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October 9, 2012

Kimberley J. Santopietro
Executive Secretary
Public Utilities Regulatory Authority
10 Franklin Square
New Britain, CT 06051

Re: Docket No. 12-06-02: Request for PURA Review of Power Procurement Plan

Dear Ms. Santopietro:

Enclosed please find the Written Exceptions of the Retail Energy Supply Association in connection with the above-referenced matter. The Retail Energy Supply Association requests oral argument.

I certify that a copy hereof has been sent to all participants of record as reflected on the Public Utilities Regulatory Authority's (Authority) service list as of this date. A copy has also been filed with the Authority as an electronic web filing and is complete.

Please do not hesitate to contact me if you have any questions or require additional information. Thank you.

Very truly yours,



Joey Lee Miranda

Enclosure

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REQUEST FOR PURA REVIEW OF POWER : DOCKET NO. 12-06-02
PROCUREMENT PLAN :
: OCTOBER 9, 2012

**WRITTEN EXCEPTIONS OF THE
RETAIL ENERGY SUPPLY ASSOCIATION**

The Retail Energy Supply Association (“RESA”)¹ hereby submits its written exceptions in response to the Public Utilities Regulatory Authority’s (“Authority” or “PURA”) Draft Decision dated October 3, 2012 (“Draft Decision”) in connection with the above-referenced proceeding. RESA also requests oral argument.

BACKGROUND

During the 2011 legislative session, the Connecticut General Assembly passed Public Act 11-80, *An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut's Energy Future* (the “Act”). Section 92 of the Act (now codified at Connecticut General Statutes section 16-244m) requires the Department of Energy and Environmental Protection’s (“DEEP”) Power Procurement Manager (“Manager”) to “develop a plan for the procurement of electric generation services and related wholesale electricity market products that will enable each electric distribution company to manage a portfolio of contracts to reduce the average cost of standard service while maintaining standard

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. 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.

service cost volatility within reasonable levels”² Pursuant to Connecticut General Statutes

Section 16-244m:

Each procurement plan *shall* provide for the competitive solicitation for load-following electric service and *may* include a provision for the use of other contracts, including, but not limited to, contracts for generation or other electricity market products and financial contracts, and *may* provide for the use of varying lengths of contracts. If such plan includes the purchase of full requirements contracts, it shall include an explanation of why such purchases are in the best interests of standard service customers.³

Pursuant to Connecticut General Statutes Section 16-244c (as amended by the Act):

Such plan shall require that the portfolio of service contracts be procured in such manner and duration as the authority 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 shall 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.⁴

On June 1, 2012, pursuant to Connecticut General Statutes section 16-244m, the Manager submitted a proposed Power Procurement Plan for Standard Service (“Plan”) for review and approval.⁵ The Plan establishes the following procurement strategies for The United Illuminating Company (“UI”): For the remaining 30% of its 2013 Standard Service load, UI will continue to procure full requirements service (“FRS”) in accord with its usual practice. However, the procurement will be for twelve (12) month contracts for ten percent (10%) tranches to be procured quarterly, creating a portfolio of overlapping service terms, with the start of delivery not exceeding six (6) months from bid day. The Manager, in consultation with UI, may revise the number of tranches per service term (or the percentage of load per tranche) in the

² Conn. Gen. Stat. § 16-244m(a).

³ *Id.* (emphasis added).

⁴ Conn. Gen. Stat. § 16-244c(c)(3) (emphasis added).

⁵ *See, generally*, State of Connecticut Power Procurement Plan for Standard Service, dated June 1, 2012.

future if the total Standard Service load changes significantly due to migration or reverse migration.⁶

The Plan further “recommends that CL&P [The Connecticut Light and Power Company] continue to procure full requirements Standard Service”⁷ However, it also gives CL&P the option to propose to serve as the load-serving entity (“LSE”) and to engage in active portfolio management for up to twenty percent (20%) of its Standard Service load for 2013.⁸ The portfolio for that portion of CL&P’s Standard Service load that is not self-managed will be procured in the same manner as described for UI.⁹

On July 16, 2012, the DEEP Commissioner delegated his authority to review and approve the Plan to the Authority.¹⁰ On July 19, 2012, the Authority issued a Notice of Proceeding and Request for Written Comments offering interested persons an opportunity to submit written comments on the Plan.¹¹ On August 1, 2012, various participants, including RESA, submitted written comments in response to the Notice. On September 6, 2012, the Authority held a hearing on the Plan.

On October 3, 2012, the Authority issued the Draft Decision. RESA now hereby submits its written exceptions in accordance with the schedule established by the Authority.

