SUBJECT TO CONFIDENTIAL TREATMENT UNTIL DECEMBER 28, 2004

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 14, 2004

ORDER DESIGNATING STANDARD OFFER PROVIDER AND DIRECTING UTILITY TO ENTER ENTITLEMENTS AGREEMENT

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Process

Docket No. 2004-682

CENTRAL MAINE POWER COMPANY
Request for Approval of Request for Bids Pursuant to Chapter 307 and Associated Waivers

Docket No. 2004-589

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Order, we designate Constellation Energy Commodities Group Maine, LLC (CECG Maine) as the standard offer provider for the residential and small non-residential class in the Central Maine Power Company (CMP). CECG Maine is designated to provide standard offer service to this class in three segments:

-One-third of the load: One-year term
-One-third of the load: Two-year term
-One-third of the load: Three-year term

The price for standard offer service for the one-year period beginning March 1, 2005 will be $0.06947 per kilowatt-hour. The CECG Maine standard offer bid was linked to its affiliate's, Constellation Energy Commodities Group, Inc. (CECG), bid to purchase CMP's non-divested entitlements to energy and capacity. CMP is directed to sell its entitlements to CECG as specified in the CECG Maine/CECG linked bid.

II. BACKGROUND

Pursuant to Maine's Restructuring Act, the Commission periodically administers a competitive bid process to select providers of standard offer service. 35-A M.R.S.A.

§ 212(2). The Commission is also required by the Act to oversee the sale by utilities of the rights to energy and capacity from their non-divested entitlements and other non-divested generation-related assets. 35-A M.R.S.A. § 3204(4). In October 2001, the Commission designated a standard offer provider for the CMP residential and small non-residential classes for a three-year period beginning March 1, 2002. Because the standard offer bid was linked to an offer to purchase CMP's entitlements, the Commission also directed CMP to enter entitlement sale agreements with an affiliate of the chosen standard offer provider for the same three-year period. *Order Designating Standard Offer Provider and Directing Utilities to Enter Entitlement Agreements,* Docket No. 2001-399 (October 2, 2001). The three-year term will terminate at the end of February 2005, thus requiring a new process for the selection of a standard offer provider(s) for the CMP residential and small non-residential class, and for the sale of CMP's contractual entitlements to capacity and energy.

During March of 2004, the Commission issued a Notice of Inquiry to examine issues regarding standard offer service supply for the residential and small non-residential classes. *Inquiry Into Standard Offer Supply Procurement for Residential and Small Commercial Customers,* Docket No. 2004-147 (Aug. 3, 2004). At the conclusion of the Inquiry, the Commission decided that it would attempt to segment the small class standard offer load as a means to reduce the potential for large price swings. This would ultimately occur by a procurement schedule in which a supply for a third of the load would be obtained each year pursuant to three-year arrangements. To accomplish this ultimate outcome, the Commission indicated that, in the upcoming solicitation for the CMP small class, it would solicit one-year, two-year, and three-year bids, each for one-third of the load. To maintain its flexibility, the Commission also indicated that it would solicit bids for the entire load for a one-year period and for a five-way segmentation consisting of bids for one through five years each for twenty percent of the load. Finally, the Commission stated that it would allow bids for segments of standard offer load to be linked to obtaining the output of pre-specified groups utility entitlement contracts. The Commission indicated that, based on indicative bids, it would narrow the number of variations permitted in the final, binding bid stage to allow for a reasonable evaluation to occur within a limited time period. *Report on Standard Offer Procurement for Residential and Small Commercial Customers,* Docket No. 2004-147 (Aug. 3, 2004) ("*Standard Offer Procurement Report*").

To allow for standard offer bids to be linked to bids for utility entitlements, the Commission asked CMP to coordinate its solicitation pursuant to Chapter 307 with the Commission's standard offer bid process. To accommodate the Commission's request, CMP filed its bid package for Commission approval as required by Chapter 307. On September 30, 2004, the Commission's Director of Technical Analysis approved CMP's entitlement bid package. *Order Approving RFB and Granting Waivers*, Docket No. 2004-589 (Sept. 30, 2004). On the same day, the Director of Technical Analysis approved the Commission's request for standard offer bids. *Order Approving Request for Standard Offer Bids,* Docket No. 2004-682 (Sept. 30, 2004). Both the standard offer and entitlement bid packages were released on September 30, 2004 with initial proposals and indicative pricing due on October 27, 2004. Based on the indicative pricing, a subset of bidders was selected for discussions on non-price items and such discussions have occurred among our staff, CMP and the selected bidders. Upon the conclusion of these discussions, bidders were requested to present final, binding bids on December 14, 2004.

