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PUBLIC UTILITIES COMMISSION
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March 27, 2001

Mr. Donald S. Clark,
Office of the Secretary,
Federal Trade Commission,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Dear Mr. Clark:

The Maine Public Utilities Commission is pleased to respond to the Commission's request for information regarding the results of regulatory approaches to the issues that arise in restructuring the retail sale of electricity. We have received many favorable comments from knowledgeable industry participants and market experts on the approach to market reforms that we have implemented in Maine. We are happy to share the details of our approach with you, and to also offer you our additional observations and perspectives on the importance of assuring that retail market reforms are accompanied by appropriate and compatible reforms to the wholesale electricity markets.

Five of the six New England states have restructured their retail electricity markets, and over eighty percent of the generation that was formerly owned by vertically integrated utilities has been sold to unregulated generation companies. An Independent System Operator manages the dispatch of all 330 of these generators, and administers the transmission tariff for the 7 transmission owning utilities that span the region. The wholesale market is itself in a rapid state of transition, with frequent and complex changes to the market rules being filed at an ever accelerating pace with the Federal Energy Regulatory Commission. We have become increasingly and sometimes painfully aware of how rulings on wholesale issues by the FERC can affect the welfare of the retail customers whom we care about.

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I hope that the attached information is helpful in your inquiry. If any of the Commissioners or their staff have further questions please let me know.

Sincerely,

Thomas L. Welch
Chairman
Maine Public Utilities Commission

"V010003 -- Comments Regarding Retail Electricity Competition."

1) Why did the state implement retail electricity competition? What problems of the previous regulatory regime was it trying to solve?

On May 29, 1997, Governor Angus King approved LD 1804, "An Act to Restructure the State's Electric Industry." This bill was codified as Chapter 32 of Title 35A, M.R.S.A. The Restructuring Act allowed for electric power to be sold directly to retail consumers by largely deregulated power providers competing with one another. The delivery of power over transmission and distribution lines continues as a monopoly service provided by fully regulated utilities. March 1, 2000, was the starting date for electric competition.

The Governor and the Legislature enacted this legislation because consumers in Maine and in the rest of New England were paying some of the highest electric rates in the country. Their expectation was that, over time, restructuring would help to bring Maine's rates closer to the national average and encourage the development and construction of new, more efficient, and environmentally cleaner power plants. One reason for the high cost of electricity in Maine was the existence of high cost contracts that utilities had signed with Independent Power Producers (IPPs) who were "Qualified Facilities" (QFs) under the Public Utilities Regulatory Policy Act (PURPA) and whose output utilities were required to buy by the Act.

2) What were the expected benefits of retail competition? Were price reductions expected in absolute terms or in relation to what price levels would be absent retail competition? Were the benefits of retail competition expected to be available to consumers in urban, suburban, and rural areas? Were the benefits expected to be available for residential, commercial, and industrial customers? Were the benefits expected to be comparable for each group of customers?

Neither the Governor, the State Legislature, nor the Maine Public Utilities Commission expected immediate benefits in electricity price from the restructuring. The expectation was, and still is, that relative price advantages will occur gradually and over time with careful implementation of retail restructuring rules within the State and with just as careful implementation of changes to wholesale market rules by the Federal Energy Regulatory Commission in Washington DC. All consumers were expected to benefit eventually, but there was no expectation that the benefits among different groups would be comparable. In the long term, one of the important benefits should be that current "stranded costs" are removed from rates, and because there is no government involvement in the decisions concerning new generation supply, no additional costs will be "stranded" should conditions render those decisions uneconomic.

3) What factors or measures should the Commission examine in viewing the success of a state's retail electricity competition program? How should these measures be evaluated?

There are a number of indicators that should be examined on a qualitative level. They include the level of customer awareness of competition and satisfaction with the restructuring program, level of awareness among politicians of competition and their satisfaction with the restructuring program, the level and direction of prices paid by consumers, the number of competitive providers available, and whether the franchised monopoly has divested its generation resources.

