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August 24, 2007

**VIA ELECTRONIC FILING AND OVERNIGHT MAIL**

Ms. Karen Geraghty  
Administrative Director  
Maine Public Utilities Commission  
State House Station 18  
242 State Street  
Augusta, ME 04333

**RE: Docket No. 2007-317 - Inquiry Regarding the Reentry of Electric Utilities  
into the Energy Supply Business**

Dear Ms. Geraghty:

Pursuant to the Notice of Inquiry issued by the Maine Public Utilities Commission (“PUC”) dated July 25, 2007, (“NOI”) the New England Power Generators Association, Inc. (“NEPGA”) hereby respectfully files these comments in the above-captioned proceeding. NEPGA is the largest trade association representing competitive electric generating companies in New England. NEPGA’s member companies represent approximately 20,000 megawatts of generating capacity throughout the region. NEPGA’s mission is to promote sound energy policies which will further economic development, jobs, and balanced environmental policy. NEPGA requests that all further correspondence, communications and other documents relating to this matter be served upon the following:

Christopher P. Sherman, General Counsel  
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The restructuring of the New England market has been the product of many years of negotiations and discussions among a wide range of market participants: utilities, regulators, customers, generators and other stakeholder groups. From a practical

perspective, a competitive wholesale market for power in New England has delivered benefits to customers and the region that would have been impossible under the regulated structure that had been in place for many years. Wholesale electricity prices in New England, adjusted for fuel costs and inflation, have declined by 16.5 percent during the four-year period from 2001- 2004.<sup>1</sup> This has been the product of substantial new investment in efficient generating plants. These units are cleaner and more efficient, so emissions of key pollutants have gone down even as electricity consumption has increased. The most notable feature of this new competitive market regime is that these new generation investments have been made by private generators, not regulated utilities or their customers. Unlike the previous regulated system where customers could be shouldered with millions of dollars of costs from uneconomic “stranded” investments, merchant energy companies recover their costs only from the market value of the products they provide.

NEPGA submits the following comments in the order with which they were presented in the NOI without reflection upon the priority of importance NEPGA assigns to each.

**1. The dissolution of the competitive electricity markets would require major legislative reform; however, the restructuring statute can accommodate beneficial consumer electricity products without nullifying the general principles of competitive markets.**

NEPGA categorically opposes the return to monopoly generation; however, NEPGA supports properly implemented demand side management activities and other conservation measures addressed in the NOI. The repeal of, or modifications to, existing statutes is unnecessary to allow utilities to engage in load management, demand-side activities or other measures advanced by the Maine Legislature in its efforts to further promote energy conservation.<sup>2</sup> The legislative intent of electric restructuring was to promote consumer benefits of competitive wholesale markets while preserving the sanctity of existing conservation programs. The relevant enabling statute explicitly provided for the sanctity of existing conservation programs as follows:

...on or before March 1, 2000, each investor-owned electric utility shall divest all generation assets and generation-related business activities other than any... **contract with a demand-side management or conservation provider, broker or host.** 35-A M.R.S.A. § 3204(1)(A) (emphasis added)

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<sup>1</sup> ISO New England website, [www.iso-ne.com](http://www.iso-ne.com). We have adjusted for inflation ISO New England’s fuel adjusted nominal value of 11 percent to yield a real decrease of 16.5 percent.

<sup>2</sup> During the second session of the 120<sup>th</sup> Legislature, the Legislature passed An Act to Strengthen Energy Conservation that became P.L.2001, ch. 624, when the Governor signed the Act on April 5, 2002.

Furthermore, subsequent legislative and regulatory enactments have established the procedures governing the selection of service providers of conservation programs.<sup>3</sup> Maine consumers will be better served by operating within the existing regulatory framework to procure beneficial energy conservation products, and therefore, NEPGA suggests that no legislative action is required.

**2. Electric utility participation in the energy supply business will have a detrimental effect on merchant generators of electricity and on competitive electricity providers.**

Developing markets abhor the uncertainty that is created by constantly changing regulations, or the threat thereof. At the same time, additional increases in generating infrastructure are critically necessary for a region that recently experienced a peak in electrical demand of 28,048 MW in August of 2006. Generators have invested more than \$2 billion building or purchasing plants in Maine, and proceeds from utility asset sales have enabled utility stranded costs to be reduced, saving ratepayers more than \$500 million. These investors entered Maine with the clear expectation that they would be able to provide low cost and efficient power in a competitive power market. Despite the success of competitive electricity markets, New England has an ongoing need for energy resources; therefore, now is the time to move forward with substantial investments of energy infrastructure of all types in Maine and throughout New England. In 2005, the New England Energy Alliance (“Alliance”)<sup>4</sup> commissioned one of the nation’s leading energy economics consulting firms, Analysis Group, to conduct an adequacy assessment of New England’s energy infrastructure. The Alliance report stated that:

Current resources will be insufficient to maintain the reliability of the electric grid in parts of New England as soon as 2008... Plausible scenarios of demand exceeding available supplies and delivery capacity for both electricity and natural gas occur as soon as within the next two years and the need for additional supplies may already be upon us... However, uncertainties affecting energy markets are chilling investments.<sup>5</sup> (emphasis added)

We are confident that Maine can continue to incent private investment in new energy infrastructure technology to accelerate the benefits that improve the environment, while maintaining adequate electrical supply. However, these infrastructure enhancements are contingent upon a business climate that guarantees sound and prudent investments through a consistent regulatory and legislative environment. Competition is

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<sup>3</sup> See, 35-A M.R.S.A. §§ 3211-A and 111;MPUC 65-407 - Chapter 381: Selection Of Conservation Program Service Providers

<sup>4</sup> The Alliance is a coalition of energy providers, business and trade organizations and others concerned about future energy supplies. The Alliance advocates for action to ensure the availability, reliability and affordability of future energy supplies, which are vital to sustain the region's economic growth and prosperity.

