**STATE OF CONNECTICUT**

**DEPARTMENT OF PUBLIC UTILITY CONTROL**

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| RE: DPUC DEVELOPMENT AND | : | DOCKET NO. 06-01-08PH01 |
| REVIEW OF STANDARD | : | |
| SERVICE AND SUPPLIER OF | : | |
| LAST RESORT SERVICE | : | JUNE 12, 2007 |

# "LESSONS LEARNED" COMMENTS OF THE OFFICE OF CONSUMER COUNSEL

## I. INTRODUCTION


**Summary**

1. The SS/LRS bidding process generally has been successful and has improved over time.

2. The Department should minimize the market-disruption created by exercise of its authority to reject recommended contracts.

3. The Department should avoid compressing the time for GSC rate-setting.

4. UI should develop its own benchmark/proxy prices.

5. Each utility, the Department's consultants and the OCC should compare updated proxy prices prior to bid day.

6. UI should seek bids that exclude congestion costs.

7. The utilities must be diligent and thorough when providing customer migration data to bidders.

8. On balance, shortening the time interval from bid submittal to contract approval probably is not feasible.

9. The Section 104 docket will provide an opportunity to consider further SS procurement issues which have arisen to date.


The Office of Consumer Counsel ("OCC") is a participant in this docket, which the Department of Public Utility Control ("DPUC" or "Department") established on its own initiative.

The initial phase of this docket developed a plan under which the state's two electric distribution companies, The Connecticut Light and Power Company ("CL&P") and The United Illuminating Company ("UI"), procure electric generation service contracts for two purposes. The first such purpose is to provide standard service under Connecticut General Statutes ("CGS") § 16-244c ("Standard Service" or "SS"), and the second such purpose is to provide supplier of last resort service under CGS § 16-244e ("Last Resort Service" or "LRS"). Under Public Act 03-135, <u>An Act Concerning Revisions to the Electric Restructuring Legislation</u> (the "Revised Restructuring Act"), CL&P and UI are required to offer both Standard Service and Last Resort Service to (separate) groups of appropriate customers from January 1, 2007 onward.

The DPUC issued its initial decision (the "Initial SS/LRS Procurement Decision" or "Initial Decision") in this docket on June 21, 2006. The Initial Decision (pp. 6-7) said that OCC should be afforded an opportunity to directly and fully participate in all aspects of the SS/LRS procurement process, for both distribution companies, and that OCC should have full access to all bidder information, subject to appropriate confidentiality provisions.

As the Department is aware, OCC accepted the DPUC's invitation to participate in the SS/LRS process, for both CL&P and UI. OCC reported our agency's independent assessment of each specific SS/LRS procurement round ("SS/LRS RFP") carried out by either distribution company, through the following written filings and otherwise:

(a) <u>The United Illuminating Company's Procurement Process and Results for Standard Service and Last Resort Service: Comments of the Office of Consumer Counsel</u>, August 30, 2006 ("OCC's 8/30/06 Report").

(b) <u>The Connecticut Light and Power Company's Procurement Process and Results For Standard Service: Comments of the Office of Consumer Counsel,</u> September 13, 2006 ("OCC's 9/13/06 Report").

(c) The Connecticut Light and Power Company's Procurement Process and Results For Standard Service: Comments of the Office of Consumer Counsel: Addendum Re: Last Resort Service, September 15, 2006 ("OCC's 9/15/06 Report").

(d) The Connecticut Light and Power Company's Procurement Process and Results For Standard Service and Last Report Service: Comments Of The Office Of Consumer Counsel: Addendum Re: Final Procurement Results From 2006, October 31, 2006 ("OCC's 10/31/06 Report").

(e) The United Illuminating Company's Procurement Process and Results For Standard Service And Last Resort Service: Comments Of The Office Of Consumer Counsel: Addendum Re: Final Procurement Results From 2006, November 8, 2006 ("OCC's 11/08/06 Report").

(f) The Connecticut Light and Power Company's Procurement Process and Results For Standard Service and Last Report Service: Comments Of The Office Of Consumer Counsel: Addendum Re: Initial Procurement Results From 2007, March 7, 2007 ("OCC's 3/7/07 Report").

