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**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

PUBLIC UTILITIES COMMISSION

**Re: Investigation of Maine
Public Service Company**

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Docket No. 85-92

BRIEF OF THE PUBLIC ADVOCATE

January 21, 1986

**Paul A. Fritzsche
Public Advocate**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. RESULTING WHOLESALE AND RETAIL RATES	2
III. OTHER COST RELATED ISSUES	11
A. Tax Exempt Financing	11
B. NEPOOL	12
C. Live-Line Barehand	13
D. Fuel Costs	14
E. Professional Jobs	15
F. New Brunswick	17
IV. QUALITY OF SERVICE	19
V. STOCKHOLDERS	20
VI. MERGERS IN GENERAL	22
VII. OFF SYSTEMS SALES	23
VIII. PRIOR RELATIONSHIP BETWEEN CENTRAL MAINE POWER COMPANY AND MAINE PUBLIC SERVICE COMPANY	25
IX. THE TESTIMONY OF MR. AUSTIN	26
X. THE YARDSTICK THEORY	26
XI. FREDERICK POTTER	28
XII. FORM OF A MERGER	29
XIII. LOCAL CONTROL AND SUPPORT	31
XIV. MATTERS RAISED BY COMMISSIONERS AND THE HEARING EXAMINER	38
XV. CONCLUSION	39

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I. INTRODUCTION.

The Public Utilities Commission has the opportunity to save the customers of Maine Public Service Company a very substantial sum over the next decade if it finds that a merger between Maine Public Service Company and Central Maine Power Company is in the public interest. Such a merger can and will be, if permitted by the Commission, done in a manner which maintains the generally good service now provided by both Maine Public Service Company and Central Maine Power Company to their respective customers. The merger can and will be accomplished in a manner which fully respects the pride many Aroostook County residents have in both their part of the state and in Maine Public Service Company.

We support a merger because of the very important reduction in rates for Aroostook residents, the economies of scale that can be achieved through combining the companies, the greater financial health that will result and the important effects of

reduced electricity prices on both economic development in Aroostook County and upon the ability of both low and fixed income individuals to pay their electric bills.

We will first address all of the major issues concerning the likely rate levels, with and without a merger, along with the other issues addressed in the Commission's Procedural Order of July 3, 1985 and in the testimony of the witnesses in this proceeding.

II. RESULTING WHOLESALE AND RETAIL RATES.

In its Procedural Order of July 3, 1985, the Commission identified issues to be addressed in this proceeding. Two of the issues were closely related and consisted of an evaluation of the resulting wholesale and retail rates of the consolidated entity and the long-term rates of the individual companies absent a reorganization. In this proceeding there have been presentations made by Booz Allen Hamilton on behalf of Maine Public Service Company and by David Marsh and Kenneth Crews on behalf of Central Maine Power Company. There have also been a number of exhibits prepared which compare the various forecasts. Before addressing the individual rate forecasts and the adjustments that can and should be made to those forecasts, we will discuss material presented in this case regarding the economies of scale.

It has been recognized by all of the witnesses in this case that two utilities are more costly to run than one and that there

is a significant amount of overhead that can be reduced if the two companies were combined. That reduced overhead could be allocated either to the ratepayers of Maine Public Service Company or spread over all ratepayers.

The Booz Allen report, and its many amendments, have indicated that there are savings to be obtained through reduced financing costs, a reduction in managerial personnel, and a significant reduction in outside professional services. One area of substantial savings is in reduced financing costs. The cost savings occur in the two general areas of reduced overhead for financing and likely lower rates for financing. For example, there are substantially reduced charges for bond counsel and underwriters if one \$25 million securities offering is made rather than a separate \$20 million offering for Central Maine Power Company and a \$5 million offering for Maine Public Service Company. See E-25, and F-68. Central Maine Power Company can obtain cheaper short-term debt through the use of the commercial paper market rather than bank loans. See E-29 and J-23. Additionally, the cost of securities is cheaper for a healthier, larger and more flexible institution than it would be for the smaller and riskier Maine Public Service Company. See, for example, the financial model runs for Central Maine Power Company and Maine Public Service contained in Maine Public Service Exhibits 8 and 34, where it is very clear that Central Maine Power Company will have significantly greater financial health over at least the first half of the study period. Also, see the testimony of Kenneth Crews, and see K-113 and K-137 which clearly

indicate that a merger between CMP and Maine Public Service will produce reductions in capital costs and an increase in financing flexibility. Also see the admission by the Booz Allen Hamilton witnesses at H-19 that they have assumed that, "Central Maine Power Company should be able to obtain capital less expensively than Maine Public Service Company".

In addition to the significant savings in the overheads of financing and in the cost of capital itself, there are major savings that can be obtained in reduced professional fees. Those savings were ignored initially by Booz Allen Hamilton at F-69 and are now estimated by them to be approximately \$350,000 per year, an amount which we believe may be understated. In 1984, See Public Advocate Exhibit 5, Maine Public Service spent in its outside services employed account \$166,000 for assistance from Stone & Webster, \$131,000 for legal advice from Verrill & Dana, slightly over \$200,000 for the outside bond counsel, Mudge Rose, along with \$66,000 for accounting advice from Deloitte Haskins & Sells, none of whom are local to Aroostook County. Public Advocate Exhibit 6 shows a more complete analysis of the amounts paid to all outside contractors and consultants, including attorneys, during 1984, regardless of the financial account which they were placed under. That exhibit shows some \$912,000 spent for legal fees, of which nearly one half million dollars went to Verrill & Dana and nearly \$400,000 to outside bond counsel. In addition, the total fees for a variety of other consulting firms total some \$462,000. While not all of this \$1,375,000 cost can be avoided, the vast majority of it can, given the fact that

Central Maine Power Company, as the parent merged entity, would need only one outside bond counsel, one law firm for rate cases, would probably not need Stone & Webster at all, would need only one lobbyist, and overall would be able to save ratepayers a very significant amount.

We believe that it is certainly possible for Maine Public Service Company, should it remain independent, to reduce its outside service fees below those charged in 1984. It will never, however, be possible for Maine Public Service Company and Central Maine Power Company, operating independently, to pay as little in outside fees as they would if they were combined. The Stone & Webster arrangement is one that would probably be very easy to reduce in the event of a merger, as this has been a long-standing arrangement used to provide backup assistance to a small electric utility. The testimony regarding Stone & Webster at pages E-3-4 indicates that the Maine Public Service Company witness was unaware of the approximate amount of the 1984 billings from Stone & Webster and that Stone & Webster normally made financial presentations to quarterly Maine Public Service Company board meetings.

