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August 9, 2010

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

RE: MAINE PUBLIC UTILITIES COMMISSION, Long-Term Contracting for Offshore Wind Energy and Tidal Energy Projects, Docket No. 2010-235

Dear Ms. Geraghty:

Enclosed please find an original and one copy of the Comments of the Industrial Energy Consumer Group in the above-captioned matter.

Sincerely,

Anthony W. Buxton
Todd J. Griset
Counsel to Industrial Energy Consumer Group

AWB/mag
cc: Parties on Service List (via e-mail only)

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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-235

August 9, 2010

MAINE PUBLIC UTILITIES COMMISSION
Long-Term Contracting for Offshore Wind Energy and Tidal Energy Projects

COMMENTS OF THE INDUSTRIAL ENERGY CONSUMER GROUP ("IECG")

NOW COMES the Industrial Energy Consumer Group ("IECG"), by and through its attorneys, Preti, Flaherty, Beliveau & Pachios, LLP, pursuant to the Commission's July 20, 2010 Request for Comments in the above-captioned proceeding, and submits the following comments.

IECG is a non-profit Maine trade association formed for the purpose of representing the interests of industrial energy consumers before regulatory and legislative bodies. For the past 25 years, IECG has advocated for sensible energy policy and reasonable, affordable rates.

At issue here is the interpretation of a rate impact limitation provision contained in P.L. 2009, Ch. 615, "An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force" (the "Act"). The plain language of the Act is clear that under current law, transmission and sub-transmission customers cannot face any rate increase resulting from costs that might be associated with long-term contracts for ocean energy resources. The Legislature drafted this language to reflect the fact htat transmission and sub-transmission level customers do not currently pay a system benefit charge; indeed, this is the entire purpose of the language, and the language is plain on its face.

Even if the Commission were persuaded that the statutory language were somehow ambiguous, the Act's legislative history manifests the legislative intent to limit each particular customer class's rate exposure to these ocean energy costs to the rate increase caused by that particular customer class's exposure to the system benefit charge applicable to that class under 35-A M.R.S.A. § 10110. Today, for transmission and sub-transmission customers, that amount is zero.

The legislative history of this provision accurately reveals the extraordinary importance of this provision to industrial consumers. With this provision properly implemented, transmission and sub-transmission consumers – those most sensitive to the price of electricity – will be indifferent to the extraordinarily high initial costs of ocean energy projects. Industrial consumers were and are acutely aware of the controversy surrounding the cost of offshore wind projects under consideration in other states such as Massachusetts and Rhode Island, where such contracts for ocean energy have been proposed with rates over 20 cents per kilowatt-hour.

The Commission certainly is aware that exposure of marginal industrial manufacturing facilities to such extraordinary costs will chill the investment necessary to maintain existing operations and scare away the investment for new industrial operations. There is much more at stake here than the mere parsing of words by creative attorneys.

II. The Statutory Language Is Unambiguous.

The rate impact limitation provision in the Act is unambiguous.

> The commission may not approve any long-term contract under this section that would result in an increase in electric rates in any customer class that is greater than the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered.[1]

Well-established legal precedent prescribes how the meaning of a statute is determined.[2] Words and phrases shall be construed according to the common meaning of the language,[3] and to give full effect to the entire statute.[4] Where a statute is not ambiguous, it must be plainly construed based on the language of the statute.[5] As the Law Court has described statutory interpretation, "we seek to give effect to the intent of the Legislature by examining the plain meaning of the statutory language and

[1] P.L. 2009, Ch. 615, § A-6.
[2] *Quiland, Inc. v. Public Utilities Comm'n,* 2008 ME 135 ¶ 9 (May 29, 2008).
[3] 1 M.R.S.A. § 72(3).
[4] 73 Am.Jur 2d Statutes §165.
[5] *Department of Corrections v. Public Utilities Comm'n* 2009 ME 40 ¶ 12 (Jan. 15, 2009).

considering the language in the context of the whole statutory scheme. We avoid statutory constructions that create absurd, illogical or inconsistent results."[6]

