STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-235

August 5, 2010

MAINE PUBLIC UTILITIES COMMISSION
Long-Term Contracting for Offshore Wind Energy and Tidal Energy Projects

Comments of the National Energy Marketers Association

The National Energy Marketers Association (NEM)[1] hereby submits these comments pursuant to the Commission's July 20, 2010, Request for Comments on the rate impact limitation provision included in the legislature's recent enactment, An Act to Implement the Recommendations of the Governor's Ocean Energy Task Force [hereinafter "the Act"]. The Act requires the Commission to conduct a competitive solicitation for long term contracts for offshore wind and tidal energy demonstration projects. Also included in the Act is a provision that effectively limits the customer rate impact of the procurements so as not to exceed 0.145/cent per kwh, incorporating a limitation set forth in Title 35-A M.R.S.A. § 10110(4) for transmission and distribution utility conservation program assessments. The Commission requested comments on the statutory interpretation of the Act specifically as to whether all customers, or only distribution level customers (medium and small commercial and residential customers), will shoulder the 0.145 cent/kwh rate impact.

NEM submits that an important factor in the Commission's determination of customer applicability of the rate increase is the concomitant issue of the treatment of customers

[1] The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

that have chosen to purchase their energy from a competitive supplier. NEM recommends that the Commission find that the rate impact should be charged to those customers that are receiving utility commodity supply and directly benefitting from the long-term supply contracts. The costs of the long-term supply contracts should be added to the utility commodity rate. As a secondary alternative, the Commission should require that the rate impact be passed through to all customers, utility and shopping customers alike, on a non-discriminatory, competitively neutral basis through the utility delivery rates. NEM also recommends that any Renewable Energy Credits (RECs) associated with the long-term contracts should enure to the customers that pay for them, again, to ensure that shopping customers are treated in a competitively neutral manner.

In answering the question as to whether all customers or only distribution customers should bear the rate increase, the issue of the treatment of shopping customers must be considered. NEM submits that the appropriate manner to decide the issue is to require non-shopping utility commodity customers to bear the rate increase. Shopping customers will not benefit from the long-term contracts and should not be required to pay for them. The rate increase should properly be reflected in the utility commodity rate. Cost causation principles dictate that utility long-term supply contracting should properly be in utility commodity rates. Indeed, long-term supply contracting is an inherently competitive activity,[2] and as such, should be reflected in the utility commodity rate against which marketers compete. In turn, the utility commodity rate will be more

[2] It is NEM's position that utilities should not engage in competitive businesses, primary amongst which is commodity supply. That being said, NEM understands that the Act requires long-term supply contracting. In these circumstances then, to mitigate the impacts on the competitive market, the appropriate treatment of the rate increases caused by the long-term contracts is to reflect said contracts in the utility commodity price.

reflective of market conditions and will mitigate the anti-competitive market impacts of the long-term supply contracting.

Additionally, marketers participate in the market and enter into long-term contracts for these types of renewable products. Accordingly, if the supply-related rate increase is to be reflected in utility delivery rates, then shopping customers will be double charged for this competitive product. Marketers are at a significant competitive disadvantage when consumers are prevented from making accurate comparisons between utility and marketer commodity rates.

If, contrary to NEM's recommendation above that the long-term supply contracting be reflected in the utility commodity rate, the Commission determines that all customers must participate in the rate increase associated with the purchase of the renewable energy products, NEM suggests that the rate increase should then be passed through to customers on a competitively neutral basis through a non-bypassable charge. As stated above, NEM believes that these commodity purchases on the part of the utility should appropriately be comprised within the utility commodity rate. However, we recognize that the legislature and this Commission may be of the opinion that renewable energy product purchases accomplish a public good, and the Commission may therefore decide that all customers should participate in the payment of the rate increase. If that is the case, then utilizing a competitively neutral, non-bypassable charge to recover the rate increase would be the means to achieve this without unduly threatening the continued development of the competitive electric market in the State of Maine.

An additional consideration related to the utilities procurement of the renewable energy contracts is the Commission's determination of which entity should receive associated the Renewable Energy Credits (RECs). NEM recommends that the RECs belong to the customers that paid for them, rather than the utilities. By treating ownership of the RECs as residing with the paying customer it similarly avoids the anti-competitive situation wherein marketers serving shopping customers would have to purchase RECs for customers even though those same customers already paid for the RECs in their utility charges.

NEM is concerned that the treatment of rate increase associated with utility long-term supply contracting could negatively impact competitive market development in the State. NEM's recommendations herein are intended to illustrate how the rate increase can be implemented in a competitively neutral manner that is likewise reflective of State energy goals.

Respectfully submitted,

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