STATE OF MAINE
PUBLIC UTILITIES COMMISSION

THOMAS L. WELCH
CHA RMAN

DAVID P. LITTELL
MARK VANNOY
COMMISSIONERS

HARRY LANPHEAR
ADMINISTRATIVE DIRECTOR

December 10, 2013

Honorable John J. Cleveland, Senate Chair
Honorable Barry J. Hobbins, House Chair
Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

Re: Report Related to LD 796, Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators To Obtain Power Directly

Dear Senator Cleveland and Representative Hobbins:

During its 2013 session, the Legislature voted to carry over LD 796, Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators To Obtain Power Directly. The Committee requested by letter dated June 19, 2013 that the Commission provide a report by December 10, 2013, on the progress of CMP's pending rate design proceeding as it pertains to the policy issues raised by LD 796. In particular, the Chairs requested that the report include issues regarding incentives for the direct purchase of electricity by businesses adjacent to an electricity generator and the design of backup or standby rates. Attached is the Commission's Report for the Committee's consideration.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Thomas L. Welch, Chairman

On behalf of the Chairman and

David P. Littell, Commissioner
Mark A. Vannoy, Commissioner
Maine Public Utilities Commission

Attachment
cc: Energy, Utilities and Technology Committee Members
Jean Guzzetti, Legislative Analyst

MAINE PUBLIC UTILITIES COMMISSION

Report on Direct Purchases of Electricity From Customers Adjacent to Generation Facilities

Presented to the
Joint Standing Committee on
Energy, Utilities and Technology
December 10, 2013

I. INTRODUCTION

Through a letter dated June 19, 2013, the Chairs of the Energy, Utilities and Technology Committee (Committee) requested that the Public Utilities Commission (Commission) provide a report regarding LD 796, Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators To Obtain Power Directly. LD 796 was a concept draft that would establish a stakeholder group to identify barriers to and incentives for the direct purchase of electricity by businesses adjacent to electricity generating facilities.[1] In their June 19th letter, the Committee Chairs asked the Commission to provide a report, by December 10, 2013, on the progress of Central Maine Power Company's pending rate design proceeding (Docket No. 2013-168)[2] as it pertains to the policy issues raised by LD 796. In particular, the Chairs requested that the report include issues regarding incentives for the direct purchase of electricity by businesses adjacent to an electricity generator and the design of backup or standby rates.[3]

The Commission requested that the parties to the CMP rate design proceeding comment on the issues raised in the June 19th letter. The following parties commented on these issues: Central Maine Power Company, Bangor Hydro Electric Company/Maine Public Service Company, the Public Advocate and the Industrial Energy Consumers Group.[4]

II. DIRECT PURCHASE OF ELECTRICITY FROM ADJACENT CUSTOMERS

There are no legal barriers preventing a business adjacent to an electric

[1] A copy of the June 19, 2013 Committee Chairs letter and LD 796 are attached to this Report.

[2] The June 19th letter did not specifically reference CMP's pending rate design proceeding. However, there are no other T&D utility rate design matters that have recently been or are currently before the Commission. The case is pending and is currently expected to conclude in June of 2014.

[3] Backup or standby rates are utility charges for customers that have access to their own generation facilities and therefore use the transmission and distribution system when those facilities are not operating.

[4] Copies of these comments are attached to this Report.

generating facility from purchasing electric energy directly from that facility and CMP's proposed rate design changes do not propose to change this. Moreover, there is no requirement that a customer purchase transmission and distribution (T&D) service from the utility. However, if a customer has direct access to a generation source, but is also connected to the T&D system for the purpose of providing some or all of its electricity needs, then that customer is subject to Commission-approved T&D utility rates.

An adjacent customer may have the option of connecting directly to a source of electric energy using facilities that are not owned or operated by the T&D utility. Maine statutes address the construction of transmission or distribution facilities by entities other than the local utility and generally require that the local utility construct such facilities when located within its service territory if those facilities are offered for public use.[5] This provision of law is intended to maintain the current structure in which T&D utilities provide their services within defined territories, which tends to minimize the overall costs of service for all customers.

However, under certain circumstances, a customer can purchase electricity from an adjacent generator through "private" facilities that do not otherwise have a public use without either party becoming a T&D utility or a competitive electricity provider. These circumstances generally involve a generator and an adjacent customer that have a distinct business association, a corporate affiliation, or a landlord/tenant relationship. The Commission has well defined precedent as to when a transmission or distribution facility will be considered private and may be constructed and operated by an entity other than a local utility.[6]

III. STANDBY OR BACK-UP SERVICE

Customers that have electric generation facilities are often connected to the T&D system so that electricity can be provided when the generator is down for service or otherwise not operating. Such service is referred to as back-up or standby service and the T&D utility charges for such service pursuant to Commission-approved back-up or standby rates. These rates are designed to recover the costs of the T&D

[5] Title 35-A M.R.S. § 2102.

[6] *Request for Commission Investigation Regarding the Plans of Boralex Stratton Energy, Inc. to Provide Electric Service Directly from Stratton Lumber Company,* Docket No. 2000-653 (April 6, 2001); *ReEnergy Rumford, LLC, Request for Advisory Ruling,* Docket No. 2011-200 (June 28, 2011). A copy of these decisions are attached to this Report.

infrastructure that must be constructed and available to deliver power from the grid whenever the customer needs the power.

IV. UTILITY RATE DESIGN

The primary purpose of utility rate design is to allocate costs among and within customer classes in a manner that reflects the underlying costs of service, taking into account rate stability and other rate design issues. In considering the issues raised by LD 796, it is important to consider the costs a T&D utility incurs to provide backup or standby service to either a customer that is directly connected to an adjacent generator or a generator itself. In both cases, as long as the customer or generator is connected to the T&D utility system and has the ability to take power from the utility system whenever it may be needed, the utility's infrastructure grid costs are typically not materially different than those used to serve other customers. This is because the utility infrastructure and grid must be in place and capable of providing the customer's electricity demands even if the customer actually uses the system only relatively rarely.[7] In the event that utility rates are designed otherwise, such as to provide "incentives" for customers to take power from adjacent facilities, such customers would not pay the full costs of utility infrastructure constructed and maintained to serve them and other utility customers would end up paying those costs in higher rates as a result.

V. CONCLUSION

In conclusion, it is important to emphasize that, as long as a customer is connected to the T&D system and has the potential of taking electric service from that system, the geographic proximity of the end-use customer to an electric generator will not, as a general matter, materially impact the cost of providing T&D service to that customer. Accordingly, the Commission will continue to strive to establish T&D rates for all customers that are fair, equitable and reflective of the costs customers impose on the system.

[7] However, there may be cases in which the costs to serve a group of standby customers in the aggregate are somewhat lower than full requirements customers because of the diversity of the individual customer usage patterns. For example, system capacity requirements and, thus, costs, for standby customers could be lower if there is a predictable difference in the times that backup customers in the same area will need to take backup service

State of Maine
ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY

June 19, 2013

Thomas L. Welch, Chairman
Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018

RE: LD 796, *Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators to Obtain Power Directly*

Dear Chairman Welch:

This session LD 796, *Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators to Obtain Power Directly,* sought to provide discounted transmission and distribution rates to those businesses located adjacent to electricity generators.

During the public hearing on this bill, the Commission stated its intent to begin a rate design case during the interim that may be relevant to the policies proposed in LD 796.

