

**SUBJECT TO CONFIDENTIAL TREATMENT UNTIL
January 3, 2005**

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 20, 2005

ORDER DESIGNATING
STANDARD OFFER PROVIDER
AND DIRECTING UTILITY TO
ENTER ENTITLEMENTS
AGREEMENT

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Process For
Residential and Small Business Customers

Docket No. 2005-553

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Request for Bids
Pursuant to Chapter 307 and Associated
Waivers

Docket No. 2005-574

ADAMS, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Order, we designate Constellation Energy Commodities Group Maine, LLC (CECG Maine) as a standard offer provider for the residential and small non-residential class in the Bangor Hydro-Electric Company (BHE) service territory. CECG Maine is designated to provide standard offer service to one-third of the load for a three-year period beginning March 1, 2006. The resulting overall price for standard offer service for the one-year period beginning March 1, 2006 will be \$0.08712 per kilowatt-hour. The CECG Maine standard offer bid was linked to its affiliate's, Constellation Energy Commodities Group (CECG), bid to purchase the rights to BHE's energy and capacity from its diesel units. BHE is directed to sell these rights to CECG for a three-year period beginning March 1, 2006, as specified in the CECG Maine/CECG linked bid.

II. BACKGROUND

Pursuant to Maine's Restructuring Act, the Commission periodically administers a competitive bid process to select providers of standard offer service. 35-A M.R.S.A. § 212(2). The Commission is also required by the Act to oversee the sale by utilities of the rights to energy and capacity from their non-divested entitlements and other non-divested generation-related assets. 35-A M.R.S.A. § 3204(4).

During March of 2004, the Commission issued a Notice of Inquiry to examine issues regarding standard offer service supply for the residential and small non-residential classes. *Inquiry Into Standard Offer Supply Procurement for Residential and Small Commercial Customers*, Docket No. 2004-147 (Aug. 3, 2004). At the conclusion of the Inquiry, the Commission decided that it would attempt to segment the small class standard offer load as a means to reduce the potential for large price swings. This would ultimately occur by a procurement schedule in which a supply for a third of the load would be obtained each year pursuant to three-year arrangements. To accomplish this ultimate outcome, the Commission indicated that, in the upcoming solicitation for the BHE small class, it would solicit one-year, two-year, and three-year bids, each for one-third of the load. The Commission also stated that it would allow bids for segments of standard offer load to be linked to obtaining the output of pre-specified groups utility entitlement contracts and generation assets. *Report on Standard Offer Procurement for Residential and Small Commercial Customers*, Docket No. 2004-147 (Aug. 3, 2004) ("*Standard Offer Procurement Report*").

On December 14, 2004, the Commission designated a standard offer provider for three segments of the small class load: one-third of the load for one year; one-third of the load for two years; and one third of the load for three years. Each of the segments were linked to a specified group of BHE's non-divested entitlements. *Order Designating Standard Offer Provider and Directing Utility to Enter Entitlements Agreement*, Docket Nos. 2004-682, 2004-683 (Dec. 14, 2004). The first segment terminates at the end of February 2006, thus requiring a new process for the selection of a standard offer provider for one-third of the BHE small class load and for the sale of BHE's rights to capacity and energy from its diesel units.

To allow for standard offer bids to be linked to bids for utility entitlements, the Commission asked BHE to coordinate its solicitation pursuant to Chapter 307 with the Commission's standard offer bid process. To accommodate the Commission's request, BHE filed its bid package for Commission approval as required by Chapter 307. On September 30, 2005, the Commission's Director of Technical Analysis approved BHE's diesel bid package. *Order Approving RFB and Granting Waivers*, Docket No. 2005-574 (Sept. 30, 2005). On the same day, the Director of Technical Analysis approved the Commission's request for standard offer bids. *Order Approving Request for Standard Offer Bids*, Docket No. 2005-553 (Sept. 30, 2005). Both the standard offer and diesel bid packages were released on September 30, 2005 with initial proposals and indicative pricing due on October 27, 2005. Based on the indicative pricing, a subset of bidders was selected for discussions on non-price items and such discussions have occurred among our staff, BHE and the selected bidders. Upon the conclusion of these discussions, bidders were requested to present final, binding bids on December 20, 2005.

