

**SUBJECT TO CONFIDENTIAL TREATMENT UNTIL
AUGUST 3, 2004**

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-342

July 20, 2004

MAINE PUBLIC UTILITIES COMMISSION
Standard Offer Bidding Procedure

ORDER DESIGNATING
STANDARD OFFER
PROVIDERS

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Through this Order, we designate Independence Power Marketing, LLC (Independence)¹ as the standard offer provider for the medium non-residential classes in the Central Maine Power Company (CMP) and Bangor Hydro-Electric Company (BHE) service territories, and for 80% of the large non-residential classes in the CMP and BHE service territories. We designate Select Energy, Inc. (Select) as the standard offer provider for 20% of the large non-residential classes in the CMP and BHE service territories. Both designations are for six-month periods, beginning September 1, 2004. The average blended prices for standard offer service for this period will be 6.587¢/kWh for the medium class and 6.483¢/kWh for the large class in CMP's service territory, and 6.649¢/kWh for the medium class and 6.256¢/kWh for the large class in BHE's service territory.

II. BACKGROUND

Maine's Restructuring Act directs the Commission to administer periodic bid processes to select providers of standard offer service. 35-A M.R.S.A. § 3212(2). The arrangement with the current standard offer providers for service to customers in the medium and large standard offer classes in the CMP and BHE service territories terminates on August 31, 2004.² Accordingly, on June 2, 2004, the Director of Technical Analysis initiated the process to solicit bids for the provision of standard offer service to these classes for the period beginning September 1, 2004 by issuing a

¹ Independence is an affiliate of the Goldman Sachs Group, Inc.

² By Order issued September 18, 2001, the Commission designated a standard offer provider for residential and small commercial customers in the CMP and BHE service territories for a 3-year period beginning March 1, 2002. *Order Designating Standard Offer Provider and Directing Utilities to Enter Entitlements Agreements*, Docket No. 2001-399 (Sept. 18, 2001). For this reason, the Commission did not solicit bids for the small classes.

Request for Proposals (RFP).³ The RFP set out the procedure to be followed in soliciting bids and selecting standard offer providers, i.e. winning bidders.

The RFP sought bids for two alternative terms, one for six months and one for a year. In our last three solicitations, we accepted bids for the CMP and BHE medium and large classes for six-month period to minimize the time for which standard offer prices may deviate from prevailing market prices. However, the Director of Technical Analysis also asked for one-year terms to protect against the possibility that the Commission might find the six-month bids to be inadequate.

Pursuant to the RFP, indicative bids were received June 15, 2004. Since that time, our staff has been discussing various non-price terms with bidders. Upon the conclusion of discussions on non-price terms with a sufficient number of bidders, the Director of Technical Analysis asked for final, binding bids to be presented today, July 20, 2004.

III. DISCUSSION

At the outset, we note that, as in our more recent standard offer solicitations, the current process was very competitive and thus standard offer prices will continue to be established by a competitive electricity market as contemplated by the Restructuring Act. Upon review of all the bids received today, and applying the selection criteria specified in section 8(C)(2) and (4) of Chapter 301, we designate Independence as the standard offer provider for 100% of the medium non-residential classes and 80% of the large non-residential classes in both CMP's and BHE's service territory; and Select as the standard offer provider for 20% of the large non-residential classes in both CMP's and BHE's service territory, all for a six-month term beginning September 1, 2004. The average prices are as follows:

	CMP	BHE
Medium Class	6.587cents/kWh	6.649 cents/kWh
Large Class	6.483 cents/kWh	6.256 cents/kWh

The actual prices for both the medium and large classes vary by month, while the large classes prices also vary by time-of-day and include a demand charge. The actual prices are contained in an appendix to this Order.

Our review of the Independence and Select bids indicate that they comply with all requirements of Chapter 301 and RFP (including the security requirements). Additionally, both Independence and Select included bidder conditions with their bids. By designating Independence and Select as standard offer providers, we hereby accept

³ On May 18, 2004 in Docket No. 2004-314, we delegated to the Director of Technical Analysis the authority to decide and carry out all matters related to the development, issuance and conduct of standard offer bid processes.

their bidder conditions and incorporate them into this Order. The bidder conditions, as well as the statements of commitment, are attached as appendices to this Order.

We find that the bidder conditions provide useful clarifications as to the precise nature of the standard offer provider obligations, as well as reasonable protections for the provider with respect to actions of the Commission or the T&D utility. We understand all conditions are satisfied at this time or will be satisfied shortly after we issue this Order. Independence and Select attached modified versions of the Standard Offer Provider (SOP) Service Agreement. We are informed that both versions of proposed SOP standard service agreements are acceptable to both CMP and BHE, and the Director of Technical Analysis,⁴ and that Independence, Select, CMP and BHE will execute the agreements upon issuance of this Order. As requested by Select, we affirm and state that our advice given in the Advisory Opinion Regarding Right and Obligations of Standard Offer Providers issued by the Commission on November 28, 2000 in Docket No. 2000-808 applies to the medium and large class solicitation process. As noted above, we find that the corporate guaranties submitted by the winning bidder satisfy the financial capability requirements of Chapter 301, and our RFP. In fact, both Independence and Select will provide greater security than required by the rule by providing a guarantee for the full cost of replacement standard offer power.

Section 8(C)(2) of Chapter 301 establishes the lowest price as the primary selection criteria in considering standard offer bids. However, section 8(C)(4) requires the Commission to select three standard offer providers within a utility service territory if this can be accomplished without increasing standard offer prices within any standard offer class by more than 1.5%. The acceptance of the lowest bids in the solicitation result in the designation of Independence for the classes and percentages as described above. Section 8(C)(4) operates to require us to designate Select as the standard offer provider for 20% of large non-residential classes in the CMP and BHE service territories, because selecting Select as the third standard offer provider in each service territory does not increase standard offer prices for any class by more than 1.5%.

