

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DEPARTMENT OF PUBLIC UTILITY : Docket No. 05-11-05
CONTROL REPORT ON THE STATE :
OF RETAIL ELECTRIC COMPETITION : January 18, 2006

BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

I. INTRODUCTION

Retail choice in electricity markets has succeeded in neighboring states and it can succeed in Connecticut if the Department of Public Utility Control (the “Department”) implements the standard service and supplier of last resort service (“SOLR”) models that the legislature has designed for the period commencing January 1, 2007. This policy not only will afford consumers access to a vast array of retail products, but it also will avoid the rate shock recently experienced by customers of one local utility and a much greater impact that will occur for the other utility’s customers upon the expiration of its long-term supply contracts at this year’s end. Wholesale market changes that the Department finds desirable can be pursued in parallel. Those efforts need not precede standard service and SOLR policies that will enable retail choice.

The Retail Energy Supply Association (“RESA”) is a nonprofit organization and trade association that represents the interests of its members in regulatory proceedings in the New England, New York and Mid-Atlantic regions. RESA’s members¹ include providers of competitive supply products to gas and electricity consumers in the five New England states that

¹ RESA member companies include Amerada Hess Corporation, Constellation NewEnergy, Inc., Direct Energy Services, LLC, Reliance Energy Solutions, Select Energy, Inc., Sempra Energy Solutions, Strategic Energy LLC, Suez Energy Resources NA, Inc. and U.S. Energy Savings Corp. The opinions expressed in this Brief may not represent the views of all members of RESA.

have restructured their electric markets. RESA therefore is in a good position to compare Connecticut's energy markets to those of its neighboring states. RESA also has substantial expertise with respect to the business climate and energy policy of the five New England states that have opted for a competitive market place. RESA is pleased to submit this brief on the state of retail electric competition in Connecticut and wholesale market concerns raised by various participants at the January 9, 2006 public hearing.

RESA commends the Department for recognizing that the transitional standard offer ("TSO"), as administered by the utilities, cannot provide the retail choice that was envisioned by the legislature when it enacted Public Act No. 98-28, *An Act Concerning Electric Restructuring* (the "1998 Act"), and Public Act No. 03-135, *An Act Concerning Revisions to the Electric Restructuring Legislation* (the "2003 Act"). Retail choice can rapidly emerge in Connecticut if the state implements the bifurcated service model that is embodied in the 2003 Act and is scheduled to become operative on January 1, 2007. Under that paradigm, customers that do not have a demand meter or have a maximum demand of less than 500 kilowatts will be eligible for standard service. Conn. Gen. Stat. § 16-244c(c)(1).² Customers that have a demand meter or have a demand equal to or greater than 500 kilowatts will be required to either buy from a competitive supplier or receive SOLR. Conn. Gen. Stat. § 16-244c(e)(1).³ This new design will allow retail choice to finally gain traction in Connecticut because it recognizes that rates, particularly for SOLR, must provide timely market signals in order to lead customers to turn to

² Conn. Gen. Stat. § 16-244c(c)(1) provides: "On and after January 1, 2007, each electric distribution company shall provide electric generation services through standard service to any customer who (a) does not arrange for or is not receiving electric generation services from an electric supplier, and (b) does not use a demand meter or has a maximum demand of less than five hundred kilowatts."

³ Conn. Gen. Stat. § 16-244c(e)(1) provides in relevant part: "On and after January 1, 2007, an electric distribution company shall serve customers that are not eligible to receive standard service pursuant to subsection (c) of this section as the supplier of last resort."

competitive retail suppliers for more advantageous offerings.⁴ Such a structure will allow for a robust retail market place and provide the many benefits of competition to Connecticut consumers.

Indeed, as January 1, 2007 approaches, retail choice among large customers is beginning to develop in Connecticut for the first time. Competitive suppliers and aggregators already are signing contracts with the state's businesses and municipalities that offer alternatives to the one-size-fits-all model and the inevitable rate shocks that are inherent in the current TSO monopoly construct.

Two troublesome positions advanced by certain participants at the January 9 hearing, however, could thwart this progress and prevent the emergence of a robust retail market in Connecticut next year. The first is the assertion that retail choice should not move forward until concerns with wholesale markets are addressed. This position, however, is contrary to the experience of Massachusetts, which has pursued solutions to wholesale market congestion problems in the Boston area while it has simultaneously developed a vibrant retail market that has produced many choices for the Commonwealth's commercial and industrial ("C&I") consumers. There is no reason why Connecticut also cannot pursue enhancements to its retail and wholesale markets in tandem.

