

November 28, 2000

MAINE PUBLIC UTILITIES COMMISSION  
Standard Offer Bidding Process

ADVISORY OPINION  
REGARDING RIGHTS AND  
OBLIGATION OF STANDARD  
OFFER PROVIDERS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## I. SUMMARY

During the course of the current standard offer request for bids (RFB) process, questions have arisen regarding the precise obligations of the standard offer provider and the circumstances under which a provider would be in default of its obligation. Questions also have arisen about the nature of the relationship between the standard offer provider and the Commission. Underlying these questions is a concern expressed by some bidders about the lack of a contract with an entity that is actually purchasing the electricity provided by the supplier. To clarify these matters, the Commission issues this Advisory Opinion to describe the standard offer provider obligation and circumstances of default, and to explain that a contract between the provider and either the purchaser of electricity or the Commission is not necessary or appropriate.

## II. BACKGROUND

On October 2, 2000, the Commission issued RFBs seeking bids from suppliers to provide standard offer service for the term beginning March 1, 2001. The process to date has afforded bidders the opportunity to raise questions and concerns with our Staff. There have been various questions about the standard offer provider's obligation, and some concern about the lack of an electric supply contract between a standard offer provider and standard offer customers or the Commission. Because clarity about this matter may be of great importance to potential providers, we are providing this advisory ruling on the requirements of Chapter 301 and our RFB.

## III. DECISION

### A. Obligations of Standard Offer Providers.

Section 3(B) of Chapter 301 defines the obligations of standard offer providers. Paragraph 1 states:

Standard offer providers shall deliver generation required by standard offer customers to the transmission delivery point(s) established by the contract between the standard

offer service provider and the transmission and distribution utility described in section 5(D) below. The standard offer provider shall make all arrangements for and be responsible for all costs associated with delivery of its capacity and energy to the transmission delivery point(s).

Paragraph 2 specifies:

Standard offer providers shall provide all or the specified portion of the standard offer requirements of each standard offer class for which it is selected at its accepted bid price. Standard offer service shall include all line losses associated with delivery to the customers' meters.

In addition, section 3(B)(5) requires standard offer providers to comply with all applicable statutory and regulatory requirements, as well as the provisions in the request for standard offer bids (RFBs).

The RFB (Section 3.1) describes standard offer service as follows:

Standard offer service includes all the electric capacity, energy, ancillary and other services, including all line and transformer losses up to the customers' meters, necessary to meet the electrical requirements of customers receiving standard offer service at all times during the term of service in a manner that complies with all applicable ISO-NE rules and requirements. Standard offer service is firm, all requirements service for the standard offer class, or portion of the standard offer class, for which a provider has been designated by the Commission to be the standard offer provider.

Based on these provisions, the obligation of the standard offer provider is, in concept, quite simply defined. A provider is obligated to provide standard offer service at the bid price that is accepted by the Commission for the classes, or portions thereof, it has offered and been designated by the Commission to serve. A provider must provide standard offer service in accordance with applicable Federal and state law and regulations, ISO-NE and NEPOOL rules and requirements and the Commission's standard offer RFB.<sup>1</sup> Standard offer service must be firm and "all requirements" supply. In other words, a provider must supply the entire electrical requirements, or the applicable percentage thereof, of standard offer customers in the class for which it has

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<sup>1</sup> Our specific discussion refers to providers in the ISO-NE control area. However, the substance of this Ruling also applies to providers in northern Maine.

been designated the standard offer provider. These requirements include all line and transformer losses to the customers' meters.

Another way to describe the obligation is that the standard offer provider is the Load Serving Entity (LSE) for its designated class or class share, and must fulfill all the obligations and bear all the costs of an LSE for this load. The LSE obligations and costs include, but may not be limited to, energy, capacity, all required ancillary services, energy uplift and any other service or charge that would be required of or imposed upon an LSE.

A standard offer provider may satisfy its supply obligation in any form allowed by ISO-NE, such as by scheduling and causing energy, capacity and ancillary services to be delivered to the delivery point or through the supply of energy, capacity and ancillary services requirements by ISO-NE and payment by the provider of ISO-NE invoices associated with supplying the standard offer load at the delivery point.<sup>2</sup>

To further clarify, it may also be useful to describe what a standard offer provider's obligation does not include. The standard offer provider does not have the obligation to ensure that the electricity ultimately reaches the consumer. This is so because, after the delivery point, the T&D utility has the sole responsibility to deliver the electricity to standard offer service customers. For instance, if a standard offer customer does not have power because its distribution circuit is out of service, a standard offer service provider would not be in default of its obligation, assuming it had met its obligation at the delivery point. This is the case even though the T&D never actually takes title to the power supply. In addition, the provider would not be responsible or liable for damages or personal injury resulting from the operation or maintenance of the T&D utilities system.

#### B. Rights of Standard Offer Providers.

Some bidders are concerned about the lack of a contract with the persons buying the power, as well as with the nature of the relationship between standard offer providers and the Commission. Bidders are concerned that the lack of a contract between a standard offer provider and standard offer customers, or between a provider and the Commission acting on behalf of customers, may leave a winning bidder without sufficient legal protection. In our view, the Maine statutes, the Commission's rules, and the standard offer contract between a standard offer provider and the underlying T&D utility, provide the legal protection necessary to ensure that the standard offer provider will receive the benefits called for when it meets its electric supply obligations.

