

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

**DPUC DEVELOPMENT AND REVIEW OF STANDARD SERVICE AND SUPPLIER
OF LAST RESORT SERVICE - PLAN APPROVAL - BILATERAL CONTRACTS
OUTSIDE OF AUCTION**

Docket No. 06-01-08RE01

**DPUC REPORT TO CONNECTICUT GENERAL ASSEMBLY ON STANDARD
SERVICE PROCUREMENT**

Docket No. 07-06-58

MOTION FOR CLARIFICATION OR RECONSIDERATION

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I. INTRODUCTION AND SUMMARY

The Retail Energy Supply Association (“RESA”)¹ respectfully requests clarification or reconsideration of the Final Decision dated April 2, 2008 (the “Decision”) that was issued by the Department of Public Utility Control (“Department”) in the above-referenced Dockets because the material changes of the Decision compared to the Draft Decision implicate significant regulatory and public policy considerations.

In its March 14, 2008 Draft Decision, the Department concluded that due to the “risks to ratepayers and the competitive market, long-term bilateral contracts should not be used for Standard Service at this time,” but allowed the electric distribution companies (“EDCs”) to enter into shorter-term bilateral contracts of up to four years in duration. In the Decision, however, the Department came to the opposite conclusion, noting that “long-term bilateral contracts may be used for Standard Service at this time.” In embracing long-term bilateral contracts, the Decision also deleted language from the Draft Decision concerning risks such contracts pose to ratepayers and the competitive market, suggesting instead that a significant public policy reversal is appropriate now based on the limited record in this uncontested case: “At this point there does not seem to be a consensus to return to regulation, but their [sic] does appear to be general agreement that action should be taken to lower electric rates in Connecticut.” Decision, p. 8.

In light of the important regulatory and public policy issues raised by the Decision’s material changes compared to the Draft Decision, RESA requests that the Department clarify or

¹ RESA is a non-profit corporation and trade association that represents the interests of its members in regulatory proceedings in the New England, New York and Mid-Atlantic regions. Its members include providers of competitive supply products to electricity and natural gas consumers in the New England states that have restructured their energy markets. RESA member companies include Commerce Energy, Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Gexa Energy, Hess Corporation, Integrys Energy Services, Inc., Liberty Power, Reliant Energy Retail Services, LLC, Sempra Energy Solutions, Strategic Energy LLC, SUEZ Energy Resources NA, Inc., and U.S. Energy Savings Corp. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

reconsider: (i) the process through which the Department will review and consider proposals by the EDCs to enter into long-term bilateral contracts; and (ii) the apparent policy construct emerging at the Department that seems to be favoring the return to more traditional electric utility regulation – employed prior to electricity restructuring – in lieu of policies that promote customer choice and retail competition.

Given the uncertainties created by the substantial discrepancy between the Draft Decision and the Decision, it is essential for the Department to clarify or reconsider certain provisions of the Decision. First, the Decision leaves unresolved the process through which long-term bilateral contracts are to be reviewed. In order to preserve the goals articulated by the Legislature and provide regulatory certainty for the participants in this Docket, who have an interest in the outcome of the manner in which bilateral contracts may be chosen, RESA requests that the DPUC clarify the Decision and ensure that before any long-term bilateral contracts are approved, it will hold open public hearings with an opportunity for public comment. Second, the Decision contains several language reversals from the Draft Decision that appear to imply a substantial policy shift away from an embrace of customer choice and retail competition that the Legislature established in An Act Concerning Electric Restructuring Act² and reaffirmed as recently as 2007 (and that the Department has promulgated for over ten years). Because of these important language reversals in certain key sentences between the Draft Decision and the Decision with respect to retail competition, RESA respectfully suggests that it is essential for the Department to clarify or reconsider its statements with respect to the impact of retail electric competition so as to provide all stakeholders, including consumers and competitive electric

² See Public Act 98-28.

suppliers who would be substantially affected by such a significant policy shift, with better clarity and regulatory certainty.

II. DISCUSSION

A. LIMITING THE NEXT PHASE OF THIS PROCEEDING TO REVIEW AND COMMENT BY SOME DOCKET PARTICIPANTS, RATHER THAN REVIEW AND COMMENT BY ALL PARTICIPANTS AND THE PUBLIC, WOULD BE CONTRARY TO THE PUBLIC INTEREST.

1. The Department has the Authority to Hold Hearings During the Review of Proposed Long-Term Bilateral Contracts for Standard Service

While this proceeding was not designated as a contested case, the Department has the authority to establish public hearings in future proceedings resulting from this docket in order to ensure that the proposed long-term (greater than four year) bilateral contracts are vetted by the public and participants and to ensure that the Legislature's goals are met. According to the Department's rules of practice, a "hearing will be held in all contested cases and *otherwise as the Commissioners may determine* in specific investigations of the Commission." §16-1-22(a) (emphasis added).

It is appropriate to hold public hearings in the continuation of this Docket, during the review of any proposed long-term bilateral contracts. Although this docket was not designated as a contested proceeding, the Department granted participant status to those who sought intervenor status (including RESA), provided notice to all regarding the opportunity to submit comments in the proceeding, and provided all participants the opportunity to submit written exceptions to the Draft Decision. Limiting the regulatory review of any proposed long-term bilateral contracts in what is essentially the next step in review of this Docket to allow input *only* from the Department, the Department's consultant, the Office of Consumer Counsel ("OCC"), OCC's consultant, and the EDCs would prevent the Department from having the benefit of a

broad spectrum of comments during the review phase and would essentially silence all other interested stakeholders, including competitive electricity suppliers, during the continuation of this proceeding.

