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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-786

July 13, 1998

CENTRAL MAINE POWER COMPANY
Petition for Approval to Furnish
Gas Service In and To Areas Not
Currently Receiving Natural Gas

EXAMINER'S REPORT

NOTE: This Report contains the recommendation of the Hearing Examiner. Although it is in the form of a draft of a Commission Order, it does not constitute Commission action. Parties may make oral exceptions to this Report on Friday, July 17 at 9:00-12:00 a.m. The Commission will consider this Report at its Deliberative Session either on July 17th or 23rd. (Advance Notice will be issued).

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I. SUMMARY

We do not grant Central Maine Power Company (CMP)[1] unconditional authority to serve in the areas it has proposed in its Phase II filing at this time. We invite CMP to submit a revised proposal that addresses the concerns discussed in this Order.

We also determine that it does not serve the public interest at this time to authorize a second utility to serve in the Bath/Brunswick and coastal area or in those areas for which Bangor Gas Company L.L.C. (Bangor Gas) is presently authorized to serve. We will revisit this finding as we are presented with proposals purporting to add value to the service provided to these areas, or if the authorized utility fails to provide service in a timely manner. When reviewing such proposals, we will consider whether the proposal will result in an economic or service benefit.

II. PROCEDURAL HISTORY

The Procedural History is contained in Appendix A to this Report.

[1] CMP filed this application on behalf of its proposed joint venture with New York State Gas and Electric (NYSEG) to form a gas utility to provide service within Maine. In this report we will refer to the applicants as CMP, CMP/NYSEG, or CMP Natural Gas (CMP NG), the proposed name for the joint venture.

III. STANDARD OF REVIEW

A. Statutory Framework

Title 35-A Section 2104 requires every gas utility to obtain commission approval before furnishing service in or to any municipality even if no other gas utility is furnishing or is authorized to furnish gas service. This statutory provision, as well as §2105 discussed below, requires our approval to determine, as a public interest matter, that the proposed service will be provided in a safe and adequate manner at rates that are just and reasonable. See Mid-Maine Gas Utilities Inc., Request for Approval to Furnish Gas Service, Docket No. 96-465, (granting Mid Maine preliminary or conditional approval to serve in the municipalities of Bangor, Brewer, Old Town, Orono, and Veazie)*(Mid-Maine),* Order dated March 7, 1997 at p. 6.

Section 2102(1) requires a public utility to obtain the approval of the Commission before it may furnish service "in or to any municipality in or to which another public utility is furnishing or is authorized to furnish service..."

This provision appears to be applicable to any authorized public utility, regardless of whether it was authorized prior to or subsequent to another authorized public utility. By requiring the commission to monitor and affirmatively approve entry into (i.e. furnishing service in) any municipality once another public utility has done so, the Legislature assigned the commission control over the entry and provision of monopoly utility service

in any area. Consistent with the regulatory scheme outlined in Title 35-A, this control guards against the development of duplicative or uneconomic, or otherwise adverse, facilities and service.

Section 2105(1) further states:

> .... no approval required by 2102, 2103, or 2104 and no license, permit or franchise may be granted to any person to operate, manage or control a public utility named in section 2101 in a municipality where there is in operation in a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, **that public convenience and necessity require a 2nd public utility**.

(emphasis added.)

Given that at least one utility is already authorized to serve in all areas of the state -- and therefore in all areas where CMP seeks unconditional service authority -- we will examine the evidence presented in this proceeding to determine whether, in our judgment, the public convenience and necessity require the authorization of a second utility to serve the areas in question.[2] As we have noted previously in this proceeding,

[2] Northern's statewide service authority derives from Northern Utilities, Inc., Re: Petition for consent to furnish natural gas servcie in and to any city or town in the State of Maine, U. #2782 (June 27, 1969). Bangor Gas, the other entity that currently has unconditional service authority in Maine (for five municipalities in the Bangor area), obtained authority in Bangor Gas Company, L.L.C., Petition for Approval to Provide Gas Service in the Greater Bangor Area, Docket No. 97-795, Order (June 30, 1998).

this determination may turn on issues of fact and policy as we consider each area of the state.[3]

As applicant, CMP has the burden to show that there is a need for another utility to serve in areas in which it proposes to serve. However, as we noted in our Order Granting Northern's Motion for Reconsideration, Northern (or the previously authorized utility contesting an application) must show that it can and will adequately address the area's service needs. Therefore, need exists if the incumbent utility is not providing, and has no reasonably certain plan to provide, adequate service to meet the needs or demands of the area.

In addition, the Commission must determine whether the applicant's proposal merits approval on its own terms, i.e. whether it is feasible and cost-effective, and serves the public interest. See *Mid-Maine* at p. 6.[4]

These standards will guide our review of applications submitted pursuant to 35-A M.R.S.A. § 2105.

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[3] See Order Granting Northern's Motion for Reconsideration, May 14, 1998 at p.5.

[4] The Mid-Maine Order at p. 6 states:

> We find the standard for approval under either [§ 2104 or 2105] is the same. Under both statutory sections, the Commission must determine that the grant of authority will promote "safe, reasonable, and adequate services at rates which are just and reasonable to customers and public utilities." 35-A M.R.S.A. § 101.

B. Statement of Commission Policy Regarding the Development of Gas Distribution Systems in Maine

Over the last few years there have been dramatic changes in the prospects for increased availability of natural gas to the State of Maine. Whereas Maine has been at the end of the national natural gas transmission system with one established local distribution company (LDC), it now enjoys the prospect of hosting two new international pipelines bringing new gas supplies through, and to, much of Maine's developed area. This has created a vibrant interest in the expansion of natural gas infrastructure and service in Maine, resulting in numerous applications for service authority for various regions of the state by would-be local distribution companies.

Our task, starting with Mid-Maine Gas Utilities, Inc.'s (MMGU's) application for preliminary service authority to serve in the Bangor area in 1996, has been to identify and establish the best public policy for allocating service authority consistent with our statutory obligations. See *Mid Maine*. Our goals include encouraging and promoting the development of gas infrastructure and assisting in bringing an additional fuel source to the broadest array of customers that is economically supportable.

In *Mid-Maine*, the Commission stated that it would consider granting multiple service authority applications in discrete areas of the State if all project proposals were sound. The expectation was that market forces would -- and could better --

determine which of the certificated entities would actually serve in a given area. Because of the strong market presence of oil and electricity as well-established fuel alternatives in Maine, natural gas is subject to substantial competitive price pressure from these alternatives.

After much evidence and debate throughout this and similar proceedings (e.g., Bangor Gas Company L.L.C., Petition for Approval to Provide Gas Service in the Greater Bangor Area, Docket No. 97-795 Order (June 30, 1998)*(Bangor Gas*)), we are now persuaded that local distribution service -- that is, the "pipes" and transportation service, not the natural gas commodity -- is not best selected for entry to an area by the market and societal forces that would come into play in the organization and start-up of an LDC. Rather, local distribution service retains the hallmark characteristics of a natural monopoly. The installation of natural gas infrastructure is capital intensive, enjoys economies of scale, and more than one such investment in an area cannot generally be economically supported. Moreover, even if load could support two utilities, the total cost of service would be higher where two utilities exist. From this we conclude that, as a general matter, allowing more than one LDC to serve an area will result in uneconomic duplication of facilities and lost economies of scale.

Moreover, if customers are the selecting mechanism, it appears likely that only the largest customers would have any

real leverage in determining which utility would succeed in becoming established in an area. Beneficial deals and discounts to large customers could work against small customers; competition among potential providers could drive discounts to the larger customers to deeper levels. These discounts would, to the extent possible, be funded through the rates of smaller customers.

Local permitting officials or elected officials are also not in a position to determine which, among potential distribution utilities, could best serve an area. Representations of proposed utilities should be tested for soundness; policies should not create incentives that may jeopardize safety or adequacy of service to an area. Races to the trench, by all accounts, appear ill-advised.

Consequently, we conclude that economic efficiencies and the public interest in safe and adequate service and facilities warrant orderly development, with entry by a utility into a service area supervised by this Commission.

The policy explored in *Mid-Maine* has, however, inspired lively competition for service authority franchises before this regulatory agency, demonstrating that there is significant value in competition at this level. The policy has encouraged aggressive and innovative proposals for development of service to previously unserved areas.