WRITTEN EXCEPTIONS

RESA respectfully requests that the Authority consider these written exceptions and reconsider the aspects of the Draft Decision discussed more fully below before issuing a final decision. In particular, RESA urges the Authority in its final decision to reject the Plan’s

⁶ Plan at 111-12.

⁷ *Id.* at 113.

⁸ *Id.*

⁹ *Id.* at 113-16.

¹⁰ *See, generally*, July 16, 2012 Revision to the July 12, 2011 Delegation of Authority.

¹¹ *See* Notice of Proceeding and Request for Written Comments, dated July 19, 2012 (“Notice”).

recommendation that CL&P be permitted to self-manage any portion of its load as such self-management will lead to increased risks to ratepayers without any meaningful ability for the Authority to exercise regulatory oversight over CL&P's procurement decisions.

I. A MANAGED PORTFOLIO APPROACH UNNECESSARILY GAMBLES RATEPAYER MONEY FOR THE "OPPORTUNITY TO DEMONSTRATE SAVINGS"

Connecticut General Statutes section 16-244m requires that the Plan provide "for the competitive solicitation for load-following electric service" in a manner that "will enable each electric distribution company to manage a portfolio of contracts to reduce the average cost of standard service while maintaining standard service cost volatility within reasonable levels."¹²

As the Draft Decision specifically concludes the modified FRS structure proposed in the Plan "meets the requirements of the statutory language."¹³ In support of this conclusion:

The Authority finds that reducing the time period between the awarding of the contract and delivery, shortening the time between the submittal of bids and approval, shortening the laddering time frame, and overlapping the service terms and procurement schedule are prudent steps that will most likely produce *just, reasonable, and reasonably stable rates while reflecting wholesale market rates over time*. The technical meeting before the Authority on the day following the approval of the full requirements contract will give the PURA the opportunity to review the results to "*insure competition, guard against favoritism, improvidence, extravagance, fraud and corruption, and secure a reliable electricity supply while avoiding unusual, anomalous or excessive pricing*."¹⁴

Despite these findings, the Draft Decision goes further and permits CL&P to actively manage up to twenty (20%) percent of its 2013 Standard Service load ("Managed Portfolio").¹⁵ However, the Draft Decision does so based on a finding that "*if* the benefits do not outweigh the costs, the Authority can reconsider the Plan in future annual proceedings reviewing the proposed

¹² Conn. Gen. Stat. § 16-244m(a).

¹³ Draft Decision at 6.

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* at 7.

procurement plan.”¹⁶ This finding essentially allows CL&P to experiment and gamble with ratepayer funds as there is no evidentiary support in the record that benefits will actually be achieved or that such benefits will outweigh the costs. Rather, “the self-managed portion of the SS load provides *an opportunity* to demonstrate savings for customers.”¹⁷ The Draft Decision further recognizes that in exchange that for this “opportunity,” customers will be exposed to more rate volatility.¹⁸

As the Plan itself recognizes, this gamble may not pay off as any potential savings will likely be offset by the additional administrative costs and financial risks that CL&P will incur to undertake a Managed Portfolio. Indeed, the Plan specifically states that allowing CL&P to assume the LSE role “must take into consideration the *additional costs* of investments that are required to manage a portfolio of resources, which would otherwise be the responsibility of the full requirements service supplier.”¹⁹ Because CL&P will be able to collect all of its prudently incurred, just and reasonable costs associated with the Managed Portfolio, ratepayers have no meaningful protection from these additional costs. Under an exclusive FRS procurement structure, competitive wholesale providers manage those functions, relieving CL&P and its customers from the risks and costs inherent in such an approach. While FRS contracts include the cost of energy portfolio management, credit and administrative costs of making forward and other derivative transactions, the costs of trading with bilateral and exchange counterparties, and setting aside capital or credit capacity to meet ISO New England (“ISO-NE”) and/or other counterparty requirements,²⁰ *all of those same costs will be incurred by CL&P* if it undertakes a

¹⁶ Draft Decision at 7 (emphasis added).

¹⁷ *Id.* at 6 (emphasis added).

¹⁸ *Id.*

¹⁹ Plan at 105 (emphasis added).

²⁰ *Id.* at 71.