<sup>5</sup> Analysis Group, Assessment of New England’s Energy Infrastructure, 2005.

the most appropriate mechanism to ensure the most reasonable costs for obtaining resources.

**3. Electric utility participation in the energy supply business will have a detrimental effect on consumers of electricity by increasing the price of electricity and removing consumer choice.**

Prior to the restructuring of the market, electricity consumers were vulnerable to a persistent market situation where there was only one provider of electricity, as opposed to a vibrant electricity market where participants' survival was based upon superior innovation and efficiencies. The lack of economic competition for electricity led to unavoidable cost overruns and stranded costs by utilities that experienced no competitive market pressures. The utilities are now claiming that they can save consumers money by developing energy resources for less money than the private sector; however, the idea that utilities can now build generation at below prevailing rates is a myth that will ultimately turn out to be untrue and will, if allowed to occur, cost ratepayers more money. In order to remain solvent, vertically integrated utility companies are able to recover their costs from ratepayers, whereas merchant energy companies are forced to cover their costs from the markets and must answer to their shareholders when their performance is subpar.

As a result of increased construction costs, utility plant capital costs have risen dramatically in monopolized markets.<sup>6</sup> In May 2005, Duke Energy Carolinas<sup>7</sup> requested approval from the North Carolina Utilities Commission (NCUC) to construct two 800 megawatt coal-fired units at Duke's existing Cliffside plant for a total cost of two billion dollars (\$2,000,000,000). In March 2007, Duke Energy calculated the latest cost for the single unit would be \$1.8 billion, an 80% increase from the original estimate from only six-months earlier.

Rising electricity costs have not been a signal of failure of competitive markets. Rather, rising costs are a direct result of our region's high-cost fuel mix and lack of indigenous resources and have been experienced proportionately by all markets.<sup>8</sup> The majority of generation resources in New England are fueled by natural gas<sup>9</sup>, and natural gas prices have risen dramatically as a result of the same global influences that have led

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<sup>6</sup> See, Electric Power Supply Association, PowerFact, July 25, 2007.

<sup>7</sup> Duke Energy owns and operates vertically integrated utilities in North Carolina and South Carolina serving approximately 2.3 million customers with a generating capability of approximately 19,900 megawatts. <http://www.duke-energy.com/about-us/power-plants.asp>

<sup>8</sup> It is important to recognize that price increases have in no way been limited to restructured states. Since 1999, electricity prices have generally increased the same (34%) across states with organized markets and across those without such markets. In particular, increases in five selected regulated states (Nevada, Florida, Mississippi, Louisiana, and Oklahoma) ranged from 39% to 62% during this same time. Open Letter to Policy Makers from Vicky A. Bailey, et al, Former Chairs and Commissioners of the Federal Energy Regulatory Commission (May 31, 2007)

<sup>9</sup> Approximately 49% of the generating capacity in Maine uses natural gas as a primary fuel. ISO-NE, 2005 Regional System Plan.

Ms. Karen Geraghty

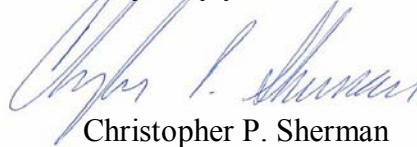
August 24, 2007

Page | 5 of 5

gasoline prices to be extremely volatile in recent months and increase by approximately 55%.<sup>10</sup> The rise in fuel prices, and corresponding increase in consumer electricity costs, has illustrated an efficient market in which competition occurs on the basis of true marginal costs. The public policy behind market-based generation is implicitly sound in that it more accurately reflects the underlying costs of electrical production, including environmental externalities, and it encourages the development of new energy infrastructure and necessary environmental improvements to existing energy infrastructure without subjecting ratepayers to stranded costs or cost overruns. These efficient energy infrastructure improvements procured through the competitive market have actually led to a decrease in fuel-adjusted electricity prices of approximately 7% from 2000 to 2006.<sup>11</sup>

For the foregoing reasons, NEPGA opposes the reentry of electric utilities into the energy supply business. Thank you for the PUC's consideration of these comments. For further insight into this issue I have enclosed NEPGA Fact Sheet No. 9, *Meeting New England's Electricity Supply Needs: Regulated vs. Unregulated Generation*. If you have any questions, please don't hesitate to contact me.

Very truly yours,



Christopher P. Sherman  
General Counsel

Enclosure (1)

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<sup>10</sup> Natural gas prices increased 51.5% between 2002 and 2003, 10.5% between 2003 and 2004, and 37.6% between 2004 and 2005. *Report to Congress on Competition in Wholesale and Retail Markets for Electric Energy*, The Electric Energy Market Competition Task Force, 2006 at 41.

<sup>11</sup> *2006 Annual Markets Report*, ISO-NE, June 11, 2007 at 40, 41. The fuel-adjusted average electric energy price normalizes the electricity market clearing prices for the variation in the prices of fuels used by price-setting generating units.