STATE OF MAINE
PUBLIC UTILITIES COMMISSION

INQUIRY CONCLUSIONS

November 13, 2013

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

Docket No. 2013-00200

WELCH, Chairman; LITTELL, and VANNOY, Commissioners

I. SUMMARY

Through this Statement, we present and discuss our conclusions regarding the various issues raised in our Inquiry into existing rules and practices related to residential and small commercial customer standard offer and competitive electricity provider services. The purpose of the Inquiry was to examine the extent to which existing rules and practices should be modified in light of recent increases in retail competition in these customer classes. The Inquiry also included more general considerations of standard offer procurement procedures.[1]

II. BACKGROUND

On March 7, 2013, Electricity Maine, LLC (Electricity Maine) submitted a petition for rulemaking to consider amendments to the standard offer rule (Ch. 301) and the consolidated billing rules (Ch. 322). According to Electricity Maine, its proposed amendments would remove protections that give standard offer providers (SOP) a competitive advantage or that act as impediments to further development of the retail competitive electricity provider (CEP) market, and that are no longer necessary or appropriate under current market conditions.

Specifically, Electricity Maine proposed:

(1) amending Chapter 301 to delete the purchase of receivables provision contained in Subsection 4(D);

(2) amending Chapter 322 to ensure that customer payments are allocated proportionally based on the percentage of charges on the customer's bill by the transmission and distribution (T&D) utility, SOP, or CEP; and

[1] Commissioner Littell concurs in part and dissents in part. See attached separate opinion.

(3) amending Chapter 322 to provide that when a T&D utility arranges a special or regular payment arrangement or budget payment plan, that arrangement or plan shall include the amount due to the T&D utility as well as the SOP or the CEP.

Electricity Maine also proposed that the Commission alter its current practice of bidding portions of the residential and small commercial standard offer load in staggered terms and instead award standard offer contracts every six months for 100 percent of the class. Electricity Maine stated that this change in bidding practice is necessary to allow competition for the residential and small commercial class to occur in the same market conditions as those that exist when standard offer is bid and to reduce the incentive for dramatic migration between standard offer service and CEP service driven solely by market timing differences.

On April 9, 2013, the Commission initiated an Inquiry into existing rules and practices related to residential and small commercial customer standard offer and competitive electricity provider services, as well as the possible need to address customer protection issues in light of the increase in competitive activity for residential and small commercial customers. On August 12, 2013 and October 3, 2013, the Commission issued two additional requests for comment on broader standard offer procurement issues. The following interested person provided comments in this inquiry: Electricity Maine, the Public Advocate, Central Maine Power Company, NextEra Energy Power Marketing, Excelon Generation Company, North American Power and Gas, Retail Energy Supply Association, Northeast Energy Solutions, and New Brunswick Power Generation Corporation.

III. DISCUSSION AND CONCLUSION

A. Standard Offer Procurement

1. Residential and Small Commercial/Staggered Terms

The Commission's practice with respect to residential and small commercial standard offer service has been to solicit and award bids every year for a three year term for one-third of the standard offer load in Central Maine Power Company (CMP) and Bangor Hydro Electric Company (BHE) service territories.[2]

The purpose of this approach is to mitigate market volatility, and thus prevent large changes in prices that could occur if supply for the entire residential and small commercial requirements was procured at a single point in time, e.g., once every year or six months. Because the approach, by design, smoothed out changes in market prices, the resulting standard offer prices would not track the market as well as if

[2] Because Maine Public Service Company's (MPS) system is smaller and not part of the ISO-NE system, the Commission generally requests standard offer bids for 100% of the load for all customer classes in the MPS service territory every two to three years.

the entire supply requirements were procured at one time. Although when the approach was adopted there was a reasonable amount of competition with respect to the large and medium classes, making it important to keep standard offer prices in sync with the market and providing customers with product choices and the ability to manage price volatility risk, this was not the case for the residential and small commercial classes. As a result, the Commission adopted the staggered term approach to smooth volatility in market prices.

