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PUBLIC UTILITIES COMMISSION
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04333-0018

JRT ADAMS
CHAIRMAN

SHARON M. REISHUS
COMMISSIONER

January 11, 2007

The Honorable Phillip Bartlett II, Senate Chair
The Honorable Lawrence Bliss, House Chair
115 State House Station
Augusta, Maine 04333

Dear Senator Bartlett and Representative Bliss:

By letter dated April 10, 2006, you requested the Commission to undertake an examination of the opt-out fee provisions of the standard offer rule and to provide a report on our examination to the Joint Standing Committee on Utilities and Energy. Enclosed please find the requested report.

The Commission looks forward to working with you and your Committee on these issues during the upcoming session. If you have any questions or comments regarding the attached report, please contact us.

Sincerely,

Kurt Adams, Chairman
Maine Public Utilities Commission

JP
Sharon M. Reishus, Commissioner
Maine Public Utilities Commission

Encl.

cc: Utilities and Energy Committee Members
Lucia Nixon, Legislative Analyst

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Standard Offer Opt-Out Fee Report by the

Public Utilities Commission to the Utilities and Energy Committee

I. INTRODUCTION

By letter dated April 10, 2006, the Chairs of the Utilities and Energy Committee (Committee) requested that the Commission undertake an examination of the opt-out fee provisions of the standard offer rule and, in particular, to:

> consider whether the current opt-out fee provisions properly balance the need to mitigate risk to standard offer suppliers of customer migration in order to ensure a reasonably priced standard offer and the need to avoid undue hardship to customers that desire to participate in the competitive market.

The Chairs of the Committee asked the Commission to consider all aspects of the standard offer rule's opt-out fee provisions including the period a customer is required to take standard offer service and the amount of the opt-out fees, and requested that a report of the examination be provided to the Committee by January 15, 2007.

This report provides a summary of the Commission's examination of the opt-out fee provisions of the standard offer rule. As noted by the Chairs of the Committee, consideration of the current opt-out fee provisions or other similar mechanisms requires a balancing of the interests of customers to whom the fee might apply and the interests of customers that receive standard offer service which, for some, may be their only supply option. Without an opt-out fee or similar mechanism, standard offer service would be more expensive and, potentially, unavailable in its current all-requirements service form. Given these considerations, the Commission believes that the current provisions provide a reasonable balance and that there is no immediate need to alter the opt-out fee requirements. The Commission will, however, continue to assess this issue and, if warranted, re-examine the matter by reopening the standard offer rule.

II. BACKGROUND

The current standard offer opt-out fee provisions are contained in section 2(C)(2) and (3) of Chapter 301of the Commission's rules. Generally, the opt-out fee provisions state that a customer who has taken service in the competitive market and then takes standard offer service, must remain on standard offer service for a 12-month period or pay an opt-out fee to return to the competitive market prior to the end of the 12 months. Ch. 301 § 2(C)(2)(d).[1] The amount of the opt-out fee is two times the customer's highest standard offer bill.[2] If the customer was served by more than one standard offer provider, the fee is apportioned among the providers based on the number of months each provider furnished service to the customer. *Id.* The opt-out fee provisions do not apply to the residential and small commercial customer classes,[3] but the rule allows the Commission to impose the provisions upon a finding that there is good cause to deter frequent transfer in and out of standard offer service. Ch. 301 § 2(C)(3)(a) and (b).[4]

As discussed in the Commission's Order that adopted the current the opt-out fee provisions, the purpose of the rule is to deter customers from strategically switching into and out of standard offer service based on the price differentials between standard offer service and the competitive market.[5] *Order Adopting Rule and Statement of Factual and Policy Basis,* Docket No. 2000-904

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[1] Chapter 301 does not apply the opt-out fee provisions to customers in northern Maine, but the rule specifies that the Commission may by order make the opt-out fee requirements applicable in northern Maine. Ch. 301 § 2(C)(3)(b). The Commission did so in an Order issued in March 2002. *Order Adopting Opt-Out Fee In Northern Maine,* Docket No. 2001-806 (March 6, 2002).

[2] The rule allows the Commission to increase the fee upon a finding that such action is necessary to accomplish the deterrent purposes of the provision or to obtain reasonably priced standard offer service. Ch. 301 § 2(C)(2)(e). The Commission has never invoked this provision.

[3] The provisions do apply to a group of customers in the small class with an aggregate demand of more than 50 kW if a competitive provider or aggregator induces the group to enter standard offer service and then leave the service within a 12-month period. Ch. 301 § 2(C)(3)(a). The Commission has never used this provision to impose an opt-out fee on a group of customers.

[4] The Commission did not apply the opt-out restrictions to the residential and small commercial class because strategic switching was less likely to occur and less likely to have a detrimental impact. *Order Provisionally Adopting Rule and Statement of Policy Basis,* Docket No. 97-739 at 8-10 (Feb. 11, 1998).