Only if a statute is ambiguous, meaning that it contains language that is reasonably susceptible of different interpretations,[7] does other evidence of legislative intent such as legislative history come into play.[8]

In reviewing and interpreting a statute, the fundamental guiding principle is thus the determination of the legislative intent of the statute.[9] Legislative intent is ordinarily determined from the plain language of the statute itself and the plain meaning of the language should be applied so long as it does not lead to an absurd, illogical, or inconsistent result.[10] Moreover, if there is no clearly expressed legislative intent to the contrary, the plain language of the statute must be viewed as conclusive evidence of legislative intent.[11] Courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain or futile thing in the enactment of a statute. Thus, it is a general principle that the courts should, if reasonably possible to do so, interpret the statute or the provision being construed so as to give it efficient operation and effect as a whole.[12] Furthermore, every word must be given meaning:

> [T]he legislature will be presumed to have inserted every part thereof for a purpose. As a general rule, a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.[13]

Thus, the rules of statutory construction each include presumptions against both ambiguity and superfluity.

Here, applying these fundamental principles of statutory interpretation, the rate impact limitation provision is unambiguous. This language is not reasonably susceptible of multiple, differing interpretations; parsing the rate impact limitation provision reveals only one possible meaning. First, the provision expresses a limitation on the

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[6] *Darling's v. Ford Motor Co.*, 1998 ME 232, ¶ 5, 719 A.2d 111, 114 (internal citations omitted)
[7] *Competitive Energy Servs.* 2003 ME 12 ¶ 12.
[8] *Trask v. Public Utilities Comm'n,* 1999 ME 93 ¶ 7 (June 7, 1999).
[9] *Id.*
[10] *Id.*
[11] *CIA. Petroler Caribe, Inc. v. Arco Caribbean, Inc.* 754 F.2d 404, 416 (1st Cir. 1985).
[12] See, e.g., 73 Am.Jur 2d Statutes §164
[13] 73 Am.Jur 2d Statutes §165.

Commission's authority to enter into long-term contracts for ocean energy resources. Certain kinds of contracts – namely those which "would result in an increase in electric rates in any customer class that is greater than the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered" – are proscribed.

Drilling deeper, we see the test to be applied in evaluating whether a specific putative contract may or may not be approved. Per the Act's plain language, this test hinges on the impact of that contract on electric rates. Specifically, by its use of the phrase "any customer class", the Act requires the Commission to perform a balancing test for each customer class. Thus in a hypothetical world in which the amount of the system benefit charge were 10 cents for residential consumers, 5 cents for commercial consumers, and 2 cents for industrial consumers, an ocean energy contract could not increase the amount residential customers pay by more than 10 cents, nor could it increase the amount commercial customers pay by more than 5 cents, nor could it increase the amount industrial customers pay by more than 2 cents.

This result is the necessary conclusion of the plain language of the Act. As the Law Court has held, the ordinary meaning of the adjective "any" is "all or every",[14] "no matter what one," and "indiscriminately of whatever kind".[15] Thus in this context, "any customer class" can only mean each customer class in particular.

No other complete interpretation makes sense. One unreasonable alternative interpretation is that no class's rates could be increased by more than the largest amount any customer class pays in system benefit charges. This makes no sense, and ignores the meaning of the word "any". Another unreasonable alternative interpretation is that no class's rates could be increased by more than the lowest amount any customer class pays in conservation assessments. This too makes no sense and likewise ignores the plain meaning of "any". Rather, the plain language of the Act calls for an analysis of whether "any customer class", no matter which one, experiences a rate impact from ocean energy greater than that class's system benefit charge exposure.

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[14] *Lambert v. New England Fire Insurance Co.*, 148 Me. 60, 70, 90 A.2d 451, 455 (1952). See also *National Council on Compensation Ins. v. Superintendent of Ins.*, 481 A.2d 775 (1984) (holding "the ordinary and common meaning of "any profit factor" is "all or every profit factor"").
[15] *Bale v. Ryder*, 290 A.2d 359, 360 (Me. 1972).

