

June 7, 2013

MAINE PUBLIC UTILITIES COMMISSION
Inquiry into Residential and Small
Commercial Customer Standard Offer Service
and Customer Protection

REPLY COMMENTS OF
RETAIL ENERGY
SUPPLY
ASSOCIATION

The Retail Energy Supply Association (“RESA”)¹ hereby submits its reply comments in response to the Public Utilities Commission’s (“Commission”) April 9, 2013 Notice of Inquiry (“Notice”) and the initial comments of other participants in connection with the above-referenced matter. RESA will not reiterate all of its positions from its initial comments here but rather will address the issues raised by the other participants in their initial comments.

I. STANDARD OFFER PROCUREMENTS SHOULD BE CONDUCTED TO PROVIDE MARKET-REFLECTIVE PRICING TO CUSTOMERS

In its initial comments, Central Maine Power Company (“CMP”) supported the continuation of the current Staggered Term approach for Standard Offer procurements (i.e., conducting procurements by soliciting three year bids annually to supply one third of the load) because “[t]here is no compelling reason to deviate from the very successful current process.”² However, as CMP noted, a large number of its small commercial and residential customers (“Small Customers”) continue to take Standard Offer service.³ The significant number of Small

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; 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.

² Comments of Central Maine Power Company, dated May 15, 2013 (“CMP Comments”), at 3.

³ *Id.*

Customers still receiving Standard Offer service is due, in part, to the current Staggered Term procurement approach, which prevents customers from receiving accurate pricing signals. For retail competition, including competitive demand response, energy efficiency, and renewable offerings, to continue to develop, Standard Offer rates must reflect market price signals.

As RESA observed in its initial comments, accurate price signals provide customers with the information they need to understand the value of competitive, retail electric market offerings and to encourage load shifting, conservation, and energy efficiency. In contrast, creating a disconnect between retail prices and the wholesale market sends inaccurate pricing signals with regard to the value of competitive, retail offerings and the cost-effectiveness of demand-side management strategies.⁴ Thus, as discussed more fully in its initial comments,⁵ RESA encourages the Commission to abandon the existing Staggered Term approach and transition in an orderly fashion to shorter term procurements of the entire Small Customer load at one time.

In its initial comments, NextEra Energy Power Marketing, LLC (“NextEra”) “supports adoption of a solicitation process pursuant to which 50 percent of all residential and small commercial standard offer load (in Central Maine Power Company’s and Bangor Hydro Electric Power Company’s service areas) is procured every six months.”⁶ While this procurement approach would provide more market-reflective pricing than exists under the current procurement process, it would still obscure market signals and create a barrier to high value competitive offerings. Thus, for the reasons discussed more fully in its initial comments,⁷ RESA

⁴ Comments of Retail Energy Supply Association, dated May 15, 2013 (“RESA Comments”), at 3-4.

⁵ *Id.*

⁶ Comments of NextEra Energy Power Marketing, LLC, dated May 15, 2013 (“NextEra Comments”), at 3-4.

⁷ RESA Comments, at 3-4.

recommends that the Commission transition to procurements that are conducted every (6) months for the *entire* Small Customer Standard Offer load.

II. COMPETITIVE ELECTRICITY PROVIDERS SHOULD BE PLACED ON A MORE LEVEL PLAYING FIELD WITH STANDARD OFFER PROVIDERS

In their initial comments, NextEra and CMP opposed changes that would place Competitive Electricity Providers (“CEPs”) on more even footing with Standard Offer Providers (“SOPs”) with respect to uncollectible risk. In particular, NextEra and CMP opposed changes to the partial payment allocation and payment plan rules.⁸ In support of their positions, NextEra and CMP assert that CEPs should take steps to better protect themselves from uncollectible risk by performing credit screening⁹ and negotiating “credit terms on a case-by-case basis with customers to address customer-specific credit concerns.”¹⁰ While CEPs routinely engage in such activities for medium and large commercial customers, given the sheer number of Small Customers, it is simply not efficient to engage in these activities for that market sector. Moreover, these types of credit screening processes prevent customers, including low-income customers, that could most benefit from the products offered by CEPs that reduce electricity costs or provide added value.