We do not preclude authorizing more than one distribution utility to serve within a given municipality if the facts demonstrate that two utilities are in the public interest. We recognize that there may be circumstances where a shared service territory makes sense. However, we find no evidence before us at this time to support allowing two local distribution gas utilities to actively compete to provide service to the same municipality. We will continue to explore this possibility as proposals are presented to us for review.

With this policy framework in mind, we will consider the issues raised in this proceeding.

C. Suspension of Service Territory Authority

CMP seeks authority to serve in several areas in which Northern Utilities, Inc.'s (Northern or NU) has had service authority for nearly 30 years but does not currently furnish service. See n.2. Prominent among these areas is the Bath/Brunswick area which, Northern argues, it has been planning to serve and which is contiguous to its existing system.

The Office of the Public Advocate (OPA) argues that the Commission should suspend Northern's authority to serve in these areas and, in its stead, CMP should be granted authority to serve them. This is because OPA believes that the risks to consumers of allowing two LDC's to develop the same area outweigh any benefits. OPA Brief at 13.[5] These risks include: the possibility

[5] Although OPA bases its recommendation on its belief that it is poor public policy to grant more than one LDC service authority in a municipality, it then argues contradictorily in its Brief

of inefficient expenditure of resources, the negative effects of utility failure, the substitution of municipal permitting officials for utility regulators in controlling development of utility service, and inviting "bidding wars" to secure critical anchor loads with adverse impacts on small consumers' rates.

The Towns also urge the Commission to exercise its authority to prevent potentially harmful "trench warfare" that would likely occur between two authorized utilities competing to serve the Bath/Brunswick coastal area. Towns Brief at 9-11. Accordingly, the Towns suggest that the Commission declare that

> in general, once an LDC begins providing service in a given town, the burden should shift to any other LDC to demonstrate that competitive service in that municipality will be in the public interest; i.e. it will result in better service available to more customers at competitive rates, and not poorer service to fewer customers at higher overall rates.

Towns Brief at 11. In other words, the Towns argue, "Northern's authority to serve the Towns should be modified to be made essentially 'conditional'." Id. As such, the Towns explain, Northern could not commence construction until it presents and the Commission approves specific construction, marketing, financial, and resource plans, such as have been reviewed for CMP/NYSEG in this proceeding. Id.

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that it "cannot oppose granting CMP a certificate in the Bangor area" because it was without an "evidentiary or procedural basis" to do so. OPA Brief at p. 16. Logically, sound public policy would apply equally to both areas.

While our decision here does not require that we take the steps recommended by the Towns, because this issue may arise in future proceedings, we will state our support for this proposal in concept. The requirement suggested by the Towns appears consistent with the language of Section 2102 that we noted above that requires the Commission to approve the expansion of a public (gas) utility into a municipality in which another public (gas) utility is already authorized to serve. See Section III.A. of this report. It also provides a fair and consistent policy with respect to how we exercise our authority in supervising and approving the furnishing of public utility service to municipalities. Additionally, pursuant to 35-A M.R.S.A. §§ 1321 and 1322, we can reopen our orders granting service authority and modify them as we determine warranted.

IV. OVERVIEW OF CMP/NYSEG'S PROPOSAL

On February 23, 1998, Central Maine Power Company (CMP) and New York State Electric & Gas Corporation (NYSEG), filed a request for unconditional authorization to furnish gas service to Bethel, the Windham area, the greater Augusta area, the greater Bangor area, and the Brunswick, Bath, and southern coastal area. Direct Test. of Quimby/Kelley at p.3. The filing reveals an ambitious plan to bring natural gas service to these areas by 1999. Included in the filing is the testimony of 12 CMP and NYSEG witnesses dealing with a variety of technical topics. Much of the information contained in the filing has been designated as

confidential and only the Office of Public Advocate (OPA) and Commission Advisory Staff have had access to all the data.

CMP NG proposed to undertake the construction activities necessary to begin serving customers in Bethel, the Windham/Standish and Bath/Brunswick areas beginning November 1, 1998, contingent on Commission approval in May of 1998. In an attempt to hold its construction costs down, CMP NG has entered into "alliance" contracts with contractors in which the company and its contractors work as a team towards a common objective of overall project success. CMP has attempted to use locally-based contractors to the maximum extent possible.

The Company's rates have been designed to be competitive with the price of No. 2 and (where appropriate) No. 6 fuel oil. CMP Gas would provide both bundled and unbundled (transportation) services for its customers. Unbundled service would initially be provided only to customers with daily metered capability, i.e. generally large commercial and industrial customers. CMP NG states that, if authorized to provide service in Maine, it anticipates proposing a small customer transportation program at some time in the future. In addition, the Company has furnished a set of tariffs for the services it intends to offer.

The Company would offer bundled sales service customers two options, the Indexed Price Option (IPO) and the Fixed Price Option (FPO), for their purchase of gas commodity. Both the IPO and FPO represent a means of adjusting gas prices to reflect New

York Mercantile Exchange (NYMEX) oil and gas market conditions. Under the IPO, a base cost of gas figure is adjusted on a monthly basis to reflect changes in the oil and gas commodity markets. Each month, the spot month closing settlement price of gas traded at the Henry Hub is averaged with a No. 2 heating oil spot month closing settlement price.[6] The resulting price is called the "Total Settlement", and the "IPO Adjustment" is the adjustment necessary (positive or negative) to raise or lower the base price to the settlement price.

The FPO adjustment is a longer term adjustment which works in a manner similar to the IPO, but which uses NYMEX futures contracts rather than monthly closing spot prices in order to lock in prices for longer periods of time. Customers choosing the FPO would be able to select gas price contracts ranging in length from three months up to two years. The purpose of including oil prices in with gas prices is ostensibly to provide customers assurance of the competitiveness of their gas prices. CMP NG's plan obviates the need for seasonal cost of gas adjustment proceedings because gas prices are either adjusted monthly, or are locked in by the futures market.

CMP NG's nongas distribution service prices[7] were multiplied by the forecast gas throughput in Confidential Exhibit RDA-7 to develop forecast revenues. The revenue forecast was then used

[6] After the $/gallon units have been converted to $/therm in order to make the units equivalent.

[7] The Company's Exhibits hold the prices constant for the study period although CMP NG has made no promises to maintain these prices.

along with a cost of service study to forecast earnings over a six year period.

V. ANALYSIS OF PROPOSAL

A. Cost of Service and Rate of Return Studies

As discussed in Section III.B. above, before awarding unconditional authority to furnish service as a public utility, we must determine whether CMP NG's project proposal merits approval on its own terms -- i.e. whether it serves the public interest by providing service that is safe and adequate at reasonable rates.

The testimony and Exhibits of CMP NG witnesses Adams, Canfield, and George describe the total project and area-specific rate of return, revenue projections, and cost of service estimates. We will comment on those areas of the proposal that are important to our determination herein.

1. Cost of Service

CMP NG estimates its cost of service by combining the area-specific construction cost estimates with estimates of gas operation and maintenance expense developed in Exhibit ACG-6. In addition, depreciation, interest, and Federal and State Income tax expenses for each area are included in the cost of service calculation.

The following elements of project cost require particular comment as they contribute to the basis for our findings herein.

a. Construction Costs

Exhibit EMM-6 breaks out construction cost estimates for each project area. Estimates of construction cost are based on an assumption that the majority of trenching and piping will occur during the summer months, with construction complete by the 1998-1999 heating season. Eastman/Miller/McCarthy Test. at p.20.

With respect to the Bath/Brunswick area, it is clear that the initial construction schedule assumptions no longer apply. It will take approximately five months after being granted authorization to serve and fulfilling other necessary preconditions for CMP to have an operable gate station at Westbrook, a necessity for service to the Bath/Brunswick area. Tr. at G-271. Kelley and Quimby acknowledge that construction activities will be delayed possibly into 1999. Tr. at G-59.

Construction delays will increase project area costs. According to Northern's witness Cote, many of the towns under consideration prohibit street openings after the hot asphalt plants have closed in November or December. These prohibitions and the scarcity of asphalt will increase the cost of late season construction. Tr. at H-181. Based on the record, it is unlikely that CMP NG will be able to deliver gas to the communities in 1998 as projected. Should CMP NG succeed at constructing the facilities in 1998, the construction costs in Exh. ACG-3 will increase to account for late season construction.

