

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)	
<b>Edison Company, The Cleveland</b>	)	
<b>Electric Illuminating Company and The</b>	)	<b>Case Nos. 09-21-EL-ATA</b>
<b>Toledo Edison Company for Approval</b>	)	<b>09-22-EL-AEM</b>
<b>of Rider FUEL and Related Accounting</b>	)	<b>09-23-EL-AAM</b>
<b>Authority</b>	)	
	)	

<b>In the Matter of the Application of Ohio</b>	)	
<b>Edison Company, The Cleveland</b>	)	
<b>Electric Illuminating Company, and</b>	)	<b>Case No. 08-935-EL-SSO</b>
<b>The Toledo Edison Company for</b>	)	
<b>Authority to Establish a Standard</b>	)	
<b>Service Offer Pursuant To R.C. §</b>	)	
<b>4928.143 in the Form of an Electric</b>	)	
<b>Security Plan</b>	)	

**PUCO**

**RECEIVED-DOCKETING DIV  
2009 FEB 20 PM 5:26**

**TESTIMONY OF  
BRADLEY A. MILLER**

**February 20, 2009**

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.  
Technician TM Date Processed 2/23/2009

## TABLE OF CONTENTS

SUMMARY .....	ES-1
I. INTRODUCTION.....	1
II. TRANSPARENCY .....	5
III. DEFINITION .....	7
IV. EVALUATION CRITERIA .....	9
V. OVERSIGHT .....	13
VI. RESULTS .....	18
VII. CONCLUSION .....	19

## **TABLE OF ATTACHMENTS**

<b><u>ATTACHMENTS</u></b>	<b><u>DESCRIPTION</u></b>
EXHIBIT-1	Curriculum vitae of Bradley A. Miller
EXHIBIT-2	Post-RFP Report on the FirstEnergy Ohio Utilities' Competitive Procurement for Standard Service Offer Supply: December 2008 RFP Process
EXHIBIT-3	Load Caps Applied in Other Competitive Procurement Processes for Standard Supply Service

1  
2 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

3 A. The FirstEnergy Ohio Utilities, consisting of Ohio Edison Company, The Cleveland  
4 Electric Illuminating Company, and The Toledo Edison Company (hereafter "FirstEnergy  
5 Ohio Utilities" or "Companies"), retained CRA International, Inc. ("CRA") to oversee  
6 the design and implementation of an RFP procurement process that would result in a fair  
7 and transparent competitive process enabling the Companies to obtain their retail  
8 standard service offer ("SSO") supply requirements at competitive prices.

9 The Companies are obligated to provide SSO service to retail customers who choose not  
10 to shop with an alternative supplier ("SSO Load"). The Companies conducted a Request  
11 for Proposal ("RFP") process for the purpose of procuring the aggregate wholesale  
12 energy and capacity requirements required to serve the Companies' SSO Load. The RFP  
13 format was a competitive bidding process that called for bids to be submitted on  
14 December 31, 2008, for delivery of supply beginning January 5, 2009 through March 31,  
15 2009.

16 The RFP process was designed and conducted to allow affiliates of the Companies to bid  
17 consistent with the principles established by the Federal Energy Regulatory Commission  
18 ("FERC") in both the *Edgar*<sup>1</sup> and *Allegheny*<sup>2</sup> decisions. The *Edgar* decision articulated a  
19 principle that no supplier that is affiliated with a regulated utility should receive undue  
20 preference during any stage of the regulated utility's competitive wholesale power

---

<sup>1</sup> FERC Docket No. ER91-243, *Edgar Electric Energy Company*, 55 FERC ¶ 61,382 at ¶ 62,167 (1991).

<sup>2</sup> FERC Docket No. ER04-730, *Allegheny Energy Supply*, Order Granting Authorization to Make Affiliate Sales, 108 FERC ¶ 61,082 at P 18 (2004).

1 procurement process. The *Allegheny* decision established four guidelines to be used to  
2 determine whether a competitive solicitation met the *Edgar* criteria: transparency,  
3 definition, evaluation, and oversight.

4 It is my conclusion that the Companies' RFP process was designed and conducted in such  
5 a way as to satisfy the four *Allegheny* guidelines. As such, the RFP process was  
6 implemented without undue preference to FirstEnergy Solutions Corp. ("FirstEnergy  
7 Solutions"), which is the competitive affiliate of the Companies, and the analysis of bids  
8 was performed according to the bidding rules in an objective, non-discriminatory manner  
9 that did not favor an affiliate. Even though FirstEnergy Solutions' bid was selected for a  
10 portion of the load, such selection was based on a reasonable combination of price and  
11 non-price factors applied to all bidders — which means that FirstEnergy Solutions did  
12 not receive undue preference during any stage of the RFP process.

**I. INTRODUCTION**

**Q. WHAT IS YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS?**

A. My name is Bradley A. Miller. I am a vice president of CRA International, Inc. ("CRA"), and am head of CRA's Auctions & Competitive Bidding Practice. My business address is: CRA International, Inc., John Hancock Tower, T-32, 200 Clarendon Street, Boston, Massachusetts 02116.

**Q. PLEASE GIVE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.**

A. I have been at CRA since receiving a Ph.D. in Economics from the University of California at Berkeley in 1988. For the last thirteen years my work has focused on auctions and bidding mechanisms. In the course of that work, I have played a leadership role in more than twenty consulting engagements involving auctions and other competitive bidding mechanisms in electricity and electric markets. A copy of my curriculum vitae is annexed hereto as Exhibit-1.

**Q. WHAT DOES CRA DO?**

A. CRA, which was founded in 1965, provides economic and financial expertise and management consulting services to businesses, law firms, accounting firms, and governments. CRA is organized by industry areas of expertise (such as electricity) and functional areas of expertise (such as auctions).

**Q. WHY WAS CRA QUALIFIED TO ACT AS THE RFP MANAGER?**

A. CRA is an internationally known economic consulting firm that has been involved in competitive power solicitations throughout the U.S. and overseas. CRA was qualified to

1 act as the RFP Manager because of its national and international reputation and expertise  
2 in managing these types of solicitations as well as an understanding of the Ohio  
3 electricity market. Both were essential to designing and conducting an effective RFP  
4 process in this case.

5 **Q. PLEASE DESCRIBE THE WORK THAT YOU DO.**

6 A. I lead CRA's Auctions & Competitive Bidding Practice, serving clients in many  
7 industries, including clients in the electricity industry. Services for clients in the  
8 electricity industry include the design and conduct of auctions and other competitive  
9 bidding mechanisms, independent monitoring of bidding mechanisms and markets, and  
10 bidding support for bidders.

11 **Q. HAVE YOU PREVIOUSLY WORKED ON MATTERS BEFORE THE PUBLIC**  
12 **UTILITIES COMMISSION OF OHIO ("PUCO")?**

13 A. Yes, I have. CRA was retained by the PUCO to assist it in monitoring the Companies'  
14 2004 and 2005-2006 competitive bidding processes to procure supplies to serve provider  
15 of last resort customers in Ohio. CRA's role was to compare the auction results to the  
16 Companies' rate stabilization plan and rate certainty plan previously approved by the  
17 PUCO. I participated in this work, and provided post-auction assessments to the PUCO.

18 **Q. HAVE YOU PREVIOUSLY TESTIFIED ON BEHALF OF ANY OF THE**  
19 **COMPANIES?**

20 A. Yes. In 2006, CRA provided expert testimony on behalf of the Companies in a Federal  
21 Energy Regulatory Commission ("FERC") proceeding concerning an affiliate sale

1 between the Companies and FirstEnergy Solutions designed to support the rate  
2 stabilization plan mentioned above.<sup>3</sup> The purpose of my testimony in that proceeding  
3 was to explain CRA's role as a consultant for the PUCO and to compare the price arising  
4 from the competitive bidding process to the alternative price embodied in the rate  
5 stabilization plan proposed by the Companies.

6 **Q. WHAT ATTACHMENTS HAVE YOU INCLUDED WITH YOUR TESTIMONY?**

7 A. My curriculum vitae is attached as Exhibit-1. The post-RFP report I submitted to the  
8 Companies in my role as the RFP Manager for the December RFP process is attached as  
9 Exhibit-2 ("CRA Report"). Exhibit-3 provides a summary of the load caps applied in  
10 competitive procurement processes for similar electric supply service in other  
11 jurisdictions and prior auctions in Ohio.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. I am testifying on the RFP process by which power was procured to serve the  
14 Companies' Standard Supply Offer ("SSO") customers for the delivery period of  
15 January 5, 2009 through March 31, 2009. Specifically, my testimony addresses how the  
16 RFP process was conducted to promote a fair, open, transparent, objective, and non-  
17 discriminatory process for the Companies to procure power supply for retail SSO  
18 customers of the Companies. I also discuss the standards set out by FERC in the *Edgar*<sup>4</sup>

---

<sup>3</sup> See FERC Docket No. ER06-117, *FirstEnergy Solutions Corp.*, Prepared Direct Testimony of Bradley A. Miller, Ph.D. (May 23, 2006).

<sup>4</sup> FERC Docket No. ER91-243, *Edgar Electric Energy Company*, 55 FERC ¶ 61,382 at ¶ 62,167 (1991).



and *Allegheny*<sup>5</sup> cases (hereafter referenced as Edgar/Allegheny) and their applicability to the RFP process.

**Q. WHAT SPECIFIC ASPECTS OF THE FERC STANDARDS DO YOU CONSIDER?**

A. In *Allegheny*, FERC stated the four guidelines that would help it determine if a procurement process ensured that an affiliate of the purchasing companies did not receive undue preference during any phase of a competitive solicitation process. These guidelines are transparency, definition, evaluation, and oversight. The transparency guideline is satisfied if the competitive solicitation process is open and fair to all suppliers. The definition guideline is satisfied if the product or products that are offered are defined precisely. The evaluation guideline is satisfied if the criteria for evaluating all bids are standardized and applied equally to all bids and bidders. The oversight guideline is satisfied if an independent third party designs the solicitation, administers the bidding, and evaluates the bids for purposes of the selection of suppliers. In evaluating whether the RFP process meets these requirements, I assessed the RFP process against these four *Allegheny* guidelines.

---

<sup>5</sup> FERC Docket No. ER04-730, *Allegheny Energy Supply*, Order Granting Authorization to Make Affiliate Sales, 108 FERC ¶ 61,082 at P 18 (2004).

