STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 13, 2002

ORDER

GEORGE LEE
Appeal of Consumer Assistance Division
Decision #2000-8603 Regarding Bangor
Hydro-Electric Company

Docket No. 2000-1003

PUBLIC UTILITIES COMMISSION
Investigation of Duties Concerning
Interruption of Service

Docket No. 2001-597

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

On September 10, 2001, in response to an appeal by Mr. George Lee of a decision by our Consumer Assistance Division (CAD), we initiated this proceeding to investigate: what the duties of transmission and distribution (T&D) utilities were to inform their customers of service interruptions; if no obligation existed, what should the obligation be; what were the consequences of a failure to meet any existing obligations; and whether Bangor Hydro-Electric Company (BHE or Company) met its obligations to Mr. Lee regarding a particular interruption which affected Mr. Lee's service to his camp in Brownville, Maine.

Based on the information collected during this investigation, we find that T&D utilities have an obligation to inform their customers of involuntary service interruptions as part of their statutory obligation to provide safe, adequate and reasonable service. The notice that must be given in a particular situation is dependent on the facts of the particular case. Therefore, we conclude that the issue of whether a utility violated its duty in a situation can best be answered on a case-by-case basis. With regard to Mr. Lee's particular complaint against BHE, we find that in this instance BHE's conduct fell below the standard of adequate and reasonable service.

II. BACKGROUND

On December 11 and 12, 1999, a significant storm affected the Brownville, Maine area. As a result, BHE's poles and distribution lines were damaged and the service to Mr. Lee's cottage in Brownville was interrupted. On or about December 13, 1999, the Company repaired its equipment. The storm, however, had damaged Mr. Lee's customer-owned equipment which connected the Company's distribution lines to Mr. Lee's cottage. Therefore, service was not restored to Mr. Lee's cottage at that time.

Mr. Lee was not informed by the Company until December 28, 1999 that his service was interrupted. On January 5, 2000, the service was restored to Mr. Lee's cottage. During the time his cottage was without power, the pipes in Mr. Lee's cottage froze, causing approximately $2,500 in damage.

On August 1, 2000, Mr. Lee filed a complaint with our CAD based on BHE's failure to notify him of the service interruption and the damage to his camp that resulted from the loss of power. On December 4, 2000, the CAD issued its decision finding that BHE had not failed to meet any Commission-mandated obligation and had acted reasonably in denying Mr. Lee's claim for damages. On December 12, 2000, Mr. Lee filed an appeal of the CAD's decision with the Commission. On January 24, 2001, we issued an Order on Appeal which upheld the CAD's December 4, 2000 decision. Mr. Lee filed a Request for Reconsideration of this Order on February 13, 2001.

In his Request for Reconsideration, Mr. Lee noted that our Order on Appeal erroneously described the incident which led to the outage. In our Order, we stated that a tree knocked down the private line extending from BHE's pole to Mr. Lee's camp. According to Mr. Lee, the line to his cottage is underground and what actually occurred was that a tree fell on BHE's line which snapped off the top of the utility pole which held the connection to Mr. Lee's line. When BHE reattached its wire to the utility pole, the Company did not reconnect the line to Mr. Lee's line because Mr. Lee's equipment had been damaged. Mr. Lee went on to argue:

> As you mentioned Bangor Hydro is not responsible for situations beyond their control but in this instance where my continuous service had been interrupted and they were perfectly aware of it they should pursue in a conscious effort to contact me of the situation. There was an unsuccessful attempt made on December 17, 1999, which was four days after my camp had been left without power. On December 28, 1999, eleven days after the first attempt, a successful contact was made. Why do you feel that they have met their responsibility of informing me that my camp had no power for over two weeks?

