STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-244

November 30, 2000

PUBLIC UTILITIES COMMISSION
Investigation of Exemptions
For Small Consumer Owned Utilities

ORDER APPROVING
STIPULATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we approve a Stipulation entered into between the Office of the Public Advocate (OPA), the Isle-Au-Haut Electric Power Company (Isle-Au-Haut or IAH) and the Monhegan Plantation Power District (Monhegan) which exempts small consumer-owned transmission and distribution utilities from certain requirements of Title 35-A and the Commission's Rules.

II. BACKGROUND

On August 10, 1998, the Commission initiated investigations of the stranded costs, transmission and distribution utility revenue requirements and rate design of Isle-Au-Haut Electric Power Company (IAH) and Matinicus Plantation Electric Company (Matinicus) as part of the Commission's implementation of the Electric Restructuring Act, 35-A M.R.S.A. § 3201-3217. During the course of the proceeding, IAH and Matinicus filed requests, pursuant to 35-A M.R.S.A. § 3504, that they be exempt from the requirements of the Restructuring Act, all other provisions of Title 35-A except sections 3502 and 3503, and all Commission rules promulgated pursuant to Title 35-A. In a supplementary filing, IAH clarified that it was not in fact requesting a waiver of all of the provisions of Title 35-A and provided a list of the sections where it sought waivers. Section 3504 of Title 35-A authorizes the Commission to exempt consumer-owned electric utilities with 150 customers or less from any of the requirements of Title 35-A except sections 3502 and 3503, and from any Commission rule.

In orders dated July 29, 1999, we granted IAH's and Matinicus's requests that they be exempted from the provisions of the Restructuring Act but denied and dismissed without prejudice the request for blanket exemptions from Title 35-A. *Public Utilities Commission, Investigation of Stranded Costs, Transmission and Distribution Utility Revenue Requirements and Rate Design of Matinicus Plantation Electric Company,* Docket No. 98-602; *Public Utilities Commission, Investigation of Stranded Costs, Transmission and Distribution Revenue Requirements and Rate Design of Isle-Au-Haut Electric Company,* Docket No. 98-599. In doing so we noted:

> While we will not grant IAH's request for a blanket exemption at this time, we do believe that it would be constructive for representatives of each of the small consumer-owned electric utilities, the Public Advocate's Office and the Commission's Staff to meet and develop a list of statutory provisions and rules which small consumer-owned electric utilities should not be required to follow. Given the extremely heavy workload currently placed on our Staff to implement electric restructuring by March 1, 2000, we believe that such an effort could begin in mid-2000. In the meantime, if IAH believes that a particular provision of Title 35-A or our rules is particularly burdensome, we invite the utility to file a specific request for waiver prior to the commencement of this collaborative effort.

Id. at 3.

Following up on this commitment, we initiated this investigation pursuant to 35-A M.R.S.A. § 1303 to determine what particular sections of Title 35-A and our rules small consumer-owned utilities should be exempted. As the subject of this investigation Isle-Au-Haut, Matinicus and Monhegan Power District (Monhegan)[1] were made parties to this proceeding. The Notice of Investigation provided other interested persons with an opportunity to intervene in this matter. Timely petitions were filed by the OPA and by Peter J. Boehmer of New Monhegan Press/Monhegan Commons and were granted without objection.[2]

On May 8, 2000, Isle-Au-Haut submitted a letter proposing that all provisions of Title 35-A, except those prohibited from waiver, should be waived. As an alternative, Isle-Au-Haut attached a list of the sections of Title 35-A indicating which specific sections should be waived. On May 15, the Advisory Staff submitted a Bench Memorandum that included a chart outlining the Staff's view of the request by Isle-Au-Haut. On May 23, 2000, Isle-Au-Haut responded with a letter identifying sections of Title 35-A on which it took a position different than the Advisory Staff. On May 25, 2000, the Public Advocate submitted its comments, identifying sections that it recommended not be waived.

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[1]By way of an order dated October 7, 1998, Monhegan Plantation was granted authority to serve Monhegan Plantation. *Monhegan Plantation Power District, Petition for Authority to Serve,* Docket No. 98-536, Order (October 7, 1998). Based on the information available to the Commission, Monhegan Plantation is a small consumer-owned utility within the meaning of 35-A M.R.S.A. § 3504.

