STATE OF MAINE
PUBLIC UTILITIES COMMISISON

Docket No. 2001-571

October 22, 2001

CENTRAL MAINE POWER COMPANY
Request for Waiver of Requirement to
Divest Hydro-Quebec Assets

ORDER GRANTING
EXTENSION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

By this Order, we grant Central Maine Power Company (CMP) an extension of the deadline to divest its interest in the Hydro-Quebec Support Agreements to March 1, 2002.

II. BACKGROUND

CMP is a supporting participant in the high voltage direct transmission interconnection between New England and the Province of Quebec, Canada. The Interconnection facilities on the U.S. side of the international border were constructed and funded by New England utilities in two distinct phases. Phase I provided interconnection transfer capability of 690 MW. Phase II increased the transfer capability to 2000 MW, although other Northeast control areas have limited the operating range of the interconnection.

CMP is not an owner of the Interconnection facilities, but is obligated to financially support approximately 7% of the Interconnection through several Support Agreements. These Agreements obligate the supporting participants to proportionately compensate the Interconnection owners for the cost of constructing, owning and operating the Interconnection. CMP estimates that its annual support cost for the Interconnection and related facilities will be $5.8 million, effective March 1, 2002.

Purchases from and sales to Hydro-Quebec over the Interconnection were conducted by the participating New England utilities pursuant to several agreements. The most significant of these agreements, called the Firm Energy Contract (FEC), allowed the supporting participants to purchase 7 tWh of energy annually from Hydro-Quebec. The FEC was to terminate in August 2000, but due to an under-delivery of energy during the contract period, deliveries were extended through August 2001. In addition to CMP's proportional share of the delivered energy, at the time of FEC termination, NEPOOL recognized CMP's 7% interest in the FEC as providing an equivalent capacity value of approximately 127 MW in the non-winter months and 44 MW in the winter months.

CMP included its rights and obligations in the Hydro-Quebec agreements in the 1997 bid process that we approved in Docket 97-523 as CMP's Divestiture Plan. In Docket 98-058, we found CMP's decision to reject all bids for its interests in the Hydro-Quebec agreements to be reasonable. Thereafter, in Docket No. 99-439, CMP sought an extension of the divestiture requirement of its Hydro-Quebec agreements and included the capacity and energy from the Hydro-Quebec Firm Energy Contract as part of the Chapter 307 auction process to sell the entitlements to non-divested generation assets.

In an Order on July 30,1999 in Docket No. 99-349, we granted CMP an extension to divest, after March 1, 2000, the capacity, energy and transmission rights under the Hydro-Quebec use agreements and the Phase I and Phase II support agreements, through the remaining term of the HQ Firm Energy Contract. We found that, pursuant to 35-A M.R.S.A. § 3204(1), CMP's interest in the Hydro Quebec Phase I and Phase II projects and agreements constitute generation-related assets which otherwise must be divested by March 1, 2000. Given the auction results approved in Docket 98-058, an extension beyond March 1, 2000 was necessary. However, we rejected CMP's request for a permanent extension, and stated that we would reexamine the necessity of extending the divestiture requirement of the Hydro-Quebec assets upon the completion of the contract that resold the entitlement to the FEC.

In Docket No. 99-764, the Commission approved CMP's sale to Select Energy, Inc. of its entitlements to energy and capability credit under the Hydro-Quebec Firm Energy Contract. This sale was approved for the full remaining term of the FEC, the length of which was not clear at the time of the sale. As stated above, the Firm Energy Contract expired at the end of August 2001, as did the CMP-Select contract.

Although CMP no longer has contractual rights to any power entitlements over the Hydro-Quebec tie-line, it retains certain rights to the use of the tie line and interconnection facilities. These transmission rights apply to CMP's proportionate share of the interconnection transfer capability, approximately 7 percent. Pursuant to an August 3, 2001 vote, the NEPOOL Participants Committee decided to continue to allocate to supporters of the Interconnection facilities the capability credit. Although the August 3 Participants Committee vote has been appealed, since September 1, 2001, when the Firm Energy Contract and CMP's concurrent sale of entitlements to Select Energy expired, CMP has had title to this capability credit.

On August 15, 2001, CMP filed a letter with the Commission proposing to use this capability credit as an offset to CMP's current large standard offer class Installed Capability obligations through February 28, 2002. Because the extension of the requirement to divest its interest in the Hydro-Quebec Support Agreements was to expire with the termination of the FEC, CMP requested either a waiver or another extension of the divestiture requirement, so that CMP could retain the capability credit in serving as standard offer provider.