On September 10, 2001, the Commission issued a Notice of Investigation in which the Commission concluded that, although Mr. Lee had not raised any new material facts by way of his Request for Reconsideration, it was appropriate to reopen this matter and to initiate an investigation to address the following questions:

A. What is the obligation of a T&D utility to inform its customers of service interruptions?

B. What should the obligation be?

C. What should the consequences of a T&D's failure to meet its obligation be?

D. Did BHE meet its obligations to Mr. Lee in this particular instance?

In our Notice, we stated that while question D above was specific to Mr. Lee's dispute with BHE, questions A through C were generic in nature and, therefore, we invited other T&D utilities to participate in this matter. In reopening the case, the Commission noted that since it did not have authority to award Mr. Lee the type of damages he apparently was seeking from the Company even if we found that BHE had failed to meet its obligation here, Mr. Lee might wish to pursue other avenues (e.g., the courts) while the Commission conducted this investigation.

Copies of the Notice of Investigation were sent to all Maine T&D utilities and to the parties in several recent major rate cases. Mr. Lee and BHE were made parties to this matter at the outset by way of the Notice of Investigation. Timely petitions to intervene were filed by the Office of Public Advocate (OPA), the Industrial Energy Consumer Group (IECG), Central Maine Power Company (CMP) and Maine Public Service Company (MPS).

An initial case conference was held on October 4, 2001. Pursuant to the schedule developed at the conference, an initial technical conference was held on November 7, 2001. During the course of the technical conference, the parties were asked a number of oral data requests. At the end of the conference, the Examiner asked the parties to address several key issues in the case. Memoranda responding to the Examiner's Request were filed by the OPA, the IECG, BHE, CMP and MPS.

A follow-up technical conference was held on January 5, 2002 to address any factual matters which needed further development and to discuss what additional process was necessary. All parties to this matter attended the conference, and agreed that a hearing was not necessary and that the case could be decided based on the record developed to date comprised of the responses to written and oral data requests, the transcript of the November 5, 2001 technical conference and the comments of the parties.

On March 7, 2002, counsel for BHE submitted a letter to the Commission arguing that since Mr. Lee, through his insurance company, had released the Company from all liability arising from the December, 1999 incident, the Commission should dismiss as moot the question of whether BHE met its obligation to Mr. Lee to inform him of the interruption of service to his camp in Brownville, Maine. The Company noted that the general issues in the case would not be affected by the dismissal of Mr. Lee's claims. By way of a Procedural Order dated March 11, 2002, the parties were provided with an opportunity to respond to BHE's motion. Responses in opposition to BHE's motion were filed by Mr. Lee and the IECG.

It was anticipated that the Commission would deliberate BHE's motion at its March 25, 2002 deliberative session and that the Examiner would issue his report following the Commission's decision on the motion. On March 21, 2002, however, Mr. Lee sent a letter to the Commission stating that he had not authorized his insurance company, State Farm Insurance, to settle with BHE and that it was his position that his insurance company did not have the authority to release BHE from claims he may make against the Company. Based on this new information, it was unclear whether a settlement in fact had been reached between Mr. Lee and BHE. Therefore, the Commission decided not to deliberate BHE's motion to dismiss on March 25, 2002. To clarify the status of Mr. Lee's claim against BHE, a case conference was held April 2, 2002, at which Mr. Lee stated that he had filed a complaint with the Bureau of Insurance challenging his insurance company's authority to settle on his behalf. This complaint was still pending and Mr. Lee was unsure as to when the Bureau of Insurance would rule on his complaint.

On April 30, 2002, the Examiner notified the parties that, in order to have the benefit of the Bureau of Insurance's decision on Mr. Lee's complaint, the Commissioners decided to defer ruling on BHE's motion and also requested that the Examiner not issue his report. The Examiner requested that either Mr. Lee or BHE inform the Commission of any developments at the Bureau of Insurance as they occur.

