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Via First Class Mail and E-Filing

September 14, 2011

Ms. Karen Geraghty
Administrative Director
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

Re: **Docket No. 2011-270: MAINE PUBLIC UTILITIES COMMISSION Inquiry into Long-Term Contracting**

Dear Ms. Geraghty:

Enclosed please find the Comments of Retail Energy Supply Association in connection with the above-referenced matter.

Please feel free to contact me if you have any questions or require additional information. Thank you.

Sincerely,

Katherine S. Kayatta

Enclosure

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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2011-270

September 14, 2011

MAINE PUBLIC UTILITIES COMMISSION
Inquiry into Long-Term Contracting

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1] hereby submits its comments in response to the Public Utilities Commission's ("Commission") August 17, 2011 Notice of Inquiry ("Notice") in connection with the above-referenced matter.

BACKGROUND

During its 2006 session, the Maine Legislature enacted An Act to Enhance Maine's Energy Independence and Security, which authorized the Commission to direct investor-owned transmission and distribution utilities ("T&D Utilities") to enter into long-term contracts for capacity resources.[2] In response, the Commission adopted rules to implement the legislation.[3] Subsequent to the promulgation of the Commission's Long-Term Contracting and Resource Adequacy rules, there were several statutory amendments to the long-term contracting statute and the Commission adopted corresponding amendments to its implementing rules.[4]

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[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; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant 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] P.L. 2005, ch. 677, Part C (codified at 35-A M.R.S.A. § 3210-C).

[3] *Order Provisionally Adopting Rule and Statement of Factual and Policy Basis*, Docket No, 2006-557 (Jan. 2, 2007) ("2007 Statement"); *Order Adopting Final Rule*, Docket No. 2006-557 (Jun. 21, 2007).

[4] *See Order Provisionally Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2010-260 (Nov. 10, 2010) ("2010 Statement").

Most recently, during the 2011 session, the Maine Legislature enacted An Act to Reduce the Energy Prices for Maine Consumers ("Act").[5] The Act adds a new provision to help ensure that long-term contracts for capacity, energy and renewable energy credits ("RECs") provide benefits to ratepayers.[6] Specifically, Section 3 of the Act provides, in relevant part, that the Commission may direct the T&D Utilities to enter into long-term contracts "only when such contracts are in the best interest of customers."[7]

As a precursor to a rulemaking to implement amendments to the Commission's rules regarding Long-Term Contracting and Resource Adequacy[8] consistent with the amendments to the long-term contracting statute, the Commission issued the Notice. In the Notice, the Commission invited interested parties to comment on specific questions "and on any other relevant issue."[9] RESA hereby submits its comments in response to the Notice.

RESA is nonprofit organization and trade association that represents the interests of its members in regulatory proceedings. RESA's members include providers of competitive electric supply products to customers in the five restructured New England states, including Maine.

COMMENTS

In considering the issues in this proceeding, RESA urges the Commission to keep in mind the primary purpose of the Electric Restructuring Act: "to create a competitive market for retail electricity supply service and to prevent future creation of new stranded costs for which the State's ratepayers would be responsible."[10] Moreover, because long-term contracts will rarely be in the best interests of ratepayers, RESA also encourages the Commission to continue to take "a

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[5] P.L. 2011, ch. 413.
[6] Act at § 3.
[7] *Id.*
[8] 65-407 CMR 316.
[9] Notice at 2-3.
[10] 2007 Statement at 3.

cautious approach in interpreting the language and intent of the Act and in implementing its provisions so as not to unnecessarily disrupt the operation of the competitive market and to minimize the risk of creating new stranded costs."[11]

I. LONG-TERM CONTRACTS CARRY SIGNIFICANT RISKS TO RATEPAYERS.

Prior to restructuring, when a regulated utility was the monopoly supplier to retail customers, it did not face a migration risk if it entered into long term commitments and then wholesale prices fell, leaving the utility's supply costs above the prices available in wholesale markets. It did, however, face disallowances based on theories that the commitments were imprudent or not "used and useful." In fact, these very "above market" costs created by some long term utility commitments were among the primary drivers behind the initiatives to move from regulation to retail competition.

