

**SUBJECT TO CONFIDENTIAL TREATMENT UNTIL  
August 7, 2006**

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2006-324

July 24, 2006

MAINE PUBLIC UTILITIES COMMISSION  
Standard Offer Bidding Procedure for  
CMP and BHE Medium and Large  
Non-Residential Customers

ORDER DESIGNATING  
STANDARD OFFER  
PROVIDERS

ADAMS, Chairman; REISHUS, Commissioner

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**I. SUMMARY**

Through this Order, we designate BP Energy Company (BP) as the standard offer provider for 100% of the large non-residential classes in the Central Maine Power Company (CMP) and the Bangor Hydro-Electric Company (BHE) service territories. We designate Dominion Retail, Inc. (Dominion) as the standard offer provider for 20% and FPL Energy Power Marketing (FPL) as the standard offer provider for 80% of the medium non-residential class in the CMP service territory. We designate FPL as the standard offer provider for 100% of the medium non-residential class in the BHE service territory. All designations are for six month periods, beginning September 1, 2006. The average blended prices for standard offer service for this period will be 10.0354¢/kWh for the medium class and 10.147¢/kWh for the large class in the CMP service territory, and 10.192¢/kWh for the medium class and 9.798¢/kWh for the large class in the BHE service territory.

**II. BACKGROUND**

Maine's Restructuring Act directs the Commission to administer periodic bid processes to select providers of standard offer service. 35-A M.R.S.A. § 3212(2). The arrangement with the current standard offer providers for service to customers in the medium and large standard offer classes in the CMP and BHE service territories terminates on August 31, 2006. Accordingly, on June 2, 2006, the Director of Technical Analysis initiated the process to solicit bids for the provision of standard offer service to these classes for the period beginning September 1, 2006 by issuing a Request for Proposals (RFP).<sup>1</sup> The RFP set out the procedure to be followed in soliciting bids and selecting standard offer providers, i.e. winning bidders.

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<sup>1</sup> On May 18, 2004 in Docket No. 2004-314, we delegated to the Director of Technical Analysis the authority to decide and carry out all matters related to the development, issuance and conduct of standard offer bid processes.

In our last several solicitations for the CMP and BHE medium and large classes, we accepted bids for six-month terms to minimize the time for which standard offer prices may deviate from prevailing market prices. Accordingly, in the RFP, the Director of Technical Analysis asked for bids only for six-month terms.

Chapter 301 now allows the details of financial security requirements to be determined by the Commission prior to the applicable bid processes and presented in the request for bids. See *Chapter 301, § 3(B)(1) as amended by Order Adopting Rule and Statement of Factual and Policy Basis, Docket 2005-443 (December 14, 2005)* (amendments effective on January 1, 2006). As described in the *Notice of Rulemaking* in Docket 2005-443 (August 2, 2005), current risk management practices in the electricity trading business often include a financial security approach referred to as “margining.” This approach allows the amount of the financial security to vary with changes in market value. Margining thus has the advantage of ensuring that the financial security amount is designed to be at all times sufficient to cover the cost of replacement power. The approach can also be beneficial from the perspective of suppliers in that they do not have to provide more security than dictated by market conditions, which could have the effect of lowering the cost of providing standard offer service.

Accordingly, in the June 2 RFP, the Director of Technical Analysis adopted a financial security requirement that includes margining. The RFP’s financial security provision sets a Base Security Amount, and using a margining approach, also requires Excess Market Exposure Security as market conditions warrant. In addition, unlike prior standard offer solicitations, the SOP standard service agreement has been revised to incorporate this margining provision. The revised SOP standard service agreement requires that T&D utilities calculate the Excess Market Exposure Security amounts and manage the process of obtaining any required Excess Market Exposure Security from standard offer providers.

Pursuant to the RFP, indicative bids were received on June 26, 2006. Since that time, our staff has been discussing various non-price terms with bidders. Upon the conclusion of discussions on non-price terms with a sufficient number of bidders, the Director of Technical Analysis asked for final, binding bids to be presented today, July 24, 2006.

### III. DISCUSSION

At the outset, we note that, as in our more recent standard offer solicitations, the current process was competitive and thus standard offer prices will continue to be established by a competitive electricity market as contemplated by the Restructuring Act. Upon review of all the bids received today, and applying the selection criteria specified in section 8(C)(2) and (4) of Chapter 301, we designate the following as standard offer providers for the six-month term beginning March 1, 2006.

