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RICHARD DAVIES
PUBLIC ADVOCATE

ELECTRONICALLY FILED ON AUGUST 4, 2010

Karen Geraghty
Administrative Director
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

RE: Request for Comments relating to Long Term Contracting for Offshore Wind Energy and Tidal Energy Projects, Docket No. 2010-235

**THIS IS A VIRTUAL DUPLICATE OF THE ORIGINAL HARDCOPY
SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH
ITS ELECTRONIC FILING INSTRUCTIONS**

Dear Karen:

Enclosed for filing is the response of the Office of Public Advocate to the Request for Comments of the Public Utilities Commission in this Docket. We appreciate the opportunity to comment on the issues raised in the Commission's Request for Comments.

Sincerely,

Richard Davies
Public Advocate



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ELECTRONICALLY FILED ON AUGUST 4, 2010

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

PUBLIC UTILITIES COMMISSION

RE: Request for Comments: Long-Term
Contracting for Offshore Wind Energy
and Tidal Energy Projects

RESPONSE OF THE
PUBLIC ADVOCATE

Docket No. 2010-235

August 4, 2010

The Office of Public Advocate respectfully submits the following comments in response to the Commission's "Request for Comments" concerning the proper interpretation of the so-called "rate impact limitation" provision included in the enacted version of LD 1810, now P.L. 2009, ch.615.

PUC Question #1: Should the provision be interpreted to mean that all customers, in any customer class, may have a rate impact up to 0.145 cent/kWh (assuming no change to assessment under subsection 4 and no additional assessment under subsection 5) resulting from any above-market costs that might be associated with long-term contracts;

OPA response: Yes. The reference to Title 35-A, section 10110, subsection 4, which is utilized in the "rate impact limitation" language included in Section A-6 of Public Laws of 2009, chapter 615 (formerly LD 1810), is only for the purpose of capping the amount that can be added to rates of "any customer class" resulting from any long-term contract the PUC may approve under the provisions of Section A-6 of PL 2009, chapter 615. There is no other relationship between section 10110, subsection 4 and the "rate impact limitation" language in Section A-6 of chapter 615. Subsection 4 deals with the collection of funds by the PUC for **"conservation programs and administrative costs..."**, not with the rate impact of any long-term contract approved under Section A-6 of Chapter 615.

PUC Question #2: Given the exclusion in subsection 6 noted above, should the provision be interpreted to mean that transmission and sub-transmission customers (i.e., industrial class customers) could have no rate increase resulting from any above-market costs that might be associated with long-term contracts, while distribution level customers (i.e., medium and small commercial customers and residential customers) may have a rate impact up to 0.145 cent/kWh (assuming no change to assessment under subsection 4 and no additional assessment under subsection 5).

OPA response: No. The exclusion in 35-A section 10110, subsection 6 applies only to assessments included in subsection 4 for “**conservation programs and administrative costs...**” on electricity customers receiving service at transmission and sub-transmission voltage levels, the only subjects included in subsection 4. It does not apply to increases in electric rates in any customer class attributable to any long-term contract under Section A-6 of chapter 615, which is not a subject of subsection 4.

If the answer to Question 1 were not unambiguous, it would be possible to argue that the answer to Question 2 should be “yes”. This is because there is language in section 10110, subsection 6 that states that transmission and subtransmission customers are “not required to pay in rates any amount *associated with* the assessment imposed on transmission and distribution utilities under sub-section 4 or sub-section 5”. One could argue that the language included in Section A-6 of Public Laws of 2009, chapter 615 creates such an association between these customers and the assessment. However, the language included in Section A-6 of chapter 615 is not ambiguous, so this argument would not hold up in a court review. In our view, if the Legislature had intended to insulate transmission and subtransmission customers from any rate increase as a result of this Act, it would have done so in a more straightforward way than this.

PUC Question #3: In addition, the Commission requests comments on the proper interpretation of the following language in the rate impact limitation provision: “the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered.” Given that subsection 4 explicitly references subsection 5, should the provision be interpreted to include only the assessment specified in subsection 4 or should it include the assessment in subsection 4 and any additional assessment pursuant to subsection 5? In providing comments on the proper interpretation, the Commission requests that a rationale be presented that provides for a legislative intent or purpose supporting the interpretation.

OPA response: We interpret the “rate impact limitation” language in Section A-6 of Public Laws of 2009, Chapter 615, including its language referencing Title 35-A, section 10110, subsection 5, as including only sub-section 4. We reach this conclusion because the plain meaning of the reference to sub-section 5 means “not including expenditures on assessments under subsection 5”, leaving only those expenditures specified in sub-section 4, and capping those expenditures at an amount that increases the sub-section 4 assessment by no more than 0.145

cent per kilowatt-hour. Further, we interpret the language “...at the time that the contract is entered.” as recognizing that other subsequent legislation might raise the 0.145 cent per kilowatt-hour figure (in 35-A, section 10110, sub-section 4) prior to the approval of a long-term contract under Section A-6 of chapter 615, and that the “at the time that the contract is entered” language is intended to cap any increase in electric rates in any customer class at no more than the amount of assessment provided for in sub-section 4 as of the date the long-term contract is entered.

Thank you for the opportunity to comment on this important set of related issues raised by the “rate impact limitation” language in P.L. 2009, ch. 615. A clear interpretation of this potentially confusing language at an early time will allow this law to move forward with reduced prospects of legal challenges seeking the meaning and intent of this portion of the new law. This issue must be resolved before the Public Utilities Commission seeks proposals for a long-term contract under the provisions of this new law. Otherwise, the solicitation of such long-term contracts by the PUC, and any award of such a contract will likely lead to law suits which could delay for a long time the receipt of the benefits of such a long-term contract, and could severely hinder Maine’s efforts to become the hub of offshore wind energy on the Atlantic coast.

Sincerely,

A handwritten signature in cursive script that reads "Richard Davies". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Richard Davies
Public Advocate