

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

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November 4, 2011

Honorable Michael Thibodeau, Senate Chair  
Honorable Stacey Fitts, House Chair  
Energy, Utilities and Technology Committee  
115 State House Station  
Augusta, Maine 04333

**Re: Report Regarding Long-Term Contracts Implemented**

Dear Senator Thibodeau and Representative Fitts:

During its 2010 session, the Legislature enacted An Act to Enhance Maine's Clean Energy Opportunities, P.L. 2009, ch. 518. Section 12 of the Act, which is in unallocated language, provides that the Commission shall by January 15, 2012, report to the Energy, Utilities and Technology Committee regarding long-term contracts implemented pursuant to the long-term contracting statute, 35-A M.R.S.A. § 3210-C, including the number, types and lengths of contracts. Pursuant to the Act, the Committee may submit a bill regarding long-term contracts to the Second Regular Session of the 125th Legislature.

**Long-Term Contracting Authority**

During its 2006 session, the Legislature enacted an Act to Enhance Maine's Energy Independence and Security, P.L. 2005, ch. 677 (codified at 35-A M.R.S.A. § 3210-C) that authorized the Commission to direct T&D utilities to enter into long-term contracts for power supply.<sup>1</sup> Generally, the purpose of this legislation was to provide the Commission with a tool that could be used to moderate increases in the market cost of capacity and energy, and to reduce price volatility, while promoting the development of new generating resources (e.g., renewable resources) in Maine. Long-term contracts for power supply are often necessary for generating projects to be financed and developed, and a long-term contract with a creditworthy entity, such as a public utility, can be especially valuable to a developer of

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<sup>1</sup> A description of Maine's experience with long-term contracting prior to industry restructuring is attached.

electric generation resources. Thus, project developers may be willing to offer attractive prices (such as fixed prices projected to be significantly lower than market prices or prices at a stated discount off market prices) in return for a long-term contract with a public utility.

However, there is an inherent risk in most long-term contracting in that the evaluation of contract prices generally involves projections of the future cost of capacity, energy and renewable energy credits (RECs). If future market prices turn out to be lower than projected and lower than the contract prices, the result could be the creation of “stranded costs” that would be paid for by electric ratepayers. Consequently, the Commission has taken a particularly cautious approach to its contracting authority.

### **Long-Term Contracts That Have Been Implemented**

Subsequent to the enactment of its long-term contracting authority in 2006, the Commission has been presented with and has evaluated dozens of proposals, but has only accepted two proposals. These are: 1) Verso Bucksport Renewable Capacity Project (Commission Order Directing Contract issued January 3, 2011); and 2) Rollins Wind Project (Commission Order Directing Contract issued October 8, 2009).<sup>2</sup> The Commission’s understanding is that these projects could not be developed without the long-term power supply contract.

### **Legislation Enacted During the 2011 Session Effecting Long-Term Contracts**

During its 2011 session, the Legislature enacted An Act To Reduce Energy Prices for Maine Consumers, P.L. 2011, ch. 413. Section 2 of the Act modified the provision of the long-term contracting statute that governs contracting for RECs, 35-A M.R.S.A. § 3210-C(3). The statute now specifies that “[t]he price paid by the investor-owned [T&D] utility for the [RECs] must be lower than the price received for those [RECs] at the time they are sold by the investor-owned [T&D] utility.”

Section 3 of the Act added a new subsection to the statute, 35-A M.R.S.A. § 3210-C(11). The new provision states:

**11. Customer benefits.** The commission may direct investor-owned [T&D] utilities to enter into contracts under this section only as agents for their customers and only when such contracts are in the best interest of customers and in accordance with this subsection. The commission shall adopt rules to ensure that:

A. To the extent the benefits to ratepayers of a long-term contract are projected to occur in the later years of the contract term, the commission shall

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<sup>2</sup> A description of the terms of the Verso Bucksport and Rollins Wind contracts is attached.

ensure that adequate financial security is in place so that it is reasonably likely ratepayers will obtain the projected benefits of the long-term contract; and

B. To the extent practicable, ratepayers obtain the benefit of lower cost capacity resources of energy associated with those resources or of any [RECs] that may exist after the term of primary financing or subsequent replacement financing necessary for the development and construction of a generation project is completed.

Pursuant to 35-A M.R.S.A. § 3210-C(10), the required rules are major substantive as defined in 5 M.R.S.A. §§ 8071-8074. Section 5 of the Act, which is in unallocated language, states that, except for offshore energy project long-term contracts entered into pursuant to P.L. 2009, ch. 615 (which is discussed in more detail below), the Commission may not direct T&D utilities to enter into long-term contracts pursuant to 35-A M.R.S.A. § 3210-C after the effective date of the Act until the major substantive rules are finally adopted.<sup>3</sup> As a result, with the exception of offshore energy long-term contracts, no additional long-term contracts may be implemented until after the Legislature reviews the provisionally adopted rules next session.<sup>4</sup>

### **Offshore Energy Projects**

During its 2010 session, the Legislature enacted An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force, P.L. 2009, ch. 615, that directs the Commission, in accordance with 35-A M.R.S.A. § 3210-C, to conduct a competitive solicitation for proposals for long-term contracts to supply capacity, energy and RECs from one or more deep-water offshore wind energy pilot projects or tidal energy demonstration projects. This contracting authority is in unallocated language (Section A-6 of the Act).