With the increase in competitive providers serving the residential and small commercial classes in the CMP and BHE areas, it has become more important for standard offer prices to track the market, and products that allow customers to manage price volatility are likely to be available in the market. Accordingly, we will phase out the use of the staggered terms. We will move to yearly solicitations for the entire load for one year terms, rather than an every six month solicitation process as proposed by Electricity Maine. Annual solicitations will balance the need to maintain the residential and small commercial standard offer prices in line with market prices, while maintaining a greater level of rate stability and predictability than would occur with a six-month process.[3]

2. Other Standard Offer Procurement Matters

In the August 12, 2013 and October 3, 2013 requests for comment, the Commission sought input on other standard offer procurement issues, such as combining the residential/small commercial class with the medium class and procuring standard offer for all three classes once a year through two jointly issued RFPs, one for CMP customers and one for BHE customers. The Commission also sought comment on an alternative approach for the medium classes in which the medium class solicitation would occur once a year and the prices would be indexed to market prices in a similar manner as the Commission's current practice with the large classes.[4]

Commenters were generally opposed to an index pricing approach for the medium class, primarily due to the potential for customer confusion.

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[3] We will reconsider moving to a six-month approach in the future if the competitive market continues to develop for residential and small commercial customers.

[4] Over the last several years, the Commission has adopted an indexed price approach for the CMP and BHE large classes. The Commission has solicited such bids every six months. The current structure for the large class includes four components: (1) energy; (2) capacity; (3) fixed adder; and (4) uncollectible adder. The energy component paid by retail customers is determined by the Commission prior to every month based on electricity futures prices, while the amounts paid to the supplier reflect actual energy costs as assessed through the ISO-NE market settlement system. The capacity component and fixed adder component (which reflects all other costs) are set through the bid, and the uncollectible adder is set by the Commission prior to the final bids.

Commenters also expressed concern that an annual solicitation for fixed prices for a twelve month term for the medium class would increase risk and, thus, prices relative to the current practice of six-month solicitations.

In considering this issue, we balance the above concerns with practical and administrative aspects of standard offer procurement. In particular, combining all CMP and BHE standard offer load into one annual solicitation will minimize administrative and transaction costs, and should attract a more robust set of bidders than if the processes were conducted separately. We conclude that, at this point, a single annual solicitation for the three classes would be consistent with the promotion of a competitive market and maximize bidder participation to the benefit of customers.[5] Under this approach:

- Residential and Small Commercial Class: We will, as discussed above, phase out the staggered terms as the existing tranches expire and move to an annual solicitation for the entire class. At that point in time (March 2016), we will allow bids for the load in 20% increments to increase bidder flexibility and lower prices.

- Medium Class: We will conduct annual solicitations for fixed prices for twelve month terms in which prices may be different in each month.

- Large Class: We will conduct annual solicitations for twelve month terms using the same indexed approach described above.

B. Uncollectible Risk

The Commission's current standard offer rule (Ch. 301, section 4(D)) provides for a fixed uncollectible adder amount that relieves SOPs of bad debt risk and transfers that risk to utility ratepayers. This risk allocation mirrors a wholesale transaction for default service supply that is common in all other restructured states and serves to lower the risk and cost of standard offer service. Because CEPs do not have this protection against uncollectible uncertainty risk, Electricity Maine asserted that Maine's current rules provide SOPs an unfair competitive advantage over CEPs and, accordingly, the fixed adder should be removed.

In addressing this issue, an important consideration is the fact that, unlike CEPs, SOPs have no access to information about the identity or creditworthiness of their customers and must provide service to any and all customers that want to take standard offer. Therefore, SOPs cannot manage uncollectible risk in the same manner as competitive CEPs that know the identity of their customers and are not required to provide service to any customer. Exposing SOPs to actual bad debt risk rather than

[5] Pursuant to our standard offer rules, Chapter 301, sections 7 and 8, the next CMP and BHE service territory request for proposals for standard offer service will be consistent with the procurement approach described above.

using the fixed uncollectible adder approach would increase the risk to SOPs which would likely translate into increased standard offer prices. Accordingly, we will not change our current practice in this regard.

Similarly, we disagree with the proposed alternative approach that would relieve CEPs of uncollectible risk by essentially requiring utilities to purchase the receivables of CEPs and placing the CEPs uncollectible risk on ratepayers.[6] This approach would remove one important component of competition—which is the management of customer creditworthiness, customer payments and uncollectible risk and, thus, would be contrary to the promotion of a competitive electricity market for residential and small commercial customers.