This upward adjustment to construction costs will decrease overall project rate of return.

b. Gas Operation and Maintenance (O&M) Expenses

Gas O&M expenses represent about of the proposed gas utility's annual expenses.[8] Where possible, gas O&M expenses have been broken down into direct costs by specific project areas. Certain gas O&M costs however, are assigned to each area based on the area's share of projected net revenues, year-end plant in service, and directly assigned expenses.

CMP NG witnesses state that their project gains important economies of scale from inclusion of the entire area CMP NG proposes to serve. See Towns Exh. #2, 01-NU-03 and 01-NU-07. In order to preserve these economies, they urge approval of the entire proposed service territory. As detailed below, these witnesses did not demonstrate these particular economies of scale, and our review of the record does not support their contention.

First, allocated costs represent approximately of the total gas O&M costs. See Confidential ACG-6, p. 1. It may be inferred, therefore, that any economies of scale must derive from this portion of total costs because they are costs which cannot be directly assigned. This being so, we conclude that the economies of scale are relatively small since they are based on

[8] Note for purposes of discussing return on equity: annual expenses includes the annual interest expenses expressed on Exh. ACG-3 p.1.

savings from a relatively small [9] piece of the annual expense pie. It is even less clear whether, if CMP NG does not receive approval to serve in areas that appear to promise smaller than average returns,[10] the balance will be significantly different.

2. Marketing Assessment

The Towns and OPA have argued that CMP NG should receive an unconditional certificate to serve the Bath/Brunswick areas, in part based on the belief that CMP will have a higher market penetration or serve a higher percentage of potential customers than Northern would achieve. We do not believe, on the whole, that the somewhat confused record on this issue provides convincing support for this conclusion.

CMP NG used historical penetration rates based on NYSEG's experience in upstate New York. Similarly, Northern used historical penetration rates based on its experience when it

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[9]

[10] See Confidential Exh. RDA-7.

expanded service under normal marketing circumstances in its current service territory.

There are some differences over the definition of penetration rate. Is it: 1) the percentage of potential customers in a municipality, 2) the percentage of potential customers in the portion of a municipality where service infrastructure is available, or 3) the percentage of potential customers along installed mains? All of these uses can be found in the record, often without distinction. Because in many municipalities in both NU's and NYSEG's service territories only a portion of a municipality is served, it is clear that the first definition will often not be a useful measure for current purposes.

If we assume that the installation of mains is based on a prior economic assessment, the third definition is probably the best measure of the LDC's marketing success. Two similar utilities should arrive at roughly the same economic assessments. It would seem that the second definition will reflect differences in the spatial distribution of load, more than marketing success or the economics of main location, which seems to be the more important issue in estimating market potential or assessing marketing success. We make no attempt to sort out the record here but request that all parties be clear and explicit in any future presentations of penetration analyses.

If it were true that NYSEG's penetration rates are higher than NU's, when appropriately compared, would it follow

that CMP NG would serve more customers than NU in the Bath/Brunswick areas? We think not. The accuracy of penetration estimates based on historical data will depend on the degree of similarity between the historical situation and the expansion situation. NU's comparisons (as described above) are clearly based on greater similarity to Maine market circumstances than NYSEG's. This is reason for concern that NYSEG's marketing assessments could be overly optimistic.[11]

Indeed, since both utilities would charge similar rates, would be making similar economic assessments of the same possible main locations, and would be marketing to the same customers, there is little reason to expect significantly different numbers of customers to be served. Ultimately, what will drive the expansion of gas infrastructure in Maine is the economics of providing gas service. In fact, both CMP/NYSEG, and Northern decide which loads to serve based on economic analyses.

> That's what you do when you're actually constructing is you're looking at actual customer interest, which certainly drives how fast you go and which areas you go into....Certainly the economics aren't there if there isn't customer interest.

Kelley, Tr. at G-169. Northern recognizes this similarity.

> Thus, the two companies have virtually identical plans for subsequent incremental expansions in the markets to be served.

Northern Brief at 15.

[11] MODA argues for a similar conclusion, based on the anticipated responses of oil and electricity providers to competition from gas. MODA Brief at p. 12.

Moreover, NU has committed to serving these areas, regardless of whether anchor customers are secured. CMP NG has stated that service will depend on finding anchor loads and other factors. This difference in commitment could lead to significant differences in the number of customers served.

Finally, we will comment on CMP NG's use of maps in its presentation to the Towns.[12] These maps, showing areas proposed to be served in yellow, were apparently instrumental in leading the Towns to believe that CMP would serve more customers. Towns Brief at 6. At hearing, the CMP NG witness acknowledged that some of the yellow areas in the Brunswick map, such as Pleasant Hill Road, would clearly not be served in the near term, since there is no load there to speak of and stated that the location was included in the yellow area because of potential load. This decision appears arbitrary, since almost any location could have potential and no reason was given why other roads, such as Mere Point, were not included. CMP NG evidently considers these maps to be non-misleading; the Town's Brief suggests the opposite.

In sum, we find reason for concern that CMP NG's marketing assessment may be overly optimistic, again calling into question the economic viability of its proposal, and we find no convincing basis for the conclusion that CMP would serve more customers than NU.

3. Revenue Projections

[12] They were, thereby, released to the public.

CMP NG's projected revenues are based on the customer penetrations, load usage, and expected margins of each customer class. Adams/Canfield/George Test. at 4. Specifically, the revenues are a direct function of the rates charged and volumes transported. Confidential Exh. RDA-7. As such, CMP NG's revenues are subject to the flaws in the customer penetration assumptions discussed above.

CMP NG witnesses have offered contradictory testimony on whether penetration assumptions, and therefore revenues, include the loss of customers to competing LDCs such as Northern and Bangor Gas.[13] Our review of the marketing materials indicates that CMP NG has not included the competitive effects of other gas utility franchisees. Competitive effects would reduce revenues and further reduce total project rate of return.

4. Rate of Return and Financial Viability

CMP NG's projected rates of return for the entire proposal are provided in Confidential Exhibit ACG-3. Confidential Exhibit ACG-5, pages 1 through 30, contain the area-specific rate of return calculations for all municipalities included in CMP NG's Phase II certificate request. Aside from CMP NG, Commission Advisory Staff and the OPA were the only parties with access to this material.

[13] CMP NG states that it did not expect to be awarded an exclusive franchise to serve in its proposed areas yet all of its project calculations are based on total potential customers in each area. CMP witness Kelley also stated that they would not expect that it would be economically viable for CMP NG to serve only part of an area, such as Bath/Brunswick, sharing the area with another gas utility.

CMP NG's brief asserts,

> The proposed rates were subsequently tested against a rate of return study consisting of a forecast of what CMP Natural Gas has projected as the costs and revenues of the expansion projects. This analysis permitted CMP Natural Gas to conclude that the proposed rates would support the construction and operation of the proposed system over a six-year time frame.

CMP Brief at 10.

CMP's response to 03-OPA-17 (Towns Exh.#2) further shows that the acheivement of adequate returns is highly speculative and likely dependent on recovery over a term longer than six years.

B. Rate Plan

In this section we will examine some features of CMP's rate proposals that have been raised and upon which we do not now finally rule, in order to assist CMP NG in preparing a revised proposal that addresses concerns expressed in this Order.

Due to time and resource constraints, we have not conducted an in-depth review of CMP NG's proposed terms and

conditions of service. Besides the features discussed here, the details of proposed Terms and Conditions for CMP NG would require further review, either in a compliance or further proceeding for review of a revised proposal.[14]

1. Confidential Treatment of CMP's Rate Proposal

The Towns complain in their Brief that they have been precluded from a meaningful review of much of the important information regarding CMP's proposal because of the confidentiality restrictions. In particular, the Towns note

> The Towns have had a very limited opportunity to review the applicant's proposed rates, as specific rates were subject to a protective order. As CMP/NYSEG's rates will presumably soon become publicly filed tariffs, keeping this information from public access during this proceeding makes little sense.

