

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 : APRIL 26 , 2006

**BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION**

**Introduction**

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 members include providers of competitive supply products to electricity and gas consumers in the five New England states – including Connecticut – that have restructured their energy markets.<sup>1</sup> RESA is pleased to submit this Brief on the plans of The Connecticut Light and Power Company (“CL&P”) and the United Illuminating Company (“UI”) to procure power for customers that choose Standard Service or Supplier of Last Resort (“SOLR”) Service effective January 1, 2007. In addition, RESA appreciates the opportunity to have participated in the Department’s hearing examining the CL&P and UI plans on April 20, 2006 (the “Hearing”).

Following the Hearing, it remains RESA’s steadfast view that the utilities’ procurement plans do not comply with the plain language of the governing statutes for Standard Service, Conn. Gen. Stat. § 16-244c(c), and SOLR Service, Conn. Gen. Stat. § 16-244c(e). As a result,

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<sup>1</sup> RESA member companies include Amerada Hess Corporation, Consolidated Edison Solutions, Inc., Direct Energy Services, LLC, 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.

RESA recommends that the Department reject CL&P's and UI's Standard Service and SOLR Service procurement plans and direct the utilities to implement the alternative structures discussed herein.

### **Summary of Argument**

Designing the procurement of Standard Service and SOLR Service is the single most important element in determining whether retail electric competition will take hold in Connecticut, as it has in New York, Massachusetts, Maine and, more recently, New Hampshire, or whether it will sputter, as it has here. Long-term, fixed-price procurements that deviate widely from actual market prices foreclose robust and enduring retail competition. They also carry higher risk premiums and pose the likelihood of rate shock when prices eventually return to market, as they must when it's time to rebid the service. Conversely, shorter-term procurements that enable the generation service rates to reasonably reflect market prices, such as the plans advocated by RESA, eliminate all of these problems. Risk premiums shrink, rate shock is less likely and retail competition can gain traction.

To comply with existing Connecticut statutes and to implement these pro-competition policies, the Department should limit the duration of Standard Service wholesale procurements to six months and minimize contract laddering. SOLR Service should be procured and priced on a monthly cycle.

The Department should, furthermore, interpret the Standard Service statute to mean that any customer who uses a demand meter is ineligible for that service offering. It also should confirm that an enterprise with several meters or locations (*e.g.*, a chain of grocery stores) may still constitute a single customer for purposes of measuring maximum demand under the

Standard Service statute. Finally, the Department should eliminate the twelve-month stay for customers who return to SOLR Service or Standard Service following a stint in the retail market.

## Argument

### I. DEFINING THE STANDARD SERVICE AND SOLR SERVICE CLASSES

CL&P has requested that the Department confirm CL&P's interpretation of the customer groups that will fall within the SOLR Service and Standard Service statutes.<sup>2</sup> Consistent with UI's proposed interpretation, CL&P contends that all customers that use less than 500 kW will be eligible to receive Standard Service even if they have a demand meter.<sup>3</sup> This interpretation violates the plain language of the Standard Service statute and renders a portion of it superfluous.

#### A. **The Plain Language of the Statute Indicates that Customers Who Use Demand Meters are Ineligible for Standard Service**

The Legislature has stated that statutes are to be interpreted according to the plain meaning rule:

The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.<sup>4</sup>

A corollary canon of statutory construction is that "statutes should be construed so that no part of a legislative enactment is to be treated as insignificant and unnecessary, and there is a presumption of purpose behind every sentence, clause or phrase in a legislative enactment."<sup>5</sup>

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<sup>2</sup> Proposal of the Connecticut Light and Power Company for the Procurement of Standard Electric Service and Supplier of Last Resort Service ("CL&P Plan") at 23.

<sup>3</sup> *Id.*

<sup>4</sup> Conn. Gen. Stat. § 1-2z.

<sup>5</sup> *Rowe v. Plastic Design*, 37 Conn. App. 131, 136 (1995) (internal quotation marks omitted).

The SOLR statute states that “an electric distribution company shall serve customers that are not eligible to receive standard service . . . as the supplier of last resort.”<sup>6</sup> A separate statutory provision defines the class of customers that are eligible for Standard Service:

“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.”<sup>7</sup>

Thus, the statute indicates that customers who use a demand meter are ineligible for Standard Service irrespective of whether their maximum demand is less than 500 kW.

