

REDACTED VERSION

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-399

October 2, 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 [] per kWh for CMP and [] 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.

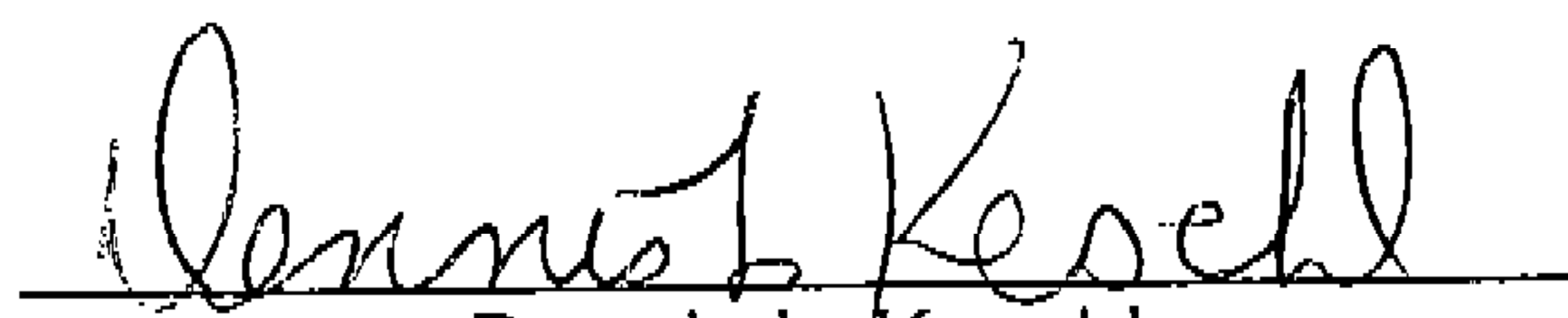
Finally, we recognize that the contingent arrangement approved in this Order creates certain risks for CMP and BHE that should be properly borne by customers. Therefore, we explicitly find that any direct or indirect costs reasonably incurred by CMP or BHE, including administrative and financing costs, 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 2nd day of October, 2001.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, reading "Dennis L. Keschl", is written over a horizontal line.

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.

STATEMENT OF COMMITMENT

The Bidder hereby represents that if it submits any bid price proposal in response to the Request For Proposals to Provide Standard Offer Service to Electric Customers in Maine issued in July, 2001 by the Maine Public Utilities Commission (the "Commission") for Central Maine Power Company's Service Area ("RFP"), such bid price proposal, subject to its terms and conditions, will be a firm offer to provide standard offer service in accordance with Maine law and regulations and the provisions of the RFP, at the prices, for the amounts and term lengths specified in such proposal. Bidder further represents that such firm offer shall remain open from the date hereof through the proposal expiration date stated therein.

The Bidder hereby represents that, if designated a standard offer provider by the Commission, the Bidder shall, subject to the terms and conditions of its bid price proposal, accept, abide by and fulfill all applicable and material obligations and terms and conditions of Maine law and regulations, and all applicable and material obligations, requirements, terms and conditions stated in the RFP, and the Bidder shall submit to the jurisdiction of the courts of the State of Maine and the Commission in matters relating to the provision of standard offer service, and that the Bidder agrees that all legal proceedings relating to the Bidder's provision of standard offer service shall be conducted before Maine courts or the Commission. Bidder further represents that, if designated a standard offer provider by the Commission, Bidder will provide standard offer service in the amounts, for the term lengths, and at the prices specified in its firm bid price proposal throughout the applicable term of service.

The Bidder hereby certifies that all of the statements and representations made in its proposal are true to the best of the Bidder's knowledge and belief.

Company submitting proposal:	<u>Constellation Power Source Maine, LLC</u> (exact legal name of company)
Bidder Name:	<u>Same as above</u> (if different than above)
Signature of an Officer of Bidder	_____
Print or type name of Officer above:	<u>John R. Collins</u>
Officer Title:	<u>Treasurer</u>
Date Signed:	<u>September 18, 2001</u>

STATEMENT OF COMMITMENT

The Bidder hereby represents that if it submits any bid price proposal in response to the Request For Proposals to Provide Standard Offer Service to Electric Customers in Maine issued in July, 2001 by the Maine Public Utilities Commission (the "Commission") for Bangor Hydro-Electric Company's Service Area ("RFP"), such bid price proposal, subject to its terms and conditions, will be a firm offer to provide standard offer service in accordance with Maine law and regulations and the provisions of the RFP, at the prices, for the amounts and term lengths specified in such proposal. Bidder further represents that such firm offer shall remain open from the date hereof through the proposal expiration date stated therein.