Under the Act's plain language, for each and every customer class, the Commission must weigh two numbers against each other. On the one hand, the Commission considers the "increase in electric rates in any customer class" engendered by entering into the long-term ocean energy contract. On the other hand, the Commission must consider the "amount of the assessment charged" to that customer class under 35-A M.R.S.A. § 10110(4) at the time of putative contract formation. If, "in any customer class", "no matter what one", "indiscriminately of whatever kind" of customer class it is, the rate increase from a proposed long-term contract exceeds the "amount of the assessment charged" to customers of that class, the Act forbids the Commission from entering into such a contract.

For example, assume that the Commission is presented with a proposed ocean energy contract under the Act. The Commission dusts off its scales and starts performing this balancing test on each customer class. Perhaps the Commission commences with the residential customer class. On the left side of the scales sits "the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered". 35-A M.R.S.A. § 10110(4) requires the Commission to assess transmission and distribution utilities an amount which is effectively "fixed at a rate of 0.145 cent per kilowatt-hour."[16] This is the "amount of the assessment charged" to the residential customer class. This amount on the left side of the scales must be weighed against the "increase in electric rates in [that] customer class" from the proposed ocean energy contract. If other applicable criteria are met, as long as the scales do not tip toward the "increase in electric rates" for "<u>any</u>" customer class, the Commission may approve the contract.

Next, the Commission considers each other customer class, including transmission and sub-transmission level customers, to ensure that the contract's rate impacts on any customer class do not exceed the customer's system benefit charge exposure under existing law. When the Commission performs its balancing test on the transmission-level customer class, it places "the amount of the assessment charged" under 35-A M.R.S.A. § 10110(4) on the left side of the scale. For transmission and sub-transmission level customers, at least from July 1, 2007 to the present, 35-A M.R.S.A. § 10110 provides that this amount is zero:

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[16] 35-A M.R.S.A. § 10110(4).

> After July 1, 2007, electricity customers receiving service at transmission and subtransmission voltage levels are not eligible for new conservation programs undertaken under this section, and those customers are not required to pay in rates any amount associated with the assessment imposed on transmission and distribution utilities under subsection 4 or subsection 5.[17]

On this basis, under the Act, for this customer class, zero must be weighed against the proposed "increase in electric rates" applicable to those transmission and sub-transmission customers under the proposed contract. (It is useful for the Commission to keep in mind that the Commission, led by Chairman Adams, proposed the section cited above exempting transmission and sub-transmission customers from paying the conservation assessment component of the system benefit charge.) The Act clearly prohibits any contract whose rate impacts "in any customer class" – "no matter what one", including transmission and sub-transmission – exceed the "amount of the assessment charged" to that class. Under the plain language of the Act, unless a proposed ocean energy contract limits transmission and sub-transmission customers' rate impact exposure to the "amount of the assessment charged" to that class – currently zero – the Commission may not approve such a contract.[18]

This language is not reasonably susceptible of multiple differing interpretations. Any other interpretation violates the statutory principle against superfluity. For example, the first interpretation offered by the Commission for comment in this proceeding violates this principle. If the Legislature had intended that "all customers, in any customer class, may have a rate impact up to 0.145 cent/kWh", there would have been no need to use the words "increase in electric rates *in any customer class*" (emphasis added); the Legislature would instead referred merely to the "increase in electric rates". Each word in the clause in question must be read as to give it meaning[19]; in this case, no interpretation other than that argued above complies with this principle. The Legislature's unambiguous expression of intent must be honored; transmission and sub-

[17] 35-A M.R.S.A. § 10110(6).

[18] In addition, the rate impacts from ocean energy contracts under the Act are an "amount associated with the assessment imposed on transmission and distribution utilities under subsection 4 or subsection 5", something transmission and subtransmission customers are "not required to pay in rates". 35-A M.R.S.A. § 10110(6) (emphasis added).

