STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-162

April 4, 2003

MAINE PUBLIC UTILITIES COMMISSION
Procedures for Conservation Program Planning

ORDER ON CONSERVATION PROGRAM FUNDING

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We decide that the Commission will continue to assess Central Maine Power Company (CMP) for conservation programs at the statutory maximum rate of 1.5 mils/kWh. The other transmission and distribution (T&D) utilities have been assessed for conservation programs at the statutory minimum rate, or 0.5% of total revenue. The statutory minimum rate produces a per kWh rate that varies from about .02 to .73 mils per kWh. While we find that, in general, all T&D utilities should be assessed at the statutory maximum, for rate stability reasons we will gradually increase the assessments for the T&D utilities other than CMP over a number of years. The Commission will assess the other T&D utilities beginning July 1, 2003, for the next 12 months, at 0.6 mils/kWh or the current assessment rate, whichever is higher. In each subsequent year, we will increase the assessment by 0.2 mils/year until the statutory maximum is reached.

We also decide to open investigations into two matters. First, we will open a proceeding to permit an additional opportunity for the consumer-owned T&D utilities (COUs) to submit facts demonstrating that the specific characteristics of their service territories justify an assessment at less than the statutory maximum. Second, we will investigate whether some CMP customer classes and special contract customers do not pay for conservation assessments in their rates, and if not, whether the Commission should design rates so that all customers pay for conservation costs. If the Commission decides that it cannot or should not impose such costs on particular categories of customers, we will also investigate whether such customers should be permitted to participate in conservation programs.

II. BACKGROUND

Section 4 of P.L. 2002, ch. 624 (the Conservation Act or the Act) (codified at 35-A M.R.S.A. § 3211-A), directs the Commission to develop and implement energy conservation programs. Subsection 4 of § 3211-A provides that:

> 4. Funding Level. The Commission shall assess transmission and distribution utilities to collect funds for conservation programs and administrative costs in accordance with this subsection. The amount of all assessments by the Commission under this subsection plus expenditures

of a transmission and distribution utility associated with prior conservation efforts must result in total conservation expenditures by each transmission and distribution utility that:

A. Are based on the relevant characteristics of the transmission and distribution utility's service territory, including the needs of customers;
B. Do not exceed 0.15 cents per kilowatt-hour;
C. Are no less than 0.5% of the total transmission and distribution revenues of the transmission and distribution utility; and
D. Are proportionally equivalent to the total conservation expenditures of other transmission and distribution utilities, unless the Commission finds that a different amount is justified; however, any increase in an assessment on a transmission and distribution utility by the Commission must be based on factors other than the achievement of proportional equivalency.

On July 23, 2002, the Commission issued an Order Establishing Procedure and Schedule for Conservation Programs Implemented Pursuant to P.L. 2002, ch 624. In that Order, the Commission established the process to develop the program plan and to set the funding level. As part of that process, the Commission requested the Public Advocate and any other interested person wishing to do so, to file studies on the economic potential for energy efficiency in Maine. The Public Advocate filed two studies:

- "The Technical Potential for Electric Energy Conservation in Maine" by Exeter Associates, Inc. ("Exeter Study")
- "The Achievable Potential for Electric Efficiency Savings in Maine" by Optimal Energy, Inc. and Vermont Energy Investment Corp. ("Optimal Study")

Interested persons were provided the opportunity to perform discovery related to these two studies, through written and oral data requests and two technical conferences. In a Procedural Order issued October 22, 2002, the Presiding Officer directed that formal comments in response to the two studies be filed by November 18, 2002. In addition, the Presiding Officer also directed that any person wishing to file comments on the issue of the proper funding level for the Commission's ongoing[1] electric energy efficiency program plan also do so by that date.

Comments on the proper funding level were filed by Central Maine Power Company (CMP), Bangor Hydro-Electric Company (BHE), Maine Public Service Company (MPS), Madison Electric Works (MEW), Madison Paper Industries (MPI), and

[1] The term "ongoing" program is meant to distinguish programs implemented pursuant to Section 3211-A(2) from interim programs implemented pursuant to Section 7 of the Act. The Commission devised and funded an interim conservation program plan in Docket No. 2002-161.

the Office of the Public Advocate (OPA) on behalf of the Maine Energy Efficiency Coalition (MECC). CMP, BHE and MPS also filed comments on the two studies addressing conservation potential.

On February 11, 2003, the Commission's Energy Efficiency Staff (Staff) filed a Report on the Potential for Energy Efficiency in Maine and Recommendations for Conservation Program Funding. In the Report, Staff compared the technical and achievable potential as estimated by the OPA consultants with the OPA's technical and achievable potential adjusted to reflect CMP's criticisms of and different assumptions from the OPA studies. The Staff concluded that, although CMP's analysis would result in a lower estimate of technical and achievable efficiency potential, even the CMP-adjusted estimate was many times greater than the savings that could be achieved if programs were funded at the statutory maximum level. Accordingly, the Staff concluded there was no need to decide between the OPA's or CMP's assumptions as to efficiency potential.

