

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-399

September 18, 2001

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure

ORDER DESIGNATING
STANDARD OFFER PROVIDER
AND DIRECTING UTILITIES
TO ENTER ENTITLEMENTS
AGREEMENTS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we designate Constellation Power Source Maine, LLC (CPS Maine) as the standard offer provider for the residential and small non-residential classes in the Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE) service territories for a 3-year period beginning March 1, 2002. The price for standard offer service for this period will be \$00.0495 per kWh in CMP's territory and \$00.05 per kWh for the BHE territory. We also direct CMP and BHE to enter agreements to sell their entitlements to capacity and energy associated with various power purchase agreements to Constellation Power Source Inc. (CPS) for the same 3-year period.

II. BACKGROUND

Pursuant to Maine's Restructuring Act, the Commission administers periodic bid processes to select providers of standard offer service. 35-A M.R.S.A. § 3212(2). The Commission is also required by the Act to oversee the sale by utilities of the rights to their non-divested entitlements to energy and capacity. 35-A M.R.S.A. § 3204(4). On July 18, 2001, the Commission decided to proceed with a standard offer solicitation for the residential and small non-residential class in the CMP and BHE territories,¹ while deferring such action for the medium and large classes. *Order Regarding Standard Offer Bid Process*, Docket No. 2001-399 (July 18, 2001). In its July 18 Order, the Commission also directed CMP and BHE to simultaneously conduct a wholesale bid solicitation so that standard offer power supply could be obtained if no acceptable retail bids were received. The Commission's Order stated that it would allow both retail and wholesale bids that are contingent on the purchase of utility entitlements at specified prices.

¹ During last year's process, the commission selected a standard offer provider for the Maine Public Service Company territory for a 3-year term. As a result, the Commission will not conduct a standard offer solicitation for the MPS area.

On July 23, 2001, the Commission issued Requests for Proposals (RFP) to provide all-requirements standard offer service for the CMP and BHE small classes. At the same time, the utilities requested bids for all-requirements wholesale service. Pursuant to the process stated in the RFPs, the Commission received indicative bids on August 7, 2001. Since that time, our Staff has been discussing various non-price terms with bidders, while regularly communicating with the utilities regarding their negotiations with wholesale bidders. Upon the conclusion of discussions on non-price terms with a sufficient number of bidders, we asked for final, binding bids to be presented on September 18, 2001.

III. DISCUSSION

Upon review of all the bids, we conclude that the CPS Maine contingent bids provide the greatest value to ratepayers. We, therefore, designate CPS Maine the standard offer provider for both the CMP and BHE residential and small non-residential classes for a 3-year period beginning March 1, 2002. The price for the 3-year period will be \$00.0495 per kWh for CMP customers and \$00.05 per kWh for BHE customers. The CPS Maine standard offer bid is contingent on CPS's obtaining the utility entitlements at the CPS bid price. The average CPS entitlement price over the 3-year term is \$00.03415 per kWh for CMP and \$00.03379 per kWh for BHE. We direct CMP and BHE to enter into entitlement agreements with CPS consistent with its bid.²

In designating CPS Maine as the standard offer provider, we accept its statement of commitment and bidder conditions. Both documents are attached to and incorporated in this Order. We find that these documents provide useful clarifications as to the precise nature of the standard offer provider obligations, as well as reasonable protections for the provider with respect to actions of the Maine Legislature and this Commission.

One of the bidder conditions is that we find that certain of the entitlements come from facilities that are "eligible" for purposes of Maine's portfolio requirement. 35-A M.R.S.A. § 3210. We have reviewed the entitlement agreements and conclude that all the facilities in the CMP Renewable and Eligible Resource Entitlement Agreement and all of BHE's entitlements except for its system contract and diesels are eligible renewable or efficient resources pursuant to Maine statute and Commission rules.

We also find that the form of corporate guarantee of Constellation Energy Group provided by CPS Maine as part of its bid proposal satisfies the financial capability

² To the extent necessary, we waive the procedural requirements of Chapter 307 (pursuant to section 11 of the rule) so as to allow the utilities to enter into the entitlement agreements as directed.

requirements of section 3(A)(2)(b) of Chapter 301.³ We note that CPS Maine will actually provide greater security than that required by the rule in that CPS will guarantee in full the performance of CPS Maine.

Finally, we recognize that the contingent arrangement approved in this Order creates certain risks for CMP and BHE that should be properly borne by customers. Therefore, we explicitly find that any direct or indirect costs reasonably incurred by CMP or BHE, including administrative and financing costs, in fulfilling its contractual obligations or exercising its contractual rights under the SOP Service Agreement or the entitlement agreements shall be fully recovered, with carrying costs, from customers either through transmission and distribution rates or standard offer rates. These risks include, but are not limited to:

- The costs of any performance assurance that CMP or BHE may be required to provide a counterparty under the entitlement agreements;
- Any requirement to reimburse a counterparty under the entitlement agreements for any back-down charges or negative energy clearing prices;
- Any provision that allows for a decrease or offset to the entitlement sale price, such that CMP or BHE collects from Buyer any amount less than the entitlement sales price approved in this Order, including such decreases or offsets arising from actual or alleged changes in law or regulation or any costs resulting from any obligation CMP or BHE may have to pay damages under the entitlement agreements for occurrences under agreements other than such entitlement agreements;
- Any additional costs or losses that CMP or BHE may incur as a result of tolling any termination rights under any agreement pending the outcome of an arbitration proceeding;
- Any transmission uplift costs that CMP or BHE incurs with respect to standard offer service load;
- Any costs caused by contractually fixing any fees applicable to the standard offer provider for any period time, where such fees are otherwise subject to change;
- Any cost incurred as a result of failure to obtain final regulatory approvals; and
- Any other costs attributable to the execution of these agreements, including those related to the solicitation, evaluation, and negotiation of these agreements.

³ Because the entitlements will revert to the utilities in the event CPS Maine materially defaults in its standard offer obligations, we have lowered the security amount to account for the value of the entitlements. To the extent necessary, we waive the security amount provision of Chapter 301 (pursuant to section 10 of the rule).

Dated at Augusta, Maine, this 18th day of September, 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.