[19] 73 Am.Jur 2d Statutes §165.

transmission level customers must not be exposed to ocean energy contract rate increases greater than those customers' system benefit charge exposure – currently, zero.

III. The Context of the Act Supports Only This Interpretation.

Even if the Commission were somehow persuaded that the provisions of the Act in question were somehow ambiguous, the legislative intent as evident from the Act's history is conclusive that transmission and sub-transmission level customers must not be exposed to ocean energy contract rate increases greater than those customers' system benefit charge exposure. It is this legislative intent, as expressed by the legislative history, which controls the interpretation where a statutory provision is ambiguous.

An understanding of the history of the Act confirms its clear meaning. By Executive Order 20 FY 08/09, dated November 7, 2008, Governor Baldacci established the Ocean Energy Task Force to investigate strategies that would enable the state to address energy costs by developing renewable energy from our ocean resources. The Task Force was also charged with recommending policy changes that would enable Maine to meet or exceed the ambitious goals established in the Maine Wind Energy Act[20] to install at least 2,000 megawatts of wind capacity by 2015 and at least 3,000 megawatts by 2020, 300 of which could be located in coastal waters.

On December 31, 2009, the Task Force released its report. Among the Task Force's recommendations was:

> Amending state law to direct the Public Utilities Commission to issue a Request for Proposals for renewable ocean energy development projects and to direct transmission and distribution utilities to enter into long term contracts with renewable ocean energy projects for capacity, energy, and renewable energy credits, even if at an above market price, when the rate impact is determined to be reasonable by the Governor and Legislature given the benefits of these projects.[21]

[20] Title 35-A, section 3404(2)(B).
[21] http://www.maine.gov/spo/specialprojects/OETF/Documents/finalreport_123109.pdf at viii-ix.

Even at this initial conceptual phase, the Task Force was concerned about ratepayer impact, recommending further "that ratepayer impacts be kept to a reasonable level, as defined by the Governor and Legislature giving due consideration to a balance of both the costs and benefits of these resources."[22] The Task Force further warned:

> Given the economics of offshore wind and tidal projects today, Maine needs to think creatively about how to finance them without having an unreasonable rate impact. The Task Force has designed a conceptual program that couples Maine's renewable ocean energy goals with its goals to reduce reliance on fossil fuels, which as outlined above present serious price-related risks to Maine homeowner and businesses.[23]

Specifically, the Task Force recommended that the costs from ocean energy contracts be paid for primarily through the electrification of home heating, including an on-bill financing mechanism "designed to help subsidize the above-market costs of the renewable ocean energy project. The costs not covered by these customers could be rolled into the transmission and distribution or energy prices of remaining customers."[24] The Task Force expected its massive program to switch residential heating and transportation from oil to electricity to be able to cover most of the costs associated with ocean energy projects:

> the electric conversion program could and has been recommended to help pay for the above-market costs of offshore wind and tidal power. By converting to electric heat pumps and vehicles, participating consumers would help build demand for offshore wind and tidal power, and by paying an electric rate (taking into account the cost of the loan) that is above the current electric rate, these participating ratepayers would help support the above market costs of offshore wind and tidal power.[25]

The Task Force's recommendations then began to take shape as a proposed bill. In 2010, Senator Hobbins, along with Representative Fitts, Senator Raye, and Representative Berry, sponsored L.D. 1810, "An Act To Implement the

[22] Id. at 25.
[23] Id. at 39.
[24] Id.
[25] Id. at 25.

