

July 18, 2001

PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Process

ORDER REGARDING STANDARD
OFFER BID PROCESS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we resolve several matters regarding this year's standard offer bid process. Among other matters, we decide to proceed with standard offer solicitation for the small standard offer classes, while deferring such action for the medium and large classes.

II. BACKGROUND

Pursuant to Maine's Restructuring Act, the Commission must administer a bid process to select standard offer suppliers for all customer classes in the Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE) service territories for service beginning March 1, 2002.¹ On June 19, 2001, the Commission issued an Opportunity to Comment on the process by which standard offer bids would be solicited. The Commission outlined the following process:

- Retail and wholesale bids would be solicited and evaluated at the same time;
- Both the retail and wholesale solicitations would be for "all-requirements" bids with specified prices through the term and bids from 1 to 3 years would be allowed;
- Indexed bids whereby prices would be determined every month would be allowed for the large class;
- Contingent bids for utility entitlements would be explicitly allowed and the utilities would conduct their entitlement sale processes concurrent with the standard offer solicitations;
- Security requirements would remain as currently required in Chapter 301; and

¹ During last year's process, the Commission selected a standard offer provider for the Maine Public Service Company (MPS) territory for a 3-year term. As a result, the Commission will not conduct a standard offer solicitation for the MPS area.

-The bid process would be on a schedule to allow for final bids to be submitted in the early Fall.

The following parties filed written comments: CMP, BHE, Industrial Energy Consumer Group (IECG), Competitive Energy Services (CES), Independent Energy Producers of Maine (IEPM), AES NewEnergy (AES), and Duke Energy Trading and Marketing (Duke).

On July 12, 2001, the Commission convened a meeting to discuss concerns that obtaining supply that would allow for a substantial reduction in standard offer rates for the large and medium classes next March could result in customers in the competitive market returning to the standard offer. CMP, BHE, IECG, CES, IEPM, Select Energy, Enron, AES, and ConEdison participated in the meeting.

III. COMMENTS

A. CMP

CMP supports the simultaneous solicitation of retail and wholesale all-requirements bids. CMP also concurs with allowing indexed bids for the large standard offer class, but suggests that the index be pre-specified to allow for fair comparison. CMP is concerned that the security requirements in Chapter 301 are inadequate and should be enhanced.

B. BHE

BHE filed comments regarding the proposed schedule whereby final bids would be submitted in the early Fall. BHE urges the Commission to allow for the possibility for an earlier solicitation if such action appears desirable.

C. IECG

IECG expressed concern that the Commission's approach to soliciting standard offer bids will impair the competitive market for the medium and small classes. IECG argues that the Commission should not take into account supplier concerns with Maine's retail model and should not conduct simultaneous wholesale and retail

solicitations. The IECG also asks that the Commission initiate some form of investigation to consider the feasibility of phasing out the standard offer.²

D. CES

CES argues against pricing the large and medium classes at market rates that are below the current standard offer prices. CES proposes that the Commission maintain the current prices for the CMP and BHE large and medium classes; if the cost of supply is less than the prices, the difference could be credited against stranded costs. CES argues that such an approach is necessary if Maine is to continue its success in establishing a competitive retail market. Regarding the residential class, CES states that it is unconvinced that a competitive market will develop in the near term even if price spreads to support such a market are created. CES cautions against artificially raising residential rates and states that the Commission should proceed essentially as it has in the past. CES supports allowing indexed bids for the large classes and suggests that the index be pre-specified to allow for fair comparisons.

E. IEPM

IEPM questions the proposal to simultaneously solicit retail and wholesale standard offer bids, stating that the Restructuring Act only allows utilities to provide service if the retail bids are rejected. IEPM also expressed concern that wholesale bids are likely to always be lower than retail bids. IEPM suggests a retail adder to stimulate retail competition. IEPM supports allowing indexed bids for the large classes, but is concerned about allowing bids for more than one year, because competition can be impaired for a significant amount of time if market prices rise above standard offer rates. The IEPM also opposes the use of contingent entitlement bids in that any reduction in standard offer costs would be offset by a lower reduction to stranded costs. Finally, the IEPM urges that the standard offer provider be required to offer a "green" product whenever this market niche is not filled by CEPs.

