

September 22, 2003

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Process

PROTECTIVE ORDER

By this Order, the Presiding Officer grants protection to the bid proposals submitted to the Commission in response to Request For Proposals (whether requested by the Commission or by Maine Public Service Company (MPS) as wholesale supply proposals) for standard offer service in the service territory of MPS and to information that would lead to the identity of the bidders or the substance of bids.

In 1997, the Maine Legislature enacted P.L. 1997, Chapter 316, "An Act to Restructure the State's Electric Industry" (the Act). The Act broadly restructures the electric industry in Maine and allows retail access to generation services for all Maine customers after March 1, 2000. Customers receive generation service called standard offer service if they do not elect electric generation service from a competitive supplier or if they lose electric generation service from a competitive supplier. Standard offer service is the only type of default service that is available in Maine. The Act requires the Commission to ensure that standard offer service is available to all customers.

By the Act, the Commission administers the bid process to select the standard offer service provider or providers for the service territory of the three investor-owned T&D utilities, Central Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE) and MPS. Chapter 301 of our Rules governs the process for selecting standard offer providers. Pursuant to Chapter 301, on September 16, the Commission issued a Request For Proposals (RFPs) for all of MPS customer classes. The Commission simultaneously directed MPS to solicit wholesale supply bids that would enable the utility to serve as standard offer providers for the medium and large non-residential classes.

The customary commercial practice is to keep bid information confidential even after the evaluation process. In their bid proposals, bidders reveal their bid strategy and their business strategy. Disclosure of the bid proposals would harm their competitive position. Bidders therefore reasonably expect confidential treatment of their bids. Bid seekers also keep bid information confidential during the bid evaluation process, because of the frequent need to seek clarifying or supplemental information from bidders after the initial filing of bids. Disclosure of bid information during this time period may provide an unfair advantage to some bidders when clarifying their bids. Moreover, release of bid information before contracts are signed may affect leverage during the contract process. Finally, bidders have stated that they would be harmed by public disclosure of the designation of a bidder as the standard offer provider and the standard offer prices before they have had a reasonable opportunity to secure a power supply.

By 35-A M.R.S.A. § 1311 and 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure, the Commission is authorized to protect confidential commercial information from disclosure or to permit disclosure only in designated ways. In order to protect the integrity of the bid process, and thereby provide Maine's customers the lowest possible standard offer prices, the Presiding Officer finds that the confidentiality of the bid information must be maintained.

Accordingly, it is

ORDERED

1. Subject to findings under the procedure described in paragraphs 2 and 3 below, that the following information shall be considered "Designated Confidential Information" for purposes of this Order and, until such time as this order is modified, access to Designated Confidential Information shall be limited as described in paragraph 4 and 5 below. Designated Confidential Information shall consist of the following type of information: all bids or proposals to provide standard offer service to electric customers in MPS service area (whether submitted in response to an RFP, any post-RFP solicitation process or as wholesale supply proposals directly to MPS), other information describing the details of those bids, including the identities of the bidders, and all drafts and executed contracts between utilities and wholesale suppliers of standard offer service. Designated Confidential Information will include the identity of bidders selected to provide retail standard offer service for three weeks after the retail standard offer provider designation, but will not include the standard offer prices that result from the selection of the retail standard offer provider or providers. Beginning three weeks after the selection of the retail standard offer provider or providers, the identity of the winning bidder or bidders selected to provide retail standard offer service will no longer constitute Designated Confidential Information.
2. That until further order by the Commission, all designated confidential information shall, unless removed from the coverage of this order as provided in paragraph 3 below be and remain confidential. Designated confidential information shall not be disclosed for any purposes except solely and in accordance with this order. No person to whom access to designated confidential information is accorded pursuant to paragraphs 4 and 5 of this order shall disclose or reveal directly or indirectly, the contents of the designated confidential information to others except as provided in paragraph 6.
3. That the characterization and designation of any documents or other information as Designated Confidential Information may be challenged by any interested person by motion and upon reasonable prior notice to the

utility and the wholesale standard offer service supplier to which the characterization or designation challenge relates or whose Designated Confidential Information would be disclosed as a result of a successful challenge and an opportunity for hearing as well as the opportunity for the utility and the wholesale standard offer service provider to submit copies of documents protected as Designated Confidential Information that are redacted to preserve the confidentiality of information that the Commission agrees should continue to be protected. Upon the entry of an Order granting such a motion, the provisions and restrictions of this order shall cease to bind any persons with respect to the documents or information that the Order granting the motion shall expressly and clearly remove from the coverage of this Order.

4. That, unless this Order is modified, access to Designated Confidential Information shall be limited to Commission members, Commission employees, and Commission consultants hired to assist the Commission in this docket, and the Public Advocate and his staff, except as stated in paragraph 7 of this Order. Transmission and distribution utilities may have access to the identity of the designated standard offer provider(s) and the standard offer prices applicable to their service territories.
5. That, unless this Order is modified, Commission members and Commission employees may discuss Designated Confidential Information with the Governor and members of the Governor's staff. No copies of Designated Confidential Information shall be circulated to these persons.
6. That, unless this Order is modified, no copies of Designated Confidential Information furnished by bidders shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information.
7. That the restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known.
8. That should any Designated Confidential Information be forwarded to the courts of this State in accordance with applicable law and procedures, it shall be under seal and so designated in writing for the information of the court.
9. The Designated Confidential Information furnished by bidders pursuant to this Order shall remain in the possession of the Commission, under seal,

and subject to the protective requirements of this Order, until this Commission or its authorized presiding officer shall otherwise order.

10. That this order may be modified on motion of the Commission upon reasonable prior notice to the utilities and bidders and an opportunity for hearing.

Dated at Augusta, Maine, this 22nd day of September, 2003.

BY ORDER OF THE PRESIDING OFFICER

James A. Buckley