Despite this plain and unambiguous language, the utilities urge the Department to adopt a contrary interpretation. Specifically, CL&P writes:

Consistent with the United Illuminating Company’s proposed interpretation of § 16-244c(c)(1)(B) in its February 14, 2006 comments in Docket No. 06-01-08, CL&P is interpreting the reference to “demand meter” in § 16-244c(c)(1)(B) to mean that only those customers with a demand of 500kW or more, who are on demand rates, are excluded from Standard Service and must therefore receive SOLR Service. *Every customer that uses less than 500 kW will therefore receive Standard Service even if they have a demand meter.*<sup>8</sup>

The problem with the utilities’ reasoning is that it contravenes the plain meaning of the statute and renders the phrase “does not use a demand meter” void. In a weak attempt to give meaning to that phrase, the utilities imply that customers who have a maximum demand of 500 kW or more and are not on demand rates would be eligible for Standard Service. But there are

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<sup>6</sup> Conn. Gen. Stat. § 16-244c(e)(1).

<sup>7</sup> Conn. Gen. Stat. § 16-244c(c)(1) (emphasis added).

<sup>8</sup> CL&P Plan at 23 (emphasis added).

no such customers.<sup>9</sup> The Department should reject the utilities' interpretation, construe the statute as it is written and confirm that customers who use demand meters are ineligible for Standard Service even if their maximum demand is less than 500 kW.

**B. Interpreting the Statute Based on its Plain Meaning Would Exclude Less Than Ten Percent of the Utilities' Customers (All Non-Residential) From Standard Service – A Sensible and Workable Result**

UI tried to demonstrate that the plain meaning of the statute was unworkable because all of its customers have metering systems that are capable of measuring demand.<sup>10</sup> To that end, it maintains that the Legislature did not intend to “expose the entire customer base to the volatility of a ‘last resort’ service.”<sup>11</sup> A closer examination of UI's metering techniques indicate that only 9 percent of its 320,000 customers<sup>12</sup> actually have a demand meter within the meaning of § 16-244c(c)(1)(B). Encompassed in that 9 percent are all of UI's customers that have a demand in excess of 500 kW.

Approximately 30,000 of UI's customers have a true demand meter.<sup>13</sup> UI calls these “smart meters” because they automatically register and internally store demand data.<sup>14</sup> The remaining 290,000 customers use what UI calls “dumb meters” that do not internally register and store demand data. UI's claim that these are “demand meters” within the meaning of § 16-

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<sup>9</sup> See CL&P Response to Data Request OCC-01 (reporting that approximately 1,200 customers representing 28% of the Company's load have a maximum demand of 500 kW or more and “all of these customers receive service that is measured using a demand meter . . . .”); UI Response to Interrogatory OCC-8 (responding that it has 283 customers whose demanded exceeded 500 kW and “all of these customers have a meter at their premise that is capable of recording demand”).

<sup>10</sup> UI Response to Interrogatory OCC-8.

<sup>11</sup> *Id.*

<sup>12</sup> UI's Company Profile indicates that it serves more than 320,000 customers in the New Haven and Greater Bridgeport areas. See <http://www.uinet.com/about/copro.asp>.

<sup>13</sup> UI Response to Interrogatory OCC-8.

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

244c(c)(1)(B) is based on the company's ability to use other electronic equipment, not located on customer premises, to poll the dumb meters frequently and to store that information in other devices. Frequent meter reading, however, whether it be by electronic means or by the neighborhood meter reader, does not convert a simple meter into a demand meter. The Department should construe the Standard Service statute for UI to exclude customers who either have a demand in excess of 500 kW *or* have a demand meter (in UI's parlance, a "smart meter.") This interpretation is compelled by the plain language of the statute and will result in the exclusion of 9 percent of UI's business customers from Standard Service eligibility.

The percentage for CL&P is comparable. CL&P reports that it has just over 105,000 customers that take service on a demand meter, including all of the 1,200 customers with a demand in excess of 500 kW.<sup>15</sup> These 105,000 customers represent approximately 8 percent of CL&P's total customer population of 1.2 million.<sup>16</sup>

In summary, the plain meaning of the statute results in less than 10 percent of the utilities' customers being ineligible for Standard Service, and none of these customers are residential. This is a perfectly sensible result. To be sure, it cannot be characterized as absurd or unworkable. The Department therefore should confirm that customers who use demand meters are ineligible for Standard Service even if their maximum demand is less than 500 kW.

RESA also recommends that the Department confirm that a business enterprise with several meters or locations (e.g. a chain of grocery stores) constitutes a single customer for purposes of measuring the maximum demand under the Standard Service statute. This

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<sup>15</sup> CL&P Response to Data Request OCC-01.

<sup>16</sup> See CL&P Statistics at <http://www.cl-p.com/companyinfor/indexcompanyinfo.asp>

interpretation is sensible because such enterprises typical procure energy on a bulk basis, aggregating the electricity needs of their various business locations.

