

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

TEN FRANKLIN SQUARE

NEW BRITAIN, CT 06051

DOCKET NO. 05-07-14PH02 DPUC INVESTIGATION OF MEASURES TO
REDUCE FEDERALLY MANDATED CONGESTION
CHARGES (LONG TERM MEASURES)

April 23, 2007

By the following Commissioners:

Donald W. Downes

John W. Betkoski, III

Jack R. Goldberg

DRAFT DECISION

DRAFT DECISION

I. INTRODUCTION AND SUMMARY

Pursuant to General Statutes of Connecticut (Conn. Gen. Stat.) §§ 16-243m(c) and (g), the Department reviews and approves the recommendations of its consultants to select certain bidders for capacity contracts in response to the request for proposals (RFP) for new capacity conducted in this proceeding. The Department selects a seven hundred and eighty seven megawatt portfolio of projects consisting of one new highly efficient combined cycle gas-fired base load plant, two peaking plants located in the constrained Southwest Connecticut region, and one state-wide energy efficiency program. The Department also describes the next steps in the approval process for capacity contracts with selected bidders.

II. BACKGROUND OF THE PROCEEDING

Pursuant to Conn. Gen. Stat. § 16-243m, also known as Public Act 05-01, An Act Concerning Energy Independence (EIA or Act), the Department opened the instant uncontested proceeding on its own motion. The purpose of this docket is to implement a competitive procurement process to solicit new capacity resources in order to reduce Federally Mandated Congestion Charges (FMCCs) for Connecticut ratepayers over the long term. On September 13, 2006, the Department issued the First Interim Decision approving the RFP for incremental or new capacity. On November 16, 2006, the Department issued the Second Interim Decision approving the capacity contracts, Master Agreements, that the electric distribution companies will use to contract for new capacity selected in this proceeding.

A. DESCRIPTION OF THE ENERGY INDEPENDENCE ACT (EIA)

The Connecticut legislature mandated that the Department issue a RFP to procure new or incremental capacity to reduce the impact of FMCCs on Connecticut ratepayers through the EIA. As defined in the Act, eligible capacity includes generation, demand response, and energy efficiency, thus this procurement process is similar to the Integrated Resource Planning processes undertaken under the previous era of electricity sector regulation.

According to subsection 12(c) of the Act, the RFP must identify “measures that would reduce FMCCs for the period commencing on May 1, 2006, and ending on December 31, 2010” and may include but shall not be limited to “(1) customer-side distributed resources, (2) grid-side distributed resources, [and] (3) new generation facilities, including expanded or repowered generation”. Subsection 12(c) of the EIA further specifies that the RFP shall “encourage

responses from a variety of resource types and encourage diversity in the fuel mix used in generation.”

Under subsection 12(g), the Department must give preference to proposals that result in the greatest aggregate reduction of FMCCs, make efficient use of existing sites and supply infrastructure, and serve the long term interest of ratepayers.

Finally, Section 12(i) of the EIA lays out the criteria by which the Department should judge the project proposals and approve contracts. The Department can approve a contract if it determines that it will: (1) result in the lowest reasonable cost of such products and services; (2) increase reliability; and (3) minimize FMCCs to the state over the life of the contract.

B. PARTICIPANTS

The Department designated the persons identified on the Service List, Attachment 1, as participants in the proceeding.

III. SELECTION PROCESS AND SELECTED BIDDERS

The Department has reviewed a report entitled “Recommendations on Selection of Projects in the 2006 Connecticut RFP Process” dated April 20, 2007 (Attachment 2, LEI Report) prepared by London Economics International LLC. The Department incorporates the LEI Report’s findings, analysis, conclusions and recommendations into this decision by reference.

Based on the content of the Report, the Department makes the following determinations. The Department finds that the RFP process was conducted in a fair and impartial manner, was commercially reasonable and was competitive. The Department also finds that the RFP process conformed to the principles and standards approved by the Department in Docket No. 05-07-20, Development of Process and Standards for Competitive Solicitation of Long-Term Projects to Reduce Federally Mandated Congestion Charges. The Department further finds that the selected projects meet the criteria of Conn. Gen. Stat. §§ 16-243m(c), (g) and (i).

