

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

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CONTROL DEVELOPMENT AND :  
REVIEW OF STANDARD SERVICE :  
AND SUPPLIER OF LAST RESORT :  
SERVICE : June 6, 2006

WRITTEN EXCEPTIONS OF RETAIL ENERGY SUPPLY ASSOCIATION

Introduction and Summary of Argument

The Retail Energy Supply Association (“RESA”) submits these Written Exceptions to the May 30, 2006 Draft Decision (the “Decision”) issued by the Department of Public Utility Control (the “Department”) in the above-captioned docket.<sup>1</sup> In its Decision, the Department accepts in part, rejects in part and modifies in part the proposals submitted by Connecticut electric distribution companies (“EDCs”) – The Connecticut Light and Power Company (“CL&P”) and The United Illuminating Company (“UI”) – for the procurement of power for Standard Service and Supplier of Last Resort (“SOLR”) Service effective January 1, 2007.<sup>2</sup> RESA, a trade association of competitive retail suppliers of electricity and natural gas throughout the five New England States – including Connecticut – where restructuring has been implemented, appreciates the opportunity to have participated in this proceeding and to submit these Written Exceptions to the Decision.

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<sup>1</sup> RESA member companies include Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Hess Corporation, Reliant 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 filing may not represent the views of all members of RESA.

<sup>2</sup> On January 1, 2007, Standard Service will be available 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.” Conn. Gen. Stat. § 16-244c(c)(1). Customers who are not eligible for Standard Service may purchase Supplier of Last Resort Service from the EDCs. *Id.* at § 16-244c(e)(1).

First, the Department’s Decision with respect to the procurement of Standard Service supply is problematic and places at great risk the ability of robust and sustainable competition to take hold in Connecticut’s nascent retail electric market. The Decision provides virtually no parameters to guide the EDCs’ procurement of power for Standard Service customers. Other than setting an outside three-year limit on contract terms, the Decision vests the EDCs with almost complete authority to initially adopt and subsequently modify the procurement of Standard Service supply in whatever way they so desire. This approach contravenes the Legislature’s clear mandate that the Department – not the EDCs – shall prescribe a specific plan of procurement that will enable Standard Service customers and retail suppliers to evaluate the viability of retail products against EDC offerings.<sup>3</sup> The Decision also rests on the faulty premise that EDCs are able to outguess the market and the companion notion that they should be afforded flexibility in their procurements to capitalize on what they perceive to be “favorable” market conditions. The EDCs have admitted that they have no such skill. A procurement framework that allows EDCs to put Standard Service customers at risk based on nothing more than guesswork is not a sensible plan.

The Decision falls short in yet another important respect – it emphasizes only one statutory objective of Standard Service (price stability) and ignores other statutory criteria, including the requirement that Standard Service rates reflect underlying wholesale prices over time.<sup>4</sup> This deficiency, coupled with the lack of a defined procurement plan, will render it very difficult, if not impossible, for Standard Service customers in Connecticut to reap the benefits of retail choice.

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<sup>3</sup> See Conn. Gen. Stat. § 16-244c(c)(3).

<sup>4</sup> See *id.*

Instead of allowing point-in-time procurement for long-term supply, which will practically ensure that rates will not reflect underlying wholesale prices, the Department should require the EDCs to systematically procure Standard Service supply through laddered six-month contracts, as recommended by RESA.<sup>5</sup> If the Department is unwilling to endorse that solution across the board, it should, at a minimum, separate the Standard Service class into two groups and require shorter procurements for customers with demand of 350 kilowatts (“kW”) or greater. This would allow retail choice to develop in the medium commercial and industrial (“C&I”) market.

The Decision as it pertains to the procurement of power for SOLR Service, while not conforming as closely to the spirit of the SOLR statute’s monthly pricing mandate as RESA’s proposal, represents an important step in the right direction. Although RESA continues to advocate for monthly procurements because they give full meaning to the monthly pricing requirement, it nonetheless believes that unladdered contract terms of six months will allow a retail market to begin to emerge for Connecticut’s large C&I consumers on January 1, 2007 for the very first time. RESA member companies look forward to serving those customers. RESA further recommends that the Department engage in annual reviews of the EDC’s procurement plans with an eye toward adopting monthly procurements of SOLR Service supply at the earliest possible date after the initial structure has been implemented.