Recommendations of the Governor's Ocean Energy Task Force". As originally drafted, the bill would have authorized the Commission to direct utilities to enter into long-term contracts for up to 20 years for the energy, capacity and renewable energy credits from renewable ocean energy projects if the Commission found that a series of criteria were met. Among these criteria was a rate impact limitation provision: the original bill would have allowed the Commission to approve contracts only if it determined that "acquisition of the energy, capacity and renewable energy credits at the price and other terms proposed would not have an unreasonable impact on the electricity rates of the transmission and distribution utility."[26]

Ratepayers including IECG expressed concern over this weak cost limitation provision in the original draft bill, as well as pro-transmission policies that would have led to ratepayers backstopping transmission development. IECG offered testimony (a copy of which is attached hereto) to the Joint Standing Committee on Utilities and Energy supporting the overall mission of the Task Force, but warning against allowing utilities to increase their electric rates to pay for long-term contracts with ocean energy projects. IECG cited evidence of offshore wind costs from proposed projects like Cape Wind and Deepwater Wind of approximately 25 cents per kilowatt-hour, far in excess of industrials' ability to pay. Under existing law at the time, the Commission could only order long-term contracts for capacity and energy resources if it determined that doing so was "appropriate for purposes of supplying or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State"[27]. L.D. 1810 as originally drafted would have create a separate standard for offshore projects, namely whether a contract would have "an unreasonable effect on the electricity rates" of the utility.

IECG opposed this weak cost limitation provision – not due to hostility toward ocean energy, but because industrial energy consumers are extremely sensitive to the price of electricity. Manufacturing is an energy-intensive and low-margin business. Even a small increase in the price of electricity can eliminate a Maine manufacturer's ability to remain in business. Tight competition with companies located in other states, and even sister mills in other states, means that any cost increase will lead to

[26] L.D. 1810 as originally drafted, § A-10.
[27] 35-A M.R.S.A. § 3210-C(3)(B)(2).

manufacturers shifting production to lower-cost environments. IECG members have seen production equipment including paper machines and turbines loaded onto trucks and shipped to sister mills in other states due to energy price increases in Maine.

Industrials' view of offshore wind is that without careful constraint, ratepayers will face radically high costs. Consider the experiences of the Rhode Island Public Utilities Commission, which recently rejected ocean energy contracts with rates of 24.4 cents per kWh, escalating 3.5% per year despite no increase in the generator's marginal production costs. This would have resulted in costs of $25 million per year beyond base rates in effect today. In Massachusetts, utility National Grid has agreed to buy half of Cape Wind's output starting at 20.7 cents a kWh in 2013, plus a 3.5% annual increase. Maine's industrial manufacturers cannot afford these price increases.

IECG believes that anyone who wants to support ocean energy development through voluntary purchases at above-market prices should be allowed to do so, but that imposing such costs on industrial consumers is not just and reasonable. This position parallels longstanding practice on other costs such as the system benefit charge. Because LD 1810 as originally drafted exposed industrial energy consumers to arguably unlimited cost exposure, IECG opposed the bill's inclusion of mandatory ratepayer support for long-term contracting for ocean energy resources.

In response, legislators listened carefully to ratepayer concerns. After extensive public hearings, work sessions, and stakeholder negotiations, the Joint Standing Committee on Utilities and Energy drafted a revised committee amendment by consensus. This revised committee amendment contained stronger provisions protecting ratepayers against rampant costs, including requiring the supplier to incorporate subsidies, tax incentives and grants into its bid price, and mitigating rate impacts through other State revenues. In response to critiques that ocean energy costs should be incurred primarily on a voluntary basis, the Committee Amendment also required the Commission to develop and market an ocean wind green power offer composed of electricity or renewable energy credits for electricity generated from deep-water offshore wind energy pilot projects. Out of concern over the magnitude of costs, the Committee scaled back the size of the ocean energy pilot program, from an unlimited mandate to pursue 3,000 MW to a more appropriate 30 MW starting point. Many of the policies that would have led to ratepayers backstopping transmission

development were eliminated. Simultaneously, after broad opposition, the Committee rejected the Task Force's home heating electrification program – the very program the Task Force had identified as being able to support the bulk of costs for ocean energy contracts.

Finally, the Committee drafted the following rate impact limitation provision:

> The commission may not approve any long-term contract under this section that would result in an increase in electric rates <u>in any customer class</u> that is greater than the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered.[28]

The Committee Amendment was enacted on April 5, 2010, and was signed by the Governor two days later. It is this final rate impact limitation that is now the subject of the Commission's inquiry.