(g) The Connecticut Light and Power Company's Procurement Process and Results For Standard Service and Last Report Service: Comments Of The Office Of Consumer Counsel: Addendum Re: Initial Procurement Results From 2007 For Last Resort Service, March 30, 2007 ("OCC's 3/30/07 Report").

(h) The United Illuminating Company's Procurement Process and Results For Standard Service And Last Resort Service: Comments Of The Office Of Consumer Counsel: Addendum Re: Initial Procurement Results From 2007, April 12, 2007 ("OCC's 4/12/07 Report").

OCC notes that portions of the above-noted filings by OCC were submitted confidentially, and are subject to one or more protective orders that the DPUC granted at OCC's request.

Further, OCC has twice responded to earlier DPUC requests for comments on the SS and LRS procurement process. That further OCC participation in this docket took the following specific form.

First, on December 14, 2006, OCC filed with the Department its Comments for the DPUC's 2007 Review ("OCC's 12/14/06 Comments"), responding to a pertinent DPUC

Notice dated December 5, 2006. OCC also participated in the DPUC's December 18, 2006 Technical Meeting, convened in connection with that 2007 Review.

Second, on January 30, 2007, OCC filed with the Department its Comments for the DPUC's Technical Meeting ("OCC's 1/30/07 Comments"), responding to a pertinent DPUC Notice dated January 24, 2007. OCC also participated in the DPUC's February 1, 2007 Technical Meeting, convened in connection with that 1/24/07 Notice.

The present OCC filing continues OCC's active participation in these SS/LRS procurement processes. In the Initial SS/LRS Procurement Decision (at p. 9), the Department required CL&P, UI and the Department's independent consultant [Levitan & Associates, Inc. ("Levitan")], to file a "lessons learned" report six months after the filing of Standard Service procurement results. While OCC is not subject to this DPUC order, we nonetheless are filing this report.

Given OCC's active participation (referenced above) in the initial rounds of SS/LRS procurement by CL&P and UI, as well our participation in the Department's initial efforts to reflect on the course of those procurement rounds (also referenced above), our agency is in a unique position to offer comments of this type.

## II. DISCUSSION

### A. The bidding process has been generally successful[1] and has improved incrementally over time.

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[1] Except for the episodes discussed in detail in Section II-B, below.

The Department's Initial Decision set out numerous rules and requirements for the distribution companies to follow. Levitan & OCC have explicitly evaluated each SS/LRS RFP round, to date, for its conformity to each of those rules and requirements, and have found the utilities to be in compliance in each case. The DPUC has accepted those Levitan and OCC representations as satisfactory.

The SS/LRS procurements have acquired all the required supply tranches, other than those for which the Department rejected the contracts. Multiple bidders have participated in each SS/LRS RFP, typically offering several times the amount of power requested by each utility for that round.

As the procurement process has proceeded, the preparation for later rounds has generally required less calendar time, less effort by each distribution company and by other RFP participants, fewer bidder questions and shorter bidder conferences. The distribution companies, with input from Levitan and OCC, and with feedback from bidder questions and conferences, have improved the RFP documents, the data packages, and the bidder information packages. Bidders have become more familiar with the Connecticut procurement process, with each distribution company's data, and with each company's standard contracts. The distribution companies, Levitan and OCC have developed sophisticated bid-evaluation tools and processes, all of which have facilitated smoother functioning of subsequent procurement rounds.

One example of an incremental improvement of the bid forms was CL&P's elimination of the option for bidders to enter a single price for all classes and periods in the bid form. This single-price bid was rarely lower than the weighted average of the individual prices in the same bid form. That is the expected result, since the single price exposes the bidder to the risk that the mix of actual sales (affected by weather, customer migration and other factors) would be more expensive than the mix that the utility and the bidder expect at the time of the bid. Since the bids by time-of-use period and customer class are important for rate design, OCC believes that the bid process should encourage relatively detailed bids. Thus, eliminating the single-price option is a desirable change. (A bidder still can enter the same price for every customer class or time period, if it so desires.)