III. DISCUSSION

We note at the outset that both the standard offer and entitlement sale bid processes were very competitive with the result being that standard offer prices and sale prices for utility entitlements have been established by a competitive market as contemplated by the Restructuring Act. Upon review of all the bids and the selection criteria in Chapter 301, we conclude that the CECG Maine linked bid provides the greatest value for ratepayers:¹ We, accordingly, designate CECG Maine as the standard offer provider for one-third of the BHE residential and small non-residential classes for a three-year period beginning March 1, 2006. We also direct BHE to enter into an agreement to sell its right to energy and capacity from its diesel units according to the CECG Maine/CECG linked bid.²

Based on our decision today, the standard offer price for the BHE small class for the one-year period beginning March 1, 2006 will be \$0.08712 per kilowatt-hour. This represents blended price of this year's winning bid for one-third of the load and last year's winning two-year and three-year bids each for one-third of the load. The average standard offer price for this year's winning bid over the three-year period for one-third of the load is \$0.11347 per kilowatt-hour.³ The average diesel sales price over the three-year period is approximately \$0.89 per kilowatt-month .

In designating CECG Maine as a standard offer provider, we accept its statement of commitment and bidder conditions, which are attached to and incorporated into this Order. We find that these documents provide useful clarifications as to precise nature of the standard offer provider obligations, as well as reasonable protections for the providers with respect to actions of the Maine Legislature, this Commission or the utility. We understand all conditions of the winning bidders are satisfied or will be shortly after the issuance of this Order. We are informed that the modified Standard Offer Provider Service Agreement that was attached to winning bid is acceptable to BHE and we concur that the changes from the standard form are reasonable.

¹ The entitlement prices in the accepted linked bid are not higher than all of the stand-alone entitlement bids. However, the net cost to BHE's ratepayers is lowest with the CECG Maine linked bid. Any implication for the allocation of BHE's stranded costs can be addressed in BHE's next stranded cost case.

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 BHE to enter into the diesel agreement as directed.

³ The winning bid for each of the years is as follows: 03/06-02/07 \$0.12166; 03/07-02/08 \$0.11253; 03/08-02/09 \$0.10623.

We also find that the security presented by CECG Maine and CECG as part of the linked standard offer proposal is reasonable and actually provides greater protection than the security required by Chapter 301 of our rules. The security covers both the standard offer and entitlement obligations and includes an initial corporate guarantee. To the extent customer exposure increases above a specified threshold amount as a result of changes in market prices, CECG is required to post additional security in the form of a letter of credit or cash. A letter of credit or cash would also be required if the credit rating of the guarantor decreases. Thus, the security we accept today provides greater protection than fixed amount of security required in Chapter 301.⁴

Finally, we recognize that the linked standard offer and entitlement arrangements approved in this Order create certain obligations and risks for BHE that should be properly borne by customers rather than shareholders. We are informed by our staff that BHE agrees to accept the obligations and risks 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 BHE, including administrative and security costs, in fulfilling its obligations or exercising its rights under the various contracts and arrangements authorized by this Order shall be deferred on the utility's books of account as regulatory assets and 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 BHE may be required to provide a counterparty under the arrangements;
- Any provision that allows for a decrease or offset to the entitlement sale price, such that 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;
- Any additional costs or losses that BHE may incur as a result of tolling any termination rights under any agreement pending the outcome of an arbitration proceeding;
- 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;

⁴ In addition, greater security is provided because a default in CECG Maine obligations as a standard offer provider will result in the entitlements reverting back to the utility. To the extent necessary, the security provisions of Chapter 301 are hereby waived pursuant to section 10 of the rule.

- Any incremental costs attributable to the execution of the linked standard offer arrangements, including those related to the solicitation, evaluation, and negotiation of those arrangements; and
- Any costs or losses that BHE incurs as a result of a default by CECG Maine or CECG of their contractual or other obligations and the consequential termination of any contract or obligation associated with the linked standard offer and entitlement arrangements authorized in this Order for which BHE is not compensated by associated security.

This Order will be treated as designated confidential information pursuant to the Protective Order issued in this proceeding for a two-week period. After that, the confidential treatment of this Order will be removed.

Dated at Augusta, Maine, this 20th day of December, 2005.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Acting Administrative Director

COMMISSIONERS VOTING FOR: Adams
Diamond
Reishus

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.