**Q. WHAT CONCLUSIONS DO YOU DRAW FROM YOUR REVIEW OF THE RFP PROCESS IN THE CONTEXT OF FERC'S GUIDELINES FOR AFFILIATE TRANSACTIONS?**

**A.** The RFP process to procure energy and capacity met the requirements described by FERC in Edgar/Allegheny and resulted in a direct head-to-head competition between FirstEnergy Solutions (the Companies' affiliate) and unaffiliated suppliers. The RFP process, as designed and implemented, was transparent, included clearly defined products and processes, was evaluated using reasonable quantitative and qualitative criteria that were applied equally to both affiliated and non-affiliated bidders, and was overseen by CRA, which is an independent party with no financial interest in the Companies or the outcome of the process. As a result, I conclude that:

- The RFP process was designed and implemented without undue preference for any supplier that is affiliated with the Companies;
- The process used to analyze the bids did not favor FirstEnergy Solutions; and
- Even though FirstEnergy Solutions' bid was selected for a portion of the load, such selection was based on a reasonable combination of price and non-price factors.

## II. TRANSPARENCY

**Q. WHAT IS THE TRANSPARENCY PRINCIPLE?**

**A.** A transparency principle applies to a process in which the free flow of information provides all bidders with equal access to the information and data that are relevant to the RFP process. FERC defines a transparent process under FERC guidelines as one that is open and fair.

1 **Q. WHAT IS YOUR CONCLUSION REGARDING THE TRANSPARENCY OF THE**  
2 **RFP PROCESS?**

3 A. I conclude that the RFP process provided a fair, open, transparent, and non-  
4 discriminatory bidding process for all bidders so that no party, including FirstEnergy  
5 Solutions, had any information or advantageous access during any part of the solicitation  
6 process.

7 **Q. WHAT IS THE BASIS FOR THIS CONCLUSION?**

8 A. In the design and implementation of the RFP process, decisions were made and  
9 procedures were established to encourage participation and competitive bidding, and to  
10 ensure that any affiliates were not given an undue advantage.

11 **Q. CAN YOU PROVIDE EXAMPLES OF HOW THE RFP PROCESS WAS**  
12 **TRANSPARENT?**

13 A. The CRA Report (Exhibit-2) describes specific ways in which this RFP process met the  
14 transparency principle, including the following:

- 15 • **Open Invitation:** The RFP process was announced with a public press release on  
16 December 22, 2008 that set forth the activities and timeline for the RFP process,  
17 directed all inquiries to CRA in its role as the RFP Manager, and provided  
18 opportunities for bidders to receive further information from the RFP Manager.  
19 In addition, the RFP Manager sent a copy of the press release via email to more  
20 than two dozen companies that were expected to be able to meet the non-price  
21 evaluation criteria and informed them of the upcoming bidding process. Also, the  
22 Companies caused notice of the RFP process to be published on December 24 in  
23 the trade press, specifically Platts Megawatt Daily.

- **Equal Access to Information:** The RFP Manager established communication protocols and prescriptive guidelines in the bidding rules that provided non-discriminatory access to information. Potential bidders had equal access to information related to the RFP process using the Companies' public auctions Web site ([www.firstenergy-auction.com](http://www.firstenergy-auction.com)), including the bid documents posted there and contact information for the RFP Manager. Answers to bidder inquiries along with the inquiries were posted anonymously (without identifying the inquirer) as "Frequently Asked Questions" on the Web site for all potential bidders to review. Notifications that questions and answers had been posted were emailed to all potential bidders who registered to receive notifications.
- **Low Barriers to Entry:** Any company able to meet the requirements of the SSO Supply Agreement and bidding rules could submit a bid. By soliciting standard energy and capacity products for relatively short-term periods, and establishing the tranche size at one (1) percent of the load, the RFP was accessible to many firms with varying resources and credit positions, avoiding the perception of design elements that were unduly favorable to affiliated suppliers.
- **Consistency with Other Approved Solicitation Models:** The RFP process was consistent with competitive procurement processes used in other jurisdictions that had been subject to extensive stakeholder and regulatory review.
- **Tranche Limit:** No bidder was allowed to bid or win more than 75 tranches, a load cap that was clearly defined in the bidding rules.
- **Non-discriminatory Credit Requirements:** All bidders were subject to the same credit requirement criteria, based on their credit rating and financial position.
- **Independent Evaluation:** The RFP Manager served as the sole link for transmitting information between potential bidders and the RFP Issuer (the Companies) during the bidding process. In addition, the RFP Manager, and not the Companies, determined which bids satisfied the pre-defined bid evaluation criteria.

### III. DEFINITION

**Q. WHAT IS THE DEFINITION PRINCIPLE?**

**A.** In order to preclude an unfair advantage to affiliates, FERC requires products procured through an RFP process to be defined in a precise and non-discriminatory manner.

1 Q. WHAT IS YOUR CONCLUSION REGARDING THE PRODUCT DEFINITION  
2 COMPONENT OF THE RFP PROCESS?

3 A. I conclude that the RFP process provided precise definitions of the products and bidder  
4 qualification criteria, and that these definitions were publicly available to all potential  
5 bidders in advance of the bidding window, thereby meeting FERC's definition principle.

6 Q. WHAT IS THE BASIS FOR THIS CONCLUSION?

7 A. As described in the CRA Report, the solicitation process was clearly defined in the  
8 following ways:

- 9 • **RFP Process:** The solicitation process was clearly defined in the bidding rules  
10 and through answers to the questions submitted by potential bidders that were  
11 posted on the Web site.
- 12 • **Product Design:** The product was clearly defined in the bidding rules and the  
13 SSO Supply Agreement that were included in the bid package. The product was  
14 clearly defined as a tranche, or one (1) percent of the aggregate wholesale load  
15 following energy and capacity requirements that FirstEnergy would need to serve  
16 their SSO Load for the delivery period of January 5, 2009 through March 31,  
17 2009. Defining the product as a tranche equal to one percent of energy and  
18 capacity requirements is consistent with similar products in other competitive bid  
19 procurements.
- 20 • **Contractual Requirements:** The SSO Supply Agreement was posted on the  
21 Web site in advance of the bid submission deadline. Bidders had to agree to the  
22 terms of the SSO Supply Agreement in advance; there was no post-bid  
23 negotiation. Bidders thus had knowledge of the contractual obligations to which  
24 they would be subject if awarded their bids.
- 25 • **Bidder Qualification Criteria:** Bidder qualification criteria and bid evaluation  
26 methods were provided in the bidding rules in advance of the bid submission  
27 deadline. Bidders thus had knowledge of the bidding and evaluation process  
28 before they placed their bids.

#### IV. EVALUATION CRITERIA

**Q. WHAT ARE THE EVALUATION CRITERIA REQUIREMENTS?**

A. Evaluation criteria must be clear and ensure that competitive solicitations do not give an advantage to the affiliate, here FirstEnergy Solutions. Winning bids and winning bidders must be selected through the application of a reasonable combination of price and non-price factors that are clearly defined in advance of the bidding process.

**Q. IN YOUR OPINION, DID THE RFP PROCESS MEET THE EVALUATION CRITERIA REQUIREMENTS?**

A. Yes. Winning bidders were selected based on an objective application of price and non-price factors that were reasonable and defined in advance of bid submissions. All bids that conformed to the non-price factors were evaluated based on price only.

**Q. WHAT WERE THE NON-PRICE FACTORS?**

A. As part of the bid submission, all bidders were required to certify that they met certain non-price requirements. Any bid submission that did not have acceptable certification that the bidder met these requirements would be considered a non-conforming bid and would be excluded from further consideration. The required non-price factors were the same for all bidders and, described in the CRA Report, included the following:

- **Membership in the Midwest ISO:** Bidders were required to be a member of the Midwest Independent Transmission System Operator and qualified as a market buyer and market seller in good standing able to secure generation or otherwise obtain and deliver electricity in MISO through compliance with all applicable requirements of MISO to fulfill the obligations of the SSO Supply Agreement.

- 1 • **Authorization by FERC:** Bidders were required to be authorized by FERC to  
2 make sales of energy, capacity, and ancillary services at market based rates,  
3 pursuant to the Federal Power Act and the provisions of regulations promulgated  
4 there under.
- 5 • **Compliance with RFP Rules:** Bidders were required to certify that they had  
6 read and understood the RFP rules and would comply with the rules.
- 7 • **Compliance with SSO Supply Agreement:** Bidders were required to certify that  
8 they had read and understood the SSO Supply Agreement and would accept its  
9 terms.
- 10 • **Ability to Execute the SSO Supply Agreement:** Bidders were required to  
11 submit their bids with the signature of a person able to bind the company, and  
12 were required to be able to execute the SSO Supply Agreement within one (1)  
13 business day following the close of the solicitation.
- 14 • **Independence and Non-collusion:** Bidders were required to bid independently  
15 of other bidders and not to enter into any agreement with another bidder directly  
16 or indirectly.

17 **Q. IN YOUR OPINION, WERE THESE NON-PRICE FACTORS REASONABLE?**

18 A. Yes. Given the time constraints at the time the RFP was announced, these requirements  
19 were reasonable, necessary, and practical for purposes of delivering power to the  
20 designated delivery point, which is in the Midwest ISO. The independence and non-  
21 collusion certification requirements helped to ensure a competitive procurement process.

22 **Q. HOW DID YOU HANDLE BIDS THAT DID NOT MEET A NON-PRICE**  
23 **FACTOR?**

24 A. Any submission that did not meet the non-price factors was considered a non-conforming  
25 bid and, per the bidding rules, was excluded from further consideration.

1 **Q. WHAT WERE THE PRICE FACTORS?**

2 A. Winning bids were determined based on the criteria defined in the bidding rules. The  
3 pricing rule was paid-as-bid, meaning winning bidders are paid the price they bid rather  
4 than a single uniform price paid to all winning bidders. Tranches in conforming bids  
5 were ordered from lowest to highest prices, with the lowest-priced tranches — up to the  
6 maximum number of tranches to be awarded — selected as winning tranches. In the  
7 event tranches to be awarded could be met at the same price by multiple bidders,  
8 preference would be given to the bidder who would win the lowest number of tranches,  
9 with (if necessary) an additional tie-breaking rule that would generate a random selection  
10 of the tranches as winning tranches. However, for the actual conforming bids in this RFP  
11 process, there was no need to apply the tie-breaking rule.

12 **Q. DO YOU CONSIDER THE PRICE-BASED EVALUATION CRITERIA TO BE**  
13 **REASONABLE?**

14 A. Yes. Rank-ordering the tranches bid by price ensured that the lowest-priced tranches  
15 would be accepted before the higher priced tranches, resulting in the lowest possible cost  
16 for procuring the power required for SSO Load.

