

### 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 January 25, 2005. If Bidder receives the Commission's Order designating the Bidder as the Provider before the close of business on January 25, 2005, the Bidder's Bid Price Proposal shall remain effective and binding until the close of business on January 27, 2005 to give the Bidder, T&D and the Commission the opportunity to agree on final, definitive documentation regarding the Standard Offer Obligation and any other obligations awarded to the Bidder by the 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>1</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 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

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

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. 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, 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 agreement between Bidder and T&D regarding the Standard Offer Obligation (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 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 to terminate its obligation to provide standard offer service, the exercise of which shall terminate all of Provider's SOP Obligations. Provider's loss as a consequence of such termination shall be calculated and recovered from the T&D

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.

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 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 Commission's Rules (as in effect as of the date hereof)(the "Provider Security Requirements"). 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)(a "Provider Downgrade Event"), and shall deliver, within five (5) Business Days, a letter of credit 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 (the "Replacement Security"), at which time the guaranty of CEG shall terminate and be of no further force and effect. If, after delivery of Replacement Security as a result of a Provider Downgrade Event, the credit rating of Provider's guarantor is restored to the minimum threshold discussed above and a replacement guaranty which complies with the Provider Security Requirements has been issued, the T&D shall return such Replacement Security to Provider within five (5) business days of the issuance of such replacement guaranty. If Guarantor notifies the T&D that it intends to terminate its guaranty in accordance with its terms, a Provider Default will occur unless, prior to the termination of the guaranty, Provider shall deliver or cause the delivery of, a letter of credit or cash 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 (the "Replacement Security") or acceptable to the Commission.