

November 9, 2001

PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Process

ORDER REGARDING STANDARD
OFFER PROCESS FOR THE LARGE
AND MEDIUM CLASSES

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we resolve several issues regarding the upcoming standard offer solicitation for the large and medium classes in the Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE) service territories.

II. BACKGROUND

On October 11, 2001, we issued an Opportunity to Comment on several specified issues regarding the standard offer bid process for the large and medium classes in the CMP and BHE territories.¹ The issues we identified were as follows:

- Whether retail prices for the large or medium classes should be pre-set;
- Whether indexed prices for the large classes should be allowed;
- Whether a separate standard offer class for standby customers should be established or certain rate designs be required;
- Whether bids for one year should be favored over longer-term bids.

We also indicated that we anticipated directing CMP and BHE to conduct a concurrent bid process for wholesale standard offer supply, as was done with our recent residential/small non-residential classes.

The following parties filed written comments in response to our October 11th Opportunity for Comment: CMP, BHE, Industrial Energy Consumer Group (IECG), S.D. Warren, Independent Power Producers of Maine (IEPM), Competitive Energy Services (CES), Enron, and Duke Energy Trading and Marketing (Duke).

¹ We do not need to solicit standard offer providers for the Maine Public Service Company territory because, during last year's process, we selected a provider for a 3-year term.

In addition, on October 19, 2001, the Commission convened a meeting of interested persons to further discuss issues related to the large and medium class standard offer solicitation. The meeting was attended by representatives of CMP, BHE, IECG, S.D. Warren, IEPM, CES, Enron, and Constellation Power Source.

III. COMMENTS

CMP

CMP does not support pre-setting prices at higher than market levels, stating that the Commission's rules are premised on finding the lowest market-based price for standard offer service. CMP adds that increasing the standard offer price is not necessary to promote a competitive market because providers will include a premium above market to account for migration risk. CMP does not object to allowing indexed bids for the large class, but prefers fixed-price service. CMP urges the Commission to pre-specify the index to allow for fair comparisons, and suggests the NYMEX natural gas index be used for this purpose. CMP supports the establishment of a separate standard offer price for standby customers because their load characteristics tend to make such customers more costly to serve, thus raising the prices for other customers in the class. CMP supports allowing bids of one to three years because such flexibility could result in long-term, stable standard offer prices. CMP supports conducting concurrent retail and wholesale solicitations to assure a more succinct, coherent process. Finally, CMP suggested during the October 24th meeting that the Commission consider altering the uncollectible percentages in light of the creditworthiness of a significant number of customers that remain on the standard offer.

BHE

BHE does not support pre-setting prices, stating that the establishment of artificially high standard offer prices may only result in penalizing consumers. BHE supports the solicitation of indexed bids, along with fixed price proposals. BHE also states that it is appropriate to create a separate standby class because it is unfair for other customers pay a premium due to the existence of standby customers in the large standard offer class. BHE believes the Commission should allow bids for one to three years, but questions the need to conduct a concurrent wholesale solicitation.

IECG

The IECG states that the Commission should consider the needs of larger customers that may not possess the high quality of credit required by suppliers in the competitive market. IECG recommends that standard offer be of a month-to-month duration and that the prices be indexed so they are determined prior to every month. IECG also suggests that the opt-out fee restrictions be waived to allow customers to choose each month whether to take standard offer service. Additionally, the IECG opposes any different treatment on the basis of whether a customer is a standby customer, believing that the problem of a single relatively large standby customer had

been resolved. IECG states that it is unaware of actual evidence to support the supposition that standby customers cause greater costs than other customers. With respect to the term of bids, IECG favors one-year bids to minimize any diversion of standard offer prices from market prices; however, the use of indices would make the length of term less important.

S.D. Warren

S.D. Warren opposes any separate treatment for standby customers, stating that a separate class should occur only through a rulemaking, that separate charges may be discriminatory in that the proposition that standby customers are more costly to serve has not been properly tested, and that smaller standby customers do not raise the same concerns as relatively large standby customers.

IEPM

IEPM is concerned about pre-setting prices because customers who have no option to standard offer would needlessly pay higher prices. IEPM encourages the Commission to use indexed bids as pro-competitive, suggesting the use of ISO-NE prices. Regarding standby customers, IEPM states its belief that the issue involving CMP's large standby customer had been resolved, and that it has no knowledge of any problems regarding the smaller standby customers. IEPM argues that the term length should be limited to one year to minimize the time that standard offer prices may diverge from market prices; noting, however, that term lengths are probably irrelevant if indexed prices are used. Finally, IEPM states that there should be a strong preference for retail bids and that the public should have an opportunity to review and comment on the bids received.

