March 22, 2001

Honorable Norman K. Ferguson, Senate Chair
Honorable William R. Savage, House Chair
Joint Standing Committee on Utilities and Energy
115 State House Station
Augusta, ME 04333

Re: LD 808, An Act to Amend the Laws Governing the Service Territory of Kennebunk Light & Power District

Dear Senator Ferguson and Representative Savage:

The Commission will testify in opposition of LD 808 as written, An Act to Amend the Laws Governing the Service Territory of Kennebunk Light & Power District (KLPD). We will offer suggestions for actions that would allay our primary objections, if the Committee chooses to pursue the bill's passage. The Commission will be present at the work session and will be pleased to work with the Committee as it considers this bill.

LD 808 would allow KLPD to serve customers in parts of the Kennebunk area who are now served by Central Maine Power Company (CMP), without receiving Commission authorization. It allows but does not require that KLPD compensate CMP for CMP's losses (we understand that the sponsors intend that the bill should require such compensation). It allows but does not require KLPD to fund such payment through a surcharge to the new customers who switch to KLPD as a result of the bill.

This bill is similar to two bills that the legislature did not pass on earlier occasions. However, this bill limits its provisions to KLPD and CMP, reducing the concern that customers in other areas will be affected.

When the previous bills were being considered, there were different assertions regarding KLPD's legal authority to serve customers to the west of the "1903 Line." In our view, KLPD could at any time have petitioned the Commission to serve customers now being served by CMP to the west of the Line, without further action by the Legislature. Title 35-A MRSA § 2102 requires that a public utility receive Commission authorization when it is the "second utility to serve," i.e., before it can provide service to customers who are already served by another utility. The historical chronology of authorizations is not relevant to implementing this subsection. In other words, because CMP is currently serving customers in parts of Kennebunk, KLPD must receive Commission authorization before serving those

customers; the existence of the Line is not relevant. KLPD has not filed such a petition with the Commission.

The Commission does not object in principle to KLPD bypassing § 2102 by seeking legislative approval, although we note that 35-A MRSA § 1323 appears to prohibit this by stating that "No public utility may apply to the Legislature to grant it a right, privilege or immunity which the commission has power to grant it until the utility has exhausted its rights regarding its request before the commission. In applying to the Legislature, the utility shall state in writing that it has applied to the commission for the right, privilege or immunity requested and that the commission has denied its application."

However, we urge that, before granting expansion authority, the Committee consider issues that we would investigate if we were to conduct a proceeding under § 2102. In our view, the expansion of one utility into another's territory should not be done solely to allow the customers on the boundary to escape paying stranded costs. Rather, expansion should occur if it results in improved efficiencies to the body of ratepayers as a whole. Thus, two questions must be satisfied:

1. will the "losing" utility's customers be held financially harmless (i.e., will the "gaining" utility's customers compensate them for stranded costs); and
2. will the resulting utility systems be more efficient?

Because of decisions made in the past – whether good or bad -- customers in some utilities' territories pay for stranded costs, while customers in other utilities' territories do not. When a group of customers moves from one utility to another, their contribution to the losing utility's stranded costs (and to all other fixed costs) is shifted to the remaining body of ratepayers. This bill should guarantee that customers who move to KLPD because of the boundary re-alignment compensate CMP's ratepayers for all costs incurred by the expansion, thereby holding CMP's ratepayers harmless. At a minimum, the costs that KLPD's customers should pay include:

1. the cost of poles and wires left stranded if KLPD installs new facilities;
2. the cost of poles and wires that KLPD purchases from CMP;
3. the contribution to stranded generation costs that are currently paid by affected KLPD customers;
4. the contribution to other fixed costs that are currently paid by affected KLPD customers; and
5. any increased costs to the remaining CMP ratepayers that may result from the loss of customers in a dense area who are less expensive to serve and therefore lower the averaged rates to all customers.

If the Commission held a proceeding in accordance with § 2102, we would likely determine the appropriate level of KLPD's compensation to CMP. The procedure would likely be complex and contentious. It will be difficult for the Committee to determine this level absent such an evidentiary hearing. With this problem in mind, the bill could be amended to require that the parties provide information necessary to develop appropriate compensation and that the

Commission approve the compensation level before any customer switches to KLPD. Alternatively, the Committee could vote the bill out "ought not to pass" and direct the Commission to determine the appropriate compensation level and report back to the Committee; should the sponsors of the bill wish to re-introduce it, the Committee would be better able to judge its impact.

The second action that would cause our opposition to diminish significantly would be for the Committee to determine that delivery to the body of ratepayers as a whole would be more efficient if KLPD expanded into CMP's territory. A key issue that the Committee should consider is the likelihood of duplicate poles and wires in Kennebunk, either to serve customers on the boundary or to reach customers at a distance from the boundary. The Committee should also balance the economies of scale attained by a larger utility against response time and customer service advantages that a smaller utility may offer.

Finally, as a general matter we note that boundaries exist between all utilities. When there is a disparity between rates, customers in the more costly utility territory understandably wish they fell on the opposite side of the boundary. This situation is not unique to the electricity industry, and it is a difficult problem to deal with. Allowing boundaries to be revised so that a few customers can avoid the higher rate they currently pay would create a haphazard approach to franchise management if not undertaken with care. Kennebunk citizens have been unusually tenacious and passionate in their desire to carry out this expansion. We understand that the Committee will weigh their clear desire against the wider impacts of boundary adjustments.

In summary, we oppose LD 808 as written because it does not guarantee that the losing utility ratepayers are made whole and it is not clear that the expansion results in efficiency gains. If the Committee addresses these two concerns, we would be neither for nor against the passage of the bill. We suggest that the issues involved in addressing those concerns are complex and require more resources than are available to the Committee during one session. For that reason, we urge the Committee to vote out LD 808 as drafted as "ought not to pass." If you have any questions, please contact me.

Sincerely,

Marjorie R. McLaughlin
Legislative Liaison