Towns Brief at 5. We agree. However,it is not obvious that the Towns would have been precluded from access to this information if they had requested a modification of the protective order.[15] We note that the Towns intervened very late in this case, approximately one week prior to the hearings. As a result, perhaps the all involved simply overlooked the fact that the Towns did not have access to this information.[16]

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[14]We would consider MODA's issue regarding the "Service Contract" section of CMP NG's Terms and Conditions in that review. Brief, pgs. 13-14.

[15]Under the terms of our standard protective orders, any party may seek to have information removed from the protective terms where warranted. The Examiner received no requests from the Towns.

[16]Or there may have been other reasons that the applicants wished to keep the information proprietary from the Towns that have not

As a general rule, we agree that proposed rate information should not be proprietary and withheld from parties such as the Towns if it will be the basis for approved rates. In this case, CMP NG sought protection, initially, of rate information and other details of its marketing and business plan, in order to keep competitors from gaining an undue competitive advantage. Later, all parties except MODA (and the late-intervening Towns) were allowed access to this information.

Our regulatory policy is to keep the minimum necessary information confidential because of the obvious public interest in the issues that come before us. CMP is now on notice that, should it submit a revised rate plan, it is unlikely that its details will be protected from parties with a legitimate (i.e. not purely competitive) interest in the gas utility's rates.

2. Customer Charges

OPA and BGC have objected to CMP NG's comparatively high customer charges. We have generally held to a rate-making principle for a customer charge or minimum bill that collects all legitimate fixed customer costs in a fixed charge. We must be convinced, however, that all costs included are legitimate customer costs. In particular, we have initial difficulty in seeing why any portion of a distribution system that would be built absent a specific potential customer should be considered a customer cost.

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yet been articulated to the Bench.

The record on customer charges in this proceeding has a number of deficiencies that preclude precise analysis in this Order. However, for clarification we can state that the general principles mentioned above, when applied to CMP NG's Confidential Residential Customer Minimum Charge Worksheet (see OPA Exh. #6), could support a customer charge of up to per month in the first year,[17] assuming that all entries in the third column are acceptable.

3. Composition of Base Rates

Various objections have been made to CMP NG's "base rates," including the inclusion of gas costs. We have allowed the inclusion of gas costs in base rates, provided the utility's terms and conditions make it clear to customers what costs are for gas and what costs are for local distribution.[18] Similarly, we have no objection in principle to including legitimate upstream transportation and storage costs in gas costs, again provided that the utility's terms and conditions make these cost distinctions intelligible to customers, especially for the purpose of assessing their options under gas-on-gas competition and unbundled services. However, given the current movement toward unbundled services and rates designed to foster gas commodity competition, we may wish to consider changes in the presentation of gas costs and rate information that will

[17] The actual charge approved would likely be based on greater than a 1-year period.

[18] Northern's current, but not its proposed, base rates are designed in this manner.

facilitate customer understanding and enable them to participate effectively in competitive unbundled gas commodity markets.

4. Late Collection Fee

CMP NG's proposed late collection fee of $98, is so far out of line with existing utility late collection costs in Maine and nationally that we doubt that it is truly cost-based. However, even if we ultimately determine it to be so, we would likely not approve it. If a theoretical case could be made for significantly higher-than-historic late collection charges (i.e. a reasonable cost-basis), customer acceptance may require that increases be phased-in gradually over time.

5. Gas Costs

We are concerned that CMP NG's gas cost projections are overly optimistic and that it has not factored in necessary supply costs. NU states in its Brief that CMP NG's gas costs may be understated, since they are less than NU's actual costs, and suggests that this may account for some the instances where CMP bills are lower.

in developing its gas cost projections and gas price indices.

In order to assure that customers will not be subjected to higher than projected gas costs, we would require a more

complete demonstration of the basis for CMP NG's gas cost projections, including detail on how it would obtain supplemental supplies and what effects this would have on overall gas costs. As currently presented, we find CMP's proposed gas supply cost estimates unrealistic and incomplete.

6. FPO and IPO Gas Pricing Options

We have a number of concerns regarding CMP NG's FPO and IPO gas pricing options. In particular, we are not convinced that Henry Hub futures or spot prices can be relied on to predict CMP NG's gas costs, which will be incurred (at least in part) in different supply regions, especially Sable Island and western Canada, under competitive conditions that are yet to be observed. Similarly, we doubt that NYMEX oil futures or spot prices will be good predictors of CMP NG gas costs. Unbundling and gas-on-gas competition will be distorted if CMP NG gas prices do not reflect its market gas costs. See Van Lierop Test. at 5.

It is also possible that differences between actual gas costs and gas revenues derived from an oil/gas average price could cause CMP NG to have some preference between sales and transportation service. At this time, a more direct treatment of gas costs (such as a traditional CGA), or alternatively, with a mechanism that would allocate the risk of under- or over-recovery between shareholders and ratepayes, is more appropriate. As presented, the FPO and IPO price options simply introduce an additional set of avoidable uncertainties into a proposal that, of necessity, involves many unavoidable uncertainties including

the number of customers, revenues, and costs. It may be that in the future, after gas markets available to Maine LDCs and marketers have stabilized, pricing options of this kind could become attractive.

C. Corporate Organization

Bangor Gas argues that CMP may not at this time receive any authority beyond conditional authority because the entity purporting to provide gas service (CMP NG) has not been created and SEC approval of CMP's proposed corporate reorganization into a holding company structure has not been approved by SEC. CMP reported at the end of hearings that it does not know when an SEC ruling will be issued. Tr. G-127-130.

CMP argues in brief that the matter of its formal corporate organization can be easily resolved simply by having the Commission modify its order in Docket No. 98-077 to permit CMP to create and own a gas company subsidiary on a temporary basis until the final approval of the SEC for the holding company reorganization is obtained.

We have considered and approved CMP's proposed reorganization, the formation of and investment in subsidiaries under a holding company structure for the purpose of becoming a gas utility in Maine.[19] See Central Maine Power Company, Application for Approval of Reorganizations, Affiliated Interest

[19]The approved gas-related subsidiaries of the holding company are Gasco and Maine Natural Gas Limited Liability Company, now renamed CMP Natural Gas. The investment is approved from the holding company, not from CMP.

Transactions and Sale in Connection with Gas Ventures, Docket No. 98-077 Orders dated May 1, 1998 and June 10, 1998 (approved formation of subsidiaries of holding company and permissable investment limitations). See also Central Maine Power Company, Request for Approval of Affiliated Interest Transaction and Reorganization and Transfer of Assets, Docket No. 97-930, Orders dated May 1, 1998 and June 30, 1998 (approving holding company reorganization).

We have not considered or approved (because CMP did not request that we do so) whether CMP could, in the interim, form and invest in a subsidiary to operate as a gas utility.[20] In order for it to do so, as noted by Bangor Gas, CMP must submit a request with a supporting filing for consideration by the Commission. It would be necessary to obtain information and views about CMP's proposal before making a determination. The request would be docketed and processed in accordance with appropriate procedures.[21] Therefore, it is impossible to know at

[20]In our Order in Docket No. 98-077 at p. 9, we explicitly stated:

> For purposes of this order, we approve the transactions and arrangements contained in the Joint Venture Agreement subject to the condition that the Agreement be transferred to Gasco. We do not here approve CMP's entering into the joint venture agreement. If CMP itself wants to pursue this venture, it must seek separate approval of the Commission.

[21] As governed by our Rules of Practice and Procedure, Ch. 110, Ch. 820 (our rule on affiliated transactions), 35-A M.R.S.A. §707 and 708, and the Maine Administrative Procedures Act, 5 M.R.S.A. §8001.

this time whether we would allow CMP to create and invest in a gas subsidiary.

We agree, therefore, with Bangor Gas that under the current regulatory status, until SEC approvs the proposed holding company structure or until CMP obtains additional reorganization approval from this Commission, formation of or investment in[22] the gas entity is not permitted. We also agree that this posture necessarily means that CMP NG has an additional task to complete before it can begin to operate as a public utility. Because CMP NG appears to be working under a schedule in which weeks are critical to its 1998 service implementation goals, this fact makes it appear less likely that CMP will be able to meet its early in-service timing goal.