17 **Q. DID THE PRICING CRITERIA INCLUDE A RESERVATION PRICE?**

18 A. Yes. The Companies provided reservation prices in writing to the RFP Manager the day  
19 before the bidding window opened. The reservation prices were applied to all bids and  
20 all tranches in conforming bids as follows:



- 1 • A lower reservation price would be used to award all tranches up to 100 tranches  
2 that were priced no higher than this lower reservation price.
- 3 • If fewer than 100 tranches were awarded based on the lower reservation price, a  
4 higher reservation price would be used to award additional tranches up to a total  
5 of 95 tranches awarded that were priced no higher than this higher reservation  
6 price.
- 7 • No tranches would be awarded that were priced above the higher reservation  
8 price.

9 **Q. DO YOU CONSIDER IT REASONABLE FOR THE COMPANIES TO HAVE**  
10 **RESERVATION PRICES?**

11 A. Yes. It is common for competitive bidding processes to include a reservation price to  
12 protect the utility from prices that could be significantly higher than the utility's  
13 alternative procurement options. Although the details were confidential, the bidding  
14 rules clearly indicated that the Companies would be developing such price-based criteria  
15 and would provide them to the RFP Manager in advance of the bidding window. CRA  
16 received the written reservation prices the day before bids were submitted, and  
17 incorporated them into CRA's bid evaluation tool in advance of the bidding window.  
18 These reservation prices were applied to all bids that were received.

19 **Q. WAS THERE A LOAD CAP?**

20 A. Yes, there was a limit on the amount that any single bidder could supply. No bidder was  
21 allowed to win more than 75 tranches.

22 **Q. DO YOU CONSIDER THIS LOAD CAP TO BE REASONABLE?**

23 A. I do consider this load cap to be reasonable. As shown in Exhibit 3, in many competitive  
24 solicitation processes for standard supply or similar service, there has been no load cap.

In this case, the load cap was imposed to facilitate diversity of suppliers. At the same time, the load cap was set at a level high enough to reduce the Companies' potential exposure to the spot market in the event only one company submitted a conforming bid with tranches that were priced at or below the reservation price thresholds.

## V. OVERSIGHT

### **Q. WHAT ARE THE OVERSIGHT REQUIREMENTS?**

A. The involvement of an independent, experienced consultant in all stages of the RFP process provides sufficient independent third-party management and oversight of the design, administration, and bid evaluation stages of the process. The independent consultant should have direct interaction with potential bidders and serve as the sole link for transmitting information between potential bidders and the RFP Issuer to ensure that the design, implementation, and evaluation do not favor any particular bidder, particularly an affiliate.

### **Q. WHAT ROLE DID CRA PLAY IN THE DESIGN OF THE RFP PROCESS?**

A. CRA had regular discussions with the Companies to talk through key decisions in the design process. CRA and the Companies worked together to develop the RFP rules, list of potential bidders, public announcement, and the documentation that would be available to bidders. CRA and the Companies also worked through the primary channel of communication (the Companies' auction Web site, [www.firstenergy-auction.com](http://www.firstenergy-auction.com)) and the content that would be provided on the Web site. Internally, CRA developed protocols, processes, and draft templates that would be used during the RFP process.

1 **Q. WHAT PROTOCOLS DID CRA DEVELOP DURING THE DESIGN PHASE?**

2 A. CRA developed the following protocols during the design phase:

- 3 • Protocols for communicating with potential bidders.
- 4 • Protocols for confirming credit requirements.

5 In all cases, CRA designed the protocols to provide transparency and non-discriminatory  
6 access to information for all bidders. In addition, CRA ensured that inquiries from  
7 potential bidders came directly to the RFP Manager and that those inquiries that needed  
8 to be addressed by the Companies were transmitted to the Companies without  
9 identification of the inquirer. The RFP Manager also served as the direct point person for  
10 potential bidders to confirm their credit requirements. CRA created an email address for  
11 the RFP Manager, [rfpmanager@crai.com](mailto:rfpmanager@crai.com), and I was listed as the point of contact with my  
12 phone and fax number provided on the Web site and in the bidding rules.

13 **Q. WHAT PROCESSES DID CRA DEVELOP DURING THE DESIGN PHASE?**

14 A. CRA developed the following processes during the design phase:

- 15 • Processes for receiving inquiries from potential bidders, answering those inquiries,  
16 and recording those communications contemporaneously into a log.
- 17 • Processes for registering potential bidders in order to communicate further  
18 information.

- Processes for receiving bids and determining if they were conforming bids according to the non-price criteria described in the bidding rules.

- Process for evaluating conforming bids according to the price criteria described in the bidding rules by using an objective bid evaluation tool.

These processes allowed for non-discriminatory communications with potential bidders and objective evaluation of bids when they were received.

**Q. WHAT TEMPLATES DID CRA DEVELOP DURING THE DESIGN PHASE?**

A. CRA developed the following templates to be used in communicating with potential bidders during the design phase:

- Immediate response to inquiries confirming to the inquirer that the RFP Manager had received the inquiry.
- Follow-up communications to provide answers to inquiries.
- Notification that additional information had been posted on the auctions Web site.
- Notification to the Companies of the bid evaluation results.
- Notification to winning bidders.
- Notification to non-winning bidders.
- Notification to disqualified bidders.

1 These templates were developed to ensure that potential bidders received the same  
2 treatment by the RFP Manager in any communications from the RFP Manager to  
3 potential bidders.

4 **Q. DID CRA DEVELOP ANYTHING ELSE DURING THE DESIGN PHASE THAT**  
5 **WOULD ASSIST YOU WITH NON-DISCRIMINATORY IMPLEMENTATION**  
6 **OF THE RFP PROCESS?**

7 A. Yes. CRA developed a bid evaluation tool used to evaluate conforming bids according to  
8 the price-based criteria that were developed in advance of the bidding window. This bid  
9 evaluation tool applied the price criteria, including the reservation prices, objectively and  
10 with no undue preference to any bidder.

11 **Q. DID CRA SERVE AS THE SOLE LINK BETWEEN POTENTIAL BIDDERS**  
12 **AND THE RFP ISSUER?**

13 A. Yes. According to the communications protocols that were followed, CRA was the RFP  
14 Manager to whom all inquiries from potential bidders were directed. CRA received all  
15 inquiries and bid submissions and interacted with potential bidders and the RFP Issuer in  
16 accordance with the protocols, processes, and templates developed during the design  
17 phase.

18 **Q. WHAT ROLE DID CRA PLAY IN THE IMPLEMENTATION OF THE RFP**  
19 **PROCESS?**

20 A. In accordance with the bidding rules, the bidding window opened at 9:00 am prevailing  
21 Eastern Time on Wednesday, December 31, 2008 and closed two hours later at

11:00 am prevailing Eastern Time on that same day. During this time, bidders faxed their bids to CRA using a dedicated fax line to be used for this purpose. The fax number was listed in the Bidder Rules and on the auction Web site. CRA personnel received the submissions, checked for completeness, determined whether the bid submission was a conforming or non-conforming bid, and sent conforming bids to CRA's bid evaluation team who entered the information into the bid evaluation tool. Once the results were confirmed, the RFP Manager entered the necessary information into the pre-established notification templates and sent the results to the Companies, winning bidders, and unsuccessful bidders. At no time during the bid evaluation process did the Companies have access to the bids that were sent to the RFP Manager.

**Q. DID THE COMPANIES EVER RECEIVE COPIES OF THE BID SUBMISSIONS?**

A. After the RFP results were finalized, the Companies were notified of the results, and winning bidders were informed, CRA sent copies of the winning bid submissions to the Companies so that the Companies could begin the process of executing the contracts with the winning bidders. This enabled the RFP issuer to execute the SSO Supply Agreement contracts in a timely manner. CRA did not provide copies of the non-winning bid submissions to the Companies.

**Q. DOES CRA HAVE ANY FINANCIAL INTEREST IN THE BIDDERS OR IN THE OUTCOME OF THE RFP PROCESS?**

A. No. CRA is not affiliated with the Companies or any of their affiliates, and has no financial interest in any of the potential bidders, or in the outcome of the RFP process.

1 **Q. IN YOUR OPINION, DID THE RFP PROCESS MEET THE OVERSIGHT**  
2 **REQUIREMENTS?**

3 A. Yes. CRA served as the RFP Manager and was responsible for the design and  
4 implementation of the RFP process. As the RFP Manager, CRA had direct interaction  
5 with potential bidders and served as the conduit of information between the Companies  
6 and bidders. At the evaluation stage of the RFP process, CRA was able to assess all bids  
7 objectively and credibly.

8 **VI. RESULTS**

9 **Q. HOW MANY POTENTIAL BIDDERS INTERACTED WITH THE RFP**  
10 **MANAGER DURING THE BIDDING PROCESS?**

11 A. The RFP Manager forwarded the press release to 26 companies who were likely to satisfy  
12 the non-price criteria. Eleven companies registered with the RFP Manager to receive  
13 additional information, asked for credit confirmation, or inquired about the RFP. Five  
14 companies submitted bids, including one company that had not corresponded previously  
15 with the RFP Manager.

1 **Q. HOW MANY COMPANIES SUBMITTED WINNING BIDS?**

2 A. Four companies were awarded tranches, with the number of tranches and average price  
3 summarized in the following table.

Winning Bidder	Number of Winning Tranches	Average Price to be Paid (\$/MWh)
██████	1	██████
██████	1	██████
██████	1	██████
██████	1	██████
<b>Total</b>	<b>97</b>	<b>66.68</b>

4  
5 **Q. WERE ANY SUBMISSIONS ELIMINATED FROM CONSIDERATION**  
6 **BECAUSE THEY WERE DETERMINED TO BE NON-CONFORMING?**

7 A. Yes, one submission was determined to be non-conforming and was eliminated from  
8 further consideration.

9 **Q. HOW WAS IT NON-CONFORMING?**

10 A. The bid did not include notarization of key certifications. In addition, the bid did not  
11 follow the required format for a price per tranche as described in Appendix 4 to the  
12 Bidding Rules.

## 13 **VII CONCLUSION**

14 **Q. CAN YOU SUMMARIZE THE KEY CONCLUSIONS OF YOUR TESTIMONY?**

15 A. Yes. The RFP process to procure energy and capacity for the SSO Load of the  
16 Companies was a competitive procurement process that was fair, open, transparent,



1 objective, and non-discriminatory, and resulted in a direct head-to-head competition  
2 between FirstEnergy Solutions (which is the competitive affiliate of the Companies) and  
3 non-affiliated suppliers. Applying the four FERC guidelines of transparency, definition,  
4 evaluation criteria, and oversight to this RFP process, it is clear that the RFP process was  
5 designed and implemented without undue preference to FirstEnergy Solutions.  
6 Furthermore, evaluation of the submitted bids was performed according to the bidding  
7 rules in an objective, non-discriminatory manner such that no affiliate was favored. Even  
8 though FirstEnergy Solutions was awarded a portion of the tranches up for bid, this  
9 selection was based on a reasonable combination of price and non-price factors that  
10 applied equally to all bidders and that were established in advance of the bidding  
11 window.