As in our last solicitation, we have chosen six-month terms for both the medium and large classes to minimize the amount of time standard offer prices for either class may deviate from prevailing market prices. This action is consistent with the recommendations that we made in our December 2002 standard offer report to the Legislature. In that report, we concluded that standard offer service for the medium and large classes should not be just another supply service and that it should be designed to encourage migration to the competitive market. We stated that, in designing standard offer service to be more of a last resort default service, prices should more closely follow market changes; one approach to accomplish this would be for standard offer to have shorter terms. Our decision to accept six-month bids will have desired impact of

⁴ By our May 18 Delegation Order, we also delegated authority to accept alternative SOP Standard Service Agreement to the Director of Technical Analysis. She consulted with the Commission's legal staff in deciding to accept changes to the standard service agreement.

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.

CMP medium

\$/kWh

Sept 04	0.06023
Oct 04	0.06007
Nov 04	0.06048
Dec 04	0.06526
Jan 05	0.07469
Feb 05	0.07497

BHE medium

\$/kWh

Sept 04	0.06088
Oct 04	0.06059
Nov 04	0.06109
Dec 04	0.06618
Jan 05	0.07534
Feb 05	0.07563

LARGE NON-RESIDENTIAL CLASSES - BLENDED

CMP	\$/kWh			\$/kW	
	On-Peak	Shoulder	Off-Peak	On-Peak	Shoulder
Sept	0.065330	0.063756	0.054338	0.000	0.026
Oct	0.066686	0.063488	0.053156	0.030	0.000
Nov	0.068198	0.062952	0.053286	0.034	0.000
Dec	0.072080	0.065036	0.058512	0.032	0.000
Jan	0.085400	0.077216	0.063316	0.096	0.000
Feb	0.084394	0.076472	0.064286	0.098	0.000

BHE	BHE On-Peak	Shoulder	Off-Peak	On-Peak	Shoulder
Sept	0.064788	0.062274	0.049228	0.000	0.026
Oct	0.065668	0.061014	0.048084	0.030	0.000
Nov	0.067378	0.060612	0.048546	0.032	0.000
Dec	0.071364	0.063974	0.055980	0.030	0.000
Jan	0.085554	0.074240	0.060490	0.094	0.000
Feb	0.084186	0.073652	0.061526	0.094	0.000

CMP Large Class

CMP Large Class

Independence

80.0%

Select

20.0%

Bid Prices

Bid Prices

\$/ kWh

\$/ kW

\$/ kWh

\$/ kW

On Peak Shoulder Off Peak Peak Shld

On Peak Shoulder Off Peak Peak Shld

Sep



\$0.064770 \$0.063220 \$0.054390

0.06757 0.06590 0.05413 0.13

Oct



\$0.066800 \$0.063410 \$0.053410

0.06623 0.06380 0.05214 0.15

Nov



\$0.068040 \$0.063280 \$0.053310

0.06883 0.06164 0.05319 0.17

Dec



\$0.071530 \$0.065210 \$0.058510

0.07428 0.06434 0.05852 0.16

Jan



\$0.084610 \$0.077740 \$0.062910

0.08856 0.07512 0.06494 0.48

Feb



\$0.084020 \$0.077290 \$0.063900

0.08589 0.07320 0.06583 0.49

**BHE
Large
Class**

**BHE
Large
Class**

**Indepen
dence**

80.0%

Select

20.0%

Bid Prices

\$/ kWh

Bid Prices

\$/ kWh

On Peak Shoulder Off Peak $\frac{\$/}{\text{kW}}$ Peak Shld

On Peak Shoulder Off Peak $\frac{\$/}{\text{kW}}$ Peak Shld

Sep	\$0.064450	\$0.062110	\$0.049510			0.06614	0.06293	0.04810			0.13
Oct	\$0.065810	\$0.061410	\$0.048360			0.06510	0.05943	0.04698	0.15		
Nov	\$0.067320	\$0.061130	\$0.048570			0.06761	0.05854	0.04845	0.16		
Dec	\$0.070870	\$0.064540	\$0.056160			0.07334	0.06171	0.05526	0.15		
Jan	\$0.084950	\$0.075260	\$0.060190			0.08797	0.07016	0.06169	0.47		
Feb	\$0.083900	\$0.074940	\$0.061230			0.08533	0.06850	0.06271	0.47		

Attachment A
to
Bid Price Proposal re: Central Maine Power Company
Bidder Conditions

July 20, 2004

Bidder Conditions

The offer of Independence Power Marketing LLC (the "Bidder") to provide Standard Offer Service at the prices described in its Bid Price Proposal is made subject to the acceptance by the Maine Public Utilities Commission (the "Commission") of the following conditions as expressly stated herein, without modification except upon the written agreement of the Bidder. The Commission's order (the "Order") designating the Bidder as a standard offer provider (the "Provider") shall expressly incorporate each of the conditions stated herein.

Upon such acceptance and designation, the Bidder's resulting rights and obligations as Provider shall consist of (i) the applicable and material provisions of Maine law and regulations and provisions of the RFP; (ii) the Order, incorporating the express conditions of these Bidder Conditions and the Bid Price Proposal; and (iii) the Standard Offer Provider Standard Service Agreement described below (collectively, the "Standard Offer Obligation"). In the event of any conflict or inconsistency between the terms and conditions of the Order and any other terms and conditions described above, the terms and provisions of the Order shall prevail and be given priority. Subject to the foregoing, the several documents and instruments forming the Standard Offer Obligation are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies within or between such parts the same shall be explained and interpreted, if possible, in a manner which gives effect to each part and which avoids or minimizes conflicts among such parts.

Proposal Expiration Date: The Bid Price Proposal will remain valid until 5:00 pm Eastern Standard Time on July 20, 2004.

Standard Offer Provider Standard Service Agreement: The named T&D shall execute, deliver and perform the Standard Offer Provider Standard Service Agreement between Bidder and T&D in the form delivered to the Commission with the Bid Price Proposal (the "SOP Agreement") on or before the Proposal Expiration Date.

Confidentiality of Bidder Identification and Entitlement Agreement Rates: The Commission agrees not to reveal the identity of the Bidder prior to the date which is two (2) weeks after the date of the Order designating Bidder as Provider.

Increased Costs Associated With Change in Law: If the Maine legislature or the Commission enacts, promulgates, adopts, alters, modifies or waives¹ any law, rule or regulation that relates directly to or affects the provision of standard offer service or the provision of competitive electric service in general after the date hereof (a "Change in Law") and such Change in Law materially increases the Provider's cost to provide standard offer service, Provider shall recover such

¹ 1 Except for opt-out fee waivers granted by the Commission pursuant to its January 24, 2001 "Order Adopting Rule and Statement of Factual and Policy Basis" (Docket No. 2000-904).

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increased costs in accordance with paragraph (a) or paragraph (b) below, as applicable. Provider shall provide the Commission and, if applicable, the Maine Legislature with a calculation of its increased costs as soon as practicable after becoming aware of a Change in Law or consideration by the Commission or the Maine Legislature of a Change in Law.

(a) If the Commission finds that Provider's calculation reasonably reflects its increased costs, the Commission shall increase the price of standard offer service paid by standard offer customers at the time a Change in Law becomes effective so that Provider recovers increased costs in accordance with Provider's calculation.

(b) If the Commission does not find that Provider's calculation reasonably reflects its increased costs, the Commission may increase the price of standard offer service paid by customers such that the Provider recovers increased costs in accordance with the Commission's calculation. In this event, Provider may invoke binding arbitration of the increased cost amount by notice to the Commission. Any such arbitration shall be conducted in accordance with the rules of the American Arbitration Association, except as otherwise provided herein. A final arbitration decision shall be rendered no later than ninety (90) days after the date on which Provider provides notice to the Commission that it has invoked arbitration. To the extent the arbitration panel finds that a Change in Law has increased the Provider's costs and that the Provider is entitled to a corresponding increase in the price of Standard Offer Service, the arbitration panel shall have the authority to award the Provider a liquidated amount payable for service already provided at the increased cost.

Notwithstanding the foregoing, if upon receipt of reasonable prior direct notification of a proposed Change in Law, the Provider fails within the time prescribed in such notice to inform the Maine Legislature or the Commission, pursuant to applicable procedures identified in such notice, of the impact that a Change in Law under consideration would have on Provider's cost to provide standard offer service, Provider shall not be entitled to cause the Commission to undertake action with respect to its increased costs or to engage in arbitration proceedings with respect thereto as provided in clause (a) or (b) above.

Basic Understandings: (a) To the extent applicable, it is the intent of the Provider that:

(i) except as otherwise specifically provided in the SOP Agreement or as the Provider and the T&D otherwise agree in writing, neither the Provider nor the T&D shall have the unilateral right to make a filing with Federal Energy Regulatory Commission ("FERC") under any Section of the Federal Power Act, or with the Commission, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason; and

(ii) any authority of the FERC or the Commission to change the SOP Agreement be strictly limited to that which applies when the contracting parties have irrevocably waived their right to seek to have the FERC or the Commission change any term of the SOP Agreement.

(b) In addition, absent the agreement of the Provider and the T&D to any proposed change,

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the standard of review for changes to any section of the SOP Agreement specifying the pricing or other material economic terms and conditions agreed to by the Provider and the T&D, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), (the "Mobile-Sierra" doctrine).

(c) To the extent a hearing, review or other proceeding is held before FERC, the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with the SOP Agreement, including any credit, security, margin, guaranty or other similar arrangement, and the Provider and the T&D expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

(d) Notwithstanding the foregoing paragraphs (b) and (c), to the fullest extent permitted by applicable law, each of the Provider and the T&D, for itself and its successors and assigns, expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of the SOP Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the parties. It is the express intent of the parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) ("NPPS") in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this paragraph shall not apply, provided that, consistent with paragraph (a) above, neither party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in paragraph (a) above.

(e) Nothing in these Bidder Conditions indicates the intention of the Provider or the Commission to submit the Standard Offer Obligation to the jurisdiction of FERC or indicates an acknowledgement that FERC has jurisdiction.

Termination by Provider: In the event of a default on the part of the T&D under section 15 of the SOP Agreement, or an unlawful or arbitrary action by the Maine legislature or the Commission or other action by the Commission (other than as a result of a Provider Default) as a result of which Provider ceases to receive payment for standard offer service at the rate and upon the terms specified herein or Provider is removed as the standard offer provider or ceases to retain the right to provide standard offer service for the entire term specified herein, Provider shall have the right to terminate its obligation to provide standard offer service, the exercise of which shall terminate the

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Bid Price Proposal re: Central Maine Power Company
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SOP Agreement . Provider's loss as a consequence of such termination (the "Settlement Amount") shall be calculated and recovered from T&D.