The committee requests a report on the progress of that rate design case by December 10, 2013. We request that the report include any information that might be relevant to the committee's consideration of LD 796, especially any changes to rate design standards that may incentivize the direct purchase of electricity by a business from an adjacent electricity generator. The committee is also interested in any changes in the way that stand-by fees are levied.

Thank you for your attention to this important matter.

Sincerely,

John Cleveland
Senate Chair

Barry Hobbins
House Chair

c: Rep. Richard H. Campbell
Members of the Energy, Utilities and Technology Committee
✓Paulina Collins, Public Utilities Commission

126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document **No. 796**

H.P. 547 House of Representatives, March 5, 2013

Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators To Obtain Power Directly

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND
Clerk

Presented by Representative CAMPBELL of Orrington.
Cosponsored by Senator TUTTLE of York and
Representative: JOHNSON of Eddington, Senator: JACKSON of Aroostook.

CONCEPT DRAFT

SUMMARY

This resolve is a concept draft pursuant to Joint Rule 208.

This resolve proposes to establish a stakeholder group to identify barriers to and incentives for the direct purchase of electricity by businesses adjacent to electricity-generating facilities, with the intent that the direct purchase of the electricity will decrease total electricity costs to the businesses.

The stakeholder group may be chaired by a representative of the Public Utilities Commission, the Office of the Public Advocate or the Governor's Energy Office.

Stakeholders may include representatives from the Public Utilities Commission, the Office of the Public Advocate, the Governor's Energy Office, the Department of Economic and Community Development, municipalities, business associations, transmission and distribution utilities, electricity generators and up to 2 Legislators appointed by the presiding officers.

Other than the 2 Legislators appointed by the presiding officers, the members of the stakeholder group may be appointed by the Public Utilities Commission, the Office of the Public Advocate or the Governor's Energy Office.

The stakeholder group would examine the effects of exit fees, limitations on authority to construct electric transmission lines and the need for backup service from transmission and distribution utilities on the ability of a business to purchase electricity directly from an electricity-generating facility adjacent to the business's property. Additionally, the stakeholder group may consider the feasibility of designating businesses located adjacent to electricity-generating facilities as Pine Tree Development Zone businesses, regardless of the type of business, in order to encourage development in those locations so that the businesses may take advantage of the benefits provided in the Maine Revised Statutes, Title 35-A, section 3210-E.

The stakeholder group would be required to report to the Joint Standing Committee on Energy, Utilities and Technology by January 15, 2014 the findings and recommendations of the stakeholder group, including any suggested legislation. The committee would be authorized to report out a bill relating to the report to the Second Regular Session of the 126th Legislature.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2013-00168

November 1, 2013

MAINE PUBLIC UTILITIES COMMISSION
Request for New Alternative Rate Plan
("ARP 2014")

COMMENTS OF BANGOR HYDRO ELECTRIC COMPANY AND MAINE PUBLIC SERVICE COMPANY

On October 11, 2013, the Commission issued a request for comments in response to a letter received from the Legislature's Energy, Utilities and Technology Committee (the Committee) on June 19, 2013. This letter requested a report on Central Maine Power Company's (CMP) rate design case and how it addresses any issues that may be relevant to LD 796, Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators to Obtain Power Directly. Specifically, the Committee requested information on incentives to purchase from adjacent generators and stand-by fees.

Bangor Hydro Electric Company (BHE) and Maine Public Service Company (MPS) submit these comments in support of CMP's October 23, 2013, response regarding the policy issues raised by LD 796 and the Committee's letter.

In regards to geographic proximity, CMP correctly notes in its response that the geographic proximity of a customer to the electric generator it is purchasing electricity from bears minimal impact on the cost of providing distribution service. Transmission and distribution (T&D) utilities incur costs for the development of its T&D systems and those costs should be paid for by all customers who benefit from such infrastructure. Allowing customers to bypass the T&D utility and receive electricity directly from nearby generators, or to receive discounted service, while continuing to utilize the T&D system, would result in a subsidy for those customers at the expense of other customers. Allowing some customers to bypass the grid, or to pay less for delivery of electricity from the grid, means that another group of customers in a different location will ultimately pay more. Altering stand-by fees to provide incentives for customers to receive service directly from adjacent generators presents a similar issue.

Additionally, allowing some customers to bypass the utility and receive service directly from a nearby generator, through the T&D system, would violate the exclusive franchise rights of the utility. Furthermore, that customer would not receive the benefit of the various rules and regulations incumbent upon utilities regarding safety, privacy, service quality, rates, billing, collection and disconnection, to name a few.

BHE and MPS support CMP's view that rates should be designed to fairly allocate the costs involved in providing service to customers. Allowing a local generator to sell electricity to neighboring customers, via the T&D system, without paying for said use, is unfair to other

ratepayers who are not similarly situated. As BHE and MPS stated in their March 27, 2013, testimony before the Committee, a large portion of T&D utility costs are fixed and altering the policy of fairly allocating costs will simply result in shifting the costs from some customers to other customers. The full March 27, 2013, testimony is attached to these comments for further reference.

Respectfully submitted this
1st day of November, 2013

Nathan Martell
Bangor Hydro Electric Company
Maine Public Service Company
Regulatory Attorney

TESTIMONY OF BANGOR HYDRO ELECTRIC COMPANY AND MAINE PUBLIC SERVICE BEFORE THE ENERGY, UTILITIES, AND TECHNOLOGY COMMITTEE

L.D. 796, An Act To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators to Obtain Power Directly

March 27 , 2013

Chairman Cleveland, Chairman Hobbins, and members of the Energy, Utility, and Technology Committee, my name is Jim Cohen, I am a partner with the law firm Verrill Dana, LLP, and I am here today on behalf of Bangor Hydro Electric Company and Maine Public Service to speak in respectful opposition to LD 796.

Summary of the bill. LD 796 is a well-intentioned bill aimed at helping Maine businesses; However, the bill would establish a stakeholder group to examine a wide range of issues, some of which have already been addressed in law, and the rest of which would not be in the best interest of Maine consumers as a whole.

The stated purpose of the bill is to identify barriers to and incentives for the direct purchase of electricity by businesses located next to generating facilities. Implementing such incentives would, however, violate the exclusive franchise rights of existing utilities, undermine important consumer protections, and increase costs for the average electricity customer.

Exit fees. The first subject of the study listed in the bill is to examine the "effect of exit fees." However, since electric restructuring was passed 15 years ago, exit fees have been prohibited in Maine. So, there would be nothing to study on this topic.

Transmission lines. The second subject of the study would be "limitations on authority to construct electric transmission lines." This subject has been extensively studied over many years and been the subject of numerous pieces of legislation. The current structure for constructing transmission lines is very thorough, and includes review and permitting on both the state and federal level. On the federal level, a transmission line must be approved by Federal Energy Regulatory Commission (FERC) through a regional transmission organization as being either necessary for reliability or for the economic benefit of ratepayers. On the state level, a line must receive a Certificate of Public Convenience and Necessity by the Maine Public Utilities Commission (MPUC), which is a heavily adjudicated process involving numerous stakeholders. Additionally, the line would need approval from the Maine Department of Environmental Protection (DEP) and other land use permitting agencies. Getting a transmission line permitted is time-consuming and difficult, but the process reflects a balance achieved through years of public process.

Backup service. A third issue referenced in the bill relates to the "need for backup service from transmission and distribution utilities." T&D utility costs are largely fixed, and utility rates are a zero sum game. The utility must stand ready to serve – and if some customers avoid paying their fair share of the associated costs, other customers make up the difference.

