

September 8, 2004

PUBLIC UTILITIES COMMISSION
Small Generator Aggregation
(Chapter 315)

ORDER ADOPTING RULE
AND STATEMENT OF
FACTUAL AND POLICY BASIS

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Order, we adopt a rule to establish requirements for standard offer providers to purchase the electricity from small generators.

II. BACKGROUND

During its last session, the Legislature enacted An Act To Facilitate the Development of Cost-Effective Distributed Electricity Generation in the State. P.L. 2003, ch. 555 (Act) (to be codified at 35-A M.R.S.A. § 3210-A). The Act requires the Commission by rule¹ to require standard offer providers to purchase the output of small generators (defined as facilities with a capacity of 5 MW or less) in a manner that is financially neutral to the providers. The Act also requires transmission and distribution (T&D) utilities to administer the sale of electricity from the generator to the standard offer provider and to charge the cost of administration to the generator.

The Act resulted from comments made by the Commission in two recent reports to the Legislature.² In those reports, the Commission stated that small generators, simply by virtue of their size, face unique difficulties in accessing the competitive wholesale market. These difficulties include the general unwillingness of electricity marketers to purchase from small generators due to the administrative costs associated with contracting with a number of small facilities that provide little volume and the high cost for small generators to sell directly into the ISO-NE market. As a result, the Commission recommended that the Legislature adopt provisions similar to those

¹ Pursuant to the Act, these rules are routine technical rules as defined in 5 M.R.S.A. § 8071.

² *Report and Recommendations on the Promotion of Renewable Resources*, December 31, 2003; *Distributed Generation: Conclusions and Recommendations*, October 2001. These reports may be obtained from the Commission's website: [www.state.me.us/mpuc/2004 legislation/2004 legislation.htm](http://www.state.me.us/mpuc/2004%20legislation/2004%20legislation.htm). Click on Reports to the Legislature under the appropriate year.

contained in the Act to address what it considered to be an unreasonable market barrier for small generators.

III. RULEMAKING PROCESS

On June 22, 2004, the Commission issued a Notice of Rulemaking and a proposed rule to implement the requirements of the Act. Consistent with rulemaking procedures, the Commission provided an opportunity for written comment on the proposed rule. Central Maine Power Company (CMP), Constellation Power Service, Inc. and Constellation NewEnergy, Inc. (Constellation) and the Independent Energy Producers of Maine (IEPM) commented on the proposed rule.

IV. DISCUSSION OF RULE PROVISIONS

A. Purpose (Section 1)

The final rule describes the purpose of the Chapter as ensuring that small generators have reasonable access to the regional wholesale market. No commenters objected to the language of this provision and it is adopted unchanged from the proposed rule.

B. Definitions (Section 2)

Section 2 contains definitions of terms used throughout the final rule. The final rule adds a provision regarding the possession of NEPOOL Generation Information System (GIS) certificates associated with eligible generation (section 8). Accordingly, the final rule contains a definition of "GIS certificates." The proposed rule stated that the purchase price would be the clearing price for the "Maine Load Zone." However, the final rule specifies the purchase price as the "Real-Time Nodel Clearing Price." As a result, the definition section of the final rule does not contain a definition of "Maine Load Zone," but has a definition for the "Real-Time Nodel Clearing Price." Finally, CMP suggested that the definition of eligible generator include a requirement that the generator take standard offer service. We see no reason for such a restriction and have not included it in the rule.

C. Purchase Obligation (Section 3)

1. Purchase Requirement (Section 3(A))

Consistent with the provisions of the Act, the final rule requires specified standard offer providers to purchase the output of generators with a capacity of 5 MW or less at a price that is financially neutral to the provider. The purchase requirement is at the option of the generator and applies only to entities operating in the ISO-NE control area. The ISO-NE control area has a market structure that would allow for a financially neutral transaction because of the existence of market clearing prices. Thus, a standard offer provider would be financially neutral in purchasing the output of a

small generator at the applicable market clearing prices in that the clearing price represents the value of the power at a point in time. No commenter objected to restricting the application of the rule to entities located in the ISO-NE control area.

