STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-273

April 14, 2000

COASTAL ESTATES II HOMEOWNERS ASSOCIATION, Appeal of Consumer Assistance Division Decision #2000-7918 Regarding Central Maine Power Company

ORDER

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

I. SUMMARY

In this Order, we direct Central Maine Power Company (CMP) to comply with its Terms and Conditions 12.5, Adjustment of Error-Refund, as it applies to amounts incorrectly billed to Coastal Estates II from 1986 to 1993.

II. BACKGROUND

Mr. Paul Putnam, President of Coastal, discovered that CMP was charging the Coastal Estates II subdivision for area lighting being provided to a separately owned but adjacent area, Coastal Estates I. This occurred for 15 years. CMP agreed to provide a credit for six years, equaling $1180. CMP claimed that under its "billing and adjustment policy," the Company will refund for a period not to exceed six years. Mr. Putnam then filed a complaint with CAD asking that Coastal be reimbursed for all 15 years, going back to 1986. CAD found that Title 35-A limits the Commission's authority to order rebates for billing errors or excessive charges to six years. On March 16, 2000, Mr. Putnam appealed CAD's decision to the Commission.

III. DECISION

CAD is correct that 35-A M.R.S.A. § 1308 limits the Commissions authority to order a utility to rebate a billing error to not more than six years. However, CMP's Terms and Conditions allow additional relief in certain circumstances.

Section 12.5 of CMP's Terms and Conditions provides:

> 12.5 ADJUSTMENT OF ERROR – REFUND
> When the Company determines that it has over-billed a customer because the test of his or her meter reveals its average accuracy to be more than four percent (4%) high, or because the Company discovers that the meter records have been switched or because of other reasons, the Company will refund to the customer excess charge for the previous six (6) months, unless it can be shown from the records of either party, that the error has existed for a greater or lessor [sic] period, in which case the refund shall cover the actual period.

The next section provides the complimentary conditions applicable when a customer has been under-billed:

12.6 ADJUSTMENT OF ERROR – CHARGE

(a) When the Company determines that it has under-billed a residential customer because the test of his or her meter reveals the meter's average accuracy to be more than four percent (4%) low, or because the Company discovers that the meter records have been switched or because of other reasons except for unauthorized use or fraud by the customer, the Company may issue a make-up bill for the unbilled charges for the previous six (6) months, or the actual period of error, not to exceed twelve (12) months, if the actual period can be determined.

(b) When the Company determines that it has under-billed a nonresidential customer because the test of that customer's meter reveals the meter's average accuracy to be more than four percent (4%) low, or because the Company discovers that the meter records have been switched or because of other reasons except for unauthorized use of fraud by the customer, the Company may issue a make-up bill for the unbilled charges for the previous twelve (12) months, or the actual period of error if the actual period can be determined.

Although Section 12 of CMP's Terms and Conditions is titled "Meters", these provisions do not only apply when the overbilling is related to a metering error. Both 12.5 and 12.6 refer to under- or over-billings "because of other reasons."

These provisions likely appear in the Meters section because the Commission's rules in Chapter 32 § H contain the following requirement concerning adjustment of bills for meter errors.

H. 2.08 Adjustment of Bills for Meter Error and Prorated Bills.

1) Whenever the test of a meter reveals its average accuracy to be more than four percent (4%) high, the utility shall refund to the customer such percentage of the total amount of bills covering the consumption indicated by the meter for the previous six (6) months, as the meter was found to be in error at the time of the test, unless it can be shown from the records of either party, that the error has existed for a greater or lessor period, in which case the refund shall cover such actual period.

2) No refund shall be allowed in any case if the seal on the customer's meter is found to be broken, or if there is any other evidence that the meter has been tampered with.

3) In the event of a nonregistering meter, customer may be billed on an estimate based on previous usage.

4) In the event unmetered electricity is used without permission, the customer may be billed on an estimate of the energy consumed.

This provision has been in the Commission's rules since 1963. The only other rule provision related to this situation is Chapter 81. This Chapter addresses payment for unbilled service. It does not address overpayments nor is it applicable to non-residential customers (such as Coastal Estates II):

E. Previously unbilled utility service. A utility may issue a "make-up" bill for service that the customer received, but that was previously unbilled.

1. If the "make-up" bill is for service that was unbilled because of utility billing error, failure to comply with subsection A, meter failure or leakage that could not reasonably have been detected by either the utility or the customer, the utility cannot bill or collect for service that occurred more than twelve (12) months before the issuance of the "make-up" bill.

2. If the "make-up" bill is for service that was previously unbilled because of unauthorized use or fraud by the customer, the utility may bill for service that occurred up to six (6) years before the issuance of the "make-up" bill.

3. A utility may enter into a settlement for just cause that abates all or a portion of the previously unbilled service.

Chapter 81 § 3(E).

After considering the statute, rules and CMP's Terms and Conditions it is apparent that CMP's Terms and Conditions 12.5 and 12.6 go beyond what is required by either statute or rule. Under CMP's Terms and Conditions, if a customer is over-billed, CMP will refund for the previous six months, unless it is shown from the records of either party that the error existed for another period, in which case the refund covers the actual period. Likewise, if CMP under-billed a non-residential customer for any reason, except for unauthorized use of fraud by the customer, CMP can issue a make-up bill for twelve months or the actual period if this can be determined.

Mr. Putnam claims to have nearly complete records dating back to 1986. Additionally, it is not difficult to determine the correct amount owed because area lighting is one of the few services provided by CMP that is not metered. CMP charges a flat rate per fixture. CMP has elected to include more generous over-billing refund provisions in its terms and conditions than are required by law or statute. Having made that choice, it must adhere to those schedules. 35-A M.R.S.A. § 309. The Commission has the authority to direct CMP to comply with its Terms and Conditions 12.5. 35-A M.R.S.A. § 115(1). If CMP did not have terms and conditions applicable to

this situation, we would be limited by 35-A M.R.S.A. § 1308 to ordering a rebate of no more than 6 years.

Therefore, we direct CMP to comply with its Terms and Condition 12.5 and determine the proper amount back to 1986 and refund such amount. In the future, if CMP wishes to apply a six (6) year limitation on refunds for over-billings, it should revise its terms and conditions. We would expect it to make parallel changes to its under-billing provisions.

Dated at Augusta, Maine, this 14th day of April, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

COMMISSIONER VOTING AGAINST: 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.