Before leaving this area, we believe that there are additional savings that can be obtained if an even more detailed review was made of what common costs could be reduced. We also note the testimony of Mr. Austin, testifying on behalf of the Staff, that the synergistic benefits from a merger are one of the major reasons leading to his support of a merger. We will

address the issues of employment levels later in this brief. Also see Public Advocate exhibits 13 through 16, dealing with a variety of expenses, some of which are subject to reduction in the event of a merger.

A very central issue to whether a merger is in the public interest is whether a consolidation of the companies would result in a reduction in the rates charged to the existing customers of Maine Public Service. There have been a very significant number of reports, amended reports and supplemental reports submitted by Maine Public's outside consultant, along with initial and rebuttal testimony submitted by Mr. Marsh on behalf of Central Maine Power Company. There are two major exhibits that summarize the projections for retail and wholesale rates, along with total company rates, found in the base cases produced by Central Maine Power Company and Booz Allen. See PUC Exhibit 6 which is an exhibit to Mr. Austin's testimony, and CMP Exhibit 17. Taken together, these two exhibits demonstrate a significant advantage to Aroostook ratepayers over a substantial period if a merger were to occur. We believe that the actual savings are likely to be higher, but even these savings, particularly in light of the needs of the Aroostook economy and in the very clearly expressed needs of the Aroostook potato processing industry, are more than sufficient to justify a merger. Staff Exhibit 6 demonstrates that over the next nine years, both wholesale and retail customers can expect to receive an over 9.0% savings in the event of a merger. Since Maine Public Service Company is now an over \$30 million per year company, that savings, which can be modestly

estimated at \$3 million per year, should be a tremendous advantage to the businesses and people of Aroostook County. Central Maine Power Company Exhibit 17 demonstrates that under Maine Public Service's preferred Seabrook approach, the so-called "phase in" method, the retail rates of Central Maine Power Company will be lower in every single year through 1997 and that the wholesale rates will be lower from 1989 through the end of the study period in 1998. These are taken from the Booz Allen Hamilton revised forecast of November 25, and can be taken as an admission by Maine Public Service Company that its rates, of necessity, are extremely likely to be higher than those of Central Maine Power Company. These statements must be contrasted with the heavy publicity given to the erroneous statements made in Maine Public's press release of August 12, 1985, see Public Advocate Exhibit 34, where Maine Public Service Company stated that its future average rates will be lower than those projected by Central Maine Power Company following the results of a detailed study.

It is very important to emphasize that Maine Public only comes even this close to equalling CMP's rates by accepting a lower level of financial health, see Crews and Marsh testimony and the Booz Allen Hamilton computer runs, and by assuming that CMP will get the full amount of its future rate increase requests. (K-157 and K-211-11)

We believe that the decision by Maine Public Service Company to use average rates rather than comparing retail to retail and

wholesale to wholesale rates is an unfair comparison, given the approximately 1% wholesale sales of CMP and the approximately 17% wholesale component for Maine Public Service. (See C-136 for an example of its unfairness.)

In looking at the various retail rate classes, we believe that the industrial rates are very important, see the emphatic testimony of Walter Sage, D-18-forward, dealing with reduced potato acreage, the loss in Maine's share of the potato market, the over 1200 direct employees of the three largest processors, and the support by the processors for a merger if the PUC is of the opinion that a merger will produce cheaper electricity rates. Mr. Sage also noted the very narrow profit margins of his clients, see D-22, and restated, in rebuttal, the critical importance of savings to the processors over the next five to six years. See Aroostook Processors Exhibit 1. It is important to note the significant savings for the industrial customers of over 9% to nearly 17% per year that are projected to begin in 1989 and go through 1994, see PUC Exhibit 6. These are very important for McCain and Simplot who currently each pay over \$1,000,000 per year for electricity, See p. 29 of the MPS monthly financial reports, and for Interstate Foods that has a bill over \$500,000 annually.

The projections in the base cases most likely underestimate the savings that will come from a merger. There is a good chance that oil prices will be lower, thus making the merger even more attractive. See N-60 where Mr. Kaestle noted the weakening strength of OPEC and falling oil prices, N-61 where he noted a

lack of sensitivity analysis for lower oil prices, and see O-104 where Mr. Marsh was questioned regarding oil prices.

Additionally, there is a very high probability of lower cogeneration prices for CMP, thus producing another 5% reduction in rates. See O-105 and 106. There is also an unresolved question regarding the possibility of significant tax savings of nearly \$500,000 in the event of a merger. See N-35, O-105 and the rebuttal testimony of Mr. Kaestle and Mr. Marsh. As noted, the financial health of MPS is weaker and the revenues of CMP have been overstated based on an assumption that rate increase requests are granted in full, which will not be the case. There are a number of other comments regarding the rate projections that should be noted.

First, Maine Public Service Company and its witnesses have shown extreme reluctance and a complete unwillingness to accept a variety of proposals which have suggested that Maine Public's rates be equal to or even modestly higher than Central Maine Power Company's, in return for the continued independence of Maine Public Service. We believe that these comments are telling.

The first major exchange occurred on October 28 between Speaker John Martin of the Maine House of Representatives and Maine Public Service President G. M. Hovey. See C-105-110. At C-108, Mr. Hovey noted that he believed that regulation was too tough on him, while he later expressed a perhaps greater fear of freedom from regulation. See N-118. The initial exchange

resulted, at C-110, with Mr. Hovey rejecting the offer and suggesting that his company be allowed to remain independent "and see if we're competitive." Mr. Kaestle, at I-16-17, rejected the suggestion by Chairman Bradford that Maine Public Service simply take CMP's tariffs. The third exchange took place during the final week of hearings when Mr. Hovey rejected the hypothetical put forward by Commissioner Moskovitz that Maine Public accept CMP's rates plus 3% and even CMP's rates plus 10%. When the offer was CMP's plus 20% or 30%, Mr. Hovey's enthusiasm substantially increased, see N-118.

Lastly, in evaluating the various rate forecasts, all of the witnesses admitted that the relatively short-term forecasts were more reliable than long-term forecasts. See one of the earlier statements of this proposition at A-80.