The winning projects portfolio, consisting of four individual projects, provides the largest net benefit to Connecticut ratepayers as compared to other individual projects and portfolios of projects. The winning portfolio constitutes a total maximum capacity of 787 MW and consists of one 620 MW new highly efficient combined cycle gas-fired base load plant in Middletown offered by Kleen Energy (Project 409), one small, 66 MW, peaking plant located in the constrained Southwest Connecticut (Stamford) region offered by Waterside Power (Project 851), one 96 MW new and highly efficient peaking unit also located in Southwest Connecticut (Waterbury) offered by Waterbury Generation LLC (Project 993), and one 5 MW energy efficiency program offered by Ameresco (Project 358). This portfolio is projected to create net economic benefits for Connecticut

ratepayers that range from \$-66 to \$1,679 million (totalling \$509 million on a weighted average basis) because of its impact on wholesale costs of power, namely Locational Marginal Prices in the energy market, capacity clearing prices in the capacity market, and auction clearing prices in the Locational Forward Reserve Market. The range in net benefits is based on the results of nine different market scenarios, with differing supply-demand conditions, environmental regulations, and fuel prices.

The DPUC directs that The Connecticut Light and Power Company (CL&P) serve as the counterparty to two contracts – with Kleen Energy and with Waterside Power. The DPUC directs that The United Illuminating Company (UI, together with CL&P, Companies) serve as the counterparty to two contracts – with Waterbury Power and with Ameresco. The anticipated share of costs based on LEI's weighted average of all nine scenarios analyzed is 89% for CLP and 11% for UI.

Bid ID #	Bidder	Location	EDC Counterparty	Weighted Cost (\$MM)	EDC share of costs
409	Kleen	Middletown	CL&P	\$ 304.52	89%
851	Waterside	Stamford	CL&P	\$ 3.78	
993	Waterbury	Ansonia	UI	\$ 35.42	11%
358	Ameresco	CT State	UI	\$ 2.29	
TOTAL				\$ 346.02	

As all Connecticut customers will benefit from the capacity contracts regardless of what service territory a project is located in, all customers are responsible for paying the costs of all of the capacity contracts. In order to achieve the targeted 80-20 cost sharing ratio (which represents each Company's peak load share), it will be necessary to establish a cost sharing agreement between CL&P and UI similar to the one used for the Project 100 renewable energy contracts in Docket No. 03-07-17RE03. Therefore, the Department directs that CL&P and UI file on or before April 30, 2007 a modified version of the cost sharing agreement already approved by the Department in Docket No. 03-07-17RE03, for use in this proceeding.

IV. ACCOUNTING ISSUES

In Written Comments filed on June 2, 2006 and at other times in this proceeding and in a related proceeding, DPUC Investigation Into the Financial Impact of Long-Term Contracts on Electric Distribution Companies, Docket No. 05-07-18, UI and CL&P indicated concern that the long-term capacity contracts could have negative impacts resulting from accounting treatments that: (1) require consolidation under FIN 46; (2) require treatment as a derivative; and (3) require that the CfD be recorded as a capital lease.

CL&P filed responses to Department interrogatories focused on accounting issues. Based on its preliminary review, CL&P has concluded that, if

the Contract for Differences (CfD) is used to contract for capacity, the contract would not require consolidation under FIN 46(R) or treatment as a capital lease. CL&P Response to Department Interrogatory EL-8. CL&P concluded that it is a derivative, but its response does not clearly indicate if CL&P believes that accounting treatment as a derivative will cause costs that it seeks to recover and whether any actions can be taken now to mitigate against any such costs. Id. UI responded similarly. UI Response to Department Interrogatory EL-9. Both Companies said that they needed to review the financial information of selected bidders before they could make a final determination regarding accounting treatment of the contracts.

As described more fully below in Section V, Requested Ruling Number 7, the Department will provide CL&P and UI an opportunity to review the financial bid information of selected bidders for the purpose of identifying any negative accounting treatments that will cause costs for them. CL&P and UI will be given an opportunity in Docket 07-04-24, DPUC Review of Energy Independence Act Capacity Contracts, to identify any claimed negative accounting treatments and propose remedies. The Department can consider the proposed remedies or, without granting any remedy, approve the capacity contract and the electric distribution company can seek rate relief through a full rate proceeding pursuant to Conn. Gen. Stat. §§ 16-243m(l) and 16-19.