12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 **A. Yes.**

**INTERNATIONAL**

---

**BRADLEY A. MILLER**

Vice President

Ph.D. Economics,  
University of California at BerkeleyM.S. Public Policy Analysis,  
University of RochesterB.S. Physics and Computer Science,  
Purdue University

Dr. Miller is head of CRA's Auctions and Competitive Bidding Practice and has worked on various auction, competitive bidding, market design, electronic trading, energy, spectrum, international trade, antitrust, securities, and environmental projects. He specializes in applied game theory, microeconomics, industrial organization, network industries, marketplace structure, public policy, and market restructuring. Dr. Miller has extensive experience in the design, implementation, administration, and monitoring of auctions, other competitive bids, transactions, and marketplaces, as well as extensive experience in bidding strategies and other support for bidders and market participants. He has been instrumental in successful projects in electricity, oil and gas, telecommunications, agricultural and food commodities, aerospace and defense, health care, transportation, IP assets, and other industries in several countries including the United States, Australia, Austria, Brazil, Canada, Germany, Mexico, New Zealand, Nigeria, The Netherlands, Sweden, Switzerland, and the United Kingdom. His project work includes the following examples.

**AUCTIONS, COMPETITIVE BIDDING, AND MARKET MECHANISMS**

Advising and assisting industry clients, government agencies, and participants in auctions, competitive bidding, market mechanisms, transactions, and electronic trading in various industries. This includes developing auction and market designs and rules, implementing the designs and rules, conducting oversight and monitoring, and advising bidders and market participants.

**Electricity**

- For a U.S. electricity transmission company, designing and conducting an "open season" auction of transmission service rights.
- For German utility RWE, designing and conducting quarterly auctions of electricity capacity and energy.
- For GE Energy Financial Services, designing and implementing an "open season" auction of transmission scheduling rights (TSRs).

- For a large Iberian utility, advising on virtual power plant (VPP) auctions and electricity supply procurement auctions.
- For a large industrial European company, designing and conducting an electricity supply procurement auction.
- On behalf of the FirstEnergy Ohio Operating Companies and the Public Utilities Commission of Ohio (PUCO), participating and providing testimony in a Federal Energy Regulatory Commission (FERC) proceeding related to FirstEnergy's Competitive Bid Process.
- For German utility RWE, designing and conducting a virtual power plant (VPP) auction.
- Advising a bidder preparing for the Illinois electricity procurement auctions.
- For Associação Brasileira dos Produtores Independentes de Energia Elétrica (APINE, association of independent power producers in Brazil), analyzing "old energy" electricity auctions conducted by Brazil's Ministry of Mines and Energy (MME), including evaluating the auction design and rules used as well as the results of the auctions, and providing recommendations for improvements for future auctions.
- Consulting to the Public Utilities Commission of Ohio (PUCO), including providing advice on product design and auction design proposals for FirstEnergy's Competitive Bid Processes (CBP) for Standard Service Offer as well as monitoring the CBP auction processes.
- Advising The World Bank and Brazil's Ministry of Mines and Energy on electricity procurement auctions.
- At the request of Exelon/ComEd and the Illinois Commerce Commission (ICC), educating Exelon/ComEd, ICC Commissioners and Staff, and stakeholders in Illinois on the planning and conduct of electricity procurement auctions including the role of Auction Managers and Auction Monitors.
- For Dutch utility Nuon, designing and conducting a virtual power plant (VPP) auction.
- Assisting the Connecticut Department of Public Utility Control on multiple RFPs by the state electric distribution companies to procure electricity supply to meet Transitional Standard Offer Service load requirements.
- Acting as Auction Monitor for the New Jersey Board of Public Utilities regarding multiple auction processes and RFPs to procure electricity to meet Basic Generation Service load requirements.
- Advising the Electricity Reform Implementation Unit, Western Australia's Office of Energy, on energy and capacity auctions and auctioning trading rights.

- Advising and providing analysis to an investment banking firm on electricity markets including the effects of auctions and other restructuring efforts on market structure, market performance, prices, and other economic indicators.
- Assisting Arizona Public Service on competitive bidding processes for Standard Offer Service. This includes Standard Offer Service product definition as well as designing and implementing RFP and descending clock auction procurement processes.
- Consulting to the Tennessee Valley Authority (TVA) on the design and implementation of alternative financing options for the restart of Browns Ferry Nuclear Unit 1.
- Advising a large marketer and trader in California's electricity markets.
- Advising a bidder in Alberta's auction of electricity contracts.
- Consulting to the Alberta Department of Resource Development on designing and implementing the auction of Power Purchase Arrangements (PPAs).
- Advising the Power Pool of Alberta on creating and auctioning financial instruments based on PPAs related to hydroelectric generating facilities.
- Advising the Power Pool of Alberta on rules for bidding potentially unsold PPAs into the energy and ancillary services markets.
- Advising the Oregon Public Utility Commission and supporting testifying witnesses on electric utility asset divestiture auction designs and on market power.
- Advising the Independent System Operator of New England (ISO-NE) on market design issues in electricity restructuring.
- Consulting to electric utility COM/Electric on the auction design and implementation for Standard Offer Service.
- Consulting to a major electric utility on the auction design for electric power generating assets and the auction design of non-utility generating purchase power contracts.
- Consulting to a major electric utility on the auction design and implementation for standard offer service and implementing the auction.

#### **Telecommunications, Broadcast, and Cable**

- Advising Shaw Communications in Industry Canada's spectrum auction of Advanced Wireless Services (AWS) licenses.
- Advising Comcast Corporation and its SpectrumCo bidding partners in the FCC's spectrum auction of Advanced Wireless Services licenses (AWS-1, Auction #66).

- 
- Advising the New Zealand Ministry of Economic Development (MED) on alternative auction designs and rules for various spectrum bands including 3.4 GHz, 3.5 GHz, 24.5 GHz, 900 MHz, and 1800 MHz spectrum.
  - Advising a bidder bidding on soccer league broadcast and cable rights.
  - Advising a bidder in the FCC's spectrum auction of Broadband PCS licenses (Auction #58).
  - Advising the holder of personal communications services (PCS) licenses won at a previous auction on their market value, based on results of a later auction.
  - Consulting to New Zealand's Ministry of Economic Development (MED) on technical designs and auction methods for its spectrum auctions following New Zealand's auction of 2nd and 3rd generation licenses in the 2 GHz band.
  - Advising a bidder in Canada's spectrum auction of PCS C and E block licenses.
  - Advising a bidder in the FCC's spectrum auction of C and F Block Broadband PCS licenses (Auction #35).
  - Advising a bidder in Australia's spectrum auction of 3.4 GHz licenses.
  - Consulting to the Nigerian Communications Commission (NCC) on its 2G (2nd generation) spectrum auction.
  - Advising a participant preparing for the FCC's spectrum auction of 700 MHz licenses.
  - Advising Industry Canada on its auction policy and rules for its second spectrum auction (PCS C and E block licenses).
  - Consulting to Switzerland's Federal Office for Communications (OFCOM) on designing and implementing its auction of IMT-2000/UMTS (3rd generation) spectrum licenses.
  - Advising a bidder in the UK's spectrum auction of IMT-2000/UMTS (3rd generation) licenses.
  - Assisting Industry Canada in running its first spectrum auction (24 GHz and 38 GHz bands).
  - Developing for the Federal Communications Commission (FCC) prototype auction software for advanced, combinatorial auctions.
  - Advising the FCC on improved designs for future spectrum auctions, including auctions with large numbers of licenses and combinatorial auctions.
  - Consulting to the Mexican Comisión Federal de Telecomunicaciones (Cofetel), Secretaría de Comunicaciones y Transportes (SCT), on the design and implementation of spectrum auctions: paging, wireless access/PCS, MMDS (multi-channel, multi-point distribution services), and point-to-point microwave.

- Consulting to Industry Canada on auction design and implementation for spectrum auctions in Canada.
- Advising a participant preparing for the FCC's spectrum auction of Local Multipoint Distribution System licenses (LMDS, Auction #17).

### **Other Industries**

- Advising Fonterra Dairy Co-Operative Group Limited on the design and implementation of a global dairy trading platform and acting as Trading Manager for monthly trading events ([www.globaldairytrade.info](http://www.globaldairytrade.info)).
- For a large worldwide client, consulting the design and implementation of a competitive bidding process to sell IP assets.
- For the Swedish National Audit Office (SNAO) — Riksrevisionen, assessing the government's sale of its 8 percent share in telecommunications company Telia Sonera.
- Advising on auction and intellectual property issues for televised shopping channels in the UK.
- Monitoring and providing oversight support for the Public Utilities Commission of Ohio for Dominion East Ohio's wholesale natural gas procurement auction.
- For the Humana-CarePlus merger of Medicare organizations in Florida, analyzing the effects regarding the competitive bidding process required under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA, P.L. 108 173).
- For the Port Authority of New York and New Jersey (PANYNJ), participating in simulation games hosted by NEXTOR and analyzing alternative airport congestion management mechanisms, including administrative measures, congestion pricing mechanisms, and a proposed auction.
- Assisting U.K. broadcasters ITV and ntl in providing recommendations to U.K. telecom regulator Ofcom and U.K. competition authority OFT on auctioning broadcast rights to FAPL (Football Association Premier League) matches.
- Conducting for the British Columbia Ministry of Transportation a fairness evaluation of the restructuring of the BC Rail Freight Division.
- Advising a private U.S. defense contractor on the restructuring of its company, including the design and implementation of a competitive bidding sales process.
- Consulting to a major aerospace & defense company in its acquisition of another major aerospace & defense company, including valuations, competitor assessment, game theoretic bidding strategies, and antitrust and national defense issues.

- Advising a client in the electronics industry on designing and implementing electronic trading solutions including auction and market designs and rules.

## INTERNATIONAL TRADE

Providing litigation support (testimony, affidavits, other submissions, and preparation of witnesses) for parties in dumping, countervailing duty, and unfair trade proceedings before the U.S. Department of Commerce, the U.S. International Trade Commission, and foreign trade agencies.