### B. <u>The Department should minimize the market-disruption created by exercise of its authority to reject recommended contracts</u>

The Department rejected several individual Standard Service tranches, despite the unanimous recommendations presented by all active participants in the pertinent SS RFP rounds (i.e., the affected distribution company, the Department's own consultant [i.e., Levitan] and OCC). While the Department was acting within its authority to do so, these actions introduced serious uncertainty into the acquisition process, uncertainty that likely has raised costs to ratepayers. In the future, the Department should act to minimize any market disruption created by its exercise of this review authority.

The Department rejected one signed UI contract from the 8/31/06 Standard Service auction, for the first half of 2007. The justification for the rejection was that the Department wanted each utility to hold a second procurement for early 2007, to implement the laddering of procurement, in at least a limited fashion. This action was completely unexpected, since it served to reject a plan that UI proposed in February 2006 and that the Department approved in June 2006.

> UI's preferred procurement plan for Standard Service…allows for an annual solicitation of Standard Service…. UI's 2006 procurement will seek full requirements supply (energy, capacity, reserves, and compliance with renewable portfolio standards) for Standard Service customers for all of 2007 and portions of service requirements in 2008 and 2009. For instance, in year 2006, UI would procure 100% of 2007… The Department finds that UI's preferred procurement plan for Standard Service is designed to meet the goal of the procurement process. Initial Decision, at 13.

The Department's reversal of this approval, barely two months later, was especially surprising, since it required abandonment of the statutory requirement that the rates for January 2007 be set by October 1, 2006. If the Department believed that laddering was more important than meeting that statutory deadline, it could (and should) have so ruled in June 2006, or otherwise so informed the utilities and other parties <u>well prior to bid day</u>. Conceivably, such DPUC notification even as late as bid day itself would have avoided the damage to the credibility of the RFP process approved in the Initial Decision.

The Department also rejected two signed contracts from CL&P's March 2007 Standard Service procurement. The Department's rationale for this rejection appears to be inconsistent with its rationale for its earlier rejection of the UI contract.

> The Connecticut General Assembly has held special sessions on electric rates, and is now considering many alternatives regarding Connecticut's energy future. The Department is attempting to balance the interests between implementing existing law, which is based upon a laddering mechanism, and allowing policymakers leeway to consider all options before them with the ability to change policies on a timely basis. DPUC Decision, March 7, 2007, at 2.

The Department's reversal of its previous insistence on laddering came as a surprise to the participants in the RFP process. This DPUC decision was particularly confusing because, while it rejected two bids for 2008, it also accepted a bid for 2009. Logically, that further-into-the-future bid would be even more vulnerable to changes in legislative direction than were the bids the Department actually rejected at this time. Again, the Department could have avoided the damage to the SS RFP process by informing CL&P and/or Levitan as late as the morning of bid day (i.e., 3/6/07, in this instance) that it was leery of approving procurements past 2007, given the uncertainties in the General Assembly's direction.[2]

The DPUC's unpredictable actions have undermined the broad goal that the evaluation and selection of preferred bidders must be made to "produce a fair auction process that results in the lowest possible cost to ratepayers." (Docket No. 06-01-08PH01, June 21, 2006 at 7.) Rejections for any reason that bidders cannot explicitly predict and quantify will lead to bidders increasing their bids to reflect additional risk, or even dropping out of the process. Both of these factors (i.e., risk premiums in the bids; withdrawals from the RFP) can raise costs.

The Department may believe that these seemingly random rejections of signed contracts will cause bidders to "sharpen their pencils" and to reduce bid prices in future procurement rounds. However, there is no evidence to support such a conclusion. Actually, when risk increases, costs also increase. In the SS/LRS RFP process as presently structured, the bidders must include in their bids the costs of hedging until the Department issues its

[2] While it is not clear what information from the General Assembly led to the Department's decision, it seems unlikely that all such information was received in the narrow window between the morning of bid day, March 6, and the issuance of the DPUC decision late on March 7.

decision, or include in their prices the risk of buying power in a higher-cost market following the Department's decision.[3]

When the Department approved the CL&P and UI procurement plans for Standard Service and Last Resort Service, it stated that (consistent with the principles and guidelines set out in the Initial Decision) it would allow the companies the discretion "to develop and conduct the auctions and procurement as they deem prudent and advantageous." (Initial Decision, at 4 and 11.) However, the Department thereafter rejected specific RFP results that clearly fell within this allowed degree of discretion. OCC believes that it would be better for the Department to have trusted the very process that its Initial Decision put into place.