V. COST RECOVERY PROCESS ISSUES

CL&P has raised concerns about its ability to recover certain costs associated with negative credit rating and accounting treatment caused by being a counterparty to capacity contracts. CL&P appealed the Department's decision in Docket No. 05-07-18, DPUC Investigation Into the Financial Impact of Long-Term Contracts on Electric Distribution Companies addressing these issues. See Docket No. HHB-CV-06-4009637-S – The Connecticut Light and Power Company v. Connecticut Department of Public Utility Control, et al.

On April 16, 2007, CL&P filed a motion seeking that the Department make certain rulings regarding the process the electric distribution companies must follow to make cost recovery claims for costs resulting from being counterparties to capacity contracts required by Conn. Gen. Stat. §§ 16-243m(c), (g) and (i). CL&P represents that these rulings would mitigate against its accounting and balance sheet concerns. On April 16, 2007, the Department issued a ruling that it would address CL&P's motion in this decision and directed that any docket participants file comments by April 19, 2007.

In its motion, CL&P asks that the Department rule that:

1. Contracts for Differences (CfDs) are long-term capacity contracts within the meaning of Conn. Gen. Stat. § 16-243m(i) and will be used by the Department in the current capacity procurement (Requested Ruling 1);

2. entering into the capacity contracts is prudent and efficient management (Requested Ruling 2);
3. all of electric distribution companies' costs that are found to be prudently incurred by the Department and that are directly related to entering into, performing under and enforcing capacity contracts shall be recovered through non-bypassable federally-mandated congestion charge (NBFMCC) (Requested Rulings 2 and 3);
4. capacity contracts shall become effective upon approval by the Department in its final decision in the proceeding reviewing contracts required by Section 16-243m(i) (Requested Ruling 4);
5. electric distribution companies can seek to recover all prudently incurred costs directly caused by the capacity contracts even if the contracts are later invalidated unless the contracts were invalidated as a result of the electric distribution company's improper performance or failure to perform (Requested Rulings 2 and 5);
6. Section 16-243(l) authorizes the electric distribution companies to file for a full rate case, under Section 16-19, to recover on a going forward basis any costs associated with negative credit ratings resulting from capacity contracts (Requested Ruling 6);
7. the electric distribution companies can have time to review selected bidders' financial information to assess whether there is any negative accounting treatment that will result from capacity contracts and whether measures can be taken to mitigate against any such costs (Requested Ruling 7);
8. Section 16-243(l) authorizes the electric distribution companies to file for a full rate case, under Section 16-19, to recover on a going forward basis any costs associated with negative accounting treatment resulting from capacity contracts and, to the extent that the law prevents the filing of a rate case, the electric distribution company can file a notice of intent to seek the costs in a future rate case (Requested Rulings 8 and 9).

On April 19, 2007, the Office of Consumer Counsel (OCC) filed objections to CL&P's requested rulings. The OCC claims that 1) it would be ultra vires for the Department to make the requested rulings as it would bind the Department in the future to these rulings and 2) committing to use of specific regulatory procedures may impinge on the procedural rights of the OCC and other parties.

The OCC incorporated by reference arguments made in a petition for reconsideration addressing the same issues in Docket No. 05-07-18.

Conn. Gen. Stat. §§ 16-243m(c), (g) and (i) require the CL&P and UI enter into long-term capacity contracts. On the issue of cost recovery, subsection (i) expressly provides that the costs of these contracts shall be recovered through federally mandated congestion charges (FMCCs). In addition to this express provision in Section 16-243m(i) regarding the Companies' entitlement to recover contract-related costs, it is a fundamental principle of constitutional law that it could result in an unconstitutional taking to require the Companies to spend money on these contracts and to incur costs performing services related to these contracts without, at the same time, allowing for appropriate cost recovery. Duquesne Light Co. v. Barasch, 488 U.S. 299 (1989).

The Department makes the following rulings regarding the process for electric distribution companies to recover their costs associated with being counterparties to capacity contracts required by Conn. Gen. Stat. §§ 16-243m(c), (g) and (i). As a general matter, the rulings proposed by the CL&P do not guarantee any future cost recovery, but rather, clarify the process by which the Companies can seek recovery subject to a prudency review of the evidence regarding any claimed costs by the Department. Moreover, the proposed rulings are consistent with the express language of Section 16-243m, which provides that the costs of these contracts shall be recovered through FMCCs. The Department addresses below each of CL&P's requested rulings. These rulings will also apply to the electric distribution companies entering into, performing under and enforcing any cost sharing agreement, described more fully above in Section III, entered into between UI and CL&P.