The Settlement Amount will be calculated as the difference between the price the Provider would have obtained under the SOP Agreement (taking into account the applicable allocation of uncollectible revenues), as applicable, and the Early Termination Price *multiplied* by the Termination Quantity. The "Early Termination Price" means, with respect to each month for the remainder of the term of the SOP Agreement, the forward prices for delivery of energy, capacity and ancillary services (taking into account any applicable ISO-New England fees and charges) necessary to provide Standard Offer Service, as determined by the Provider in a commercially reasonable manner. The Termination Quantity shall reflect the load of the customers at the time of termination, which shall be deemed to be those quantity amounts that would have been delivered by Provider to such customers on an hourly basis had this Agreement been in effect during the previous calendar year, adjusted for such standard offer service customer load changes as have occurred since the previous calendar year. The Settlement Amount also shall take into consideration (i) any power delivered by Provider to satisfy standard offer service customer load requirements delivered before the early termination date established by the Provider for which payment has not yet been made and (ii) any fees and expenses that Provider would have owed the T&D under the SOP Agreement. Where appropriate, amounts included in determining the Settlement Amount shall be discounted to present value in a commercially reasonable manner. As soon as practicable after such liquidation and termination, notice shall be given by the Provider to the Commission and the T&D of the Settlement Amount, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount including sufficient backup detail. Within two (2) business days following the receipt of the notice, the Commission shall review the calculation of the Settlement Amount and direct the T&D to pay that portion of the Settlement Amount that the Commission does not dispute. Within five (5) business days of such direction by the Commission, the T&D shall pay to the Provider the undisputed portion of the Settlement Amount as specified by the Commission.

Termination by Commission: The unexcused occurrence of the following event shall constitute a "Provider Default": the Provider fails to perform any of its material obligations under the Standard Offer Obligation in accordance with the requirements thereof, and the Commission, after notice and opportunity to be heard, finds that the failure justifies removal of the Provider as the standard offer provider. A termination by the Commission because of a Provider Default shall, for purposes of the SOP Agreement, be deemed to be a termination of the SOP Agreement by the T&D.

Notwithstanding any provision to the contrary in the Standard Offer Obligation, the Commission shall not, nor shall it permit T&D to, take any remedial action as a result of a failure or default of Provider (including action(s) described in Section 7.2 of the RFP and Section 9 of Chapter 301) unless such event constitutes a Provider Default.

Security: The Commission shall find that the Form of Guaranty delivered to the Commission with the Bid Price Proposal satisfies Provider's financial capability requirements under Maine law, regulations, the RFP and any other Standard Offer Obligation provision (notwithstanding a Change

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in Law) so long as the guarantor thereunder meets the requirements of Section 3(A)(2)(b)(i), (ii) and (iii) of Chapter 301 of the Commissions Rules (as in effect as of the date hereof). Provider shall promptly notify the Commission in the event of a downgrade in the rating assigned to the senior secured debt obligations of the guarantor thereunder below the threshold specified in such rule (or the equivalent in the case of a downgrade of the guarantor's senior unsecured debt obligations), and shall deliver, within five (5) Business Days, a letter of credit or performance bond, in an amount equal to the amount of the Guaranty in effect as of such date and otherwise consistent with the requirements of Section 3(A)(2) of Chapter 301, at which time the guaranty shall terminate and be of no further force and effect.

If at any time there shall occur a Downgrade Event in respect of the T&D, then the Provider may, by written notice to the T&D, require the T&D to provide Performance Assurance in an amount equal to the average daily receivable amount pursuant to the SOP Agreement outstanding as of the date of the Downgrade Event, multiplied by 26 days. For purposes of the SOP Agreement, "Downgrade Event" shall mean a decrease below Investment Grade in the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its unsecured, senior long-term debt, then the rating assigned to such entity as an issuer rating by S&P, Moody's, their successors or any other rating agency agreed by the Provider and the T&D. "Investment Grade" means a rating at or above BBB- from S&P or Baa3 from Moody's. "Performance Assurance" means collateral in the form of, at the T&D's election, (i) cash, (ii) irrevocable, transferable standby letter(s) of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least BBB+ from S&P or Baa1 from Moody's, in a form reasonably acceptable to the Provider and with costs borne by the T&D for such letter(s) of credit, (iii) a guarantee from the parent corporation of the T&D, which parent corporation must have a rating that exceeds the level defined above for a Downgrade Event, or (iv) other security acceptable to the Provider. If, after delivery of the Performance Assurance as a result of a Downgrade Event, the T&D's credit rating is restored to Investment Grade or better, the Provider shall return such Performance Assurance to the T&D within five (5) business days of notification from the T&D of such upgrade.

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Bidder Conditions

The offer of Independence Power Marketing LLC (the "Bidder") to provide Standard Offer Service at the prices described in its Bid Price Proposal is made subject to the acceptance by the Maine Public Utilities Commission (the "Commission") of the following conditions as expressly stated herein, without modification except upon the written agreement of the Bidder. The Commission's order (the "Order") designating the Bidder as a standard offer provider (the "Provider") shall expressly incorporate each of the conditions stated herein.

Upon such acceptance and designation, the Bidder's resulting rights and obligations as Provider shall consist of (i) the applicable and material provisions of Maine law and regulations and provisions of the RFP; (ii) the Order, incorporating the express conditions of these Bidder Conditions and the Bid Price Proposal; and (iii) the Standard Offer Provider Standard Service Agreement described below (collectively, the "Standard Offer Obligation"). In the event of any conflict or inconsistency between the terms and conditions of the Order and any other terms and conditions described above, the terms and provisions of the Order shall prevail and be given priority. Subject to the foregoing, the several documents and instruments forming the Standard Offer Obligation are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies within or between such parts the same shall be explained and interpreted, if possible, in a manner which gives effect to each part and which avoids or minimizes conflicts among such parts.