The second troublesome position advanced principally by The Connecticut Light and Power Company ("CL&P") is that the restructuring of electric markets has yielded no benefits for consumers and, hence, the Department should consider whether an ill-defined "more controlled model" would better serve the interests of ratepayers and the public at large. That

⁴ Conn. Gen. Stat. § 16-244c(e)(2) incorporates this principle by stating: "The Department shall determine a price for [SOLR] customers that reflects the full cost of providing the electricity on a monthly basis." Similarly, Conn. Gen. Stat. § 16-244c(c)(3) states that standard service rates must reflect "underlying wholesale prices over time."

position finds no basis in the law and is contradicted by studies that show that competition has indeed spawned substantial savings and other benefits for consumers.

The Department should not sanction the utilities' apparent willingness to declare retail choice a failed policy just as it is beginning to show the promise of delivering choice and value to Connecticut's electricity consumers. Instead, the Department should advocate implementation of standard service and SOLR as scheduled and, to that end, adopt the specific recommendations of RESA and seriously consider the recommendations of Dominion Retail. That approach will enable the Department to best fulfill the purpose of this proceeding – that is, to present recommendations to the legislature that will stimulate Connecticut's retail market while protecting ratepayers from "excessive rate fluctuations."⁵ Public Act 03-135, § 20. By contrast, extending the TSO would stymie recent progress in the state's retail market and deprive customers of access to products that can be tailored to their particular business needs and enable them to avoid the jarring rate hikes that are an untenable feature of the existing environment.

II. WHOLESALE MARKET REFORMS CAN BE PURSUED IN TANDEM WITH ACTIONS TO FOSTER RETAIL CHOICE

Some urge the Department to direct its attention to wholesale market issues in this proceeding, rather than engage in a probing analysis of the state of retail competition, apparently believing that the two goals are mutually exclusive. There is no evidence that these goals cannot be pursued in tandem. Though RESA does not share all of the wholesale market concerns

⁵ Embracing timely market pricing for utility offerings is not only the key element to allow retail choice to succeed, it will also provide the best protection against "excessive rate fluctuations." Mr. Coretto testified that bringing the standard offer of The United Illuminating Company ("UI") to current market levels will *double* the generation component of UI's rates. Temporarily insulating customers from market prices not only stymies retail choice, it exacts a terrible price in the form of rate shock when consumers finally must come to grips with the market.

expressed in this proceeding, there can be no doubt that those seeking reform can continue to advocate their views before the Federal Energy Regulatory Commission.

Massachusetts has congestion problems that resemble those in Southwest Connecticut and it operates under identical wholesale market rules. Yet retail choice dominates in that state. Over 50 percent of the Commonwealth's large C&I customers, accounting for nearly 26 percent of the total load, had switched to competitive supply as of September 2005. *See* Customer Switching Data, at <http://www.mass.gov/dte/restruct/competition/index.htm>. Maine's statistics are even more impressive. The percentage of large C&I customers that had turned to the retail market as of November 1, 2005 ranged from 62 percent to 91 percent across the state's three major service territories. *See* Customer Migration Data at <http://www.state.me.us/mpuc/industries/electricity/index.html>. There is no reason why Connecticut, too, cannot build a thriving retail market even as it advocates evolution in wholesale markets.

III. RESTRUCTURING OF ELECTRICITY MARKETS YIELD SIGNIFICANT BENEFITS TO CONSUMERS

During the January 9 hearing, Richard Soderman of CL&P stated that Connecticut is at a "crossroads" with respect to whether it is going to be a "full blown competitive state" and noted that competition had not yet produced any benefits for consumers. He therefore advocated for a "more controlled model" which, in his view, would better serve the interests of the ratepayers and the public at large. The Department should reject CL&P's invitation to explore variations of such a model.

CL&P's position is inconsistent with the restructuring legislation that lawmakers enacted in 1998 and reaffirmed in 2003. Although some policy makers have expressed the desire to

review the state's energy policy as a result of the public outcry and political fallout from the recent CL&P rate increase, it is wholly presumptuous to think that the legislature will reverse course and return to the former regulated state at any time in the future, much less before January 1, 2007. That conclusion is consistent with the views expressed by Representative Steve Fontana, co-chairman of the Energy and Technology Committee, as reported by the Hartford Courant:

[Representative] Steve Fontana, D-North Haven, co-chairman of the energy committee, said while all energy prices will be a huge issue at the Capitol, he doesn't foresee the legislature considering major changes to energy policy in the new year given the short legislative session Instead, he predicts lawmakers will look for ways to fix immediate problems, such as the price spikes in electricity.