4) *What are the most successful and least successful elements in the state's retail competition program? Has the state taken steps to modify the least successful elements?*

Maine's open access restructuring process has been heralded by many industry observers for the most successful piece of its program - the superiority of its market reforms and the deliberate process involved in developing the reforms. Because the State's load is a mere 10% of the regional market load, the least successful part of the program has been the attraction of a large number of competitive load servers.

Consumer Protection Issues

1) *What efforts were made to educate consumers about retail competition? How was the success of these efforts measured? Were the programs successful? Who funded these efforts? Who implemented the programs?*

The Maine PUC implemented a comprehensive consumer education program. The program used many methods to raise awareness and understanding of restructuring, including direct mail, advertising, and community outreach. So far, the program has cost $1.2 million. Program success was measured through periodic random surveys. The program was funded by Maine's electric distribution company customers through regular rates. Program implementation was by the PUC and its communications contractor (an ad agency), with guidance from a broad-based stakeholder group serving as a consumer education advisory panel. More information on the type of materials distributed to customers can be found on the MPUC's web site electric restructuring page: http://janus.state.me.us/mpuc/er-page.htm

2) *Do consumers have enough information to readily make informed choices among competing suppliers? Did the state coordinate its labeling requirements about the attributes of a supplier's product, if any, with neighboring states? Is there a need for federal assistance to provide standardized supplier labeling? If so, what would be the most useful federal role?*

Consumers display varying knowledge of the tools needed to make informed decisions, such as the uniform disclosure label. When it became apparent that competition for residential customers would be slow to develop, Maine deferred some education program investments until more suppliers decide to enter the market for small customers, so some education that was planned to let people know how to shop has not yet been implemented. The Maine PUC also coordinated the development of its labeling rules with other New England states through the development of a model labeling rule. This was done to hold down the costs for load servers in the New England markets and to minimize inter-state confusion. The regulators along with the market participants continue to work collaboratively to develop a tradable tag approach to mapping generation attributes. A Federal role in establishing standards for labelling may be useful. On the other hand, recent Federal initiative might be very harmful: for example, the Notice of Investigation issued recently by the Energy Information Administration may make it difficult or impossible to develop a useful disclosure protocol.

3) *Have consumers complained about unauthorized switching of their accounts to alternative suppliers (Aslamming@ <mailto:Aslamming@>) or the placement of unauthorized charges on their electric bills (Acramming@ <mailto:Acramming@>)? Were rules adopted to prevent these practices? Has the state taken enforcement action under its new authority against slamming and cramming? Have these actions been effective to curb the alleged abuses? Is there a need for federal assistance with slamming and cramming issues? If so, what would be the most useful federal role?*

4) *How did the state facilitate the ability of customers to switch to a new supplier? Have these efforts been successful? Does the state allow consumers to aggregate their electricity demand? If so, has aggregation enabled consumers to benefit from retail electricity competition? If not, why not?*

The state increased the ability of consumers to switch suppliers through customer education, and by working with key players in our own state and by monitoring the activities of our neighboring states to develop a region wide, uniform switching process.

Maine allows aggregation, and many of the customers that have elected to switch providers have done so with the assistance of an aggregator..

5) *Has the state established licensing or certification requirements for new suppliers to provide electricity to customers? Why? Which licensing provisions are designed to protect consumers? How do they operate? Has the state taken enforcement action against unlicensed firms? Have these actions been effective to curb unlicensed activity? Have these requirements acted as an entry barrier for new suppliers?*

Licensing and certification requirements have been established for customer protection. Information on the requirements and on the uniform business and switching requiremensts discussed above can be found on the supplier page of the MPUC website: http://janus.state.me.us/mpuc/supplier.htm

6) *Did the state place any restrictions on the ability of a utility's unregulated affiliate(s) to use a similar name and/or logo as its parent utility, in order to avoid consumer confusion when the affiliate offered unregulated generation services? Why or why not? What has been the experience to date with the use of these restrictions? Are consumers knowledgeable about who their suppliers are?*

Maine's restructuring legislation places the following restrictions on utilities serving retail loads within their own service territories.