**C. CL&P's Request With Respect to Special Contract Customers Should be Rejected**

The SOLR statute explicitly states that it “shall not apply to customers purchasing power under contracts entered into pursuant to section 16-19hh.”<sup>17</sup> In light of this provision, CL&P asks the Department to confirm that “all special contract customers and flexible pricing customers under Conn. Gen. Stat. § 16-19hh will receive Standard Service, not SOLR Service, regardless of whether or not they use more or less than 500 kW.”<sup>18</sup> RESA is perplexed by CL&P's request.

Special contract customers are the largest energy consumers in the State. Hence, it is untenable to think that the Legislature intended for these customers to be eligible for Standard Service when it inserted the above quoted provision into the SOLR statute. It is much more likely that the Legislature intended for these customers to be held to the specific terms of their contract. The Department should reject CL&P's request or, at a minimum, require CL&P to clarify its rationale and the impact of this decision before ruling on CL&P's proffered interpretation.

**II. PROCUREMENT OF SOLR SERVICE POWER SUPPLY**

CL&P's Plan calls for the procurement of SOLR Service supply on a quarterly or semiannual basis through laddered contracts with one-year terms.<sup>19</sup> It claims that this approach

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<sup>17</sup> Conn. Gen. Stat. § 16-244c(e)(1).

<sup>18</sup> CL&P Plan at 24.

<sup>19</sup> CL&P Plan at 10-11.

is optimal because the laddered, one-year contracts will provide “rate stability” for SOLR customers.<sup>20</sup> The statute, however, does not even mention stability as a goal of SOLR service rates. Rather, it requires the utilities to establish the SOLR Service price monthly, evincing the Legislature’s clear expectation that supply contracts would be of short duration to enable SOLR service rates to reflect timely market signals.<sup>21</sup>

UI proposes to procure SOLR and Standard Service power supply together. This proposal eviscerates the Legislature’s intent to divide customers into two classes and renders the monthly pricing requirement meaningless. The Department should reject these plans and order the utilities to procure SOLR Service power supply through contracts with one-month terms.

**A. The Legislature Did Not Mandate Laddered Contracts and Stable Rates for SOLR Service**

The statute enacted by the Legislature does not provide specific principles governing the procurement of SOLR Service power supply. It simply reads: “The Department shall determine a price for [SOLR] customers that reflect the full cost of providing the electricity on a monthly basis.”<sup>22</sup> Contrary to the utilities’ assertions, overlapping contracts of extended terms and rate stability are not legislative goals of SOLR Service.

If the Legislature had intended these requirements, it would have incorporated them into the SOLR statute as it did for Standard Service. With respect to the latter, the Legislature explicitly stated that the procurement plans approved by the Department “shall require that the portfolio of service contracts be procured in an overlapping pattern of fixed periods at such time and in such manner and duration as the department determines to be most likely to produce just,

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<sup>20</sup> CL&P Response to Data Request DPUC-01, Q-EL-004.

<sup>21</sup> Conn. Gen. Stat. § 16-244c(e)(2).

<sup>22</sup> *Id.*

reasonable and reasonably stable rates while reflecting underlying wholesale prices over time.”<sup>23</sup>

It also provided that Standard Service supply contracts should “be for terms of not less than six months . . . .”<sup>24</sup> The fact that the Legislature did not mandate laddered contracts of specific terms and stable rates in the SOLR statute indicates that these are not goals of SOLR Service. Indeed, to read the statute to implicitly embody these requirements contradicts the express provision that SOLR Service be priced monthly. It also contravenes the overarching purpose of the SOLR statute – to foster a robust and enduring retail market in Connecticut.

## **B. SOLR Service Power Supply Should be Procured Monthly**

In order to give meaning to the statutory requirement of monthly pricing, the Department should order the utilities to procure SOLR Service power supply through contracts of one-month terms. This approach: (1) is administratively feasible; (2) would foster retail competition; and (3) would yield other desirable benefits discussed in RESA’s April 3, 2006 Comments and summarized below.

### **1. Monthly Procurements are Administratively Feasible**

UI attempts to justify its plan in part by arguing that short-term contracts yield high administrative costs.<sup>25</sup> This view was refuted by James Shuckarow, who testified on behalf of CL&P at the Hearing. Mr. Shuckarow explicitly stated that the procurement of SOLR Service power on a monthly basis is “doable.” Monthly procurements are plainly a viable option.

### **2. Monthly Procurements Will Foster Retail Competition**

Monthly procurements will allow a robust retail market to emerge and endure in Connecticut because the SOLR Service rates will reflect timely price signals. This dynamic will

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<sup>23</sup> *Id.* at § 16-244c(c)(3).

<sup>24</sup> *Id.*

<sup>25</sup> UI Proposed Plan for the Procurement of Standard Service (“UI Plan”) at 4.