In its initial comments, Exelon Generation Company, LLC (“Exelon”) “recommends that a purchase of receivables program be fully explored as a way to level the playing field”¹¹ A well-designed, non-resource purchase of receivables (“POR”) program would significantly enhance the opportunity for a prosperous retail competitive electric market for Small Customers in Maine. For instance, in Connecticut, which has such a program, more than eighty percent

⁸ See NextEra Comments, at 4-6; CMP Comments, at 2-7.

⁹ Cf. CMP Comments, at 7.

¹⁰ NextEra Comments, at 6.

¹¹ Comments of Exelon Generation Company, LLC, dated May 15, 2013, at 3.

(80%) of smaller commercial load and almost fifty percent (50%) of residential customer load is served by competitive providers.¹² However, the development of a POR program can take a significant amount of time. In fact, although the Massachusetts General Court passed legislation *in 2008* authorizing POR and the Massachusetts Department of Public Utilities opened a proceeding *more than three (3) years ago* to implement POR, POR is still not available.¹³ Thus, while RESA agrees with Exelon that the Commission should fully explore the development of POR, RESA encourages the Commission to begin by taking the interim steps of modifying its rules to: (a) adopt a pro rata payment hierarchy pursuant to which customer payments are distributed between the transmission and distribution utility (“T&D Utility”), SOP and CEP in proportion to each entity’s charges on the customer’s bill; and (b) permit CEP charges to be included in T&D Utility payment arrangements to the same extent as SOP charges.

By making these interim changes, the Commission can more quickly establish a paradigm in which the costs and risks associated with the provision of retail service by SOPs and CEPs are materially consistent; thereby, placing CEPs on a more level playing field with the SOPs and enhancing the opportunity for a prosperous retail competitive electric market in Maine. In this way, all customers, regardless of economic status, can benefit from the provision of retail products and services through the interplay of numerous CEPs actively competing with each other on an equal footing with the SOPs. Thus, for the reasons discussed more fully in its initial comments,¹⁴ RESA recommends that the Commission modify its rules to adopt a pro rata payment hierarchy pursuant to which customer payments are distributed between the T&D

¹² See CT PURA Docket 06-10-22, *DPUC Monitoring the State of Competition in the Electric Industry*, April Migration Reports.

¹³ See, generally, MA DPU Docket 10-53, *Investigation by the Department of Public Utilities regarding Purchase of Receivables pursuant to G.L. c. 164, § 1D and G.L. c. 164, § 76*.

¹⁴ RESA Comments, at 5-9.

Utility, SOP and CEP in portion to each entity's charges on the customer's bill; and (b) permit CEP charges to be included in T&D Utility payment arrangements to the same extent as SOP charges.

In its initial comments, CMP also asserted that Section 3202 of Title 35-A prohibits a pro rata payment hierarchy.¹⁵ However, as RESA observed in its initial comments, since customer payments under a pro rata payment allocation methodology would be applied proportionally to both the T&D Utility and CEP charges, to the extent the customer had a past due balance for CEP charges, it would *also* carry a past due balance for T&D Utility charges and those delinquent T&D Utility charges would form the basis of the customer's disconnection.¹⁶ Accordingly, a pro rata payment hierarchy would not run afoul of Section 3202 of Title 35-A.