C. Partial Payments

Under the Commission's current rule (Ch. 322, section 6), customer payments that cover some, but not all, of the bill (partial payments) are applied first to past due T&D utility and SOP charges, with the oldest charge paid first. When past due charges are of the same age, the T&D utility past due charges are paid first. Past due CEP charges are paid after the T&D utility and SOP's past due charges are paid. Once past due charges are paid, the remaining portion of any partial payment is applied first to current T&D utility charges, then to current SOP charges, and last to current CEP charges.

Electricity Maine stated that the SOP is therefore favored over the CEP in that the CEP is always paid last, and that the effect of these provisions is that CEPs experience higher levels of bad debt and their collection of bad debt extends out over longer periods of time. According to Electricity Maine, this adds cost and uncertainty to the CEP and, thus, raises CEP prices.

Electricity Maine's proposal regarding partial payments, however, implicates Title 35-A, section 3203(14) which specifies that customers can be disconnected for non-payment of standard offer charges, but prohibits disconnection for non-payment of CEP charges. Title 35-A, section 3203(14) specifies:

> **14. Disconnection restricted.** A transmission and distribution utility may not disconnect service to a consumer due to nonpayment of generation charges or any other dispute with a competitive electricity provider, except that the commission may permit disconnection of electric service to consumers of electricity based on nonpayment of charges for standard-offer service provided under section 3212.

This statute raises an issue with respect to disconnections notices and CEP partial payments, which the Commission has previously considered in adopting the

[6] We understand that this approach has been adopted in some states.

current partial payment rules. *Order Adopting Rule and Statement of Factual and Policy Basis,* Docket No. 1999-152 at 2-5 (Aug. 8, 2002). In the event that CEPs payments were on the same level with SOPs, a customer could receive a disconnection notice for an overdue utility/ SOP account and pay that amount. However, because some amount of that payment would go to a CEP before the utility/SOP account is satisfied, the customer would still be subject to disconnection. In the event that the utility includes the amount owed to a CEP which must be paid to, in essence, avoid disconnection, section 3203(14) is implicated and effectively violated. For these reasons, we will not reconsider our partial payment rules.

D. Payment Plans

Under current rules, when a T&D utility negotiates and implements a payment plan with a customer, the plan does not include CEP billed amounts. Electricity Maine proposed to amend Chapter 322, section 6 to provide for a single payment plan, arranged by the T&D utility, to address CEP amounts as well as T&D and SOP amounts, with any payments made under the plan being allocated proportionally among the T&D utility, SOP, and CEP. The change would result in only one payment, arranged by the T&D utility, with which the customer must agree and comply. The current rules effectively require a CEP to independently pursue collection of its bad debt and to attempt to enter into separate payment plans.

To the extent that payments under payment plans are allocated proportionally, the same issues with respect to section 3203(14) arise as discussed above. In addition to this problem, requiring a T&D utility to establish a payment arrangement that is binding on the customer and the CEP effectively puts the T&D in the position of making business decisions for a CEP and removes the CEP's ability to make business choices best suited for its particular business model. For example, to minimize bad debt write-offs, a CEP may have a policy of performing credits checks on all potential customers and immediately discontinuing service for non-paying customers. Requiring T&D utilities to establish payment arrangements for CEPs would be inconsistent with the competitive model and the CEPs ability to maintain certain business practices. Accordingly, we will not pursue this approach to payment plans.

E. Treatment of Deposits from CEP Customers

In Central Maine Power's credit and collections proceeding, (*Investigation of Central Maine Power Company's Credit and Collection Policies And Standard Offer Uncollectible Balances, Order on Reconsideration,* Docket No. 2010-327 (May 14, 2013), the Commission stated that the issue of deposits from customers taking service from CEPs should be addressed in this proceeding. Upon consideration, there may be reasons for a T&D utility to enter into an arrangement with a CEP to collect a deposit related to CEP service, assuming that such deposits are used to reimburse the CEP for non-payment. CEPs can also seek deposits directly from their customers if they so choose.

There is also an issue regarding deposits related to standard offer service that results from customers' ability to switch from standard offer service to competitive service or from competitive service to standard offer service. The issue is whether utilities should collect a deposit related to standard offer service if a customer is not currently taking standard offer service and, conversely, whether deposits related to standard offer service should be returned when a customer leaves standard offer to take service from a CEP. In any event, deposits collected that are related to standard offer service should be credited to the standard offer retainage accounts, with any excess amounts returned to the customers. We will consider these issues in more detail in a future proceeding.

