STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 3, 1999

ORDER (PART 1)

CMP NATURAL GAS, L.L.C.,
Petition for Approval to Furnish
Gas Service in the Municipalities
Of Westbrook and Gorham (§ 2105)

Docket No. 99-477

CENTRAL MAINE POWER COMPANY
AND CMP NATURAL GAS, L.L.C.,
Request for Approval of Affiliated
Interest Transaction, Sale of Assets
(Property)

Docket No. 99-739

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

## I. SUMMARY

We grant CMP Natural Gas's (CMP NG) request for reconsideration in part. CMP NG is now authorized to begin certain limited construction activities on Central Maine Power Company's (CMP) electric corridors as described more fully below.

## II. PROCEDURAL HISTORY

On October 22, 1999, CMP and CMP NG jointly filed agreements proposed to convey real property interests for its electric transmission corridors from CMP to CMP NG, seeking approval of this affiliated transaction pursuant to 35-A M.R.S.A. § 707. CMP NG proposes to construct an operate a natural gas pipeline to serve the Calpine Corporation (Calpine) 540 MW gas-fired electric generating facility currently under construction in Westbrook, Maine.

The Commission issued a Notice of Proceeding on October 28, 1999, notifying interested persons – including parties to Docket No. 99-477[1] -- of the deadline for intervention and its scheduled initial case conference.

In the application, CMP NG explained an accompanying arrangement to be made between its contractor, Cianbro Corporation (Cianbro), and CMP to permit Cianbro to install the pipeline in CMP's transmission corridor while the conveyance of rights from CMP to CMP NG for the project was under Commission review. CMP NG stated that it did not believe the Cianbro-CMP agreement would require approval under § 707 because these entities are not affiliates.

[1] The Hearing Examiner has invited comments from parties on whether these cases should be consolidated.

However, CMP NG requested that, in the event the Commission determined that the Cianbro-CMP agreement did require prior commission approval under §707, that CMP and CMP NG's affiliated agreements be granted an exemption, pursuant to §707 (3)(F), to allow CMP NG to begin construction of this project this fall. CMP NG argued that it was necessary for it to begin construction this fall in order to ensure that it could meet its contractual commitment to provide Calpine with gas service by June 1, 2000.

Because of the relationship of CMP NG's request to issues raised in Docket No. 99-477, the Hearing Examiner allowed those parties and CMP to comment on CMP NG's request for "preliminary approval" for these agreements.

The Commission deliberated and denied CMP NG's request for exemption on November 15 and 16, 1999. The Hearing Examiner held an initial case conference on November 17, 1999 and granted intervention to Northern Utilities, Inc. (Northern), Maritimes & Northeast Pipeline (MNE), the Office of the Public Advocate (OPA) and Bangor Gas Company, L.L.C.

On November 24, 1999, CMP NG filed its Request for Expedited Reconsideration of the Commission's decision "to deny CMP NG's request for preliminary approval to begin construction of the natural gas pipeline this fall. In particular, CMP NG argued that its costs to cross the Stroudwater River would be lower if it was allowed to complete this portion of the project before December 10, 1999. CMP NG also maintained that any entity's ability to meet Calpine's requested in-service date for gas service would be jeopardized.

On November 29, 1999, the Hearing Examiner issued a Procedural Order notifying parties to Docket Nos. 99-739 and 99-477 that the Commission would hold a telephone conference on December 2, 1999 to further explore the basis for CMP NG's request. Representatives of the Department of Environmental Protection, the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Calpine were invited to participate in the conference and respond to questions from the Commission and its Advisory Staff.

Messrs. Michael Petit, Director of Fuels Management, and Malcolm Jarvis, Project Manager for the Westbrook facility, participated in the telephone conference for Calpine, and Mr. John Boland, Regional Biologist for Fisheries, participated from MDIFW, and provided sworn testimony on matters at issue. In particular, the Commission explored the basis for and firmness of the DEP permit's river crossing construction "window," as well as Calpine's project schedule needs. Northern, MNE, OPA, CMP NG, and CMP also participated in the conference.

We deliberated this matter on December 3, 1999.

## II. LEGAL AUTHORITY

We issue our Order on this matter in two parts, as allowed by Ch. 110, Section 1003(b) of our Rules of Practice and Procedure in extraordinary circumstances. We find such circumstances to exist here where CMP NG has only seven days in which to complete a dry flumed crossing of the Stroudwater River under its DEP permit.