While we applaud CMP NG with aggressively pursuing competitive opportunities for natural gas distribution company development in Maine, the fact remains that there are necessary preconditions that it must meet before it can proceed as a public utility. We simply recognize that, at present, CMP NG is still working on resolving those matters and that additional time will be needed.[23]

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[22] 35-A M.R.S.A. Section 708(2) states: "Unless exempted by rule or order of the commission, no reorganization may take place without the approval of the commission." Section 708(1)(A) defines reorganization, in part, as: "any creation....of an affiliated interest as defined in section 707....accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property."

[23] This circumstance clearly does not result from delay in processing CMP's requests before this agency. Had CMP been

D. Conclusion

Our assessment of CMP NG's proposal reveals that its estimates of construction and gas costs appear to be understated or subject to increases. Conversely, its penetration and revenue levels are likely overstated. Nor does CMP NG's plan appear to be feasible on its present schedule. Finally, even using CMP NG's own optimistic assumptions and flawed estimates, CMP NG has not shown that it is likely to make an acceptable return on its investment over the project term. Consequently, we cannot conclude that this proposal is likely to succeed on its proposed terms. Rather, financial success appears unlikely.

Based on the considerations identified in this Order, we do not believe the project can be financially sustained at the rates proposed by CMP NG. This determination leads to the recognition that rate increases, insolvency, or possibly other adverse service effects such as diminished expansion or services, could be anticipated.[24] Tr. G-65, H-80.

The fact that our assessment of CMP NG's proposal reveals that the proposal, as currently developed, is likely not to be financially viable means that that consumers in these areas will

successful in obtaining SEC approval by this time, this issue would be resolved.

[24] MODA argued that the possibility of rate increases in CMP NG's rate plan affects the terms of competition between oil and gas providers and creates asymmetric risks that are adverse to oil dealers. MODA Reply Brief, p. 3-4. MODA urges us to ensure that competition between oil and gas will not be unfairly skewed by regulatory effects. Accordingly, MODA argues that the risk of its venture should be placed on the company, not consumers.

be faced with some combination of undesirable impacts as a result.

Much of CMP NG's proposal and activities to date -- such as its engineering and operational expertise[25] and its expansion enthusiasm -- display positive attributes that recommend a grant of service authority in Maine. Accordingly, we invite CMP NG to correct these existing project weaknesses and present a revised proposal to support expansion into those areas of the state in which it demonstrates likely financial viability[26] and an acceptable operational proposal.[27]

VII. ANALYSIS OF PUBLIC NECESSITY

CMP requests unconditional authority to furnish gas service to six discrete areas comprised of various municipal groupings. These areas can be summarily described as the Bath/Brunswick coastal area, the Windham area, the Augusta area, the Waterville area, the Bangor area, and Bethel. Quimby/Kelley Test. at p.3. Many of the areas for which authority is requested include small communities for which gas service would not be economical on a stand alone basis without additional customer base or large anchor customers. Exh. QK-3.

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[25] As demonstrated by Mr. Eastman.

[26] As noted above, based on the evidence provided CMP has not demonstrated economies of scale that would impair its ability to fashion a proposal to serve select areas of the state.

[27] We would give careful consideration to any proposal to operate out of NYSEG's New York base of operations.

For purposes of legal and policy analysis, the six areas listed above can be broken down into three groups based on economic and existing franchise characteristics. The first grouping involves those areas for which an existing utility is already authorized to serve and is serving nearby areas. Northern, Maine's only operating LDC, is currently authorized to serve the Bath/Brunswick Coastal Area which includes Bath, West Bath, Brunswick, Topsham, Freeport, Falmouth, Yarmouth, and Cumberland, and is currently providing service to nearby communities. Exh. QK-3. Northern presented evidence in this proceeding of cost and service economies that exist for it to expand its existing system to provide service to "continguous" or nearby areas.[28]

A second conceptual grouping includes those areas for which a utility is already authorized to serve and has concrete plans to serve as evidenced by construction, other demonstrable preparations, and represents that it will serve on an identifiable schedule. This grouping includes the "core" Bangor Area,(i.e., the five municipalities comprised of Bangor, Brewer, Orono, Old Town, and Veazie) which Bangor Gas is authorized to serve, and the Bath/Brunswick coastal area which Northern proposes to serve. In June, Bangor Gas began to construct the infrastructure necessary to serve the five-municipality, or "core", Bangor area upon the arrival of gas via the proposed

[28] See Confidential 05-Staff-05.

Maritimes pipeline in 1999. Northern proposes to serve the Bath/Brunswick/Freeport areas by the 1999 heating season and the southern coastal area (Freeport, Yarmouth, and Falmouth) by December 31, 1999. Tr. H-164.

The third conceptual grouping includes all remaining areas in which an existing entity (Northern) is authorized to serve but where no concrete plans or other evidence exist at this time to demonstrate that it will commence service within any particular period of time. See Northern's Letter dated June 24, 1998. This grouping includes the Windham, Waterville, and Augusta areas, Bethel, and the surrounding communities of the Bangor area (Milford, Hermon, Holden, Hampden, Orrington, and Bucksport).[29] These areas are noncontiguous to Northern's existing infrastructure (with the exception of Windham) and its plans to serve the area are highly uncertain. See Confidential 05-Staff-05, 08-OPA-01, and OPA Exh. #10.

Our policy decision takes the various economic and franchise characteristics of each grouping into account as described further below.

A. The Bath/Brunswick Coastal Area

For the reasons below, we do not find that the public interest requires a second utility and we do not authorize CMP NG to serve the communities it defines in its request as the

[29]BGC has also recently requested authority to serve additional towns in the Bangor area (Docket No. 98-468).

Bath/Brunswick Coastal Area: Bath, West Bath, Brunswick, Topsham, Freeport, Yarmouth, and Cumberland. See Exh. QK3 at p. 2.

1. Cost

Northern's existing system infrastructure runs through adjacent or nearby communities.[30] Therefore, Northern's cost to serve the Bath/Brunswick and southern coastal communities will be lower than will be CMP's. See OPA Exh.# 13 and 01-CMP-10. The reasons for this are as follows:

a. To reach consumers in the Bath/Brunswick/Topsham areas, CMP would need to install substantially more miles of steel distribution main at greater cost per foot and at greater total cost than does Northern. See CONFIDENTIAL CMP Exh. EMM-6 and CONFIDENTIAL 04-Staff-01.

b. CMP will incur additional costs because it will need to construct an LDC City Gate or "take station" to obtain its gas supply. The estimated cost of the take station

[30]These municipalities include Lisbon Falls, Lewiston, Auburn, and Portland.

Northern will not need to incur such costs to serve the Bath/Brunswick/Topsham areas. See Cote Test. at p.6.

c. Northern would be able to provide service at lower costs in part because it will not need to build service centers to provide service to the Bath/Brunswick area. Conversely, because CMP is a start-up utility without an existing in-state presence, it will need to incur these additional costs. The testimony of Messrs. Eastman, Miller and McCarthy at page 14, and Exhibit QK-12 indicate that new employees will need to be hired, some will need to be trained, and a service center will either need to be built or space rented from CMP. See 02-ADV-13.

2. Failure to Serve

Throughout this proceeding, CMP has argued that it should be allowed to provide service in these areas because, despite having authority to serve these areas, Northern has neglected to do so. We are not persuaded on this point.

We are fully aware of the gas supply constraints that Northern has faced and the measures it has taken in recent years in response to those circumstances. In our view, Northern has acted prudently in its efforts to contain its growth within available supply levels.[31] There is no doubt that the potential reduced level of supply that would exist without fortuitous extensions of the Portland Pipe Line lease or without the successful completion of the Portland Natural Gas Transmission System would have left Northern in a precarious position with respect to its ability to maintain supply to its existing customer base. Consequently, we do not find that Northern has neglected to expand into the Bath/Brunswick or coastal areas.

We have not fully explored and will provide no further comment at this time on the contention that Northern has responded too slowly to the demand and interest that has been developing in anticipation of PNGTS being in-service in late 1998. What is apparent on this record is that Northern is now

[31] During 1997, Northern held a number of meetings with the Commission to discuss its contingency plan and partial marketing moratorium. In Docket No. 97-311, Northern requested, and the Commission approved, terms and conditions enabling a moratorium on active sales and promotional efforts, and to allow a freeze on connecting new services, if it became necessary.

moving ahead in a reasonable manner, taking into account cost and system development considerations. We believe that it is clearly in the public interest for Northern to continue this momentum and to endeavor to expand in a safe and adequate manner wherever possible. We will continue to monitor Northern's progress to ensure that adequate and reasonable gas distribution service is made available wherever warranted within the State.