Purchasing electricity directly from generators. A fourth issue referenced in the bill relates to "the ability of a business to purchase electricity directly from an electricity generating facility adjacent to the business's property." If this were to involve a direct connection that would bypass the T&D utility

entirely, this would be a direct violation of the regulatory compact and a regulated utility's franchise rights. Moreover, if a generator connected directly to neighboring customers, that generator would be acting as a utility and would be operating in another utility's exclusive franchise area.

It is important to remember that a T&D utility's exclusive franchise benefits the customer as well as the utility, because in return for the franchise, the utility has the obligation to serve. In addition, regulated utilities are subject to various rules that protect customer safety and privacy, and ensure both service quality and just and reasonable rates.

If the intent of the bill is to allow the generator to sell to neighboring companies by way of T&D infrastructure, but to avoid paying for that use, that would be unfair to other ratepayers.

Pine Tree Zones. Finally, the bill lists a fifth issue: the "feasibility of designating businesses located adjacent to electricity-generating facilities as Pine Tree Development Zone businesses, regardless of the type of business." The stated goal in the bill is to "encourage development in those locations by expanding where PTZ benefits can be offered. This issue does not raise particular concerns for T&D utilities or their customers, but would impact state tax collections and would expand the careful balance of where Pine Tree Zones can be established, and which businesses qualify.

"Bypass" of the grid means more costs for all customers who remain on the grid. This is a topic that arises regularly before the Committee, and is a significant issue for the people of Maine. As has been discussed in prior hearings this session, many of the costs of the T&D system are fixed. So, if one group of customers pays less for delivery of electricity from the grid, it necessarily means that another group of customers will pay more. It is a zero sum game. So, when this bill suggests that we study options to make it easier for some group of customers to pay less, those costs don't go away. They just get added onto the bills of everyone else.

Conclusion. Bangor Hydro and Maine Public Service provide safe and reliable electric service at reasonable rates. We are obligated to serve, and to ensure that, when someone flips a switch, the system is capable of delivering power to that location. Utility infrastructure, including the transmission and distribution system, is the backbone of our economy and the costs should be fairly shared by all those who benefit from it.

The delivery of electricity by T&D utilities is highly regulated. Regulations that protect consumers include rules on bill collection, rates, disconnection, service quality, and safety. Under this bill, there is an underlying concept that some customers could choose to bypass their utility and receive service directly from regulators. Not only would this violate the exclusive franchise rights of existing utilities, it would bypass important consumer protections that would create serious risks for customers.

We appreciate the interest of the sponsor in considering the important role that electric service plays in economic development. However, the particular issues suggested for study have been carefully considered over many years, and further study is not needed. Moreover, several of the proposed issues would have the effect of shifting costs from some customers to others, which is not in Maine's best interest. For this reason, we would recommend not proceeding with this legislation.

Thank you, and would be happy to provide further information as needed by the Committee.

PretiFlaherty

ANDREW LANDRY
alandry@preti.com
207-623-5300

ELECTRONICALLY FILED ON NOVEMBER 1, 2013

November 1, 2013

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

RE: CENTRAL MAINE POWER COMPANY, Request for Approval of an Alternative Rate Plan (ARP 2014) Pertaining to Central Maine Power Company, Docket No. 2013-00168

Dear Mr. Lanphear:

This letter serves as the comments of Industrial Energy Consumer Group ("IECG") pursuant to the Procedural Order dated October 11, 2013.

The Commission has previously established that customers adjacent to electric generators may service directly from such generator if they satisfy certain conditions. See, e.g., *Re Central Maine Power Company, Request for Commission Investigation Regarding the Plans of Boralex Stratton Energy, Inc. to Provide Electric Service Directly to Stratton Lumber Company*, No. 2001-653 (April 6, 2001). As IECG understands CMP's filings in this matter, CMP is not proposing to prohibit such relationships. However, issues are posed by CMP's standby rate proposal, including a) whether such rates would apply to customers taking service directly from an adjacent generator who remain interconnected with the grid and, if so, b) whether such proposed rates are just and reasonable for such purpose. Improperly designed standby rates would clearly have the potential to unduly impact the economics of such arrangements. IECG intends to continue to explore issues relating to the reasonableness of CMP's standby rate proposal in this proceeding.

Thank you for your attention in this matter.

Best regards,

/s/ Andrew Landry

Andrew Landry, Esq.
Counsel to Industrial Energy Consumer Group

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Paul R. LePage
GOVERNOR

Timothy R. Schneider
PUBLIC ADVOCATE

November 1, 2013

Harry A. Lanphear
Administrative Director
Maine Public Utilities Commission
State House Station #18
Augusta, ME 04333-0018

Central Maine Power Company
Request for New Alternative Rate Plan ("ARP 2014")
Docket No. 2013-00168

Dear Mr. Lanphear,

The Public Advocate files these comments in connection with the Procedural Order dated October 11, 2013 in the above-referenced docket. We have reviewed 1) the letter from the chairs of the Energy Utilities and Technology Committee to the Commission dated June 19, 2013, 2) LD 796, and 3) the Comments of Central Maine Power (CMP) that were filed on October 23, 2013.

The Public Advocate agrees that the issue of the ability of customers adjacent to electric generators to take service directly from the generator, as outlined in concept in LD 796, is not addressed in CMP's August 1, 2013 Rate Design testimony filed in this docket. We can confirm that we do not expect to raise this issue in any testimony* we will file.

Very truly yours,

Eric J. Bryant
Senior Counsel

EJB/dt

* Intervenor testimony is currently due on December 10, 2013

CENTRAL MAINE POWER

October 23, 2013

Mr. Harry Lanphear
Administrative Director
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04330

Re: Central Maine Power Company, Request for Approval of Alternative Rate Plan (ARP 2014) and Establishment of Starting Point Rates, Docket No. 2013-168

Dear Mr. Lanphear:

Enclosed please find the Comments of Central Maine Power Company filed in response to the Procedural Order dated October 11, 2013.

Sincerely,

Stephanie T. McNeal
Manager, Regulatory Administration

Enclosures

83 Edison Drive, Augusta, Maine 04336
Telephone 207-623-3521
www.cmpco.com

IBERDROLA USA

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2013-00168

October 23, 2013

CENTRAL MAINE POWER COMPANY, Request for New Alternative Rate Plan ("ARP2014")	)))	COMMENTS OF CENTRAL MAINE POWER COMPANY

I. BACKGROUND

During a technical conference held on October 7, 2013, the Examiner asked Central Maine Power Company ("CMP" or the "Company"), as an oral data request, to discuss how its proposed rate design addresses issues regarding the direct purchase of electricity by businesses located adjacent to generators, as suggested in LD 796, Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators to Obtain Power Directly. By Procedural Order dated October 11, 2013, the Examiner rescinded this oral data request and requested that CMP separately file comments on this matter, including responding to issues raised in a June 19, 2013 letter to the Commission from the Legislature's Energy, Utilities and Technology Committee regarding LD 796.

II. CMP'S COMMENTS ON LD 796

On March 27, 2013, CMP testified in opposition to LD 796 before the Energy, Utilities and Technology Committee. A copy of CMP's testimony is attached for reference. As noted in the Company's testimony, CMP understood the resolve's proponent to be seeking a mechanism by which direct sales from a generator to the public could be accomplished without subjecting the generator, or the transactions involved, to regulation by the Commission. As CMP's testimony further notes, these issues have been squarely addressed by the Commission in prior proceedings.