Specifically, the Initial Decision requires each distribution company, reporting jointly with Levitan, to represent that the specific RFP round being reported upon meets the Initial Decision's numerous specific requirements for structure and process. Also, each OCC report to the Department[4] has presented our agency's views on whether the standards set out in the Initial Decision were met during the conduct of the specific RFP round. If the Department finds these several representations credible in specific instances, then it should follow through by approving the jointly recommended group of contracts without change.

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[3] The Department's rejection of the bid in the 8/06 UI procurement happened to coincide with a decline in market prices, due to falling gas prices. However, the Department can have <u>no</u> assurance that such intervening price movements will consistently be favorable.

[4] Each of these OCC reports on specific RFP rounds are cited above, in Section I of these Comments.

The Department should not underestimate the complexity and thoroughness of the RFP analyses conducted by each company, by Levitan and by OCC, both prior to each bid-day and on each bid-day. This analytic work involves the development of benchmark market prices, the application of linear-programming models to sort out complex choices among linked bids, and hours of consideration of the risks and benefits of alternative bid choices --- all of which has been followed in each RFP round to date by frank and nuanced discussions among the three expert parties who have independently reviewed the bids. For the Department in effect to undertake to reproduce that complex process during a short hearing on the following day is neither efficient nor practical. Department rejection of a single contract after the fact may well result in higher total costs than if the utility (and the Department consultant and OCC) understood the Department's preferences in advance and thus were able to select the least-cost bid package consistent with those preferences.

In short, the Department should address important SS/LRS RFP factors unrelated to the bid-day process prior to bid day. For instance, if the Department has concerns about the design of a particular SS/LRS procurement (e.g., the number of slices to be procured for each time period), it should promptly notify both the distribution company and the Department's consultant. Also, if the Department requires a formal filing laying out critical aspects of the procurement, it should instruct the utilities to make such a filing, either coincident with or prior to the public release of the RFP materials.

When there is consensus among the company, the Department's consultants and OCC as to the recommended outcomes of a specific RFP round, the Department definitely should hesitate before rejecting signed contracts for individual blocks of power. If possible, it should refrain entirely from such rejections.

If the Department finds that it absolutely must reject a signed contract, it should at the same time take two important steps. First, it should fully and consistently explain that action. Second, it should establish appropriate changes for future procurements in order to eliminate any need for future rejections on a similar basis.

Further, any rejection of a contract based on its specific economics (as appeared to be the case for the rejected UI contract) would reasonably raise bidders' concerns that the Department might be basing its rejection on market information that has been updated since bid day. Any such perception would further exacerbate the bidders' need to increase their bid prices, since they will expect that the Department would leave them committed to their contracts if prices are rising, but would reject the contracts if prices were falling. This scenario would result in a "heads I win, tails you lose" situation for the bidders, as well as higher average costs to serve the contracts that actually go into effect, and lower market prices for power that must be resold into the market following bid rejection.

As noted in OCC's 12/14/06 Comments, the Department should assure bidders that it will <u>not</u> monitor movements of electric or gas markets after the bids are submitted. Such an assurance could mitigate the regulatory risks that may result in higher bid prices or less RFP participation. The Department has not acted on this OCC recommendation, but should do so before the next round of solicitations in the fall.

### C. <u>The Department should avoid compressing the time for GSC rate-setting as it did in the fall of 2006.</u>

The Department's 9/11/06 decision to bypass the statutory October 1, 2006 deadline for setting Standard Service rates for January 2007 created problems for the customers, since they had only a month to react to the new rates, negotiate with competitive suppliers, and sign contracts. The problems for competitive suppliers in this circumstance were even more challenging.

This delay was unnecessary, since the parties had worked hard through summer 2006, starting within days of the Initial Decision, to complete the acquisitions for January 2007 well before October 1, 2006.[5]

**D. <u>UI should develop its own benchmark or proxy prices.</u>**

UI should develop its own benchmark/proxy prices, just as CL&P has done. Such benchmarks are invaluable for evaluating the reasonableness of all bids received on bid-day.