Furthermore, CMP itself acknowledges expansion of the gas industry in Maine has been constrained by a lack of interstate pipeline capacity and that expansions depend on these new sources of gas supply being in place.

> If neither of these pipelines were constructed, further development of a natural gas LDC in Maine would be severely limited and the proposed gas fired generating plants to be constructed could not be built.

Test. of Quimby and Kelley at p. 8. Therefore, we do not find that Northern has neglected or failed to expand its system when conditions would have otherwise allowed.

3. Commitment To Expand

Northern has demonstrated that it will be cost-effective for it to serve the Bath/Brunswick coastal area. The communities of Bath and Brunswick are part of Northern's 1998/1999 expansion plans. See OPA Exh. #10, NU's response to 08-OPA-01. In addition, the Company intends to provide service to the Falmouth to Freeport areas in 1999. Trans.H-164.

The development of the CMP NG system in all areas contained in its application is more closely dependent on its success at recruiting anchor customers. When asked whether CMP NG would continue to develop LDC infrastructure absent contracts with large customers, Mr. Kelley indicated that project economics would require further review. Tr. H-80.

See April 30 update to Confidential 02-OPA-16 at p.16.

This strategy lends an element of uncertainty to CMP NG's proposal to serve in any particular area, at least until firm customer commitments are arranged. Northern's management has given specific approval to expand its system in the Bath, Brunswick, and Freeport areas without waiting to contract with anchor customers. Trans. H-202. This difference in emphasis on obtaining anchor customers likely reflects the cost and risk differences faced by the two entities. We find Northern's proposal to serve the Bath/Brunswick and coastal area to be the more secure and cost effective manner to serve these areas.

4. Economies of Scale

We have also reviewed the estimated costs to serve the loads in the area and the market studies of both CMP NG and Northern. It is not surprising to find that both companies would attempt to recruit many of the same potential "anchor" customers. Because the market is relatively small and geographically concentrated, we expect that the two companies would also compete for many of the smaller customers and loads identified in their market studies. The cost studies reveal that there is a significant initial capital investment required by either firm in order to extend service to this market area. Were we to allow two firms to serve in this area, the evidence indicates that the result would be higher total costs to serve essentially the same loads; a demonstration that subadditivity of costs exist in the extension of gas service to the area. Because costs eventually will translate into rates, it is clear that choosing the lower cost option to obtain the same service best serves the public interest and convenience.

5. Timing

Northern has argued that CMP NG's time frame for construction is not feasible and have noted contradictory statements made by CMP/NYSEG witnesses regarding the speed with which they could construct a distribution system and serve the area. NU Brief at 11. We agree that a number of factors weigh against CMP NG's projected timetable, such as its incomplete

corporate organization, winter construction moratoria, uncertain anchor customer commitments, and other preliminary construction matters. Additionally, Northern's decision to lower costs by beginning construction in the spring of 1999 appears to be reasonable. However, in light of the customer and municipal interest in the area, we urge Northern to explore the possibility of meeting service needs of potential customers in the Bath/Brunswick area earlier if it can be done economically.

6. Rate Comparisons

A number of rate comparisons between CMP NG and NU have been offered in this proceeding. The most comprehensive and comparable is the joint response of CMP NG and NU to ODR-05, which is based on a number of shared assumptions, although the two utilities use different methods for determining gas costs. The rate comparisons consist of a series of twenty-six total bill comparisons, where bills for assumed usage levels are calculated using CMP NG rates and NU rates. Bills are calculated for the years 1998, 2000, and 2002, in order to reflect the effects of projected changes in NU's rates (CMP NG's rates are assumed not to change during the entire period of the comparison).

As might be expected, some total bills are lower for CMP NG, some are lower for NU. In a number of cases the comparison shifts over time in favor of NU, as NU implements its proposed series of phased-in rate reductions to larger customers. Our overall assessment is that these rate comparisons do not show any

clear superiority of one utility's rates over the others of such significance that our decision on whether a second utility is required in Bath/Brunswick would turn on this issue. Even if one was clearly superior, these rate comparisons would provide an uncertain basis for such a decision for several reasons. First, we note that we have not approved either of these rate proposals.[32] In addition, as noted above, the gas cost component of the CMP rate may be in error resulting in understated costs and rates. More importantly, even if proposed rates were approved, neither utility will guarantee that they will not seek increases during the period of the comparison.

In sum, we conclude that these rate comparisons do not provide an adequate basis for any decision regarding whether public convenience and necessity requires a second utility in the Bath/Brunswick areas. Most clearly, they do not establish any significant deficiency in NU's proposed rates.

7. Bath/Brunswick Coastal Area Conclusion

In sum, we find that Northern can provide service to the communities that comprise the Bath/Brunswick Coastal areas at lower total cost and that Northern has demonstrated with sufficient certainty that it will do so and that it is actively planning to construct a system to provide service within a reasonable time frame. Thus, we find the public interest and necessity do not require a second utility to provide service in

[32]NU's rate proposal is currently under investigation in Docket No. 97-393.

what has been defined as CMP's Bath/Brunswick project area at this time.

However, due to the concerns expressed by the Towns that without competitive pressure Northern would not move ahead in a timely and aggressive manner to serve the area, we will monitor Northern's progress to ensure that system development and service are accomplished within a reasonably expeditious and certain period of time. We will require Northern to report on its progress and remaining planned expansion activities for the Bath/Brunswick/Coastal area in six months.

Public utilities have an obligation to serve within their service territory where it is economic to do so. Moreover, it is within our authority to require a utility to serve where we determine it is reasonable and necessary, such as where a demonstrated demand for the service exists. Alternatively, we could find that that the public interest would be better served by authorizing another entity to serve an unserved area.

B. The Bangor Area:

As outlined in section IV.A above, Bangor Gas has been granted authority to provide service in the communities of Bangor, Brewer, Veazie, Old Town, and Orono. See *Bangor Gas*. Bangor Gas proposes to construct a local distribution system in this area during 1998 and 1999 and to provide service in these municipalities when the Maritimes pipeline is placed in service in 1999. Northern is fully authorized to provide service in the

remaining (surrounding) towns identified in CMP's petition, but has not presented plans to serve the area.

The demonstration of need, as defined in *Mid-Maine*, is fairly straightforward in the entire Bangor project area.[33] As further described in the Order, however, a showing of need does not necessarily support a grant of service authority.

> A finding of need is not conclusive on the issue of whether or not an applicant should be granted authority to provide service. The Commission must also assess the technical and financial capability of the applicant and address issues such as uneconomic duplication of facilities, fairness to existing investors, and any other factor implicated by the Commission's broad public policy statement.

Mid-Maine, Order at 10.

1. The Bangor Gas (or "Core") Service Area

For the reasons below, we do not authorize CMP NG to serve the communities it defines in its petition as the Greater Bangor Area.

Again, we are concerned with the economic efficiency of providing local distribution service to the greater Bangor area. The economics supporting the provision of service to the

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[33] We hold that an applicant seeking to serve an area which is unserved or to provide a type of service which is not being provided need make no further evidentiary showing to demonstrate that a need for the proposed service exists. Nor will such an applicant be required to demonstrate that existing service to the area is inadequate. This rule shall apply regardless of whether any other utility holds a franchise for the currently unserved area or has authority to provide the service not currently provided.
See *Bangor Gas* Order at 10.

communities in which Bangor Gas has been authorized to serve have been demonstrated for us both on this record in CMP NG's cost of service studies for the project area,[34] and in cost of service studies furnished in the *Bangor Gas* proceeding.[35] The balance of costs and revenues in these areas do not appear to support more than one local distribution utility. This conclusion was generally echoed by statements of CMP/NYSEG witnesses Kelly/Quimby. Tr. at H-84. To the extent the customer base is shared between the two utilities, the unit cost to serve will be higher for remaining customers of each entity and the possibility of an acceptable return on project investment to each entity is diminished.