Managed Portfolio approach. However, the Draft Decision ignores the inefficient and duplicative nature of a Managed Portfolio approach as well as the added cost impact on Connecticut ratepayers. Rather, the Draft Decision simply finds that “CL&P has the ability to self-manage a portion of the SS [Standard Service] load as CL&P and its affiliates have done in the past and are currently performing.”²¹ Under a Managed Portfolio procurement model, CL&P must piece together a portfolio from a range of different physical and financial products. These products could and often do include short, medium, and long-term physical contracts, financial swaps, financial collars, and transmission rights, combined with purchases from the day-ahead and real-time markets.²² There is *no* evidence that CL&P is able to disaggregate the elements of all requirements, load following service, acquire those elements separately, and reassemble the elements into a deliverable load following service more efficiently than the wholesale suppliers currently performing that function. Additionally, under the Managed Portfolio model, CL&P must actively monitor the market and attempt to time procurement to achieve the lowest possible cost while maintaining the desired level of hedging to protect against market volatility.²³ There is also *no* evidence to support a finding that CL&P can perform this function any better than wholesale suppliers.

As the foregoing demonstrates, there is absolutely *no* basis for the Authority to find that a Managed Portfolio approach will satisfy the statutory requirement that the Plan “enable each electric distribution company to manage a portfolio of contracts to *reduce* the average cost of standard service while maintaining standard service cost volatility within reasonable levels.”²⁴

Moreover, there is nothing in Connecticut General Statutes section 16-244m that requires that the

²¹ Draft Decision at 7.

²² Comments of the Retail Energy Supply Association, dated August 1, 2012 (“RESA Comments”), at 10.

²³ *Id.*

²⁴ Conn. Gen. Stat. § 16-244m(a) (emphasis added).

EDCs be permitted to self-manage any portion of their load.²⁵ Rather, Connecticut General Statutes section 16-244m simply requires that if the Plan “includes the purchase of full requirements contracts, it shall include an explanation of why such purchases are in the best interests of standard service customers.”²⁶ In approving the modified FRS structure proposed in the Plan, the Draft Decision has already made such a finding.²⁷

Stripped to its core, the essential claim of those advocating change to a Managed Portfolio approach is that, given the *opportunity*, CL&P can manage its portfolios in a manner that *may* be cheaper for ratepayers than the FRS procurement process. Yet, this purported hypothesis is supported by little more than conclusory assertions as to potential benefits and does not constitute substantial evidence sufficient to support a conclusion²⁸ that a Managed Portfolio approach will satisfy the statutory requirement that the Plan “enable each electric distribution company to manage a portfolio of contracts to *reduce* the average cost of standard service while maintaining standard service cost volatility within reasonable levels.” In fact, the Plan provides *no detail* on how CL&P could potentially achieve cost savings or provide for a projected reduction to the average cost of Standard Service; rather, it leaves to CL&P the discretion to prepare an active portfolio management proposal without further opportunity for public input,

²⁵ September 6, 2012 Hearing Transcript (“Tr.”) at 139-40.

²⁶ Conn. Gen. Stat. § 16-244m(a).

²⁷ See Draft Decision at 6.

²⁸ Cf. *Lord Family of Windsor, LLC v. Town of Windsor Inland Wetlands and Watercourses Commission*, 103 Conn. App. 354, 365 (2007), *aff’d*, 288 Conn. 669 (2008) (finding an agency’s actions arbitrary and capricious because its conclusions were based on nothing more than “mere speculation”); *accord Martland v. Woodbury Zoning Comm’n*, 114 Conn. App. 655, 666-67 (2009) (finding that a substantial evidence “must *do more than create a suspicion* of the existence of the fact to be established”) (emphasis added); see also Docket 08-07-02, *Application of Becker Associates to Become an Electric Efficiency Partner, Submit a Technology for Eligibility, or Receive a Grant*, Final Decision, dated December 17, 2008, at 12 (refusing to rely on conjecture or the opinion of the applicant); Docket 07-04-27, *DPUC Review of Long-Term Renewable Energy Contracts--Round 2 Results*, Final Decision, dated January 30, 2008, at 45 (refusing to rely on speculation and conjecture).

including input from the Office of Consumer Counsel (“OCC”) or wholesale suppliers who engage in such activities on a regular basis.²⁹

Conversely, as the Draft Decision itself recognizes, a modified FRS structure is in the best interest of ratepayers because it “will most likely produce just, reasonable, and reasonably stable rates while reflecting wholesale market rates over time.”³⁰ Indeed, consumers realize the best results possible by having all their Standard Service load procured through an FRS structure that employs competitive, fully transparent requests for proposals from the wholesale market because this procurement mechanism maximizes the opportunity for market participation, provides the most accurate price signals and avoids forcing Connecticut ratepayers to shoulder risks that are better managed by the competitive market. Conversely, allowing CL&P, who has failed to demonstrate that it is in a better position to serve this function than the wholesale suppliers currently doing so, to self-manage its load would reduce market participation, add potential above-market costs and send distorted price signals to customers.³¹ Thus, RESA urges the Authority in its final decision to reject the Plan’s option to allow CL&P to actively manage up to twenty (20%) percent of its 2013 Standard Service load because such an approach will impose added risks and costs on ratepayers and adversely affect customer choice.