1. Caps the permissible market share acquired by marketing affiliates of Central Maine Power Company and Bangor Hydro-Electric Company within their respective transmission and distribution service territories at 33%;

2. Prohibits affiliates of Central Maine Power Company and Bangor Hydro-Electric Company from providing standard offer service for more than 20% of the load within their respective service territories;

3. Prohibits any entity or affiliate of an entity which purchases more than 10% of the stock of Central Maine Power Company or Bangor Hydro-Electric Company from providing competitive electric power service and provides that if the Public Utilities Commission determines the purchase results in a utility affiliate gaining unfair market advantage, the utility must divest its marketing affiliate;

To date, utilities have found these provisions too onerous to market within their own service territories. Maine Public Service Company, the State's smallest investor owned utility had less restrictive prohibitions placed upon it bu the legislation and has had some success as a competitive energy service provider.

7) *Did the state place any restrictions on third-party or affiliate use of a utility's customer information (e.g., customer usage statistics, financial information, etc.)? What were the reasons for enacting the restrictions? What has been the effect of these restrictions on new marketing activity?*

Please see above.

8) *Has the state adopted any other measures intended to protect consumers (e.g., length of consumer contracts, automatic renewal provisions, etc.) as it implemented retail competition? What has been the effect of these measures?*

Many of the restructuring rules that implement retail choice are designed specifically to protect consumers through things such as a comprehensive education program, standardized billing labels, anti-slamming and cramming rules e.t.c. Due to the low migration rate from standard offer service to competitively procured power, it would be premature to conclude at this juncture whether or not these protections are adequate.

9) *To what extent have suppliers engaged in advertising to sell their product(s)? Do some suppliers claim that their product is differentiated (e.g., that it has environmental benefits)? Has there been any enforcement or attempts to verify these advertising claims? Do any certification organizations, such as Green-e, operate in the state? Are they used by (or at least available to) a substantial portion of consumers?*

There has been some supplier advertising using the mass media, although since most suppliers are currently targeting medium and large consumers, they may be advertising in specialized or trade publications. One supplier claims that its product is 100% renewable. To our knowledge, Green-E or other similar organizations have not yet certified this supplier's green product.

Retail Supply Issues

1) *What difficulties have suppliers encountered in entering the market? What conditions/incentives attract suppliers to retail markets? Have suppliers exited the market after beginning to provide retail service? If so, why?*

Maine's total load represents only 10% of the total load in the regional market. Because of this, suppliers are reluctant to incur any additional transaction costs to attract Maine customers. The suppliers are attracted by areas with lots of load and in which their advertising costs can be held to a minimum. There have been no withdrawals from the market for retail service in Maine.

2) *What are the customer acquisition costs and operational costs to service retail customers? How do acquisition and operational costs compare to profit margins for electric power generation services? Do retail margins affect entry? If so, how? Did the state harmonize the procedures suppliers use to attract and switch customers with other states' procedures, in order to reduce suppliers' costs?*

Energy services are provided to retail customers in Maine by competitive entities so the Maine PUC does not have the information requested on profit margins, operational costs, or customer acquisition costs. MPUC did attempt to coordinate with other New England states in developing billing disclosure, electronic business transactions, and uniform business practices in order to reduce suppliers costs.