The Staff noted some variations among T&D utilities in the energy efficiency potential in specific end uses or sectors. The Exeter and Optimal analyses identified some differences primarily due to different load growth rates or different saturations in air conditioning. The Staff found that overall, however, each utility's energy efficiency potential as a proportion of overall State potential reasonably matches the utility's share of kWh sales levels. Despite the variations, the Staff concluded that all utility service territories across Maine possessed substantial potential for savings.

As the efficiency potential in the State was sufficient to justify assessment levels at the statutory maximum, the Staff recommended that assessment levels be set at the statutory maximum. The Staff recommended, however, that a multi-year approach be used to attain the statutory maximum for utilities that are currently assessed at a lower level. Because CMP is already at the maximum funding level, a phase-in is not needed for CMP. And because CMP represents such a large percentage of the electricity consumption in the State, the multi-year approach would still provide most of the benefits of a maximum funding approach, while achieving a degree of rate stability for utilities at the minimum level. Specifically, the Staff recommended that the funding level for the T&D utilities other than CMP be set at the higher of 0.6 mils/kWh or the current amount in rates and be increased by 0.2 to 0.3 mils/kWh per year until all T&D utilities are at the statutory maximum.

Comments in response to the Staff Report and Recommendations were filed by Houlton Water Company (Houlton), MPS, MPI, BHE, Eastern Maine Electric Cooperative (EMEC) and CMP.

CMP disagrees with the Staff recommendation to set the funding level for all utilities at 1.5 mils/kWh. CMP states that 1.0 mil/kWh is proper. According to CMP, the OPA studies are imprecise and unreliable. Moreover, the studies fail to recognize the considerable conservation efforts made by CMP prior to the Electric Restructuring. The prudent approach, in CMP's view, is to start out assessing at less than the maximum

amount, and then work up to the maximum when the Commission finds it in the public interest to spend more on programs. CMP also argues that the statutory requirement of equivalent funding levels for all T&D utilities, coupled with a desire for phasing in the increased funding levels for other T&D utilities, makes a funding level of 1.0 mil "most appropriate."

BHE also advocates a go-slow approach for the beginning of the ongoing plan. BHE asserts that the OPA studies demonstrate that the returns available for conservation programs are very low. This is especially the case for BHE, because its benefit/cost ratio, while greater than one, is still lower than the ratio for other T&D utilities. BHE recommends maintaining its assessment at the minimum level. MPS also asks for the status quo minimum level, although it states that a higher assessment would be considered if MPS customers get a proportionate benefit.

EMEC and Houlton also seek continuation of the minimum assessment, because of low or even negative load growth in their service territories and the magnitude of rate increases if the assessment is increased. EMEC also requests that if its assessment is increased, one of its customers, the Domtar paper mill in Woodland, be exempted from the increase. EMEC states that Domtar already has installed conservation measures and therefore will not benefit from any programs. Moreover, EMEC fears that any rate increase may result in Domtar's closing the facility in Woodland.

MPI strongly objects to the Staff Report. MPI states that the Staff misconstrued its and MEW's prior comments, leading Staff to fail to comply with the Act. The Staff Report states that MEW and MPI seek to exclude the revenue or kWhs of the Madison Paper facility from MEW's funding assessment. MPI asserts that Staff is mistaken, and that MPI did not ask to be excluded from assessments. Rather, MPI sought to limit MEW's assessment to the statutory floor. By misconstruing MPI's request, MPI states that Staff failed to consider the facts about the MEW service territory, such as the extensive conservation measures already installed at Madison Paper, and the fact that MPI represents 95% of the kWhs sold by MEW, which facts justify the lower assessment. The Act requires the Commission to consider the relevant characteristics of the T&D service territory, and MPI asserts that the Staff failed to consider whether these special characteristics of MPI and MEW warrant the minimum assessment. When the Commission does properly consider MEW's circumstances, MPI argues that the Commission will conclude that MEW should continue to be assessed at the statutory floor.

III. DECISION

The Conservation Act directs the Commission to implement cost effective conservation programs. 35-A M.R.S.A. § 3211-A(2). Our programs are paid for by funds collected from the T&D utilities in the State. 35-A M.R.S.A. § 3211-A(4). The Act establishes minimum (0.5% of T&D revenue) and maximum (1.5 mils.kWh) levels, but provides only limited guidance on how the Commission should decide on a specific assessment within the authorized range. We must equalize the level of funding among

T&D utilities to achieve the so-called "proportional equivalence," unless we justify different treatment. 35-A M.R.S.A. § 3211-A(4)(D). Our obligation to equalize is further qualified by the admonition that we cannot use equalizing contribution levels as the sole reason to increase any one utility's funding level. *Id.* In addition, we are to choose a funding level that is based on the relevant characteristics of the T&D service territory, including the needs of customers. 35-A M.R.S.A. § 3211-A(4)(A).