III. ISSUES RAISED BY THE JUNE 19 LETTER

The Energy, Utilities and Technology Committee's June 19 letter requests a report from the Commission regarding the progress of T&D Utility rate design changes expected to be considered in 2013. In particular, the report should address those rate design changes that may incentivize the direct purchase of electricity by a business from an adjacent electricity generator, as suggested by LD 796, as well as any changes in the way that stand-by fees are levied.

As an initial matter, CMP assumes that the letter's reference to the Commission's rate design consideration is limited to CMP's pending case, as the Company is unaware of any other generic proceeding in which T&D Utility rate design matters are currently being addressed, or any other individual utility case involving significant rate design changes. Given the requested timing of the Commission's report to the Committee (by December 10, 2013), and the procedural schedule in this docket, the Commission's report will presumably be limited to relaying a summary of the Company's rate design proposal and testimony, as well as the comments and any

responsive comments submitted in response to the October 11 Procedural Order, as the Bench Analysis and Intervenor testimony in this case are not scheduled to be filed before December 10.

The rate design changes proposed by CMP in its August 1 filing are not designed to incentivize the direct purchase of electricity by a business from an adjacent electricity generator, nor should they be. As described extensively in the testimony of the Company's rate design panel and in numerous data request responses, CMP's rate design proposal seeks to fairly allocate the embedded costs of providing distribution service to its customer classes, to better align the structure of its distribution rates with the fixed cost nature of these services, and to avoid excessive shifts in individual rate impacts through transitional mechanisms. The proposed design was not developed to achieve any other specific policy objectives, such as that proffered by LD 796.

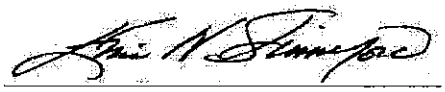
Unless a generator is delivering its output directly to a customer without use of *any* of the host T&D Utility's system, the geographic proximity of an end-use customer to an electric generator does not materially impact the cost of providing distribution service to that customer. While there may be some basis for suggesting that transmission costs or line losses may vary based on the proximity of generation and consumption, these costs should not be a consideration in designing distribution service rates. Any rate structure that is designed to discount distribution services to customers based on their proximity to a generator would necessarily not be cost-based and would therefore result in a subsidy from other customers not so situated. It is not clear to CMP why such a policy or its supportive subsidy would be desirable, as it would arbitrarily reward customers based on their location.

LD 796 also suggests that a stakeholder group explore other related issues which may impact the ability of a business to purchase electricity directly from an adjacent generating facility. Among the topics listed in the resolve, only the issue of generator stand-by rates is implicated by the distribution rate design proposals presented by CMP in this proceeding. As explained in the Company's initial testimony and in subsequent discovery, CMP's proposed stand-by rates are designed to fairly recover the costs of providing distribution service to those customers who use their own generation resources for some portion of their electric requirements, but rely on the utility to provide replacement service when these resources are unavailable. The Company's stand-by rates are not designed to achieve any other policy objective, including a policy to encourage the direct provision of electric service from a generator to an adjacent business customer. Any stand-by distribution rate structure that does not fully recover the costs of providing distribution service to self-generating customers, including CMP's current distribution rate structure, is necessarily resulting in a subsidy to these customers at the expense of all other customers. The Company questions why the Legislature or the Commission would encourage a policy that knowingly transfers distribution funding allocations from those customers with the ability to own and operate their own generating resources to other customers who do not possess such financial resources. Such an outcome would appear to undermine the Legislature's existing rate design policy goals of protecting the ability of low-income residential customers to afford electric service, 35-A M.R.S. § 3152(1)(C), and ensuring that distribution rates reflect the marginal costs of service, 35-A M.R.S. § 3153-A.

IV. CONCLUSION

CMP hopes that the Commission finds these comments helpful as it develops its report in response to the Committee's June 19 request.

Respectfully submitted,



Eric N. Stinneford
Vice President, Controller, Treasurer & Clerk

CENTRAL MAINE POWER

Testimony in Opposition to LD 796
Resolve, To Enhance Economic Development by Encouraging Businesses Adjacent to Electric Power Generators to Obtain Power Directly
March 27, 2013

Senator Cleveland, Representative Hobbins, members of the committee, my name is David Allen. I'm here on behalf of Central Maine Power Company to testify in opposition to LD 796.

This resolve would set up a stakeholder group to determine whether generators should be able to sell power to customers who are adjacent to their facilities. It appears that the sponsor is interested in circumventing two existing statutes. One statute gives utilities exclusive franchise territories as long as they agree to serve all customers and submit to rate regulation. This is often referred to as the "regulatory bargain". The other statute says that in order to sell electricity at retail in Maine, you have to be a competitive energy provider, a CEP.

Again, it appears that the sponsor wants to by-pass the T&D system and allow generators to own and operate their own T&D systems to serve adjacent customers without adhering to all the rules and regulations that T&D utilities have to abide by. Likewise, the generator would be able to act like CEP, again without having to adhere to the law and commission rules.

We oppose giving generators either authority.

Finally, this issue has already been addressed by the commission in Docket 2000-253. In that case, the commission allowed a generator to sell to an adjacent sawmill directly, without using CMP's T&D facilities. The commission's decision was based on the following facts:

The customer and generator were located on the same or physically adjacent property;
The generator and the customer had a commercial or corporate relationship that went beyond the sale of electricity;
The generator was selling to a single customer and was not selling to the "public";
All the power sold was generated by the generator and no grid power was being passed through to the customer;
There was no "sham" transaction.

Likewise, the generator was not a competitive energy provider because it wasn't selling power over a T&D system.

Again, it appears the sponsors concerns have already been met by current statute and commission decisions, and another review isn't needed, especially if the sponsor's intent is to allow generators to by-pass the T&D system in violation of our franchise territory rights.

I'll be happy to answer any questions you may have.

83 Edison Drive, Augusta, Maine 04336
Telephone 207-623-3521
www.cmpco.com

IBERDROLA USA

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-653

April 6, 2001

CENTRAL MAINE POWER COMPANY
Request for Commission Investigation
Regarding the Plans of Boralex Stratton Energy, Inc.
to Provide Electric Service Directly from
Stratton Lumber Company

ORDER DECLINING TO
OPEN INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we decline to open an investigation regarding Boralex Stratton Energy's (Boralex) plans to provide electric service to Stratton Lumber Company. We conclude, based on the pleadings, that Boralex's planned activity would not make it either a transmission and distribution (T&D) utility or a competitive electricity provider (CEP). Thus, a formal investigation to obtain further facts is not warranted.[1]

II. BACKGROUND

A. CMP Compliant

On August 1, 2000, Central Maine Power Company (CMP) petitioned the Commission, pursuant to 35-A M.R.S.A. § 1302(3), to open an investigation regarding the plans of Boralex to provide electric service directly to Stratton Lumber. Specifically, CMP requests that the Commission determine whether the planned activity would make Boralex either a CEP or a T&D utility.

In its Petition, CMP states that Stratton Lumber operates a sawmill in Eustis, Maine. Stratton receives T&D service from CMP. Boralex owns and operates a 40 MW biomass-fired electric generating plant located on property adjacent to Stratton Lumber. CMP states that it has become aware that facilities have been installed to allow Boralex to provide electric service directly to Stratton Lumber. If Stratton Lumber is allowed to take electric service directly from Boralex, CMP states it would lose approximately $150,000 in annual revenues.