In summary, the evidence in the case is clear that a merger will result in lower rates for Aroostook ratepayers and much of the evidence suggests that the actual savings have a very good probability of being even more than projected. While perhaps not of high risk, the ability of Maine Public Service Company to remain even as close to Central Maine Power Company's rates as it is projected to is highly dependent upon the continued sound operation of Maine Yankee and the relicensing of the Tinker hydroelectric facility and no significant increase in electricity load in Aroostook County. Finally, Mr. Hovey was asked by Examiner Nagusky whether he had sufficient confidence to agree to support a Commission decision which said there would be "no merger

but don't ever come back for a request for extraordinary ratemaking treatment." The answer was, "well, I would not like that kind of an order at all". (N-123)

III. OTHER COST RELATED ISSUES.

The Public Utilities Commission Procedural Order of July 3, 1985 included in Paragraph 1-d a list of issues regarding the cost of capital, efficiency of operation and other financial and service quality issues. In addition, the initial testimony of Mr. Hovey, Maine Public Service Exhibit 1, listed a number of reasons why Maine Public Service Company believed a merger was not in the public interest. We will address the other issues contained in the Procedural Order and in Mr. Hovey's initial testimony.

A. Tax Exempt Financing.

At page 3 of his initial testimony, Mr. Hovey listed five areas where he believed an independent Maine Public Service Company could better serve the public. The first of those was the availability of Maine Public Service Company to do tax exempt financing. We have examined the record regarding tax free financing and believe that there is very little merit in the arguments of Maine Public. First, there is no tax exempt financing now outstanding for Maine Public Service, or likely. See C-6 and M-123. Under existing tax laws, tax exempt financing is restricted to projects within the service territory, see C-7, and even that possibility is doubtful, given the continuing

debate over tax reform, See M-143. It also appears that the interest of Maine Public Service in tax exempt financing is of relatively recent origin, see C-140-1, and that there are statewide restrictions on the number of dollars that can be committed through industrial revenue bonds, C-141. There are also likely to be effects on the attractiveness of tax exempt financing, even if this form of financing continues to be permitted, if the marginal tax rates for wealthier individual investors are reduced, C-141-2.

It is also interesting to note that, unlike Maine Public Service Company, Central Maine Power Company has actually accomplished tax exempt financing, J-24-5 and K-120, which makes it very clear that even larger entities can do tax exempt financing under certain circumstances, and at least in this instance are more likely to actually avail themselves of this cheaper source of debt. The Commission can also take official notice of the financing approval which authorized Bangor Hydro to obtain tax exempt securities for its portion of the pollution control facilities at the Seabrook nuclear unit.

B. NEPOOL.

A second area raised by Mr. Hovey concerned the advantage of Maine Public Service remaining independent of NEPOOL. The testimony and cross examination of Mr. Kelly, the power supply vice president for Central Maine Power Company, indicated that Central Maine Power Company is not suggesting that the Maine Public Service territory become a NEPOOL member in the event of a merger, see L-3 and L-82.

The questioning of Mr. Kelly at L-82 indicated that Central Maine Power Company would need to obtain a NEPOOL waiver regarding the Aroostook County load if there were to be a full consolidation, but would not if Maine Public Service Company were to be maintained, as is desired by Central Maine Power Company, as a separate subsidiary. Also see Section 3.1 of the New England Power Pool Agreement which states that, "all Entities which are controlled by a single person (such as a corporation or a common law business trust) which owns at least seventy-five percent of the voting shares of each of them shall be collectively treated as a single Participant for purposes of this Agreement, if they each elect such treatment. They are encouraged to do so. Such an election shall be made by signing the appropriate form at the end of a counterpart of this agreement." It is clear from Section 3.1 that if Central Maine Power Company and a future Maine Public Service Company subsidiary decided that Maine Public Service should not be a member of NEPOOL, that they can simply decline to do so and be in full compliance with the New England Power Pool Agreement.

C. Live-Line Barehand

The next point raised is the concern by Mr. Hovey that Maine Public Service Company might lose the ability to use the live-line barehand method of working on transmission lines and that the alternative methods were slower and more costly. On cross-examination Mr. Hovey noted, that while he had no estimate of the savings he believed them to be substantial, C-7, that larger

utilities could use it, C-8, that Maine Public Service uses both the live-line method and other methods, C-61, and that there was one fatality that resulted from the improper use by a worker of the live-line method, I-36-7, but that was unfortunately comparable to the record under the other methods. Central Maine Power Company submitted the testimony of Joseph Moran, the vice president in charge of division and district operations. He stated that use of the barehand live-line method was not common but that Central Maine Power Company would evaluate it having no firm position as to whether or not it would be continued, see L-100 and pages 6&7 of Mr. Moran's pre-filed testimony.

D. Fuel Costs

The next area raised by Mr. Hovey was the area of lower cost fuel for Maine Public Service Company. Regardless of whether or not Maine Public Service Company has lower cost fuel, what is most important is the total rate paid by customers. The rate forecast presented by witnesses in this proceeding demonstrates that the total rate paid by retail or wholesale customers is likely to be significantly higher if Maine Public Service Company remains independent. Whatever benefits may be obtained from the historic generating mix of Maine Public Service Company are insufficient to produce lower or equal rates. In addition, the argument of Maine Public Service regarding lower cost fuel is highly dependent upon the continued retention of the export license for the Tinker facility in New Brunswick and upon the first rate operation of Maine Yankee into the next century.

E. Professional Jobs

Another reason given in opposition to a merger was the potential loss of professional jobs. This issue is clearly one of significant concern to some members of the Presque Isle business community and is obviously of crucial importance to the individuals involved. It is our sincere hope that any necessary reductions in managerial or technical employment will be kept to the absolute minimum and be done in a way that is flexible and respects the needs of Maine Public employees.