Finally, and as discussed further herein, RESA recommends that the Department take steps to completely eliminate the mandatory stay on Standard Service and SOLR Service when a customer returns from service in the competitive marketplace and expand the “full requirements” concept to include capacity and ancillary products.

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<sup>5</sup> Brief of RESA, Apr. 26, 2006, p. 14.

## Argument

### I. STANDARD SERVICE

The Decision as it pertains to the procurement of Standard Service power supply suffers from two main problems: (1) it does not prescribe a specific procurement plan; and (2) it ignores certain statutory criteria, most notably, the requirement that rates reflect underlying wholesale prices. Because these dual flaws violate the statute and will prevent a retail market from emerging in Connecticut for Standard Service customers, RESA urges the Department to adopt the modifications set forth below in the Final Decision.

#### A. The Draft Decision Does Not Prescribe A Procurement Plan

The Standard Service statute evinces the Legislature's clear intent that the Department – not the EDCs – shall prescribe a detailed procurement plan. It states in pertinent part:

An electric distribution company providing electric generation services pursuant to this subsection shall mitigate the variation of the price of the service offered to its customers by procuring electric generation services contracts in the manner prescribed in a *plan approved by the department . . . .* Such plan shall *require* that the portfolio of service contracts be procured in an overlapping pattern of fixed periods at such times and in such manner and duration *as the department determines* to be most likely to produce just, reasonable and reasonably stable retail rates while reflecting underlying wholesale market prices over time . . . . The portfolio of contracts procured under such plan shall be for terms of not less than six months, provided contracts for shorter periods may be procured under such conditions *as the department shall prescribe* to (A) ensure the lowest rates possible for end-use customers; (B) ensure reliable service under extraordinary circumstances; and (C) ensure the prudent management of the contract portfolio.<sup>6</sup>

The clear import of this statute is that the Legislature intended that the Department would articulate the procurement plan with specificity, announce the plan, and ensure that the EDCs adhere to its requirements. The Decision, however, appears to completely ignore that standard.

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<sup>6</sup> Conn. Gen. Stat. § 16-244c(c)(3) (emphasis added).

Instead, it abdicates the Department’s statutorily-imposed responsibility to the EDCs, giving them free rein to structure their procurement approaches and to modify them from time to time in whatever fashion they see fit. This abdication is clearly not what the Legislature intended and will not produce for consumers the benefits of a robust and sustainable competitive retail electric market that the statute mandates.

This lack of a clear plan is apparent from several passages that appear in the Decision. With respect to full requirements contracts, for example, the Decision states: “The Department will not require the electric distribution companies to adhere strictly to any set of formulas or lock into any specific format at this time.”<sup>7</sup> Likewise, the Decision offers no guidance with respect to the desirability of fixed or variable wholesale bid pricing, opining instead that it will allow CL&P and UI to determine what is “in the best interest of ratepayers . . . .”<sup>8</sup> Most importantly, the Decision does not specify the frequency of procurements or the required terms of supply contracts, other than providing that such contracts should not extend beyond three years.<sup>9</sup> It merely states:

[R]ather than establishing a rigid format for these solicitations, the Department believes it is important to provide the Discos some flexibility in designing their respective RFP’s in negotiating the final agreements, in order to maximize the potential customer benefit from those contracts. Therefore, *the Department will allow the Discos latitude and flexibility in structuring the procurement process in order to achieve the lowest cost for consumers, promote price stability and minimize the risk associated with market fluctuations.*<sup>10</sup>

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<sup>7</sup> Decision, p. 11.

<sup>8</sup> *Id.* at 14.

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 13-14 (emphasis added).

In short, the Decision does not prescribe any sort of procurement plan. If this ill-defined framework stands, it will deprive customers of the benefits of robust competition, for the reasons that follow.

1. Vesting EDCs With Near-Total Discretion To Design Standard Service Procurement Plans Prevents The Certainty of Market Rules That Is Essential To The Development of a Sustained Competitive Market

As RESA noted in its Comments, when a competitive supplier enters a market, that supplier commits significant capital based on the reasonable expectation that the rules underpinning that market will not be changed arbitrarily and without the supplier's participation in the regulatory process.<sup>11</sup> Similarly, when a customer switches away from utility service to a competitive offering, that customer commits significant resources based on the same reasonable expectation that his or her decision will not be rendered uneconomic solely by an arbitrary change in the market rules.

