIEP consumer need. The biggest winner was Constellation Energy Generation LLC, who won 12 tranches (five for PSE&G, five for JCP&L and two for ACE). Last year's process saw six winners with the largest supplier (DTE Energy Trading) also winning 12 tranches.

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 five winners in the CIEP Auction, three had a market share over 20% (Constellation Energy Generation LLC, DTE Energy Trading, Inc. and NextEra Energy Marketing, LLC won 32%, 22% and 30%, respectively).

The 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 2,549. This puts the HHI for the CIEP Auction barely 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. A broader 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 CIEP Auction. Bates White and its auction expert, Professor Ken Hendricks of the University of Wisconsin, [REDACTED] we detected no evidence of explicit coordination of bidding.

**QUESTION 23:**

**Was information made public appropriately? From what Bates White 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 Bates White signed confidentiality agreements. [REDACTED]

[REDACTED]

In addition, Bates White reviewed communication between all Auction personnel and bidders; we had access to communications sent to all bidders through the online platform and recordings of calls between NERA and bidders.

**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, Bates White 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 State RPS. Bidders are paid the PJM spot energy price to cover the energy portion of the service. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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.**

As noted elsewhere, due to the ongoing COVID-19 pandemic the auction was conducted remotely. This did not affect the outcome of the auction.

**QUESTION 26:**

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

**ANSWER 26: No.**