On May 17, 2002, counsel for BHE filed a letter with the Commission stating that he had tried to get information on the case but was refused due to confidentiality restrictions. On June 12, 2002, the OPA informed the Commission that the Bureau of Insurance had ruled on Mr. Lee's complaint and attached a copy of the letter provided to Mr. Lee from the Bureau of Insurance. A copy of this letter, along with a letter from Mr. Lee requesting that the Commission go forward with this matter, was sent to the Commission on July 19, 2002. The letter from the Bureau of Insurance indicated that it did not appear that State Farm Insurance had the authority to settle claims on Mr. Lee's behalf. On July 24, 2002, BHE filed a letter with the Commission renewing its motion to treat as moot the issue of whether BHE met its obligations to Mr. Lee. The OPA subsequently filed a response in opposition to BHE's renewed motion to dismiss on July 26, 2002.

Based on the stipulation of the parties, the factual record in this case shall consist of all data responses, the transcript of the November 5, 2001 technical conference, as well as the comments. Prior to addressing the substantive issues set forth in the Commission's September 10, 2001 Notice of Investigation, however, we will address the issues raised by BHE's March 7, 2002 Motion to Dismiss.

III. BHE'S MOTION TO DISMISS

A. Positions of the Parties

In its March 7th Motion to Dismiss, BHE states that on February 26, 2002, Mr. Lee through his insurance company, State Farm Insurance, formally released BHE from liability of any kind to which it might otherwise be subject because of the December 1999 outage. Given this development, BHE argues that any further consideration of Mr. Lee's complaint would have no practical effect and that any continued expenditure of time and resources on Mr. Lee's complaint would serve no useful end. In addition, BHE maintains that through its settlement, the cause of the complaint with the Commission with regards to Mr. Lee had, in essence, been removed. Therefore, BHE argues that this particular aspect of the case is moot and should be dismissed. BHE does not contend that its settlement with State Farm has any affect on the status of the generic issues identified by the Commission in its Notice of Investigation.

In response to BHE's motion, Mr. Lee argues that State Farm's settlement with BHE was irrelevant to his Public Utilities Commission complaint against BHE. Mr. Lee states that he pursued this matter to get an answer to the question of what BHE's duty was to inform him of the outage at his camp. He did not pursue this matter at the Commission for damages because it was clear, based on the Commission's prior orders, that the Commission did not have the authority to make such an award. Even if the settlement might be relevant, Mr. Lee argues that the May 24, 2002 letter from the Bureau of Insurance establishes that State Farm did not have the authority to settle on his behalf.

The OPA and the IECG support Mr. Lee's position. Both argue that the Commission always has jurisdiction to decide of whether a public utility had acted in conformity with its obligation to provide safe, adequate and reasonable service and that a settlement in a tort action, especially made by an insurance company which did not have any interest in the outcome of the question of whether a utility was meeting its statutory obligations, should not render moot a ratepayer's complaint with the Commission.

BHE responds that it entered into the comprehensive settlement with Mr. Lee's insurance company in the belief that it was settling all of Mr. Lee's claims related to the December 1999 incident. If the Commission were to exempt itself from such settlement agreements, utilities will be discouraged from settling since they will still have to litigate the issues in a PUC proceeding. Because Mr. Lee has been fully compensated for the damages to his camp, has had his deductible refunded in full and has been assured by his insurance company that his insurance rating will be unaffected by this claim, BHE argues that Mr. Lee has been made fully whole. Therefore, there is no case or controversy before the Commission. BHE states that it made the settlement in good faith and at the Public Advocate's urging. The invalidity of the release does not mean that BHE was imprudent.

Finally, Mr. Lee argues that his insurance policy clearly states that an assignment of his right to settle the case must come from him in writing. Since such a written assignment had not been made, the Bureau of Insurance correctly concluded that State Farm Insurance had no right to sign a release of information on his behalf.

B. Decision

In its May 24, 2002 letter to Mr. Lee, the Bureau of Insurance stated:

> You specifically inquired as to whether State Farm acted appropriately when executing a release from liability on your behalf to Bangor Hydro-Electric relating to an accident on or about December 13, 1999. Based on the information you have provided me, while State Farm apparently has the right to seek subrogation to the extent a covered loss is paid by it, it does not appear that State Farm would have the authority to sign a release from liability on your behalf without your affirmatively granting some form of an assignment of rights.