There is one disturbing trend throughout Maine Public Service's discussion of job loss. As Booz Allen Hamilton noted in its Appendix A to its initial filing, MPS-4, the projected job losses are for non-union personnel and are generally in professional or managerial positions or confidential employees who assist those individuals. It was obvious to us, and we are pleased that it was confirmed by both Central Maine Power Company and Maine Public Service Company, that there is no need for, and there will be no, reduction in union personnel. There is a suggestion, however, in the testimony of Maine Public witnesses, including their outside financial consultant, Mr. Potter, that professional jobs and professional people are far more important than other individuals and their jobs. There has been a general lack of any appearance of sympathy for any blue-collar worker who might have to pay higher residential rates because of a continued independent Maine Public. There was no concern that an employer might not expand or might even curtail production due to the

higher electricity cost associated with retaining Maine Public in an independent status. This attitude is evidenced by Frederick Potter, a Merrill Lynch vice president, who testified for Maine Public Service Company stated, see M-131 and M-132, that,

"You have some people in a community that contribute a great deal to the community and without - many times these people make the better incomes and they make the better incomes because they have these qualities that will allow them to contribute so much to a community... the people who make the higher incomes and have the better educations contribute to the schools, to the hospitals, to the banks and to the community organizations, to organizing ethnics picnics, to the quality of life in the community...its a fact of life that the people who are making the larger incomes are making them because their leadership qualities or their educational backgrounds or their street savvy, or whatever is more developed than those people that make the lower incomes."

We are also concerned that the report by Maine Public Service Company, at MPS 4, may have, overstated the number of people who might be subject to job loss. It is clear that a person who might lose his or her job will be far more vocal concerning a merger than will the general consumer who is not immediately affected by any future reduced electricity costs that will come from a merger. It is particularly disturbing that Booz Allen Hamilton did not discuss staffing levels with Central Maine Power Company and made their own assumptions, F-17. In addition, Maine Public Service Company has in the past itself saved costs even though it required the elimination of jobs, I-39, and there have been relatively recent reductions in the number of Maine Public Service jobs, see I-21, I-24 and I-39.

In addition, the dollar amount of any financial loss to the Aroostook economy from a reduction in professional salaries is overstated for at least three reasons. First, as we have already discussed, we believe the estimates of jobs are overstated. Second, the merger will only be authorized by the PUC if there were savings to the overall Aroostook economy in excess of loss from reduced salaries. Third, Maine Public Service Company has apparently stated the amount in pre-tax income, and a portion of that salary must go for state and federal taxes and would not be available to be spent by the employee in Aroostook County.

F. New Brunswick

In addition to the issues raised by Mr. Hovey the Commission expressed interest in the cost of capital, which has been discussed early in this brief, the efficiency of operation, which has been discussed to some degree in our section on economies of scale and by Mr. Kelly in his testimony regarding wheeling savings, and the effect on the Maine and New Brunswick Electric Power Company. The Maine and New Brunswick Electric Power Company is a wholly owned subsidiary of Maine Public and owns and operates the Tinker Dam. It has been the feeling of all witnesses in the case that the fate of Tinker is not dependent on whether a merger takes place and we do not believe that the relicensing of Tinker in a few years will depend upon who owns the parent of Maine and New Brunswick. The most important point surrounding Tinker is that if for any reason Maine Public Service Company, whether independent or merged, loses Tinker, the effects

on an independent Maine Public Service would be significantly greater. (See E-18.)

Another issued raised by the Commission and in Mr. Hovey's testimony was Maine Public's relationship with Canada. We believe that the relationships of New Brunswick to Maine Public Service and to CMP are both good. The relationship of Maine Public Service is historically longer while the relationship with Central Maine Power Company involves more money and is of greater economic importance to the Province of New Brunswick. In addition Central Maine Power Company, through transmission lines south of Wiscasset, provides important wheeling services to New Brunswick in sales to Southern New England utilities.

Testimony in the case suggests that Mr. Hovey does not know the status of the CMP/New Brunswick relationship, see C-9 and 12, that Central Maine Power Company buys more power from New Brunswick than does Maine Public, C-144, that power for export goes through Central Maine's service territory, C-144, that Maine Public is not well versed in the pricing arrangements between CMP and New Brunswick, E-12, and that New Brunswick exercises greater control over Maine Public or any other utility in the absence of alternatives by that utility, E-46-7 and lastly that there is no indication of lack of backup by New Brunswick in the event of a merger, E-61. We believe that the answer to the question posed by the Commission is essentially that the relationships between a merged or independent Maine Public and New Brunswick will continue to remain good and that the relationship with New Brunswick is a neutral factor in approving or rejecting a merger.

IV. QUALITY OF SERVICE.

An additional question posed by the Examiners was the quality of service and the responsiveness to customers, including power supply planning. The evidence in the case suggests that both Maine Public Service and Central Maine Power Company are providing generally good quality service to their customers. See the testimony of Mr. Hovey, Mr. Rowe, Mr. Moran and Mr. Leonard. The outage rates are approximately equal and there has been no study of the outage rates in Van Buren, Houlton, Kennebunk, Bangor Hydro or elsewhere to indicate how these two companies compare on a regional basis to areas of similar geography and weather. Given the difference in geography and weather, it appears that both are doing a generally good job in keeping a high degree of reliability of service. In other areas of customer service Maine Public now has a more modest conservation program but appears willing to improve its services and has several requests now pending before the Commission. For example Maine Public Service does not have time of day rates, C-20, only produced its best results from the water heater jacket program after insisting on trying something else, E-8, does not use magnetic tapes for large industrial customers, E-47, or have an interruptible rate program for industrial customers, E-48. None of these, however, are of overwhelming concern and we believe that the overall question of the merger should not turn on quality of service issues given the overall good quality of service in both areas.

V. STOCKHOLDERS.

The overwhelming majority of testimony and time has been spent on the effects of a merger on ratepayers. See page 1 of MPS 2. Relatively little time has been spent discussing the effects on stockholders. Given the changing nature of Maine Public stockholders and the high degree of fluctuation in common stock prices since the possibility of a merger was announced, it is important to discuss the merger from a stockholder perspective. It is the testimony of Mr. Hovey that the stockholders would be better off without the merger and that they will continue to be better off in the future and have better earnings, C-30 and C-32. It was also clear from the testimony of Mr. Crews and the modeling done by Booz Allen Hamilton that the current price of Maine Public Service stock can only be attributed to the possibility of a merger and, otherwise, would of necessity be significantly lower. See H-23 where it was noted that Booz Allen Hamilton model states that it takes until 1988 to 1989 to get Maine Public's market price to the then current level. Since then, administrative notice has been taken of stock prices, Maine Public Service's stock has undergone another substantial gain pushing the date out into the ninety's before the Booz Allen model would produce such a market price. The stock market is voting for the merger and it is clear that the stockholders interests would be exceedingly well served through a merger.

