

STATE OF MAINE  
UTILITIES COMMISSION

Docket No. 98-620

December 10, 1998

PUBLIC UTILITIES COMMISSION  
Voluntary Renewable Resource  
Research and Development Fund  
(Chapter 312)

ORDER ADOPTING RULE AND  
STATEMENT OF FACTUAL AND  
POLICY ANALYSIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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## I. INTRODUCTION

In this Order, we adopt rules to establish a program under which retail consumers of electricity may voluntarily contribute to fund renewable resource research and development.

During its 1997 session, the Legislature fundamentally altered the electric utility industry in Maine by deregulating electric services and allowing retail competition to begin on March 1, 2000.<sup>1</sup> The change in industry structure necessarily impacts the means by which the State has traditionally implemented its energy policy. In the past, utilities obtained their mix of generation resources through a least cost planning process that was subject to Commission oversight. In enacting the Restructuring Act, the Legislature recognized that, because generation services will be deregulated, energy policies can no longer be implemented through the regulation of utility resource acquisition decisions. As a consequence, the Act includes a provision on renewable resources and an explicit pronouncement of legislative policy:

In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable sources and to diversify electricity production on which residents of this State rely . . . .

35-A M.R.S.A. § 3210(1).

To implement this policy, the Legislature directed the Commission to establish a program whereby retail electricity consumers may voluntarily contribute to a fund to support

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<sup>1</sup>An Act To Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316 (codified as Chapter 32 of Title 35-A M.R.S.A. §§ 3201 through 3217).

renewable resource research and development.<sup>2</sup> The Act requires the Commission to adopt a mechanism for customers to indicate their willingness to contribute; to provide that transmission and distribution (T&D) utilities collect the contributions and forward them to the Commission; and to provide for a distribution of the funds to the University of Maine system, the Maine Maritime Academy or the Maine Technical College system.

According to 35-A M.R.S.A. § 3210(5), the rules adopted in this proceeding are routine technical rules pursuant to Title 5, Chapter 375, subsection II-A.

## II. RULEMAKING PROCESS

On August 25, 1998, we issued a Notice of Rulemaking and proposed rule on implementing the voluntary renewable resource research and development fund. Prior to initiating the formal rulemaking process, we conducted an Inquiry in Docket No. 97-584 into the issues and approaches for implementing the renewable resource section of the Act. As with our other inquiries regarding restructuring matters, the comments and input from interested parties helped us to define the issues and develop a proposed rule.

Consistent with rulemaking procedures, interested persons were provided an opportunity to submit written and oral comments on the proposed rule. The following persons provided comments: the Public Advocate, the State Planning Office (SPO), Central Maine Power Company (CMP), Maine Public Service Company (MPS), Dirigo Electric Cooperative, David Tilton, Chris Carrol, Michael Mayhew, Coalition for Sensible Energy (CSE), and Ed Holt and Associates. These comments are discussed below.

## III. DISCUSSION OF INDIVIDUAL SECTIONS

### A. Section 1: Purpose

The first section of the rule summarizes the purpose of the Chapter as implementing the State's policy to encourage the development of renewable resources through the establishment of a research and development (R&D) fund to which customers may make voluntary contributions. The provision is unchanged from the proposed rule.

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<sup>2</sup>The Legislature also required that each competitive electricity provider provide no less than 30% of its retail sales in the State through renewable resources. 35-A M.R.S.A. § 3210(3). This 30% portfolio requirement is the subject of a separate rulemaking (Docket No. 98-619).

B. Section 2: Effective Date

Section 2 specifies that the program allowing for voluntary contributions to the renewable resource R&D fund will become effective on March 1, 2000, the date on which retail competition begins. The provision is unchanged from the proposed rule.

C. Section 3: Definitions

This section contains definitions of terms used in the rule. The definitions are self-explanatory. To be consistent with legislative policy, renewable resource is defined with reference to the fuels and technologies listed in 35-A M.R.S.A. § 3210(2)(C). The provision is unchanged from the proposed rule.

D. Section 4: Transmission and Distribution Utility Obligations

Section 4 of the rule satisfies the obligations of T&D utilities in administering the voluntary contribution program.