Mr. Lee has stated, and BHE does not contradict, that he has never provided State Farm with an affirmative assignment of rights as referenced in the Bureau of Insurance letter. Therefore, we find that State Farm did not have the authority to settle all of Mr. Lee's pending claims at the Commission on behalf of Mr. Lee. While BHE's payment to State Farm and any State Farm payment to Mr. Lee might be relevant in a claim for damages in a civil suit, as we have noted previously, the issue of damages is not before this Commission. As Mr. Lee stated in his response to BHE's motion, the issue in this case is whether BHE had met its obligations to Mr. Lee under Title 35-A following the interruption of service to Mr. Lee's camp. We thus conclude that the State Farm/BHE settlement does not act as bar to any matter before the Commission in this investigation. BHE's motion to dismiss is therefore denied.

BHE argues that if its motion is denied, parties in the future will be reluctant to enter into settlement agreements. Our decision here should not be construed in any way as a decision that this Commission will not honor settlements of parties or their authorized agents of claims before this Commission. In this particular instance, however, we do not have such a settlement before us.

IV. ISSUES PRESENTED

A. Positions of the Parties

Mr. Lee and the OPA argue that T&D utilities currently have an affirmative obligation to inform customers of outages when the utility should reasonably anticipate that a customer may not be aware of the outage and when further damage would likely result. This obligation, according to Mr. Lee and the OPA, arises from the utility's duty to engage in reasonable practices under 35-A M.R.S.A. § 301 and from the utility's duty to "properly warn and protect its customers and the public from harm because of its plant or service" under Chapter 320, § II.E(2.05) of the Commission's Rules. The OPA

concludes that the utilities' obligation to inform its customers of interruptions should take the form of dialing each phone number on record for the customer and leaving a message when possible. If the customer cannot be reached by phone, a postcard or letter should be sent the same day that the utility is on notice of the outage.

The IECG also argues that utilities currently have an obligation to inform ratepayers of outages under section 301 of Title 35-A and under MPUC Rules Ch. 320 §II.E(2.05). In addition, the IECG asserts that under MPUC Rules Ch. 320 §II.F(2.06)(a), a utility must provide "such information as is reasonable in order that customers may secure safe, adequate and proper service delivery." What the term "reasonable" means will depend on the particular circumstances of the case, and thus will be defined by case law. The IECG also argues, however, that the standards for reasonable notice or reasonable effort to notify a customer of an outage situation should be developed through a well-defined administrative rulemaking process. As part of the rulemaking process, the Commission should develop power quality standards, as well as those for the notification of outages. To demonstrate the importance of this issue to its members, the IECG points to National Semiconductor Corporation's facility in South Portland which consumes 10-14 mWh of power per year and which, due to the nature of its production process, could lose up to $12,000,000 in lost production as a result of even a short power outage.

BHE counters the arguments of Mr. Lee, the OPA and the IECG by arguing that Chapter 320 §II.E(2.05) does not require a T&D utility to provide notice of outages. The focus of that section is on physical harm which could result from downed lines or other unsafe conditions involving T&D property, and the notice required by the section relates to such physical harm. BHE seems to acknowledge that Chapter 810 § 7(C) of the Commission's Rules requires utilities to notify customers of the cause and expected duration of an interruption, whether planned or unplanned. According to BHE, the timing of such notice is "as soon as possible" in the context of unplanned outages such as the type Mr. Lee experienced. BHE argues that there is no additional duty of ordinary care to provide individual notice to customers by section 301. BHE also notes that the Commission has approved Terms and Conditions for BHE which limit tort claims to circumstances involving reckless or intentional behavior by the utility.