II. A MANAGED PORTFOLIO APPROACH WILL LEAD TO HIGHER RISKS AND INCREASED COSTS BEING SHIFTED TO CONNECTICUT RATEPAYERS

Although the Plan itself recognizes that allowing CL&P to engage in a Managed Portfolio “must take into consideration the *additional costs* of investments that are required to manage a portfolio of resources, which would otherwise be the responsibility of the full

²⁹ Plan at 116-17; RESA Comments at 9-10; Tr. at 110-11.

³⁰ Draft Decision at 6.

³¹ RESA Comments at 4.

requirements service supplier,”³² the Draft Decision fails to acknowledge any of those added costs. As the Plan indicates, allowing the EDCs to engage in active portfolio management creates “staffing requirements, infrastructure costs, and a need to develop and implement policies and procedures for front-office, middle-office, and back-office functions.”³³

In particular, “[a]ctively managing Standard Service load requires an LSE to have the capability and resources to forecast, bid and schedule load each day with ISO-NE, and to develop and implement hedging strategies.”³⁴ Based on the increased cost associated with these functions alone, the Plan does not recommend that UI engage in a Managed Portfolio approach.³⁵ Nevertheless, the Plan finds that “there would be little incremental cost for NUSCO to also provide the LSE function to CL&P.”³⁶ While it may be true that *NUSCO’s* incremental costs may not increase significantly, the costs that *Connecticut ratepayers* pay for these services could increase substantially as employee and overhead costs that are currently allocated to Public Service Company of New Hampshire’s (“PSNH”) customers are reallocated to and imposed on Connecticut Standard Service customers.³⁷ However, the Draft Decision fails to acknowledge any of these costs.

There will also be *added costs* associated with Dodd-Frank compliance, a marked increase in ISO-NE credit assurance, credit support and other indirect costs (e.g., unfavorable accounting impacts, etc.).³⁸ However, these costs, which could have significant impact on the

³² Plan at 105 (emphasis added).

³³ *Id.* at 73.

³⁴ *Id.* at 106.

³⁵ *Id.* at 111-12 (finding that “the incremental cost for UI to add the requisite manpower resources, credit facilities, infrastructure, and risk management policies and procedures to assume the LSE responsibility for Standard Service is likely to exceed the expected benefit”)

³⁶ *Id.* at 106.

³⁷ RESA Comments at 11; Tr. at 114-16.

³⁸ Plan at 107-09.

costs of a Managed Portfolio, are not quantified in the Plan nor are they acknowledged in the Draft Decision.

Moreover, CL&P will be required to engage in risk management through hedging to reduce the exposure to market price, quantity, and regulatory risk and “the cost of hedging *necessarily adds to the expected cost* of the hedged portfolio.”³⁹ Indeed, as the Plan recognizes: (a) load-following energy products are high cost products and would require load management resources that are otherwise avoidable; (b) block forward energy products cannot be one hundred percent (100%) hedged and impose ISO-NE credit assurance requirements; (c) indexed block forward energy products offer limited value compared to other products; (d) dispatchable energy products involve a premium payment and could result in unfavorable accounting impacts and increased direct and indirect costs; and (e) other options and derivatives require rigorous assessment to determine their usefulness.⁴⁰ Neither the risks nor the costs associated with these products are acknowledged in the Draft Decision.

Moreover, the Draft Decision fails to address the most significant risk from putting CL&P into the active portfolio management role: the possibility that it will assemble a portfolio that becomes “above market” or “out of the money.” That is, the average cost to supply customers from the portfolio is higher than the cost to serve those customers at the prevailing wholesale market price. In addition, in any given hour, if the power from any contracts CL&P enters into is less than its customers' requirements, CL&P has to make "spot" purchases of power from the market.⁴¹ ISO-NE will charge CL&P the hourly clearing (spot) price for these

³⁹ Plan at 70 (emphasis added).

⁴⁰ *See Id.* at 73-78.