With respect to the OCC's objections, the Department rules as follows. First, it is not ultra vires for the Department to perform its function of interpreting and applying the statutes that govern this proceeding. Section 16-243m addresses the issue of cost recovery by indicating that capacity contract costs shall be recovered through the FMCC. CL&P has requested rulings from the Department regarding the specific process by which it can seek to recover capacity contract costs. The Department's current Commissioners, and any future Commissioners, are and will continue to be bound by Section 16-243m until such statute is repealed or changed. To suggest that the Department cannot interpret the statutes relating to this proceeding and make rulings on relevant issues raised by parties to this proceeding based on its interpretation of relevant statutes is wholly without merit.

Second, the Department is not impinging on the procedural rights of the OCC and other parties. CL&P seeks a ruling regarding the process that it must follow to recover costs it may incur as a result of being a counterparty to capacity contracts. The Department is interpreting, applying and making rulings on the issues raised based on relevant statutes.

Third, the OCC incorporated by reference arguments it made in a petition for reconsideration addressing the same issues in Docket No. 05-07-18. CL&P also made a request for the same rulings it seeks here in Docket No. 03-07-17RE03, DPUC Review of Long-Term Renewable Energy Contracts – Round 1 Results and Contract, Accounting and Allocation Issues. The OCC raised all of the same objections in its petition for reconsideration in Docket No. 05-07-18 as objections to CL&P's request for cost recovery process rulings in Docket No. 03-07-17RE03. The Department, in a letter order dated April 9, 2007 in Docket No. 03-07-17RE03, adopted CL&P's proposed rulings and rejected all of the OCC's objections. The Department affirms its rejection of OCC's objections in this proceeding as well and makes the rulings requested by CL&P subject to some modifications described below.

Requested Ruling Number 1:

CL&P requests that the Department rule that Contracts for Differences (CfDs) are long-term capacity contracts within the meaning of Conn. Gen. Stat. § 16-243m(i) and will be used by the Department in the current capacity procurement (Requested Ruling 1). The Department previously made this ruling in its September 13, 2006 Interim Decision in this proceeding at Section IV.B.1 and, for the same reasons stated therein, the Department affirms that ruling again in this decision.

Requested Ruling Number 2:

CL&P requests that the Department rule that entering into the capacity contracts is prudent and efficient management for cost recovery purposes. As the Companies are required by statute and Department decisions implementing the same, to enter into capacity contracts and the cost sharing agreement, the Department finds that the Companies are acting prudently in obeying these legal directives. The Department does not see how it could legally rule otherwise.

Requested Ruling Number 3:

CL&P requests that the Department rule that all of the electric distribution companies' costs that the Department finds (1) were directly related to entering into, performing under and enforcing capacity contracts and (2) were prudently incurred shall be recovered through a NBFMCC and Section 16-19b. The Department believes that this criteria and process for cost recovery is required by Sections 16-243m(i) and 16-19b(d) and (h). Only the contract price and administrative costs can be collected through a NBFMCC and Section 16-19b. As described more fully below in Requested Rulings Numbers 7 and 8, the electric distribution companies must file a full rate case pursuant to Sections 16-19 and 16-243m(l) to recover any negative credit rating and accounting treatment costs.

The OCC and others will have the right to review and contest UI's and CL&P's claimed costs as Section 16-19b(d) provides that the "Department of Public Utility Control shall adjust the retail rate charged by each electric distribution company for electric transmission services periodically to recover all transmission **costs prudently incurred** by each electric distribution company." [emphasis added].

Section 16-19b(h) requires that

[t]he department shall **hold a public hearing** thereon whenever the department deems it necessary, but **no less frequently than once every six months**, and undertake such other proceeding thereon to determine whether charges or credits made under such clauses reflect the actual prices paid for purchased gas or energy and the actual transmission costs and are computed in accordance with the applicable clause. **If the department finds that such charges or credits do not reflect the actual prices paid for purchased gas or energy, and the actual transmission costs or are not computed in accordance with the applicable clause, it shall recompute such charges or credits and shall direct the company to take such action as may be required to insure that such charges or credits properly reflect the actual prices paid** for purchased gas or energy and the actual transmission costs and are computed in accordance with the applicable clause for the applicable period. [emphasis added].