We agree with Staff's conclusion that overall, the potential for energy efficiency is relatively proportional across T&D service territories in Maine. The MECC and CMP generally agreed with this conclusion. BHE, MPS, MPI, Houlton, and EMEC object to this conclusion. We will discuss the MEW and EMEC potential and achievable conservation separately, as both claim their service territory is different because of a dominant, but already efficient, large customer.

BHE, MPS, and Houlton argue that the potential for energy efficiency is lower in their respective service territories because load is growing at a slower rate than the state average, or not at all. We disagree. While growth rates can impact the potential for energy efficiency for new construction programs, considerable potential will still exist for energy savings at existing homes and businesses. Moreover, improving energy efficiency in the slower-growth areas of the state should help improve their economic vitality.

In general, then, we conclude that there are not sufficient differences in electric energy efficiency potential among the T&D utility service territories to guide us in choosing between the minimum and maximum funding. The Staff reasoned that, as the achievable potential energy savings are several times that which can be achieved at the maximum funding level, considerable energy savings will be foregone by any funding decision at less than the maximum level. Therefore, the Staff recommended funding at the statutory maximum (with a suggested phase-in for the T&D utilities other than CMP for rate stability reasons).

Setting aside for the moment consideration of a phase-in, we accept the Staff's recommendation. Without further statutory guidance, we begin with the premise that the Legislature authorized the Commission to implement cost-effective conservation programs because such programs will benefit the State as a whole. A logical corollary of such an interpretation is that, as a general matter, more conservation is better than less conservation, provided it is cost effective. We believe this statutory interpretation is implicit in Staff's recommendation that funding at 1 mil/kWh or the statutory minimum foregoes too much energy efficiency. To be consistent with what we see as the Legislature's intent, we think that as long as achievable cost effective energy efficiency appears to be greater than the amount achievable at the maximum funding, the Commission should fund at the maximum level, absent a persuasive showing that the relevant characteristics of a utility's service territory warrant a lower assessment.

CMP argues that funding should not be set at the maximum because the OPA studies are not reliable enough to demonstrate that the achievable cost effective

conservation is greater than the efficiency that will be achieved at the maximum funding level. There may be merit in some of CMP's criticisms of the OPA studies. In addition, because the studies require assumptions about the future, they do not carry scientific precision. However, we reject CMP's argument because the studies indicate a maximum achievable conservation potential that is so far above the level we can fund at the assessment ceiling that we are left with huge room for error.[2] We agree with Staff that the OPA's studies are sufficiently reliable to withstand CMP's criticisms and provide reasonable assurance that achievable conservation is greater than the conservation that can be achieved at maximum funding.

In addition, the possibility that the studies may overstate the savings potential does not pose a significant risk. In this Order, we decide only how much to assess the T&D utilities. Before any money is expended, we must decide that each conservation program is cost effective and satisfies the other statutory criteria. If, as we gain more experience with programs, we find that we cannot achieve sufficient cost effective conservation to justify the amount being assessed, a surplus in the conservation fund will develop, and we can lower future assessments. Thus, we rely on the studies only to provide a reasonable starting point for conservation funding. Today's decision does not lock us into spending an amount that cannot be adjusted in the future.

In order to ensure rate stability, the increase from the minimum assessment to the maximum assessment should be gradual. Therefore, we decide to phase in the increase to 1.5 mils/kWh for those utilities currently assessed at the minimum level (all but CMP). We find that a phase-in of 0.2 mils/kWh per year is reasonable, as is the starting point for this year (effective July 1, 2003) of 0.6 mils/kWh, or the current assessment level, whichever is higher.

We mentioned above that MEW and EMEC assert that their service territories' conservation potential is less than that of the other service territories. The phase-in approach also will allow MEW, EMEC and any other COU more time to convince the Commission that unique characteristics of their service territories warrant a lower assessment. Madison Paper asserts that the level of achievable conservation in the MEW service territory is lower than elsewhere because Madison Paper represents 95% of its electricity consumption and the paper facility has already implemented most, if not all, cost effective conservation measures. EMEC argues that it serves a no-growth rural area, with less potential for savings. EMEC also asserts that its service territory includes a large, already efficient paper mill customer. EMEC concludes that these facts justify treating its service territory differently and that the Commission should maintain its assessment at the statutory minimum.

