

January 21, 2004

Bidder Conditions

The Bidder's offer to provide Standard Offer Service at the prices described in its Bid Price Proposal is made subject to the acceptance by the Maine Public Utilities Commission (the "Commission") of the following conditions as expressly stated herein, without modification except upon the written agreement of the Bidder. The Commission's order (the "Order") designating the Bidder as a standard offer provider (the "Provider") shall expressly incorporate each of the conditions stated herein.

Upon such acceptance and designation, the Bidder'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 these Bidder Conditions and the 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: Our Bid Price Proposal will remain valid until 5:00 pm Eastern Standard Time on January 21, 2004.

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 and Entitlement Agreement Rates: The Commission agrees not to reveal the identity of the Bidder prior to the date which is two (2) weeks after the date of the Order designating Bidder as Provider.

Increased Costs Associated With Change in Law: If the Maine legislature or the Commission enacts, promulgates, adopts, alters, modifies or waives¹ any law, rule or regulation that relates directly to or affects 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

¹ 1 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 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 increased costs, the Commission shall increase the price of standard offer service paid by 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 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 shall 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.

Basic Understandings: (a) To the extent applicable, it is the intent of the Provider that:

(i) except as otherwise specifically provided in the SOP Agreement or as the Provider and the T&D otherwise agree in writing, neither the Provider nor the T&D shall have the unilateral right to make a filing with Federal Energy Regulatory Commission ("FERC") under any Section of the Federal Power Act, or with the Commission, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason; and

(ii) any authority of the FERC or the Commission to change the SOP Agreement be strictly limited to that which applies when the contracting parties have irrevocably waived their right to seek to have the FERC or the Commission change any term of the SOP Agreement.

(b) In addition, absent the agreement of the Provider and the T&D to any proposed change,

the standard of review for changes to any section of the SOP Agreement specifying the pricing or other material economic terms and conditions agreed to by the Provider and the T&D, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), (the "Mobile-Sierra" doctrine).

(c) To the extent a hearing, review or other proceeding is held before FERC, the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with the SOP Agreement, including any credit, security, margin, guaranty or other similar arrangement, and the Provider and the T&D expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

(d) Notwithstanding the foregoing paragraphs (b) and (c), to the fullest extent permitted by applicable law, each of the Provider and the T&D, for itself and its successors and assigns, expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of the SOP Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the parties. It is the express intent of the parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) ("NPPS") in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this paragraph shall not apply, provided that, consistent with paragraph (a) above, neither party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in paragraph (a) above.

(e) Nothing in these Bidder Conditions indicates the intention of the Provider or the Commission to submit the Standard Offer Obligation to the jurisdiction of FERC or indicates an acknowledgement that FERC has jurisdiction.

Termination by Provider: In the event of a default on the part of the T&D under section 15 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 (the "Settlement Amount") shall be calculated and recovered from T&D.

The Settlement Amount will be calculated as the difference between the price the Provider would have obtained under the SOP Agreement (taking into account the applicable allocation of uncollectible revenues), as applicable, and the Early Termination Price *multiplied* by the Termination Quantity. The "Early Termination Price" means, with respect to each month for the remainder of the term of the SOP Agreement, the forward prices for delivery of energy, capacity and ancillary services (taking into account any applicable ISO-New England fees and charges) necessary to provide Standard Offer Service, as determined by the Provider in a commercially reasonable manner. The Termination Quantity shall reflect the load of the customers at the time of termination, which shall be deemed to be those quantity amounts that would have been delivered by Provider to such customers on an hourly basis had this Agreement been in effect during the previous calendar year, adjusted for such standard offer service customer load changes as have occurred since the previous calendar year. The Settlement Amount also shall take into consideration (i) any power delivered by Provider to satisfy standard offer service customer load requirements delivered before the early termination date established by the Provider for which payment has not yet been made and (ii) any fees and expenses that Provider would have owed the T&D under the SOP Agreement. Where appropriate, amounts included in determining the Settlement Amount shall be discounted to present value in a commercially reasonable manner. As soon as practicable after such liquidation and termination, notice shall be given by the Provider to the Commission and the T&D of the Settlement Amount, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount including sufficient backup detail. Within two (2) business days following the receipt of the notice, the Commission shall review the calculation of the Settlement Amount and direct the T&D to pay that portion of the Settlement Amount that the Commission does not dispute. Within five (5) business days of such direction by the Commission, the T&D shall pay to the Provider the undisputed portion of the Settlement Amount as specified by the Commission.