⁴¹ RESA Comments at 13; Tr. at 37.

additional last-minute purchases.⁴² Further, if CL&P enters into contracts for more power than it needs at any point in time, the excess power can be sold into the market at the hourly clearing price. Although CL&P can offset that cost to the extent of any revenues it receives for having sold the power into the wholesale market, it will still have to pay the contract price to its supplier for that power. To the extent that CL&P incurs additional costs because it buys additional power at the spot price or because it is unable to recover the full cost of any excess power it has under contract, those costs would be passed onto CL&P customers.⁴³

FRS contracts shift price and quantity risk to the wholesale suppliers;⁴⁴ thus, providing consumers with price insurance for the duration of the contract at little added cost.⁴⁵ Because they have bid a fixed price, these suppliers cannot seek to increase rates to Standard Service customers when market conditions change and the effects of customer migration impact their total cost of supply.⁴⁶ Under the Managed Portfolio approach, the results of CL&P's power purchase decisions, good or bad, are passed onto its Standard Service customers through its periodic Standard Service rate adjustments.⁴⁷ The Managed Portfolio approach would leave CL&P with the risk that, as power prices fall and customers leave Standard Service, CL&P (and, ultimately, Standard Service customers) will be left holding purchased power supply in excess of

⁴² RESA Comments at 13; Tr. at 37 (CL&P indicating that the "magnitude of purchases could vary depending on the number of energy blocks that we purchase.").

⁴³ RESA Comments at 13-14; Tr. at 65-66.

⁴⁴ Tr. at 11 (under FRS, the supplier "assumes all of the risk of serving that load asset, including market uncertainty, regulatory uncertainty, and any migration risk.").

⁴⁵ Prosecutorial Unit Response to Interrogatory RA-23, at 2 (indicating that the cost of such price insurance is *less than one mil*); Tr. at 139 (same); Tr. at 87 (indicating that for a "small premium," it is worth shifting certain risks to suppliers).

⁴⁶ RESA Comments at 6; Tr. at 111.

⁴⁷ Tr. at 112 (CL&P admitting that it is "absolutely correct" that the risk of out of market purchasing decisions are passed on to ratepayers).

Standard Service load requirements;⁴⁸ thereby, unnecessarily increasing the cost of supply to those customers that remain on Standard Service and leaving a small number of Standard Service customers to pay the costs associated with CL&P's procurement and hedging activities.⁴⁹

Prior to restructuring, the EDCs' customers bore the risk of uneconomic decisions, which resulted in billions of dollars in stranded costs that are still being recovered from ratepayers today and will be for years to come.⁵⁰ As a consequence, one of the primary rationales for the restructuring of the electric industry in the State of Connecticut was to remove the risk of uneconomic investment from ratepayers and place it on the shareholders of market players. Post-restructuring, the EDCs have not performed any better. For instance, NUSCO's purchases on behalf of PSNH, from 2006 through July 2010, were estimated to be *above-market* by \$233,585,606 or around **28 percent** of total purchases (\$839,128,484).⁵¹ Despite evidence of NUSCO's prior poor performance, the Draft Decision finds that "CL&P has the ability to self-manage a portion of the SS [Standard Service] load as CL&P and its affiliates have done in the past and are currently performing."⁵² However, NUSCO has clearly failed over the last several years to match, let alone beat, the market in making its purchasing decisions and there is no reason to believe that its future results will improve. In contrast to the current market design that places these financial risks on the FRS supplier's shareholders, under a Managed Portfolio

⁴⁸ While the oversupply could be resold in the market, if prices have fallen, it will have to be sold at a loss with such loss passed onto ratepayers.

⁴⁹ RESA Comments at 6-7.

⁵⁰ RESA Comments at 14 (citing Docket No. 99-02-05, *Application of The Connecticut Light and Power Company for Calculation of Stranded Costs*, Final Decision, dated July 7, 1999, at 83 (finding that CL&P's stranded costs were \$3,582,126,000); Docket No. 99-03-04, *Application of the United Illuminating Company for Calculation of Stranded Costs*, Final Decision, dated August 4, 1999, at 75 (finding that UI's stranded costs were \$801,300,000); Docket No. 99-03-35RE13, *DPUC Determination of the United Illuminating Company's Standard Offer – 2006 Reconciliation of CTA and SBC*, Final Decision, dated August 29, 2007, at 3 (finding that UI will not collect all of its stranded costs until 2015)).

⁵¹ RESA Comments at 14-15.