MPS also argues that the duty to warn and protect set forth in Chapter 320 §II.E(2.05) is restricted to the risk of serious physical injury or death. For outages entirely within MPS's control, such as those required to make needed repairs, the Company is required by its Terms and Conditions to give "such reasonable notice as is practicable" or as may be required by the Commission. For matters not under MPS's control, interruptions may be made without notice. Because the Commission has not promulgated a rule governing notice of outages, MPS believes its duties are limited to those set forth in its Terms and Conditions.

MPS states that as circumstances allow, it does as a matter of courtesy attempt to advise customers of involuntary interruptions, however, this courtesy is not required and is not an obligation of the T&D utility. MPS acknowledges that the

Commission has the authority to interpret the provisions of section 301 to require certain notice of outages either through a rulemaking, or in the absence of any specific rule or provision in a utility's Terms and Conditions, by determining that a specific utility act or omission is inconsistent with its general duty to provide safe, reasonable and adequate service. The Commission, however, does not have the authority under section 301 to find unreasonable utility conduct that conforms to Terms and Conditions approved by the Commission.

B. Decision

1. What is the Current Duty of a T&D Utility to Inform Customers of Outages?

As discussed above, Mr. Lee and the OPA's primary argument is that a utility is required to provide notice of an outage to its customers, pursuant to Chapter 320 II.E(2.05), when the utility should reasonably anticipate that the customer is unaware of an outage which would likely result in further damage. Subsection (E)(2.05) of Chapter 320, entitled "Customer Protection," provides that:

> Each utility shall make every reasonable effort to properly warn and protect its customers, and the public, from harm because of its plant or service.

We find that the language of this subsection is clear and describes an obligation to warn and protect customers from harm which might occur as a *result* of providing electric service and not harm to property which might result from a lack of service. We therefore reject the argument of Mr. Lee and the OPA that Chapter 320 §II.E(2.05) imposes a duty to inform customers of interruptions in service.

The IECG argues that a utility also has an obligation to provide notice of outages pursuant to Chapter 320 §II.F(2.06). Section II.F(2.06) of Chapter 320 is entitled "Customer Relations" and requires each utility to keep on file, in its business offices and open to the public for inspection, its rate schedules, rules and regulations. Section II. F(2.06)(4) of Chapter 320 further provides that each utility, *upon request,* shall give its customers such information as is reasonable so that customers may secure safe, adequate and proper service delivery. Given the provision's use of the term "upon request," looking at the title of the subsection and reading the provision in the context of the remainder of the rule, we reject the IECG's argument that this provision establishes an obligation on utilities to inform customers of outages.

While it was not cited by either Mr. Lee, the IECG or the OPA, BHE recognizes that Chapter 810 of our rules requires a utility to provide notice to its customers of "interruptions." Specifically, Chapter 810 §7(C) provides that when a utility schedules a service interruption for maintenance or repairs, it must give affected customers or occupants reasonable notice of the cause and expected duration of the interruption. When service is interrupted without notice for more than (3) hours, the

utility must make reasonable efforts to notify affected customers and occupants of the cause and expected duration of the interruption "as soon as possible." MPS argues that subsection 7(C) of Chapter 810 applies only to situations where service is interrupted voluntarily by the utility. We agree with MPS's argument on this point.

Chapter 810 is entitled "Disconnection and Deposit Regulations for Residential Utility Service." Section 7 of Chapter 810 is entitled "When Disconnection Procedures Can Begin." Subsection A of section 7 sets out the circumstances in which a utility may disconnect service without a customer's consent. Subsection B of section 7 describes when service may be disconnected upon request of the customer or due to abandonment of the dwelling. Subsection C goes on to provide that:

> "A utility may temporarily interrupt service when it is necessary to repair or maintain the utility delivery system (planned or unplanned); to eliminate an imminent threat to life, health, safety or substantial property damage; or for reasons of local, state or national emergency."