The EDCs near-total discretion to devise and revise the procurement plans for Standard Service destroys this reasonable expectation and will leave suppliers reluctant to enter the Connecticut market and customers reluctant to commit to those suppliers who do enter the market. Furthermore, customers will be unable to ascertain how the price of retail offerings stack up against EDC offerings and, hence, they will not seek out competitive alternatives that can offer them real cost savings and features that fit their particular business needs. Put simply, an ill-defined procurement plan undermines the interests of both customers and retail suppliers.

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<sup>11</sup> Comments of RESA, April 3, 2006, p. 8.

2. Procurement Structures Based Solely On The EDCs' Guesswork Will Not Produce the Lowest Possible Prices For Consumers Over The Long Term And Will Fatally Undermine Robust and Sustainable Retail Competition

The Department appears to believe that the “flexibility” it has granted to EDCs in the Decision will pay off in the form of superior timing of commodity purchases by EDC personnel. The Decision states that “[t]he Department will allow shorter contract durations and more frequent solicitations in response to market conditions or if specific bidding results are not favorable.”<sup>12</sup> There is no evidence whatsoever in the record to support the conclusion that the EDCs are in any way capable of timing market purchases in a manner that will save customers money in the long term. In fact, the record supports the opposite conclusion, namely, that EDC attempts to time the market constitutes little more than guesswork with customers bearing the risk of those guesses being wrong.

Commodity prices move up and down in unpredictable ways, and the EDCs do not have the ability to foresee future price trends. CL&P witness James Shuckerow and UI witness Dennis Hrabchack admitted as much at the April 20, 2006 Hearing in this proceeding (the “Hearing”). If the utilities guess right and prices rise during an extended contract term, ratepayers may benefit temporarily. If they guess wrong and prices fall, however, ratepayers will be locked into higher contract prices potentially for up to three years.<sup>13</sup> Basing a so-called procurement “plan” on this type of gamble is not a sensible approach.

If the Department truly wants to produce the lowest possible rates for consumers over the long term, it should direct the EDCs to engage in a well-defined, systematic plan of shorter-term

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<sup>12</sup> Decision, p. 13.

<sup>13</sup> UI suggested during the Hearing in this proceeding that this risk is not real because customers can turn to a competitive supplier if they do not like the rates that culminate from the EDC's procurements. This assertion lacks substance, however, because the long-term contracts preferred by the EDCs render it unlikely that competitive suppliers will be on call to serve Standard Service customers.

procurements that will encourage a competitive retail market to take hold in Connecticut. Certainly, the Department can agree that customers are best served when they are given the opportunity and proper incentives to choose an energy plan that suits their needs. That opportunity will only be realized if competition is given a chance to flourish. The Maine Public Utilities Commission embraced that conclusion in response to a similar market timing argument advanced by the Central Maine Power Company (“CMP”). It wrote:

We agree with CMP that attaining the lowest energy prices possible is the ultimate goal, but we believe that the underlying theory of the Restructuring Act is that a healthy, competitive market is the best way to accomplish that goal over the long term. Thus, to the extent that our desire to foster competition may lead us to decline to lock in what appears to be a low standard offer price, we do not see that as favoring competition over low prices, but rather the long term objective over the shorter term benefit.<sup>14</sup>

#### **B. The Decision Ignores Statutory Criteria**

In RESA’s Comments and Brief, it noted that the Standard Service statute directs the Department to balance several criteria in its procurement plan, including, *inter alia*, the need to: (1) promote price stability; (2) avoid excessive pricing for customers; and (3) foster retail competition.<sup>15</sup> The Decision emphasizes only price stability and ignores the other statutory criteria.

It is undisputed that long-term procurements cause wholesale suppliers to add expensive risk premiums to their bids. Mr. Shuckerow acknowledged that point in his testimony at the Hearing. Despite this evidence, the Decision does not even question whether shorter-term

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<sup>14</sup> MPUC, Docket No. 2003-127, *Report on Standard Offer Service Issues* (May 28, 2003), at 5 n. 4.

<sup>15</sup> Comments of RESA, April 3, 2006, p.11; Brief of RESA, April 26, 2006, p. 23; *See also* Conn. Gen. Stat. § 16-244c(c)(3).

