

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

DEPARTMENT OF PUBLIC UTILITY : DOCKET NO. 97-01-15RE02
REVIEW OF ELECTRIC COMPANIES :
COST OF SERVICE AND UNBUNDLED :
TARIFFS – REOPENING : January 23, 2007

REPLY BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

Introduction and Summary of Argument

The Retail Energy Supply Association (“RESA”)¹ submits this Reply Brief to respond to the positions taken by other participants in their filings with the Department of Public Utility Control (“Department”) made on January 16, 2007. With the limited exceptions noted herein, RESA generally agrees with the views of Constellation NewEnergy, Inc. (“Constellation”), Dominion Retail, Inc. (“Dominion”) and Direct Energy Services, LLC (“Direct”) and the Connecticut Industrial Energy Consumers (“CIEC”) as set forth in their Briefs. In lieu of filing Briefs, The Connecticut Light and Power Company (“CL&P”), The United Illuminating Company (“UI”) and the Office of Consumer Counsel (“OCC”) filed a Proposed Settlement Agreement (“Joint Filing” or “Filing”), which has been endorsed by the Attorney General (“AG”). RESA disagrees with the characterization of the Joint Filing as a “Settlement” and opposes a number of the substantive provisions contained therein.

Settlements by their very nature contemplate that the settling parties have adverse positions that are compromised through negotiation. In this instance, however, CL&P, UI and OCC (the “Sponsors”) have been aligned in their positions from the inception of this proceeding

¹ RESA member companies include Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, Hess Corporation, Reliant Energy Retail Services, LLC, 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.

and have merely restated their views in the Joint Filing. The Joint Filing does not consider the opposing positions of the retail suppliers and industrial energy consumers and should be afforded no special deference. The Department should, instead, treat the Joint Filing as if it were a Brief submitted by the three Sponsors.

With respect to the substance of the Filing, RESA appreciates that the Sponsors fully support the inclusion of generation-related bad debt expense, allowance on working capital and regulatory commission expense in the Generation Service Charge (“GSC”). The Joint Filing nonetheless suffers from substantive flaws. Specifically it: (1) understates the purposes and goals of this proceeding; (2) endorses an inappropriate de minimus standard that excludes several generation costs from the GSC; and (3) proposes an unnecessary true-up mechanism that would decrease the risk to the electric distribution companies (“EDCs”), while increasing the risk borne by ratepayers. RESA respectfully requests that the Department reject these aspects of the Joint Filing and adopt the positions recommended by RESA in its Brief.

Comments

I. THE JOINT FILING BY CL&P, UI AND OCC

A. The Department Should Afford No Special Deference to the “Settlement”

Instead of filing Briefs, CL&P, UI and OCC filed a document styled as a “Settlement” that sets out the collective positions of the Sponsors. This Joint Filing is marginally useful in that it expands the common ground among all participants in this proceeding. It now appears that all stakeholders agree that three cost items should be moved from distribution rates into the GSC, these being the generation-related portion of non-hardship bad debt expense, the allowance for working capital, and regulatory commission expense.²

² Joint Filing of CL&P, UI and OCC (Jan. 16, 2007), p. 2.

From a procedural standpoint, however, characterizing the Joint Filing as a Settlement is wrong. Settlements arise from successful negotiations among parties with interests adverse to one another. When adverse parties can find a resolution to their dispute through negotiation, that outcome is generally favored by public policy, since negotiated settlements by definition accommodate the parties' concerns and result in a resolution that is superior to a traditional adjudication by a tribunal. For this reason, negotiated resolutions, forged in compromise, are generally encouraged by courts and administrative agencies charged with resolving disputes. This policy is reflected in Section 16-19jj of the General Statutes, which directs the Department to "encourage the use of proposed settlements produced by alternative dispute resolution mechanisms to resolve contested cases and proceedings."

Unlike a genuine settlement, the Joint Filing of CL&P, UI and OCC does not merit any special deference because the Sponsors of the Filing had little, if any, adversity among them from the outset. Indeed, the Sponsors of the Joint Filing have accomplished little more than to restate their initial positions, which were in general alignment before this proceeding commenced. Not only does the Filing completely omit the points of view advanced by the retail suppliers and industrial energy customers whose positions are most directly adverse to those of the Sponsors, these adverse parties were never advised of the pendency of the "Settlement" discussions, nor were they invited to participate. The Department should treat the Joint Filing just as it would treat a joint brief filed by those parties that articulate the same positions. It should also recognize that many of the positions set forth in the Filing are substantively flawed.