Our Part 1 Order will address the construction activities that we authorize and the conditions we place on this authority pursuant to 35-A M.R.S.A. § 707(3)(B) and (F).

Our Part II Order will address our holdings on how we propose to conduct of the remainder of our review of CMP and CMP NG's affiliated interest agreements bearing on the corridor used to serve Calpine as well as our statements regarding our policy on when information should be accorded confidential treatment in our proceedings.

## IV. DECISION AND ANALYSIS

### A. Authority to Begin Certain Construction Activities

As noted above, CMP NG argues that it is necessary for it to begin construction of the gas pipeline to Calpine this fall to help ensure that it can meet its contractual commitment to Calpine to provide natural gas service by June 1, 2000. In addition, CMP NG argues that, in fact, any other entity would not be able to provide natural gas service to Calpine by this date without beginning construction this season. Calpine stated that it would prefer to have construction on the project begin now even with the uncertainty as to whether CMP NG will ultimately be authorized to obtain property rights to the CMP corridors on which the pipeline is to be built.

CMP NG and its contractor Cianbro stated that they plan to complete the river crossing, clear trees from the corridor, and string and weld pipe during the fall and winter seasons. Northern confirms that the best time to clear trees from the corridor is during the winter season.

The testimony of Mr. Boland clarifies that the December 10th deadline for conducting a dry flumed river crossing is firm because of the environmental degradation that construction later in the season would invite. The environmental risk lies primarily in securing the river banks to avoid erosion and sedimentation of the stream bed during winter and spring periods of heavy rainfall. Mr. Boland also confirmed that a river crossing using the directional drilling method is unrestricted and could be used at any time of year because it would not disturb the stream banks or beds.

It appears that all other construction activity could be delayed until spring without jeopardizing the project deadline and, in fact, Northern states that it would choose to do so were it building this pipeline.

Our priorities in deciding this matter are threefold. First, we wish to try to accommodate Calpine's needs, recognizing that they are impacted by our decisions on regulatory matters that do not directly relate to them. We do not wish to inconvenience unrelated third parties as a result of regulatory matters if at all possible. Finally, ensuring that the Calpine facility is constructed and on-line on schedule is in the interests of Maine's ratepayers.

Next, we wish to preserve our ability to make appropriate regulatory rulings at the conclusion of our affiliated interest review. We do not wish to do anything here that will compromise or limit our ability to make a determination in our affiliated interest review of CMP and CMP NG's agreements on the merits.

Finally, we wish to get the remaining matters in this proceeding resolved as quickly as possible, recognizing that contentiousness such as we have seen to date by parties in Docket No. 99-477 unnecessarily extends our proceedings.

We approve CMP NG's request for an exemption of prior approval of its agreements with its affiliate, CMP, to allow it to complete the Stroudwater River crossing as it proposes and as allowed in the DEP permit. In addition, we would also allow CMP NG to clear trees from the corridor as necessary to prepare it for spring construction. We also authorize CMP NG to conduct incidental activities related to these limited construction activities such as environmental damage mitigation requirements. Naturally, we expect that CMP NG will respect this limitation in good faith.

We would not allow further activities – such as stringing and welding pipe along the corridor -- in advance of our completion of the 707 proceeding because of our concern that the more that is done, the more difficult it may be to unravel if we ultimately do not approve the affiliate agreements.

Because of the uncertainty over the final resolution of Docket No. 99-739, we are placing three conditions on our agreement to allow construction. First, in the event that we ultimately disapprove the CMP/CMPNG agreement, CMPNG will offer to turn over any work, materials, and equipment, including any rights to equipment, to Calpine, or its designee, at cost. Second, CMP will make the right of way available to Calpine or its designee under terms at least as favorable as the terms of the contract with CMPNG. Finally, to the extent feasible, CMPNG will facilitate transfer to or acquisition of any necessary permits by Calpine or its designee.

Accordingly, we

O R D E R

1. That CMP Natural Gas, L.L.C. may act under its proposed agreements with Central Maine Power Company for use of its corridors to begin the particular construction activities subject to the conditions outlined above; and

2. That we will address issues related to processing the affiliated interest review in our Part II Order.

Dated at Augusta, Maine, this 3rd day of December, 1999.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

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

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

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

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