CES

CES urges the Commission to pre-set standard offer prices at their current level for both the large and medium classes so as not to inhibit the progress being made towards a competitive market. CES believes that a reasonable alternative would be to use indexed prices, noting that such an approach could encourage customers to leave the standard offer because customers generally prefer known prices. CES recommends that the Commission pre-specify the NYMEX natural gas index to avoid confusion and to facilitate comparability. CES believes that with the resolution of the issues regarding CMP's large standby customer, there are no issues that warrant special treatment for standby customers. CES supports a two-year term for pre-set prices, but notes that the term is irrelevant under the index option. CES opposes wholesale standard offer supply, stating that the problems with obtaining a retail supply appear to have been resolved in the Commission's recent residential/small non-residential solicitation. Finally, CES opposes any approach whereby the utility guarantees payment to the supplier because this would put competitive suppliers at a competitive disadvantage.

Enron

Enron believes that the pre-setting of prices will not achieve their intended goals and proposes instead that the Commission seek bids for only 12-month terms so that prices can be adjusted if they become an impediment to retail competition. Enron also supports indexed pricing as a way to address the risks presented by the large classes that have significantly reduced numbers of customers. Enron, however, opposes pre-specifying the index mechanism, preferring instead for bidders to have flexibility to choose their own index. Enron states that it would welcome the opportunity to bid to serve standby customers separate from other customers to provide for what is essentially an "option."

Duke

Duke states that the premise that standby customers significantly increase the price paid by other customers may not be true and that standby customers may be actually cheaper to serve. Therefore, Duke states that soliciting bids separately for standby load may result in higher prices for other customers and may be unduly discriminatory.

IV. DISCUSSIONPre-Set Prices

We decide not to pre-set prices for either the large or medium classes. In our view, such action is not necessary to continue Maine's steady progress towards a fully competitive electricity market, and could unnecessarily increase the prices for customers who, for whatever reason, remain on the standard offer. We continue to believe that the premium associated with the migration risk should be sufficient to allow competitive suppliers to offer customers prices below that of the standard offer. Moreover, as more customers leave the standard offer, we expect the risk premium to increase, resulting in competitive suppliers having an increased ability to offer customers attractive prices. In this light, pre-setting prices or otherwise increasing standard offer prices above bid prices could cause the bids to be unnecessarily higher as bidders try to account for even greater migration due to artificially high standard offer prices.

Nevertheless, for the medium class only, we will specifically allow alternative bids that assume the standard offer price will be set 5% above the bid price. Under this approach, a selected bidder would receive its bid price, and the 5% premium would offset standard costs. For the reasons discussed above, we do not favor this type of approach, but we will seriously consider accepting such bids if such action appears necessary to continue the progress towards a competitive market for the medium class of customers.

Indexed Prices

We will allow bids for the large classes to be tied to an index. There is a general consensus that such bids should be allowed due to the increased risk to suppliers as load in the large classes continues to migrate off the standard offer. An indexed approach has the advantage of potentially providing reasonable prices to customers who remain on the standard offer, while creating an incentive for customers who desire to have known prices to seek a competitive supplier. Such an approach, however, does not appear necessary at this time for the medium classes, as the migration rate has been slower. Additionally, we believe that an indexed approach with monthly changes in prices could unnecessarily confuse some medium class customers.

We will require that the large-class indexed bids produce prices that change no more often than monthly and that the prices be determined only on a prospective basis. We will also require that the index produce prices sufficiently in advance of the prices' effective date so that utilities will have adequate time to program their billing systems.

We will not pre-specify the index as suggested by several commenters. We agree that a pre-specified index would allow for easier comparisons. However, we are concerned that such an approach would restrict bidder flexibility to provide creative bids that could be in the public interest. Although the use of differing indices presents challenges in bid evaluation, we do not believe these to be insurmountable. For example, we may require bidders to provide information as to how the index would have performed over a past period. Although we will not pre-specify the index that must be used, we will require that the index is generally available so that an indexed bid will produce prices that can be readily evaluated and administered. We will also ask bidders to provide an alternative index mechanism as a contingency in the event that the accepted index becomes unavailable.

Finally, we reject the IECG suggestion that our opt-out fee restrictions be waived to allow customers to choose each month whether they want to take standard offer service. We agree with the IECG that the use of indexed prices reduces the concern over gaming the standard offer. However, we do not want to impede our progress towards a fully competitive market by designing a more attractive standard offer product that would allow customers to move on and off the standard offer on a monthly basis. On the contrary, we intend that, once a customer enters the competitive market, the customer will stay there unless factors beyond the customer's control compel a return to the standard offer. In our view, allowing indexed bids should provide reasonable standard offer prices for customers who, for whatever reason, do not take service from competitive suppliers, without the need to waive substantial portions of our rules to allow for monthly returns to the standard offer.

Standby Customers

We will not act at this time to establish a separate standby standard offer class or require certain rate designs (such as demand charges). Although we remain concerned

that the existence of a substantial number of standby customers on standard offer will cause higher prices for other customers, we conclude that the flexibility already exists for bidders to reasonably address the situation. Specifically, bidders are allowed to structure the rate design of their bids to include demand charges. We, therefore, see no reason to require any specific rate design or take other steps at this time with regard to standby customers. We also note that the magnitude of the problem has been substantially reduced as a result of the departure from the standard offer of CMP's relatively large standby customer and FERC's recent adoption of an ICAP structure that allows for an after-the-fact cure period.

Term Lengths

We will not restrict bids to a one-year term as suggested by several commenters. Instead, we will allow bids for terms of 1, 2, or 3 years. We agree that a one-year term length has the advantage of minimizing the time the standard offer prices may deviate from market prices. However, there could be advantages to longer terms in that they provide a more stable price against which suppliers can market. We will carefully consider the advantages of both longer and shorter term lengths when we evaluate the bids.

Concurrent Wholesale Solicitation

We will proceed with a concurrent retail and wholesale solicitation and, accordingly, direct CMP and BHE to proceed with a solicitation of wholesale standard offer suppliers. Although we were successful in obtaining a retail supplier in our recently concluded solicitation for the residential/small non-residential classes, there can be no assurance that we will receive acceptable retail bids in the upcoming solicitation. It is, therefore, prudent to concurrently solicit wholesale bids so that standard offer providers will be selected in a timely and coherent manner.

Uncollectible Percentages

During the October 24th meeting, there was a discussion regarding the creditworthiness of customers that remain on the standard offer. Several commenters stated that some customers in the large class remain on standard offer because credit issues prevent them from obtaining a competitive supplier. This prompted the Commission to ask CMP and BHE to re-examine the uncollectible percentages that are used in calculating the payments to the standard offer providers. On October 26, 2001, CMP filed an analysis indicating that the uncollectible percentages should be increased as follows:

| | <u>Current</u> | <u>Proposed</u> |
|--------|----------------|-----------------|
| Medium | .2% | .3% |
| Large | .1% | 1.6% |

BHE has not yet filed revised uncollectible percentages.

We will provisionally accept CMP's revised percentages, subject to a review of the supporting data by our Director of Technical Analysis. We, hereby, delegate to the Director of Technical Analysis final approval of revisions to the CMP and BHE uncollectible percentages.

Public Availability of Bid Information

We reject IEPM's proposal that standard offer bid information be made available to the public so that interested parties can have input on the selection of providers. Our experience in soliciting standard offer suppliers, as well as our general knowledge of the operation of the electricity market, lead us to conclude that making bid information generally available to the public, even under protective arrangements, would have a substantial chilling impact on our bid process to the detriment of the public interest.

We have considered alternative approaches in an attempt to address IEPM's concerns. We specifically considered allowing third parties who are not market participants and who have absolutely no financial interest in the electricity markets to have access to bid materials. However, even this limited access would likely have a negative impact on our bid process and would not aid those interested persons who have an interest in the electricity markets to have input in our evaluation process.

Upon careful consideration, we cannot conceive of any approach that would allow interested parties to meaningfully participate in our evaluation process without seriously jeopardizing the viability of our standard offer process. However, we do emphasize that the Public Advocate does have access to bid materials and our evaluation documents, and our staff does consult with the Public Advocate throughout the bid process. Additionally, in future standard offer solicitations, we may explore the possibility of releasing bid information from those solicitations to the public. This would occur only upon the passage of a sufficient amount of time after the conclusion of the bid process so that the bidders' confidentiality concerns are adequately addressed.

K. Delegation

To facilitate the process of soliciting and evaluating standard offer bids, we delegate our authority to decide the following matters to the Director of Technical Analysis pursuant to 35-A M.R.S.A. § 107(4):

- Content and format of the RFPs
- Utility data to be provided to bidders
- Billing units to be used to compare bids
- Billing units upon which to base the financial capability requirements
- Schedule for the RFP, evaluation and selection processes
- Acceptance of alternative provisions to the standard contract
- Eligibility and conformance of non-price portions of proposal
- Acceptance of deviations from the requirements of the RFPs

Dated at Augusta, Maine, this 9th day of November, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.