This statutory language explicitly provides that for any given <u>customer class</u>, that <u>class's exposure to cost or rate increases due to ocean energy</u> is limited to that customer <u>class's exposure to the conservation assessment system benefit charge</u> under 35-A M.R.S.A. § 10110(4). The Legislature prescribed that rate impacts be limited on this customer-class by customer-class basis for good cause. Indeed, the Legislature explicitly pegged the rate impacts from ocean energy contracts to the Commission's precedent in limiting industrials' exposure to the system benefit charge. As the Commission knows, the system benefit charge under 35-A M.R.S.A. § 10110 initially applied to all Maine ratepayers. At the time, it funded a program whose benefits in funding to any given customer were limited at $50,000 per year, while many industrial energy consumers were required to pay in several times this amount in SBC assessments annually. For example, an industrial energy consumer using 1,000,000 kWh per year was required to pay $145,000 in conservation assessments per year, but was limited to drawing $50,000 in benefits from the program annually. A consumer using 2,000,000 kWh per year was required to pay $290,000 in annual conservation assessments, but again was capped at $50,000 in annual program benefits. This system was markedly unfair to the large energy consumers, those customers who are most price-sensitive. These excess payments required under the former SBC regime

[28] P.L. 2009, Ch. 615, § A-6 (emphasis added).

directly translated into jobs lost or not created: approximately three jobs lost at each 1,000,000 kWh/year facility, and six lost jobs at each 2,000,000 kWh facility.

In an attempt to remedy this inequity, while preserving industrials' support for the SBC, the Commission allowed industrials to receive up to $100,000 in SBC funding in any given year, although they remained limited to $100,000 in any two-year period. This enabled industrials to implement larger and more cost-effective efficiency projects through SBC funding, but still required many industrials to pay in several times more dollars than they could possibly reap in benefits. This money represented jobs lost or not created at the mills – real people and families harmed by Maine's energy policy choices. This inequity also resulted in manufacturers being unable to install cost-effective conservation projects on their own dime, as they were required to pay this excess money into the SBC rather than being allowed to invest it into their own businesses.

The continued inequity of this system, coupled with industrial energy consumers' sharp price sensitivity, led to opposition to the entire SBC concept from industrials as well as legislators. As a political and practical compromise, industrials dropped their opposition to the SBC in exchange for which transmission and sub-transmission customers were exempted from the system benefit charge.[29]

The Act in question here presents a congruent situation – so congruent in fact that the Legislature explicitly tied each class's exposure to ocean energy costs to that same class's SBC exposure. IECG strongly opposed ratepayers' potentially unlimited cost exposure in the original bill. Through negotiation and mutual compromise, as well as hard work by the members of the Joint Standing Committee on Utilities and Energy, the Committee produced a unanimously-supported bill that addressed a number of important ocean energy policies such as siting, while excluding industrials from ocean energy cost exposure. This compromise had broad support, including that of IECG. Had the Committee's work resulted in a bill that exposed industrials to ocean energy costs, IECG would have opposed the Committee's bill.

[29] 35-A M.R.S.A. § 10110(6).

This history confirms the plain reading of the language in question, which evinces the legislative intent.[30] In this case, those indicia are provided by the legislative history recited above, from the 2008 fuel price spikes through the operations of the Ocean Energy Task Force, to L.D. 1810 as originally proposed, the stakeholder negotiations and industrial ratepayers' opposition to unnecessary cost exposure, and ultimately P.L. 2009 Ch. 615, § A-6. All of these indicia require a finding that industrials' cost exposure to ocean energy costs is limited to industrials' exposure to the SBC: zero. Had the Legislature intended any other result, IECG would not have supported the bill.

IV. Additional Comments

The Commission also solicited 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." Specifically, the Commission solicited comments on whether this provision should 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. The same principles of statutory interpretation apply here as above; the plain language of this provision dictates that the Commission limit each class's exposure to ocean energy costs to that class's exposure to charges under Title 35-A, section 10110, subsection 4 – not including any additional assessment pursuant to subsection 5.