⁵² Draft Decision at 7.

approach, the costs associated with such poor trading decisions would be passed onto ratepayers.⁵³

As customer migration increases, these cost impacts become exacerbated. There has been significant migration of Standard Service customers to competitive supply. Indeed, as of July 31, 2012, 47% of residential customer load and 82.5% of Standard Service business load had switched to competitive supply.⁵⁴ As customers migrate off of Standard Service to competitive supply, the remaining Standard Service customers are exposed to upward pressure on the Standard Service rate.⁵⁵ This problem does not occur with the FRS approach because migration costs are managed by the wholesale FRS suppliers through the bidding process, relieving the upward pressure on Standard Service rates.⁵⁶

Based on the foregoing, it is difficult to see how Standard Service customers will come out ahead in the long run, relative to the current policy of exclusive FRS procurement. Thus, rather than gambling with ratepayer funds for an “*opportunity to analyze* the results for *future* costs and benefits,”⁵⁷ RESA encourages the Authority to continue the existing FRS paradigm in Connecticut (as modified by the Plan) in which competitive providers concentrate on what they do best - providing market based generation supply options - and the EDCs concentrate on what they do best - providing reliable and cost effective transmission and distribution services. Accordingly, RESA urges the Authority in its final decision to reject the Plan’s recommendation that CL&P be permitted to self-manage any portion of its load.

⁵³ RESA Comments at 15; Tr. at 111-12.

⁵⁴ Tr. at 7-8.

⁵⁵ Conn. Gen. Stat. § 16-244m(c) (“[t]he costs of procurement for standard service shall be borne solely by the standard service customers.”).

⁵⁶ RESA Comments at 15; Tr. at 11.

⁵⁷ Draft Decision at 7 (emphasis added).

IV. A MANAGED PORTFOLIO WILL NOT SEND CUSTOMERS PROPER PRICE SIGNALS

The Draft Decision finds that the modified FRS structure proposed in the Plan “will most likely produce just, reasonable, and reasonably stable rates while *reflecting wholesale market rates over time.*”⁵⁸ RESA agrees. However, there is no evidence to support nor does the Draft Decision make a similar finding regarding the Managed Portfolio approach.

As the Plan recognizes, under a Managed Portfolio structure, there would be a true-up of retail rates from one rate period to the next.⁵⁹ In particular, under the Managed Portfolio approach, CL&P’s customers would pay Standard Service rates that are based on a forecast of CL&P’s expected costs. The difference between the forecasted costs and actual costs, once known, would be charged or credited to customers after the period for which those costs were incurred.⁶⁰ This reconciliation process means that CL&P’s Standard Service rates, at any point in time, would be higher or lower than the actual cost for that period. As a consequence, although customers would be told that they are purchasing energy at a fixed price; that is not really the case. If customers stay on CL&P’s systems, they would actually be charged a rate that appears fixed but has a hidden variable component that is added to the true cost of providing service during the subsequent reconciliation period.⁶¹ Although CL&P performs certain reconciliations now, those reconciliations are limited to specific components of their generation rates (i.e., congestion costs), not the entire cost of supplying Standard Service load.⁶² A Managed Portfolio

⁵⁸ Draft Decision at 7 (emphasis added).

⁵⁹ Plan at 73.

⁶⁰ RESA Comments at 16; Tr. at 111-12.

⁶¹ RESA Comments at 16.

⁶² Tr. at 64.

approach would add reconciliations to account for CL&P's inaccurate forecasting of the market prices as well as inaccurate forecasting of customer migration.⁶³

CL&P would also be required to forecast their retail customers' load on an hourly basis and factor in the extent to which retail customers may switch to competitive retail suppliers or back to Standard Service from competitive suppliers throughout the year based on changes in market prices, the price of CL&P's energy service and other factors.⁶⁴ Obviously, it is impossible for CL&P to correctly forecast all of the factors that go into determining the quantity and cost of its purchased power requirements. As a result, CL&P will have to periodically tally up the cost of the hourly imbalances incurred and adjust its rates for prior period over or under collections of its energy service costs. This reconciliation occurs in addition to the need to adjust CL&P's rates for changes in their actual costs for the coming period.⁶⁵ By adding further reconciliations, customer price signals become even more distorted because the price customers pay becomes even less reflective of the prevailing market price of power.⁶⁶ However, the Draft Decision fails to address the negative impact these reconciliations will have on customer rates and on the accuracy of information that customers receive to assist in their energy management decisions.

Furthermore, reconciliations significantly undermine the State's conservation, energy efficiency and dynamic pricing strategy objectives as delineated in the recently released Draft 2012 Comprehensive Energy Strategy ("Draft Strategy"). The Draft Strategy recommends that CL&P submit a detailed plan to the Authority "for a multi-stage roll out of advanced meters in a manner that minimizes stranded costs, prioritizes adoption by customers most likely to benefit

⁶³ Tr. at 111-12.

⁶⁴ RESA Comments at 16-17.

⁶⁵ *Id.* at 17.

