STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2006-513

December 18, 2006

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure
For Customers of Maine Public Service
Company

ORDER GRANTING
RECONSIDERATION
AND DESIGNATING
STANDARD OFFER
PROVIDER

ADAMS, Chairman; REISHUS, Commissioner

I. SUMMARY

Through this Order, we grant the petitions for reconsideration of WPS Energy Services. Inc. (WPS) and Loring BioEnergy LLC (LBE), and designate WPS as the standard offer provider for all customer classes in the Maine Public Service Company (MPS) service territory for the 26 month period beginning January 1, 2007.

II. BACKGROUND

On September 15, 2006, the Commission issued a request for proposals (RFP) to provide standard offer service to all customer classes in MPS's territory. The RFP sought bids of 26 months and 50 months for the residential and small commercial class and bids of 14 months for the medium and large classes. As required by the RFP, indicative bids were provided on October 5, 2006. After a review of bids and discussion on non-price terms, the Commission asked that binding bids be submitted on November 14, 2006.

During its deliberations on November 14, 2006, the Commission rejected the bids, stating that the solicitation process produced two bids from a single bidder (a 26 month bid and a 10 year bid). In its Order rejecting the bids, the Commission explained:

> Participation by a single bidder is contradictory to the basic premise of the standard offer solicitation process. The process is intended to provide thbenefits of competition for those customers who do not or can not obtain electricity supply directly from the competitive market. A solicitation process that yields only one bidder cannot be considered competitive and frustrates the purposes of the standard offer process. In addition, the lack of competing bids makes it extremely difficult to

> determine whether the prices are reasonable and in the public interest. It is for these reasons that we reject the bids and terminate our solicitation process.

Order Rejecting Standard Offer Bids And Directing MPS To Provide Standard Offer Service, Docket No. 2006-513 (Nov. 16, 2006).[1] Consistent with the process in our standard offer rule, Ch. 301, § 7(D)(2), we directed MPS to procure standard offer through wholesale arrangements and to provide standard offer service to its customers for a 14 month period beginning January 1, 2007. The Commission also initiated an Inquiry to consider possible long-term solutions to the lack of competition in northern Maine.

On December 4, 2006, WPS filed a petition for reconsideration, arguing that the process was sufficiently competitive and the rejection of the bids may lead to higher rates for customers. WPS urged the Commission to reconsider its Order and award standard offer supply based on the retail bids it received. On December 6, 2006, Loring BioEnergy LLC (LBE) filed a request for reconsideration, generally supporting the arguments and positions of WPS. In compliance with the Commission's November 16, 2006 Order, MPS, on December 15, 2006, filed its recommendations regarding standard offer wholesale supply arrangements and corresponding standard offer rates.

III. DECISION

We grant the petitions for reconsideration of WPS and LBE, reopen the bid process that was terminated on November 16, 2006, and designate WPS as the standard offer provider for all customer classes in the Maine Public Service Company (MPS) service territory for the 26 month period beginning January 1, 2007. The standard offer prices vary among the classes and change over the 26 month term. Additionally, as we discuss below, the accepted bid contains a condition that would allow for the prices to increase based on the future imposition of a capacity requirement in northern Maine (either through a market rule change or a FERC finding that current market rules impose such a condition). Attachment A contains the accepted standard offer prices, including the maximum prices that may occur as a result of the capacity requirement contingency.

As explained in our November 16th Order, we rejected the standard offer bids because of market failure in northern Maine. The participation by a single

[1] The Commission also noted that the longer term bid was not in acceptable form even if submitted in a competitive context, because it placed significant risks (i.e. fuel price and plant efficiency) on the consumers and did not sufficiently address financial security issues. In addition, because we did not ask for long-term bids in this solicitation, there were no competing proposals, thus making it difficult to analyze.

bidder indicated that there was not enough activity to ensure that customers would receive a price that was reasonably reflective of competition. Our view is that the northern Maine market, as currently constructed, is too small and isolated to support a competitive market. It is for these reasons that we rejected the bids.