The reports done by Booz Allen Hamilton indicate very clearly that if Maine Public Service Company were to remain

independent and were to follow its stated preference for having a phase-in of 70% of the Seabrook I cost, then Maine Public Service Company would be a significantly weaker company than if it became part of a merged entity. While there can and will be significant debate as to whether Maine Public Service could survive with a sufficient degree of health, the fact does exist that a stockholder retaining an interest in an independent Maine Public will retain an interest in a much weaker institution which does not currently pay common stock dividends.

We believe that the testimony of Mr. Crews is particularly persuasive when he argued that a Maine Public stockholder would be much better off with a merger as there is really nothing comparable that could be obtained by the stockholder for five, six or seven years, K-130 and that Maine Public Service should be pursuing a merger as being in the interest of its stockholders, K-134. Mr. Crews' direct statement, at K-134 was, "In good conscience I would be so intensely in negotiations it would be very difficult to slow things down. There is no comparable alternative to the shareholders and the ratepayers of this area to a merger with Central Maine Power Company. I would be discussing price, but I wouldn't be discussing the doability."

While the issue is not immediately before the Commission as Central Maine Power Company has not requested permission to actually acquire securities of Maine Public Service, the Commission may ultimately need to deal with the price to be paid in the event

of a merger. The Public Advocate has a legitimate role to play in those debates as the money that will be going to Maine Public Service shareholders will be money which will likely be paid for in the rates of the customers of the merged entity. We have a duty to make sure that, while the shareholders are treated fairly, they are not treated so generously as to result in unnecessarily high rates for the customers of the merged entity. Our only additional comment now is that we believe the proposal of Central Maine Power Company was very, and perhaps excessively, generous.

VI. MERGERS IN GENERAL.

There have been suggestions that the proposed merger between Maine Public Service Company and Central Maine Power is either unusual or somehow radical in nature. The merger of one Maine based investor-owned utility with another is not a highly radical proposition as it involves absolutely no public ownership or any control by multi-national corporations. The histories of Maine Public Service and Central Maine Power Company demonstrate that both companies are the products of many mergers and acquisitions, including some in the last decade. See E-13, E-14 and Public Advocate Exhibit 2. There have also been a number of instances where there have been consolidations nationally, See K-111, and the testimony of Mr. Potter concerning electricity, gas and telecommunications mergers (M-136-138) and the cross-examination of Mr. Austin concerning Continental Telephone, New England Telephone and other mergers, O-29-31. In addition, the Commission is familiar with the merger between Northern Utilities and Bay State Gas and

the history of the formation of the majority of the Maine utilities. While we fully understand the concern of an individual who is involved in the middle of a merger that he or she may not find fully desirable, the facts do remain that mergers within the utility industry in Maine, and nationally, have been common and that even Maine Public itself is a combination of many much smaller and much more locally controlled electric utilities.

VII. OFF SYSTEMS SALES.

The procedural order of the Commission noted that the Commission would examine whether other alternatives to reorganization, such as the sale by MPS of off system transmission and generation assets were more desirable. Currently Maine Public Service Company is exploring the possibility, and has signed a preliminary letter, for the sale of its Wyman 4 output for a number of years to a company called Unitil, which is a combination of wholesale customers of Public Service of New Hampshire who are seeking cheaper alternatives to Seabrook produced power. It is clear that the Unitil sale could go through regardless of a merger, E-6-7 and it is entirely unclear whether New Brunswick will provide Maine Public Service with replacement power cheap enough over enough years to make a sale of Wyman 4 to the New Hampshire companies sound.

We are both pleased and disturbed that the process of a possible sale to Unitil began, at least in a formal manner, only

after the merger investigation began and after the CMP stipulation was signed. If Maine Public Service Company can produce an arrangement with Unitil or anyone else which will drop its likely rates to levels truly comparable to Central Maine Power Company we encourage them to do so expeditiously.

There is currently pending before the PUC a case where both Central Maine Power and Maine Public Service propose to sell their Seabrook interest to Eastern Utilities Associates for equal per-kilowatt prices. The cases have not concluded either in Maine or Washington and it is not certain whether the sales to EUA will be completed, or whether a better price than that initially offered to the Maine utilities can ultimately be obtained. Maine Public Service Company has analyzed the effects on its rates if it were to sell to Eastern Utilities but there has been no detailed analysis by MPS as to what the results on a sale to Eastern Utilities will be for Central Maine Power Company rates. The Commission will not be deciding this case before March and it will have ample opportunity to see the progress of the EUA sale and determine what if any effects such a sale would have on the desirability of a merger. Given the huge amount that will still need to be recovered from ratepayers of MPS even in the event of an EUA sale and the modest savings from an EUA sale projected in the MPS forecast found in Mr. Cariani's testimony in PUC Docket No. 84-113, we are confident that a merger would continue to be in the public interest and that issue can be addressed further, if necessary, in the event of an EUA sale.

VIII. PRIOR RELATIONSHIP BETWEEN CENTRAL MAINE POWER COMPANY AND MAINE PUBLIC SERVICE COMPANY.

Despite any current tension that may exist between Central Maine Power Company and Maine Public Service surrounding the possibility of a merger, the two utilities have been closely related in the past and there have been numerous circumstances where Maine Public Service Company has profited from the existence of Central Maine Power Company or found their working relationships to be cordial and productive. Maine Public Service Company is a minority owner in Maine Yankee, Wyman 4 and the MEPCO transmission line. While Maine Yankee and MEPCO are separate corporations, it is true that the two generating units and the one transmission line are primarily operated by Central Maine Power Company. See Mr. Rowe's direct testimony and I-66. Those relationships have been mutually beneficial and should demonstrate, at least in part, to the people of Aroostook that Central Maine Power is fully responsible and is very capable of providing lower cost, good quality electric service. Additionally, there has been evidence in the case, see PA Exhibit 8 and E-42, that Maine Public Service Company used Central Maine Power Company to do some of the work related to the Sherman generating unit and that that relationship was satisfactory. Also, Mr. Grant, a former vice president at Maine Public Service Company, noted the good relationship he had had with Central Maine Power Company executives prior to his retirement. See D-26.

Recently, Maine Public Service Company signed a series of wheeling agreements in order to take power to be generated in Fort Fairfield to the Central Maine Power service territory. It appears that Maine Public Service Company will get both wheeling revenues from this project and a reduction in its own costs for wheeling Wyman 4 and Maine Yankee northward. See N-34.