The proposed rule specified that the standard offer provider for residential customers would have the small generator purchase obligation. Each investor-owned utility has three standard offer classes. Thus, it is necessary for the rule to designate the particular provider that has the purchase obligation. The proposed rule designated the provider to the residential class because the administration of the small generator purchase and sale will be similar to that which currently occurs with net billing customers. Because net billing customers are almost exclusively residential customers, the residential standard offer provider will already be accommodating similar transactions administered by the T&D utility. Thus, it would be efficient for the same entities to also have the responsibility for similar transactions involving small generator sales, because it would minimize the overall administrative costs and cause the least disruption to the existing market procedures. We received no comments on this portion of the proposed rule and it is adopted without change.

CMP commented that the proposed rule seems to assume that there will be a direct contractual relationship between eligible generators and standard offer providers. Because there may be multiple standard offer providers that change over time, CMP stated that it would not make sense for eligible generators to make any requests directly to standard offer providers; rather, eligible generators should make requests through the administering T&D utility. We agree and have added language to the final rule clarifying this point.

Constellation commented that it is unclear whether the rule requires the standard offer load responsibility to be reduced by the amount of electricity purchased from small generators or whether the purchase requirement is separate from the standard offer load requirement. Constellation states that a requirement to serve standard offer load net of electricity from participating small generators would create uncertainty and risk, and that the mitigation of that uncertainty and risk would require that detailed information about all participating generators be provided at the time of competitive solicitations for residential standard offer service. There is nothing in the rule that requires that the standard offer load responsibility be reduced by the electricity purchased from small generators. Accordingly, standard offer providers may treat the purchase requirement as separate from the standard offer load responsibility, and we assume they will do so to avoid the risk and uncertainties discussed in Constellation's comments.

2. Purchase Price (Section 3(B))

The proposed rule specified that the purchase price would be the market clearing price for the Maine Load Zone. However, we asked for comments on whether the final rule should specify the real-time or day-ahead clearing prices.

Both CMP and Constellation commented that, to keep the standard offer provider financially neutral, the rule should specify the purchase price as the nodal clearing price for the node on which the generator is located. These commenters stated that the real-time price is appropriate because eligible generators will be registered as “Settlement-Only Generators” in the ISO-NE system and such generators are settled in the real-time market. The IEPM commented that day-ahead prices are more appropriate because they are more predictable, less susceptible to correction, and more user-friendly for small generators. The final rule states the purchase price to be the real-time nodal clearing prices because these are the prices that keep the standard offer provider financially neutral as required by the Act. Constellation also commented that standard offer providers be compensated for any ISO-NE charges. We agree and have added language stating that the purchase price shall be reduced for any ISO-NE charges.

3. Multiple Providers (Section 3(C))

The proposed rule stated that if there are multiple standard offer providers serving residential customers within a T&D utility service territory, the purchase obligation will be apportioned according to each provider’s share of the standard offer load. The language is adopted without change from the proposed rule.

CMP commented that the existence of multiple providers raises certain implementation issues, such as who would be the Lead Participant under ISO-NE rules and who would make the choice of how to register eligible generators in the ISO-NE system. CMP stated that such issues could be addressed through technical specifications issued by the Director of Technical Analysis. We agree with CMP in this regard and have not modified the rule to address implementation details. Such details may be addressed by our Director of Technical Analysis pursuant to section 9 of the final rule.

4. Northern Maine (Section 3(D))

The northern Maine market currently does not have a structure that produces market clearing prices. As a result, there does not appear to be a mechanism for a small generator purchase requirement to exist in northern Maine in a manner that would be financially neutral to a standard offer provider. Thus, the purchase requirements of the rule do not apply to entities in northern Maine. However, the rule does specify that, if the Commission finds that the market structure in northern Maine can accommodate transactions in a financially neutral manner, the purchase requirement of the Chapter will become applicable to northern Maine. We received no comments on this portion of the proposed rule and the language of the proposed rule is adopted without change.