While UI certainly can rely on much of the benchmark/proxy work done by the DPUC consultant (i.e., Levitan) and by OCC, this company also should have ownership of its own set of such prices. This can only improve the quality of the bid evaluations. Of the three parties involved in making the initial bid evaluations, it is of course the distribution company that enters into the resulting contracts.

For example, in UI's April 2007 Standard Service procurement, the proxy prices developed by Levitan and OCC diverged enough to potentially lead to different decisions regarding how many bids to accept. Having a third independent projection of bid prices (i.e., from UI) might have helped clarify the decision. Fortunately, in this case, the differences in the proxy prices did not change the order of preference among bids, so there was agreement among the participants that the set of contracts presented to the Department

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[5] The OCC Motion of 9/15/06, page 2, recounts the pertinent facts.

was cost-effective.[6] However, had the different proxies led to a different ranking of bids, or if UI had wanted to contract for power that OCC considered to be over-priced, both bid day and the subsequent hearing before the Department could have been much more difficult and contentious. Again, having a third perspective might have been invaluable in resolving this issue.

OCC's reflections on this April 2007 incident lead to our next recommendation.

### E. The utility, the Department's consultants and the OCC should compare updated proxy prices a week or more prior to bid day.

The differences in the proxy prices developed by Levitan and OCC for UI's April 2007 Standard Service procurement described in the previous section were unexpected, since previously our proxy prices had been quite close, once differences in the treatment of risk had been taken into account.[7] Under slightly different circumstances, such divergence in the benchmark prices could have resulted in serious disputes, both on bid day and in the subsequent technical meeting at the Department.

To reduce the probability of another last-minute divergence, the OCC, the Department's consultant, and the relevant utility should compare their projection of market prices at least two weeks prior to bid date. That time interval will allow the parties preparing to evaluate the final bids actually received on bid-day to track down the reasons for differences in their proxy prices, whether those are different assumptions about market

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[6] OCC's benchmark prices indicated that accepting some additional bids also would have been cost-effective.

rules, different projections of load shapes or market prices, or other factors. Following a period of consultation and comparison, the parties should at least be able to determine whether they believe that the proxy differences lie within a reasonable range of opinion, or whether there are actually substantive differences in the parties' projections. Even if the parties do not come into full agreement about all the assumptions, understanding the origin and significance of their disagreement may help smooth the process on bid day, and improve the quality of (and perhaps achieve consensus in) the recommendations to the Department.

### F. UI should seek bids that exclude congestion costs.

In its Standard Service procurements, CL&P has allowed bidders to offer two types of firm full-requirements service: Type A bids include delivery of all services to CL&P's delivery points in Connecticut, while Type B bids effectively price energy at ISO-NE's Massachusetts pricing hub, the standard delivery point for New England wholesale energy contracts.[8] Type A bids insulate consumers from changes in congestion costs between the Hub and Connecticut, but may be much more expensive than would be justified by current expectations for congestion. CL&P has taken a combination of the two categories of bids, selecting Type A bids where the price increment appears reasonable and Type B bids otherwise. Given the level of interest and the prices for the two types of service offered in

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[7] Levitan includes a small risk allowance, and expects bids to come in slightly above the resulting price, while OCC includes a larger risk allowance, and expects bids to come in close to the resulting price.

CL&P's Standard Service auctions, CL&P's flexibility clearly has produced substantial savings to ratepayers compared to soliciting only Type A supplies.

In contrast, UI has solicited only Type A bids. Considering the benefits to CL&P customers of also accepting Type B bids, OCC believes that UI also should seek Type B bids. If UI continues to procure three tranches for each year, it might take zero to two tranches as Type B contracts, depending on the prices.