B. The Joint Filing Understates the Purpose and Goals of this Proceeding

The Joint Filing states the following with respect to the purpose of this docket:

The Parties agree that the principal purpose of this docket is to determine and properly allocate the [EDC's] generation-related costs

to the generation services component or other bypassable supply-related charge (collectively, the “GSC”) The Department should approach the question of allocation in a neutral manner, to neither support nor impede the development of a competitive retail supply market as an alternative to the standard service and last resort options. This docket should not shift costs to the GSC for the purpose of encouraging standard service or last resort customers to switch to competitive supply.³

RESA agrees with the Sponsors that the purpose of this proceeding is to place generation-related costs in the GSC. The rest of the language set forth above is unnecessary if the Department simply follows principles of cost causation to achieve this purpose. Adherence to these principles would automatically advance the overarching goals of unbundling as announced by the Department in prior decisions and summarized by RESA in its Brief.⁴ These include: (1) enabling customers to make meaningful price comparisons of generation service; (2) avoiding duplicate charges to customers who choose competitive supply; and (3) prohibiting EDCs from gaining an unfair advantage over competitive suppliers. These goals are not even mentioned in the Joint Filing.⁵

RESA has never contended that the Department should slant its cost allocations to specially favor retail competition as it works to refine the unbundling of EDC costs, nor has any other participant in this proceeding. The Sponsors’ implicit suggestion that the Department

³ Joint Filing of CL&P, UI and OCC (Jan. 16, 2007), p. 1.

⁴ RESA Brief (Jan. 16, 2007), pp. 3-6 (citing Department Decisions).

⁵ The basic tenor of the Joint Filing is that the Department should be entirely indifferent as to whether Connecticut has a viable retail market. It is beyond dispute, however, that a principal goal of the Restructuring Act was to allow a retail market to emerge in Connecticut under the belief that increased competition would lower prices for the State’s consumers consistent with the experiences of neighboring states. See Conn. Gen. Stat. § 16-244(3) & (5) (legislative findings that “competitive market forces can play a role in the reduction of Connecticut rates”). The Legislature reiterated that view for large customers when it adopted the supplier of last resort service, reflecting its preference that such customers should purchase their electricity in the retail market. See Conn. Gen. Stat. § 16-244c(e)(1). These mandates are undermined by the EDCs’ present cost recovery practices, which exclude several generation costs from the GSC.

should guard against artificially inflating the GSC is particularly inappropriate in light of the undisputed fact that at least three significant generation costs (i.e., bad debt expense, working capital allowance and regulatory commission expense) have been *excluded* from the GSC for the past six years to the detriment of competitive suppliers. RESA, the individual supplier companies and the industrial energy consumers merely request that the Department order the EDCs to follow well-established principles of cost causation and recover generation costs in the GSC whenever it is practical to do so. This approach has the salutary effect of avoiding the inequities to customers and competitive suppliers that result from the present cost allocation and recovery regimes.

The Department has recognized that the inclusion of generation costs in distribution rates is unfair to customers for two reasons. First, it hinders their ability to make meaningful price comparisons between generation services offered by the EDCs and competitive suppliers.⁶ Second, it penalizes customers who choose to participate in the retail market by requiring them to pay generation costs twice – once in the competitive offering price and again in distribution charges.⁷ The present system also works an injustice to suppliers in that it allows EDCs to gain an unfair advantage by subsidizing generation costs through distribution rates and other nonbypassable rate components. The Department should explicitly recognize that the purpose of this proceeding is to achieve the corollary goals of adhering to cost causation principles and correcting these inequities. In rendering this conclusion, the Department would not be favoring retail competition. It would simply be endorsing basic notions of fairness to consumers and the

⁶ See Decision (April 30, 1999), p. 1, Docket No. 97-01-15RE01, DPUC Review of Electric Companies Cost of Service and Unbundling Tariffs – Unbundled Bills and SBC.

⁷ See Decision (Jan. 27, 2006), pp. 125-27, Docket No. 05-06-04, Application of The United Illuminating Company to Increase its Rates and Charges.

competitive suppliers who wish to participate in the Connecticut market and get some key cost allocations right after years of inaccuracies.

C. The Department Should Reject the Proposed De Minimus Standard

With respect to allocation principles, the Joint Filing states: “In evaluating cost items for purposes of reallocation from the distribution component to the GSC, the Department should use the avoided cost principle, and should apply a de minimus standard.”⁸ RESA concurs that the avoided cost principle is the proper means to address cost causation. But it does not believe that a de minimus standard is appropriate or necessary.

RESA identified in its Brief several costs that would be avoided if the EDCs exited the retail generation business. In addition to the three cost elements set forth in the Joint Filing, the EDCs would avoid expenses relating to supply acquisition, portfolio management, wholesale supplier relations, contract negotiations, load settlement and the associated information technology costs and investments to support these activities.⁹ The Sponsors apparently believe that these costs should not be transferred to the GSC because they fall within the de minimus standard. They maintain that this standard is needed “so that the companies will not be required to expend significant resources or exhaustively evaluate the shifting of costs that are relatively small and that would not have a meaningful impact on the overall level of the GSC.”¹⁰ This view does not withstand scrutiny.

