STATE OF MAINE
PUBLIC UTILITIES COMMISSION

January 24, 2003

ORDER INITIATING
FORMAL INVESTIGATION

OFFICE OF THE PUBLIC ADVOCATE
Petition To Initiate Proceedings For An
Concerning Central Maine Power Company's
Intent To Construct A Transmission Line In
Southern York County

Docket No. 2002-650

LAURIE DOWNS, ET AL
Request For Commission Investigation Into the
New Central Maine Power Company Transmission
Line Proposal for Eliot, Kittery and York

Docket No. 2002-665

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

By this Order, we find that the 10-person complaint filed against Central Maine Power Company (CMP) concerning CMP's proposed construction of a new transmission line in York County should not be dismissed and should be set for public hearing. The Public Advocate also filed a request seeking an investigation into CMP's proposed transmission line in York County. We grant the Public Advocate's request and consolidate his request with the 10-person complaint proceeding.

II. BACKGROUND

On October 31, 2002, the Commission received a complaint pursuant to 35-A M.R.S.A. § 1302 from Laurie A. Downs and nine other CMP customers and residents of the Town of York. The complainants ask the Commission to open an investigation of CMP's proposed new 69 kV transmission line to be built from the Bolt Hill substation in Eliot to the York Harbor substation in York. The complainants allege that CMP has failed to respond to numerous inquiries about the new transmission line, including the need for the line, environmental, aesthetic, and safety concerns related to the line, and alternative routes for the line. The complainants ask for an investigation that compels CMP to answer these questions and concerns, to produce objective data that demonstrates the present electrical system is inadequate, and to consider alternatives that do not require construction of the new transmission line.

On October 25, 2002, the Public Advocate filed a Petition to Initiate Proceedings. In his Petition, the Public Advocate asks the Commission to initiate proceedings "to

review, investigate and take appropriate action" with respect to CMP's plan to build the 69 kV transmission line described above. The investigation is warranted because, in his view, the project has already generated public opposition, which may lead to additional costs that CMP should consider in comparing the project to other alternatives and CMP has not demonstrated that it considered conservation or distributed generation as an alternative to the new line.

On November 18, 2002, CMP filed a timely answer to the 10-person complaint and the Public Advocate's request. As to the 10-person complaint, CMP states that it has removed the cause of the complaint. Subsequent to the filing of the complaint, CMP responded to a set of 12 written questions sent to CMP by the York Board of Selectmen. CMP states that it has also conducted many meetings and telephone calls with municipal officials and residents in the York area. In addition, CMP states that the Company will hold a "workshop meeting" on November 20 with the York and Kittery town officials and residents[1]. Lastly, CMP asserts that it soon will seek a permit under the Natural Resources Protection Act with the Department of Environmental Protection and various local permits with the appropriate municipalities. CMP concludes that the informal process by which Company officials have responded to town and citizen concerns, and will continue to respond to their concerns, along with the formal permit processes that will occur soon, satisfy the concerns raised in the 10-person complaint. The Commission should therefore, in CMP's view, find that CMP has removed the cause of the complaint.

As to the Public Advocate's request, CMP argues that the Commission should decline to open an investigation for many of the same reasons it cited in support of the dismissal of the 10-person complaint. In addition, CMP states that the Commission should reject the Public Advocate's implied allegation that CMP chose a 69kV upgrade to "evade" Commission approval of the line. CMP responds that it now proposes a 69kV line instead of a 115 kV line, as proposed in 1993, "directly in response to community concerns" because of the smaller structures used for a 69kV line compared to a 115kV line. CMP also rejects the Public Advocate's assertion that the line designed for 69 kV to be operated at 34.5 kV creates unique impacts on residential neighborhoods. CMP alleges that there are "numerous residential areas throughout the state located near lines operating at similar voltages." Finally, CMP rejects the Public Advocate's suggestion that conservation activities or distributed generation may preclude the need for the transmission line. CMP responds that conservation initiatives will not "resolve" the distribution problem facing York, and that the transmission line is a preferred alternative to distributed generation.

III. DECISION

Title 35-A, section 1302(2) governs the processing of 10-person complaints. After the utility answers the complaint,

[1] CMP did hold the meeting on November 20.

> …if the Commission is satisfied that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is without merit, the complaint may be dismissed. If the complaint is not dismissed, the Commission shall promptly set a date for a public hearing.