Lawmakers Consider Tinkering With Electric Deregulation Law, Hartford Courant, January 2, 2006.

CL&P also is incorrect in its assertion that restructuring has yielded "no benefits yet." On the contrary, leading studies show that competitive wholesale markets have produced substantial consumer savings and other benefits. At the same time, consumers in states that have developed robust retail markets have enjoyed the ability to choose from a broad range of products that meet their particular levels of risk tolerance and needs for budget certainty. By contrast, Connecticut's retail environment, which is predicated on the TSO, offers virtually no choice at all and leads to excessive rate fluctuations.

A. Competitive Wholesale Markets Have Delivered Significant Benefits to Consumers

In April 2005, ISO New England, Inc. ("ISO-NE") published a study that evaluated the effects of competitive wholesale markets on consumers. *See Progress of New England's Restructured Electric Industry and Competitive Markets*, ISO New England, Inc., April 2005. In that study, ISO-NE reported that the restructuring of electric markets in five of the six New

England states already has brought significant benefits to consumers in the region. *Id.* at 2.

Most notably:

- New England wholesale electricity prices, after adjustment for fuel costs, have declined by 5.7 percent since 2000;
- over \$9 billion was invested in new power plants in New England from 2000 to 2004, which enhanced system reliability and capacity;
- the newer, cleaner power plants have not only delivered economic benefits, but they also have improved the environment by reducing emissions of carbon dioxide, nitrogen oxide and sulfur oxide;
- competitive markets have created incentives for power plant owners to improve the maintenance and operational efficiency of their plants, thereby expanding “generator availability” and lowering operating costs; and
- the emergence of markets has “provided new and more transparent information about the performance of the power system, helping to identify needed infrastructure improvements, including transmission investment of up to \$4billion.”

Id. at 1-2. ISO-NE further reports that these advancements have yielded real and measurable savings for consumers:

The additional generation, along with competitive market incentives to improve generator availability, enhance operation and make infrastructure investment more efficient, has led to a reduction in wholesale market costs of \$700 million annually (after adjustment for fuel costs). Progress such as this is evidence that markets are working to meet their objective of delivering significant value to consumers.

Id. at 2.

The ability of the competitive markets to demonstrate real savings for consumers was confirmed by a separate study performed by Global Energy Decisions, Inc., a leading energy consulting firm. *See Putting Competitive Power Markets to the Test*, Global Energy Decisions, Inc., July 2005. That study revealed that competitive wholesale electricity markets in the eastern United States and Canada produced at least \$15.1 billion in consumer savings from 1999 to

2003. *Id.* at ES-1. What’s more, savings are not confined to large C&I customers. Cambridge Energy Research Associates, Inc. (“CERA”) conducted a nation-wide study and concluded that residential customers also have benefited significantly from the restructuring of electric markets:

Deregulation of the US power business lowered prices for the majority of electricity consumers. As a result, US residential electric customers paid about \$34 billion less for the electricity they consumed over the past seven years than they would have if traditional regulation had continued. Although the conventional wisdom says that deregulation has failed to lower power prices, real power prices are lower – compared with the previous regulated period and with what prices would have been if traditional regulation had continued.

Beyond the Crossroads: The Future Direction of Power Industry Restructuring, CERA Special Report, 2005, at I-1.

In light of this empirical evidence, it is unwise to presume that the legislature will return, in whole or in part, to a regulated environment that produced billions of dollars in stranded capital costs that have not yet been paid off.

B. Retail Offerings Have Benefited Consumers Greatly in States That Have Developed Robust Retail Markets

As RESA’s representative Thomas Bessette and Dominion Retail’s representative Michael Cornwell stated at the January 9 hearing, all electricity customers do not think alike. Those who have a high risk tolerance might prefer a product that floats with the market, while customers who are risk averse may desire a long-term fixed price offering. RESA members can offer C&I customers literally hundreds of products including, among others, fixed price products for various terms, real-time products, block products and green products, all of which can be tailored to meet a customer’s particular risk tolerance and need for flexibility and budget certainty. Contrary to the position of Michael Coretto of The United Illuminating Company (“UI”), the value arising from such customer choice is not “elusive.” Rather, it is the hallmark of a robust retail market place that has brought substantial benefits to consumers in Maine,