- Proceedings before the U.S. Department of Commerce and the U.S. International Trade Commission.
  - *Pencils, Cased from the People's Republic of China*. Representing the domestic industry in an administrative review.
  - *Manganese Metal from the People's Republic of China*. Representing the domestic industry and testifying in antidumping proceedings; also subsequently representing the domestic industry in subsequent administrative reviews.
  - *In the Matter of Certain Diltiazem Hydrochloride and Diltiazem Preparations*. Representing a respondent in a Section 337 unfair trade competition proceeding involving a cardiovascular pharmaceutical, bulk diltiazem.
  - *Nitromethane from the People's Republic of China*. Representing respondents in the final determination stage of an antidumping proceeding.
  - *Uranium from Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Ukraine, and Uzbekistan*. Representing a respondent in a review of a Suspension Agreement from an antidumping proceeding.
  - *Ferrosilicon from the People's Republic of China, Kazakhstan, Russia, and Ukraine*. Representing the domestic industry in antidumping proceedings.
  - *Gray Portland Cement and Clinker from Mexico*. Representing a respondent and analyzing fictitious market allegations in an administrative review of an antidumping duty order.
  - *Minivans from Japan*. Representing a respondent in the final determination stage of an antidumping proceeding.
  - *Potassium Hydroxide, Liquid and Dry, from Canada, Italy, and the United Kingdom*. Representing a domestic producer in an antidumping proceeding involving caustic potash (potassium hydroxide).
  - *Silicon Metal from Argentina, Brazil, and the People's Republic of China*. Representing the domestic industry in antidumping and countervailing duty proceedings.

- 
- *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*. Representing a German manufacturer in responding to an administrative review of an antidumping order.
  - *Certain Catalyst Components and Catalysts for the Polymerization of Olefins*. Representing the domestic industry in preparing for a Section 337 unfair trade competition proceeding involving polypropylene catalysts.
  - *Electrolytic Manganese Dioxide from Japan and Greece*. Representing the domestic industry in an antidumping proceeding involving electrolytic manganese dioxide (EMD); also subsequently representing the domestic industry in changed circumstances reviews, administrative reviews, and sunset reviews.
  - Providing strategy consulting to U.S. and foreign companies in the context of potential trade disputes, optimal international operations, import and other duties, and other trade regulations.
    - *Consulting to various domestic industries concerning filing antidumping and countervailing duty proceedings involving various metals*.
    - *Consulting to a foreign client on defensive antidumping business strategies*.
    - *Consulting to a domestic chemical producer concerning business strategies for reducing the risk of an antidumping proceeding filed against it by the European Community*.
    - *Consulting to a multi-international metals company to minimize the costs of international duties, taxes, and regulations*.

## ANTITRUST

Providing litigation support (testimony, affidavits, and preparation of witnesses) for parties in antitrust cases and mergers and acquisition matters.

- Testimony for the plaintiff in a Robinson-Patman predatory pricing and price discrimination case (Liggett Group, Inc. v. Brown & Williamson Tobacco Corporation).
- Litigation and pre-litigation analysis of antitrust issues in various industries, including:
  - Electricity
  - Credit card, bank ATM (automated teller machine), and POS (point of sale) networks
  - Airline
  - Petroleum
  - Retail apparel
  - Tobacco



- Lead pigments
- Video game
- Analysis of mergers and acquisitions in various industries, including:
  - Aerospace and defense
  - Paper
  - Beverage
  - Ready-to-eat cereal
  - Alumina
  - Polypropylene

## **SECURITIES**

Providing litigation, pre-litigation, litigation-avoidance, and policy analysis support for clients in various matters.

- Government security auctions and markets.
- Rule 10b-5 matters, including damage calculations.
- Section 11 and Section 12 matters, including damage calculations.

## **ENERGY AND ENVIRONMENTAL**

Analyzing U.S. and world energy industries, particularly with respect to electricity, petroleum, and natural gas markets and the effects of government policies and regulation. This includes development of models quantifying, and applying game theory to, energy market interactions and externalities, costs of supply disruptions, and the effects of various government regulations, policies, and taxes.

- Analyses of California, New England, and Alberta electricity markets.
- Analysis of OPEC pricing and output behavior and the effects of regulations in the oil industry.
- Analysis of trading in the North Sea oil market.
- Analysis of carbon-based, BTU-based, and other energy related taxes.
- Analysis of automobile fuel efficiency standards and alternative conservation policies.
- Evaluation of the effects of ethanol subsidies.

- Evaluation of oil refinery linear programming models.
- Analysis of financial and contract evaluation models for an oil and natural gas company.
- Analysis of stockpiles and emergency sharing agreements in world oil markets.
- Clients include industry, institutional (trade associations), and government (U.S. Department of Energy).

## **TRANSFER PRICING**

Providing litigation and tax compliance support in Section 482 and related matters.

- Transfer price issues involving a major oil company.
- Transfer price analyses for a toy and video game developer, manufacturer, and distributor.

## **TESTIMONY, AFFIDAVITS, AND HEARINGS**

*FERC Docket No. ER06-117-000.* On behalf of the FirstEnergy Ohio Operating Companies and the Public Utilities Commission of Ohio (PUCO), written testimony in a Federal Energy Regulatory Commission proceeding related to FirstEnergy's Competitive Bid Process in 2004.

Appearance before and submissions to the Dutch competition authority, the NMa, regarding product design and auction design and implementation for a virtual power plant (VPP) capacity auction.

*Establishment of the Process for the Procurement of Transitional Standard Offer Power, Docket No. 03-07-18.* Two affidavits on behalf of the Connecticut Department of Public Utility Control (DPUC), one for The Connecticut Light and Power Company's Transitional Standard Offer procurement and one for The United Illuminating Company's Transitional Standard Offer procurement.

*In the Matter of the Generic Proceeding Concerning Electric Restructuring Issues, Docket No. E-000000A-02-0051.* Affidavit on behalf of Arizona Public Service before the Arizona Corporation Commission regarding APS' Track B competitive procurement RFP solicitation.

Appearances before the New Jersey Board of Public Utilities regarding Basic Generation Service procurement processes.

*Filene's Basement, Inc. v. Corporate Property Investors.* Affidavit on behalf of Corporate Property Investors.

*In the Matter of Manganese Metal from the People's Republic of China.* Affidavits and testimony on behalf of Petitioners Kerr-McGee Chemical Corporation and Elkem Metals Company in connection with an antidumping proceeding.

*In the Matter of Electrolytic Manganese Dioxide from Greece and Japan.* Affidavit on behalf of Petitioners Kerr-McGee Chemical Corporation and Chemetals, Inc., in connection with an antidumping proceeding.

*Liggett Group, Inc. v. Brown & Williamson Tobacco Corporation.* Testimony on behalf of Liggett Group, Inc., in a Robinson-Patman predatory pricing and price discrimination case.

## EXPERIENCE PRIOR TO CRA INTERNATIONAL

*Independent Consultant* (January 1983–June 1988). As such he had contracts with Applied Decision Analysis, Inc., Lawrence Berkeley Laboratory, and the U.S. Department of Energy. His accomplishments include the following:

- Research and development of a regional and dynamic simulation model of the natural gas industry. The model implements a fixed-point algorithm by integrating two nonlinear programming submodels.
- Development of a linear programming model to simulate optimal behavior by a natural gas pipeline company.
- Development of a model of alternative rate designs for natural gas pipeline companies.
- Development of a model of natural gas supply and demand used to evaluate alternative natural gas price and quantity regulations.
- Development of a stochastic dynamic programming model of the US Strategic Petroleum Reserve that implements a game-theoretic approach to private- and public-sector stockpiling interactions.

*Graduate Research Assistant*, Department of Economics and Boalt School of Law, University of California at Berkeley (August 1985–June 1988). Research included econometric analysis of the demand for local public goods and services with Professor Daniel L. Rubinfeld.

*Regulatory Impact Analyst*, Office of Economic Analysis, U.S. Department of Energy (August 1983–August 1984). Responsibilities and accomplishments involved research and analysis of policies affecting oil and natural gas markets, including:

- Analysis, research, and writing chapters for the congressionally mandated report on natural gas markets.
- Representing the Department of Energy's Office of Policy, Planning and Analysis in the DIREX-B simulation exercise of a major world oil supply disruption.

- Research with Dr. George Horwich and the development of a model to analyze the effects of oil import quotas during world oil supply disruptions. Resulted in a conference paper and a book chapter.

*Graduate Research Resident, Argonne National Laboratory Program for U.S. Department of Energy's Office of Policy, Planning and Analysis (summers 1982 and 1983).*

- Research and analysis of natural gas policy issues and energy models, and development of an econometric model of natural gas demand.
- Extension and improvement of a dynamic programming model of the US Strategic Petroleum Reserve.

*Visiting Graduate Research Fellow, The Lunar and Planetary Institute, affiliated with NASA, (summers 1980 and 1981).*

- Development of a simulation model used for analyzing meteorite impacts on planets.
- Research with computer simulations of impact cratering phenomena. Resulted in conference paper with adviser.

## **Teaching**

*Graduate Student Instructor for intermediate microeconomics course, Department of Economics, University of California at Berkeley (fall 1986).*

*Instructor for graduate course in mathematical modeling, Department of Political Science, University of Rochester (fall 1982).*

*Undergraduate Teaching Assistant for intermediate physics course, Department of Physics, Purdue University (1980–1981 academic year).*

## **PROFESSIONAL ASSOCIATIONS**

- American Economic Association (AEA)
- International Association of Energy Economics (IAEE)
- Institute for Operations Research and the Management Sciences (INFORMS)

## HONORS AND AWARDS

- Listed in Marquis' *Who's Who in the World*, *Who's Who in America*, *Who's Who in the East*, *Who's Who in Finance and Industry*, *Who's Who in Science and Engineering*, *Who's Who in Emerging Leaders in America*, and *Who's Who Among Young Professionals*.
- Listed in National Register's *Who's Who in Executives and Professionals*.
- Listed in Strathmore's *Who's Who*.
- Listed in *Directory of International Biography*.
- Flood Fellowship, Department of Economics, University of California, 1984–1985 academic year.
- Graduate Student Fellowship, University of Rochester, 1982–1983 academic year.
- Public Service Fellowship, US Department of Education, 1981–1982 academic year.
- Distinguished Student Status, Purdue University.
- Sigma Pi Sigma Physics National Honor Society, Purdue University.

## SELECTED PUBLICATIONS AND PRESENTATIONS

"The Art and Science of Auctions: How Does Auction Design Work in Practice?," presented at Von Zufällen, Spielern und Agenten: Mathematik an der Schnittstelle zwischen Wirtschaft und Wissenschaft (Of Coincidence, Players and Agents: The Role of Mathematics at the Interface Between Business and Research), conference at Berlin-Brandenburgische Akademie der Wissenschaften (Berlin-Brandenburg Academy of Sciences and Humanities), Leibniz-Saal, Germany, December 4, 2008.

"Treasury's Reverse Auctions: Much is at Stake," *CRA Insights: Credit Crisis*, October 2008.

"An Auction Primer in the Context of the Credit Crisis," *CRA White Paper*, October 2008.