	<b>CMP</b>	<b>BHE</b>
Medium Class	Dominion 20%	FPL 100%
	FPL 80%	
Large Class	BP 100%	BP 100%

The average prices are as follows:

	<b>CMP</b>	<b>BHE</b>
Medium Class	10.0354 cents/kWh	10.192 cents/kWh
Large Class	10.147 cents/kWh	9.798 cents/kWh

The actual prices for the medium classes vary by month and are contained in an appendix to this Order.

Our review of the Dominion, BP and FPL bids indicate that they comply with all requirements of Chapter 301 and the RFP (including the security requirements). Additionally, BP and FPL included bidder conditions with its bids. By designating BP and FPL as standard offer providers, we hereby accept their bidder conditions and incorporate them into this Order. The BP and FPL bidder conditions, as well as the statements of commitment of all winning bidders, are attached as appendices to this Order.

The bidder conditions provide 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 Commission or the utility. We understand all conditions are satisfied at this time or will be satisfied shortly after we issue this Order. BP and FPL each attached modified versions of the Standard Offer Provider (SOP) Service Agreement to their bids. We are informed that the modified versions of the proposed SOP standard service agreements are acceptable to both CMP and BHE, and the Director of Technical Analysis,<sup>2</sup> and that the winning bidders, CMP and BHE will execute the agreements upon issuance of this Order.

Section 8(C)(2) of Chapter 301 establishes the lowest price as the primary selection criteria in considering standard offer bids, although section 8(C)(4) does require the Commission to select three standard offer providers within a utility service

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<sup>2</sup> By our May 18, 2004 Delegation Order, we also delegated authority to accept alternative SOP Standard Service Agreements to the Director of Technical Analysis. She consulted with the Commission's legal staff in deciding to accept changes to the standard service agreement.

territory if this can be accomplished without increasing standard offer prices within any standard offer class by more than 1.5%. Selection of standard offer providers on the basis of price results in three providers in the CMP and BHE service territories.<sup>3</sup>

The Commission recognizes that Chapter 301 does not require T&D utilities to perform margining functions with respect to standard offer service and that such a margining function imposes additional risk on T&D utilities. CMP and BHE have agreed to calculate the Excess Market Exposure Security amounts and manage the process of obtaining any required Excess Market Exposure Security from standard offer providers for this standard offer period if they have protection from the risk of this activity. We explicitly find that CMP and BHE shareholders shall not be subject to any prudency risk or financial liability with respect to its margining activities related to standard offer service for any actions that CMP and BHE take and decisions that CMP and BHE make in the ordinary course of business of managing the margining requirements, as long as they take reasonable steps to inform the Commission of their activities in this regard.<sup>4</sup> To the extent that any other person or entities seek to impose any such prudency risk or liability on CMP and BHE in contravention to the previous sentence, any resulting direct or indirect costs, obligations, expenses or damages incurred by CMP or BHE shall be fully recovered, with carrying costs, from customers either through T&D rates or standard offer prices.

Finally, we also recognize that the bidder conditions approved in this Order create certain risks and obligations for CMP and BHE. Risks imposed by the bidder conditions are properly borne by customers and not shareholders. We are informed by Commission staff that CMP and BHE agree to accept the obligations imposed on it by bidder conditions, as long as it is compensated for the financial consequences of satisfying those obligations. Therefore, we explicitly find that any direct or indirect costs, obligations, expenses or damages reasonably incurred by CMP or BHE, including administrative and security costs, in fulfilling its contractual obligations or exercising its contractual rights under the SOP Service Agreements, or in satisfying the bidder conditions we have accepted, shall be fully recovered, with carrying costs, from customers either through transmission and distribution rates or standard offer prices.

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<sup>3</sup> Effective March 1, 2006, Constellation Energy Commodities Group Maine, LLC is the standard offer provider for 100% of the residential and small non-residential classes in the CMP and BHE service territories.

<sup>4</sup> The reasonable steps will include, but not be limited to, weekly e-mail communications from the T&D to Commission Staff reporting current market prices and the T&D's calculation of Excess Market Exposure.



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 **21 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.

New prices for Standard Offer Service for Central Maine Power and Bangor Hydro-Electric Medium and Large Commercial/Industrial Customers.

Prices to be effective 09/01/06 through 02/28/07.

	<b>CMP Medium Class</b>	<b>BHE Medium Class</b>
<b>Suppliers</b>		
	\$/kWh	\$/kWh
Sep	0.0713960	0.07250
Oct	0.0778080	0.07742
Nov	0.0831060	0.08426
Dec	0.1035840	0.10644
Jan	0.1368200	0.13787
Feb	0.1358360	0.13542

	<b>CMP Large Class</b>	<b>BHE Large Class</b>
<b>Suppliers</b>		
	\$/kWh	\$/kWh
Sep	0.10147	0.09798
Oct	0.10147	0.09798
Nov	0.10147	0.09798
Dec	0.10147	0.09798
Jan	0.10147	0.09798
Feb	0.10147	0.09798











**Attachment A**  
**to**  
**FPL Energy Power Marketing Inc.'s Bid Price Proposal**  
**(Central Maine Power Company)**

**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. Close of Business, July 24, 2006.
- 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") within twenty-four (24) hours after the Proposal Expiration Date.
- Confidentiality of Bidder Identification. The Commission agrees 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>5</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,

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<sup>5</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).