⁶⁶ Tr. at 114 (CL&P indicating desire to "always be in an overcollected position")

from their use, and provides for hybrid rate structures and/or affordable basic service for customers opting out of any installation program.”⁶⁷ Moreover, the Draft Strategy recognizes that “[c]entral to any rollout strategy will be pricing that reflects the cost of procuring electricity (higher during periods of peak demand and lower when demand is low) so as to provide commensurately positive and negative signals to customers.”⁶⁸ However, only when customers know the actual cost of their power supply can they make appropriate decisions regarding demand response and energy efficiency modifications and adopt innovative dynamic pricing products designed to better manage their electricity consumption and costs. Conversely, if customers do not know the true cost of their power supply, they are discouraged from adopting new solutions to meet their energy needs.⁶⁹ Reconciliations are also harmful to the development of a competitive retail market because they distort the relationship between the EDCs’ actual cost of providing power during a particular period and the market price of power.⁷⁰ Thus, to not undermine Connecticut’s long-term energy strategies, future product innovation and in order to ensure that customers are presented with the most accurate cost regarding their power supply options, RESA urges the Authority in its final decision to reject the Plan’s recommendation that CL&P be permitted to self-manage any portion of its load.

V. THE AUTHORITY WILL NOT HAVE ANY MEANINGFUL ABILITY TO EXERCISE REGULATORY OVERSIGHT OVER CL&P’S MANAGED PORTFOLIO PROCUREMENT DECISIONS

In approving the modified FRS structure proposed in the Plan, the Draft Decision modifies the Plan “to include consultation with the PURA Directors on bid day, following the

⁶⁷ 2012 Comprehensive Energy Strategy for Connecticut, Draft for Public Comment, dated October 5, 2012, at 86.

⁶⁸ *Id.* (emphasis added).

⁶⁹ RESA Comments at 17.

⁷⁰ *Id.*

PM's [Procurement Manager's] decision, but prior to UI or CL&P notifying the selected bidders."⁷¹ The Draft Decision further finds that such consultation "will give the PURA the opportunity to review the results to 'insure competition, guard against favoritism, improvidence, extravagance, fraud and corruption, and secure a reliable electricity supply while avoiding unusual, anomalous or excessive pricing.'"⁷² However, the Draft Decision does not give the Authority any meaningful ability to exercise regulatory oversight over CL&P's Managed Portfolio procurement decisions.

During the course of the hearing, there were concerns raised with the Plan's proposal that the Manager be given the authority to select the winning FRS bids without any input from the Directors.⁷³ Based on these concerns, the Manager indicated his willingness to modify the process so that the Directors would make the ultimate decision regarding the winning bids.⁷⁴ Under this modified process, the Manager, the Authority's consultant (Levitan & Associates), the OCC *and* the Directors would all have an opportunity to review the bids and provide input regarding the winning bids.⁷⁵ Conversely, under the Managed Portfolio approach, *only* CL&P and the Manager would have input on CL&P's Managed Portfolio plan, any changes to that Managed Portfolio plan, and CL&P's individual procurement decisions;⁷⁶ the Directors would simply be expected to accept those decisions and then pass the costs of such decisions onto ratepayers.⁷⁷ Although the Draft Decision recognizes that the Manager "will actively oversee,

⁷¹ Draft Decision at 7.

⁷² *Id.* at 6.

⁷³ Tr. at 46-51.

⁷⁴ Tr. at 51.

⁷⁵ Tr. at 39-46.

⁷⁶ Tr. at 35, 38, 110-11 (CL&P would file separate plan with Manager for the Managed Portfolio that would not be subject to the Directors approval and would not include input from the OCC).

⁷⁷ Tr. at 106.

review, and access CL&P's performance in managing this limited portfolio,"⁷⁸ because as with the FRS procurement, Managed Portfolio procurements involve "significant dollars,"⁷⁹ as with FRS procurement, *the Directors* should exercise regulatory oversight over CL&P's Managed Portfolio plan, any changes to that plan and any procurement decisions under that plan. Otherwise, the Directors will be limited to an after-the-fact review of those decisions when determining what costs should be borne by ratepayers. However, because CL&P's decision-making processes will not be transparent, it will be nearly impossible for the Authority to conduct a meaningful review of the numerous costs⁸⁰ incurred in the wholesale market. Consequently, it would not be realistic to expect the Authority to be able to assess the prudence of CL&P's conduct.⁸¹

In order to attempt to minimize the cost of purchased power to customers, CL&P will need to balance numerous considerations to arrive at the best strategy for purchasing power on the wholesale market. These considerations include significant factors such as the hour by hour requirements of customers and forecasts for market prices. In any given hour, if the power from the contracts that CL&P has entered into is less than customer requirements, CL&P will have to make "spot" purchases of power from the market.⁸² In such cases, ISO-NE will charge CL&P the hourly clearing (spot) price for these additional last-minute purchases. If CL&P enters into contracts for more power than needed at any point in time, the excess power can be sold into the market at the hourly clearing price. Although CL&P can offset that cost to the extent of any revenues it receives for having sold the power into the wholesale market, it will still have to pay

⁷⁸ Draft Decision at 6.