As noted in our discussion of the Bath/Brunswick area above, for more than one entity to serve the Bangor area will require more taps into the pipeline and other duplication of costs to establish two foundational sets of facilities and services. This results in unnecessary costs to serve and adverse pressures on markets and profits. We have already established that a "race to the trench" appears to be in no one's interest and could well lead to the hasty, ill-planned and uneconomic installation of facilities.

Furthermore, we do not find that the public necessity requires a second utility to accomplish the provision of safe,

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[34]See ACG-3 and ACG-5 pp 21-25 (Confidential)

[35]See Rea Exh. C, Financial Analysis (Confidential), Docket No. 97-795.

adequate service to the area at this time. Bangor Gas is proceeding to implement its plans to construct and begin to serve a significant portion of the area by 1999 when the Maritimes pipeline is placed in service. As in the Bath/Brunswick coastal areas, we see no service areas or elements that are lacking in Bangor Gas's proposal or which are unlikely to be implemented on a timely schedule. We therefore deny CMP a grant of authority to serve the "core" Bangor Area at this time.

As previously stated, we will revisit this issue as additional evidence is brought forward and we have within our powers, various options to remedy the situation if service to the area is unreasonably lacking at any point in the future. At this time, however, we do not find that to be the case. There is in place a competent entity with a sound proposal that is executing plans to go forward in a reasonable time to serve the area. We find that it is preferable to allow Bangor Gas a reasonable period of time to develop its proposal, rather than to invite a competition on local turf between two start-up ventures at this juncture. If, in the future, we find this effort is inadequate, we can act as necessary to serve the public interest.

Moreover, our review of the development plans of Bangor Gas and CMP lead us to believe there is a higher probability that customers in the area will receive gas service through Bangor Gas than through CMP. CMP's system development philosophy targets anchor customers, building the distribution mains to serve them,

and then gradually picking up load adjacent to the distribution mains that meets the Company's investment test. As mentioned in section IV.A above, CMP Gas witnesses during the April 7 technical conference were candid in their response that project area economics would require further review should they fail to recruit anchor customers. Tr. G-75-76 and H-80, lines 2-21.

As pointed out by Bangor Gas in its brief of, it is at least questionable whether CMP Gas will proceed with project development in other areas if it does not receive service authority in the Bath/Brunswick project areas. Tr. H-78 lines 12-79, and Tr. H-79 lines 7-12.

2. Remainder of the Bangor Project Area

After denying CMP authority to serve in the "core" Bangor area (i.e. the towns of Bangor, Brewer, Veazie, Old Town, and Orono), CMP's request for certificate is reduced to a patchwork of noncontiguous, surrounding towns. While Northern currently has authority to serve in these municipalities, it has not come forward with any plans to do so. It is unlikely, based on evidence proferred thus far in this proceeding, that -- with the possible exception of Bucksport -- it would be economic for CMP Gas to develop an LDC system to reach these remaining towns.

Nor does the record support granting unconditional authority to CMP to serve only a portion of the project area.[36] Rather,

[36]At best, we could award service authority conditioned on the submission of an acceptable modified proposal. Because this is the functional equivalent of simply denying CMP unconditional authority at this time, we see no point in doing so. CMP can submit a revised proposal if it decides to proceed with a

CMP NG has consistently maintained that it is crucial to its overall proposal to receive authority to serve the Bath/Brunswick coastal areas and the Bangor Area. Witnesses indicated that the joint venture would need to reassess the economics and operational characteristics of its proposal -- and possibly to redesign its proposal -- to take into account the loss of any portion of its proposed areas. CMP NG also stressed the importance of the Bath/Brunswick and Bangor areas, which comprise two-thirds of its proposal, to the success of its project due to lost economies. Towns Exh. #2, 01-NU-03, 01-NU-07. Where we here deny CMP NG authority to serve in those areas, we anticipate that a revised CMP NG proposal might be crafted quite differently in its operational and engineering or other supporting details. Thus, we conclude that it will be necessary to have CMP NG submit its modified proposal to us in order to grant unconditional authority to serve in the remaining project areas.[37]

C. The Augusta, Bethel, Waterville, and Windham Project Areas

As indicated in our "Phase I" Order granting conditional authority[38] to CMP NG in this docket, we believe that CMP NG has the technical and financial ability required to serve as a public gas utility in these areas. In addition, no economies of scale

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proposal to serve some areas within Maine.

[37]CMP would also have the opportunity to address other areas of concern to us, such as those described in the rate plan analysis, in a modified proposal.

[38]Order dated March 11, 1998.

favoring the existing certificate holder, Northern, have been presented, nor would we necessarily expect them because of the significant distance between these areas and Northern's current distribution system. See Confidential 05-Staff-05. These facts suggest that -- applying the same standard we have used in the Bath/Brunswick and Bangor areas, i.e. the existence of a ready and capable entity with concrete plans to go forward to serve the area under a reasonable and economic project proposal -- we would grant CMP service authority in these areas if fully satisfied with its project details for these areas.

Because we have denied service authority to CMP NG in much of its proposed project area, we would require additional information to support a grant of unconditional authority to CMP NG for these other areas. First, CMP NG must reaffirm its interest to serve in the reduced project areas. Next, CMP NG must provide a revised proposal reflecting the new project area, including its staffing plan addressing the type and number of personnel it will require to perform gas distribution functions in the various areas, where such distribution personnel will be located, and other pertinent details. Also, prior to beginning construction or contracting with customers, CMP NG must meet the conditions regarding formation of a gas venture specified at page 14 in our conditional certificate approval. Finally, CMP NG should revise its rate plan to assure us that CMP NG's proposal will result in service at just and reasonable rates, that the

rates will remain stable over time, that they reflect realistic gas costs,[39] and that their structure will not hinder the development of a competitive gas commodity market.

Without this information, we will not know the final nature of the project, its economic viability, or even whether CMP NG plans to proceed with its proposal. Because these are fundamental elements of our review to determine whether a proposal serves the public convenience and necessity, we will not grant CMP NG unconditional authority without reviewing modified project information.

VIII. CONCLUSION

For the foregoing reasons, we do not grant CMP NG unconditional authority to serve in its proposed areas.

Submitted by,

Carol A. MacLennan
Hearing Examiner

In conjunction with
Advisory Staff members:

Denis Bergeron
and
Eric Von Magnus

[39]Supplemental supply cost should be definitively included and the gas price should reflect gas prices, not an oil/gas level.

Appendix A: Procedural History

Phase I

On December 20, 1996, CMP filed a petition for approval to furnish natural gas service in 60 municipalities that may be served from the Maritimes & Northeast Pipeline (MNE) or Portland Natural Gas Transmission System (PNGTS) including Rumford, Mexico, Dixfield, Bethel, Farmington, Wilton, Jay, Livermore, Livermore Falls, Millinocket, East Millinocket, Medway, Lincoln, Howland, Orono, Old Town, Milford, Veazie, Bangor, Brewer, Hampden, Orrington, Bucksport, Clinton, Waterville, Winslow, Fairfield, Madison, Oakland, Skowhegan, Norridgewock, Augusta, Gardiner, Randolph, Hallowell, Farmingdale, Manchester, Winthrop, Topsham, Brunswick, Bath, Freeport, and Yarmouth. With its direct testimony, filed on October 31, 1997, CMP amended this list to include Baileyville(Woodland), Bridgton, Casco, Durham, Gray, Harrison, Naples, North Yarmouth, Norway, Otisfield, Oxford, Paris, Pownal, Raymond, Standish, and Windham.

A prehearing conference was held on March 5, 1997 at which the Hearing Examiner granted the petitions to intervene of the Office of the Public Advocate (OPA), Mid-Maine Gas Utilities, Inc. (MMGU), the Town of Jay, the Industrial Energy Consumer Group (IECG), and Northern Utilities, Inc. (Northern). The Examiner deferred ruling on the petitions of the Maine Council - Atlantic Salmon Federation (ASF), MNE, Madison Electric Works (MEW), and the Town of Cumberland, all of which did not appear at

the prehearing conference. The list of parties now includes ASF and MNE.

