

November 13, 2000

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Standard Offer Service Rule
(Chapter 301)

NOTICE OF RULEMAKING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Notice, we initiate a rulemaking to consider amendments to the opt-out fee provision of our standard offer rule (Chapter 301).¹ The rule adopted through this proceeding will replace the emergency rule adopted by Orders issued on November 3, 2000 and November 7, 2000 (Docket No. 2000-890).

II. BACKGROUND

On August 16, 2000, the Commission adopted several amendments to the standard offer rule (Chapter 301). The amendments were based on our experience in implementing the rule and conducting last year's standard offer bid process, and the comments of participants in the New England power market. These amendments included a change to the opt-out fee provision of the rule (section 2(C)), the purpose of which is to deter the strategic movement of customers between standard offer service and the competitive market. Such activity is often referred to as "gaming" the standard offer.

The original opt-out fee provision in Chapter 301 required that a customer in the medium or large standard offer class (or a set of customers having a demand greater than 50 kW) who entered the standard offer service after taking service from a competitive provider either continue to take standard offer service for 12 months or pay an opt-out fee to the standard offer supplier equal to 1-month's generation bill. In the amended rule, the opt-out provision applied only if a customer had taken standard offer service during the summer months; if so, the customer would have to remain on standard offer service through the following February or pay an opt-out fee. To provide a greater deterrence against gaming, we also increased the opt-out fee to equal the sum of the customer's two highest standard offer bills.

We amended the provision to target summer service because it was in these months that there appeared to be the greatest potential for strategic entry onto standard offer service. Electric power prices in the New England market are typically at their

¹ This rulemaking will only consider amendments to the opt-out provision, section 2(C). We will not consider amendments to other provisions of the rule.

highest during these months. When standard offer prices are averaged, they are likely to be lower than summer market prices, thereby creating an incentive to take standard offer service during the summer and then return to the competitive market. Such activity creates a large financial risk for the standard offer suppliers.

The intent of the change was to strengthen the deterrent effect of the opt-out fee, while targeting its applicability to the perceived problem (i.e., dropping to the standard offer during the summer months). However, by limiting the applicability of the opt-out fee to summer months, we inadvertently created an opportunity for strategic movement by entering standard offer service during non-summer months. Under conditions where market prices become higher than the standard offer rate, competitive providers, together with customers who have contracted to purchase electricity from competitive providers, will have the economic incentive to extract savings by having the customers return to standard offer service. Having entered the standard offer in a non-summer month, customers could return to the competitive market at any time, without incurring an opt-out fee. Before our rule change in August, a customer entering the standard offer in a non-summer month would have had to remain for 12 months before returning to the competitive market or pay an opt-out fee, thus providing some deterrent against such activity.

We recently became aware that a significant number of customers of competitive providers were seriously considering entering the standard offer to extract below-market savings. It was our understanding that those customers would not have considered such action if the original opt-out provision had not been amended to target only summer standard offer service. This situation raised a substantial concern because the current suppliers of standard offer service were chosen early in the year to provide service for a 12-month period beginning March 1, 2000. At the time the suppliers were chosen, the original opt-out fee was in effect. The opt-out fee provision as amended in August 2000 would allow a significant amount of load to enter the standard offer at below current market prices, creating a potential for substantial financial harm to the suppliers. Any such harm would be a direct result of our change of the rule in the middle of the current standard offer period.

Creating the potential for such harm was inadvertent, and allowing it to occur would be fundamentally unfair to the current standard offer suppliers. Additionally, it might signal to suppliers generally that the Maine Commission may change rules in the middle of the game to their substantial detriment. This could cause some suppliers to decide not do business in Maine and others to add significant premiums to their Maine prices. The end result would be higher rates for Maine consumers.

For these reasons, we adopted an emergency rule, pursuant to 5 M.R.S.A. § 8054, that reinstated the original opt-out provision. By statute, the emergency rule may only be in effect for a maximum period of 90 days. Accordingly, we initiate this rulemaking to consider the appropriate structure of the opt-out fee in light of the circumstances described above.