Again, looking at the title of the rule, the language of the particular subsection, and the context of the subsection in the rule, we conclude that the notice contemplated in Chapter 810 §7(C) was intended to cover utility-initiated interruptions and not involuntary outages caused by weather or other force majeure events.

Although we find our rules are silent on the notice to be provided customers in the case of a weather-related outage, this finding does not end our inquiry as to whether an obligation exists. Under the provisions of 35 M.R.S.A. 301, utilities are required to provide safe, adequate and reasonable service. As we noted in *Pollis v. New England Telephone Company,* U.3285, 25 PUR 4th 529, 536 (June 12, 1978), the absence of a specific service standard would not preclude the Commission from reviewing whether a particular service practice of the utility was adequate.

The requirement of reasonable and adequate service encompasses more than the delivery of electric energy, but also incorporates a requirement that the utility as a monopoly service provider adequately and reasonably communicate with its customers. We find that this overall statutory duty includes a requirement that a utility provide its customers with reasonable notice of outages. The nature and extent of the duty will depend on individual circumstances.[1] We believe that the flexible notice requirements for voluntary interruptions set forth in Chapter 810 §7(C) are instructive as to what the statutory duty of the utility is for involuntary interruptions. Chapter 810 §7(C) provides that the required notice can be given by the method best suited to the nature of

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[1]Clearly, a utility can notify its customers only of those outages of which it is aware. It has no obligation to search for outages it has, as here, no reason to believe exist. Nevertheless, once a utility is aware of an outage, it must act diligently to eliminate the outage and, where the customer's action is necessary to restore service, to make reasonable efforts to contact the customer.

the interruption, the size of the area affected, the time of year and the resources available to the utility and that when it is impossible to restore service and notify customers at the same time, a utility may give priority to restoration of service.

Indeed, it appears that BHE's general practice is consistent with these requirements. BHE's customer notification procedures for unplanned outages (generally storm related) are outlined in BHE's Emergency Operation Plan ("the Plan"). In its December 21, 2001 memorandum BHE states:

> The process of notification changes depending upon the magnitude of the storm. When the Plan is activated, BHE's On-Call Outage Coordinator secures the required number of employees to handle the anticipated customer calls. In addition, the Plan provides that the Division Manager will contact local officials, issue informative statements to the media, make every effort to contact customers on life support equipment, and communicate with the Storm Command Center.

BHE believes that its policy, which leverages the media and local officials to get the word out quickly, is sufficient and has served its customers well. As a general rule, we agree with BHE that relying on the media and local officials to communicate with customers on the status of weather-related outages will be sufficient. In certain circumstances, however, such notice may not be appropriate or sufficient. The particular notice required will depend on the circumstances of the case. The test is whether, given the facts and circumstances of the case, the utility acted reasonably. In assessing the reasonableness of the utilities conduct, we are likely to insist that the utility behave in a manner no less customer-friendly than what a reasonable customer would expect of a similarly situated business in a competitive market.

At this point, we do not believe that a rulemaking to clarify the obligation discussed here is necessary or warranted. We do recommend, however, that our Staff, in the not too distant future, study the rulemaking issue further and report back to the Commission with their recommendations.

2. <u>What Should the Obligation Be?</u>
See Above.

3. <u>What are the Consequences of a Failure to Meet the Obligation?</u>

The Commission has a variety of tools available to it in instances in which a utility is not meeting its obligation to provide adequate service. The most obvious remedy is for the Commission to order the Company to modify the practice under 35-A M.R.S.A. § 1306. To the extent that a utility, or an employee of the utility, refuses to comply with such an order, the utility or the employer found in contempt is subject to punishment in the same manner as in the case of a court order. In addition,

the Commission may consider such issues during the ratesetting process. If a utility is under an alternative rate plan, to the extent that a utility's failure to provide adequate service results in customer complaints, such complaints might trigger the ARP's Service Quality Index penalty mechanism.