IX. THE TESTIMONY OF MR. AUSTIN.

Thomas Austin, testifying for the Staff, stated that he supported the merger, given the benefits of rate averaging, operational synergies, the generation make up of the companies, better access to financial markets and the provision of a safety net. We believe that his testimony was thoughtful and was a sound endorsement of the wisdom of a merger. Upon cross-examination, Mr. Austin noted the flaws in the Booz Allen Hamilton argument which stated that you can never have a merger between a small and large company because the savings from operational efficiencies would never amount to much on a combined basis. He also gave very good testimony at O-32 and 33 as to why a delay was undesirable and why the Commission should decide either in favor of or against the merger.

X. THE YARDSTICK THEORY.

A number of witnesses in the case argued that Maine Public Service Company should be kept independent so that there can

always be a test as to whether the independent Maine Public or CMP is doing better. There was no satisfactory answer as to what would be done if Maine Public Service always came up short on the yardstick. The exhibits attached to Mr. Hovey's rebuttal testimony indicate that Maine Public Service Company's rates have been higher over nearly all of the last eleven years. Maine Public Service just produced the requested calculation of the additional amount the industrial customers and other customers in Aroostook paid over the last eleven years given Maine Public's independence. See attached Exhibit 1, which we request be admitted as a late filed exhibit. The exhibit shows that industrial customers have paid over \$5,000,000 extra and that all customers have paid an extra \$11,000,000 in rates. The 1985 results were not included and would increase those amounts. In addition to losing historically, all the forecasts suggest that Maine Public Service Company's rates will be higher during the next eleven years. If the yardstick theory has any meaning, it seems to us that having higher rates over virtually all of the 22 year period means that you did not measure up and a merger is in order to assist the people and businesses of Aroostook.

A yardstick would still exist because Bangor Hydro and all of the other utilities in Maine would continue to remain independent and the rates of Central Maine Power Company could be compared to other utilities without difficulty. We restate again our firm position that one merger does not mean that there will be more. Mr. Austin found yardstick competition not to be an

important benefit and admitted that there were other companies against which the yardstick could be applied, O-9 and O-30. Mr. Potter noted that other companies would remain independent, see M-151, and the Booz Allen Hamilton witnesses were asked the following question and gave the following answer, H-33:

Q: Let me ask you what you think of the argument that the company should not merge because we will never know whether the - one of the companies involved in the merger could have done better alone. Does that make sense to you?

A: No, sir.

XI. FREDERICK POTTER.

We anticipate that we will make most of our comments regarding Mr. Potter's testimony once we have seen the initial Maine Public Service Company brief. We have an initial concern with the belief stated in his testimony that Central Maine Power Company, Public Service of New Hampshire and several other utilities are of roughly comparable financial risks. We believe that the late-filed exhibits submitted by Central Maine Power Company and CMP Exhibits 9 and 10 clearly indicate that the bond ratings of those other companies are substantially lower and the cost of debt substantially higher, thus putting into question the fundamental soundness of Mr. Potter's testimony. On cross-examination, Mr. Potter also noted that the Forbes article involving Maine Public Service, among others, did not recognize the existence of AFUDC, the failure of which would vastly overstate the financial standing of Maine Public Service Company.

XII. FORM OF A MERGER.

We asked a number of witnesses how to have the best possible merger if there was to be one. There were a number of good suggestions and we would like to recommend those suggestions along with several other points. It is most important that if a merger is to occur that the merger be done in a manner that produces the best results for the Aroostook customers of the merged entity.

First, we believe that while there is some modest additional paperwork that comes from having a separate subsidiary, we believe that a separate subsidiary, rather than a full merger, is very important as it will allow Maine Public Service Company to keep its corporate name, have its own board of directors, have its own resident senior executive and have two or more seats on the parent Central Maine Power Company board, see E-43-45. The last two points can be achieved with a full consolidation.

Second, we believe that rates should be consolidated initially but that the option should remain open to separating them if, after at least ten years, it becomes advantageous to Aroostook County to do so. See E-44-45-46.

Third, there should be no changes in the level of union employment. See G-23 and the existing views of both Central Maine Power Company and Maine Public Service Company that there would be no changes in the event of a merger.

Fourth, Central Maine Power Company should be encouraged to make as many purchases in Aroostook County of needed supplies and services as is possible. In reviewing the current purchases of Maine Public Service Company, it is clear that their purchases are made both within Aroostook and throughout the rest of the state and country. See PA-4 and 5. It is our view that Central Maine Power Company would come to the same conclusions that Maine Public did, that while it was not possible to buy a warehouse full of material from a local General Electric Company, it is certainly possible and fully desirable to buy local communications services, cleaning services, fuel, office supplies, vehicles and a variety of other services from local Aroostook-based companies. See John Rowe cross-examination. Many of the larger purchases by Maine Public Service Company have not been through Aroostook businesses.

Fifth, the number of employees terminated or transferred should be kept at an absolute minimum and that ample time and relocation assistance should be provided. We believe that the work done by Central Maine Power Company in finding jobs for people at their Mason Station in Wiscasset (I-71, 91), which involved nearly forty people, is a good sign that Central Maine Power Company is committed to treating its employees with decency.

Sixth, customer services and divisional and district operations should continue to be handled by local employees. Mr. Rowe acknowledged that that was their plan as it should be.

We believe that these recommendations, if ordered by the Commission, would increase the confidence of Aroostook people that this new corporation would, in addition to producing lower rates, treat them fairly and reduce the natural anxiety that comes with any change.

XIII. LOCAL CONTROL AND SUPPORT.

Central Maine Power Company, in its stipulation in its own rate case, and in many public statements since that time, has stated that it did not desire to go to Aroostook County absent sufficient support by the people of Aroostook. Maine Public Service Company, through a vast public relations effort, has made much of the negative effects on Aroostook County of the loss of what it has called "local control". In carefully reading the testimony of witnesses, listening to the comments at public hearings and in talking with many other people over many visits to Aroostook County, it is very clear that most residents of Aroostook have a strong pride in Aroostook and are skeptical, perhaps with substantial justification, to claims that anyone south of Molunkus Township could possibly have any true interest in Aroostook's wellbeing. We believe that a finding by the Public Utilities Commission that the Commission has determined that a merger would save Aroostook ratepayers a substantial sum over the next decade would provide an objective viewpoint which would be listened to by many individuals. In addition, an order from the Commission making very clear that there was a preference for a separate subsidiary, a separate board, the retention of the

vast majority of Maine Public's employees, the placing of two members of the Maine Public board on the Central Maine Power board and the other recommendations in the last section of this brief would also be of great assistance.