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<sup>3</sup> Section 7 of the Act, which is also in unallocated language, further provides that "[n]otwithstanding [P.L. 2009, ch. 615], Part A, section 6, the portions of [P.L. 2011, ch. 413] that amend the Maine Revised Statutes, Title 35-A, section 3210-C do not apply to contracts entered into pursuant to [P.L. 2009, ch. 615], Part A, section 6."

<sup>4</sup> To obtain information, viewpoints and recommendations from interested persons on how the long-term contracting rule should be amended in response to P.L. 2011, ch. 413, the Commission, on August 17, 2011, initiated an Inquiry. *Inquiry into Long-Term Contracting*, Docket No. 2011-270 (Aug. 17, 2011). On October 11, 2011, the Commission opened a rulemaking proceeding and proposed rule changes to implement the new law. *Amendments to Long-Term Contracting Rule (Chapter 316)*, Docket No. 2011-348 (October 11, 2011). A public hearing on the proposed rule changes will be held on November 9, 2011 and the Commission expects to provisionally adopt rules by the end of the year.

Under its offshore energy long-term contracting authority, the Commission may authorize contracts for an aggregate total of no more than 30 MW with no more than 5 MW supplied by tidal energy projects. The authorizing law contemplates that selected proposals will demonstrate a commitment to invest in manufacturing facilities in the State and the purchase of goods and services from local suppliers. The authorizing law also limits any rate impact from offshore energy contracts to 0.145 cents/kWh—the same amount as the assessment for the Efficiency Maine Trust.

As required by the Act, the Commission issued a Request for Proposals (RFP) for qualifying offshore energy projects on September 1, 2010 and initial proposals were submitted May 1, 2011. The bid evaluation process is ongoing and we expect that it will be at least several more months before that process is completed and the Commission announces what proposals, if any, have been selected for long-term contracts.

If you have any questions regarding this information, please do not hesitate to contact us.

Sincerely,



Thomas L. Welch, Chairman

On behalf of the Chairman and

Vendean V. Vafiades, Commissioner  
David Littell, Commissioner  
Maine Public Utilities Commission

Attachments

cc: Energy, Utilities and Technology Committee Members  
Jean Guzzetti, Legislative Analyst and Jon Clark, Esq., OPLA Deputy Director

**Attachment 1****Long-term Contracting Prior to Industry Restructuring**

In 1997, the Legislature enacted comprehensive legislation that fundamentally restructured the electric industry in Maine. P.L. 1997, ch. 316 (codified at 35-A M.R.S.A. § 3201-3217) (Restructuring Act). Beginning in March 2000, the Restructuring Act deregulated the provision of generation service, allowed customers to choose their supplier of electricity, and prohibited utilities from owning generation assets (except for some limited exceptions) or providing retail supply to customers. Prior to the Restructuring Act, Maine's electric utilities had the legal responsibility to provide generation supply to all customers within their respective serviced territories and were expected to engage in resource planning and acquisition to assure that the utilities always had access to power supply at a reasonable cost.

To satisfy their obligations, utilities from the mid 1980s to early 1990s entered into a large number of long-term contracts with independent powers producers (often renewable power facilities). These contracts were based on long-term projections of energy costs that turned out to be significantly higher than the actual costs, resulting in considerable stranded costs. However, because the utilities would, absent these contracts, have continued to have the obligation to procure supply, it is impossible to determine the exact extent to which all the over-market costs that comprise stranded costs would have been avoided because utilities may have pursued the other options that existed at the time (e.g., investment in the Seabrook nuclear power plant, a long-term contract with Hydro-Quebec, construction of a coal or oil facility). Although there is an inherent risk with most long-term contracts, the current circumstances in Maine are now very different with respect to long-term contracting. Because the industry is now restructured, utilities do not have to obtain any power supply and the Commission can be very selective in determining the contracts, if any, utilities should be required to enter into. This fact limits the overall risk and benefits for ratepayers from long-term contract activity.

## **Attachment 2**

### ***Verso Bucksport Renewable Capacity Project***

The Verso Bucksport Renewable Capacity Project contract is for a five-year term (with an option for CMP to extend the term for an additional five years). The contract is for the purchase of RECs and the provision of capacity value. Under the contract, CMP will purchase the annual equivalent of 35 MWh per hour of Maine Class I RECs at a base price that starts at \$22 per REC in year one of the Agreement and decreases to \$15 per REC in year five of the Agreement. In years three through five of the Agreement, Verso will receive the greater of the REC base price or 75% of the average cost per Maine Class I REC as determined by the Commission. The Verso contract also provides that for thirty months of the five-year term, CMP will receive the financial equivalent of purchasing 21 MW of capacity from the VRC project at a 10% discount.

### ***Rollins Wind Project***

The Rollins Wind Project contracts have a twenty-year term for the entire capacity value and energy output from the 60 MW Rollins Wind Project located in Penobscot County, Maine. The Commission directed CMP to enter into a contract for 80% of the output of the Project and BHE to enter into a contract for 20% of the output of the Project. The utilities will pay a price per MWh of electricity that is equivalent to a discount off of the hourly real time wholesale price. The energy price paid under the contracts is subject to a cap of \$110 per MWh, and a floor that starts at \$55 per MWh in the first year and escalates by \$1 per MWh each year until it reaches \$65 per MWh, where it stays for the remainder of the contract term. Pursuant to the capacity component of the contracts, the utilities essentially receive the capacity value of the Rollins Wind Project (at least 17.91 MW) for no additional cost above the cost of purchasing the energy.