CMP seeks a waiver or extension of the divestiture requirement as to the HQ assets under two alternative theories. First, CMP requests that the Commission find that its ownership of the HQ assets is necessary for CMP to perform its obligations as a transmission and distribution utility in an efficient manner pursuant to Section 3204(1)(D). CMP serves as standard offer service provider for the medium and large standard offer classes because of its underlying role as the T&D utility. Under the current arrangement with the wholesale supplier serving the large non-residential standard offer load, CMP is responsible to provide the Installed Capability necessary to serve the class. CMP asserts that the most efficient means for it to satisfy its Installed Capability obligations will be through the use of the capability credit that arises from the Hydro-Quebec agreements.

Alternatively, CMP requests an extension until March 1, 2002 to divest its Hydro-Quebec-related generation assets. CMP points out that, under 35-A M.R.S.A. § 3204(3) and § 10 of Chapter 307 of the Commission's rules, the Commission may grant an extension to permit a T&D utility to divest a generation asset after the statutory deadline of March 1, 2000, if the Commission finds that the extension improves the sale value of the asset or would likely reduce the level of the utility's stranded cost.

CMP asserts that an extension is proper because the sale value of the Hydro-Quebec generation-related assets will likely be improved by waiting. There remains considerable uncertainty with respect to the ultimate method that capability credit from the support agreements will be assigned. The August 3 vote has been appealed by NEPOOL participants who prefer an alternative outcome in which both the cost of supporting the interconnection facility and the resulting capacity benefits are broadly socialized among all NEPOOL participants. Moreover, as CMP explains in its filing, the FERC has encouraged New England transmission owners to pursue including the Hydro-Quebec facilities in the RTO transmission tariff in the manner proposed by the participants who have appealed the August vote. In CMP's view, until these issues are more clearly resolved, it is impractical for CMP to sell its interests in the HQ facilities. Moreover, even if the August 3 vote is not successfully appealed, CMP states that it is not clear how the Participants Committee decision of August 3 will be implemented within the NEPOOL system. In the event that CMP makes sales of transmission services with the Hydro-Quebec line, CMP asserts that it could lose the capability credit to the extent that such sales result in a capacity contract between Hydro-Quebec and the transmission service customer. The exact interplay between transmission sales to a third party and capability credit has yet to be determined, according to CMP. Given all of these uncertainties, CMP believes it would be advisable to take a cautious attitude with respect to any long-term decision on how to handle Hydro-Quebec assets.

By letter of September 21, 2001, CMP stated that, since filing its request for waiver, the Company has become aware that it may not need all of the capability credit in order to meet its standard offer Installed Capability obligation, due to increased migration of customer accounts from standard offer into the competitive market. In order to make use of the full amount of the capability credit from the Hydro-Quebec Support Agreements, CMP further requests that the Commission authorize CMP to use

this excess capability credit to meet its obligation to Engage Energy to provide Installed Capability to replace certain Purchase Power Agreements that were bought out last year.

III. DECISION

We grant an extension to March 1, 2002 for CMP to divest its Hydro-Quebec generation-related assets. We agree with CMP both that the delay will likely improve the sale value of the assets and that CMP's retention of the capability credit likely will maximize the value of that credit and therefore maximize CMP's stranded cost mitigation. We therefore do not need to address the issue of whether a T&D utility's function as a standard offer provider constitutes an obligation of a T&D utility within 35-A M.R.S.A. § 3204(6).

As noted in CMP's original filing, there are accounting issues raised by this request. Those issues arise because, to the extent that standard offer customers receive the benefit of the capability credit, some value must be assessed to standard offer customers that will be transferred to offset the stranded costs associated with the Hydro-Quebec assets. We agree with CMP that these accounting issues need not hold up the extension request. The accounting issues will be addressed in the current stranded cost investigation, Docket 2001-232.[1]

Accordingly, we grant Central Maine Power Company an extension of the requirement to divest its Hydro-Quebec generation-related assets until March 1, 2002.

Dated at Augusta, Maine, this 22nd day of October, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

[1] The accounting issues are avoided to the extent the capability credit is fully assigned to replace PPA-buyout replacement obligations that would otherwise be considered stranded costs.

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 Appellate Procedure.

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.