Prices for standard offer service and the providers of that service are established by competitive bids. The competitive bid process is conducted by the Commission, and the Commission chooses the winners. The Commission conducts the

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<sup>2</sup> The delivery point is specified in the standard offer provider's contract with the T&D utility.

process in accordance with statute and its rule, Chapter 301, described above. Winning bidders are obligated for a specified portion of the standard offer load but are not assigned individual standard offer customers. Because T&D utilities meter and bill for standard offer providers, there is no direct customer relationship between standard offer providers and standard offer customers even though standard offer service is a retail sale by the standard offer provider(s) to these customers.

Moreover, because Chapter 301 eliminates the provider's standard offer collection risk by prescribing a fixed uncollectible rate for computing payments to the standard offer provider, there is no direct relationship between the payments by standard offer customers to the T&D utility and the payments by the T&D utility to the standard offer provider. Because of the lack of any direct connection or contact between the standard offer providers and standard offer customers, the standard offer customer's obligations are set forth in our rules and not left to the standard offer provider and customer to negotiate.<sup>3</sup> Accordingly, there is no logical basis for a contract between a standard offer provider and standard offer customers.

Some bidders have asked, acknowledging that it is not logical or possible to contract with standard offer customers, whether standard offer providers could contract with the Commission. As there is no business relationship between providers and customers to justify a contract directly with customers, there is no justification for the Commission to enter into a contract indirectly on behalf of customers. Furthermore, there is no direct business relationship between providers and the Commission to justify a contract. The Commission's role is limited to the bid process and selection of winners. The Commission does not buy or take title to the electricity delivered to standard offer customers. The Commission does not collect money for or agree to pay money to the standard offer providers. Once the bid process is conducted and winners selected, there is no further direct business relationship between the providers and the Commission. Thus, the nature of the relationship between providers and the Commission does not warrant a supply contract that would normally exist in a wholesale purchase and sale situation.

The sale of electricity by standard offer providers to standard offer customers is accomplished by virtue of Maine law and the interaction between the standard offer provider and the T&D utilities. A provider and the T&D utility engage in many commercial transactions. Accordingly, the Commission, by its rule, requires providers and utilities to enter into standard offer contracts. The T&D utility is obligated to deliver the electricity to customers, to meter the electric usage of standard offer customers, and to bill the customers. The provider agrees to furnish the necessary rate information so that the bills submitted by the T&D utility will be accurate. In short, for the T&D utility and the provider to perform their functions, they must exchange

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<sup>3</sup> In addition, unlike electric service from a competitive electric provider, customers may be disconnected for non-payment of standard offer bills.

information, electronically for the most part, and they must also exchange information and undertake obligations with the ISO-NE.

Most importantly, the standard offer contracts require T&D utilities to pay the standard offer providers for electricity delivered to standard offer customers. However, the contracts are not a wholesale supply contracts and as described above, it is Maine law that obligates providers to provide standard offer service. Thus, the protection against unreasonable treatment is not found in the T&D standard form contract, but is a function of Maine law. The obligation to provide standard offer electricity and the right to be paid for that electricity in accordance with its bid arise from the statute, Chapter 301, the RFB, the provider's bids and statement of commitment, and the Commission designation of the bidder as the, or one of the, standard offer providers.

The combined effect of the rights and obligations of the standard offer providers as set forth in our rules, our RFB, the bids and statement of commitments, and our designation of winning bidders, and the contractual promise of the T&D utility to pay the standard offer provider for delivered electricity in accordance with our rules and RFB, is to provide legal protection to winning bidders that they will be treated in accordance with these rights and obligations and the terms of their accepted standard offer bids.

We note that standard offer service has been provided in Maine since March 1, 2000. For the residential and small non-residential customer class in Central Maine Power Company's service territory and for the entire Maine Public Service Company service territory, standard offer providers were chosen through the RFB process. The standard offer service process in Maine has operated satisfactorily for the winning bidders in the first RFB process. Standard offer providers have understood and met their obligations. Standard offer providers have been paid promptly. The data exchange necessary for both the providers and the T&D utility to perform their obligations has been occurring without problems. Indeed, the T&D utilities have worked cooperatively and successfully to accommodate the special needs of the standard offer providers. Bidders in their second RFB process will hopefully take some comfort that the standard offer process described above has been successfully operating in Maine for nine months.

Bidders also expressed concern that the lack of a contract with the Commission could allow the Commission to "un-designate" a winning bidder before the standard offer period is complete or otherwise change its rules to the substantial detriment of the providers. We realize that designated providers likely will enter into supply commitments so that the bidders can meet their standard offer obligations. Thus, we explicitly recognize that bidders will act in reasonable reliance on the Commission's designation.

Bidders should expect that a governmental agency, the Maine Public Utilities Commission, will reasonably execute its statutory obligations subject to court

review. Any action to “un-designate” a provider, absent a default by the provider, is contrary to statute, the Commission’s rules and the Commission’s RFB. The providers have legal protections from arbitrary government action by the Commission. In short, winning bidders have legal rights that protect them from arbitrary or unreasonable Commission action regarding their status as standard offer providers.

Dated at Augusta, Maine, this 28th day of November, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:     Welch  
   Nugent  
   Diamond