

May 28, 2003

MAINE PUBLIC UTILITIES COMMISSION
Investigation into the Conservation Fund
Assessments of the Consumer-Owned
Transmission and Distribution Utilities

NOTICE OF
INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We open an investigation to provide the consumer-owned transmission and distribution utilities (COUs) an opportunity to develop facts that justify conservation assessments at less than the rate set for the other transmission and distribution (T&D) utilities.

II. BACKGROUND

By P.L. 2002, ch. 624 (the Conservation Act or Act), the Commission is directed to develop and implement electric conservation programs. The Commission is authorized to pay for the programs, including any necessary administrative costs, by assessing and collecting funds from the T&D utilities.

The Commission exercised its authority under the Conservation Act and implemented interim programs during 2002-2003. To implement interim programs, the Commission needed money in the Conservation Program Fund and therefore began assessing T&D utilities in June 2002. For the interim period, the Commission decided to assess the T&D utilities in the amount included in each T&D utility's rates. This decision resulted in disparate treatment for Central Maine Power Company (CMP), as CMP's rates were set at the statutory maximum, 1.5 mils/kWh, and all other T&Ds were set at the statutory minimum, 0.5% of T&D revenue. *Order on Interim Funding*, Docket No. 2002-161 (June 13, 2002).

To transition from interim programs to "on-going" programs, the Act imposes two additional requirements in setting funding levels: to assess based on the characteristics of each T&D's service territory, and to assess in a way that is "proportionally equivalent" among all the T&D utilities, unless the Commission finds that a different amount is justified. 35-A M.R.S.A. § 3211-A(4)(A) and (D). By Order on April 4, 2003, we decided to assess all T&D utilities in the state at the statutory maximum rate, 1.5 mils/kWh, for funding conservation programs. We found that the potential for energy efficiency is relatively proportional across T&D service territories in Maine. We also found that the achievable potential energy savings is several times greater than the savings that could be achieved at the maximum funding level, and inferred a legislative intent in such an

instance to fund at the maximum level. *Order on Conservation Program Funding*, Docket No. 2002-162 (April 14, 2003).

For the T&Ds that were assessed during the interim period at the statutory minimum (all but CMP), we decided for rate stability purposes to phase in the increase in the conservation assessment from the minimum to maximum. The minimum assessment of 0.5% of total revenue produces a per kWh rate that varied among these T&Ds from 0.02 to 0.73 mils per kWh. We decided that the starting point for the phase-in, effective July 1, 2003, should be 0.6 mils/kWh or the current assessment level, whichever was higher. Each assessment would increase by 0.2 mils/kWh per year until the statutory maximum of 1.5 mils per kWh is reached.

In the April 4 Order, we discussed the arguments made by Madison Electric Works (MEW), Madison Paper Industries (MPI) and Eastern Maine Electric Cooperative (EMEC) that the MEW and EMEC service territories warranted smaller assessments. Ultimately, we concluded that the comments about MEW and EMEC did not provide us facts sufficient to justify a lower assessment. We acknowledged, however, that due to the nature of the Docket 2002-162 proceeding, there was no detailed, individualized examination of the COU service territories. Accordingly, we directed our staff to open an investigation that gives all of the COUs the opportunity to demonstrate facts that justify different conservation assessments for their service territories.

III. DECISION

We open this investigation pursuant to 35-A M.R.S.A. § 1303. All COUs are made parties to the investigation. The purpose of the investigation is to provide each COU the opportunity to present facts that justify treating its service territory differently and setting conservation assessments at less than the statutory maximum. The April 4 Order discussed two factual scenarios that might justify different treatment: initial, high level of rates or fewer cost effective conservation opportunities. The COUs of course are free to argue that other circumstances justify lower assessments.

Other persons who desire to participate in the investigation must file a petition to intervene. Such petitions must be filed with the Administrative Director, 242 State Street, Augusta, Maine, by June 9, 2003, and served on the other persons listed in the COU service list attached to this Notice.

An initial case conference in this investigation will be held at the Commission on June 10 at 1:30 p.m.. The purpose of the conference will be to rule on petitions to intervene and to discuss the orderly processing of the case.

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.