Sections 4(A), (B), (C) and (D) require each T&D utility to provide its customers with the opportunity to make voluntary contributions to a R&D fund through a "check-off" mechanism whereby customers can choose: \$1.00, \$5.00, \$10.00 or "other" amount; utilities are specifically permitted to employ additional mechanisms to solicit contributions.<sup>3</sup> If a customer chooses to make a contribution, the T&D utility will add the amount of the monthly contribution to the customer's bills. We have added language that clarifies that customers, in addition to responding to the check-off mechanism, may choose to contribute at any time by notifying the utility through any means.

The rule provides T&D utilities with an option of two "check-off" mechanisms: 1) the check-off can be offered on the customers' bills; or 2) the check-off can be provided on a response card<sup>4</sup> to be mailed by the customer directly to the utility. We have provided these options because, during the inquiry process, some utilities suggested that it would be very expensive to program their billing computers to allow for a

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<sup>3</sup>For example, utilities may consider the use of the Internet for this purpose.

<sup>4</sup>The proposed rule used the term "postcard." For clarity, we have replaced the term with "response card," because it is not our intent to restrict utilities to use of postcards. For example, a response card may include a tear-off section of a bill insert or of other notification materials.

check-off mechanism on the bills. CMP supported the flexibility contained in this provision as helping to reduce administrative costs.

The proposed rule specified that the contributions would be added to bills for a 12-month period and did not contain a provision for customer termination prior to the conclusion of this period. Ed Holt commented that the proposed rule was unclear as to whether customers could withdraw from the program prior to the 12 months or whether they would be automatically dropped from the program after the 12 months. CSE expressed concern over requiring a 12-month commitment and stated a preference for monthly bill check-offs.

We have modified the final rule to remove the 12-month provision and to specify that customers may terminate their contributions at any time. Thus, customers would continue to contribute until they notify the utility that they no longer desire to do so.<sup>5</sup> This approach allows customers more flexibility in determining how much they wish to contribute. We have deleted references to the 12-month period in sections 4(B) and 4(D) and have added a provision to section 4(D) allowing customers to terminate their contributions at any time by notifying the T&D utility.

Section 4(E) of the rule requires utilities to notify customers of their option to contribute to the R&D fund every six months. The proposed rule required such notification every quarter. MPS and CMP commented that a quarterly requirement would add significant administrative costs that may well exceed the additional contributions, and suggested an annual mailing as an alternative. The Public Advocate also expressed concern over the costs of quarterly mailings. During the hearing, an alternative of quarterly notification for the first year and semi-annually thereafter was discussed. In our view, the final rule's six month requirement, in conjunction with the customers' ability to choose to contribute at any time by notifying the utility (see discussion above), reasonably balances the goals of maximizing contributions and minimizing administrative costs.<sup>6</sup>

Section 4(F) requires utilities to prepare the materials used for the semi-annual customer notification. These

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<sup>5</sup>CMP indicated during the hearing that such an approach would be administratively workable.

<sup>6</sup>After some experience with the program, we would reconsider this requirement if it appears that the costs of the solicitations exceed the contributions or that more frequent solicitations would raise the level of net contributions.

materials must inform customers of the R&D program, the means to contribute and the check-off response card (if that mechanism is chosen by the utility). The materials must be developed in conjunction with the Commission, the SPO and the Public Advocate, and be included as a bill insert or separately mailed. We note that in addition to this utility notification requirement, the Commission, the SPO, the Public Advocate, and other interested organizations may make independent efforts to inform customers of their option to make contributions.<sup>7</sup> Moreover, utilities may also choose to promote the R&D program more actively than required by the rule.<sup>8</sup>

The proposed rule contained a similar provision that referred to these materials as "customer education" and required utilities to provide the materials to the Commission for informational purposes three weeks prior to their finalization. The language in the final rule is more consistent with our intent regarding the purpose and development of these materials. The purpose is to notify customers of the R&D program and provide them with the check-off mechanism so they can choose to contribute. Our view is that materials should be developed in a cooperative manner between utilities and the public agencies involved with the program in an effort to maximize the program's chances of success. CSE suggested that it might also be desirable to consult with other interested persons in the development of these materials. The rule does not mandate such consultation, but it may occur on an informal basis.