D. Administration (Section 4)

As specified in the Act, the final rule requires the T&D utilities to administer the sale of power from small generators to standard offer providers.³ The intent of this provision is to mirror the process currently used to administer net billing transactions and to minimize the burden on standard offer providers so as not to make it undesirable for providers to bid to provide standard offer service. Also, as specified in the Act, the final rule requires the generator to pay the costs of utility administration. This will be accomplished pursuant to a Commission-approved rate schedule. The final rule adopts the language of the proposed rule with a clarification that only T&D utilities within the ISO-NE are required to file implementing rate schedules.

CMP commented that the language of the proposed rule lacked detail on how the “administration” would occur. For example, CMP states that it assumes it will invoice standard offer providers on a monthly cycle and pass on payments, less administrative fees, to the eligible generators. CMP suggested that the Commission address these types of details in the final rules or through technical specifications to be issued by the Director of Technical Analysis. Our view is that such details would be more appropriately addressed through technical specifications or applicable utility Terms and Conditions, and we have thus not modified the final rule to include administrative details.

E. Financial Neutrality (Section 5)

Consistent with a fundamental aspect of the Act, the final rule states that the Commission shall suspend the operation of the Chapter if it finds the purchase requirement cannot be accomplished in a manner that is financially neutral to the standard offer provider. The final rule adopts the language of the proposed rule without change.

CMP suggested that the section be expanded to include a statement that T&D utilities also be kept financially neutral. We decline to modify the section as suggested by CMP. It is conceivable that regional market rules could change to make it infeasible for standard offer providers to remain financially neutral. In contrast, there is nothing to prevent T&D utilities from remaining financially neutral through the requirement in the Act and rule that eligible generators pay the utility’s administrative costs.

F. Net Energy Billing (Section 6)

Section 6 of the final rule states that net billing customers may elect to sell their excess generation into the market pursuant to the small generator aggregation rule, rather than “banking” the excess as a credit against future usage as permitted

³ The T&D utilities would not buy, sell, or own the electricity.

under our net billing rule (Chapter 313).⁴ As a general matter, it is likely to be more economic for a net billing customer to use excess generation as a credit against future usage, but there is no reason why such a customer should not have the option of selling monthly excess generation into the wholesale market.

At CMP's suggestion, we have included language specifying that net billing customers must affirmatively elect the option of selling excess generation through a contract with the utility and that customers may not change between options more than once in a calendar year. CMP also commented that existing banked energy should be eliminated if a current net billing customer opts to sell generation to the market. We see no reason why existing banked energy should be eliminated and have thus not included such a requirement in the rule. Finally, CMP commented that this provision should ideally be in the Commission's net energy billing rule (Chapter 313). We agree that reference to the option of selling, excess generation into market should be included in Chapter 313 and we will do so next time the rule is reopened.

G. Contracts (Section 7)

The Notice of Rulemaking in this proceeding asked for comment on whether there will be a need for a contract between generators and either the standard offer provider or the T&D utility. All commenters agreed that there need not be a contract between the generator and the standard offer provider. Constellation and the IEPM stated that a standard form contract between the generator and the utility should be developed. CMP suggested that generators be required to execute an interconnection agreement with the utility or ISO-NE, as well as all other agreements that may be required under CMP's or the ISO-NE's Open Access Transmission Tariff (such as transmission service agreements) and CMP's Rate Schedules and Terms and Conditions. CMP also proposed to add language to the standard form standard offer agreement to set forth any necessary arrangements between the utility and the standard offer provider.

