STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC UTILITY CONTROL

APPLICATION OF THE CONNECTICUT	:	DOCKET NO. 03-07-01RE04
LIGHT AND POWER COMPANY TO	:	
ESTABLISH THE TRANSITIONAL	:	
STANDARD OFFER - 2005	:	
TRANSITIONAL STANDARD OFFER	:	
RATES	:	December 2, 2004

MOTION TO DISMISS THE APPLICATION OF THE CONNECTICUT LIGHT AND POWER COMPANY TO ESTABLISH 2005 TRANSITIONAL STANDARD OFFER RATES AND CHARGES BY RICHARD BLUMENTHAL, ATTORNEY GENERAL FOR THE STATE OF CONNECTICUT

Richard Blumenthal, Attorney General for the State of Connecticut ("AG"), hereby moves to dismiss the Connecticut Light and Power Company's ("CL&P" or the "Company") Request to Re-open Docket No. 03-07-01 to Establish January 1, 2005 TSO, FMCC and EAC Charges dated November 23, 2004 ("Application"). CL&P's Application violates the plain language and intent of Public Act 03-135, An Act Concerning Revisions to the Electric Restructuring Legislation ("P.A. 03-135" or the "Act"). Specifically, in its Application, the Company proposed to raise its customers rates by 16.7%, which is far in excess of the rate cap provisions in P.A. 03-135 and is therefore illegal under Connecticut law.

Highlighting the significance of this matter, CL&P's proposal translates to a requested increase in annual revenue requirements of approximately $440 million – the largest proposed increase in recent memory. Moreover, assuming the incorporation of this increase into customer rates, CL&P's average rate (over 12.5 cents/kwh) will be one of the highest in the country, with potentially devastating impacts on the Connecticut economy.[1] By way of comparison, the

[1] For individual rate classes, the resulting rate may be significantly higher than this average rate. For example, if the proposed rate increase is adopted, rate 1 (residential) will be 14 cents/kwh. For some rate classes, the increase

average rate for all sectors (residential, commercial and industrial) in the southeast section of the United States in August of 2004 was about 6.2 cents/kwh, or about half of the cost in Connecticut.[2]

In the alternative, in the event the Department declines to dismiss CL&P's illegal and unfair Application, the Department should restructure CL&P's Transitional Standard Offer ("TSO") rates and defer certain ratepayer obligations to bring rates under the rate cap as required by P.A. 03-135. Deferring such obligations would also be consistent with past DPUC practice in that it promotes the interests of rate stability and fairness to customers. The DPUC should also carefully scrutinize CL&P's request and reject any unwarranted amounts. Further, the Department should re-examine the manner in which it considers CL&P's power supply contracts. Finally, the DPUC should consider additional future actions to reduce customers' rates.

I. BACKGROUND

P.A. 03-135 requires CL&P to offer TSO service to its customers from January 1, 2004 through December 31, 2006. The Act explicitly states that TSO rates, with the exception of federally mandated congestion costs ("FMCCs"), must not exceed the rates in effect on December 31, 1996. In other words, the legislature capped CL&P's rates. Specifically, Section 4(b)(2)(B) of the Act provides that:

> [t]he Department shall hold a hearing that shall be conducted as a contested case in accordance with chapter 54 to establish the transitional standard offer. The transitional standard offer shall provide that the total rate charged under the transitional standard

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will also be significantly higher than the overall average increase of 16.7%. Rate 55 will experience an increase of 20.9%). See, CL&P filing, Exhibit 11. Moreover, as explained further below, this increase is potentially only the leading edge of another wave of rate increases which CL&P may seek after the expiration of currently utilized credits and the possible approval by FERC of pending applications for Reliability Must-Run ("RMR") contracts by several generators located in Connecticut.

[2] Table 5.6.A. showing the average retail price of electricity to ultimate consumers by end-use sector by state in August of 2004 and August of 2003 in "Monthly Electric Sales and Revenues Report with State Distributions Report, Energy Information Administration, Form EIA-826.

> offer, including electric transmission and distribution services, the conservation and load management program charge described in section 15-245m, as amended by this act, the renewable energy investment charge described in section 16-245n, electric generation services, the competitive transition assessment and the systems benefits charge, and excluding federally mandated congestion costs, shall not exceed the base rates, as defined in section 16-244a, in effect on December 31, 1996, excluding any rate reduction offered by the department on September 26, 2002.