By Procedural Order dated March 12, 1997, the parties were invited to comment by March 26, 1997 on a threshhold question as to whether it would serve the public interest to allow an electric utility to also provide gas service.[40] An Examiner's Report on the threshold issue was issued on August 25, 1997. The Commission issued its Interim Order on September 26, 1997 holding that CMP's application to provide gas service could be processed in accordance with the standards of approval delineated in Docket No. 96-465 and that CMP would be permitted to provide gas service only through a separate corporate subsidiary.

On October 27, 1997, CMP filed a proposed schedule for the remainder of the proceeding to which several parties had indicated no objection. On October 28, 1997 CMP filed a Motion for Protective Order to allow it to limit distribution to only Staff and the Public Advocate of certain market analyses and confidential business strategy information. On October 29, 1997, the IECG filed an objection to CMP's request to limit distribution to Staff and OPA. On November 25, 1997, the Hearing Examiners granted the protective order and established a schedule for the proceeding including a case management conference and hearings on January 26, 28, and 29. CMP filed its Direct

[40]On June 27, 1997, the Examiners assigned to this and three other natural gas dockets (97-177, 97-267, 97-310) issued a Notice of Temporary Suspension of these cases to allow the Commission to conduct a generic inquiry (Docket No. 97-267) into the development of the natural gas industry in Maine.

Testimony and Exhibits on October 31, 1997. CMP filed Confidential Exhibit QKE-6 pursuant to protective order on November 26, 1997.

The Examiner issued Protective Order No. 1 on December 5, 1997. The IECG filed a Motion for Reconsideration with Incorporated Memorandum of Law on December 15, 1997. CMP filed its response on December 23, 1997. The Examiners denied the IECG's motion by Procedural Order dated December 30, 1997.

The Maine Oil Dealers Association (MODA) and Bangor Gas Company, L.L.C.'s (Bangor Gas) late-filed petitions to intervene were granted by Procedural Order on December 24, 1997 on condition that they "take the case as they find it". MODA's intervention was limited to providing information concerning gas and oil pricing, environmental comparisions, or conversion costs and data at this stage of the proceeding.

None of the intervenors filed testimony in this proceeding.

The Examiners issued a Procedural Order on January 23, 1998 requiring parties to provide prehearing memoranda outlining their cases for the hearings scheduled for January 28th and 29th. On January 26, 1998, the Examiner held a Case Management Conference at which CMP presented a draft stipulation supported by CMP, the Public Advocate, and MNE. Northern Utilities indicated that it would take no position on the stipulation.

Also on January 26, 1998, Bangor Gas filed a Motion to Compel Responses to Data Requests it had issued on December 31, 1997. CMP objected, on January 21, 1998, that Bangor had filed its data requests well after the discovery deadline that had been established in this case. Bangor Gas then sought to obtain responses to its discovery through cross-examination at hearing. No other party submitted areas for cross-examination of CMP’s witnesses.

On January 27, 1998, by Procedural Order, the Examiners denied Bangor Gas’ motion to compel, overruled Bangor Gas’ stated objection to CMP’s application, and canceled the scheduled hearings. That order also allowed written comment by the parties on the proposed stipulation by February 4th. The executed stipulation was filed on February 3, 1998. Objections to the stipulation and to the application were filed by IECG and Bangor Gas.

An Examiners' Report was issued on February 20, 1998. Northern, IECG and Bangor Gas filed exceptions. Deliberations were held on March 9, 1998.

By Order dated March 11, 1998 (March 11th Order), the Commission granted Central Maine Power Company (CMP), on behalf of its joint venture with New York State Electric and Gas (NYSEG), conditional authority to serve within 60 cities and towns in Maine pursuant to 35-A M.R.S.A. §§2104 and 2105, finding that the joint venture possesses the general financial and

technical capability to serve as a public utility and that need exists in the designated municipalities because natural gas service is currently not being provided in those areas. The March 11th Order did not allow CMP to construct or operate a natural gas system public utility until the Commission has reviewed and approved detailed financing, construction and resource plans, granting CMP full, or unconditional, service authority.

Phase II

On February 23, 1998, CMP filed its "Phase II" proposal for unconditional authority in thirty-five municipalities, including 1) the greater Augusta area (Augusta, Gardiner, Hallowell, Farmingdale, Randolph, Chelsea and Manchester); 2) the greater Waterville area (Waterville, Fairfield, Winslow, Oakland and Vassalboro); 3) the greater Bangor area (Bangor, Brewer, Old Town, Orono, Veazie, Milford, Hermon, Holden, Hampden, Orrington and Bucksport); 4) the Bath/Brunswick coastal area (Bath, West Bath, Brunswick, Topsham, Freeport, Falmouth, Yarmouth and Cumberland); 5) the Windham area (Windham, Raymond, Standish); and 6) Bethel.

The initial schedule for Phase II established intervenor testimony on April 17th, a hearing on May 15th, and a final decision on the application by June 26th.

The Examiner issued Protective Order No. 2, protecting information relating to potential customers of the CMP/NYSEG joint venture, on April 2, 1998. Under Protective Order No. 3,

issued April 13, 1998, CMP/NYSEG released to Bangor Gas, Northern and MNE information relating to rates based on its project planning assumptions. On May 5, 1998, a Protective Order was issued relating to Northern's analyses of gas markets in Maine, project analyses and related materials and business strategy information including financial, cost and market information.

On March 31, 1998, Northern filed a Motion for Reconsideration of the March 11th Order, requesting that the Commission failed to consider the overall public interest in granting CMP authority to serve in an area where Northern is already authorized to serve. Northern requested that the Commission reopen Phase I to consider these issues in its determination of need, or, alternatively, to consider these issues in Phase II of the CMP proceeding. Responsive comments were filed by CMP, MNE, OPA, and Bangor Gas.

Technical conferences on the Phase II filing were held on April 10th and May 7th.

Briefs on issues raised by Northern's request for reconsideration were filed on April 17th by Bangor Gas, OPA, CMP MNE,and Northern.

The Commission deliberated Northern's Motion for Reconsideration on April 28, 1998 and issued its *Order Granting Northern Utilities, Inc.'s Motion For Reconsideration* on May 14, 1998.

On May 12, 1998, the Examiner issued a modified schedule for Phase II to reflect the Commission's ruling on Northern's Motion for Reconsideration. The schedule allowed CMP to file testimony on the additional issues raised by Northern's motion, followed by an opportunity for intervenors to file testimony.

On May 13th, CMP filed a letter protesting the schedule, stating that it had nothing further to present at this time on the issue of whether CMP should be allowed to provide service in municipalities in which Northern is already authorized to serve. CMP urged the Commission to resolve its application as soon as possible.

On May 14th, the Examiner issued a revised schedule, finding that CMP, as applicant, had waived its opportunity to file initial testimony, and advancing the filing dates for Northern's opportunity to provide testimony. In addition, the Examiner allowed other parties a round of responsive testimony.

On May 15th, Northern filed a letter objecting to the May 14th schedule. By Procedural order dated May 18, 1998, the Examiner further revised the schedule and limited the scope of further testimony and hearings to those areas that CMP had identified as priorities for 1998 construction: the Bath/Brunswick area, Bethel, and the Windham/Standish area. The procedural order also required CMP to propose by May 20, 1998, a separate schedule for the remainder of the areas in which it seeks approval or, alternatively, to indicate why it is not

possible to bifurcate review of its application in this manner. CMP filed nothing in response to this directive.

On June 1, 1998, Northern filed the testimonies of John Flumerfelt, Patricia Dyer, and Danny Cote.

Hearings were held on June 17th and 19th. CMP witnesses supplied the rebuttal testimony (CMP Exhibit #)of Tim Kelly and Darryl Quimby. Northern's witnesses gave brief oral surrebuttal. Cross-examination was allowed on all witnesses.[41]

Comments of the parties on whether there would be a need for further proceedings to evaluate the remaining areas contained in CMP's application were filed on June 24th by OPA, Bangor Gas, CMP,and Northern. No party requested additional hearings or testimony at this time.

Briefs on CMP's entire application were filed July 1 by OPA, MODA, Bangor Gas, CMP, and Northern. Reply briefs were filed by Northern, Bangor Gas, CMP and MODA. The Examiner's Report was issued on July 13, 1998. Oral exceptions were made on July 17th and deliberations were scheduled for July , 1998.

[41]Bangor Gas witness Jan Van Lierop was made available by telephone.