The Commission has previously determined that "[t]he primary purpose of our long-term contracting authority is to reduce ratepayer costs . . . ."[12] Although long-term contracts with unregulated generators may seemingly provide a ratepayer hedge against market prices, these long-term contracts carry several significant risks to ratepayers. In particular, long-term contracts: (1) are based on forecasts and may actually lock customers into paying higher rates if the market prices fall; (2) send distorted pricing signals, crushing the development of a competitive market; (3) may result in rate shock at the expiration of the long-term contracts; and (4) provide disincentives for energy efficiency to which customers are otherwise attuned when accurate price signals are sent out.

If the T&D Utilities predict long-term prices and the market brings lower prices, then ratepayers will be locked in to higher prices for several years. If a utility makes long-term supply

[11] *Id.*
[12] 2010 Statement at 6.

commitments to acquire a large amount of power and then wholesale prices fall, the utility's rates for commodity supply will be above prevailing wholesale market prices. In that case, customers will have an incentive to migrate to competitive providers, leaving the utility to recover the cost of its above-market commitments from its remaining customers.[13] As the utility attempts to collect this amount from a shrinking pool of default service customers, this action will raise the price even further and, in turn, induce further migration away from default service.

It is also a problem if a utility's long term supply commitments turn out to be below market prices for an extended period for several reasons. First, customers will migrate back to the utility and retail competition will dry up. Second, when the utility's below-market supply commitments finally end, there will be the prospect of rate shock. Lastly, creating a disconnect between retail prices and the wholesale market will also send inaccurate pricing signals and provide disincentives for energy efficiency to which customers are otherwise attuned when accurate price signals are sent.

Thus, RESA encourages the Commission to continue to proceed cautiously as it continues its inquiry in this proceeding and its subsequent amendments to the Long-Term Contracting and Resource Adequacy rules "so as not to unnecessarily disrupt the operation of the competitive market and to minimize the risk of creating new stranded costs."[14]

II. THE POTENTIAL BENEFITS OF LONG-TERM CONTRACTS ARE SPECULATIVE.

Section 3 of the Act provides, in relevant part, that the Commission may direct the T&D Utilities to enter into long-term contracts "***only*** when such contracts are in the best interest of

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[13] *See* 35-A M.R.S.A. § 3210-C(8) ("A price differential existing at any time during the term of the contract price and the prevailing market price . . . must be reflected in rates . . . .).
[14] *Id.*

customers."[15] However, the purported benefits that would justify long-term contracts suffer from the disadvantage that they are speculative at best. The Commission has determined that long-term contracts will provide ratepayer value if they: (1) foster generation development, (2) reduce prices to ratepayers and/or (3) smooth price fluctuations.[16] However, these three foundations are no more than myths.

The first myth is that long-term contracts are needed to foster generation development. This is simply inaccurate, particularly in the case of renewable resources which are getting built where they can get sited, where they can get transmission and where they make good economic sense.

The second myth is that long-term contracts will reduce prices. This is also inaccurate. Generators are no more anxious than any other entity to be the party left holding the risk of accepting contract terms less favorable than they would receive from selling on a shorter term basis in the market. Thus, generators will build these risks into the prices at which they are willing to enter into long-term contracts in the form of risk premiums; thereby, increasing costs to ratepayers.

The third myth is that long-term contracts will smooth price fluctuations. Any fixed position is a hedge that carries with it inherent risks. Even if prices remain low for the duration of the contract periods, after the terms expire, customers may experience jarring rate shocks from the delayed price volatility.

CONCLUSION

Given the significant risks associated with long-term contracts and the speculative benefits that may be achieved, RESA encourages the Commission to continue to take "a cautious

[15] Act at § 3 (emphasis added).
[16] 65-407 CMR 316(5)(D)(1).

approach in interpreting the language and intent of the Act and in implementing its provisions . . . ."[17]

Respectfully submitted,
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[17] *Id.*