The COUs will be assessed this year at the greater of 0.6 mils/kWh or their current level, which will represent either a small increase to the statutory minimum or the statutory minimum. The COUs' comments, however, have not provided us facts

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[2] Indeed, BHE stated in its comments: "The conclusion that a lot of electrical energy efficiency potential exists within the state, Bangor Hydro agrees."

that justify an assessment at less than the statutory minimum. However, due to the nature of this proceeding, there has been no detailed, individualized examination of the COU service territories. Accordingly, we will open an investigation and invite all of the COUs to demonstrate the facts that justify treating their service territories differently. The investigation will be concluded in time to allow adjustment to next year's step increase, if warranted.

The investigation will enable the COUs to demonstrate that there are fewer cost-effective opportunities in their service territories. The COUs may also attempt to show that the magnitude of the rate increases, or the initial level of rates, justify different treatment. For instance, Fox Island Electric Cooperative (FIEC) and Swans Island Electric Cooperative (SIEC) already have rates higher than the three large Investor-owned utilities (IOUs). FIEC and SIEC may be justified in seeking lower assessments because any increase to their already high rates may exacerbate the economic difficulties of customers in those service territories relative to other areas in the state.

Before opening the investigation, however, we wish to address the COU claims that the 1.5 mil assessment level should be reduced because it will harm the already stagnant local economy and result in burdensome price increases for customers. To the extent that the Commission fulfills its mandate to ensure that customers in all service territories benefit, it is the nature of cost-effective conservation programs that the money spent on electricity for a given level of output will decline. Thus, the assessment will not harm the local economies. Rather, it should enhance economic development. In addition, some of the COUs that argue against large percentage increases in their service territories fail to note their initial level of rates. For some, the percentage increases are higher because rates are low. Asking a 1000 kWh customer in Houlton to pay $1.50 more on his monthly $76 electric bill is no more burdensome than asking the 1000 kWh customer in Bangor to pay $1.50 more on his monthly $127 electric bill.

We wish to address another issue raised by some COUs related to increased conservation assessments. They are concerned that, to the extent that current revenues do not cover existing expenses and the new assessment, the costs of a rate case to recover the increased assessment may be as much as the increase itself. This would obviously be an unreasonable result. With respect to COUs, the Commission can be extremely flexible with regard to how we permit the increased assessments to be passed along to customers. A COU may simply file a new rate surcharge, or increased rates, to cover the amount of the increase, pursuant to 35-A M.R.S.A. § 307. The Commission would not need to suspend any such new or increased rate, assuming that it is calculated correctly. Such rates can be effective in only 30 days, with little administrative burden.

The Staff Report also discussed an issue raised during the proceeding by BHE about the eligibility of non-core, special contract customers, and whether their sales should be included in calculating the assessments. A similar issue was discussed regarding CMP's largest customers, those served at transmission or sub-transmission

voltages. When CMP's rates were unbundled into separate transmission, distribution and stranded cost rates, all conservation related costs were allocated as a distribution cost.

The Staff recommended that all customers, including non-core and CMP transmission and sub-transmission customers, should be eligible to participate in any appropriate conservation program. The Staff interpreted 35-A M.R.S.A. § 3211-A(2)(B)(3) as requiring such a result. The Staff recommended that the Commission defer to a rate proceeding or an ARP annual review any cost allocation issues raised by the manner in which CMP's transmission and distribution rates were unbundled.

As a general matter, we agree with the Staff that all core customers should be eligible to participate in any appropriate conservation program although we express no opinion as to whether this result is mandated by the Conservation Act. The cost allocation issue regarding CMP's transmission and sub-transmission customers should be addressed promptly, however. We will issue a Notice of Investigation in the near future so that the Commission can decide whether CMP's rates should be redesigned to reallocate conservation costs among customer classes.

By their nature, conservation-related costs raise equity issues because not all customers benefit equally from the programs. These equity concerns are mitigated by implementing a portfolio of programs in which all customers are able to participate in at least one program. Equity concerns are also addressed by ensuring that all customers, or at least the broadest base possible, contribute to the conservation assessment. With the current cost allocation, CMP's distribution customers are effectively paying more than 1.5 mils/kWh for conservation. We will use the investigation to consider changing rates so that all CMP's customers will pay their pro rata share of CMP's assessment.

We will also investigate whether, by law or policy, non-core, or special contract, customers should pay a share of the conservation assessment. If we conclude that non-core customers will not contribute to the assessment, we also will consider the extent to which non-core customers should be allowed to participate in conservation programs.[3]

Accordingly, we agree with the principal elements of analysis in the Staff Report, attached to this Order for reference. Based upon that analysis and for the reasons described above, we adopt the Staff recommendation and order conservation assessments to be made at the statutory maximum, with a phase-in as described in this Order. We will also conduct the two further investigations described in this Order.

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[3] Although this issue was discussed in this proceeding, it was not addressed by many participants and we do not believe we have a sufficient record to resolve the issue in this Order.

Dated at Augusta, Maine, this 4th day of April, 2003.

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 **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.