(Emphasis added).

This rate cap represents the legislature's determination that TSO rates may increase by as much as 11% (excluding FMCCs) from their previous levels under the standard offer, but no more. It also reflects the importance that the General Assembly placed upon rate stability. The rate increase proposed by CL&P in the present proceeding completely undercuts the legislative mandate and its underlying policy.

In its December 19, 2003 Final Decision in Docket No. 03-07-01, Application of the Connecticut Light and Power Company to Establish the Transitional Standard Offer, ("Docket No. 03-07-01"), the Department established CL&P's TSO rates for 2004, but did not set rates for 2005 and 2006 because CL&P was unable or unwilling to procure its load requirements for those years. In that Final Decision, the Department approved CL&P's 2004 TSO rates after determining that "CL&P's TSO rates will not breach the Cap." Final Decision, Docket No. 03-07-01, 1.

Elsewhere in the Final Decision, however, the Department held that CL&P could charge its customers for amounts that could cause its rates to rise above the rate cap by flowing certain charges through to customers as a line item under the energy adjustment clause ("EAC"). Specifically, the Department adopted CL&P's proposal to make the generation services component ("GSC") of TSO rates "the residual component," meaning that the GSC will fill in the amount left under the rate cap after all of the other rate elements, such as transmission and distribution charges, are determined. Final Decision, Docket No. 03-07-01, 9. The Department further accepted the Company's proposal to make the EAC "available for the recovery of generation supply costs that cannot be recovered under the Cap." Id. This mechanism effectively permitted the Company to recover all of its non-generation costs in rates and recover all of its generation costs in rates through the GSC and the EAC, regardless of whether the total of those costs would exceed the statutory rate cap.

In his Brief, Reply Brief, Exceptions and during oral argument in Docket No. 03-07-01, the Attorney General vigorously opposed the Company's proposal because the EAC loophole violated the plain language of the Act and the intent of the legislature. The Attorney General also warned that CL&P in the future might seek use the EAC to evade the provisions of the rate cap.

Unfortunately, that day has now come. In its Application, CL&P has proposed to increase its 2005 rates by 16.7%. As CL&P has acknowledged, this 16.7% increase exceeds the rate cap by 7%, or 0.816 cents/kWh. Application, Exhibit 15. CL&P, however, proposed to flow that 7% above the rate cap through to customers via the EAC. Application, Exhibit 15. Moreover, the monumental 17% rate increase that the Company has proposed is currently moderated by two rate refunds. Application 11, note 7. When those refunds expire in 2005, the Company's overall proposed rate increase will be roughly 30%, with 20% of this increase exceeding the rate cap and passed through to customers via the EAC.

II. DISCUSSION

A. The Department Should Dismiss CL&P's Application Because it Violates the Rate Cap Requirements of P.A. 03-135

The Department should dismiss CL&P's Application because it violates the plain meaning and intent of the rate cap provisions of the Act. P.A. 03-135 clearly mandates that all elements of rates other than FMCC's, including the distribution component and the GSC, must fit under the rate cap proscribed in the Act. On its face, the Company's Application conflicts with the Act because CL&P acknowledges that it seeks to recover through the EAC rates that are, at present, 7% higher than the rate cap allows.

Neither the Company nor the Department is authorized to second guess the legislature's decision to impose a rate cap on electricity costs. This policy decision was made by the General Assembly and embodied in law and is entitled to respect. CL&P's Application is openly inconsistent with the legislature's mandate that rates not exceed 1996 levels. The Department should dismiss CL&P's Application and require CL&P to file a new application that is consistent with Connecticut law.

B. If the Department Does Not Dismiss the Company's Application, The DPUC Should Defer Certain Obligations in Order to Comply With the Rate Cap Provisions of P.A. 03-135 and to Promote Rate Stability

In the event that the DPUC refuses to dismiss CL&P's Petition as requested herein, the Department should restructure CL&P's TSO rates by deferring certain ratepayer obligations in a manner that will bring TSO rates into compliance with the rate cap. For example, the DPUC should seek to defer recovery of the system benefits charge ("SBC"), the GSC and stranded cost recovery (consistent with the discussion in § II.E. infra) as necessary to bring rates into compliance with the plain language and legislative intent of the rate cap provisions of the Act.