Termination by Commission: The unexcused occurrence of the following event shall constitute a "Provider Default": the 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. A termination by the Commission because of a Provider Default shall, for purposes of the SOP Agreement, be deemed to be a termination of the SOP Agreement by the T&D.

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 Section 7.2 of 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 secured 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 Section 3(A)(2) of Chapter 301, at which time the guaranty shall terminate and be of no further force and effect.

If at any time there shall occur a Trigger 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 Trigger Event, multiplied by 26 days. Such Performance Assurance will be delivered to Provider, at the address or account specified in Provider's written demand for Performance Assurance, not later than the close of Business on the third Business Day following the Business Day such written demand for Performance Assurance was delivered to the T&D.

Throughout the Term, the T&D will deliver its Financial Statements to the Provider as soon as reasonably practicable after such statements are available, but in no event later than 45 days after the end of the applicable fiscal quarter with respect to quarterly statements or 90 days after the end of the applicable fiscal year with respect to annual statements.

For purposes of this Agreement, the following terms will have the meanings ascribed thereto below:

"Capitalization" means consolidated total assets of the T&D (including intangible assets), minus such party's consolidated total liabilities plus Total Indebtedness, each as would be reflected on a consolidated balance sheet of the T&D prepared in accordance with generally accepted accounting principles.

"Depreciation, Depletion and Amortization Expense" means, with respect to the T&D for any period, the total amount of consolidated depreciation, depletion and amortization expense (exclusive of the amortization of the principal amount of any indebtedness) and other similar non-cash operating charges for such period.

"EBITDA" means, with respect to the T&D for any period, the aggregate amount of its Net Income plus the sum of (to the extent deducted in calculating Net Income) (i) the aggregate amount of Interest Expense for such period, (ii) the aggregate amount of consolidated income taxes for such period, (iii) Depreciation, Depletion and Amortization Expense for such period, (iv) all amounts (to the extent not already included in (iii) above) attributable to other (a) non-cash operating charges

and (b) non-cash non-operating charges for such period, and (v) all consolidated extraordinary non-cash charges during such period minus, without duplication, all consolidated extraordinary gains during such period.

“EBITDA Coverage Ratio” means, with respect to any period, the ratio of (i) EBITDA for such period to (ii) the aggregate amount of Interest Expense for such period.

“Financial Statements” means (i) for a fiscal year, an annual report containing audited consolidated financial statements for such fiscal year and (ii) for a fiscal quarter, a quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles.

“Interest Expense” means, for any period, without duplication, the total consolidated interest expense of the T&D including (i) interest expense attributable to capital leases, (ii) amortization of indebtedness discount and indebtedness issuance costs (including any original issue discount attributable to any issuance of equity securities and indebtedness securities), (iii) capitalized interest, (iv) non-cash interest payments, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, (vi) net cash costs under interest rate protection agreements (including amortization of fees), and (vii) consolidated interest actually paid by the T&D under any guarantee of indebtedness or other obligations of any other person.

“Net Income” means consolidated total revenues of and other proper income credits, less all proper income charges, including taxes on income, all determined in accordance with generally accepted accounting principles.

“Net Worth” means consolidated total assets of the T&D, minus the consolidated total liabilities of the T&D, each as would be reflected on a consolidated balance sheet of the T&D prepared in accordance with generally accepted accounting principles.

“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, or (iii) other security acceptable to the Provider.

“Total Indebtedness” means the aggregate principal amount of all indebtedness that would appear on the consolidated balance sheet of the T&D.

“Trigger Event” shall mean any of the following occurrences: (1) the Net Worth of the T&D is less than \$120,000,000; (2) the EBITDA Coverage Ratio is less than 2 to 1; (3) the Total Indebtedness to Capitalization Ratio is more than 7 to 10; or (4) either the T&D or Emera, Inc. (i) defaults under one or more agreements or instruments, individually or collectively, relating to indebtedness for

Attachment A
to
Bid Price Proposal
Bidder Conditions

borrowed money in an aggregate amount of not less than \$50,000,000, in the case of the T&D, or \$100,000,000, in the case of Emera, Inc., which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) defaults in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than \$50,000,000, in the case of the T&D, or \$100,000,000, in the case of Emera, Inc.