Proposal Expiration Date: The Bid Price Proposal will remain valid until 5:00 pm Eastern Standard Time on July 20, 2004.

Standard Offer Provider Standard Service Agreement: The named T&D shall execute, deliver and perform the Standard Offer Provider Standard Service Agreement between Bidder and T&D in the form delivered to the Commission with the Bid Price Proposal (the "SOP Agreement") on or before the Proposal Expiration Date.

Confidentiality of Bidder Identification and Entitlement Agreement Rates: The Commission agrees not to reveal the identity of the Bidder prior to the date which is two (2) weeks after the date of the Order designating Bidder as Provider.

Increased Costs Associated With Change in Law: If the Maine legislature or the Commission enacts, promulgates, adopts, alters, modifies or waives¹ any law, rule or regulation that relates directly to or affects the provision of standard offer service or the provision of competitive electric service in general after the date hereof (a "Change in Law") and such Change in Law materially increases the Provider's cost to provide standard offer service, Provider shall recover such

¹ 1 Except for opt-out fee waivers granted by the Commission pursuant to its January 24, 2001 "Order Adopting Rule and Statement of Factual and Policy Basis" (Docket No. 2000-904).

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increased costs in accordance with paragraph (a) or paragraph (b) below, as applicable. Provider shall provide the Commission and, if applicable, the Maine Legislature with a calculation of its increased costs as soon as practicable after becoming aware of a Change in Law or consideration by the Commission or the Maine Legislature of a Change in Law.

(a) If the Commission finds that Provider's calculation reasonably reflects its increased costs, the Commission shall increase the price of standard offer service paid by standard offer customers at the time a Change in Law becomes effective so that Provider recovers increased costs in accordance with Provider's calculation.

(b) If the Commission does not find that Provider's calculation reasonably reflects its increased costs, the Commission may increase the price of standard offer service paid by customers such that the Provider recovers increased costs in accordance with the Commission's calculation. In this event, Provider may invoke binding arbitration of the increased cost amount by notice to the Commission. Any such arbitration shall be conducted in accordance with the rules of the American Arbitration Association, except as otherwise provided herein. A final arbitration decision shall be rendered no later than ninety (90) days after the date on which Provider provides notice to the Commission that it has invoked arbitration. To the extent the arbitration panel finds that a Change in Law has increased the Provider's costs and that the Provider is entitled to a corresponding increase in the price of Standard Offer Service, the arbitration panel shall have the authority to award the Provider a liquidated amount payable for service already provided at the increased cost.

Notwithstanding the foregoing, if upon receipt of reasonable prior direct notification of a proposed Change in Law, the Provider fails within the time prescribed in such notice to inform the Maine Legislature or the Commission, pursuant to applicable procedures identified in such notice, of the impact that a Change in Law under consideration would have on Provider's cost to provide standard offer service, Provider shall not be entitled to cause the Commission to undertake action with respect to its increased costs or to engage in arbitration proceedings with respect thereto as provided in clause (a) or (b) above.

Basic Understandings: (a) To the extent applicable, it is the intent of the Provider that:

(i) except as otherwise specifically provided in the SOP Agreement or as the Provider and the T&D otherwise agree in writing, neither the Provider nor the T&D shall have the unilateral right to make a filing with Federal Energy Regulatory Commission ("FERC") under any Section of the Federal Power Act, or with the Commission, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason; and

(ii) any authority of the FERC or the Commission to change the SOP Agreement be strictly limited to that which applies when the contracting parties have irrevocably waived their right to seek to have the FERC or the Commission change any term of the SOP Agreement.

(b) In addition, absent the agreement of the Provider and the T&D to any proposed change,

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the standard of review for changes to any section of the SOP Agreement specifying the pricing or other material economic terms and conditions agreed to by the Provider and the T&D, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), (the "Mobile-Sierra" doctrine).

(c) To the extent a hearing, review or other proceeding is held before FERC, the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with the SOP Agreement, including any credit, security, margin, guaranty or other similar arrangement, and the Provider and the T&D expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

(d) Notwithstanding the foregoing paragraphs (b) and (c), to the fullest extent permitted by applicable law, each of the Provider and the T&D, for itself and its successors and assigns, expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of the SOP Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the parties. It is the express intent of the parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) ("NPPS") in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this paragraph shall not apply, provided that, consistent with paragraph (a) above, neither party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in paragraph (a) above.

(e) Nothing in these Bidder Conditions indicates the intention of the Provider or the Commission to submit the Standard Offer Obligation to the jurisdiction of FERC or indicates an acknowledgement that FERC has jurisdiction.

Termination by Provider: In the event of a default on the part of the T&D under section 15 of the SOP Agreement, or an unlawful or arbitrary action by the Maine legislature or the Commission or other action by the Commission (other than as a result of a Provider Default) as a result of which Provider ceases to receive payment for standard offer service at the rate and upon the terms specified herein or Provider is removed as the standard offer provider or ceases to retain the right to provide standard offer service for the entire term specified herein, Provider shall have the right to terminate its obligation to provide standard offer service, the exercise of which shall terminate the

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SOP Agreement . Provider's loss as a consequence of such termination (the "Settlement Amount") shall be calculated and recovered from T&D.