V. Conclusions

The plain language of the Act is clear. Under the Act, the Commission may enter into long-term contracts for ocean energy resources. However, the Legislature carefully circumscribed the rate impacts of entering into these contracts. The Legislature limited these rate impacts through a variety of tools, including requiring suppliers to seek federal aid, using other State revenues to mitigate rate impacts, scaling back the overly ambitious 3,000 MW goal to a more reasonable 30 MW pilot program, and facilitating a voluntary ocean wind green power offer for those who for ideological reasons are willing and able to pay the costs of supporting ocean energy. Finally, in light of threatened

[30] *Trask v. Public Utilities Comm'n*, 1999 ME 93 ¶ 7 (June 7, 1999).

inequity, the Legislature clearly added additional protections for transmission and sub-transmission customers, preventing the Commission from entering into ocean energy contracts that would result in any rate increases to these customer classes. Any other result would not have earned industrials' cautious support.

The IECG is not and has never been an opponent of wind power. In fact, the IECG presented the first wind power development bill to the Maine legislature several years ago, which bill was opposed by some of those now supporting a contrary interpretation of the language at stake in this proceeding. However, the IECG is opposed to unnecessary cost increases that will add to the loss of jobs – nearly 30,000 in the last decade – in Maine's industrial sector. With the interpretation we propose, the legislative intent will be respected, and industrials will not be forced to oppose ocean wind power pilot projects.

Dated: August 9, 2010

Anthony W. Buxton
Todd J. Griset
Counsel to IECG

1766388.4

TESIMONY OF TODD J. GRISET
ON BEHALF OF
INDUSTRIAL ENERGY CONSUMER GROUP

L.D. 1810

An Act to Implement the Recommendations of the Governor's Ocean Energy Task Force

BEFORE THE JOINT STANDING COMMITTEE ON UTILITIES AND ENERGY

March 11, 2010

Good afternoon Senator Hobbins, Representative Hinck and Members of the Joint Standing Committee on Utilities and Energy. I am Todd Griset of Preti Flaherty, here today on behalf of the Industrial Energy Consumer Group, a Maine trade association of large energy consumers, some of whom also produce and sell energy. I am here to offer the IECG's support for the overall mission of the Governor's Ocean Energy Task Force – to recommend strategies to meet the ambitious goals set in the Maine Wind Energy Act[1] – as well as to recommend changes to the bill to improve the way this bill advances Maine's energy future.

Some members of this Committee will remember that the IECG, working with other stakeholders, successfully lobbied for passage of Maine's first pro-wind power legislation – a bill opposed by some of the proponents of LD 1810. It's nice to see that times do change.

It is clear that policies that facilitate the development of renewable electricity generation in Maine will empower significant benefits to the state. Faced with the significant pressure brought to bear by huge power lines from Canada, and the fact that Maine-based resources must compete against Canadian power for market share in the New England markets, it is critical that we as a state fashion policies that will promote sensible, domestic renewable generation. The value to Maine of locally-sited project has been proven time and time again. For example, in 1987 the PUC rejected Central Maine Power's proposal to have Hydro-Quebec build a DC line to Quebec to import power as more costly than sourcing renewable power locally. As a result, the Public Advocate and others forced CMP to conduct a competitive RFP for renewable power from Maine. Nearly 2000 megawatts of lower priced renewable power bid against the Hydro-Quebec price, and at a lower price. The result was that the Hydro-Quebec project was ultimately denied by the PUC and CMP signed contracts with more

[1] Title 35-A, section 3404(2)(B).

than 300 megawatts of renewable power projects in Maine. This was a huge benefit to Maine's economy and environment.