There are at least two opportunities, one in a contested case and one in an administrative setting, for the Department, the OCC and others to examine the Companies' requested cost recovery related to the capacity contracts. The first opportunity arises in an administrative proceeding when the Companies seek to pass through the costs in the NBFMCC. At that time, the persons can seek to investigate and challenge the Companies' submissions and the Department can take appropriate action in response to any issues raised. The second opportunity arises at least twice a year, when persons, in the contested case conducted pursuant to Section 16-19b(h), can challenge any of the electric distribution companies' claimed capacity contract-related administrative costs that they believe are imprudent or not caused by the capacity contracts. If persons are correct that certain costs are not properly recoverable, the Department has the authority to require rate adjustments to address any over recovery.

Requested Ruling Number 4:

CL&P asks that the Department rule that capacity contracts shall become effective upon approval by the Department in its final decision in the proceeding reviewing contracts required by Section 16-243m(i). The Department will make this ruling as the express language of Section 16-243m(i) states that capacity contracts are effective upon Department approval. Also, this concept is reflected in Section 5.1(b) of the Master Agreements approved by the Department. Section 5.1(b) states that contracts will be effective upon approval in the docket required by Section 16-243m(i) which has now been opened and is identified as Docket No. 07-04-24, DPUC Review of Energy Independence Act Capacity Contracts.

Requested Ruling 5:

CL&P requests that the Department rule that electric distribution companies can seek to recover all prudently incurred costs directly caused by the capacity contracts even if the contracts are later invalidated unless the contracts were invalidated as a result of the electric distribution company's improper performance or failure to perform. The Department believes that this request is consistent with the basic rate recovery principals and the constitutional law regarding takings. If the electric distribution companies are prudently performing as counterparties under the capacity contracts as ordered by statute and the Department, and the contracts are later invalidated through no fault of their own, they are entitled to recover prudently incurred costs.

Requested Ruling Number 6:

CL&P requests that the Department rule that Section 16-243(l) authorizes the electric distribution companies to file for a full rate case, under Section 16-19, to recover on a going forward basis any costs associated with negative credit ratings resulting from capacity contracts. The Department believes that the plain language of this provision and Section 16-243m(i), permitting capacity contract cost recovery through FMCC, provide clear legislative intent that the electric distribution companies could recover prudently incurred capacity contract costs on a going forward basis without any risk that electric distribution companies could be locked out from seeking to recover these costs or that these costs would somehow become unrecoverable. Unlike administrative and contract price costs which can be collected through a NBFMCC and Section 16-19b, for costs due to negative credit ratings, the electric distribution companies must file a full rate case under Section 16-19 and 16-243m(l), in which all of its costs and revenues can be examined and contested.

Requested Ruling Number 7:

CL&P requests that the Department rule that the electric distribution companies can have time to review selected bidders financial information to assess whether there is any negative accounting treatment that will result from capacity contracts and whether measures can be taken to mitigate against any such costs.

The Department makes the requested ruling with modifications. Provided that CL&P and UI have provided signed nondisclosure agreements, the RFP Coordinator will provide CL&P and UI with the financial bid information for winning bidders on May 4, 2007. In Docket No. 07-04-24, DPUC Review of Energy Independence Act Capacity Contracts, the Department will provide CL&P and UI until July 3, 2007, sixty days from May 4, 2007, to review the financial bid information of selected bidders for the purpose of identifying any negative accounting treatments that will cause costs for them as well as any proposed remedies for mitigating against any such costs. CL&P can request additional financial information from selected bidders and the Department will resolve any disputes pertaining to such requests. On July 3, 2007, CL&P and UI shall file a report with the Department in Docket No. 07-04-24 providing the results of their financial accounting review. If CL&P or UI claims there are costs due to accounting treatment, they should file the information specified in paragraph 8 of the requested ruling and any proposed remedy. The Department will not make it mandatory, as requested by CL&P, to have a 30-day negotiation process between, the electric distribution company, the bidder and a Department prosecutorial unit. Rather, if CL&P or UI proves that negative accounting treatment of any of the capacity contracts will cause them costs, the Department can consider and adopt proposed remedies, or, without approving any remedies, approve the capacity contract and the electric distribution company can then seek rate relief through a full rate proceeding pursuant to Conn. Gen. Stat. §§ 16-243m(l) and 16-19. In order to bring timely closure to this proceeding, the Department is not inclined to give any more time for review beyond sixty days, given that the electric distribution companies can file a rate case at any time to seek cost recovery if they believe that negative accounting treatment of a capacity contract is causing increased costs.