"Buying and Selling Strategies Under Alternative Bidding Mechanisms," presented at Infocast Workshop, "Practical Tools and Approaches for Planning and Executing Power Asset Transactions," New York City, September 25, 2006.

"Energy Auctions," presented to The World Bank and Public-Private Infrastructure Advisory Facility, Washington, D.C., October 7, 2004.

"The BGS Auction and its Impact on C&I Customers," presented at Amerada Hess Electricity Seminar on New Jersey's Basic Generation Service Auction, Iselin, NJ, February 24, 2003.

"Review of 2 GHz Spectrum Auction," presented at a workshop, "2 GHz Auction: Where Do We Go from Here in Running Auctions?," sponsored by the New Zealand Ministry of Economic Development, September 18, 2001.

"Creative Use of the Internet: Alberta's Auction of Power Purchase Arrangements," presented at The Energy Daily's Conference, "B2B & E-Commerce in the Energy Industry: Capitalizing on the Internet," Washington, D.C., June 8-9, 2000.

"Auction Designs, Rules, and Marketing for Power Purchase Arrangements," presented at Independent Power Producers' Society of Alberta (IPPSA) 6<sup>th</sup> Annual Conference, Banff, Alberta, March 19-21, 2000.

"Optimal Auction Design for Generation Assets Under Restructuring: Power Purchase Arrangements," presented at Institute for International Research (IIR) Conference, "Competitive Strategies for Buying and Selling Utility Generation Assets," Atlanta, September 30-October 1, 1999.

"Auction Design and Implementation for Power Purchase Arrangements," presented to *Electric Utilities Act* Advisory Committee, Calgary, Alberta, September 15, 1999.

"Auction Design for Power Purchase Arrangements," presented at Independent Power Producers' Society of Alberta (IPPSA) 5<sup>th</sup> Annual Conference, "Let the Bidding Begin," Banff, Alberta, March 21-23, 1999.

"PPA Auction Design," presented at Independent Assessment Team's Consultations in Calgary, Alberta, January 12-15, 1999.

"Using State-of-the-Art Auction Design to Optimize Generation Asset Sales," presented at Infocast Conference, "Buying & Selling Utility Generation Assets," Boston, November 4-6, 1998.

"Using Auctions to Divest Generation Assets," presented at "Buying & Selling Generation Assets Workshop" of International Business Communications Conference, "Developing & Financing Merchant Power Plants in the New U.S. Market," New York City, June 3-5, 1998.

*Issues in Economics: The Use of the CADIC Model in ITC Proceedings.* With J. Burrows. Boston: Charles River Associates, February 1991.

"The Dynamic and Regional Effects of Wellhead Price Regulation in the US Natural Gas Industry." Ph.D. dissertation, Department of Economics, University of California at Berkeley, 1988.

"Oil Import Quotas in the Context of the International Energy Agency." With G. Horwich. Chapter 4 in G. Horwich and D. Weimer (eds.), *Responding to International Oil Crises*. Washington, DC: American Enterprise Institute for Public Policy Research, November 1987.

"Comments of the United States Department of Energy on the Federal Energy Regulatory Commission's Notice of Proposed Rulemaking (May 30, 1985) on the Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, FERC Docket No. RM85-1-000 (Parts A-D)." Washington, DC: US Department of Energy, July 15, 1985.

"Increasing Competition in the Natural Gas Market: The Second Report Required by Section 123 of the Natural Gas Policy Act of 1978." Washington, DC: US Department of Energy, January 1985. DOE/PE-0069.

"The Impact of Oil Import Quotas on Oil Imports and Prices in the International Oil Market." With G. Horwich. Paper presented at the Second IMACS Symposium on Energy Modeling and Simulation Models in the Decision-making Process: Planning Under Uncertainty, Brookhaven National Laboratory, Upton, New York, August 26-28, 1984.

"Modeling the Strategic Petroleum Reserve: The Effects of Private Stockpiling Behavior and Price Controls." With T. Lyon and S. Minihan. Paper presented at the Second IMACS Symposium on Energy Modeling and Simulation Models in the Decision-making Process: Planning under Uncertainty, Brookhaven National Laboratory, Upton, New York, August 26-28, 1984.

"A New Model of Domestic Natural Gas Supply." With T. Bolema and G. Sweetnam. Paper presented at the Second IMACS Symposium on Energy Modeling and Simulation Models in the Decision-making Process: Planning under Uncertainty, Brookhaven National Laboratory, Upton, New York, August 26-28, 1984.

"The First Report Required by Section 123 of the Natural Gas Policy Act of 1978." Washington, DC: US Department of Energy, July 1984. DOE/PE-0054.

"Modeling the Natural Gas Market." Paper presented at the TIMS/ORSA Joint National Meeting, San Francisco, May 14-16, 1984.

"Multi-Ring Basin Formation: Possible Clues from Impact Cratering Calculations." With P. Schultz, W. Borden, and S. Larson. *Proceedings of the Lunar and Planetary Conference on Multi-Ring Basins*, Houston, 1980.

**REDACTED**



**INTERNATIONAL**

---

**FINAL REPORT**

**Post-RFP Report on the  
FirstEnergy Ohio Utilities'  
Competitive Procurement for  
Standard Service Offer Supply**

**December 2008 RFP Process**

**Submitted to:**

**FirstEnergy Ohio Utilities**

**Submitted by:**

**CRA International, Inc.  
Boston, Massachusetts**

**January 9, 2009**



## Table of Contents

---

	<u>Page</u>
Table of Contents .....	i
Executive Summary .....	ES-1
1. Introduction .....	1
2. Context of the Competitive Procurement Process .....	3
3. CRA's Role in the RFP Process .....	4
4. Results of the RFP Process .....	6
5. Assessment of the RFP Process .....	8



## Executive Summary

---

This is the report of CRA International, Inc. ("CRA") to the FirstEnergy Ohio Utilities ("FirstEnergy") regarding our role as the RFP Manager and our assessment of FirstEnergy's competitive bidding process to procure wholesale energy and capacity for the provision of retail electric generation service as the provider of last resort ("Standard Service Offer Load" or "SSO Load").<sup>1</sup> The competitive bidding process used a Request for Proposal ("RFP") format with bids due on December 31, 2008 for delivery during the supply period beginning January 5, 2009 through March 31, 2009 ("Delivery Period").

### Context of the Competitive Procurement Process

FirstEnergy is obligated to provide service to retail customers who choose not to shop with an alternative supplier. The Companies, which do not own any electric generation, serve approximately 2.1 million customers in Ohio. The RFP process was conducted to ensure that customers have a reliable supply of electricity and specifically sought to procure up to 100 percent of the aggregate wholesale energy and capacity requirements FirstEnergy requires to serve its SSO Load.

FirstEnergy approached CRA in mid-November 2008 to oversee the design and implementation of a competitive procurement process that would meet the requirements adopted by the Federal Energy Regulatory Commission ("Commission") in *Edgar* and *Allegheny*, two separate cases in which the Commission approved affiliate transactions resulting from competitive bidding processes (hereafter referenced as *Edgar/Allegheny*).<sup>2</sup> An important aspect of the Commission's approval in these cases was the evidence that the outcome resulted from "direct head-to-head competition between affiliated and competing unaffiliated suppliers."<sup>3</sup>

FirstEnergy advised CRA that it desired to obtain its wholesale electric energy and capacity requirements for the Delivery Period by means of a competitive RFP solicitation process.

### CRA's Role in the RFP Process

FirstEnergy asked CRA to develop and implement a competitive procurement process in which potential suppliers would compete directly with each other by bidding to supply the energy and capacity required

---

<sup>1</sup> FirstEnergy Ohio Utilities refers to The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company ("the Companies").

<sup>2</sup> See *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*); *Allegheny Energy Supply Company, LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

<sup>3</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,167-69. See also *Connecticut Light & Power Co. and Western Massachusetts Electric Co.*, 90 FERC ¶ 61,195 at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217 at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027 at 61,059-60 (1999).



## Executive Summary

for FirstEnergy to meet its SSO Load. It was critical to design and implement the competitive procurement process in a way that met the conditions described by the Commission that no affiliate should receive undue preference during any stage of the process.

CRA designed the competitive procurement process, led implementation of the competitive procurement process, evaluated bid submissions to determine winning suppliers, and notified FirstEnergy and bidders of the results.

### Results of RFP Process

The bid evaluation criteria selected the lowest-priced tranches up to the maximum number of tranches to be sold. The pricing rule was paid-as-bid, meaning winning bidders are paid the price they bid rather than a single uniform price paid to all winning bidders.

The following table summarizes the results of the RFP process.

Table ES-1. Summary of FirstEnergy's RFP Process

Period of Delivery	January 5, 2009 - March 31, 2009
Number of Companies that Submitted Bids	5
Number of Companies that Submitted Conforming Bids	4
Number of Winning Bidders	4
Maximum Number of Tranches to be Purchased	100
Number of Tranches Purchased	97
Average Price for Tranches Purchased	\$66.68/MWh

### Assessment of the RFP Process

The Commission stated four guidelines that would help it determine if a procurement process satisfied their underlying principles for competitive solicitation: transparency, definition, evaluation, and oversight. In evaluating whether the RFP process meets these requirements, the RFP Manager assessed the process against the requirements described by the Commission that would indicate those underlying principles had been met.

The RFP process was consistent with the requirements of Edgar/Allegheny:



## **Executive Summary**

---

- The RFP process was designed and implemented without undue preference for any supplier that is affiliated with FirstEnergy;
- The analysis of bids did not favor any affiliate of FirstEnergy; and
- Even though an affiliated supplier's bid was selected, such selection was based on a reasonable combination of price and non-price factors.

### **Conclusion**

The FirstEnergy RFP process to procure energy and capacity for the SSO Load of FirstEnergy met the requirements described by the Commission in *Edgar/Allegheny* and resulted in a direct head-to-head competition between the affiliate and non-affiliates of FirstEnergy.

The RFP process was designed and implemented without undue preference to FirstEnergy affiliates, and the analysis of bids was performed according to the bidding rules in an objective, non-discriminatory manner that did not favor an affiliate. Even though a FirstEnergy affiliate was awarded a portion of the tranches up for bid, this selection was based on a reasonable combination of price and non-price factors that were established in advance of the bidding window.



## **1. Introduction**

---

FirstEnergy retained CRA to act as the RFP Manager for FirstEnergy's competitive process to procure energy and capacity to meet the requirements of its SSO Load. A competitive RFP process was conducted with bids due on December 31, 2008. This report is the post-RFP assessment of the competitive procurement process.