2. The Goals of the Legislature Are Met by Allowing the Participants and Public a Meaningful Opportunity to Review and Comment with Regard to any Proposed Long-Term Bilateral Contracts for Standard Service

The Legislature has directed that EDCs providing Standard Service offer such default generation through a plan approved by the Department. C.G.S. §16-244c(c)(3). The statute requires that the EDCs' portfolio of contracts "be assembled in such manner as to invite competition; guard against favoritism, improvidence, extravagance, fraud and corruption; and secure a reliable electricity supply while avoiding unusual, anomalous or excessive pricing." C.G.S. §16-244c(c)(3). Furthermore, the statute directs that the contracts be entered 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." C.G.S. §16-244c(c)(3). In designing the Standard Service model, the Legislature also required that the Department establish a price for Standard Service "not more often than every calendar quarter." See C.G.S. §16-244c(c)(3) (emphasis added). The applicable statutes allow for contracts of shorter terms: "[t]he 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." C.G.S. §16-244c(c)(2) (emphasis added).

In its written exceptions in this Docket dated March 26, 2008, The Connecticut Light and Power Company (“CL&P”) emphasized that it merely seeks permission to “explore whether potential savings can be realized through long-term bilateral contracts,” and correctly pointed out that any such possible savings would still be vetted by the Department as the existing Standard Service auction bidding results have been vetted. CL&P Exceptions, p. 5. In short, CL&P argued, the Department will still be able to review any proposed long-term bilateral contracts before approving them, so what’s the harm in allowing CL&P to go about “exploring” or merely seeking opportunities?

If the process of reviewing these long-term contracts is limited to review by the Department, the Department’s consultant, OCC, and OCC’s consultant, without public input and an opportunity for comment from all of the interested participants, then the very risks such long-term contracts present – stranded costs, ratepayer harm and damage to the competitive marketplace – become enhanced. A related concern includes the question, which was certainly not vetted on the limited record of this uncontested case, as to whether some kind of hard cap in years (such as 4 years or less) or percentages (such as 20% of the standard service load) is appropriate.³

The Department could easily rectify these concerns and clarify the Decision, without impairing CL&P’s stated desire to be able to “explore” whether such long-term contracts might produce ratepayer benefits, by simply insisting that any such proposed long-term contracts be fully vetted in a public hearing process and by suggesting that initial “explorations” into long-

³ A related concern is that with respect to the 20% limitation on bilateral contracts approved by the Department with this Decision, there is little in the record on how the EDCs could determine how many megawatts of load will make up the 20% of standard service load, especially in longer-term years. For example, by the year 2012, today’s 20% could be 50% of the remaining load. These are additional risks not fully vetted by the record in this Docket that should be addressed with full public participation.

term contracts not exceed four years at this time or until a more complete analysis of longer-term contracts can be publicly considered.

As CL&P pointed out in its Written Exceptions, shorter term contracts are more likely tied to natural gas forward contracts and likely to include substantial supplier risk premiums being built into the bids to account for even the short-term confidential review process that is currently conducted by the Department, Department's consultant, OCC and OCC's consultant. Depending upon their structure, longer term contracts may provide EDCs with the opportunity to decouple energy prices from the natural gas forwards and, therefore, are by definition less likely to include substantial supplier risk premiums being built into the bids and an urgent need for confidential review of the contracts.

Compared to the shorter-term contracts, longer-term contracts pose far less risk of natural gas forward contract sensitivity but far greater risk that the market will change after the price is locked in, exposing ratepayers to stranded costs and higher rates. Longer-term contracts require even greater scrutiny and the Department would be better able to protect the public interest, without impairing contract sensitivities to natural gas forwards, by simply insisting that, before any such contracts are approved, the public has a meaningful opportunity to review and comment.

As the record in this Docket amply demonstrates, the competitive supplier participants offered a unique perspective – one that the Department should solicit in any future long-term contract review proceeding – to balance the competing goals set forth by the Legislature, as demonstrated in Public Act 07-242, *An Act Concerning Electricity and Energy Efficiency* (the “Act”). Without the competitive supplier perspective in reviewing these long-term contracts, the Department would lack the balanced perspective.

RESA is very concerned that without the ability to review and comment on the proposed long-term bilateral contracts resulting from EDC explorations, the regulatory review process and resulting long-term contract obligations will lack public input from key perspectives.

RESA's concerns can be addressed easily, without changing the overall Decision, if the Department clarifies the Decision by making clear that any resulting long-term bilateral contract that is presented for review will require meaningful opportunity for public review and comment, a notion RESA anticipates that the Department probably would have decided on its own anyway. The Department should now clarify for the competitive marketplace how this process will occur, as it rightfully should be distinct from the procedure currently used to vet auction proposals for the short-term procurements of Standard Service. Such a clear signal from the Department will help inform both wholesale market participants and the competitive retail supplier community that this is not a move toward re-regulation.

While risks that can impact pricing of long-term bilateral contracts include customer migration, governmental intervention or regulatory changes, fuel price uncertainty, and geopolitical events, conversely, use of spot market pricing is more likely to promote customer behavior with regard to energy efficiency and demand response, thereby supporting the public policy goals set forth most recently by the Legislature during the 2007 session with the Act. The Department, Department's consultant, OCC, and OCC's consultant may benefit from the perspective of RESA and other members of the public in weighing these and other risks when analyzing in detail the efficacy of specific long-term bilateral contract proposals.

As the Department is aware, the Legislature wanted the EDCs' plans, approved by the Department, to be comprised of an "overlapping pattern of fixed periods at such times and in such manner and duration" as the Department deemed appropriate to meet the Legislature's