The costs and benefits of this piece of history were assessed by the Maine Watch Institute in the 1990s. This Study showed that the economic impact of the rates from these projects, the construction jobs and expenditures, the property taxes, and the environmental benefits in cleaner air, were of enormous benefit to Maine. The Study showed economic benefits of $120 million to $220 million and environmental benefits valued at $57 million to $202 million annually. For example, the Study says at Page 7,

> "Adding the economic benefits and subtracting the environmental costs of the alternative scenarios reviewed in this study indicates that Maine's energy policy [development of renewable energy and energy efficiency technologies] has produced a net benefit of $209 to $424 million in 1992."

This shows the significant value to the public of meeting our power needs with generation located in Maine.

However, we must not let our desire to support the development of Maine-based renewables to cloud our vision of where Maine needs to be on other energy matters like transmission line policy. In dutifully pursuing its mandate, the Task Force has proposed a broad slate of measures designed to promote vigorous and expeditious development of ocean energy resources, many of which are well-reasoned – but some of which will have serious and costly consequences for the state.

For example, Maine carefully regulates transmission line development through the Public Utilities Commission's certificate of public convenience and necessity (CPCN) review process. This committee is responsible for articulating the standards that a developer of a proposed transmission line must meet in order to receive project approval – standards designed to protect Maine against unnecessary transmission lines, and to protect Maine ratepayers against the costs created by such lines. As drafted, LD 1810 erodes these standards and the protection they offer. For example, Section A-2 of the bill would allow transmission lines to be built and sized not for current load, or even for future anticipated customer demand, but rather based on the assumption that Maine will build out all 8,000 MW of wind capacity. This could have disastrous effects on Maine ratepayers, as the PUC would be in a position where it could find itself obliged to approve expensive and truly unnecessary transmission projects. Likewise, as drafted, the provisions in Section A-2 allowing T&D utilities to construct, own, and charge ratepayers for generator leads, almost cannot help but raise electric rates for consumers – consumers who can ill-afford any cost increase. This same concept – that we should bend our

carefully-crafted rules and approve unnecessary transmission lines in pursuit of offshore wind and tidal power – appears in other places in Part A of the bill – including Sections A-5 and A-11, where it is equally dangerous.

The Task Force correctly notes that switching consumers from oil heat and transportation fuels to electric power will increase the demand for renewable capacity in Maine. However, it is premature to enshrine any particular technologies, such as heat pumps and electric motor vehicles, in statute. Rather, the prudent course is to acknowledge that coastal renewable energy in Maine will improve our energy independence and reduce greenhouse gas emissions, and leave it to competition and consumers to find the best technologies to facilitate those goals.

Similarly, Sections A-8 and A-9 of LD 1810 call for the Department of Environmental Protection and the Finance Authority of Maine, respectively, to develop programs to promote residential and commercial fuel switching from fossil fuels to electric heating. Fuel switching may provide some environmental or cost benefits, in addition to driving up the electric demand envisioned by the Task Force, but the Efficiency Maine Trust is already well on its way to developing programs to implement these concepts. The Legislature, including members of this Committee, worked hard last year to establish the Efficiency Maine Trust as Maine's one-stop shopping depot for energy efficiency. For this bill to diminish this achievement is a step in the wrong direction.

Finally, Section A-10, which would allow utilities to increase their electric rates to pay for long-term contracts with ocean energy projects, is poorly timed and even unnecessary. In 2010, Maine's energy consumers cannot afford to pay more for anything, let alone something as basic and universally necessary as electricity. Under current law, the Commission can only order long-term contracts for capacity and energy resources if it determines that doing so is "appropriate for purposes of supplying or lowering the cost of standard-offer service or otherwise lowering the cost of electricity for the ratepayers in the State". By contrast, LD 1810 as drafted would create a separate standard for offshore projects, namely whether a contract would have "an unreasonable effect on the electricity rates" of the utility.

IECG will propose an amendment to LD 1810 that resolves these inconsistencies with Maine's energy policy. With these changes made, the Task Force's hard work in developing strategies to promote renewable ocean energy will result in legislation that offers Maine the opportunity to do well by doing good.

Thank you for your consideration. IECG looks forward to working with the Committee and stakeholders as you craft Maine's energy future.