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. 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, in reselling to other parties the energy, capacity and ancillary services 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. The quantities to be used in calculating Provider's damages shall be the actual historical usage over the comparable prior year period, as reasonably adjusted for known changes in the load, as the proxy for expected 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 take any remedial action against the Provider 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. Furthermore, the Commission shall not permit T&D to terminate the SOP Agreement 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 is acceptable.

**Attachment A**  
**to**  
**FPL Energy Power Marketing Inc.'s Bid Price Proposal**  
**(Bangor Hydro Electric Company)**

**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. Close of Business, July 24, 2006.
- 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") within twenty-four (24) hours after the Proposal Expiration Date.
- Confidentiality of Bidder Identification. The Commission agrees 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>6</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,

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<sup>6</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).

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. 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, in reselling to other parties the energy and ancillary services 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. The quantities to be used in calculating Provider’s damages shall be the actual historical usage over the comparable prior year period, as reasonably adjusted for known changes in the load, as the proxy for expected 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 take any remedial action against the Provider 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. Furthermore, the Commission shall not permit T&D to terminate the SOP Agreement 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 is acceptable.

**CONFIDENTIAL**

**Attachment A**

**To BP**

**Bid Price Proposal**

### **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; 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.

- Bid Price Proposal Expiration Date. The Bidder's Bid Price Proposal shall remain effective and binding until the close of business on Monday, July 24, 2006. If Bidder receives the Commission's Order designating the Bidder as the Provider before the close of business on Monday, July 24, 2006, T&D and Bidder shall, no later than Thursday, July 27, 2006, execute final, definitive documentation regarding the Standard Offer Obligation and any other obligations awarded to the Bidder by the Commission (such documentation to be substantially in the form agreed to by the Bidder, T&D and the Commission prior to the submission of Bidder's Bid Price Proposal and containing subsequent non-substantive changes mutually agreed upon by the Bidder, T&D and Commission).
- Confidentiality of Bidder Identification. The Commission agrees not to reveal the identity of the Bidder prior to the date that 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 waives<sup>7</sup> any law, rule or regulation that relates to the provision of standard offer service or the provision of competitive electric service in general after the date hereof, or if the definition of rate classes, as presently defined by each T&D, changes (a "Change in Law") and such

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<sup>7</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).

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 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 from the T&D the difference between the increased cost amount as calculated by Provider and the amount being paid to Provider in respect of such increased costs. If the amount awarded pursuant to such arbitration is materially less than the amount recovered by Provider from the T&D in respect of the Change in Law during the pendency of the arbitration, Provider shall refund such difference to the T&D, together with interest on such difference calculated at a rate equal to the lesser of (i) eighteen percent (18%), and (ii) the maximum rate permitted by applicable law.

Notwithstanding the foregoing, if upon receipt of reasonable prior direct notification of a proposed Change in Law, 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) 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 the Standard Offer Obligation (the "SOP 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) 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, and neither the Provider nor the T&D shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of the SOP Agreement, 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 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 (among other remedies) to terminate its obligation to provide standard offer service, the exercise of which shall terminate all of Provider's SOP Obligations. The parties' payment of termination damages in the event of such a termination shall be calculated and recovered pursuant to the relevant liquidation provisions of the SOP 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 fails to satisfy its Load Asset 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 the T&D or other third party is obligated to assume responsibility for all such market settlement obligations; or (ii) Provider 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 Provider as the standard offer provider, and all Provider's SOP Obligations shall terminate. In the event of a Provider Default, the T&D (subject to the Commission's approval) shall have the right (among other remedies) to terminate its obligation to accept standard offer service, the exercise of which shall terminate all of the T&D's obligations under the SOP Agreement. The parties' payment of termination damages in the event of such a termination shall be calculated and recovered pursuant to the relevant liquidation provisions of the SOP Agreement.

Notwithstanding any provision to the contrary in the Standard Offer Obligation, the Commission shall not, nor shall it permit the T&D to, take any remedial action against the Provider or the Provider Guarantor (as such term is defined in the SOP Agreement) as a result of a failure or default of Provider (including action(s) described in Section 6.2 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 initial financial capability requirements.