CMP asserts that 35-A M.R.S.A. § 1302(3) provides the legal basis for its complaint, in that the provision allows a public utility to make complaint to the Commission as to any matter affecting it own product, services or charges. Because Boralex's service to Stratton Lumber would eliminate CMP's provision of T&D service

[1] Commissioner Diamond voted against this decision. See separate Dissenting Opinion.

and could result in shifting costs to other customers, CMP argues that the prerequisites of 35-A M.R.S.A. § 1302(3) are satisfied.

On the merits of the issues presented, CMP claims that Boralex's planned service to Stratton Lumber would make it both a CEP and a T&D utility. According to CMP, Boralex would be a CEP as a result of making retail sales of electricity to a member of the public. CMP argues that the mere fact that Boralex may make retail sales to a single customer does not affect the analysis of whether it is acting as a CEP, because the Restructuring Act does not refer to the number of targeted customers and Boralex (as may be the case with other CEPs) has chosen a niche market based on geography. CMP argues that if Boralex is not considered a CEP, it will have an unfair advantage over other CEPs that have to comply with statutory and regulatory requirements.

CMP also states that Boralex would be a T&D utility because it will own and control T&D plant for public use. CMP asserts that Boralex's planned activity satisfies the Commission's test for "public use" in that Boralex is a large entity and its arrangement with Stratton Lumber is presumably motivated by profit. CMP states that an investigation would yield further information relevant to the "public use" standard.

B. Boralex Response

On September 11, 2000, Boralex filed a response to CMP's request for an investigation, urging the Commission to deny CMP's request. Boralex states that it and Stratton Lumber have benefited from a symbiotic relationship since the construction of the biomass facility in 1984. Stratton Lumber was essential to the location of the facility in Eustis due to the mutually beneficial biomass disposal and power supply relationship with Boralex. Boralex sells its energy to the wholesale market through CMP's system, with the sole exception of the power proposed to be sold directly to Stratton Lumber. Boralex states that there will be no other retail power transactions.

Boralex argues that 35-A M.R.S.A. § 1302(3) does not provide the Commission with jurisdiction over the activities of a private company on the basis that those activities have the potential to affect CMP's rates. If this were the case, CMP would be able to file a complaint against any alternative provider of energy or conservation services on the grounds that their activities could impact CMP's rates.

Boralex also argues that, under Maine law, it is neither a CEP nor a T&D utility. Boralex states that it is not a CEP because it is not providing service through a T&D utility and thus not providing generation service as defined by 35-A M.R.S.A. § 3201(18). Additionally, Boralex claims that the Restructuring Act was not intended to transform electric generators that were not public utilities before restructuring into CEPs after restructuring, and that Boralex does not sell electricity to the public at retail (the statutory requirement for an entity to be a CEP) because a sale to one person does not constitute a sale to the "public." Boralex argues that it is not a T&D utility because T&D facilities must be for "public use" pursuant to statute, 35-A M.R.S.A. § 102(20-A), and

Commission precedent, and it does not own any property available to or open to the public.

C. CMP Reply

On September 19, 2000, CMP filed a reply to Boralex's response, stating that the alleged "special" relationship between Boralex and Stratton Lumber does not justify excepting the proposed transaction from Commission regulation. According to CMP, this case presents significant legal and policy decisions regarding the propriety of generators' selling directly to their neighbors. CMP states that a clear message must be sent that this type of activity is an unlawful infringement upon utilities' franchise service territories, as well as an unfair method by which unlicensed generators compete with licensed CEPs.

CMP disputes Boralex's claim that it is not a T&D utility because its planned activity does not meet the "public use" standard, and urges the Commission to analyze the situation, considering all relevant factors pursuant to Commission precedent. CMP also argues that the statutory definition of CEP does not refer to the number of targeted customers, 35-A M.R.S.A. § 3201(5), and, thus, the mere fact that Boralex may sell to only one customer does not affect the analysis of whether Boralex is a CEP. According to CMP, Boralex has chosen a niche market based on geography that happens to currently include one customer.

III. DISCUSSION

A. Statutory Authority

We review CMP's petition pursuant to our general investigatory authority under 35-A M.R.S.A. §§ 1303 and 3203(13-A). Section 1303 authorizes the Commission to conduct a summary investigation into "any matter relating to a public utility" and, if sufficient grounds are found, to initiate a formal investigation into the matter. Section 3203(13-A) provides the Commission with similar authority to investigate matters related to CEPs.

The essence of CMP's complaint is the allegation that Boralex's contemplated activity would violate Title 35-A in that Boralex will be acting as a T&D utility without proper Commission authority and as a CEP without the required license. Boralex does not dispute that the Commission has jurisdiction under its general investigatory authority to determine whether an entity is acting in violation of Title 35-A. We agree that our investigatory authority under sections 1303 and 3203(13-A) is the proper procedural vehicle for us to consider CMP's complaint regarding the activity of Boralex.

Because we decide to consider CMP's complaint pursuant to our sections 1303 and 3203(13-A) authority, we do not reach the issue of whether a complaint alleging that an entity is acting as a utility or CEP without authority could be

brought by a utility under section 1302(3). We note, however, that the determination of the statutory authority (either section 1303 or 1302(3)) upon which we proceed in this matter is of little consequence. As stated above, CMP's complaint is essentially a request that the Commission investigate whether an entity is acting in violation of the provisions of Title 35-A. In such a circumstance, as long as the request has a reasonable basis, we would investigate to determine whether an entity may be acting as a utility or a CEP in violation of statute.

B. Status as T&D Utility

We conclude that Boralex's planned service to Stratton Lumber, as described in the Boralex pleading,[2] does not constitute T&D service. Our conclusion is based on the statutory definitions of T&D utility and T&D plant. A T&D utility is defined, in relevant part, as:

> a person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State . . .

35-A M.R.S.A. § 102(20-B). T&D plant is defined as:

> all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for *public use* and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for *public use*. (emphasis added)

35-A M.R.S.A. § 201(20-A). The question presented is whether the Boralex facilities which may be considered T&D plants are "for public use" by virtue of a direct sale of electricity to Stratton Lumber.

The Commission has historically analyzed the question of "public use" based on the specific facts and circumstances. Typically, the Commission employed a "public use" test that includes consideration of seven factors, none of which is viewed as conclusive. The seven factors, originally articulated in *Kimball Lake Shore Ass'n*, M.221 (Jan. 31, 1980), are:

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[2] CMP does not dispute any of the facts in the Boralex pleading that are relevant to the determination of whether Boralex is or will be acting as a T&D utility or a CEP. We thus accept these facts for purposes of our analysis.

- the size of the enterprise
- whether the enterprise is operated for profit
- whether the system is owned by the user(s)
- whether the terms of service are under the control of its users
- the manner in which the services are offered to prospective user(s)
- limitation of service to organization members or other readily identifiable individuals

- whether membership in the group (e.g., whether taking service) is mandatory

See also, Request for Commission Investigation into Central Monhegan Power, Docket No. 96-481 (Oct. 17, 1996); *Bernard D. Radcliffe v. Weld Inn*, Docket No. 89-312 (June 11, 1990); *New England Telephone Company*, Docket No. 84-208 (June 20, 1985).