35-A M.R.S.A. § 1302(2)(1988).

Thus, the 10-person complaint should be dismissed if the cause of the complaint has been remedied or otherwise removed, or if the complaint is "without merit." CMP asks the Commission to dismiss the complaint because, in its view, the Company has removed the cause of the complaint. If the complaint merely asked for responses to inquiries or other information about the transmission line project, we would agree with CMP. The complainants seek more, however. They express environmental, aesthetic, and safety concerns over the proposed route or routes. They assert that they "have reasonable questions" about whether CMP has adequately considered alternatives to the transmission upgrade to solve the distribution problems in the area. They point out that during the 1990s CMP proposed a new 115 kV transmission line for the area, yet the distribution problems were alleviated or solved without any transmission addition at that time.

We find that a reasonable reading of the complaint amounts to a challenge that:

1. CMP has not adequately demonstrated that the electrical system within the Towns of York and Kittery will soon suffer from electrical distribution problems which will be solved by the proposed transmission upgrade;

2. Even if significant distribution problems exist or will soon exist, CMP has not demonstrated that the transmission project is the only or even best solution to the distribution problems; or

3. Even if a transmission upgrade is necessary, CMP has not demonstrated that either proposed route is safe or reliable or reasonably sized or located.[2]

We conclude, that neither CMP's answer nor its other actions to date have conclusively responded to these allegations or otherwise removed these causes of the complaint. The nature of the complainants' allegations raise significant technical, and perhaps policy, issues. We can conclude that the "causes of the complaint" have been removed only after our technical staff has obtained and thoroughly reviewed the relevant information. We must therefore conclude that CMP has not removed the cause of the complaint.

The Law Court has construed the phrase "without merit" in section 1302(2)

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[2] Rule 8(f) of the Maine Rules of Civil Procedure, which apply to Commission proceedings, 35-A M.R.S.A. § 1311, direct us to construe pleadings "to do substantial justice." *See CMP v. PUC 395 A2d414, 433 (Me. 1978)*

> to mean that there is no statutory basis for the complaint, i.e., that the PUC has no statutory authority to grant the relief requested or that the rates, tolls, or services are not "in any respect unreasonable, insufficient, or unjustly discriminatory … or inadequate." 35-A M.R.S.A. § 1302(1).

Agro v. Public Utilities Commission, 611 A2d 566, 569 (Me. 1992). It is a fundamental statutory directive of the Commission to assure that CMP's transmission and distribution network is safe, reliable and adequate. 35-A M.R.S.A. § 301(1). The rates that are set to recover CMP's cost of constructing, operating and maintaining that network must be just and reasonable. 35-A M.R.S.A. § 301(2). Moreover, CMP must plan and construct its transmission and distribution network in an efficient and least cost manner. See also 35-A M.R.S.A. §§ 3152, 3153-A, and 3204(1)(D). A 10-person complaint that raises issues concerning the safety, reliability, and cost of a transmission project, and generally questions whether CMP is adequately and reasonably carrying out its transmission and distribution network planning, is clearly within the Commission's statutory authority. We cannot conclude without further investigation that CMP's T&D network planning in the York area is reasonable.

Accordingly, CMP has not removed the cause of the 10-person complaint, and we cannot conclude that the complaint is without merit. We therefore set the complaint for hearing. Persons who desire to participate in this proceeding as a party must file a petition to intervene by **February 11, 2003**. Each petitioner must state the reasons for seeking intervention and the manner that the investigation will affect the petitioner. Each petitioner shall also send a copy of his or her petition to Regulatory Affairs, CMP, 83 Edison Drive, Augusta, ME 04336. As the lead petitioner in the complaint case, Laurie Downs is granted party status. The Examiner will hold a case conference on **February 12, 2003** at 2:00 p.m., to rule upon petitions to intervene, and to discuss the orderly processing of this case, including the need to accelerate the processing of this case to accommodate any construction, if found necessary.

As the Public Advocate's request essentially raises the same issues as the 10-person complaint, by setting the complaint for hearing, we also grant the Public Advocate's request. We consolidate the two proceedings for all purposes. The Administrative Director shall file this order in both dockets, and hereafter docket all material only in the complaint docket, No. 2002-665.

The Administrative Director also shall publish the attached newspaper notice in newspapers of general circulation in the York County area.

Dated at Augusta, Maine, this 24th day of January, 2003.

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.