### G. The utilities must be diligent and thorough in providing customer migration data.

In the round of procurements in the spring of 2007, various bidders expressed concern regarding the completeness and quality of the data on migration of customers from utility service to competitive suppliers, particularly with respect to the LRS-eligible customers. Bidders sought additional detail and updates on the number and load of customers taking Last Resort Service and Standard Service; on the customers currently taking service from competitive suppliers that are eligible to return to each utility service; and on the changes in those figures over time. At least one previously-serious bidder complained that the customer migration data available in Connecticut were less complete than those available in other New England states. This bidder chose not to bid on CL&P LRS supply, stating that it lacked the information necessary to price and manage its risks.

OCC has no reason to believe that the utilities have been withholding data from bidders. Some of the problems in tracking Last Resort Service and Standard Service load

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[8] In either case, the supplier is responsible for delivery to CL&P of all products required by ISO-NE. For Type B supply, CL&P rebates to the supplier the difference in

migration undoubtedly stem from the fact that the 350-kW distinction between these two groups originated with the beginning of Standard Service in January 2007, so the utilities had not previously identified the customers in each group, or tracked their migration or usage in those categories. Also, legal staff at both utilities were concerned that releasing sales data prior to the filing of their quarterly reports to the Securities and Exchange Commission ("SEC") might violate SEC restrictions on the release of financial data.[9] Additional problems in CL&P's data tracking may result from Northeast Utilities' outdated customer-information system, which the company is in the process of replacing.

In any event, OCC's opinion of the utilities' diligence and thoroughness in preparing and releasing migration and sales data is less important than the opinion of potential bidders. Driving away bidders, making them nervous, or increasing their perceived risk or uncertainty can only increase costs to ratepayers. The utilities should make every effort to present to bidders whatever data they can assemble in the most transparent and timely possible manner.

### H. <u>Shortening the Interval from Bid Submittal to Contract Approval</u>

Every hour of delay from the submittal of bids until the final approval of the contracts increases the risk to the bidders and hence the price they must bid. The Department should consider whether feasible changes to the bidding and approval schedules would shorten this interval, alleviate bidder risk, and reduce prices.

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energy price between Connecticut and the Massachusetts hub.

[9] The data sought by the bidders did not include any explicitly financial data, but sales do drive revenues, which in turn have a major effect on earnings. OCC has not evaluated the validity of these SEC-related utility concerns.

The benefit of condensing the schedule and limiting bidder risk of movements in the markets (and hence the risk premium in the bids) has been increased by the Department's rejection of signed contracts. There are two types of time lag that create different risks: the time lag from bid submittal to selection by the utility, and the time lag from selection by the utility to the Department's approval or rejection of the contracts.

Bidders are likely to quantify and value each of these time lags differently. In the interval from bid to selection, each bidder has a relatively low probability of success, unless it has some reason to believe that its bid is particularly likely to be the lowest of the five or ten bids received. Hence, the bidders probably do not purchase energy or capacity prior to the bid selection, although they may purchase some hedges (options to purchase power) to protect against rapid changes in the energy markets during bid day. Once its bid is selected, the probability of the contract being rejected is relatively small; the Department has rejected only three of the dozens of Standard Service contracts the utilities have signed. The bidder is likely to start locking in energy futures and other products, although it is also likely to hedge (by buying options to sell energy futures) in case the Department rejects the contract. The longer the bidders need to hold the bids open without final approval, the greater the cost of the hedges, or the cost of unhedged risk that the bidders will incorporate in their bid prices.

For most commercial contracts, bidders face only the first type of lag, and typically need to hold their bids open for only an hour or so. Under the current Connecticut practice, Standard Service bids are submitted at 10 AM and winners are typically selected by 4 PM, in time for contracts to be signed by 5 PM. A technical meeting is held the next morning and the Department typically issues a decision late on the afternoon of the second day.[10]

Other jurisdictions operate on different schedules. In Maryland, of example, bids are submitted in late afternoon, as the markets close, and winners are notified that evening. The Maryland process does not allow for linked bids, or Type B bids, so the selection of winners is simpler than in Connecticut. The Maryland Public Service Commission has taken longer to approve contracts than has the Department.

In some RFP rounds, analyzing the alternatives and getting expert consensus requires most of the allotted time on bid day. It may be possible to shorten this process, if the utility, OCC and the Department consultant can work through the likely issues (e.g., how much above the proxy price is too much for each slice, how much more is it worth paying for a Type A contract than Type B) a few days prior to bid day. The preparation of the reports to the Department occupies much of the evening, and it is not clear how much that can be shortened.