The *Kimball Lake* factors, however, were developed primarily to aid us in determining whether the provision of service to relatively few customers under circumstances where the customers have little or no feasible options constitutes "public use," thus subjecting the provider to regulation as a public utility. We find that the *Kimball Lake* factors have no relevance in the context of the current proceeding, which involves a customer that has access to the services of an established utility, but would like to take service from an alternative provider.[3]

The question of public use in the context of this case implicates the meaning of T&D utility franchises and service territories, and involves issues of utility bypass, the opportunity of T&D utilities to recover stranded costs, and the potential for the shifting of such costs among ratepayers. The basic regulatory framework in Maine, as in most jurisdictions, is that utilities have an obligation to serve customers in defined service territories at rates that are regulated; in return, competition within utility service territories is restricted. *Dickinson v. Maine Public Service Co.*, 223 A.2d 435, 438 (Me. 1966). This policy is embodied in 35-A M.R.S.A. § 2102, which requires Commission authority before a second utility can provide service in the territory of an existing utility. It is within this basic statutory scheme that we construe the public use test in this proceeding.

The statutory language provides little guidance in resolving the utility status issue presented in this case. However, based on the general purposes of the statutory scheme, we conclude that the Legislature did not intend the "public use"

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[3] During oral argument, Boralex argued that entities have relied on the *Kimball Lake* factors in planning their operations. We note that the *Kimball Lake* factors are more of a list of considerations, rather than a firm test. Because it would always be difficult to predict how the Commission would weigh the various considerations, we do not believe reasonable expectations are frustrated by the abandonment of *Kimball Lake* in analyzing the type of issues raised in this proceeding.

requirement to be a means to allow for the gradual degradation of utility service territories through the direct sale of services to single customers or limited sets of customers that may be in the proximity of a generating facility. A single customer is a member of the public and, therefore, a sale to a single customer could meet the public use test and constitute a utility sale. The primary question is not the number of customers served, but rather whether the sale is "public" or "private" in nature. To determine if the transaction is private in nature and thus not a utility service, we will consider whether:

- the generator and customer are located on the same or physically adjacent property;

- the generator and customer have a commercial or corporate relationship that goes beyond the sale of electricity;

- the number of customers served or could be served is limited;

- all the power sold comes from the generator as opposed to the utility grid; and

- there are no sham transactions to create a private character regarding the sale

We do not conclude that each of these considerations must be satisfied to find that a particular sale or transaction is a private rather than a utility service. However, if all the factors are satisfied, we conclude that the public use test is not met and the entity in question is not a public utility.

In light of these considerations, we conclude that Boralex would not be a T&D utility by virtue of a direct sale of electricity from its generating facility to Stratton Lumber. As described in the Boralex pleading and attached affidavit, Boralex and Stratton Lumber have a long-standing relationship which includes mutually beneficial waste disposal transactions. The generating facility was located on adjacent property due to the existence of Stratton Lumber. Boralex has a continuing interest in the economic success of Stratton Lumber as the source of part or all of its fuel supply, and Stratton Lumber will be the sole retail customer of Boralex under a particularized, individually negotiated arrangement. The Boralex facilities will not be available to other retail users. Finally, there is no indication that any sham transactions exist to avoid utility status. Based on these circumstances, Boralex's facilities are not for public use and the transaction is of a private nature. Thus, Boralex is not a T&D utility.

C. Status as a CEP

We also conclude that the direct sale of electricity from Boralex's facility to Stratton Lumber would not make Boralex a CEP under the statute. Section 3201(5) defines a CEP as:

> A marketer, broker, aggregator or any other entity selling electricity to the *public* at retail. (emphasis added)

Thus, the question raised by CMP's complaint is whether the proposed transaction constitutes a sale to the "public." We find that it does not.

In making our determination, we apply the same "public use" considerations as discussed above to the question of "public sale" in considering whether Boralex would be a CEP. The use of the same considerations is appropriate because, prior to restructuring, providers of generation services would have only been considered utilities if the "public use" test were satisfied. There is no indication that the Legislature intended to transform generation services that did not constitute utility service prior to restructuring into CEP services after restructuring.

Our conclusion that Boralex is not a CEP is also supported by the statutory definition of "generation service." Generation service is defined as:

> the provision of electric power to a consumer *through a transmission and distribution utility* . . . .

35-A M.R.S.A. 3201(11) (emphasis added). The fundamental aspect of the Restructuring Act is the deregulation of "generation services," 35-A M.R.S.A. § 3202(2). It is thus reasonable to conclude that the Legislature viewed CEPs as the entities that would provide "generation service" after restructuring and that service would be provided through T&D utilities. Thus, our finding that Boralex will not be providing service through T&D facilities supports our conclusion that Boralex is not a CEP.

CMP argues that if activity such as that planned by Boralex is not considered CEP service, some entities that sell electricity will have an unfair competitive advantage because CEPs have to comply with statutory and regulatory requirements (e.g., portfolio requirement). Although CMP's unfair competition argument may have merit, the statute specifies that an entity is a CEP if it sells electricity to the "public." By specifying public sales, we conclude that the Legislature was aware that "private sales" could occur that would not be covered by the requirements of the Restructuring Act. If the Legislature had intended to cover all electricity sales, whether "public" or "private," the definition of CEP would not have been restricted to public sales.

D. Conclusion

For the reasons discussed above, we conclude that Boralex's planned activity would not make it either a T&D utility or a CEP. A formal investigation to obtain additional facts is, therefore, not warranted.

Dated at Augusta, Maine, this 6th day of April, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

Diamond: See attached Dissenting Opinion

Dissenting Opinion of Commissioner Stephen Diamond

I dissent from the conclusion of my colleagues that under the facts presented here Boralex would as a matter of law not be a transmission and distribution utility.

Under 35-A M.R.S.A. § 20-B, a transmission and distribution utility is a person "... owning, controlling, operating or managing a transmission and distribution plant for compensation...." Under 35-A M.R.S.A. § 20-A, transmission and distribution plant "... means all ... property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity ... for public use...."

It does not appear to be disputed that Boralex will be owning and operating property in connection with the delivery of electricity for compensation. The issue is simply whether the delivery of the electricity should be deemed to be "for public use."

As reflected in the federal and state securities laws, it is not uncommon to limit the reach of regulatory schemes to transactions with the "public." How broadly one interprets "public" can vary greatly depending on the interest that the Legislature is seeking to protect. What makes the instant case particularly difficult is the absence of any legislative history on this question.

To be more specific, if the objective underlying the statutes requiring interpretation is to protect consumers who may be unable to protect themselves in dealing with sellers of electric delivery service, a narrow definition of "public use" would seem appropriate. Indeed, borrowing from the concept of a private placement in the securities laws, I can envision an interpretation that allows an unregulated entity to sell delivery service to all of the State's large industrial customers, assuming the entity does not publicly advertise, on the theory that the buyers are sophisticated consumers who

do not need the protection of the regulatory scheme. By contrast, if the purpose is to safeguard the existing utility's franchise, not only for the benefit of the utility but also to protect customers whose prices might increase if unregulated providers of delivery service were able to lure away the utility's choice accounts, the appropriate interpretation might be very different. Indeed, against that backdrop, allowing an unregulated competitor to take over all of a transmission and distribution utility's large industrial business could be very damaging to its other customers.[4]

In its order, the Commission appears to adopt a franchise protection rationale for the relevant statutes, stating that "based on the general purposes of the statutory scheme, we conclude that the Legislature did not intend the 'public use' requirement to be a means to allow for the gradual degradation of utility service territories...."[5] Even if that is the correct rationale, it may not end the policy inquiry, as there may also be a legitimate public interest in not unnecessarily restricting customer choices or unduly deterring creative alternatives to current ways of doing business. Indeed, there may be a need to engage in the type of difficult line drawing that can only be carried out when the underlying policy objectives have been clearly identified.