Requested Ruling Number 8:

CL&P requests that the Department rule that Section 16-243(l) authorizes the electric distribution companies to file for a full rate case, under Section 16-19, to recover on a going forward basis any costs associated with negative accounting treatment resulting from capacity contracts and, to the extent that the law prevents the filing of a rate case, the electric distribution company can file a notice of intent to seek the costs in a future rate case. The Department believes that the plain language of Section 16-243m(i), permitting capacity contract cost recovery through FMCC, provides clear legislative intent that the electric

distribution companies could recover prudently incurred capacity contract costs on a going forward basis without any risk that electric distribution companies could be locked out from seeking to recover these costs or that these costs would somehow become unrecoverable. The Department believes that it would be illegal, in contravention of Conn. Gen. Stat. § 16-243m(i) and may be in violation of the Takings Clauses of the United States and Connecticut Constitutions to bar the electric distribution companies from seeking cost recovery for capacity contract costs as a result of following mandates of the statute and Department decisions. Unlike administrative and contract price costs which can be collected through a NBFMCC and Section 16-19b, for costs associated with negative accounting treatment of capacity contracts, the electric distribution companies must file a full rate case, in which all of its costs and revenues can be examined and contested, under Sections 16-9 and 16-243(l).

The Department believes that it is consistent with the cost recovery language of Sections 16-243m(i) and (l) to permit CL&P or UI, if they are legally barred from filing a rate case during the time they are incurring costs related to negative accounting treatment of capacity contracts, to defer those costs they seek to recover. If either company seeks such treatment, it must file written notice at the time it wishes for cost recovery to begin with the Department and the OCC. Any such requested deferral would be subject to Department review of the appropriateness of the deferral, including whether or not the company was overearning at the time of the deferral, and a prudency review of the costs. Office of Consumer Counsel v. Department of Public Utility Control et al, 279 Conn. 584 (2006).

VI. DESCRIPTION OF NEXT STEPS

On or before April 30, 2007, CL&P and UI shall provide Kleen Energy, Waterside Power, Waterbury Generation LLC, Ameresco, the Department and the RFP Coordinator with the signed nondisclosure agreements for each person it wishes to have access to the confidential financial bid information. The Companies should use the protective order and nondisclosure agreement approved by the Department on November 27, 2006. Consistent with the Code of Conduct outlined in the RFP and Master Agreements, CL&P and UI must limit access to the protected information to only those persons performing the financial accounting review. Upon receipt of the nondisclosure agreement and after this decision is final on May 3, 2007, the RFP Coordinator will send CL&P and UI an electronic version of the selected bidders financial information on CD-ROM. CL&P and UI shall only use the financial bid information for the limited purpose of analyzing it to identify if there any actual financial accounting issues that raise cost recovery issues so that CL&P and UI may file a rate case seeking recovery for any claimed costs. UI and CL&P shall have sixty days to review this information. In Docket No. 07-04-24, DPUC Review of Energy Independence Act Capacity Contracts, UI and CL&P shall report to the Department if there are any negative accounting treatments that will cause costs and propose remedies, including any agreements with bidders, for resolving any negative accounting

issues. If the Department agrees that there is a problem, the Department will then consider whether it will address it through adopting a proposed remedy or through a rate case filing by UI or CL&P.

In Docket No. 07-04-24, DPUC Review of Energy Independence Act Capacity Contracts, on or before May 18, 2007, CL&P shall file signed executed Master Agreements with Kleen Energy and Waterside Power and UI shall file signed executed contracts with Waterbury Power and Ameresco. The schedule for this proceeding is attached as Attachment 3. The Department will conduct this one proceeding to review all of the selected projects and the executed contracts and will issue a Decision approving or rejecting each of the contracts. Pursuant to Section 16-243m(i), the contracts will become effective upon approval by the Department. The scope of review in the contested case proceeding will be limited to assessing whether there is substantial evidence to support the Department's preliminary finding in this proceeding that the projects selected meet the three criteria listed in Section 12(i) of the EIA, notably whether the project(s): (1) result in the lowest reasonable cost of such products and services; (2) increase reliability; and (3) minimize FMCCs to the state over the life of the contract. The scope of the proceeding will not include presentation of evidence about whether the Department or its consultants could have reached different conclusions using different methods for evaluating bids.

