

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
March 23, 2012

Docket No. 2010-235

MAINE PUBLIC UTILITIES COMMISSION

THIRD AMENDED PROTECTIVE ORDER NO.1

Long Term Contracting for Offshore Wind Energy and Tidal Energy Projects

By this Order, the Presiding Officer grants protection to the bid proposals submitted to the Commission in response to Request For Proposals (RFP) for Long-Term Contracts for Deep-Water Offshore Energy Pilot Projects and Tidal Energy Demonstration Projects and to information that would lead to the identity of the bidders or the substance of bids.

During its 2010 session, the Maine Legislature enacted An Act To Implement the Recommendations of the Governors Ocean Energy Task Force (Act). P.L. 2009, ch. 615. Section A-6 of the Act directs the Maine Public Utilities Commission (Commission), in accordance with the Maine Revised Statutes, Title 35-A, section 3210-C, to conduct a competitive solicitation for proposals for long-term contracts to supply installed capacity and associated renewable energy and renewable energy I credits (RECs) from one or more deep-water offshore wind energy pilot projects or tidal energy demonstration projects. As required by the Act, the Commission initiated the solicitation on September 1, 2010.

The customary commercial practice in the electric industry is to keep project development bid information confidential both during and after the evaluation process. In their bid proposals, bidders reveal their bid strategy and their business strategy, and may reveal proprietary information about facilities they own or are constructing. Disclosure of the bid proposals would harm their competitive position. Bidders therefore reasonably expect confidential treatment of their bids.

By 35-A M.R.S.A. § 1311 and 131 1-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 the best opportunity to achieve lower electricity costs or other benefits from long-term contracts for Maine consumers, 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 that offer to enter long-term contracts to provide capacity resources or associated energy with Maine's Investor-owned T&D utilities (whether submitted in response to the RFP or any post-RFP solicitation process), including all documents submitted in connection with the bid proposals such as draft contracts and other information describing the details of those bids, including the identities of the bidders. The identity of any winning bidder or bidders selected to enter into long-term contracts with a T&D utility will not constitute Designated Confidential Information. Additionally, fully executed long-term contracts that are signed by both the winning bidder and the T&D utility will not 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 paragraphs 3 or 10 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 if the characterization and designation of any documents or other information as Designated Confidential Information is challenged by any person, the Commission will provide reasonable notice to the bidder or bidders whose Designated Confidential Information would be disclosed as a result of a successful challenge and an opportunity for hearing before deciding the challenge. Upon the entry of an Order granting such a challenge, the provisions and restrictions of this order shall cease to bind any persons with respect to the documents or information that the Order 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 (i) Commission members; (ii) Commission employees; (iii) Commission consultants hired to assist the Commission in this docket; (iv) Chris Hart, Department of Energy, Offshore Wind Energy Manager; (v) Michael Peterson, University of Maine Professor of Mechanical Engineering, Cooperating Professor of Marine Sciences and Cooperating Professor of the Climate Change Institute; (vi) the Public Advocate, counsel and their consultants; and (vii) counsel for and representatives of Central Maine Power Company, Bangor Hydro Electric Company, and Maine Public Service Company who will be involved in negotiations related to Long-Term Contracts for Deep-Water Offshore Energy Pilot Projects and Tidal Energy Demonstration Projects and the

development and submission of comments to proposed Long-Term Contract term sheets.

5. 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.

6. 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 that Designated Confidential information was publicly known at the time it was furnished or has since become publicly known.

7. 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.

8. 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.

9. That this order may be modified by the Commission or Presiding Officer with or without notice to the bidders.

Dated at Hallowell, Maine, this 23rd day of March, 2012.

BY ORDER OF THE PRESIDING OFFICERS

Mitchell M. Tannenbaum

Sarah B. Tracy