Imposing such deferrals and reducing the impact of CL&P's proposed rate hike is also entirely in keeping with the Department's own precedents. The DPUC has consistently sought to balance the introduction of competitive electric generation service charges with the need for rate stability for Connecticut's electricity consumers, both residential and commercial. For example, while the DPUC has always reflected the cost of the GSC on bills, it has made a consistent and concerted effort to smooth future rates by applying significant amounts of customer-funded over-recoveries to pay down long-term future obligations such as stranded costs.

Since the beginning of electric restructuring in Connecticut, CL&P's ratepayers have paid CL&P higher amounts than were actually required for electric service at the time. These overpayments have taken a variety of forms. Customers have paid more than they owed for the SBC thereby producing SBC overrecoveries. Ratepayers have paid more than they owed for stranded costs in the form of the Competitive Transition Assessment ("CTA") thereby producing CTA overrecoveries. They have also paid more than has been required for the GSC on their bills in the form of a "retail adder." For example, in Docket No. 03-07-01, Application of the Connecticut Light and Power Company to Establish a Transitional Standard Offer, the DPUC was faced with $262 million in overrecoveries. $41 million of this amount was in SBC-related revenues, $64 million in CTA-related revenues and $157 million in GSC-related revenues. Id., 14.

In the past, the DPUC has applied such overrecoveries to reduce customers' long-term obligations, often by writing down the CTA. See Docket No. 03-07-01, 14. For example, in Docket 03-07-01, the DPUC applied the $262 million in overrecovered amounts to pay down future customer obligations, including $80 million to mitigate potential future increases in the CTA and $25 million for non-recurring SBC costs and to provide a reserve to mitigate potential increases during the TSO period. Id., 15-16. In other words, the DPUC has not followed the policy currently proposed by CL&P that electric rates must exactly reflect the true market cost of electricity. Rather, the Department has determined that although portions of electric rates are becoming deregulated, there remains an important public interest in providing a measure of rate stability.

Now, circumstances have changed dramatically. Instead of paying rates that generate more money than is actually required for service creating overrecoveries, customers now face the prospect of a dramatic increase in the price for their electric service. Yet, in a significant departure from past DPUC practice, CL&P has proposed to collect the entire amount owed all at once by raising customers' rates by 17%. The DPUC should reject CL&P's onerous proposal and act in a manner that is consistent with its past practice by deferring certain amounts to be recovered by CL&P. The DPUC should simply slow the recovery of certain ratepayer obligations. The DPUC should also consider applying any remaining deferred amounts (such as any remaining portion of the $80 million that it set aside in Docket No. 03-07-01) to mitigate potential future increases in the CTA to offset the proposed rate increase. Such deferrals and related actions will provide some measure of rate stability and help avoid rate shock.

As the DPUC is well aware, the Attorney General typically opposes efforts to defer the payment or recovery of rate elements. This, however, is a special case. Ratepayers who have overpaid for electric service for years without receiving refunds are now being asked to shoulder the entire 17% rate increase. The Company, which has benefited from the customers' overpayments in the past, should now do its part and accept deferrals of certain amounts owed in order to provide rate stability into the future. The proposed increase will have a devastating impact on the public interest and the state’s economic recovery and all possible steps must be taken to protect Connecticut ratepayers from these exorbitant charges.

C. <u>The DPUC Should Carefully Scrutinize CL&P’s Rate Request</u>

The DPUC should carefully examine the details and supporting data provided by CL&P in support of its historically large rate increase proposal. Certain items that the Company has proposed to recover cannot fairly be considered to represent annual revenue requirements. For example, CL&P has sought to recover substantial deferred amounts of FMCC revenues, plus interest. Specifically, the Company has proposed to recover $43.6 million that it identified as FMC under collection, as well as $2.7 million in interest accrued on that amount. Application, Ex. 14, 7.

This $46.3 million is not really an annual revenue requirement. This request should raise the question of whether it represents a legitimate charge and, if so, whether the DPUC approved the deferral of this amount and the accrual of interest on that deferral. Further, if this deferral was approved by the Department, this specific item provides a good example of how the Company has in the past deferred recovery of ratepayer obligations.