[5] In its rulemaking Order and in subsequent Orders on the subject, the Commission often refers to this activity as "gaming." We will endeavor to refrain from using this term in the future because its negative connation may create some confusion as to the nature of the activity for which opt-out fees apply. The term "gaming" was not meant to suggest actions based on some type of bad motives or the desire to reap some kind of windfall, but refers only to switching services based on price considerations.

at 4-6 (Jan. 24, 2001) (*Order Adopting Rule*). Such deterrence is necessary to reduce the risk and the associated costs to standard offer providers that would occur if customers were free to move on and off standard offer service without limitation. The Commission stated in the *Order Adopting Rule* that the potential cost to suppliers would result in unacceptable premiums in standard offer rates, thus requiring some deterrence to achieve reasonably-priced standard offer service. *Id.*

In the *Order Adopting Rule*, the Commission recognized that there would be circumstances in which the imposition of an opt-out fee would not be warranted. The Commission noted that an opt-out fee would not be appropriate when a customer enters standard offer service for reasons beyond its control or otherwise not related to strategic switching among competitive and standard offer service. *Id.* at 4. The Commission explained that, because it is difficult to articulate specific exemptions to the opt-out requirements that would be appropriate in all cases, it would entertain requests for a rule waiver on a case-by-case basis. The Commission stated that, in considering a waiver request, relevant factors would include whether strategic movement among services had occurred and whether the failure to impose the fee would work an injustice on the standard offer provider. *Id.* The Commission has routinely granted opt-out fee waivers upon the determination that requisite circumstances have existed.[6]

In subsequent Orders, the Commission has further elaborated on when an opt-out fee under the current rules should be imposed and when it should be waived in the context of the overall purpose of standard offer service. The Commission has found that an opt-out fee is warranted when an affirmative decision is made to switch between the market and standard offer service based on economic criteria, specifically the relative prices of the two services, with the objective being to lower electricity costs. The Commission noted that the use of the standard offer as a temporary lower cost option or a free call option is precisely what the opt-out fee was intended to discourage. Rather, for customers that have entered the competitive market, standard offer is intended to be a default service or a safety net (not another supply option) in the event of inadvertent lapses in competitive supply or when the customer cannot obtain competitive supply. *WPS Energy Services, Order Denying Request for Opt-out Fee Waiver,* Docket No. 2001-594 at 2-4 (Nov. 7, 2001); *Maine Energy Aggregation Company, Order Granting Waiver,* Docket No. 2002-468 at 3-4 (Dec. 11, 2002).

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[6] The waivers generally involve circumstances in which the entering of standard offer service was inadvertent or beyond the customer's control (e.g. the competitive provider failed to enroll the customer on time or the customer was not able to arrange for service before the termination of a previous contract) and the customer returned (or would return) to competitive service within a one to three month period.

III. COMMISSION EXAMINATION

In response to the request by the Committee Chairs, the Commission, on June 19, 2006, initiated an Inquiry as the vehicle to examine the standard offer rule's opt-out fee provisions. *Inquiry into the Opt-Out Fee Provisions of the Standard Offer Rule (Chapter 301),* Docket No. 2006-310. Through a Notice of Inquiry, the Commission requested comments from interested persons on the following issues: minimum stay requirements, fee amount, fee apportionment, applicability of fees and process, applicability to northern Maine, and alternative structures (e.g., opt-in restrictions).

The Commission received comments from the Retail Energy Supply Association, Constellation Energy Commodities Group, WPS Energy Services, Inc., Central Maine Power Company, and Bangor Hydro-Electric Company.[7] The comments ranged from general satisfaction with the current system to recommendations that the Commission move from fixed-term prices to real-time pricing for large standard offer customers. The Commission also received a variety of comments suggesting consideration of changes to the current opt-out fee system. These included having the minimum stay period correspond with the standard offer term, altering the allocation of fees to account for the time the customer would have remained on the standard offer, requiring returning customers to pay real-time prices for the remainder of the standard offer term, and adopting a monthly bid process for the medium class.

Based on our experience implementing the opt-out fee provisions of the standard offer rule and a review of the recommendations and suggestions made by the commenters in the Inquiry, our view is that current opt-out fee requirements are sufficient to serve their purposes and that there is no immediate need to modify them. However, the commenters did provide many suggestions that are worthy of further consideration. We will therefore consider modifications to the current system, as well as comprehensive changes to the general approach, when we next reopen Chapter 301 for review.[8]

[7] All comments filed in this Inquiry are posted on the Commission's virtual case file on its webpage www.maine.gov/mpuc and can be obtained through reference to Docket No. 2006-310.

[8] The Commission periodically reopens Chapter 301 to modify its provisions based on experience and changes in market operations. The Commission last modified Chapter 301 in December 2005, *Order Adopting Rule and Statement of Factual and Policy Basis,* Docket No. 2005-443 (Dec. 13, 2005).

IV. CONCLUSION

As discussed above, the purpose of the opt-out fee requirements is to provide a deterrent against the use of standard offer as a temporary lower cost option or free call option. Use of the standard offer in this manner would both hinder the operation of the competitive market and increase the cost of standard offer service for those customers that require the service (e.g., through inadvertent lapses in competitive supply or the inability to obtain competitive supply).

There are a number of different mechanisms or approaches that would serve as a deterrent to varying degrees against strategic switching onto or out of the standard offer. Each of these has its own attributes, both positive and negative, and would require careful examination before adoption. In addition, there are approaches to standard offer pricing that would negate the need for opt-out fees or any other deterrent mechanism (primarily real-time standard offer prices). However, in the Commission's view, the current opt-out provisions are operating as intended to encourage customers to stay in the competitive market and provide a reasonable balance of the need to mitigate risk to standard offer suppliers with the desire of customers to leave the standard offer and return to the competitive market. In addition, the Commission's waiver process allows for consideration of unanticipated circumstances and provides the flexibility necessary to ensure fair outcomes in individual cases. For these reasons there is no pressing need to change the current system. As with all standard offer procedures, the Commission will continuously examine ways to improve the opt-out fee provisions and will make changes as warranted by future circumstances.