

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-272

May 31, 2002

MAINE PUBLIC UTILITIES COMMISSION
Inquiry into Procedures to Govern Selection
Of Conservation Service Providers and
Rulemaking Definitions of Low-Income
Residential Consumers and Small Business
Consumers

NOTICE OF INQUIRY

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Notice, we initiate an inquiry to obtain information on the competitive bid process that the Commission should implement to select providers of energy conservation services. We also seek information on how the Commission should define “low-income residential consumers” and “small business consumers” for conservation program purposes. The rule promulgated on these issues will be effective for the Commission’s long term conservation plan but will not be used when choosing interim programs.

II. BACKGROUND

P.L. 2001, ch. 624 (the Conservation Act) directs the Commission to develop and implement electric energy conservation programs that are consistent with the goals and objectives of an overall energy conservation program strategy that the Commission must establish. The programs must be cost effective, according to a definition that the Commission also must establish.

The Commission may arrange delivery of conservation programs by contracting with service providers. 35-A M.R.S.A. § 3211-A(3). In the Conservation Act, “service provider”

Means a public or private provider of energy conservation services or an entity selected by the commission to contract with such providers or otherwise arrange the delivery of conservation programs.

35-A M.R.S.A. § 3211-A(1)(G).

The Act directs the Commission to select service providers through a competitive bid process. 35-A M.R.S.A. § 3211-A(3)(A). Subsection 3211-A(3)(C) describes circumstances when the Commission may select service providers without a competitive bid process. While the Commission is not subject to rules adopted by the State Purchasing Agent in selecting service providers, we must adopt our own rule establishing procedures governing the selection of service providers. 35-A M.R.S.A. § 3211-A(3).

The Conservation Act directs the Commission to target at least 20% of available funds to programs for low-income residential consumers and at least 20% of available funds to programs for small business consumers. The Act requires the Commission to define the terms “low-income residential consumers” and “small business consumers” by rule.

III. ISSUES FOR COMMENT

A. Service Provider Selection

Before we initiate a rulemaking to promulgate a rule establishing procedures to select service providers, we invite interested persons to respond to the following questions. Responses to these questions will assist the Commission in drafting a proposed rule. In addition, persons may comment generally on the content and scope of service provider bidding provisions, or on any relevant issue not covered in response to the questions:

1. Please provide an outline of provisions that should govern the bidding and selection processes for conservation program service providers. Include a short description of each provision and an explanation of its purpose. Commenters may submit an outline of only a subset of the provisions to be adopted.

2. Our experience in conducting bid processes for standard offer providers led us to amend chapter 301 to allow the Commission more flexibility in defining acceptable bids and in selecting winning bids. *See Order Adopting Rule*, Docket No. 2000-489 (August 16, 2000). Please comment on the degree to which the rule should establish bid criteria or should leave bid criteria to be set by the Commission in each Request for Bids (RFBs). In what specific areas should the Commission be afforded flexibility?

3. Is it desirable or practical to objectively select bids based solely on the lowest price? To select bids based solely on some other objective standard or fixed “objective criteria” formula? If objective selection criteria are not desirable or practical, what subjective selection criteria should be established?

4. Should affiliates of T&D utilities be permitted to bid to become service providers in the T&D service territory? Describe any restrictions or codes of conduct that should be applied to any T&D affiliate.

B. Definitions of Low-Income Residential and Small Business Consumers

Before we initiate a rulemaking to define these terms, we invite interested persons to respond to the following questions.

1. Should the Commission's definition for low-income be the same as the LIHEAP criteria? Do all the low-income programs that the Maine State Housing Authority (MSHA) and the Community Action Program (CAP) agencies administer define low-income identically? If not, please describe each definition and the reasons for the differences.

2. Should the Commission's definitions of low-income be independently derived? If so, please state your preferred definition and the reasons the Commission should adopt it.

3. Should the Commission define "small business consumer" as a member of each utility's small non-residential standard offer class? Please explain your answer.

4. Should the Commission define "small business consumer" so that the definition is identical throughout the State? Please provide your reasons.

5. Please provide any other suggested definition, and the reasons the Commission should adopt it.

Interested persons may participate in this Inquiry by filing a letter stating their interest in this proceeding no later than June 10. The letter should be addressed to Dennis L. Keschl, Administrative Director, and include the docket number. The Commission will then issue a service list. Interested persons may file substantive comments by June 20. All comments filed in this docket can be obtained through the Commission's virtual case file, accessible on www.state.me.us/mpuc. We will convene a meeting with the parties on June 26 at 1:00 p.m. to discuss the comments received. We will initiate a formal rulemaking soon thereafter.

Accordingly, we

ORDER

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.