F. Customer Protections

As a result of the recent increase in CEPs marketing and providing service to residential and small commercial customers, the NOI requested comment on whether the Commission should review and consider changes to its customer protection rules (Chapter 305 § 4). The major concerns that have arisen with increased residential competition have been:

- Misleading or inaccurate comparisons with standard offer prices
- Misrepresentation of association with the utility
- Automatic renewals at different terms
- Transfer of customer accounts among CEPs
- Disparate supplier/customer obligation regarding fixed terms

Accordingly the Commission will reopen the customer protection provisions of Chapter 305 to consider the following provisions:

- A requirement that any comparison with standard offer include the term length for both standard offer and the CEP offer;

- A prohibition in promotional or marketing activities on any suggestion that the CEP is associated with a utility, as well as a requirement for clear identification of an entity as a competitive provider of electricity not associated with the utility;

- A prohibition on automatic renewals without affirmative customer consent if the price or other significant terms (e.g., length of contract term) are changed;

- A prohibition of the transfer of customer accounts to another CEP unless the previous terms are honored, and customers are given the option to change suppliers; and

- A requirement that any contract that binds customers for a particular term also bind the supplier for a same term (e.g., contract cannot obligate customers for a 12 month term, while simultaneously allowing the supplier to terminate at any time).

Dated at Hallowell, Maine this 13th day of November, 2013

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Lanphear, Harry
Administrative Director

COMMISSIONERS VOTING FOR:	Welch Vannoy
COMMISSIONER DISSENTING IN PART	Littell

Dissenting and Concurring Opinion of Commissioner Littell

I join in all elements of the Inquiry Conclusions with the exception of the elimination of the three-year staggered term procurement cycle. I would delay that implementation by an additional one to three years.

Without making any attempt to time the electricity market, we need to be aware of the past, where we are now with electricity prices and what the future holds. I observe that all energy markets experts uniformly expect electricity prices in New England to begin to rise from current pricing. The extent of projected increases depends largely on assumptions and views of each expert. The Commission pays energy market experts for these types of projections to make various decisions in matters before us. Judging from these expert opinions, it is clear that there is a projected upward price trend and consensus we are near or already through a trough in energy prices.

The three-year staggering of the standard offer contracts has served to provide standard-offer electricity pricing that lags the market. In the recent falling market that standard offer price has been slightly more expensive. That has been the experience of the last several years as electricity prices have declined from the high prices of the 2008 and 2009. This is why in simple terms competitive electricity providers ("CEPs") have been able to underbid the standard offer and the competitive market has done well over the last three years. In the multiple-year falling market, the CEPs have been able to buy less expensive short term electricity to re-sell to their customers – thus the ability to price under the standard offer. The comments we received from energy market players as well as the Commission's expertise all support this view of the recent market trends.

In other matters, the Commission has based decisions on this view that natural gas prices and electricity prices are not likely to remain where they have been over the immediate past. Market experts think New England is likely to be in a rising price market and somewhat volatile market for the next several years and perhaps beyond. Because we are coming off of a declining market and expecting prices to increase, this is exactly the wrong time for ratepayers to take away the standard offer's three-year staggered terms – this decision will result in higher prices than a three-year procurement could provide for the next several years.

Because competitive markets generally have a price reduction benefit, I could support a transition that delays implementation to allow ratepayers the benefit of a three-year staggered procurement while the markets adjust to rising prices. Making the standard offer less attractive to ratepayers is of course the very reason the CEPs have made this petition because it will make their products more competitive. In the long run, this transition will likely be a good one for consumers but I do not think the Commission should disregard its experience in administering the standard offer with the price lag effect.

Since there is also evidence that this reduction in price volatility benefits ratepayers and there may be significant volatility in the next several years, I think the timing is particularly ill-suited to consumers on the standard-offer who may absorb more of these costs and experience more price changes than the prior three-year procurement cycle. I respectfully dissent.

I concur with other elements of the Inquiry Conclusions with the caution that many residential ratepayers on the standard offer have little interest in thinking too deeply about electricity markets and pricing. The standard offer is a formal electricity procurement process that captures the benefits of competitive bids for those consumers. The standard offer process allows electricity consumers to obtain the benefits of competitive bids without those customers needing to figure out annually the differences in electricity offers and needing to read the fine print in electricity contracts once a year. The standard offer is a valuable service for ratepayers and electricity consumers.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.