CL&P and UI shall use the Letter of Credit (LOC) template attached to this Draft Decision (Attachment 4, the same template the Department used for the RFP process) as a basis for the LOC to be signed by winning bidders electing to use an LOC to fulfill their Completion and Performance Security requirements. CL&P and UI may make amendments to the template if needed though such amendments should be commercially reasonable and acceptable to the Department and selected bidders. CL&P and UI shall submit the final LOC template to be used by the winning bidders for approval to the DPUC on or before April 30, 2007.

Winning bidders will have until May 18, 2007, the date upon which the executed Master Agreements are submitted to the Department, to post their full Completion and Performance Security with their assigned electric distribution company - \$100/kW for generation and \$35/kW for demand response. There will be no intermediary step up in the project security deposit between the date of announcing winning bidders and the submission by the electric distribution companies of the executed Master Agreements, as anticipated earlier in the RFP process. Upon notification that the electric distribution company has received the full security deposit, the Department will return the original security deposit posted on December 13, 2006 to the bidder. For bidders that submitted an LOC, the Department will send the bidder the LOC within 2 days of notification by the electric distribution company that the full Completion and Performance Security has been received.

For those bidders that submitted a wire transfer of cash as their project security deposit, within 2 days of notification by the electric distribution company that the full Completion and Performance Security has been received, the Department will direct the Connecticut State Treasurer to cut a check for the original project security deposit, plus accrued interest, and to send that check to the bidder. We have been informed that it takes the Treasurer approximately seven business days to cut the check from the date of notification.

Bidders whose projects were not selected will have their project security deposit refunded to them. Bidders who posted a Letter of Credit will receive that LOC via express mail, sent out by April 24, 2007. Bidders who posted cash will receive a check from the Connecticut state Treasurer. It takes the Connecticut state treasurer about seven business days to process and send the check from the date of notification. Thus, bidders who posted cash should expect to receive their check in the first days of May. Bidders who submitted bids using a wire transfer will need to complete the form that will be distributed by the RFP Coordinator.

VI. CONCLUSION AND ORDERS

A. CONCLUSION

Based on the content of the Report, the Department makes the following determinations. The Department finds that the RFP process was conducted in a fair and impartial manner, was commercially reasonable and was competitive. The Department also finds that the RFP process conformed to the principles and standards approved by the Department in Docket No. 05-07-20, Development of Process and Standards for Competitive Solicitation of Long-Term Projects to Reduce Federally Mandated Congestion Charges. The Department further finds that the selected projects meet the criteria of Conn. Gen. Stat. §§ 16-243m(c), (g) and (i). The winning projects portfolio, consisting of four individual projects constituting 787 MW, provides the largest net benefit to Connecticut ratepayers as compared to other individual projects and portfolios of projects.

B. ORDERS

1. In this proceeding, CL&P and UI shall submit nondisclosure agreements to selected bidders, the RFP Coordinator and the Department on or before April 30, 2007.
2. In this proceeding, CL&P and UI shall submit the final LOC template to be used by the winning bidders for approval to the DPUC on or before April 30, 2007.
3. In this proceeding, CL&P and UI shall file on or before April 30, 2007 a modified version of the cost sharing agreement already approved by the Department in Docket No. 03-07-17RE03, for use for in this proceeding.

4. In Docket No. 07-04-24, CL&P and UI shall file executed contracts on or before May 18, 2007.

**DOCKET NO. 05-07-14PH02 DPUC INVESTIGATION OF MEASURES TO
REDUCE FEDERALLY MANDATED CONGESTION
CHARGES (LONG TERM MEASURES)**

This Decision is adopted by the following Commissioners:

Donald W. Downes

John W. Betkoski, III

Jack R. Goldberg

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Louise E. Rickard

Date

Acting Executive Secretary

Department of Public Utility Control

Table of Contents of Attachments to Interim Decision

Attachment 1: Service List

Attachment 2: LEI Report

Attachment 3: Schedule in Docket No. 07-04-24

Attachment 4: Letter of Credit template