CMP objected to the customer education provision in the proposed rule as a violation of its first amendment rights. CMP noted that the language in the proposed rule was similar to that in the Commission's customer education rule (Chapter 301) which CMP has challenged in court as violating the first amendment.<sup>9</sup> The modifications made to clarify the final rule should reduce CMP's first amendment concerns, particularly since we have removed the requirement that materials be submitted to the Commission for informational purposes in advance of distribution.

<sup>7</sup>In its comments, the SPO, recognizing that promotion of the program will be essential to its success, expressed the need to supplement utility required activities to encourage customers to contribute.

<sup>8</sup>We will allow utilities that more actively promote the program to recover the reasonable costs of doing so from their ratepayers. Such ratemaking treatment is appropriate because the voluntary R&D fund implements an explicit State policy and because the utility notification requirement in the final rule was reduced to semi-annually (from the proposed rule's quarterly requirement).

<sup>9</sup>The CMP appeal is currently pending before the Law Court.

Nevertheless, the Commission continues to view regulations such as that contained in the final rule as not violative of the first amendment.

Ed Holt suggested that the materials include a description of the projects that have been funded and their results. We have added such a provision to the section.

Section 4(G), consistent with the provisions of 35-A M.R.S.A. § 3210, requires T&D utilities to transfer the funds collected from customers to the Commission for distribution every quarter. We have modified the section from the proposed rule to clarify that the amounts transferred will include any interest that may accrue between transfers.

Section 4(H) of the rule specifies that T&D utilities may recover from their ratepayers the reasonable costs of implementing the provisions of the rule.

In our Notice of Rulemaking, we sought comment on whether it would be more appropriate to pay for the utilities' costs of administering the program out of the contributions, rather than through generally applicable utility rates. None of the commenters recommended this approach. CMP and Dirigo stated that, as a matter of principle, costs should be charged against contributions because they are not T&D costs. MPS, CMP, Dirigo, the Public Advocate and CSE agreed that administrative costs of this program should be collected through rates, because such costs may be high relative to contributions; netting the costs against contribution could significantly diminish the amount available for R&D. Ed Holt stated that it is appropriate for all T&D ratepayers to pay for the program because all customers will benefit from the public policy to promote renewable R&D. We agree with the commenters that the costs of the program should be included in generally applicable rates and have thus not modified the proposed rule in this regard.

Section 4(I) requires utilities to provide a report to the Commission each year that contains the number of customers participating in the program, amounts of contribution and an accounting of the costs of administration. This provision is intended to allow the Commission to monitor the program so that it may assess costs and benefits, and consider appropriate modifications. For this purpose, we have modified the proposed rule to include a reporting of administration costs.

MPS commented that the rule should contain an "opt out" provision that would allow the utility to suspend the program if the annual expense is greater than the contribution. The SPO commented that the program should be reassessed depending on the

level of contributions. The statute requiring the establishment of the R&D fund does not provide the Commission with the discretion to suspend the program. However, as discussed above, if the annual reports indicate that expenses exceed contributions, we will reconsider the program and may ask the Legislature for modifications.

E. Section 5: Distribution of Funds

As required by 35-A M.R.S.A. § 3210, section 5 of the rule specifies that the funds collected through the voluntary customer contributions will be distributed to the University of Maine system, the Maine Maritime Academy or the Maine Technical College system. The rule states that the funds will be distributed through a grant proposal mechanism that will be developed and administered by the State Planning Office. Finally, the section specifies that the State Planning Office will provide a status report to the Commission each year describing the grants provided under the program and that the report will be available to the public. Except for the language added to the status report section, mentioned below, and minor clarifying language, section 5 is unchanged from the proposed rule.

David Tilton expressed concern that the guidelines for grants developed by SPO might be limited to the three named institutions. He suggested that guidelines can be developed to include opportunities for persons at community or organization levels to apply for grants. Mr. Tilton, Chris Carrol and Michael Mayhew suggested that the grant guidelines encompass the work of the Maine Energy Education Program (MEEP). Ed Holt also expressed concern that if the funds go only to the named institutions and they focus on research rather than the demonstration projects, there may be no tangible or visible results which would cause less motivation in terms of participation and contribution levels.