The questions raised by this case demonstrate that the Commission sorely needs more legislative guidance in interpreting these statutes, particularly in the context of the recent restructuring of Maine's electricity industry. While the five considerations invoked in the Commission's order reflect an admirable attempt to distinguish between "public" and "private," the order gives little attention to articulating the underlying policy considerations and none to balancing what may be competing interests. It applies narrow legal craftsmanship to an issue that cries out for broad policy making.

My preference would be to employ a very narrow, bright line test in allowing non-utilities to enter the electricity delivery business and to expressly state the need for further legislative guidance. Specifically, I would provide that the public use requirement is satisfied if an entity is delivering electricity to an unaffiliated entity for compensation, which would presumably make Boralex a transmission and distribution utility in this instance.[6]

This approach strikes me as having two advantages over the Commission's order. First, it preserves the status quo pending a consideration of the larger policy

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[4] This is particularly true when there are significant stranded costs yet to be paid off.

[5] It is not clear to me from the order why one should not view the result reached in this case as potentially the first step in "the gradual degradation of utility service territories."

[6] My conclusion is tentative as I would give the parties the opportunity to present more information in the context of the test that I advocate.

issues.[7] Second, it avoids the ambiguity that inevitably stems from a test that is simply a list of different "considerations." For example, under the Commission's order, one consideration that keeps Boralex from being a transmission and distribution utility is the fact that it obtains its fuel from its customer.[8] Where does that leave matters if Boralex begins to obtain fuel elsewhere? Is there a certain amount of fuel that must come from the customer for this consideration to be satisfied, and if it is not satisfied, does Boralex become a utility? I can see an endless variety of questions that might have to be resolved under the Commission's test without the benefit of a clear policy framework.

I should emphasize that I view my proposed resolution as temporary and not as reflecting any ultimate opinion on how the underlying policy issues should be resolved. Furthermore, I recognize that while the Commission can invite further legislative consideration of an issue, the Legislature has the perfect right to ignore our invitation, leaving open the question of how we should then proceed for the long term. In that event, I would be inclined to address this issue through a rulemaking, see 35-A M.R.S.A. § 111, as that would allow us to give full consideration to all of the underlying policy issues and to deal with the matter on a more comprehensive basis than may be possible in a case-by-approach.

Turning to the question of whether Boralex should also be deemed a competitive energy provider (CEP), I do not dissent from the result reached by the Commission. CEPs do not have protected franchises; indeed, the objective here is to have as much competition as possible. Accordingly, I see the purpose of the phrase "selling electricity to the public," in 35-A M.R.S.A. § 3201(5) as clearly one of consumer protection, and thus, I have no problem with a result that effectively provides that selling electricity to one sophisticated customer does not constitute selling to the public.

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[7] Current law clearly allows self-supply, and my test would essentially provide that delivery of power by an affiliate falls within that concept. It would hold off going further until resolution of the policy issues on the theory that it is far easier to allow this type of activity to develop than it is to rein it in after investments have been made and commercial relationships established.

[8] The relevant consideration in the order is that "the generator and customer have a commercial ... relationship beyond the sale of electricity."

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2011-200

June 28, 2011

REENERGY RUMFORD, LLC
Request For Advisory Ruling

ADVISORY RULING

WELCH, Chairman; VAFIADES, LITTELL, Commissioners

I. SUMMARY

In this Advisory Ruling issued pursuant to chapter 110 § 601, we conclude that, based on the facts presented, ReEnergy Rumford LLC's (ReEnergy) proposed purchase and operation of certain cogeneration assets currently owned by Rumford Paper Company and Rumford Cogeneration Company Limited Partnership (Rumford Paper) at the NewPage pulp and paper mill in Rumford, Maine, and the use of those cogeneration assets by ReEnergy to provide electricity to the NewPage mill will not render the cogeneration assets transmission and distribution (T&D) plant, render ReEnergy a T&D utility, or render ReEnergy a competitive electricity provider (CEP) under Maine law.

II. ADVISORY RULING REQUEST

A. Requested Ruling

On June 6, 2011, ReEnergy filed a request for an advisory ruling and a supporting affidavit. Specifically, ReEnergy requested that the Commission issue an advisory ruling as follows:

1) ReEnergy's proposed purchase and operation of certain inside the fence cogeneration assets currently owned by Rumford Paper at the NewPage mill, and the use of those cogeneration assets by ReEnergy to provide electricity to the NewPage mill will not render the cogeneration assets T&D plant nor render ReEnergy a T&D utility within the meaning of 35-A M.R.S.A. § 102(20-A) and (20-B);

2) ReEnergy's sales and delivery of electricity from the cogeneration assets to Rumford Paper will be exempt from Commission regulation under 35-A M.R.S.A. § 3305; and

3) ReEnergy's sale of electricity from the cogeneration assets to the NewPage mill will not render ReEnergy a CEP within the meaning of 35-A M.R.S.A. § 3201(5).

B. Factual Background

In support of its requested advisory ruling, ReEnergy presented the following factual background.

Rumford Paper owns the NewPage mill, an integrated pulp and paper mill in Rumford, Maine. The NewPage mill includes cogeneration assets, which include: two primary boilers, a primary turbine generator with a rated capacity of approximately 102 MW, two back-up boilers, a back-up turbine generator with a rated capacity of approximately 12 MW, fuel processing equipment, a fuel storage area, and associated equipment in the NewPage mill site, including the land on which those assets sit. These cogeneration assets are currently owned and operated by Rumford Paper and operate for the primary purpose of providing thermal energy and electricity to the NewPage mill. The cogeneration assets are located within the NewPage mill complex, entirely on land owned by Rumford Paper. Rumford Paper purchases electricity from a third-party CEP when the electrical output of the cogeneration assets is not sufficient to meet the NewPage mill's electrical load. During limited times when the electrical output of the cogeneration assets exceeds the NewPage mill's load, the excess electricity is sold into the ISO-New England market.

Rumford Paper and ReEnergy have entered into an Asset Sale Agreement by which Rumford Paper agrees to sell to ReEnergy the cogeneration assets along with the real estate upon which the cogeneration assets are located. Under the Agreement, ReEnergy will also acquire an undivided, tenancy in common interest in certain electrical delivery facilities used to deliver the output of the cogeneration assets to the NewPage mill and from the mill to the point of interconnection with the transmission system of Central Maine Power Company (CMP).

Once the proposed transaction closes, ReEnergy will continue to use the cogeneration assets principally to supply the electricity and thermal energy needs of the NewPage mill and, to the extent excess generation is available, to sell that excess generation into the ISO-NE market. ReEnergy plans eventually to invest in expanding the condensing capabilities of the principal turbine generator, which will permit additional net generation from the cogeneration assets, thereby allowing ReEnergy from time to time to increase exports of electricity over current levels. To the extent the cogeneration assets cannot meet all of the NewPage mill's electrical load, a CEP will provide electricity from the grid. ReEnergy will not resell grid power to Rumford Paper.

Other than wholesale sales to the grid, the NewPage mill will be ReEnergy's only customer for electricity sales. All deliveries of electricity from the cogeneration assets within the NewPage Mill complex will be made over electrical delivery facilities owned by ReEnergy or Rumford Paper, and will occur entirely within the Mill complex. No other private or public property will be used or traversed, and no public roads will be crossed in making such sales. ReEnergy will not be engaged in the generation or sale of electricity other than the electricity generation by the cogeneration assets.