F. AES

AES states that it finds the simultaneous retail and wholesale solicitations to be less than optimum and suggests that the Commission follow the approach in other states in which utilities provide standard offer service through wholesale market contracts. AES concurs with seeking all requirement bids.

² Throughout its comments, the IECG alleges that the Commission has decided that retail competition for residential consumers will never occur and, without any input from interested persons or direction from the Legislature, is thus acting contrary to the goals of the Restructuring Act. This supposition is apparently based on interpretations of comments by individual Commissioners or Staff members made in various contexts. Discerning the position of the Commission in this manner lacks reliability. The Commission remains committed to implementing the letter and the spirit of all aspects of the Restructuring Act.

G. Duke

Duke states that the equitable way to deal with migration risk is to request bidders to provide separate pricing for customers willing to commit for a contract period and customers who want the flexibility to migrate out of standard offer service.

IV. DISCUSSION

A. Bid Process

To take advantage of current market prices, we direct our staff to prepare and issue as soon as feasible requests for proposals (RFP) for CMP's and BHE's residential and small non-residential classes consistent with this Order.

We will, however, defer issuance of RFPs for the medium and large classes. At the current time, the market environment is such that competitive providers should be able to offer attractive prices relative to current standard offer rates. The immediate issuance of RFPs for the medium and large classes and a subsequent publication of new standard offer prices could inhibit progress towards customers leaving the standard offer for the competitive market. Additionally, in a companion order issued today, we require CMP and BHE to provide their customer mailing lists for the medium and large classes to licensed providers. Therefore, a delay in soliciting standard offer bids would allow marketers to make use of the mailing lists before a new standard offer price is established.

Prior to issuing the RFPs for the medium and large classes, we will seek comment on whether the standard offer price should be pre-set with bidders asked to bid to provide service at that price. The concept is similar to that proposed by CES, but if we decided to adopt this approach, we would anticipate setting a somewhat lower price than the current standard offer prices. We will seek comment both on whether the approach is desirable as a matter of principle and, if so, how the pre-set price should be determined.

B. Concurrent Wholesale Solicitation

For the reasons discussed in our July 19th Opportunity to Comment, we will proceed with a simultaneous retail and wholesale bid. We agree that the Restructuring Act allows utilities to provide standard offer service through the wholesale market only if the Commission rejects retail bids. We will, therefore, give preference to retail bids and only direct utilities to enter wholesale contracts upon rejection of the retail bids.

There appears to be some confusion in the comments over soliciting wholesale bids as opposed to setting "wholesale" standard offer prices. As in the past, if the Commission directs the utilities to enter wholesale contracts, the standard offer price paid by customers will not be the wholesale supply cost. The Commission will

convert the power supply costs into a retail price by including the cost of such items as line losses, uncollectibles, billing, disclosure labels and utility administration.

We note that, in our view, this matter is of much less significance than it may appear. This is because the provision of standard service under Maine's retail model and service pursuant to utility wholesale contracts are basically identical from nearly all perspectives. From the customer's perspective, under either approach, the price is a retail price and the contact entity is the utility. We will also allow the wholesale supplier's name to appear on the bills so customers become aware that their power supplier is no longer the utility. From the utility perspective, the approaches are basically identical in that the Commission directly oversees and approves all aspects of the utilities' bid process. The approaches are also similar for suppliers in that they have no contact with customers and no risk regarding uncollectible accounts. The major difference, as discussed in our July 19th Opportunity for Comment, is that suppliers have their obligations and rights secured by a wholesale contract, rather than the State's restructuring laws and rules.

C. Retail Adders

The IEPM suggests that the Commission increase the standard offer price to promote retail competition. The CES proposal that the Commission maintain current standard offer prices for the large and medium classes even if supply costs are reduced is also essentially a retail adder mechanism. We decline to adopt retail adders for our residential/small non-residential solicitations .

Retail adders are essentially artificial increases in standard offer prices for the purpose of stimulating competition. However, such an approach is only sensible if there is good reason to believe that effective competition will develop in short-term.³ If not, the adder would only have the effect of increasing the price for all standard offer customers, as well as for those who enter the competitive market in that marketers are likely to price against the inflated standard offer prices. In our view, it is prudent to determine that effective competition exists in the large and medium classes and is reasonably likely to develop in the small classes before considering the adoption of retail adders.