There is also a very good question as to exactly what "local control" means. It clearly does not mean that the people of Aroostook own their utility, as Maine Public Service Company is privately owned by shareholders, the majority of whom do not appear to live in Aroostook County. See E-30 and 31. Unlike Van Buren, Houlton or the Eastern Maine Coop, there is no local control in the sense that the customers are also the owners, either as cooperative members or as residents of a municipality, of the utility. See C-89.

Second, local control cannot mean that the actual electricity itself is generated in Aroostook, as that is not the case, C-90, as power is generated either in New Brunswick, at Wyman 4 or Maine Yankee.

Third, local control does not mean that the outside experts, attorneys and other professionals are from Aroostook as that is not the case. See E-31 and Public Advocate Exhibits 5 and 6.

Fourth, local control does not mean that the major purchases are made in Aroostook County, see Public Advocate-4 and E-37-40.

Fifth, local control does not mean that the other major factors determining ultimate price are set in Aroostook, as oil prices, uranium prices and the cost of capital are set elsewhere, E-31-32.

Sixth, local control does not mean that without it you are, of necessity, bad corporate citizens. Numerous witnesses admitted that McCains, Huber, Simplot and other companies were controlled elsewhere and were excellent corporate citizens. See, for example, I-41 and much of the public witness testimony.

Ultimately, local control has to mean that a number of people are familiar with, comfortable with and oftentimes friendly with the existing management of Maine Public Service Company. People are also skeptical of any true savings to come from a merger and, thus, say to themselves, why should we give up the benefits of working with people we know when we have insufficient confidence that it will save us any money,. Part of that question can be answered by a finding by the PUC, which as noted repeatedly by Mr. Harding is the agency that ultimately sets rates, that the rates charged by Maine Public Service are exceedingly likely to be substantially higher for a significant period. See I-94 and the statement that local support can best be determined after the PUC has made its decision.

The Public Utilities Commission held two evening sessions in Presque Isle in late October to hear the views of the public. The majority of the testimony of the relatively small number of

people who testified was generally in support of an independent Maine Public Service Company. That testimony was obtained through a vigorous effort by Maine Public Service Company and Us and MPS to "get out the vote." See C-112 where Speaker Martin noted the efforts to generate public support; the hiring of a customer liaison, Mr. Hewes, C-76; a series of public meetings in Fort Kent, Madawaska, Limestone, Caribou, Presque Isle, Island Falls and Easton, C-79; and the formation of the the group, Us and MPS, headed by the general manager of the one commercial television station which also took an editorial position in the matter in support of an independent Maine Public, C-80 and J-31. In addition, there were paid advertisements, J-34, bumper stickers and newspaper ads, J-35.

The hearings in this case were held in the same auditorium at the University of Maine at Presque Isle as were the public hearings approximately a year earlier when Maine Public Service Company was then asking for a 25% rate increase in Docket 84-80. The contrast is startling. As the Public Utilities Commission noted in the May 10, 1985 order in the Maine Public rate case, Docket 84-80, see page 13, "At the public witness hearings held in Presque Isle, Fort Kent and Patten, many businesses, large and small, expressed serious concern over the ability to withstand a large rate increase or worse, a series of large rate increases. Witnesses were afraid of loss of competitive standing in their respective industries, loss of retail customers and loss of jobs. Several residential customers described their hardship in meeting

current utility bills in spite of the use of good conservation practices." As Mr. St. Peter noted, see D-29-31, his group obtained some 4,000 signatures in opposition to a rate increase. We believe that if there really were to be significant rate savings over a substantial number of years, that those savings, for the average working person, industrial customer or person on a fixed income in Aroostook County are more important than any notions of maintaining "local control".

It has been suggested that one of the advantages of having an independent Maine Public Service Company is that if you are dissatisfied, and several customers apparently were in the past, see the cross examination of both Mr. Barressi and Representative Ayer, that you can go to Presque Isle and voice your concerns to someone you know. We would first note that the average consumer has little opportunity to get that same type of audience that a community leader would get. Secondly, with a resident subsidiary president and the retention of virtually all of the people who provide the day to day service, the average customer and, we suspect, the community leaders as well, would find little change in their dealings with their electric company. We are not convinced that the ability to sound off locally at Mel Hovey or a successor or a predecessor is worth the millions of dollars a year in higher rates over the next decade that an independent Maine Public will need to charge.

Another pattern emerged from the public testimony. The proponents of the merger were primarily, but not exclusively, the

major potato processors for whom electricity is a major cost, the representative of the International Brotherhood of Electrical Workers and representatives of low and fixed income consumers. Several other individuals supported the merger. The majority of the opponents of the merger, though not all of them, were representatives of the small business community or current or former employees or relatives of employees of Maine Public Service. Electricity prices are of greatest importance to industries in highly competitive markets and for people who, because of lack of education, lack of job opportunities, illness or age, have a limited income. Electricity prices are not so important for commercial establishments for whom the cost of electricity is small both as a percentage of the total cost of doing business and in absolute dollars. We believe that the public sentiment, in part, is based upon how important your electricity bill is to your economic wellbeing. For those for whom prices are important, support for the merger exists. Our exchange with Mr. Dean of the Eastern Maine Co-op at K-24 and 25 was interesting when he vigorously rejected the motion that Maine Public should remain independent and that any extra cost in doing so should be charged to those ratepayers who opposed the merger.

There is also a question as to how longstanding any opposition to the merger might be. The testimony of many witnesses suggests that their opposition to the merger is based on skepticism concerning the actual cost savings and that a finding by the Commission that the projections of cost savings

are highly credible would be very persuasive to them. In addition, the testimony of several other witnesses as to how human behavior in Aroostook County and elsewhere works is very interesting. Mr. Owen Smith testified in support of the merger. He also testified, see D-65-67 that he had been one of the leaders in his town in the then very controversial decision to join a regional school administrative district. He stated, at D-67, that after much divisiveness his side won by two votes. He noted,

Today very few people will admit that they voted against the uniting of the two districts.