The Department will need to examine whether it can shorten its review period between the technical meeting and final decision on the contracts. To the extent that the Department commits itself to trusting the RFP process set up in the Initial Decision, as discussed above, this time-compression may be possible.

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[10] Bids are submitted at noon for LRS, and winners are typically selected by 2 PM, in time for contracts to be signed by 3 PM. To date, the Department has not rejected a signed contract for LRS service.

The parties should continue to work on shortening the review and approval periods. OCC does not believe that promising bidders quicker decisions would be prudent at this time.

### I. The Section 104 Study.

OCC notes that House Bill No. 7432, An Act Concerning Electricity and Energy Efficiency (signed by Governor Rell on 6/4/07, subject to a discrete line item veto), in its Section 104, requires the DPUC to study the feasibility of different Standard Service procurement and management options. OCC, consistent with the filing of these "Lessons Learned" Comments and with our extensive prior SS/LRS participation and comments (as noted above), looks forward to active participation in the DPUC proceeding associated with that required study.

Here, in closing and based on the SS/LRS RFP experience to date, OCC mentions three issues that may be appropriate for further examination in the Section 104 docket. At present, OCC takes no position on how these three issues should be resolved.

**The one-sided default true-up.** Currently, the contracts that CL&P and UI use for securing SS and LRS supply contain asymmetrical true-up provisions in the event of a supplier default. Defaulting suppliers owe termination payments to the distribution companies if energy prices have risen since the contract was signed, but the utilities owe no comparable payments to the suppliers if default occurs when energy prices have fallen over that period.

This asymmetry troubles suppliers, who have (during the SS/LRS RFP process) expressed concern that the distribution companies might exploit or even force a technical default to take advantage of decreases in market prices. CL&P and UI nonetheless object to making the termination clause symmetrical, due to uncertainty over whether the Department would allow recovery from ratepayers of payments to a defaulting supplier.

**Post-bidding negotiation.** The current SS/LRS procurement process consists of bidders submitting various bids, the utilities and other parties reviewing those bids, the utility selecting winning bids and signing contracts for the supplies as bid. Some have suggested that allowing the utilities to negotiate with potential winning bidders could produce superior best-and-final bids. However, it is also possible that bidders would raise their initial bids slightly if they expect to negotiate slightly lower prices prior to signing of a contract.

If the Department were to allow this sort of final negotiation, clear guidelines would be necessary. Such guidelines should demonstrate that the contemplated process will plainly be fair to all bidders.

**Going beyond full-requirements contracts.** The utilities have found that the full-requirements prices offered for the third year (i.e., contracts for 2009 solicited in late 2006 and early 2007) generally are less attractive (compared to projected wholesale market prices) than prices for two earlier years (i.e., 2007 and 2008). Also, the number of bidders generally has been lower for the third year.

Bidders may consider the risks of customer migration, market-rule changes, and market-price changes beyond two years to be excessive, or at least to require high risk adders. At the same time, laddering power procurements over three or more years could tend to reduce the risk of market excursions. Neither forgoing the benefits of laddering nor taking the high-priced full-requirements contracts offered for the third year is really a desirable outcome.

One suggested solution to this dilemma has been for the utilities to acquire some energy to serve Standard Service load in the out years through firm contracts for standard products, such as 50 MW blocks for all hours or all peak hours in the year. Any such discrete procurements would have to be coordinated with the full-requirements acquired later for the same time periods. For instance, the utility could allocate the standard-product contracts proportionately to winning bidders, or could solicit supply in excess of the standard-product contracts, or could sell the standard-product contracts into the market and use the proceeds to offset the cost of the full-requirements contracts.

## III. CONCLUSION

OCC urges the Department to take full account of our agency's views as expressed above, and looks forward to further participation in this important proceeding.

Respectfully submitted,

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By: ________________________
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I hereby certify that a copy of the foregoing has been mailed and/or hand-delivered to all known parties and intervenors of record this 12th of June 2007.

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Bruce C. Johnson
Commissioner of the Superior Court