D. The DPUC Should Reexamine the Manner in Which It Considers Transitional Standard Offer Supply Contracts

The Department should thoroughly overhaul the manner in which it reviews the procurement of power supply contracts. The process for procurement of power supply contracts requires both technical expertise and important policy judgments. This process would benefit greatly from substantive DPUC oversight and scrutiny, and not merely review for procedural compliance as currently seems to be the method now followed by the Department. This need is especially obvious where, as here, the procurement contributes to a proposed increase on the magnitude of that proposed in this proceeding -- a $440 million increase in annual revenue requirements.

First, the DPUC should establish a means by which it can examine and reexamine contracts as market circumstances change in material ways. In the present case, conditions have changed in a material manner since the bids were submitted. The generators who bid for CL&P's standard offer supply likely included premiums in their bids to account for anticipated market based bids from other generators in the wholesale energy market existing during the period in which the bids were formulated (and anticipated to exist during the term of the pending supply contracts).

This context, however, may have been fundamentally changed by the recent flood of reliability must-run ("RMR") contract applications that are now pending at the FERC. A key element of the RMR contract mechanism is that energy bids from generators subject to RMR contracts are limited to a measure of their variable cost and no longer may be set unilaterally, subject only to ISO-NE's market power mitigation rules. Indeed, since the time that the bids for the contracts at issue in the present case were submitted, generators owning more than 40% of the installed generation capacity in Connecticut have received, applied for or have indicated their intention to apply to FERC for RMR status. See, e.g., FERC Docket No. ER04-23-000, ISO-New England, Inc.; FERC Docket ER05-163-000, Milford Power Company, LLC; FERC Docket No. ER05-231-000, PSEG Power Connecticut, LLC.[3] With so many generators in Connecticut under or potentially subject to RMR contracts, there likely will be a dampening effect on prices in the energy market. This effect, however, was probably not included in the bids considered by CL&P in its procurement of power supply, resulting in a likely inflation in the price paid for such power.

RMR contracts remove significant risks from operation because they give generators traditional regulatory-type returns. In particular, generators receive returns on investment that are paid for directly by ratepayers in a manner that is entirely separate from the amounts that they pay for transitional standard offer supply. If granted by the FERC, RMRs should be expected to reduce the prices in the wholesale energy market, thereby driving down the suppliers' cost of providing TSO service. Yet, this anticipated reduction is very likely not

[3] Bridgeport Energy has also recently filed with ISO-NE notice of its intention to seek RMR coverage.

reflected in the bids for the CL&P standard offer supply contracts that are at issue in the present case. Accordingly, the DPUC should create a mechanism by which it may examine and reexamine standard offer supply contracts as the market changes in material ways, such as contracts that require customers to pay for the risk premiums that will no longer exist under an RMR dominated market.

Second, the DPUC should reconsider the process by which it reviews and approves the Company's standard offer supply contracts. The Department considered CL&P's current TSO contracts in Docket No. 03-07-18PH02, Establishment of the Process for Procurement of Transitional Standard Offer – Phase 2. In that proceeding, the Department not only approved the TSO contracts in question, but also "order[ed] that they be included unchanged into the formulation of the overall TSO rate." Id. at 2. Indeed, in Order No. 1 the DPUC stated that "[t]he auction results shall be included without change in the establishment of the overall TSO rate in the future reopening of Docket No. 03-07-01." Id. at 3. At that time, however, the pricing and other material terms of the contracts in question were under protective order and the proceeding was not a contested case.

The DPUC should have a more transparent process in making decisions that have such a monumental impact upon ratepayers. There are a series of important structural issues involved in CL&P's procurement of power supply which, given the huge dollar impacts, should be subject to greater scrutiny. The public should have a greater opportunity to examine and question these contracts before they are approved. For example, at a minimum the public should have the opportunity to question CL&P's decisions regarding the following issues:

(a) the selection of the delivery point (Connecticut or the Mass hub) for each power supply contract;

(b) Likely future procurements (timing and volumes) to cover portions of CL&P's load not covered by prior and pending contract procurements;

(c) the amount and manner of hedging done by CL&P or by the suppliers with respect to the procurement of power supply contracts (e.g., how and when did CL&P procure FTRs, if it did, to cover any "basis risk" not assumed by the TSO suppliers who did not contract to deliver to the Connecticut load zone); and

(d) the lengths of term and volumes of each of the supply contracts and issues related to counter-party credit, requirements for posting and providing performance assurance (and ability of suppliers to physically hedge the power supply commitment through ownership or control of in-area generation).