[2]On August 15, 2000, Mr. Boehmer indicated that he had not intended to intervene as a "party" to this proceeding. Instead, his intent was simply to be listed as an "interested party," so that he might report on developments in this proceeding. Accordingly, Mr. Boehmer's status is changed to that of "interested person."

On June 2, an initial case conference in this proceeding was held by telephone. Isle-Au-Haut, the Public Advocate and the Advisory Staff were active participants. Thereafter, on July 19, 2000, the Advisory Staff issued a Bench Memorandum that identified areas of agreement and issues in dispute. On July 25, 2000, Isle-Au-Haut filed a letter offering a settlement of outstanding issues. On August 30, 2000, we received a Stipulation entered into between the OPA and Isle-Au-Haut which resolved all issues raised by this investigation. Monhegan subsequently filed a signature page joining this Stipulation. Matinicus has neither indicated support nor opposition to the proposed Stipulation.

III. DECISION

To accept a stipulation the Commission must find that:

1. the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

2. the process that led to the stipulation was fair to all parties; and

3. the stipulated result is reasonable and is not contrary to legislative mandates.

See Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II), Detailed Opinion and Subsidiary Findings (Me. P.U.C. Jan. 10, 1995), and *Maine Public Service Company, Proposed Increase in Rates (Rate Design),* Docket No. 95-052, Order (Me. P.U.C. June 26, 1996). We have also recognized that we have an obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery,* Docket No. 96-678, Order Approving Stipulation (Me. P.U.C. April 28, 1997). We find that the proposed Stipulation in this case meets all of these criteria.

The Stipulation before us was signed by the OPA, IAH and Monhegan. The Stipulation was the result of a series of meetings and written submissions between the parties and our Advisory Staff. All meetings were properly noticed and open to all parties and all written submissions were duly served. We are thus satisfied that criteria 1 and 2, set forth above, have been satisfied here. For the reasons set forth below, we are also satisfied that the results agreed to in the Stipulation are reasonable, consistent with the public interest and not contrary to legislative mandate.

Section 3504 of Title 35-A provides that the Commission may, upon request of a consumer-owned transmission and distribution utility of not more than 150 customers, exempt such utility from any of the requirements of any Commission rule or Title 35-A with the exception of section 3502 and 3503, which concern the procedures and standards for setting rates. On May 15, 2000, the Commission's Advisory Staff filed a

Bench Memorandum which contained a detailed section-by-section analysis of what sections of Title 35-A and of the Commission's rules could be waived. The Advisory Staff noted:

> In doing this detailed section-by-section analysis, the Advisory Staff relied on several general decision-making principles. First, we tried to waive all sections which actually posed a burden on small electric utilities and were not viewed as essential to the protection of customers or to the Commission's jurisdiction. Sections of Title 35-A which concern the Commission's authority (such as 35-A M.R.S.A. § 1127 – power to request information) and pose no burden on the utility as a generic matter or which provide core customer protections were generally considered non-waivable. To the extent sections are not addressed in the analysis, the default position would be that such sections are not waived.

The Advisory Staff's memorandum ultimately served as the basis for the Stipulation agreed to by the parties in this matter.

We have reviewed the particular sections of Title 35-A and of our rules which would be waived by our approval of this Stipulation. We are in agreement with the sections to be waived under the Stipulation. We believe the exemptions agreed to will relieve small COUs from certain filing and administrative requirements which might be burdensome to such small utilities. At the same time, the Stipulation retains Commission oversight over essential safety, consumer protection and rate setting functions. We, therefore, find that the provisions of the Stipulation are reasonable and are consistent with the public interest and with legislative mandates. We thus approve the Stipulation as submitted.

Accordingly, it is

O R D E R E D

1. That the Stipulation entered into between the Office of the Public Advocate, Isle-Au-Haut Electric Power Company and Monhegan Plantation Power District, dated August 30, 2000 (a copy of which is attached hereto), is approved;

2. That the exemptions and waivers agreed to in the Stipulation for consumer-owned utilities with no more than 150 customers are granted; and

3. That this investigation is now closed.

Dated at Augusta, Maine, this 30th day of November, 2000.

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.