III. EXISTING CONSUMER PROTECTION RULES SHOULD BE VIGOROUSLY ENFORCED

In its initial comments, CMP noted that it has received "frequent complaints . . . with respect to CEP marketing activities" and "an alarming number of complaints" about misrepresentations regarding CEP affiliations with the T&D Utility.¹⁷ RESA fully supports efforts to improve the integrity of the retail energy market and market participants, and consideration of additional steps that can help consumers to make better informed choices. However, the Commission's current consumer protection rules already provide adequate protections to customers, especially Small Customers, and also provide a reasonable and workable retail market framework. Thus, if these provisions are comprehensively and

¹⁵ CMP Comments, at 4-7. CMP further asserted that certain Commission rules would prevent the adoption of a pro rata payment hierarchy and would prohibit a T&D Utility from including CEP charges in its payment plans. However, the Commission opened this proceeding "to examine the extent to which existing rules and practices *should be modified* . . ." Notice, at 1 (emphasis added).

¹⁶ RESA Comments, at 8.

¹⁷ CMP Comments, at 8.

consistently enforced, it is conceivable that the concerns highlighted in CMP's comments could be ameliorated. Accordingly, before imposing unnecessary and potentially unworkable solutions, as an initial step, RESA urges the Commission to take full advantage of the current enforcement mechanisms¹⁸ it has available to investigate and sanction any improper behavior.

Since the inception of retail access, the Commission has instituted measures that were designed to enhance consumer protections, codify marketing standards and improve the clarity of information provided to consumers¹⁹ and, in particular, Small Customers.²⁰ For instance, as RESA noted in its initial comments, the existing Commission rules require CEPs to provide Small Customers with extensive disclosures,²¹ including an initial Terms of Service document and annual notices of their right to obtain this document²² and disclosures regarding the market risks associated with variable priced products.²³ These existing disclosure requirements already ensure that customers receive clear and accurate pricing information.

The Commission's existing rules also include minimum notice requirements regarding changes in the Terms of Service²⁴ and cancellation of service,²⁵ which provide customers with notice of material changes to their competitive supply agreements upon renewal. Moreover, the Maine Uniform Trade Practices Act already prohibits a CEP from creating a likelihood of confusion or of misunderstanding as to its affiliation, connection, or association with another

¹⁸ See Ch. 305, § 3.

¹⁹ See, generally, Ch. 305, § 4.

²⁰ See Ch. 305, § 4(B).

²¹ Ch. 305, § 4; Ch. 306.

²² Ch. 305, § 4(B)(1)(a).

²³ Ch. 305, § 4(D).

²⁴ Ch. 305, § 4(B)(5).

²⁵ Ch. 305, § 4(B)(6).

person, such as a T&D Utility.²⁶ Given Maine’s existing, strong consumer protections, RESA recommends that the Commission refrain from making any changes to its existing consumer protection rules at this time and instead focus on investigating and sanctioning CEPs that fail to comply with those rules. However, if the Commission decides that changes to its rules are warranted, before instituting any changes, RESA encourages the Commission to undertake a complete investigation of the impact any such changes may have on consumers and their participation in the competitive market.

IV. THE OPT-OUT FEE SHOULD NOT BE APPLIED TO SMALL CUSTOMERS

In its initial comments, NextEra favored applying the Standard Offer opt-out fee to Small Customers.²⁷ In support of its position, NextEra asserted that such an application “would reasonably balance the need to mitigate the migration risk faced by SOPs . . . with customers’ ability to replace standard offer service with CEP service.”²⁸ However, CMP noted, “[i]t is difficult to envision a sufficient number of customers in this class acting in such a manner as to pose a discernible migration risk to SOPs.”²⁹ RESA agrees.

As RESA observed in its initial comments, there is simply no evidence that Small Customers would have the inclination or ability to time their switch from Standard Offer to competitive supply in order to arbitrage the difference between their total electricity costs under the Standard Offer rate versus the CEP price.³⁰ In fact, RESA is not aware of any other New England state that imposes an opt-out fee (or similar charge) when a customer switches from default service to competitive supply and none of those states have reported inappropriate

²⁶ 10 MRSA § 1212.

²⁷ NextEra Comments, at 6-7.

²⁸ *Id.* at 7.