The need for substantive public review of these issues is heightened by the contentious experience with the prior standard offer procurement which ultimately required the Department to pursue litigation at FERC to facilitate the resolution of disputes arising under the contracts.

E. The Department Should Consider Additional Future Action to Reduce Customer Rates

The DPUC should carefully examine other courses of action that could reduce customers' rates. One such course of action is to join the Attorney General in an effort to revoke the Connecticut nuclear plant owner's market-based rate authority at the FERC.[4] As the Department is well aware, ratepayers have paid a substantial portion of the cost of Connecticut's nuclear plants through the CTA and yet currently do not receive any of the cost savings associated with

[4] Consistent with reasonable ratemaking and accounting practices, the resulting cost-of-service rates should be based upon the lower of the units' net book or purchase price depreciated value.

the low cost operation of those plants. This unfair and untenable situation has occurred because FERC authorized the owners of the nuclear power plants to have market-based rate authority, which allows the power from those plants to be bid into the market as if they were powered by oil or gas. As those plants currently operate at a significantly lower cost than oil and gas fired plants, the nuclear plant owners are reaping windfall gains, possibly several hundreds of millions of dollars per year, from the current pricing regime established by FERC, at the same time Connecticut ratepayers are facing devastating rate increases.

The Attorney General is determined to petition FERC to revoke the market based rate authority of the nuclear plants and suggests that the DPUC join in that effort. Such an action at this time would be particularly appropriate, considering that the high cost fossil fuel plants are seeking RMR status to protect them from market forces, at the same time FERC is allowing the low cost nuclear plants to bid into the market as if they were high cost generators. This is a complete market distortion that leaves customers with the worst of both worlds. Such an action could have a significant impact on the cost of the power purchased by CL&P for Connecticut consumers.

In addition, the Department should consider whether it can and should seek to replace the current rate reduction bonds with bonds that might extend or defer the amortization of stranded costs, thereby reducing the rate impact upon consumers. At present, the CTA charge in rates must cover the principle and interest on the current rate reduction bonds. Conn. Gen. Stat. § 16-245g(d). As the DPUC is aware, however, rate reduction bonds may, under certain circumstances, be refunded with other rate reduction bonds. Conn. Gen. Stat. § 16-245j(c)(7).

The Department should consult with the State Treasurer and other responsible entities about the advisability of replacing the current rate reduction bonds with other such bonds to extend the repayment period for stranded cost obligations in order to reduce customers' present rates. If, after such a review, it appears that such refinancing would result in a reduction of a CTA obligation on customers in a manner that makes economic sense, this Office would be willing to join the Department in recommending the necessary legislative changes to lessen the impact of the present dramatic and devastating rate increases on ratepayers.

Finally, the DPUC should consider reopening Docket No. 03-07-02, Application of the Connecticut Light and Power Company to Amend its Rate Schedules, to roll back the 1% increase in distribution costs granted to CL&P in December, 2003. At the time that increase was granted, the DPUC was unaware of the magnitude of the future generation supply cost increases that we now face. Since CL&P's rates are subject to the rate cap, the Company should share in the burden imposed by the higher electricity supply costs.

WHEREFORE, the Attorney General respectfully requests that the Department dismiss CL&P's Application because it violates the plain language and spirit of P.A. 03-135. In the alternative, in the event the Department declines to dismiss CL&P's illegal and unfair Application, the Department should restructure CL&P's rates by deferring certain obligations to comply with the rate cap provisions of P.A. 03-135. The DPUC should also carefully scrutinize CL&P's request and reject any unwarranted amounts. In addition, the Department should re-examine the manner in which it considers the procurement of CL&P's power supply contracts. Finally, the DPUC should consider additional actions to reduce customer rates as discussed herein.

Respectfully Submitted,

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