The competitive procurement process and the window for bidding were announced by FirstEnergy Corp. in a press release on Monday, December 22, 2008 in the afternoon. The press release referenced the FirstEnergy auctions Website ([www.firstenergy-auction.com](http://www.firstenergy-auction.com)) where additional details regarding the RFP, documents and data that bidders could review were posted. The press release also referenced that CRA International was the RFP Manager, and further inquiries could be directed to Brad Miller at CRA using the email address ([RFPManager@crai.com](mailto:RFPManager@crai.com)) or phone number provided in the press release and on the Website.

At any time from December 22, 2008 to the bidding date, parties could raise questions and provide comments on the RFP process to the RFP Manager. Upon receipt of an inquiry, the RFP Manager would relay the inquiry, without reference to who submitted the question, to FirstEnergy. The RFP Manager and FirstEnergy would develop an answer to the question, and both the question and answer would be posted on the Website. The RFP Manager then would respond directly to the inquirer with the answer and inform all registrants that the Website had been updated.

As scheduled, the bidding window opened on December 31, 2008 at 9:00 am and closed at 11:00 am Eastern Prevailing Time on the same day. All bids were faxed to the RFP Manager on a dedicated fax line at CRA's headquarters in Boston, Massachusetts. Until the results were determined, only CRA personnel had access to the bids; FirstEnergy did not have a representative onsite at CRA's offices and did not receive a copy of the submissions of winning bidders until after the bid evaluation was completed. FirstEnergy did not receive a copy of the non-winning bid submissions.

On the day bids were due, the RFP Manager reviewed bid submissions, evaluated them against the pre-specified criteria referred to in the bidding rules, and determined the winning bids. The RFP Manager then informed FirstEnergy of the winning bidders, their number of winning tranches, and the average price of the winning tranches for each winning bidder. The RFP Manager subsequently informed the winning bidders of the number of tranches and average price they had been awarded, and informed the one bidder who had submitted a non-conforming bid that its bid had been rejected for being non-conforming.

CRA's efforts as the RFP Manager in assisting FirstEnergy through this process are summarized as follows:

- Designing the competitive RFP process, including review and recommendations of possible bidding rules, protocols, and documentation.



## **Introduction**

---

- Reviewing and providing comments on documents to be disclosed to potential bidders in advance of the bidding window, namely the press release, Standard Service Offer Supply Agreement ("SSO Supply Agreement"), bidding rules, and Website.
- Preparing internal memoranda and real-time documentation on the resolution of key aspects of the RFP operations, including Communications Protocols, Credit Review to be performed for potential bidders, and the process to be followed during the bidding.
- Registering potential bidders and ensuring communication with registrants occurred in a fair, open and non-discriminatory way.
- Fielding inquiries from potential bidders concerning the RFP, confirming receipt of their inquiry, answering questions, communicating other inquiries to FirstEnergy without bidder identification, drafting answers, reviewing answers, and approving responses to be posted on the Website. Once answers to inquiries were approved, the RFP Manager would respond directly to the inquirer with the answer and would inform all registrants that new questions and answers had been posted to the FAQ section of the Website.
- Receiving bids, determining if they were conforming or non-conforming, evaluating them against the pre-specified bid evaluation criteria described in the bidding rules, and determining the winning and non-winning bidders.
- Providing the results of winning bids to FirstEnergy.
- Notifying bidders of their results.
- Participating with FirstEnergy in a post-RFP review of the competitive procurement process, held on January 2, 2009.

Our final task as the RFP Manager of this RFP is the preparation of this post-RFP report, which is organized as follows.

- Section 2 summarizes the context of the competitive procurement process and key considerations in the design and implementation of the RFP.
- Section 3 summarizes CRA's roles and responsibilities in the RFP process.
- Section 4 summarizes the results of the RFP process.
- Section 5 provides our assessment of the RFP process, focusing on the Edgar/Allegheny requirements of transparency, definition, evaluation, and oversight.



## **2. Context of the Competitive Procurement Process**

This section of the report provides the context surrounding FirstEnergy's RFP process.

FirstEnergy is obligated to provide service to retail customers who choose not to shop with an alternative supplier. FirstEnergy, which does not own any electric generation, serves approximately 2.1 million customers in Ohio. The RFP process was conducted to ensure that customers have a reliable supply of electricity and specifically sought to procure up to 100 percent of the aggregate wholesale energy and capacity requirements FirstEnergy requires to serve its SSO Load.

FirstEnergy approached CRA in mid-November to oversee the design and implementation of a competitive procurement process that would meet the requirements adopted by the Commission in *Edgar/Allegheny*, two separate cases in which the Commission approved affiliate transactions resulting from competitive bidding processes.<sup>1</sup> An important aspect of the Commission's approval in these cases was the evidence that the outcome resulted from "direct head-to-head competition between affiliated and competing unaffiliated suppliers."<sup>2</sup>

FirstEnergy advised CRA that it desired to obtain its wholesale electric energy and capacity requirements for the Delivery Period by means of a competitive RFP solicitation process.

---

<sup>1</sup> See *Boston Edison Company Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*); *Allegheny Energy Supply Company, LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

<sup>2</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,167-69. See also *Connecticut Light & Power Co. and Western Massachusetts Electric Co.*, 90 FERC ¶ 61,195 at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217 at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027 at 61,059-60 (1999).



### **3. CRA's Role in the RFP Process**

---

FirstEnergy asked CRA to act as the RFP Manager for a competitive procurement process in which potential suppliers would compete directly with each other by bidding to supply the energy and capacity required for FirstEnergy to meet its SSO Load. It was critical to design and implement the competitive procurement process in a way that met the conditions described by the Commission that no affiliate should receive undue preference during any stage of the process.

In its role as RFP Manager, CRA designed the competitive procurement process, led implementation of the RFP process, evaluated bid submissions to determine winning suppliers, and notified FirstEnergy and bidders of the results. This section summarizes CRA's roles and responsibilities as the RFP Manager in each of these areas.

#### **3.1. Design**

CRA started working with FirstEnergy on November 23, 2008 to design a competitive procurement process. Over the next five weeks, CRA and FirstEnergy worked together with regular conference calls to develop the RFP rules, list of potential bidders, public announcement, and the documentation that would be available to bidders. CRA and FirstEnergy also worked through the venue of communication (the FirstEnergy auctions Website) and the content that would be provided on the Website.

Internally, CRA developed protocols, processes, and draft templates that would be followed during the RFP process.

#### **3.2. Implementation of the Competitive Procurement Process**

Once the competitive procurement was announced on December 22, the RFP Manager forwarded the press release to 26 different companies and referenced the FirstEnergy auctions Website where additional information could be found. Starting on December 22, CRA fielded inquiries from potential bidders in its role as the RFP Manager, forwarding specific questions and, in some cases, draft answers to FirstEnergy. In its communications with FirstEnergy regarding bidder inquiries, CRA did not disclose the names of potential bidders and ensured that the inquiries forwarded to FirstEnergy did not identify the potential bidders who had submitted the questions.

The RFP Manager also served as the primary contact for potential bidders interested in confirming their credit requirements as described in the SSO Supply Agreement. Although the SSO Supply Agreement described the relevant calculations for determining the credit and whether cash or a letter of credit would be required, potential bidders could confirm their calculations by contacting the RFP Manager before noon Eastern Prevailing Time on December 29, 2008. Upon receipt of a request for confirmation, the RFP Manager would confirm the Independent Credit Threshold and Unsecured Credit Limit for the





## **CRA's Role in the RFP Process**

---

requesting bidder with FirstEnergy's credit department before responding to the potential bidder with these values.

### **3.3. Bid Submission Compilation and Bid Evaluation**

In preparation for the competitive RFP, CRA developed a bid evaluation tool that would be used to assess the bids according to the evaluation criteria in the bidding rules and the pricing criteria FirstEnergy provided to CRA the day before the bidding window opened. When bids were received, CRA identified whether a bid was conforming or non-conforming, compiled the information in the conforming bids, and used the bid evaluation tool to rank the conforming bids according to the pre-defined criteria.

### **3.4. Notification to FirstEnergy, Winning Bidders and Unsuccessful Bidders**

Once the bids were evaluated and the winning bidders were determined, CRA, in its role as the RFP Manager, notified the relevant parties:

- **FirstEnergy:** The RFP Manager provided FirstEnergy with a list of winning bidders, the number of tranches each had won, and the average price in \$/MWh to be paid to each winning bidder.
- **Winning Bidders:** The RFP Manager notified each winning bidder that it had won, the number of tranches it had won, and the average price in \$/MWh for those tranches.
- **Unsuccessful bidders:** The RFP Manager notified one unsuccessful bidder that it had not been awarded any tranches due to its submission of a non-conforming bid.



## **4. Results of the RFP Process**

---

The bid evaluation criteria selected the lowest-priced tranches up to the maximum number of tranches to be sold subject to the pricing criteria established by FirstEnergy and communicated to CRA the day before the bid window opened. The pricing rule was paid-as-bid, meaning winning bidders are paid the price they bid rather than a single uniform price paid to all winning bidders.

### **4.1. Registration**

Between the initial press release and the bidding window, eleven (11) companies registered with the RFP Manager to receive ongoing information on the RFP process. The RFP Manager corresponded with registrants as a group at least nine times before the bidding window opened, often referencing updates to the auctions Website and providing links to the updated pages.

### **4.2. The RFP Process**

The bidding window opened at 9:00 am Eastern Prevailing Time on Wednesday, December 31, 2008, and closed at 11:00 am Eastern Prevailing Time on the same day. During the bid submission window, the RFP Manager received five submissions. Four of the submissions were deemed to be conforming bids. One of the submissions was non-conforming and was excluded from the bid evaluation process. No additional submissions were received before or after the bidding window.

Although the pricing criteria provided to the RFP Manager by FirstEnergy included a volume adjustment after a certain level of prices, no volume adjustment was made during the bid evaluation process because that price threshold was not reached. So, the pre-bidding tranche target of 100 was unchanged for the bid evaluation process.

### **4.3. Results**

The following tables summarize the results of the RFP process.



## Results of the RFP Process

**Table 1. Summary of FirstEnergy's RFP Process**

Period of Delivery	January 5, 2009 - March 31, 2009
Number of Companies that Submitted Bids	5
Number of Companies that Submitted Conforming Bids	4
Number of Winning Bidders	4
Maximum Number of Tranches to be Purchased	100
Number of Tranches Purchased	97
Average Price for Tranches Purchased	\$66.68/MWh

**Table 2. Summary of Winning Bidders**

Winning Bidder	Number of Winning Tranches	Average Price to be Paid (\$/MWh)
<b>Total</b>	<b>97</b>	<b>66.68</b>



## 5. Assessment of the RFP Process

---

This section of our report provides our assessment of the FirstEnergy RFP process, focusing on the standards expressed in *Edgar/Allegheny* concerning affiliate inclusion in competitive procurement processes.