²⁹ CMP Comments, at 9.

³⁰ RESA Comments, at 11.

gaming activity. Additionally, although the CEPs serving these customers may have the ability to engage in such behavior, the Commission's existing rules already deter CEPs from engaging in such behavior by requiring them (rather than customers) to pay the opt-out fee.³¹ Thus, further anti-gaming protections are not required.

Further, as CMP pointed out, "the costs of administering an opt-out fee program for this class would likely exceed any benefit to be obtained."³² RESA agrees. Indeed, as RESA indicated in its initial comments, given that Small Customers are less familiar with the competitive market, when switching from one CEP to another, they are more likely to accidentally trigger the opt-out fee by entering Standard Offer service for a brief period. While these customers would be eligible for a one-time waiver of the opt-out fee, because each waiver request is individually reviewed and decided on its unique facts, the process can create an unnecessary administrative burden and could discourage customers from re-entering the competitive market.³³ Thus, since the Commission's current rules already protect against any anticipated gaming and given the unwieldy waiver process, for the reasons discussed more fully in its initial comments,³⁴ RESA encourages the Commission to refrain from making any changes to the applicability of the opt-out fee.

V. T&D UTILITIES SHOULD NOT BE INVOLVED IN CEP BUSINESS DECISIONS

In its initial comments, CMP requested that the Commission consider "issues related to how deposits for customers who receive service from a CEP should be calculated and later

³¹ Ch. 301, §2(C)(3) (requiring an opt-out fee equal to each customer's two highest bills from CEPs or aggregators who induce a set of Small Customers with an aggregate demand of greater than 50kW to return to competitive supply within 12 months of returning to Standard Offer).

³² CMP Comments, at 9.

³³ RESA Comments, at 12.

³⁴ *Id.* at 11-12.

applied to customer accounts.”³⁵ RESA opposes a policy that would permit a T&D Utility to collect security deposits on behalf of CEPs because such a policy would place the T&D Utility in the position of making business decisions for the CEP (e.g., the appropriate amount of the security deposit, how and when it should be applied, etc.) that are wholly outside the T&D Utility’s customer relationship, knowledge and purview. If a CEP believes that a security deposit is warranted, the CEP should be the entity responsible for calculating, collecting and applying such deposit to a customer’s account. Thus, rather than forcing CEPs to cede this aspect of their customer relationship to the T&D Utilities, RESA urges the Commission to continue to permit CEPs to determine if and how they will calculate, collect and apply security deposits for their customers’ accounts.

VI. THE COMMISSION SHOULD FOREGO CHANGES THAT WOULD CREATE FURTHER BARRIERS TO COMPETITION AND CONSIDER IMPLEMENTING RETAIL MARKET ENHANCEMENTS

In its initial comments, NextEra expressed its support for “the Commission’s recent initiatives aimed at expanding the service offerings available to standard offer customers, including dynamically priced standard offer service.”³⁶ While RESA recognizes that the Commission recently designed a Standard Offer dynamic pricing program for CMP customers, it urges the Commission to refrain from expanding that program further.

Because customers now have many more supply options in the market, Standard Offer has reached the point where it can be viewed more as a transitional service for *all* customer classes as it was originally intended to be.³⁷ Hence, RESA encourages the Commission to maintain a market structure paradigm that allows CEPs to concentrate on what they do best -

³⁵ CMP Comments, at 9-10.

³⁶ NextEra Comments, at 7.