Both Mr. Barresi and Representative Ayer have testified that they have taken initially unpopular stands or made unpopular decisions, were initially criticized or met with initial skepticism, and ultimately prevailed and demonstrated to people that they were correct. See M-89 and forward and M-37. It is our belief that given the savings that would exist, given the continued employment of a vast majority of Maine Public's employees, and given the first rate job that Central Maine Power Company can do and will do in Aroostook, much of any residual opposition will be short-lived. As Mr. Hovey noted in questioning by Town Manager Beaton when he asked, see C-114,

Q. Well, what is more important, the facts or the emotions?

A. Well, certainly the facts.

We believe that given a strong decision by the Commission and a little bit of time, the merger will be well accepted. As evidenced by Norm Johnson's own television station, a company owned from away can do a first rate job. See J-45.

XIV. MATTERS RAISED BY COMMISSIONERS AND THE HEARING EXAMINER.

Commissioner Moskovitz asked several questions regarding how the Commission should view a friendly merger and an unfriendly merger with the same underlying facts. We believe that the existence of opposition by Maine Public Service Company cannot be used to bar what would otherwise be an acceptable merger and prevent savings to ratepayers that would come from that otherwise acceptable merger. If the Commission believes that the merger, if presented on a friendly basis, would be approved, then the Commission must approve the merger even when presented on an unfriendly basis. The Commission would only approve a merger on a friendly basis if it was in the public interest and, having once made that finding, the opposition of Maine Public Service should not bar improvements for the customers.

Examiner Nagusky asked the parties to address the burdens of proof that may exist in this case. As this case is officially a Commission investigation, the normal burdens of proof stated at 35 M.R.S.A. Section 69 and Section 307 do not fit well. It is fair, however, to place the burden of proof on those who would

change the status quo. We believe the evidence in the case demonstrates that it is in the public interest to have a merger. If the Commission believes that, then we have met our burden of proof. If they do not find it to be in the public interest, then the question of who has the burden of proof is of no real consequence.

In its order of July 3, 1985, the Commission asked the parties to address any limitations on its power to order a reorganization. Since CMP is willing, given its rate case stipulation, to pursue a merger, any question regarding the Commission's authority to order a merger need not be addressed.

XV. CONCLUSION.

The Public Advocate believes that a merger between Maine Public Service Company and Central Maine Power Company is in the public interest as it will produce substantial savings through economies of scale and a wider sharing of the Seabrook burdens. We believe that the evidence strongly suggests that the people of Aroostook will save a very substantial amount of money over at least the next decade if a merger occurs.

We recommend that the Commission make a strong finding supporting the merger, placing the conditions upon it previously suggested while resisting any temptation to defer judgment for another six months, a year, or two. We are sorry for any inconvenience or discomfort we have caused any of the existing

employees of Maine Public Service, given the uncertainty surrounding the status of their employment. They, perhaps more than any other individuals, are entitled to a prompt resolution of this case.

We believe that there is public support for the merger from low income individuals, some small business people, individuals on fixed income and major civilian employers in the potato processing industry. We recognize that several legislators have questioned the wisdom of the merger, while others take a different view or have not yet reached an opinion. We believe that a finding by the Commission that savings are expected will be very useful to those individuals who have been skeptical of claims of savings, given suggestions by Maine Public that an independent Maine Public will save you money while Central Maine Power Company claims the opposite. Additionally, there is a natural tendency to be comfortable with those individuals and institutions with whom you are most familiar. However, new companies, like Simplot and others, have come to Aroostook and are highly regarded.

Lastly, we believe that the savings projected through a merger are understated given a likely reduction in cogeneration costs, greater capital costs for Maine Public Service Company, the unresolved tax issues and the possible future course of oil prices and Maine Yankee operation. Maine Public has been able to produce a rate forecast bringing it where it is only by having

significantly weaker financial health over the remainder of the decade. We encourage a finding in support of the merger, coupled with instructions to the companies to report in twenty days following a Commission order as to their progress in coming to terms regarding an actual merger.

Respectfully submitted,

Dated

January 21, 1986

Paul A. Fritzsche
Paul A. Fritzsche
Public Advocate

MAINE PUBLIC SERVICE COMPANY
INVESTIGATION OF MAINE PUBLIC SERVICE COMPANY
MPUC DOCKET NO. 85-92

ORAL DATA REQUEST OF THE
CENTRAL MAINE POWER COMPANY

December 11, 1985

Q. Please provide the dollar difference for the rate comparisons shown on GMH Rebuttal, Exhibit #2.

Response: See attached.

Prepared by: L. E. LaPlante
Submitted by: G. Melvin Hovey

Maine Public Service Company
Rate Comparisons - Rate History for the Years 1974-1984
Per G. M. Hovey Rebuttal Exhibit 2

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Residential											
Cents/KWH Difference-											
MPS Over (Under) CMP	.7	1.0	1.0	.8	.9	.5	.6	(.2)	.1	.5	-
GWH's	141	145	154	154	159	156	156	159	160	164	169
Total \$ Difference*	987	1,450	1,540	1,232	1,431	780	936	(318)	160	820	-
Commercial											
Cents/KWH Difference-											
MPS Over (Under) CMP	1.0	1.4	1.3	.6	.7	.2	.3	(.4)	(.1)	.1	.5
GWH's	86	90	97	99	111	105	107	108	108	112	116
Total \$ Difference*	860	1,260	1,261	594	777	210	321	(432)	(108)	112	580
Industrial											
Cents/KWH Difference-											
MPS Over (Under) CMP	.7	1.2	1.0	.6	.7	.3	.4	(.2)	.2	.4	(.1)
GWH's	80	88	96	100	107	110	112	112	110	117	118
Total \$ Difference*	560	1,056	960	600	749	330	448	(224)	220	468	(118)
Wholesale											
Cents/KWH Difference-											
MPS Over (Under) CMP	.3	1.2	.8	.2	.6	.2	.1	(.5)	.1	(.3)	(.5)
GWH's	67	67	72	75	77	76	76	77	91	96	98
Total \$ Difference*	201	804	576	150	462	152	76	(385)	91	(288)	(490)
Total											
Cents/KWH Difference-											
MPS Over (Under) CMP	.5	1.0	.7	.5	.6	.2	.2	(.5)	(.2)	.2	(.4)
GWH's	386	402	431	440	465	459	463	493	521	541	558
Total \$ Difference*	1,930	4,020	3,017	2,200	2,790	918	926	(2,465)	(1,042)	1,082	(2,232)

This schedule reflects territorial sales only.

* In \$1,000's.