3) *Have customers switched to new suppliers? Why or why not? Are there greater incentives for certain customer classes (i.e., industrial, commercial, residential) than for others to switch suppliers? Why or why not? Are penalties or different rates applied to customers that switch back to the supplier of last resort? Are there other measures to determine whether customers are actively considering switching suppliers? If so, do these indicators show different patterns than the switching rate data?*

Most of Maine's large industrial customers have switched to new suppliers. The shopping activity by other customers has been minimal. The number of customers and percent of State load that have migrated to competitive providers in Maine are tracked on our web site:
http://janus.state.me.us/mpuc/electric%20restructuring/migrationrates.htm

4) *Have suppliers offered new types of products and services (e.g., time of day pricing, interruptible contracts, green power, etc.) in states where retail competition has been implemented? If so, describe the products and what customer response has been.*

Since the advent of retail competition, there has been very little advertising by competitive providers. As described in the response to question number 9 above, some limited advertising of green power has targeted residential customers. Large customers have chosen competitive providers, small customers have chosen to remain with the competitively selected provider of standard offer service.

5) *What are the benefits or drawbacks of the different approaches to handling the supplier of last resort obligation for customers who do not choose a new supplier (e.g., allow incumbent utility to retain the obligation to provide generation services to non-choosing customers, auction the obligation, or assign the obligation to non-utility parties). What has been consumer reaction to these approaches? Is provider of last resort service necessary?*

An incumbent utility that provides standard offer service will use any monopoly leverage available to resist losing customers to competitors. To avoid this problem, Maine's restructuring legislation requires that the provider of last resort or standard offer provider be selected through a competitively let RFP.

Retail Pricing Issues

1) *How is entry affected by the price for the provider of last resort service (for customers who do not choose) or for default service (for customer whose supplier exits the market)? How does the price for the provider of last resort or default service compare to prices offered by alternative suppliers? Is the price for provider of last resort service or default service capped? If so, for how long?*

There are no caps on the price for provider of last resort or standard offer service in Maine. Ample evidence of the problems with such an approach already exist from other states that have attempted to mandate the retail price of standard offer power (e.g. CA, MA, RI). The MPUC has no information on the prices offered to customers receiving service from competitive providers.

2) *Has the state required retail rate reductions prior to the start of retail competition? What is the rationale for these reductions? How have state-mandated rate reductions prior to the start of retail competition affected retail competition?*

No. See response to question 2 above.

3) *Do any seasonal fluctuations in the price of wholesale generation cause some suppliers to enter the market only at certain times of the year? How have these suppliers fared?*

Competitive providers have attempted to "dump" customers back onto standard offer service when the wholesale market prices rise. This can occur when the underlying cost structure of the market changes (e.g. run ups in oil or gas prices) in addition to seasonal changes. MPUC does not have information on the financial condiditon of competitive providers.

4) *How has the state addressed public benefit programs (e.g., universal service requirements, low income assistance, conservation education, etc.) as it has implemented retail competition? Which of these programs are necessary as competition is introduced and why? Are public benefits available to all customers or are they restricted to customers of the supplier of last resort? How does this affect retail competition?*

Low income and energy conservation programs continue to be offered to all customers of the local distribution companies in Maine. The programs are funded through the revenue requirements of the LDCs. It is too early to determine whether there are any effects upon retail competition.

Market Structure Issues

1) *How has the development of Regional Transmission Organizations (RTOs) affected retail competition in the state?*

The north eastern part of the US electrical grid is divided into three control areas made up of multiple transmission owning utilities and operated by Independent System Operators (ISOs). Market development in these areas is far in advance of other regional markets due to the history of these areas operating as "tight power pools" prior to the formation of the ISOs. These three control areas have already achieved the 4 characteristics and 8 functions of an RTO that are described in the FERC Order 2000. As such, the Commission's continued insistence that these entities attempt to form a single RTO immediately has created unnecessary confusion, dissension, and delay in the refinement of the existing wholesale market rules and created uneconomic costs for consumers through out the northeastern US. We agree, however, that in the long run, the entire north eastern United States should operate as a seamless electricity market.

2) *Did the state require the divestiture of generation assets (or impose other regulatory conditions on the use of these assets) when retail competition was introduced? To what extent was divestiture of generation assets a component of the state's handling of a utility's stranded costs? Was divestiture used to remedy a high concentration of generation assets serving the state? Was there appreciable voluntary divestiture of generation assets? Has the state examined whether there has been appreciable consolidation of ownership of generation serving the state since the start of retail competition?*

Divestiture of utility generation assets was mandated by the State's restructuring legislation. Net proceeds over book value were used to reduce the stranded cost obligation. Utilities are given a reasonable opportunity to recover all stranded costs.