The Settlement Amount will be calculated as the difference between the price the Provider would have obtained under the SOP Agreement (taking into account the applicable allocation of uncollectible revenues), as applicable, and the Early Termination Price *multiplied* by the Termination Quantity. The "Early Termination Price" means, with respect to each month for the remainder of the term of the SOP Agreement, the forward prices for delivery of energy, capacity and ancillary services (taking into account any applicable ISO-New England fees and charges) necessary to provide Standard Offer Service, as determined by the Provider in a commercially reasonable manner. The Termination Quantity shall reflect the load of the customers at the time of termination, which shall be deemed to be those quantity amounts that would have been delivered by Provider to such customers on an hourly basis had this Agreement been in effect during the previous calendar year, adjusted for such standard offer service customer load changes as have occurred since the previous calendar year. The Settlement Amount also shall take into consideration (i) any power delivered by Provider to satisfy standard offer service customer load requirements delivered before the early termination date established by the Provider for which payment has not yet been made and (ii) any fees and expenses that Provider would have owed the T&D under the SOP Agreement. Where appropriate, amounts included in determining the Settlement Amount shall be discounted to present value in a commercially reasonable manner. As soon as practicable after such liquidation and termination, notice shall be given by the Provider to the Commission and the T&D of the Settlement Amount, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount including sufficient backup detail. Within two (2) business days following the receipt of the notice, the Commission shall review the calculation of the Settlement Amount and direct the T&D to pay that portion of the Settlement Amount that the Commission does not dispute. Within five (5) business days of such direction by the Commission, the T&D shall pay to the Provider the undisputed portion of the Settlement Amount as specified by the Commission.

Termination by Commission: The unexcused occurrence of the following event shall constitute a "Provider Default": the Provider fails to perform any of its material obligations under the Standard Offer Obligation in accordance with the requirements thereof, and the Commission, after notice and opportunity to be heard, finds that the failure justifies removal of the Provider as the standard offer provider. A termination by the Commission because of a Provider Default shall, for purposes of the SOP Agreement, be deemed to be a termination of the SOP Agreement by the T&D.

Notwithstanding any provision to the contrary in the Standard Offer Obligation, the Commission shall not, nor shall it permit T&D to, take any remedial action as a result of a failure or default of Provider (including action(s) described in Section 7.2 of the RFP and Section 9 of Chapter 301) unless such event constitutes a Provider Default.

Security: The Commission shall find that the Form of Guaranty delivered to the Commission with the Bid Price Proposal satisfies Provider's financial capability requirements under Maine law, regulations, the RFP and any other Standard Offer Obligation provision (notwithstanding a Change

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in Law) so long as the guarantor thereunder meets the requirements of Section 3(A)(2)(b)(i), (ii) and (iii) of Chapter 301 of the Commissions Rules (as in effect as of the date hereof). Provider shall promptly notify the Commission in the event of a downgrade in the rating assigned to the senior secured debt obligations of the guarantor thereunder below the threshold specified in such rule (or the equivalent in the case of a downgrade of the guarantor's senior unsecured debt obligations), and shall deliver, within five (5) Business Days, a letter of credit or performance bond, in an amount equal to the amount of the Guaranty in effect as of such date and otherwise consistent with the requirements of Section 3(A)(2) of Chapter 301, at which time the guaranty shall terminate and be of no further force and effect.

If at any time there shall occur a Trigger Event in respect of the T&D, then the Provider may, by written notice to the T&D, require the T&D to provide Performance Assurance in an amount equal to the average daily receivable amount pursuant to this Agreement outstanding as of the date of the Trigger Event, multiplied by 26 days. Such Performance Assurance will be delivered to Provider, at the address or account specified in Provider's written demand for Performance Assurance, not later than the close of Business on the third Business Day following the Business Day such written demand for Performance Assurance was delivered to the T&D.

Throughout the Term, the T&D will deliver its Financial Statements to the Provider as soon as reasonably practicable after such statements are available, but in no event later than 45 days after the end of the applicable fiscal quarter with respect to quarterly statements or 90 days after the end of the applicable fiscal year with respect to annual statements.

For purposes of this Agreement, the following terms will have the meanings ascribed thereto below:

“Capitalization” means consolidated total assets of the T&D (including intangible assets), minus such party's consolidated total liabilities plus Total Indebtedness, each as would be reflected on a consolidated balance sheet of the T&D prepared in accordance with generally accepted accounting principles.

“Depreciation, Depletion and Amortization Expense” means, with respect to the T&D for any period, the total amount of consolidated depreciation, depletion and amortization expense (exclusive of the amortization of the principal amount of any indebtedness) and other similar non-cash operating charges for such period.

“EBITDA” means, with respect to the T&D for any period, the aggregate amount of its Net Income plus the sum of (to the extent deducted in calculating Net Income) (i) the aggregate amount of Interest Expense for such period, (ii) the aggregate amount of consolidated income taxes for such period, (iii) Depreciation, Depletion and Amortization Expense for such period, (iv) all amounts (to the extent not already included in (iii) above) attributable to other (a) non-cash operating charges and (b) non-cash non-operating charges for such period, and (v) all consolidated extraordinary non-cash charges during such period minus, without duplication, all consolidated extraordinary gains during such period.

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“EBITDA Coverage Ratio” means, with respect to any period, the ratio of (i) EBITDA for such period to (ii) the aggregate amount of Interest Expense for such period.

“Financial Statements” means (i) for a fiscal year, an annual report containing audited consolidated financial statements for such fiscal year and (ii) for a fiscal quarter, a quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles.

“Interest Expense” means, for any period, without duplication, the total consolidated interest expense of the T&D including (i) interest expense attributable to capital leases, (ii) amortization of indebtedness discount and indebtedness issuance costs (including any original issue discount attributable to any issuance of equity securities and indebtedness securities), (iii) capitalized interest, (iv) non-cash interest payments, (v) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing, (vi) net cash costs under interest rate protection agreements (including amortization of fees), and (vii) consolidated interest actually paid by the T&D under any guarantee of indebtedness or other obligations of any other person.

“Net Income” means consolidated total revenues of and other proper income credits, less all proper income charges, including taxes on income, all determined in accordance with generally accepted accounting principles.

