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September 25, 1980

Honorable Richard S. Davies
House Chairman
Committee on Public Utilities
53 North Main Street
Orono, Maine 04473

Honorable Laurence E. Connolly, Jr.
273 Danforth Street
Portland, Maine 04102

Dear Representative Davies and Representative Connolly:

This is in response to your opinion requests, asking the identical question as to whether the Public Utilities Commission would violate 35 M.R.S.A. § 96 if it were to permit the Central Maine Power Company to employ a minimum customer charge in collecting whatever increased revenue requirement the Commission may award in the company's pending rate case, Docket No. 80-25, without consideration by the Commission of whether the exclusion of any minimum distribution costs from such a charge might reasonably advance the objective of energy conservation. For the reasons set forth below, I am of the view that the manner in which the Commission is proceeding in this case cannot clearly be said to violate the intention of the Legislature in passing 35 M.R.S.A. § 96.

Section 96 was enacted in 1979, and represented a compromise between the House and the Senate on the degree to which the Legislature should interject itself into Public Utilities Commission rate-making proceedings on the question of the establishment of a minimum customer charge. The original bill, Legislative Document 1444, 109th Maine Legislature, (1979), proposed simply to establish a customer charge of \$2 for all utilities. An amendment to that bill was reported by an evenly divided Committee on Public Utilities, which amendment proposed to establish the charge at \$3.75 for all utilities. House Document 383, 109th Legislature (1979). The Committee Amendment passed the House of Representatives, Maine Legislative Record, 1131 (1979), but was defeated in the Senate, Maine Legislative Record, 1272, 1381 (1979).

A conference committee was subsequently convened and a further amendment was proposed, which was enacted without debate by both Houses and became Section 96. The section provides:

§ 96. Minimum distribution costs

The Public Utilities Commission, in approving any minimum customer charge in an electric utility rate proceeding subsequent to the effective date of this section, shall consider whether the exclusion of any minimum distribution costs incurred by the utility from such customer charge may be reasonably expected to advance the basic findings and purposes of this chapter. If the commission so finds, it shall exclude from the customer charge any minimum distribution charges which do not advance the basic findings and purposes of this chapter.

The question which you have asked involves the application of this section to the current CMP rate case.^{1/} In that case, the Commission, motivated by a desire to undertake for the first time a thorough examination of the company's rate structure, but faced with a legislative mandate that it conclude its determination as to the revenue requirement within nine months of the filing of the case, 35 M.R.S.A. §§ 64 and 69, decided that while it would authorize the company to recover its increased revenue requirements using its existing rate structure without alteration, it would initiate an independent proceeding, pursuant to 35 M.R.S.A. § 296, into the reasonableness of that structure. In addition, when the issue of the applicability of Section 96 to this procedure was raised, the Commission indicated that it would take up the matter of the minimum customer charge in the rate structure investigation, but not in the revenue requirement proceeding. The question, therefore, is whether this decision violates the intention of the Legislature in enacting Section 96.

It is clear from the legislative history recited above that the Legislature, in enacting Section 96, did not foresee the possibility that the Commission would proceed in the next rate case in the manner in which it has chosen to do. It is also clear that the ultimate legislative purpose was to insure that the Commission review the reasonableness of the customer charge as soon as possible.

^{1/} Your question may also be applied to the recently completed Bangor Hydro-Electric Company rate case, in which the Commission authorized an increase in rates for that company which included a minimum customer charge, but also initiated an investigation into the company's entire rate structure pursuant to 35 M.R.S.A. § 296.

What is not clear is whether the Legislature would have intended that the Commission undertake that analysis independently of a general review of the reasonableness of the company's entire rate structure, or whether the Legislature would have found it acceptable for the Commission to include its evaluation of the reasonableness of the customer charge in its analysis of the reasonableness of the overall structure, so long as the general analysis was undertaken as soon as possible.

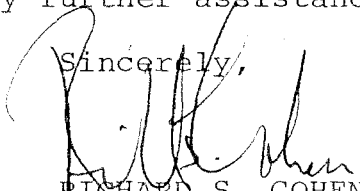
It is obvious that the Public Utilities Commission is about to conduct a serious investigation of the rate structures of both the Central Maine Power Company and Bangor Hydro-Electric Company. I am advised that the Commission's staff has been the recipient of a substantial grant from the Department of Energy to permit it to do an independent cost of service study, which grant had been applied for and awarded prior to the filing of both the Central Maine Power Company and Bangor Hydro-Electric Company rate cases.^{2/} Furthermore, a schedule for the resolution of the rate structure investigation is about to be established which should permit the Commission, with the assistance of nearly a dozen intervenors, to reach a decision in 1981. I am inclined to think that this effort on the part of the Commission represents good faith compliance with the spirit of the Electric Rate Reform Act, 35 M.R.S.A. § 92, et seq., of which Section 96 is a part. Consequently, in view of the complete absence of any legislative history indicating how the Legislature would have wanted the Commission to act in this circumstance, I am unable to say that the Commission's unwillingness to undertake a

^{2/} The procurement of this grant indicates that the Commission had already taken steps, prior to the Central Maine Power Company rate filing, to initiate a process which would result in compliance with the purpose underlying Section 96, namely, that the minimum customer charge be reviewed. This suggests to us an intent on the part of the Commission to promptly implement the legislative directive.

consideration of the reasonableness of the customer charge in the pending revenue requirement proceeding would violate the Act.^{3/}

I hope this answers your question. Please feel free to reinquire if I can be of any further assistance.

Sincerely,



RICHARD S. COHEN
Attorney General

RSC:jg

3/ I am aware that there may be individual members of the Legislature who believe that the legislative intention was otherwise, but, in view of the failure of the Legislature to express itself clearly as to this apparently unforeseen contingency, I cannot say that the Commission's actions are clearly illegal.