In addition to the sale of electricity, ReEnergy and Rumford Paper will be engaged in numerous other interrelated commercial transactions. Rumford Paper will continue to own the NewPage recovery boiler that produces over one-third of the steam load to the primary turbine generator included as part of the purchased cogeneration assets. The recovery boiler produces steam that is delivered to the turbine generator through a common header with the boilers, and, accordingly, after the closing on the cogeneration assets, Rumford Paper will provide to ReEnergy the thermal energy produced by the recovery boiler which ReEnergy will deliver to the turbine generator. In addition, Rumford Paper will supply wood residue and biomass to the cogeneration assets, comprising over 50% of the fuel input to the cogeneration assets. Rumford Paper will also sell boiler make-up water to ReEnergy and the mill will provide the treatment of boiler wastewater. ReEnergy will provide the burning of paper sludge and non-condensable gases produced by the mill and the mill will provide for the disposal in the mill's solid waste landfill of ash produced by the cogeneration assets.

C. Legal Analysis

In its advisory ruling request, ReEnergy states that, based on statutory definitions and Commission precedent, *Request for Commission Investigation Regarding the Plans of Boralex Stratton Energy to Provide Electric Service Directly from Stratton Lumber Company,* Docket No, 2000-653 (April 6, 2001) (*Boralex*), the cogeneration assets will not be T&D plant and ReEnergy will not be either a T&D utility or a CEP. As defined in statute, a T&D utility is an entity that owns, controls, operates or manages T&D plant for compensation and T&D plant is defined as facilities used to transmit or deliver electricity for "public use," 35-A M.R.S.A. §§ 102(20-A), (20-B), while a CEP is defined as an entity that sells electricity to the public at retail, 35-A M.R.S.A. § 3201.

ReEnergy argues that, based on the facts presented, the cogeneration assets will not be for public use and it will not be selling electricity to the public. ReEnergy cites *Boralex* to support its position, stating that the facts in the current proceeding meet each of the factors identified by the Commission when it determined that Boralex Stratton Energy would not be a T&D utility or a CEP.

ReEnergy also argues that the generation, distribution and sale of electricity from the cogeneration assets are exempt from regulation by the Commission under 35-A M.R.S.A. § 3305(2), which is among Maine's statutory provisions enacted to implement the Public Utility Regulatory Policies Act of 1978 (PURPA) (federal legislation intended to remove certain state utility regulation with respect to qualifying facilities). Section 3305(2) provides that a cogenerator may generate or distribute electricity through its private property for its own use, use of tenants or use by associates in the cogeneration facility and not for use or sale to others. ReEnergy argues that it is a "cogenerator" and Rumford Paper is an "associate" under the statute and therefore the regulatory exemption applies to the facts of this case.

D. Advisory Ruling Comments

On June 7, 2011, the Commission issued an Opportunity for Comment that allowed interested persons to file comments on the issues raised by the advisory ruling request. CMP commented that it has no objection to the transactions described in the advisory ruling request and that the findings sought by ReEnergy appear to be consistent with statutes and Commission precedent, particularly the *Boralex* decision. Bangor Hydro Electric Company (BHE) commented that the Rumford facility is in CMP's service territory and BHE will not assert a position in that CMP has indicated that it has no objection to the requested advisory ruling. BHE did comment that, in evaluating an advisory ruling of this sort, the Commission should be mindful of the affect of its decision on the exclusive franchised service territory of T&D utilities.

III. RULING

Based on the facts presented in the advisory ruling request, we conclude that ReEnergy's proposed purchase and operation of the cogeneration assets currently owned by Rumford Paper at the NewPage mill, and the use of those cogeneration assets by ReEnergy to provide electricity to the NewPage mill will not render the cogeneration assets T&D plant, render ReEnergy a T&D utility, or render ReEnergy a CEP.

A. T&D Status

> A T&D utility is defined, in relevant part, as:
> a person, its lessees, trustees or receivers or trustees appointed by a court, owning, controlling, operating or managing a transmission and distribution plant for compensation within the State . . .

35-A M.R.S.A. § 102(20-B). T&D plant is defined as:

> all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the transmission, distribution or delivery of electricity for light, heat or power for *public use* and includes all conduits, ducts and other devices, materials, apparatus and property for containing, holding or carrying conductors used, or to be used, for the transmission or distribution of electricity for light, heat or power for *public use*. (emphasis added)

35-A M.R.S.A. § 201(20-A). Therefore the question presented is whether the cogeneration assets, which may be considered to be used in connection with or to facilitate the delivery of electricity, are "for public use" by virtue of a direct sale of electricity from ReEnergy to Rumford Paper.

We considered a very similar factual situation in the *Boralex* decision. In that proceeding, Boralex Stratton Energy (Boralex) planned to provide direct electric service to Stratton Lumber Company (without the use of CMP's T&D system). The Boralex plant is located on property directly adjacent to the Stratton Lumber sawmill. Stratton Lumber would supply wood fuel to the Boralex plant and the Boralex plant would supply electricity directly to the sawmill. Stratton lumber would be the sole entity to which Boralex sold electricity directly. *Boralex* at 6.

In the *Boralex* proceeding, we adopted a revised, multi-factor test to determine whether a sale of electricity is private in nature and not for "public use." Under this test, the Commission considers whether:

- the generator and customer are located on the same or physically adjacent property;
- the generator and customer have a commercial or corporate relationship that goes beyond the sale of electricity;
- the number of customers served or could be served is limited;
- all the power sold comes from the generator as opposed to the utility grid; and
- there are no sham transactions to create a private character regarding the sale

Id. We did not conclude that each of these considerations must be satisfied to find that a particular sale or transaction is a private rather than a utility service. However, if all the factors are satisfied, we concluded that the public use test is not met and the entity in question is not a public utility. *Id.*

We agree with ReEnergy's analysis that, under the *Boralex* factors, the cogeneration assets would not become T&D plant and ReEnergy would not become a T&D utility as a result of the contemplated transaction. The facts presented meet each of the five *Boralex* factors. The generator (Rumford) and the customer (Rumford Paper) are both located on the NewPage Mill property. ReEnergy and Rumford Paper will have commercial transactions that go beyond the sale of electricity in that the mill will be the cogeneration assets thermal energy host and Rumford Paper will supply wood residue and biomass to the cogeneration asserts. Rumford Paper will also sell boiler make-up water to ReEnergy and the mill will provide the treatment of boiler wastewater. ReEnergy will provide the burning of paper sludge and non-condensable gases produced by the mill and the mill will provide for the disposal in the mill's solid waste landfill of ash produced by the cogeneration assets. The number of electricity customers served is one and all electricity provided by ReEnergy to Rumford Paper will

be from the cogeneration assets. Finally, there is no indication of any form of a sham transaction.

B. CEP Status

In *Boralex*, we concluded that the direct sale of electricity from Boralex's facility to Stratton Lumber would not make Boralex a CEP under the statute. In making that determination, we applied the same "public use" factors to the question of "public sale" in considering whether Boralex would be a CEP. Accordingly, we conclude that ReEnergy would not become a CEP with respect to the contemplated transaction and subsequent sale of electricity to Rumford Paper.

C. Exemption From Regulation

As stated above, we find that the provision of delivery service under the facts as presented would not be for public use and the sale of electricity would not be a sale to the public. Therefore, ReEnergy would not be a T&D utility or a CEP as a result of the contemplated transaction. Accordingly, we need not reach the question of whether ReEnergy's sales of electricity to Rumford Paper would otherwise be exempt from regulation under 35-A M.R.S.A. § 3305.

Dated at Hallowell, Maine, this 28th day of June, 2011.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Vafiades
Littell

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.