³⁷ See Docket 97-739, Order Provisionally Adopting Rule and Statement of Policy Basis, at 5.

providing market based generation supply pricing and related service options - and the T&D Utilities concentrate on what they do best - providing reliable and cost effective transmission and distribution services. To do so, the competitive market should be provided the opportunity to offer solutions before creating further regulatory programs that impose greater costs on all ratepayers, especially low income customers, and can create unintended barriers to high value competitive offerings. Accordingly, dynamic pricing options, including any type of time varying rates, should remain optional products and should be exclusively offered by the competitive retail market, and the T&D Utilities should be required to maintain basic rate designs, rather than engaging in new rate designs that include dynamic pricing or other time varying rate options for generation service.³⁸

While RESA acknowledges that the Commission originally authorized CMP to offer dynamic Standard Offer pricing because it was concerned that a sufficient competitive market for such products had not yet developed,³⁹ in jurisdictions with well-designed market structures, competitive providers have been able to offer customers high value products, including dynamic pricing products that encourage conservation, energy efficiency and renewable energy solutions. For instance, in Texas and Pennsylvania, competitive providers are now offering a plethora of competitive supply products enabled by smart meters that encourage customers to move their consumption away from peak price periods, such as free power during the evenings or on the weekends. However, competitive suppliers can only provide these high value offerings when unnecessary barriers to competition are removed and they are placed on a more level playing field with the default service provider. Thus, in order to provide customers with greater

³⁸ If the Commission determines it is warranted, RESA has no objection to the T&D Utilities offering dynamic pricing options for *distribution* service.

³⁹ See Docket 2010-132, Order (Mar. 20, 2012), at 2-3.

opportunities to take advantage of the many high value competitive offers that are available, for the reasons discussed more fully in its initial comments,⁴⁰ RESA recommends that, as part of this proceeding, the Commission consider opportunities to further engage and empower customers by providing: (a) improved and timely access to customer data; and (b) enhanced opportunities for customers to access the competitive market.

As RESA noted in its initial comments, as more and more customers have smart meters installed, both the customers and the T&D Utilities have real-time access to more detailed information about the customer's load profile. Unfortunately, the varying, and sometimes antiquated policies and procedures regarding the provision of customer data to CEPs prevent these providers from having appropriate access to this data.⁴¹ For instance, although CMP currently has access to hourly customer data, it does not make this data available to CEPs.

Allowing Competitive Suppliers to have real-time access to their customers' hourly interval meter data has the potential to unleash a wave of innovation capable of delivering value and benefits to customers that are not currently available in Maine. Many of these programs encourage load shifting, conservation, and energy efficiency. By providing these programs on a competitive basis, suppliers are able to either reduce the amount of ratepayer dollars needed to fund these programs or to offer additional programs that supplement those funded by ratepayers. Thus, for the reasons discussed more fully in its initial comments,⁴² RESA encourages the Commission, as part of this proceeding, to consider opportunities for providing improved and timely access to customer data.

⁴⁰ RESA Comments, at 12-17.

⁴¹ RESA Comments, at 12.

⁴² *Id.* at 12-16.

RESA also encourages the Commission to consider implementing a program that would allow customers to actually choose a CEP at the time of service initiation or reinstatement. As RESA observed in its original comments, because the current rules automatically place new and, in some circumstances, moving customers on Standard Offer, at a time when they may be most open to considering the range of available energy supply options, and CEPs then must incur marketing expenses to win those customers away from the SOP, CEPs are at a competitive disadvantage. In addition, when moving customers wish to retain their existing CEP but are not able to do so, it causes customer dissatisfaction and confusion, requires CEPs to spend additional funds to reacquire the customers, and increases the administrative burden and expense for both CEPs and the T&D Utilities who must process the service terminations and re-enrollments. Thus, rather than simply defaulting customers to Standard Offer service, upon service initiations, moves or reinstatements, CEPs should be given an equal opportunity to win those customers as their own. Accordingly, for the reasons discussed more fully in its initial comments,⁴³ RESA encourages the Commission to consider implementing a program that would allow customers to actually choose a CEP at the time of service initiation or reinstatement, rather than simply placing customers on Standard Offer service.

CONCLUSION

RESA appreciates the opportunity to submit these reply comments and looks forward to discussing these issues in more detail during the course of this proceeding.

⁴³ RESA Comments, at 16-17.

Respectfully submitted,
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