III. DISCUSSION

We note at the outset that both the standard offer and entitlement sale bid processes were very competitive with the result being that standard offer prices and sale prices for utility entitlements have been established by a competitive market as contemplated by the Restructuring Act. Upon review of all the bids and the selection criteria in Chapter 301, we conclude that the CECG Maine linked bids for each of the three segments provide the greatest value for ratepayers.[1] We, accordingly, designate CECG Maine as the standard offer provider for the CMP residential and small non-residential classes and direct CMP to enter into entitlement agreements according to the CECG Maine/CECG bid.[2] Based on our decision today, the standard offer price for the CMP small class for the one-year period beginning March 1, 2005 will be $0.06947. The price corresponding to two-thirds of the load for one-year period beginning March 1, 2006 will be $0.06654 per kilowatt-hour and the price corresponding to one-third of the load for the one-year period beginning March 1, 2007 will be $0.06293. The average entitlement sales price over the three-year period is approximately $0.0525 per kilowatt-hour.[3]

Because reasonable bids for a three-way segmentation were submitted, we are able to proceed with the approach outlined in our *Standard Offer Procurement Report* in which the standard offer load is segmented to protect against large swings in standard offer prices. Because of our decision today, we will proceed with the plan to annually solicit (starting with our next solicitation) three-year bids for one-third of the standard offer load for the CMP residential and small non-residential load. The submission of reasonable three-way segmentation bids negates the need for us to consider the one-year bids for the entire load. We also decline to pursue the five-way segmentation bids

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[1] The entitlement prices in the accepted linked bid are higher than any stand alone entitlement bids. Thus, the choice of the winning linked bid does not provide any advantage to the small class customers over utility customers more generally and results in lower stranded costs for all of the CMP and BHE ratepayers.

[2] To the extent necessary, we waive the procedural requirements of Chapter 307 (pursuant to section 11 of the rule) so as to allow the utilities to enter into the entitlement agreements as directed.

[3] CMP's hydro and nuclear entitlements are linked to the one-year segment, its cogeneration and waste-to-energy entitlements are linked to the two-year segment, and its system entitlements are linked to the three-year segment.

because, based on a comparison between the indicative bids and natural gas futures, it appears that in the out years (beyond the third year) the bids diverge from natural gas, suggesting a premium for risk or other factors. We do not believe that any additional hedging benefit that a five-way segmentation may have over the three-way segmentation outweighs the apparent price premium.

In designating CECG Maine as the standard offer provider, we accept its statement of commitment and bidder conditions. Both documents are attached to and incorporated into this Order. We find that these documents provide useful clarifications as to precise nature of the standard offer provider obligations, as well as reasonable protections for the provider with respect to actions of the Maine Legislature, this Commission or the utility. We understand all conditions of the winning bidder are satisfied or will be shortly after the issuance of this Order. We are informed that the modified Standard Offer Provider Service Agreement that were attached to winning bid are acceptable to CMP and we concur that the changes from the standard form are reasonable.

We also find that the security presented by CECG Maine/CECG as part of the linked standard offer proposal is reasonable and actually provides greater protection than the security required by Chapter 301 of our rules. The security covers both the standard offer and entitlement obligations and includes an initial corporate guarantee. To the extent customer exposure increases above the initial amount as a result of changes in market prices, CECG is required to post additional security in the form of a letter of credit or cash. A letter of credit or cash would also be required if the credit rating of the guarantor decreases. Thus, the security we accept today provides greater protection in that the amount increases with customer exposure as opposed to the fixed amount of security required in Chapter 301.[4]

Finally, we recognize that the linked standard offer and entitlement arrangements approved in this Order create certain obligations and risks for CMP that should be properly borne by customers rather than shareholders. We are informed by our staff that CMP agrees to accept the obligations and risks as long as it is compensated for the financial consequences of satisfying those obligations. Therefore, we explicitly find that any direct or indirect costs, obligations, expenses or damages reasonably incurred by CMP, including administrative and security costs, in fulfilling its obligations or exercising its rights under the various contracts and arrangements authorized by this Order shall be deferred on the utility's books of account as regulatory assets and shall be fully recovered, with carrying costs, from customers either through transmission and distribution rates or standard offer rates. These risks include, but are not limited to:

[4] In addition, greater security is provided because a default in CECG Maine's obligations as a standard offer provider will result in the entitlements reverting back to the utilities. To the extent necessary, the security provisions of Chapter 301 are hereby waived pursuant to section 10 of the rule.

- The costs of any performance assurance that CMP or BHE may be required to provide a counterparty under the arrangements;
- Any provision that allows for a decrease or offset to the entitlement sale price, such that CMP collects from buyer any amount less than the entitlement sales price approved in this Order, including such decreases or offsets arising from actual or alleged changes in law or regulation;
- Any additional costs or losses that CMP may incur as a result of tolling any termination rights under any agreement pending the outcome of an arbitration proceeding;
- Any costs caused by contractually fixing any fees applicable to the standard offer provider for any period time, where such fees are otherwise subject to change;
- Any incremental costs attributable to the execution of the linked standard offer arrangements, including those related to the solicitation, evaluation, and negotiation of those arrangements; and
- Any costs or losses that CMP incurs as a result of a default by CECG Maine or CECG on any of their contractual or other obligations and the consequential termination of any contract or obligation associated with the linked standard offer and entitlement arrangements authorized in this Order for which CMP is not compensated by associated security.

This Order will be treated as designated confidential information pursuant to the Protective Order issued in this proceeding for a two-week period. After that, the confidential treatment of this Order will be removed.

Dated at Augusta, Maine, this 14th day of December, 2004.

BY ORDER OF THE COMMISSION

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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.