The final rule contains a requirement (similar to that in the Net Energy Billing Rule (Chapter 313, § 3(G))) that utilities develop a standard form contract to govern their interaction with eligible generators. The rule does not require that the standard contract be filed for Commission approval, but any interested person may request that the Commission review and order changes to the contract.⁵ In response to CMP's comments, we see no reason for the rule to specify a variety of generally applicable agreements that eligible generators may have to execute. Instead, the

⁴ Chapter 313 of the Commission's rules establishes the terms and applicability of net billing in Maine. Under Chapter 313, net billing is available to customers who generate electricity primarily for themselves using renewable generation that does not exceed 100 KW.

⁵ Utilities may wish to consult with interested persons (such as the IEPM) during their development of the standard form contract.

provision states that nothing in the Chapter exempts eligible generators from other legal requirements regarding the execution of contracts.

H. GIS Certificates (Section 8)

The Notice of Rulemaking asked for comments on whether the rule should require GIS certificates to be transferred from the eligible generator to the standard offer provider as part of the sale transaction or whether eligible generators should retain the ability to transfer certificates to other parties for whatever value they may have in the market. CMP and Constellation commented that the rule should require the transfer of GIS certificates to the purchasing standard offer provider because when an entity is forced by law to purchase the output of a generator at prices mandated by law, it is fair that the purchaser receive all the benefits and attributes that arise from such generation. The IEPM commented that the transfer of GIS certificates is neither required by the Act nor necessary to fulfill its intent. The IEPM points out that the Act only requires standard offer providers to purchase the output from small generators at financially neutral prices and that the transfer of certificates would result in providers obtaining something of value without compensation.

We agree with the IEPM and have added a provision to the final rule that states that the transfer of GIS certificates is not required as part of the transaction under the Chapter. As discussed above, the Act is intended to remove a barrier to accessing the regional wholesale market that small generators face simply by virtue of their size. As a general matter, generators may sell into the regional market without any requirement that GIS certificates also be transferred. The same situation should apply to small generators who sell their power pursuant to this rule. In addition, a requirement that GIS certificates be transferred (assuming the certificates have value) would result in the transaction being better than financially neutral for the purchasing standard offer provider.⁶

I. Technical Specifications (Section 9)

CMP commented that the proposed rule lacked specific detail regarding the nature and scope of the required transactions among standard offer providers, T&D utilities and eligible generators (e.g., the structure of the transaction in the ISO-NE system). CMP stated that the lack of detail in the rule is appropriate (especially given that regional market rules and procedures can often change) as long as there is another mechanism for establishing specific details. CMP recommends that the Commission's Director of Technical Analysis be given the authority to address technical

⁶ The situation under this rule is distinguishable from that of long-term qualifying facility (QF) contracts entered into before existence of the GIS. Under the circumstances of such QF contracts, it was the attributes themselves that resulted in the utility purchase requirement and thus the attributes were at the heart of the contracts. In addition, the QF contracting process did not ensure financial neutrality to the buyer as is the case with this rule.

implementation issues. Constellation provided similar comments. We agree with CMP and Constellation in this regard and have included a provision in the final rule specifying that the Director of Technical Analysis may adopt technical specifications to implement the requirements of the rule.

J. Waiver (Section 10)

This section of the final rule contains the Commission's standard language for waivers of provisions of the rule provided that the waiver is not inconsistent with the Rule's purposes or with statutory provisions. We received no comments on this provision and the language is unchanged from the proposed rule.

Accordingly, we

O R D E R

1. That the attached rule, Chapter 315 – Small Generator Aggregation, is hereby adopted;
2. That the Administrative Director shall file the adopted rule and related materials with the Secretary of State; and
3. That the Administrative Director shall notify the following of this rulemaking proceeding:
 - a. All transmission and distribution utilities in the State;
 - b. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
 - c. All licensed competitive electricity providers; and
 - d. All persons who have commented in this rulemaking.

Dated at Augusta, Maine, this 8th day of September, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
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.