The SPO responded to Mr. Tilton by indicating that the R&D program would cover a wide range of energy technology and system activities from theoretical conception and design, through lab experimentation and bench testing of equipment, to prototype construction and testing, and finally demonstration installations with testing of results. The SPO added that there is a possible role for an educational element that could be delivered by organizations such as MEEP. Finally, the SPO recognized that in some cases the named institutions would act as conduits for other institutions and individuals, thus providing a way for independent inventors and developers to have access to the grants.<sup>10</sup>

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<sup>10</sup>SPO stated that it plans to establish an advisory committee

The SPO response appears to address the issues raised by David Tilton, Chris Carrol, Michael Mayhew<sup>11</sup> and Ed Holt. There is, thus, no need to alter the grant proposal provision of the rule.

Ed Holt commented that people should be informed of the availability of SPO's status report; either by customer mailings, a publicized website, or hard copy upon request. We have added a provision specifying that that status report is available upon request. We expect the SPO and interested persons to inform people of the existence of the report as part of their efforts to promote the program.<sup>12</sup>

F. Section 6: Waiver or Exemption

This section contains the Commission's standard language for a waiver or exemption from the provisions of the Chapter that are not inconsistent with its purposes or those of Title 35-A.

G. Tax Status

In our Notice of Rulemaking, we sought comment on whether contributions to the voluntary R&D fund under the proposed rule would be tax-exempt or tax-deductible and, if not, how the rule could be modified or the program structured so that contributions would be exempt or deductible from taxes.

The Public Advocate responded that, in his view, ratepayer donations to the R&D fund will qualify for an income tax deduction as charitable contributions. The Public Advocate refers to provisions of the Internal Revenue Code (IRC) that state that a contribution to a state or any political subdivision is defined as a charitable contribution if made exclusively for

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to help with the initial creation of the program, the grant award process, and the setting of program priorities and focus areas for research.

<sup>11</sup>Mr. Mayhew also commented that conservation should be included in this program. The statute requiring the establishment of the R&D fund specifies the research and development of "renewable resources". The promotion of conservation is the subject of a separate section of the restructuring Act. 35-A M.R.S.A. § 3211.

<sup>12</sup>We anticipate including a notice of the availability of the status report on the Commission website.

public purposes. 26 U.S.C.S. § 170(c)(1).<sup>13</sup> The Public Advocate also stated that he was assured by Maine Revenue Service that the deductibility of the State's "chickadee check-off" program is well established based on the cited IRC provisions. The Public Advocate noted that the case for the R&D fund would be stronger because the funds are distributed to political subdivisions (i.e., the three named institutions). Ed Holt noted that, in similar utility programs in other states, non-profit trusts or foundations were established to administer and distribute funds collected by utilities. Mr. Holt suggested, however, that the creation of a non-profit entity may have been necessitated by the investor-owned status of the utilities; the case may be different with the Commission and SPO state entities administering the program and distributing the fund contributions.

The Public Advocate's conclusion that contributions to the R&D will be tax deductible appears sound. Although the funds are collected by private utilities, the program is administered by and distributed to State entities so that contributions would be deductible under the Internal Revenue Code. We are continuing to investigate this matter, and, if it is subsequently determined that a separate trust or foundation must be created, we will bring the matter to the Legislature's attention.

Accordingly, we

#### O R D E R

1. That the attached Chapter 312, Voluntary Renewable Resource Research and Development Fund is hereby adopted;
2. The Administrative Director shall send copies of this Order and attached rule to:
  - a) All electric utilities in the State;
  - b) All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;
  - c) All persons on the Commission's list of persons who wish to receive notice of all electric restructuring proceedings;
  - d) All persons on the service list or who filed comments in the Inquiry, Public Utilities Commission, Inquiry

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<sup>13</sup>The code also defines charitable contributions to include a contribution for educational or scientific purposes. 26 U.S.C.S. § 170(c)(2). The contribution's to the R&D fund are ultimately distributed to educational institutions.

into a Renewable Resource Portfolio Requirement, Docket No. 97-584;

e) All persons who filed comments in Docket No. 98-620;

f) The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

g) The Executive director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Dated at Augusta, Maine this 10th day of December, 1998.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR: Welch  
Diamond

COMMISSIONER ABSENT: Nugent