As we have noted on several occasions in this proceeding, the Commission does not have jurisdiction to award damages to a customer for losses which may have resulted from a utility's failure to provide adequate service. In addition, while a utility may attempt to limit its liability to customers through a particular provision in its tariff, the tariff provision would not necessarily direct any particular outcome in a Commission investigation of whether the utility was providing safe, reasonable or adequate service.

4. Did BHE Meet its Obligations to Mr. Lee in this Particular Instance?

a. Findings of Fact

Mr. Lee is a customer of BHE at his camp in Brownville, Maine. Mr. Lee's camp is located on a camp road which is three miles from the main highway and which forks shortly before Mr. Lee's residence. Mr. Lee's residence is on the road which forks right and the main distribution line follows the road to the left. A line owned by BHE runs though a wooded area separating the two roads to a pole located on Mr. Lee's property and owned by Mr. Lee. The service connection then runs down a pole owned by Mr. Lee and goes underground where it connects to Mr. Lee's camp and garage.

Beginning on December 11, 1999 and running through December 12, 1999, a significant storm struck the Northern Division area of BHE's service territory which includes Brownville. The storm caused fairly widespread outages in the area affecting between 5,000 and 6,000 customers. During that time period, the primary focus of the workers assigned to the Northern Division was the restoration of service. By December 13, 1999, service to most of the customers in the area had been restored. On that same date, a BHE employee reading meters in the area of Mr. Lee's camp, noticed that BHE's line to Mr. Lee's private pole was down; that the top of Mr. Lee's pole had been snapped off; and that the interconnection between Mr. Lee's line and BHE's line had been damaged. The meter reader contacted service restoration personnel who attached the BHE line to the top of Mr. Lee's remaining pole. Due to the damage to Mr. Lee's equipment, the BHE line crew did not energize the line.

The task of calling Mr. Lee was assigned to the Northern Division office. In its initial filings with the Commission, the Company maintained that it had attempted to call Mr. Lee on December 12th, but that it had misdialed the number. The Company now acknowledges that this was likely a misstatement since it did not know of the damage to Mr. Lee's line until December 13th and that in fact it had no reason to call Mr. Lee on December 12th. The Company's call tracking system (TRASKE) indicates that attempts to call Mr. Lee at his home in Winthrop, Maine were

made on December 17, 1999, December 28, 1999 and January 4, 2000. The Company's records from Verizon indicate that the calls on December 28, 1999 and January 4, 2000 were completed. The Company could not state with certainty the results of the December 17th call.

Shortly after receiving the call from BHE on December 28th, Mr. Lee made arrangements to repair the weather-head and the line running down the pole so that service could be restored. Service was restored to Mr. Lee's camp on January 5, 2000. As a result of Mr. Lee's cottage being without power during this period, the pipes in Mr. Lee's cottage froze and caused approximately $2,500 worth of damage. It is uncertain when this damage occurred.

b. Conclusions of Law

Because the statutory standard of reasonable and adequate service cannot be defined with precision, the Commission has the responsibility to consider the facts and circumstances of the particular case and to determine whether the service provided is reasonable and adequate. *Hogan v. Hampden Telephone Company,* F.C. 2438, 36 PUR 4th 480,485 (May 16, 1998). As noted previously, we have not, as of this date, promulgated any specific standard governing the notice to be provided customers in the case of a weather-related outage. The absence of a particular rule or service standard, however, does not preclude the Commission from reviewing the level of service provided by a utility to ensure its adequacy. *Pollis, supra,* at 536; *Securities and Exchange Commission v. Chenery Corporation et. al,* 332 U.S. 194, 67 S. Ct. 1575,1579 (June 23, 1947).

The Commission has employed the following three standards in determining whether service practices were unreasonable or inadequate:

1) whether the company's practice substantially departs from the regular and accepted practice of the company in question as well as that of other utilities in general;

2) whether benefits to the company of the practice are outweighed by the adverse impact of the practice on its ratepayers; and

3) whether the company's practice results in inadequacy of service when considering such factors as the number of customers affected, the duration of the impact, the reason for the company's action and the departure from historic trends.