The Bidder hereby represents that, if designated a standard offer provider by the Commission, the Bidder shall, subject to the terms and conditions of its bid price proposal, accept, abide by and fulfill all applicable and material obligations and terms and conditions of Maine law and regulations, and all applicable and material obligations, requirements, terms and conditions stated in the RFP, and the Bidder shall submit to the jurisdiction of the courts of the State of Maine and the Commission in matters relating to the provision of standard offer service, and that the Bidder agrees that all legal proceedings relating to the Bidder's provision of standard offer service shall be conducted before Maine courts or the Commission. Bidder further represents that, if designated a standard offer provider by the Commission, Bidder will provide standard offer service in the amounts, for the term lengths, and at the prices specified in its firm bid price proposal throughout the applicable term of service.

The Bidder hereby certifies that all of the statements and representations made in its proposal are true to the best of the Bidder's knowledge and belief.

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Bidder Name:	<u>Same as above</u> (if different than above)
Signature of an Officer of Bidder	_____
Print or type name of Officer above:	<u>John R. Collins</u>
Officer Title:	<u>Treasurer</u>
Date Signed:	<u>September 18, 2001</u>

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 Commission of the following conditions as expressly stated herein, without modification except upon the written agreement of the Bidder. The Commission's order designating the Bidder as a standard offer provider (the "Provider") shall expressly incorporate each of the conditions stated herein (the "Order").

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 this Bid Price Proposal; (iii) the Standard Offer Provider Standard Service Agreement described below; (iv) the Credit and Settlement Agreement described below and (v) the related provisions of the Entitlement 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, September 18, 2001
- 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.
- Entitlement Agreement. T&D shall execute, deliver and perform each entitlement agreement between Bidder's wholesale provider (the "Entitlement Purchaser") and T&D in the form delivered to the Commission with the Bid Price Proposal, modified only as necessary to incorporate the rates quoted by the Entitlement Purchaser in its bid to T&D of even date herewith (all such agreements, collectively referred to herein as the "Entitlement Agreement") on or before the Proposal Expiration Date.
- Credit and Settlement Agreement. T&D shall execute, deliver and perform the Comprehensive Credit Support and Settlement Calculation Agreement among Bidder, Bidder's wholesale provider and T&D in the form delivered to the Commission with the Bid Price Proposal (the "Credit and Settlement Agreement") on or before the Proposal Expiration Date.
- Confidentiality of Bidder Identification and Entitlement Agreement Rates. The Commission agrees (i) not to reveal the identity of the Bidder or the Entitlement Purchaser prior to the date which is two (2) weeks after the date of the Order designating Bidder as Provider; and (ii) to protect the confidentiality of the rates proposed to be paid by the Entitlement Purchaser under the Entitlement Agreement in

accordance with the terms of the Protective Order issued by the Commission on August 3, 2001 in Docket No. 2001-399 through December 31, 2001.

- Renewable Resource Portfolio Requirement. The Commission finds that the facilities described in the Renewable and Eligible Resource Entitlement Agreement described above qualify as eligible renewable or efficient resources pursuant to Chapters 301 and 311 of the Commission's Rules.
- 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 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 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. From and after the date of Provider's arbitration notice and until the conclusion of any such arbitration proceeding pursuant to final decision of the arbitrators,, Provider may recover the difference between the increased cost amount as calculated by Provider and the amount being paid to Provider in respect of such increased costs as an offset to the Entitlement Purchaser's payment obligation as provided under the Entitlement Agreement with the applicable T&D. If the amount awarded pursuant to such arbitration is materially less than the amount offset by Entitlement Purchaser in respect of the Change in Law during the pendency of the arbitration, Entitlement Purchaser shall refund such difference to T&D, together with interest on such difference calculated at a rate equal to 18% per annum as provided in the Entitlement Agreement.

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).

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 the Entitlement 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 both the SOP Agreement and the Entitlement Agreement. Provider's loss as a consequence of such termination shall be calculated and recovered from T&D, by Entitlement Purchaser on behalf of Provider, pursuant to the Credit and Settlement Agreement. For purposes of such calculation, Provider's loss shall not include any consequential or indirect damages.
- Termination by Commission. The unexcused occurrence of either of the following events shall constitute a "Provider Default": (i) Provider or Entitlement Purchaser fails to satisfy its Load Asset Contract obligations for the applicable Load Assets in the ISO-NE market settlement system (or its equivalent obligations in any successor market settlement system), as a result of which T&D or other third party is obligated to assume responsibility for all such market settlement obligations; or (ii) Provider or Entitlement Purchaser fails to perform any other 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 Section 8.2 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 of CEG shall terminate and be of no further force and effect.