Our approach of pricing standard offer service based on its actual cost has been successful. Only a year and a half after retail access has begun, Maine is nationally recognized as a leader in promoting retail competition. Our approach has succeeded in part because the price for standard offer service contains a substantial premium to account for migration risk. Thus, CEPs have been able to offer prices below

³ As discussed above, we will consider proposals to pre-set prices for the medium and large classes as suggested by CES. However, we will only proceed with this approach if we conclude that the state of competition is such that marketers are pricing against the market (and each other), rather than against standard offer prices.

the standard offer. With a more mature competitive market, we believe the same result may ultimately exist for residential customers without the need for artificial adders and that we should use adders only if events prove otherwise.

D. Contingent Entitlement Bids

For several reasons, we have decided not to formally coordinate the standard offer and the utilities' entitlement bid processes to allow for contingent bids.⁴ We will, however, allow bids that are contingent on purchasing entitlements at specified prices and will endeavor to make adequate information available to allow for such bids

We agree with some of the comments that contingent bids raise issues that do not exist with stand-alone bidding. Under current market conditions, we believe that we can obtain acceptable standard offer bids without allowing for contingent entitlement bids. Additionally, utilities require more time to prepare their stand-alone entitlement bid packages. Nevertheless, we do not want to preclude bidders from proposing contingent bids in the event that such proposals may have value for CMP and BHE's customers.

Although our preference is to provide standard offer service and sell the entitlements on stand-alone bases, we note our view that the problems cited by commentators are not insurmountable. For example, if stranded cost mitigation were reduced as a result of a contingent bid that favors a particular ratepayer class, this could be accounted for in establishing stranded cost rates.⁵

E. Bid Period

The IEPM expressed some concern regarding the acceptance of bids for more than one year. We share the IEPM's concern that such an approach could have a longer-term negative impact on the market if wholesale costs rise significantly. However, we also believe that there could be substantial benefits to establishing standard offer rates for longer periods of time. Such an outcome adds stability to the market in that CEPs and customers would not have to make assumptions regarding future standard offer prices or wait until prices are announced before entering competitive supply arrangements. For this reason, we will solicit bids for up to three years and evaluate them with the IEPM's concern in mind.

⁴ For this reason, we will not address in this Order the issues raised in the July 19th Opportunity to Comment that relate solely to the entitlement bid process.

⁵ We note that contrary to suggestions in some comments, the acceptance of a contingent bid for CMP's small class did not result in reduced stranded cost mitigation, in that the price for the entitlements was nearly identical to the highest non-contingent bid.

F. Indexed Bids

We will allow indexed bids for the large classes for the reasons discussed in our June 19th Opportunity for Comments. Commenters generally supported this approach. Because we have delayed issuance of the RFP for the large classes, we will not decide now whether to pre-specify an index as suggested by several bidders. Although we agree that a pre-specified index would allow for easier comparisons, there is currently no standard market index upon which to rely. We will consider this matter again when developing the large class RFPs.

G. Security Requirements

We will not modify the security requirements contained in Chapter 301 as suggested by CMP. Security requirements always involve a balancing between additional costs and enhanced credit assurances. We view the rule's requirements as striking a reasonable balance. We will, however, accept CMP's suggestion that minimum credit standards be maintained for institutions providing bonds and letters of credit throughout the standard offer period. We will also enhance the security by not allowing the security requirement amount to decline over time as specified in section 3(A)(2) of Chapter 301.⁶

H. Green Product

We decline to accept the IEPM's suggestion that we require the standard offer provider to offer a "green" product. The standard offer is intended to be a default service available to customers who do not choose a CEP. We do not believe the Legislature intended standard offer to be a means to provide customers with options regarding various products; this was intended to occur through the competitive market. The introduction of a "green" standard offer would further entrench the State in the procurement of power and could inhibit the development of a "green" competitive market. In addition, such a requirement would complicate the bid process and could result in potential suppliers not bidding in Maine's solicitation. Finally, we note that there is no reason to believe that a standard offer provider could offer a green product more cheaply than other providers; in fact, such a product is likely to be prohibitively expensive if the "green" standard offer is required to maintain a price without any commitment of load.⁷

⁶ For good cause, we waive this provision pursuant to section 10 of Chapter 301.

⁷ The standard offer rate for CMP's residential/small non-residential class will move to current market rates next March. At that time, green product marketers should be able to offer a more attractively price produce relative to the standard offer.

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 30 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.