Hogan v Hampden, Supra. 36 PUR 4th at 485. Evidence warranting a finding adverse to the utility on any one or more of these standards is sufficient to support a finding that the practice is unreasonable.

In its memorandum to the Commission, BHE argues, and we agree, that the facts of this case are unique. In this particular instance a customer's power was interrupted at his secondary residence. Moreover, unlike most situations, where service can be restored through the repair of utility property, service could not be restored when the company's equipment was repaired because Mr. Lee's equipment was also damaged.

As noted above, BHE's policy of leveraging the media and local officials to get the word to as many people as possible will generally be sufficient. However, the notice required in a particular instance will depend on the circumstances. In this instance, the utility was able to restore service to the Brownville area shortly after the weather-related event. The utility, however, could not restore service to Mr. Lee's cottage due to the damage done to Mr. Lee's equipment. The evidence indicates that the Company was aware, or could have easily concluded from the circumstances, that Mr. Lee was not occupying the cottage at such time. Therefore, BHE called Mr. Lee at his home in Winthrop, Maine on December 17, 2001 shortly after the restoration effort was concluded. We find that the Company's actions up until December 17th were reasonable.

After its unsuccessful attempt to call Mr. Lee on December 17th, BHE did not attempt to call Mr. Lee again until December 28th. At the November 2001 technical conference, Joe Giard, BHE's director of customer service at the time, could not explain the reason for the delay. We find that the Company with very minimal effort or expense could have taken additional steps to notify Mr. Lee of the inability to restore service and that such action could have provided Mr. Lee with a considerable benefit. We, therefore, find that BHE's actions in this particular instance did not meet standard two or standard three of the *Hogan* test and, therefore, resulted in unreasonable or inadequate service.

In reaching this conclusion, we note that it was the same weather event that caused the damage to the utility's equipment serving the customer and to the equipment that belonged to the customer. As a result of this weather event, BHE had to take steps to repair its equipment in order to provide safe and adequate service. In doing so, it was obvious to the Company that service could not be restored because of the related damage to the customer's equipment. Given the seasonal nature of the property served here, and the time of year that the event occurred, there certainly was a reasonable likelihood (obvious to the Company) that Mr. Lee was not occupying the camp at the time, and thus was not aware of the need to repair his property. Given these facts, it would be unreasonable for the Company not to let the customer know that more needed to be done on his end. While BHE did attempt to contact Mr. Lee on December 17 (thus acting consistently with its obligation), based on the facts presented here, the delay between the Company's unsuccessful December 17th call and the time of the second call on December 28th was not reasonable.

Through our decision here we make no finding as to whether BHE's post December 17th conduct resulted in the damage to Mr. Lee's cottage or that its conduct would warrant a finding of negligence under applicable tort law.[2] Our decision here should also not be interpreted as establishing a requirement that utilities monitor the condition of customer owned equipment or monitor whether service is being provided to a particular customer location. We also do not decide that a utility must always give notification when it becomes aware of damage to a customer's equipment. In this situation, the utility was not only aware of the damage, but had to make repairs to related equipment on the utility's side of the pole and those repairs were insufficient to allow for the restoration of power without similar action by the customer. Since there was reason to believe that the customer would not be aware of this and might suffer harm from the lack of power, we find the delay in giving notification unreasonable in this case. Whether we would reach the same result if any of these factors were absent is not something we need decide today.

Dated at Augusta, Maine, this 13th day of December, 2002.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

This document has been designated for publication.

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[2] In fact, while we do not regulate the behavior of ratepayers, it appears that Mr. Lee is not without responsibility here. Unexpected power outages, if rare, do happen in Maine. Property owners have an obligation to check on the security of their property and, if they expect to be absent from the property for an extended period, to consider making appropriate arrangements to protect their property for possible power-supply interruptions.

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 **21 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.