3) *If a utility no longer owns generation assets to meet its obligations as the supplier of last resort or default service provider, what market mechanism (e.g., spot market purchases, buy*

back or output contracts, etc.) does it use to obtain generation services to fulfill these obligations? What share of a utility's load is obtained via the different mechanisms? How are these shares trending? Is the market mechanism transparent? Is it necessary to monitor these market mechanisms? Why or why not? If so, what should the monitor examine?

Utilities in Maine are transportation-only entities and do not serve as the provider of last resort.

4) *Explain the state's role in overseeing operation of the transmission grid in the state and the extent to which public power or municipal power transmission systems are integrated into this effort. What is the relationship between the state's role and the Federal Energy Regulatory Commission's role in transmission system operation in the state?*

There is little if any transmission owned by municipal or public power organizations in Maine. Jurisdiction for the economic regulation of transmission rests with the FERC. The Maine Public Utilities Commission has siting authority for new transmission facilities constructed within the State.

5) *Do firms that have provider of last resort or default service obligations (formerly "native load" obligations in the regulated environment) receive preferential transmission treatment? If so, how does this affect wholesale electric power competition? How and by whom should retail sales of bundled transmission services (i.e., retail sales of both energy and transmission services) and retail sales of unbundled transmission be regulated? If by more than one entity, how should regulation be coordinated? What should the state's role be in overseeing wholesale transmission reliability?*

In Maine and all of New England, there is no preferential treatment in access to the transmission system extended to providers of last resort

6) *To what extent did the state identify transmission constraints affecting access to out-of-state or in-state generation prior to the start of retail competition? Is the state capable of remedying these transmission constraints, or is federal jurisdiction necessary? How do the rationales for federal jurisdiction over electric power transmission siting compare to the reasons underlying federal jurisdiction over the siting of natural gas pipelines?*

Prior to the implementation of retail access, transmission into and out of the State was reviewed and determined to be adequate. The current situation in which transmission rates are set by a Federal agency and construction is permitted by a State agency will need to change. It is not yet clear what the nature of the new relationship should be. Electric transmission facilities are substantially different than natural gas transmission facilities in that generation plants (either large central station or multiple distributed resources) can substitute for the construction of long linear facilities that create large visual and environmental disturbances. It would be incorrect, for example, to allow citizens of one community to drive the need for construction of a transmission facility by refusing to allow a generation plant that can meet the need more economically in their community. Thus, if federal jurisdiction is to be extended to the FERC for the construction of transmission facilities, the authority must also include the authority and responsibility to examine such situations and when warranted, override local opposition to the construction of generation facilities.

7) *How have state siting regulations for new generation and transmission facilities been affected by the onset of retail competition? Has new generation siting kept pace with demand growth in the state? If not, why not? Is federal jurisdiction necessary for siting of electric power generation facilities? Has the state actively monitored and reported the relationship between in-state capacity and peak demand in the state? What incentives do suppliers have to maintain adequate reserve capacity? What are the ways to value capacity in competitive markets? Is reserve sharing still important in competitive markets? Do other institutions/market processes provide a reasonable substitute for reserve sharing?*

Retail competition has not affected the siting of generation or transmission within Maine. The development of new generation facilities have greatly exceeded load growth within the State. The Maine PUC has monitored the relationship between in-state capacity and peak demand, but such a comparison is largely irrelevant because all of the generation is owned by unregulated merchant generators who may sell their output to whomever they desire. Reserve capacity was initially supposed to be maintained through an installed capability (ICAP) market. Many of the market participants in New England have determined that the ICAP market is broken and must be eliminated. The FERC has agreed, but is unwilling to eliminate a capacity market altogether. Meanwhile, market participants, the ISO New England, and New England state regulators struggle to develop a forward reserves market and an enhanced load response program that will obviate the need for a separate "capacity" market. Reserve sharing among competitors is unlikely to work well in truly competitive markets due to the opportunity costs faced by entities that control generation.