“Net Worth” means consolidated total assets of the T&D, minus the consolidated total liabilities of the T&D, each as would be reflected on a consolidated balance sheet of the T&D prepared in accordance with generally accepted accounting principles.

“Performance Assurance” shall mean collateral in the form of, at the T&D’s election, (i) cash, (ii) irrevocable, transferable standby letter(s) of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least BBB+ from S&P or Baa1 from Moody’s, in a form reasonably acceptable to the Provider and with costs borne by the T&D for such letter(s) of credit, or (iii) other security acceptable to the Provider.

“Total Indebtedness” means the aggregate principal amount of all indebtedness that would appear on the consolidated balance sheet of the T&D.

“Trigger Event” shall mean any of the following occurrences: (1) the Net Worth of the T&D is less than \$120,000,000; (2) the EBITDA Coverage Ratio is less than 2 to 1; (3) the Total Indebtedness to Capitalization Ratio is more than 7 to 10; or (4) either the T&D or Emera, Inc. (i) defaults under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than \$50,000,000, in the case of the T&D, or \$100,000,000, in the case of Emera, Inc., which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) defaults in

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making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than \$50,000,000, in the case of the T&D, or \$100,000,000, in the case of Emera, Inc.

ATTACHMENT V

Standard Offer Service Proposal - Contingencies

This Proposal submitted by Bidder to provide standard offer service at the prices described in Attachments I through IV is made subject to the acceptance by the Commission of the following conditions as expressly stated herein, without modification except upon the written agreement of the Bidder. The Commission's order designating the Bidder as a standard offer provider (the "Provider") shall expressly incorporate each of the conditions stated herein (the "Order").

Upon such acceptance and designation, the Bidder's resulting rights and obligations as Provider shall consist of (i) the applicable and material provisions of Maine law and regulations, and provisions of the RFP; (ii) the Order, incorporating the express conditions of this Proposal; (iii) the Standard Offer Provider Standard Service Agreement described below; and (iv) the Security Agreement described below (collectively, the "Standard Offer Obligation"). In the event of any conflict or inconsistency between the terms and conditions of the Order and any other terms and conditions described above, the terms and provisions of the Order shall prevail and be given priority. Subject to the foregoing, the several documents and instruments forming the Standard Offer Obligation are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies within or between such parts the same shall be explained and interpreted, if possible, in a manner which gives effect to each part and which avoids or minimizes conflicts among such parts.

Contingencies:

- I. Acceptance by MPUC of Proposal. Acceptance by the Maine Public Utilities Commission (the "MPUC") of this Proposal by 4:30 p.m. Eastern Prevailing Time of July 20, 2004 (the "Period"). The MPUC's acceptance must be sent by facsimile (860-665-2666) to the attention of Christopher Jordan, and time stamped within the Period. This Attachment V containing a statement of Contingencies shall be attached to and incorporated by reference into any order issued by the MPUC stating the MPUC's acceptance of this proposal.

Such acceptance shall include the award to Bidder of up to 100% of the following classes in the indicated service territories:

	<u>Proposal</u>
I.	CMP - 6 Months, Medium Customers
II.	CMP - 6 Months, Large Customers
III.	BIIE - 6 Months, Medium Customers
IV.	BIIE - 6 Months, Large Customers
V.	CMP - 12 Months, Medium Customers
VI.	CMP - 12 Months, Large Customers
VII.	BIIE - 12 Months, Medium Customers
VIII.	BIIE - 12 Months, Large Customers

2. Standard Offer Provider Standard Service Agreement. Agreement in full by all parties, which are Bangor Hydro-Electric Company and Central Maine Power Company ("the T&Ds") and the Provider (collectively, the "Parties"), and the MPUC to all terms and conditions of the Standard Offer Provider Standard Service Agreement as amended pursuant to current and ongoing discussion with the T&Ds and the MPUC ("Contract"). The named T&D shall execute, deliver and perform the Contract between Bidder and T&D in the form delivered to the Commission with the Proposal on or before the Proposal Expiration Date.
3. Security. Acceptance by the MPUC of the guarantee submitted with this Proposal as satisfying the conditions of Chapter 301 of the MPUC Rules and Regulations and the RFP.
4. Confidentiality of Bidder Identification. The Commission agrees not to reveal the identity of the Bidder prior to the date which is two (2) weeks after the date of the Order designating Bidder as Provider.
5. MPUC Rules; T&D Provisions. The MPUC shall, at Bidder/Provider's request, waive the application of any change and continue to apply to Bidder/Provider the provisions, in effect as of January 2002 unless subsequent revisions are acceptable to Bidder/Provider, of the following MPUC Rules and Regulations, as well as the T&D Specific Provisions included as Exhibit A to the Contract and Section 43 (for Central Maine Power Company) and Sections 19 and 20 (for Bangor Hydro-Electric Company) of the T&D's Terms and Conditions, throughout the Term of the Contract:

Chapter 301, § 2(A)(2)	Standard Offer Classes
Chapter 301, § 3	Eligibility and Obligations of Standard Offer Service Providers
Chapter 301, § 4(D)	Allocation of Uncollectible Accounts
Chapter 301, § 5(A)	Power Delivery
Chapter 301, § 5(B)	Billing and Metering
Chapter 301, § 5(C)	Administration and Service Connections and Terminations
Chapter 301, § 5(D)	Standard Contract
Chapter 311, § 3(13)	Annual Obligation
Chapter 321, § 4	Load Profiles
Chapter 321, § 5	Daily Estimation of Hourly Load
Chapter 321, § 7	Information Access
Chapter 322, § 3(A)(B)	Consolidated Billing
Chapter 322, § 5(C)	Meter Reading

6. Termination. Bidder's obligation to provide Standard Offer Service may terminate upon the happening of any contingency (for which termination is a consequence) set forth in a Proposal or at the Bidder's option if the necessary Contract(s) become(s) ineffective or if the MPUC promulgates, enacts or amends any rules or regulations or otherwise causes any changes to occur which materially affect the Bidder's ability to provide Standard Offer Service including but not limited to material impact on the cost to the Bidder of providing such service; provided that the Bidder, after being notified by the Commission in a timely fashion by a Notice of Rulemaking or Notice of Proceeding sent directly to Bidder, informs the MPUC within the comment period provided for in said Notice of Rulemaking or Notice of Proceeding pursuant to MPUC procedures that a matter under consideration would have a material affect on the Bidder's ability to provide Standard Offer Service.