III. PROPOSED AMENDMENTS

We propose that the opt-out fee provision reinstated in the emergency rule remain in effect until the end of the current standard offer period (February 28, 2001). This will extend the effectiveness of the provision that existed when the current standard offer suppliers were chosen to provide service through the end of their term of service. The reasons for this are the same for adopting the emergency rule.

For the period beginning March 1, 2001, we propose to maintain the original structure of the opt-out fee provision (i.e., a customer who switches to standard offer from a competitive provider must remain on the standard offer for 12 months or pay an opt-out fee, regardless of when the customer entered standard offer). However, the fee would be set at two times the customer's highest standard offer bill, rather than a 1-month bill fee contained in the original rule. This approach strengthens the deterrent for gaming, as was intended by the August amendment, without creating the potential for gaming the standard offer by entry in non-summer months. We have also added a provision that would allow the Commission to increase the opt-out fee by order, which could be necessary to maintain the gaming disincentive in the event of increasing market prices. Finally, we have added a provision that specifies that customers that are part of a group with a combined demand of 50 kW or greater are individually responsible for their portion of opt-out fee if the competitive provider or aggregator defaults on its responsibility to pay the opt-out fee.

We seek comment on the proposed rule, as well as any alternative approach to the gaming issue. Specifically, we seek comments on the following:

- Should the rule seek only to deter gaming that is a result of standard offer prices being more averaged over the year than market prices or should it also seek to deter reentry that results from market prices rising above a fixed standard offer price? Should the results from a long-term standard offer price becoming below market (as opposed to seasonal averaging) be considered an inherent aspect of the existence of standard offer service?
- Would an entrance fee (i.e., charge to return to the standard offer service after entering competitive market) be a more effective approach to deterring gaming? How could an entrance fee be designed so that customers who return to standard offer for reasons beyond their control, e.g., supplier default, are not unfairly penalized? Would a requirement that customers returning to the standard offer pay current market prices rather than the fixed standard offer prices be more effective in deterring gaming? Is such an approach consistent with the Maine statutes?
- How should the opt-out fee be apportioned between standard offer providers if the customer enters during one provider's term and exits during another's?

- Should the rule specifically address the circumstance in which a group of customers with combined demands of 50 kW or greater are moved onto the standard offer, but movement back into the competitive market occurs in smaller than 50 kW blocks, or on an individual customer basis? If so, how would such a provision operate?

IV. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter will be held on December 13, 2000 at 2:30 p.m. in the Public Utilities Commission hearing room. Written comments on the proposed rule may be filed until December 26, 2000, however, the Commission requests that comments be filed by December 8, 2000, to allow for follow-up inquiries during the hearing. Written comments should refer to the docket number of this proceeding, Docket No. 2000-904, and sent to the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

Please notify the Commission if special accommodations are needed to make the hearing accessible to you by calling 1-287-1396 or TTY 1-800-437-1220. Requests for reasonable accommodations must be received 48 hours before the schedule event.

In accordance with 5 M.R.S.A. § 8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested persons to comment on the fiscal impact, the economic effects, and all other implications of the proposed rule.

The Administrative Director shall send copies of this Order and the attached proposed rule to:

1. All electric utilities in the State;
2. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;
3. All persons on the service list in the rulemaking, Public Utilities Commission, Bidding Processes and Terms and Conditions for Standard Offer Service (Chapter 301), Docket No. 97-739;
4. All persons on the service list in the rulemaking, Public Utilities Commission, Amendments to standard offer rule (Chapter 301), Docket No. 2000-489;
5. All licensed competitive electricity providers in the State;
6. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

7. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Accordingly, we

O R D E R

That the Administrative Director send copies of this Notice of Rulemaking and attached proposed rule to all persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.

Dated at Augusta, Maine, this 13th day of November, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond