

**Attachment A**  
**to**  
**FPL Energy Power Marketing Inc's Bid Price Proposal**

**Bidder Conditions**

The offer to provide standard offer service by FPL Energy Power Marketing, Inc. ("PMI") at the prices described in its Bid Price Proposal is made subject to the acceptance by the Commission of the following conditions as expressly stated herein, without modification except upon the written agreement of PMI.

The Commission's order designating PMI as a standard offer provider (the "Provider") shall expressly incorporate each of the conditions stated herein (the "Order"). Upon such acceptance and designation, PMI's resulting rights and obligations as Provider shall consist of (i) the applicable and material provisions of Maine law and regulations, and provisions of the RFP; (ii) the Order, incorporating the express conditions of this Bid Price Proposal; and (iii) the Standard Offer Provider Standard Service Agreement described below; (collectively, the "Standard Offer Obligation"). In the event of any conflict or inconsistency between the terms and conditions of the Order and any other terms and conditions described above, the terms and provisions of the Order shall prevail and be given priority. Subject to the foregoing, the several documents and instruments forming the Standard Offer Obligation are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies within or between such parts the same shall be explained and interpreted, if possible, in a manner which gives effect to each part and which avoids or minimizes conflicts among such parts.

- Proposal Expiration Date. 5:00 PM Eastern Prevailing Time, January 22, 2003
- Standard Offer Provider Standard Service Agreement. The named T&D shall execute, deliver and perform the Standard Offer Provider Standard Service Agreement between Bidder and T&D in the form delivered to the Commission with the Bid Price Proposal (the "SOP Agreement") on or before the Proposal Expiration Date.
- Confidentiality of Bidder Identification. The Commission agrees (i) not to reveal the identity of PMI prior to the date which is two (2) weeks after the date of the Order designating PMI as Provider.
- Increased Costs Associated With Change in Law. If the Maine legislature or the Commission enacts, promulgates, adopts, alters, modifies or waives<sup>1</sup> any law, rule or regulation that relates directly to the provision of standard offer service or the provision of competitive electric service in general after the date hereof (a "Change in Law") and such Change in Law materially increases the Provider's cost to provide standard offer service, Provider shall recover such increased costs in accordance with paragraph (a) or paragraph (b) below, as applicable. Provider shall provide the Commission and, if applicable, the Maine Legislature with a calculation of its increased costs as soon as practicable after becoming aware of a Change in Law or consideration by the Commission or the Maine Legislature of a Change in Law. (a) If the Commission finds that Provider's calculation reasonably reflects its

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<sup>1</sup> Except for opt-out fee waivers granted by the Commission pursuant to its January 24, 2001 "Order Adopting Rule and Statement of Factual and Policy Basis" (Docket No 2000-904).

increased costs, the Commission shall increase the price of standard offer service paid by retail standard offer customers at the time a Change in Law becomes effective so that Provider recovers increased costs in accordance with Provider's calculation. (b) If the Commission does not find that Provider's calculation reasonably reflects its increased costs, the Commission may increase the price of standard offer service paid by retail customers such that the Provider recovers increased costs in accordance with the Commission's calculation. In this event, Provider may invoke binding arbitration of the increased cost amount by notice to the Commission. Any such arbitration shall be conducted in accordance with the rules of the American Arbitration Association, except as otherwise provided herein. A final arbitration decision shall be rendered no later than ninety (90) days after the date on which Provider provides notice to the Commission that it has invoked arbitration. To the extent the arbitration panel finds that a change in law has increased the Provider's costs and that the Provider is entitled to a corresponding increase in the price of Standard Offer Service, the arbitration panel will have the authority to award the Provider a liquidated amount payable for service already provided at the increased cost.

Notwithstanding the foregoing, if upon receipt of reasonable prior direct notification of a proposed Change in Law, the Provider fails within the time prescribed in such notice to inform the Maine Legislature or the Commission, pursuant to applicable procedures identified in such notice, of the impact that a Change in Law under consideration would have on Provider's cost to provide standard offer service, Provider shall not be entitled to cause the Commission to undertake action with respect to its increased costs or to engage in arbitration proceedings with respect thereto as provided in clause (a) or (b) above.