8) *Since the start of retail competition, what has been the rate of generation plant outages (scheduled and unscheduled)? To what extent has the state monitored these outages and examined their causes?*

The level of unscheduled generation outages in New England has increased since most of the New England utilities divested their generation resources. The cause of this change is not yet clear, but is being examined.

Other Issues

1) *What measures has the state taken to make customer demand responsive to changes in available supply? Has the state provided utilities incentives to make customers more price responsive? Has the state moved away from average cost pricing? What effect have these measures had on demand and on demand elasticity?*

The Maine PUC has allowed the price of standard offer service to rise with the increase in prices that was experienced in the wholesale markets. Utility energy conservation programs continue to be offered and the region is experimenting with an "Enhanced Load Response Program" that responds to fluctuations in the wholesale prices of the regional market. The program is being conducted through the ISO New England, which operates the regional spot market. Prior to restructuring, the State had moved away from average cost pricing in favor of marginal cost rate designs. It is unclear whether there have been any changes in demand elasticity.

2) *Has the state provided mechanisms and incentives for owners of co-generation capacity to offer power during peak demand periods? Has the state identified, reported, and facilitated development of pumped storage facilities or other approaches to arbitraging between peak and off-peak wholesale electricity prices?*

Owners of co-generation facilities in the State of Maine are merchant facilities and operate according to wholesale market price signals. The energy resource planning activities that used to be the joint responsibility of vertically integrated utilities and the public utilities commission have been supplanted by competitive market forces.

3) *What issues have arisen under retail competition that have required cooperation or coordination with other states? What approach was taken to securing this cooperation or coordination? Are there other issues requiring cooperation that have not yet been addressed? Which of these issues are the most significant?*

State regulatory commissioners belong to an organization called the New England Conference of Public Utility Commissioners (NECPUC). Because New England operates as a single control area, NECPUC has fostered extensive cooperation by its member states as they develop their retail market rules in such areas as billing information disclosure, electronic billing, load profiling, uniform business transactions, and the development of positions and filings with the FERC on the operation of the wholesale markets. For an example of these filings please visit our web site at: http://janus.state.me.us/mpuc/er-page.htm Continued scrutiny of the developing wholesale market rules will require continued attention by the NECPUC.

4) *How prevalent is the use of distributed resources (e.g., distributed generation) within the state? What barriers do customers face to implementing distributed resources?*

The Maine Public Utilities Commission continues to investigate this question. A report on the issue can be accessed on our website at the following address: http://janus.state.me.us/mpuc/2001legislation/2000-2001Legislative%20Reports.htm

5) *Which specific jurisdictional issues prevent state retail competition programs from being as successful as they might be?*

We can think of none.

6) *Which specific technological developments are likely to substantially affect retail or wholesale competition in the electric power industry that may alter the manner in which states structure retail competition plans? Why? What time frame is associated with these developments?*

The development of internet based platforms and energy management software that can respond to hourly fluctuations in the wholesale market prices has great potential for changing customer behaviors. To facilitate this transition, state regulators will need to carefully review their metering and billing rules.

7) *What are the lessons to be learned from the retail electricity competition efforts of other countries? Are there other formerly-regulated industries in the U.S. (e.g., natural gas) that allow customer choice and provide useful comparisons to retail electricity competition? If so, what are the relevant insights or lessons to be learned?*

The primary utility of information about other efforts (whether elsewhere in the United States or abroad) is in identifying the kinds of issues that may arise, and the varieties of problems that develop. The solutions attempted elsewhere, or the particular market structures or regulatory approaches chosen, however, are less helpful because the initial starting points and particular market conditions differ substantially.