When we rejected the bids and directed MPS to supply the standard offer through wholesale arrangements, we took a risk that the prices could be higher than the rejected bid prices. The petitions for reconsideration allowed us to compare the ultimate prices consumers would pay under the retail bids with that which would result from MPS providing the service.[2] This comparison revealed that prices would be significantly higher if MPS provided standard offer service through its wholesale arrangements. In addition, WPS lowered its retail bid somewhat on reconsideration. When we rejected the bids, our intent was to commit to standard offer arrangements for a short term to provide time to consider longer term solutions. The acceptance of WPS's 26 month retail bid serves the purpose of providing a transition or a bridge to the longer term at the lowest possible cost to consumers and, it is for this reason, that we reconsider our November 16th Order and accept WPS's 26 month retail bid.

We do not consider the WPS long-term bid (ten years) because adoption of that bid would effectively preempt or short-circuit our efforts to consider all possible longer term solutions to the northern Maine market problems. By accepting the WPS short-term bid, we do not suggest in any way a view that the northern Maine market has been vindicated or that the status quo may be maintained indefinitely. In addition, our decision should not in any way be interpreted as conferring antitrust immunity on any party, or otherwise estopping any appropriate investigation and enforcement activity.

The WPS bid included bidder conditions that are contained in Attachment B to this Order.[3] We hereby accept these bidder conditions and incorporate them into this Order. As mention above, the WPS bid included a condition that would allow for a price change to reflect costs resulting from the imposition of a capacity requirement in northern Maine through a FERC finding or a market rule change. In such an event, standard offer prices would increase as determined

---

[2] We acknowledge the enormous effort of MPS in putting together a portfolio of wholesale arrangements on such short notice. Consistent with Chapter 301, § 9(D), MPS may defer for later recovery all incremental costs involved in its effort to secure standard offer supply.

[3] We also attach to this Order WPS's Statement of Commitment (Attachment C) that binds WPS to the provision of standard offer service according to the terms of its bid.

by the Commission up to a capped amount stated in the bidder conditions.[4] Under the current circumstances, we find the WPS capacity requirement contingencies to be acceptable.[5] We also note that WPS did not propose any changes to standard offer provider standard service agreement and we therefore direct WPS and MPS to execute the standard agreement upon issuance of this Order.

Our request for standard offer bids and the standard contract incorporate a "margining" approach to financial security in which the amount of security to be posted by the supplier varies with market conditions and the amount of expected standard offer load. MPS has agreed to perform the margining function. We recognize that Chapter 301 does not require utilities to perform margining functions with respect to standard offer service and that such a margining function imposes additional risk on T&D utilities. We explicitly find that MPS shareholders shall not be subject to any prudency risk or financial liability with respect to its margining activities related to standard offer service for any actions it takes and decisions that it makes in the ordinary course of business of managing the margining requirements, as long as it takes reasonable steps to inform the Commission of its activities in this regard. [6] To the extent that any other person or entities seek to impose any such prudency risk or liability on MPS in contravention to the previous sentence, any resulting direct or indirect costs, obligations, expenses or damages incurred by MPS shall be fully recovered, with carrying costs, from customers either through utility rates or standard offer prices.

Similarly, we also recognize that the bidder conditions approved in this Order may create certain risks and obligations for MPS. Risks imposed by the bidder conditions are properly borne by customers and not shareholders. Therefore, we explicitly find that any direct or indirect costs, obligations, expenses or damages reasonably incurred by MPS in fulfilling its contractual obligations or exercising its contractual rights under the standard agreement, or

[4] The WPS bidder conditions included two possible types of capacity requirements: 1) installed capacity obligation; and 2) available capacity obligation. The capped prices differ depending on the type of capacity requirement that is imposed.

[5] We have generally found such contingencies not to be acceptable and have preferred that suppliers take the risk of changes in FERC jurisdictional market rules. Our decision to accept the market rule change contingencies under the circumstances of this case does not indicate a change in our general practice.

[6] The reasonable steps will include, but not be limited to, weekly e-mail communications from the MPS to Commission Staff reporting current market prices and MPS's calculation of Excess Market Exposure.

in satisfying the bidder conditions we have accepted, shall be fully recovered, with carrying costs, from customers either through utility rates or standard offer prices.

Dated at Augusta, Maine, this 18th day of December, 2006.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Adams
Reishus