In order to approve market-based rate sales agreements between regulated and unregulated affiliates, the Commission has established the *Edgar* criteria in order to have assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.<sup>6</sup>

In *Allegheny*, the Commission also stated four guidelines that would help the Commission determine if a competitive solicitation process satisfied its requirements in *Edgar*: transparency, definition, evaluation, and oversight.

The RFP process was consistent with the requirements of *Edgar/Allegheny*:

- The RFP process was designed and implemented without undue preference for any supplier that is affiliated with FirstEnergy;
- The analysis of bids did not favor any affiliate of FirstEnergy; and
- Even though an affiliated supplier's bid was selected, such selection was based on a reasonable combination of price and non-price factors.

We apply the four guidelines established in *Allegheny* below.

### 5.1. The RFP Process was Transparent

*Allegheny* states that the underlying transparency principle is that the competitive solicitation should be open and fair. In the design and implementation of the RFP process, many decisions were made to encourage participation and competitive bidding and ensure that any affiliates were not given an undue advantage. Specific ways in which this RFP process was open and fair include the following design characteristics:

---

<sup>6</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,168.



## Assessment of the RFP Process

---

- **Public Announcement:** The RFP process was announced with a public press release that set forth the activities and timeline for the RFP process, directed all inquiries to the RFP Manager, and provided opportunities for bidders to respond. Potential bidders could register to receive further information from the RFP Manager.
- **Equal Access to Information:** Potential bidders had equal access to information related to the RFP process using FirstEnergy's public auctions Website. Potential bidders were informed of how to contact the RFP Manager and were able to submit their inquiries by phone, fax, or email. Answers to bidder inquiries along with the inquiries were posted anonymously (without identifying the inquirer) on the Website for all potential bidders to review. Notifications that questions and answers had been posted were emailed to all registrants.
- **Low Barriers to Entry:** Any company able to meet the requirements of the SSO Supply Agreement and bidding rules could submit a bid. In order to allow as many bidders as possible to qualify, winning bidders would schedule and deliver their respective wholesale energy and capacity obligations under the SSO Supply Agreement to the FE.FESR delivery point in the Midwest ISO.
- **Tranche Limit:** No bidder was allowed to bid or win more than 75 tranches. This winning tranche limit, or load cap, assured bidders that this RFP would not result in a "winner-take-all" outcome.
- **Non-discriminatory Credit Requirements:** All bidders were subject to the same credit requirement criteria, based on their credit rating and financial position.
- **Independent Evaluation:** The RFP Manager, and not FirstEnergy, determined which bids satisfied the pre-defined bid evaluation criteria.

These efforts provided an open, transparent, and non-discriminatory bidding process for all bidders.

### 5.2. The RFP Process was Defined Appropriately

The RFP satisfies the definition criteria because the products procured through the RFP process were defined in a clear and non-discriminatory manner.

- **Product Design:** The product was clearly defined as a tranche, or one (1) percent of the aggregate wholesale load-following energy and capacity requirements FirstEnergy would need to serve their SSO Load for the delivery period of January 5, 2009 through March 31, 2009. By defining the product as a tranche equal to one percent of energy and capacity requirements, many more bidders would be able to meet the credit requirements and manage the risk associated with delivering the product.



## **Assessment of the RFP Process**

---

- **Pre-defined Bidder Qualification Criteria:** Bidder qualification criteria and bid evaluation methods were provided in the bidding rules in advance of the bid submission deadline. Bidders thus had knowledge of the bidding and evaluation process before they placed their bids.
- **Pre-defined Contractual Requirements:** The SSO Supply Agreement was posted on the Website in advance of the bid submission deadline. Bidders had to agree to the terms of the SSO Supply Agreement in advance; there was no post-bid negotiation. Bidders thus had knowledge of the contractual obligations to which they would be subject if awarded their bids.

The products and bidder qualification criteria were clearly defined and publicly available to all potential bidders in advance of the bidding window.

### **5.3. The RFP Process Met the Evaluation Criteria Requirements**

The evaluation criteria were clearly defined in the bidding rules. In selecting winning bidders, the RFP Manager applied a reasonable combination of price and non-price factors. Selection of winning bidders was based on the criteria summarized in the bidding rules, which identified the requirements for winning bidders described below.

#### **5.3.1. Non-price factors**

As part of the bid submission, bidders were required to certify that they met certain non-price requirements. Any bid submission that did not have acceptable certification that the bidder met these requirements would be considered a non-conforming bid and would be excluded from the price criteria evaluation. The required non-price factors were the same for all bidders and included the following:

- **Membership in the Midwest ISO:** Bidders were required to be a member of the Midwest Independent Transmission System Operator and qualified as a market buyer and market seller in good standing able to secure generation or otherwise obtain and deliver electricity in MISO through compliance with all applicable requirements of MISO to fulfill the obligations of the SSO Supply Agreement.
- **Authorization by FERC:** Bidders were required to be authorized by the Commission to make sales of energy, capacity, and ancillary services at market based rates, pursuant to the Federal Power Act and the provisions of regulations promulgated there under.
- **Compliance with RFP Rules:** Bidders were required to certify that they had read and understood the RFP rules and would comply with the rules.



## **Assessment of the RFP Process**

---

- **Compliance with SSO Supply Agreement:** Bidders were required to certify that they had read and understood the SSO Supply Agreement and would accept its terms.
- **Ability to Execute the SSO Supply Agreement:** Bidders were required to submit their bids with the signature of a person able to bind the company, and were required to be able to execute the SSO Supply Agreement within one (1) business day following the close of the solicitation.
- **Independence and Non-collusion:** Bidders were required to bid independently of other bidders and not enter into any agreement with another bidder directly or indirectly.

These requirements are reasonable and necessary for purposes of delivering power to the designated delivery point in the Midwest ISO wholesale market to meet FirstEnergy's objectives to procure a reliable supply of energy and capacity for its SSO Load in the timeframe required by FirstEnergy. In addition, the independence and non-collusion requirement helped to assure a competitive procurement process.

### **5.3.2. Price factors**

Once the non-price criteria were met, conforming bids were subject to evaluation based on price. The pricing rule was paid-as-bid, meaning winning bidders are paid the price they bid rather than a single uniform price paid to all winning bidders.

Winning bids were determined based on the criteria defined in the bidding rules. Conforming bids were ordered from lowest to highest prices, with tranches being awarded to the lowest-priced tranches up to the maximum number of tranches to be awarded. No bidder was allowed to win more than 75 tranches. In the event the number of tranches to be awarded could be met at the same price by multiple bidders, preference would be given to the bidder who would win the lowest number of tranches, with additional tie-breaking rules that would generate a random outcome. However, given the bids, there was no need for application of the tie-breaking rules.

In addition, the RFP Manager incorporated the price-based reservation prices which were provided by FirstEnergy the day before the bidding window opened. The reservation prices were applied to all bidders and all tranches from conforming bids as follows:

- A lower reservation price would be used to award all tranches up to 100 tranches that were priced no higher than this lower reservation price.
- If fewer than 100 tranches were awarded based on the lower reservation price, a higher reservation price would be used to award additional tranches up to a total of 95 tranches awarded that were priced no higher than this higher reservation price.
- No tranches would be awarded that were priced above the higher reservation price.



## **Assessment of the RFP Process**

---

Although FirstEnergy chose to develop a reservation price, and withhold the details of those price values from bidders, it was disclosed in advance that FirstEnergy would be developing such price-based criteria and would provide them to the RFP Manager in advance of the bidding window.

Using the rank order approach to award tranches by price is consistent with the Commission's evaluation guidelines.

### **5.4. The RFP Process Met the Oversight Criteria**

CRA served as the RFP Manager. CRA is not affiliated with FirstEnergy or its affiliates, and has no financial interest in any of the potential bidders, or in the outcome of the RFP process.

The RFP Manager had direct interaction with potential bidders and served as the sole link for transmitting information between potential bidders and the RFP Issuer. This ensured that the RFP design, implementation, and evaluation did not favor any particular bidder, particularly an affiliate.

The involvement of an independent, experienced consultant in all stages of the RFP process provided sufficient independent third-party management and oversight of the design, administration, and bid evaluation stages of the process.

### **5.5. Conclusion**

The FirstEnergy RFP process to procure energy and capacity for the SSO Load of FirstEnergy met the requirements described by the Commission in Edgar/Allegheny and resulted in a direct head-to-head competition between the affiliate and non-affiliates of FirstEnergy.

The RFP process was designed and implemented without undue preference to FirstEnergy affiliates, and the evaluation of bids was performed according to the bidding rules in an objective, non-discriminatory manner such that no affiliate was favored. Even though a FirstEnergy affiliate was awarded a portion of the tranches up for bid, this selection was based on a reasonable combination of price and non-price factors that applied equally to all bidders and that were established in advance of the bidding window.



### Load Caps in Standard Supply Service/POLR Competitive Procurements

State	Utility Load Cap Summary
Connecticut	No load caps specified
Delaware	No load caps specified
Illinois	Load cap specified for each utility and each of the two sections (Fixed Price and Hourly Price Section) – 2006: 35% of the tranches available for each utility in a section
Maryland	No load caps specified
Massachusetts	No load caps specified
New Jersey	Specified for Basic Generation Service – Fixed Price auction for small customers: – 2008: Varied by utility (38% to 100%) – 2007: Varied by utility (43% to 100%) – 2006: Varied by utility (43% to 100%) No utility-specific load caps specified for Basic Generation Service – Commercial and Industrial Energy Pricing
Ohio	FirstEnergy Load Cap specified in auctions: – 2008: 75% (December 2008 RFP Process) – 2006: 65% (auction cancelled prior to receiving bids) – 2004: 65% (no bids awarded because exceeded reservation price)
Pennsylvania	No load caps specified

## References:

State	Source
Connecticut	2009 RFPs for United Illuminating Co. & Connecticut Power & Light
Delaware	Electric Regulation in Delaware, Delaware Public Utility Commission Utility RFPs
Illinois	Illinois Auction Rules, Illinois Auction Web site ( <a href="http://www.illinois-auction.com">www.illinois-auction.com</a> )
Maryland	State Analysis and Survey on Restructuring and Reregulation Final Report, Maryland Public Utility Commission Phase II settlement filings by Potomac Electric and Delmarva Power& Light
Pennsylvania	Power Supply Procurement in Retail Choice states by American Public Power Association Regulatory Research Associates Report on Electricity Restructuring
New Jersey	BGS Auction Rules and Results , New Jersey Statewide Basic Generation Service Auction website ( <a href="http://www.bgs-auction.com">www.bgs-auction.com</a> )