- Termination by Provider. In the event of a default on the part of the T&D which results in termination of the SOP Agreement, or an unlawful or arbitrary action by the Maine legislature or the Commission or other action by the Commission (other than as a result of a Provider Default) as a result of which Provider ceases to receive payment for standard offer service at the rate and upon the terms specified herein or Provider is removed as the standard offer provider or ceases to retain the right to provide standard offer service for the entire term specified herein, Provider shall have the right to terminate its obligation to provide standard offer service, the exercise of which shall terminate the SOP Agreement. Provider's loss as a consequence of such termination shall be calculated and recovered from T&D. Such damages shall be calculated as the positive difference, if any, between (i) the amount the Provider would have been entitled to for provision of the Standard Offer Service in accordance with the SOP Agreement had the SOP Agreement not been terminated, less (ii) both the allowance for uncollectibles set forth on Exhibit A to the SOP Agreement and any fees and expenses that Provider would have owed T&D under its Terms and Conditions for Standard Offer Service, less (iii) the amount realized by Provider, acting in a commercially reasonable manner, pursuant to the provision of the energy and ancillary services to other parties that would have been dedicated to Provider's performance of the SOP Agreement had it not been terminated. For purposes of such calculation, Provider's loss shall not include any consequential or indirect damages; provided, however, in no event will the market-based resale remedy provided for in the immediately preceding sentence be deemed "consequential damages" for these purposes. Provider's damages shall be calculated based on reasonable estimates of aggregate customer usage over the remaining term of the SOP Agreement.

- Termination by Commission. The unexcused occurrence of either of the following events shall constitute a "Provider Default": Provider fails to perform any of its material obligations

under the Standard Offer Obligation in accordance with the requirements thereof, and the Commission, after notice and opportunity to be heard, finds that the failure justifies removal of the Provider as the standard offer provider.

Notwithstanding any provision to the contrary in the Standard Offer Obligation, the Commission shall not, nor shall it permit T&D to, take any remedial action as a result of a failure or default of Provider (including action(s) described in the RFP and Section 9 of Chapter 301) unless such event constitutes a Provider Default.

- **Security:** The Commission shall find that the form of Guaranty delivered to the Commission with the Bid Price Proposal satisfies Provider's financial capability requirements under Maine law, regulations, the RFP and any other Standard Offer Obligation provision (notwithstanding a Change in Law) so long as the guarantor thereunder meets the requirements of Section 3(A)(2)(b)(i), (ii) and (iii) of Chapter 301 of the Commissions Rules (as in effect as of the date hereof). Provider shall promptly notify the Commission in the event of a downgrade in the rating assigned to the senior unsecured debt obligations of the guarantor thereunder below the threshold specified in such rule (or the equivalent in the case of a downgrade of the guarantor's senior unsecured debt obligations), and shall deliver, within five (5) Business Days, a letter of credit or performance bond, in an amount equal to the amount of the Guaranty in effect as of such date and otherwise consistent with the requirements of 4 Section 3(A)(2) of Chapter 301, at which time the Guaranty of FPL Group Capital Inc shall terminate and be of no further force and effect. If at any time there shall occur a Downgrade Event in respect of the T&D, then the Provider may, by written notice to the T&D, require the T&D to provide Performance Assurance in an amount equal to the average daily receivable amount pursuant to this Agreement outstanding as of the date of the Downgrade Event, multiplied by 26 days. For purposes of this Agreement, "Downgrade Event" shall mean a decrease below Investment Grade in the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its unsecured, senior long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's, their successors or any other rating agency agreed by the Parties. Investment Grade means a rating at or above BBB- from S&P or Baa3 from Moody's. "Performance Assurance" shall mean collateral in the form of, at the T&D's election, (i) cash, (ii) irrevocable, transferable standby letter(s) of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least BBB+ from S&P or Baa1 from Moody's, in a form reasonably acceptable to the Provider and with costs borne by the T&D for such letter(s) of credit, (iii) a guarantee from the parent corporation of the T&D, which parent corporation must have a rating that exceeds the level defined above for a Downgrade Event, or (iv) other security acceptable to the Provider. If, after delivery of Performance Assurance as a result of a Downgrade Event, the T&D's credit rating is restored to Investment Grade or better, the Provider shall return such Performance Assurance to the T&D within five (5) Business Days of notification from the T&D of such upgrade.