7. Previous MPUC Orders. Express affirmation and application to this Standard Offer Solicitation process of the Advisory Opinion Regarding Rights and Obligations of Standard Offer Providers as issued by the MPUC in Docket No. 2000-808 on November 28, 2000.

STATEMENT OF COMMITMENT

The Bidder hereby represents that if and when it submits any firm bid price proposal(s) in response to this Maine Public Utilities Commission RFP (RFP), such bid price proposal(s) will be a firm offer to provide standard offer service: (1) in accordance with Maine law and regulations and the provisions of the RFP; (2) at the prices and for the amounts and term lengths specified on the Bid Price Proposal Sheets submitted by Bidder at such time; and (3) subject only to contingencies and conditions agreed upon between Bidder and the Maine Public Utilities Commission.

The Bidder hereby represents that, if designated a standard offer provider by the Commission, Bidder will accept, abide by and fulfill all applicable obligations and terms and conditions of Maine law and regulations, and all applicable obligations, requirements, terms and conditions stated in the RFP, and that Bidder will submit to the jurisdiction of the courts of the State of Maine and the Maine Public Utilities Commission in matters relating to the provision of standard offer service, and that Bidder agrees that all legal proceedings relating to Bidder's provision of standard offer service will be conducted before Maine courts or the Maine Public Utilities Commission. Bidder further represents that, if designated a standard offer provider by the Commission, Bidder will provide standard offer service in the amounts, for the term lengths, and at the prices specified in its firm price proposal throughout the term of service.

The Bidder hereby certifies that all of the statements and representations made in its proposal are true to the best of the Bidder's knowledge and belief.

Company submitting proposal:

Independence Power Marketing, LLC
(exact legal name of company)

Bidder Name:

(if different than above)

Signature of an Officer of Bidder:

 *LF*

Print or type name of Officer Above:

Lesha Biddle

Officer Title:

Vice President

Date Signed:

June 15, 2011

EXHIBIT D

SECOND ALTERNATIVE STATEMENT OF COMMITMENT

The Bidder hereby represents that if it submits any bid price proposal(s) in response to the Maine Public Utilities Commission (MPUC) current RFB, such bid price proposal(s), subject to its (their) terms and conditions, will be a firm offer to provide Standard Offer Service: (1) in accordance with Maine law and regulations and, except as set forth herein, the provisions of the RFB; (2) at the prices and for the amounts and term lengths specified on the Bidder's Bid Price Proposal Sheets submitted; and (3) subject only to contingencies and conditions specified by Bidder in its proposal(s). Bidder further represents that its proposal will remain open for the day on which it is submitted.

The Bidder hereby represents that, if designated a standard offer provider by the MPUC, Bidder will, subject to the terms and conditions of its proposal(s) accept, abide by and fulfill all applicable obligations and terms and conditions of Maine law and regulations, and all applicable obligations, requirements, terms, and, except as set forth herein, conditions stated in the RFB and the Standard Offer Provider Standard Service Agreements entered into with the applicable T&D utilities (the "SOP Agreements"), and that Bidder will submit to the jurisdiction of the courts of the State of Maine and the MPUC in matters related to the provision of Standard Offer Service, and that Bidder agrees that all legal proceedings relating to Bidder's provision of Standard Offer Service will be conducted before Maine courts or the MPUC. Bidder further represents that, if designated a Standard Offer provider by the MPUC, Bidder will provide standard offer service in the amounts, for the term lengths, and at the prices specified in its proposal throughout the term of service except that Bidder's obligation to provide standard offer service may terminate upon the happening of any contingency (for which termination is a consequence) set forth in the Bidder's proposal or at the Bidder's option if the necessary SOP Agreements become ineffective or if the MPUC promulgates, enacts or amends any rules or regulations or otherwise causes any changes to occur which materially affect the Bidder's ability to provide Standard Offer Service including but not limited to material impact on the cost to the Bidder of providing such service, provided that the Bidder, after being notified by the Commission in a timely fashion by a Notice of Rulemaking or Notice of Proceeding sent directly to Bidder, informs the MPUC within the comment period provided for in said Notice of Rulemaking or Notice of Proceeding pursuant to MPUC procedures that a matter under consideration would have a material affect on the Bidder's ability to provide Standard Offer Service.

The Bidder hereby certifies that all of the statements and representations made in its proposal are true to the best of Bidder's knowledge and belief.

This Statement of Commitment shall supercede and replace the previous Statement of Commitment signed by Bidder and submitted to the MPUC.

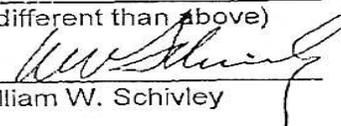
Company submitting proposal

Select Energy Inc.
(exact legal name of company)

Bidder Name:

(if different than above)

Signature of Officer of Bidder:


William W. Schivley

Officer Title:

President-Select Energy

Date Signed:

6-10-04