The EDCs do not have to engage in exhaustive efforts to identify and transfer the above-listed generation costs to the GSC. On the contrary, they can simply estimate these costs and

⁸ Joint Filing of CL&P, UI and OCC (Jan. 16, 2007), p. 1.

⁹ RESA Brief (Jan. 16, 2007), pp. 9-12.

¹⁰ Joint Filing of CL&P, UI and OCC (Jan. 16, 2007), p. 2.

tack on an adder to the GSC, just as UI has done with its transitional standard offer rates since 2004.¹¹ Indeed, CL&P has developed many of these estimates for this proceeding.¹² The use of estimates, which is a cornerstone of utility rate-setting, would be a cost-effective way to place EDC generation expenses in the GSC, consistent with principles of cost causation. And as Lee Smith, OCC's expert witness, testified at the November 27 Hearing: "[I]f it doesn't cost anything or it's relatively cost effective to shift the cost, why wouldn't you do so?"¹³

In proposing the de minimus standard, the Sponsors also fail to recognize that costs which are individually insignificant may have a material impact when measured collectively – a point that is made succinctly in the Brief of CIEC and the testimony of its expert witness, Stephen Baron.¹⁴ CIEC therefore recommends that the Department reject the de minimus standard and order the EDCs to follow cost causation principles unless they can show through specific analysis that it is not cost effective to do so. This view comports with RESA's recommendation that the Department adopt a presumption that all costs will be allocated to the appropriate function, unless the EDCs can rebut that presumption by proving that such approach would be unduly burdensome.¹⁵ The EDCs have provided no such rebuttal evidence in this proceeding with respect to the expenses pertaining to supply acquisition, portfolio management, load settlement and other generation-related costs that purportedly fall within the de minimus

¹¹ See UI Revised Response to Interrogatory EL-1; Decision (Dec. 18, 2003), p. 10, Docket No. 03-07-15, Establishment of The United Illuminating Company's Transitional Standard Offer.

¹² See, e.g., CL&P Response to Interrogatory OCC-1; Pre-Filed Testimony of Charles R. Goodwin and Robert A. Baumann (Oct. 31, 2006), p. 4.

¹³ CIEC Brief (Jan. 16, 2007), p. 7 (quoting Ms. Smith's testimony from the Hearing transcript).

¹⁴ Id. at 10-12; Pre-Filed Testimony of Stephen J. Baron (Oct. 31, 2006), p. 8.

¹⁵ RESA Brief (Jan. 16, 2007), p. 15.

standard. Consequently, the Department should order the EDCs to estimate these costs and include them in the GSC.¹⁶

D. The Department Should Reject the Proposed True-Up Approach

The Joint Filing endorses a reconciliation and true-up mechanism that allows the EDCs to recoup from ratepayers any underrecovery that culminates from the transfer of additional costs to the GSC. The Sponsors posit that this approach is needed “so that the reallocation does not expose the companies to *more risk of recovery of allowed costs than currently exists . . .*”¹⁷ The true-up approach embraced in the Joint Filing, however, achieves the opposite effect: it decreases the recovery risk of the EDCs and increases the risk borne by ratepayers.

As RESA noted in its Brief, the Department should distinguish between two types of recovery risks for the costs that may be transferred to the GSC: (1) risk of cost estimation errors; and (2) risk that customers will transition to competitive supply at a pace greater than anticipated.¹⁸ The Department should not allow the EDCs to recoup underrecoveries stemming from cost-estimation errors because they already bear this risk today. Although it may be appropriate to allow a true-up to accommodate customer-migration risk, any such mechanism should not encompass expenses that decline directly when customers transition to competitive supply. Interestingly, these include the three types of shifted costs included in the Joint Filing – bad debt expense, allowance on working capital and regulatory commission expenses – and any other costs with similarly decremental characteristics.

¹⁶ RESA does not concur with the positions of Constellation, Dominion and Direct that the EDCs should continue to recover these costs in the distribution rates until a cost-of-service study can be completed. Brief of Constellation (Jan. 16, 2007), p. 6; Brief of Dominion and Direct (Jan. 16, 2007), p. 6.

¹⁷ Joint Filing of CL&P, UI and OCC (Jan. 16, 2007), p. 3 (emphasis added).


¹⁸ RESA Brief (Jan. 16, 2007), pp. 16-17.

Conclusion

The Department should recognize that the purpose of this proceeding is to allocate all generation-related costs to the GSC using cost causation principles, which will advance the overarching goals of unbundling as discussed herein. The Department should adopt the rebuttable presumption recommended by RESA in lieu of the de minimus standard urged by the Sponsors of the Joint Filing. Finally, any true-up mechanism embraced in this proceeding should be carefully crafted to avoid the unnecessary shifting of additional risks to ratepayers.

Respectfully submitted,

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