⁷⁹ Tr. at 50-51.

⁸⁰ Tr. at 11 ("There are many component parts, including energy, capacity, ancillary services, renewable portfolio standard requirements, ISO charges, and several other transaction costs.")

⁸¹ RESA Comments at 18.

⁸² RESA Comments at 18; Tr. at 36-37.

the contract price to its supplier for that power.⁸³ To the extent that CL&P incurs additional costs because it buys additional power at the spot price or because it is unable to recover the full cost of any excess power under contract, those costs will be passed onto customers.⁸⁴

While it is theoretically possible that the Authority could require that such costs be borne by CL&P's shareholders, the Authority can only disallow such costs if it finds that they were imprudently incurred. In practice, however, it is nearly impossible to make such a finding because it involves an after-the-fact review and requires the Authority to fully understand the information available to CL&P at the time it made each decision at issue. This process puts the Authority in the position of essentially trying to second guess CL&P's hour-by-hour decisions, decisions that were made over the course of several months, a year or more.⁸⁵ A meaningful review of these decisions, if one could be conducted at all, would require the Authority to comb through a staggering amount of data regarding not just the hourly clearing price of power in New England during the period at issue, but also forward price information that was available at each decision point, bilateral arrangements that might have been entered into but were not, hedging mechanisms and other data.⁸⁶ Such a review effectively requires the Authority to have available all of the same real time information that was available to CL&P, much of which is in CL&P's possession or control.

During the course of the proceeding, the Manager tried to minimize these concerns by indicating that he intends to work closely with CL&P in making procurement decisions and that CL&P's decisions would be benchmarked against a proxy price.⁸⁷ However, the Manager also

⁸³ RESA Comments at 18.

⁸⁴ RESA Comments at 18; Tr. at 65-66, 111-12.

⁸⁵ RESA Comments at 19; Tr. at 105-06.

⁸⁶ RESA Comments at 19; Tr. at 149-51.

⁸⁷ Prosecutorial Response to Interrogatory RA-22.

indicated that the proxy price would not provide a ceiling on the costs that CL&P would be permitted to incur in actively managing its portfolio.⁸⁸ This is especially troubling given that the proxy prices that have been developed recently “have been significantly higher than we’ve seen as bids.”⁸⁹ Moreover, if CL&P can exceed the proxy prices and those proxy prices are higher than what would otherwise be available, it is difficult to see how the Managed Portfolio approach could satisfy the statutory requirement that the Plan provide for procurements intended to *reduce* the average cost of Standard Service.⁹⁰

In sum, the many transactions entered into by CL&P and the situation confronting it when it entered into each transaction are not transparent to the Authority. The result is that the Authority will face a serious challenge in attempting to review CL&P’s Managed Portfolio procurement decisions in any meaningful way. Conversely, maintenance of third party supply for Standard Service requirements provides a vehicle by which the Authority can ensure that the EDCs are obtaining their market purchases at the lowest reasonable cost. Thus, RESA urges the Authority in its final decision to reject the Plan’s recommendation that CL&P be permitted to self-manage any portion of its load.

CONCLUSION

For all of the foregoing reasons, RESA respectfully requests that the Authority consider these written exceptions before issuing a final decision. In particular, RESA urges the Authority in its final decision to reject the Plan’s recommendation that CL&P be permitted to self-manage any portion of its load as such self-management will lead to increased risks to ratepayers without

⁸⁸ Tr. at 122-23.

⁸⁹ Tr. at 123.

⁹⁰ See Conn. Gen. Stat. § 16-244m(a).

any meaningful ability for the Authority to exercise regulatory oversight over CL&P's procurement decisions.

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CERTIFICATION

I hereby certify that a copy of the foregoing was sent via electronic mail or first-class mail, postage pre-paid to all participants of record, on this 9th day of October 2012.

A handwritten signature in black ink that reads "Joey Lee Miranda". The signature is written in a cursive style with a large initial "JL" and a stylized "M".

Joey Lee Miranda