STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 19, 1997

ORDER PARTIALLY GRANTING WAIVER AND DENYING MOTION TO CLARIFY

PETER TALMAGE
Petition Requesting Commission Intervention Regarding Efforts to Obtain Net Billing Purchasing Contract with Central Maine Power Company

Docket No. 97-513

NAOTO INOUE
Petition Regarding Commission Intercession Regarding Efforts to Obtain Net Billing Purchasing Contract with Central Maine Power Company

Docket No. 97-532

WELCH, Chairman; NUGENT and HUNT, Commissioners

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## I. SUMMARY

In this Order, we address Central Maine Power Company's (CMP) request for waiver and motion for clarification regarding its obligations under the net energy billing provisions of Chapter 36. We partially grant CMP's request for waiver of its obligation to enter net energy billing contracts that extend beyond February 28, 2000; the waiver shall only apply to requests for net billing arrangements that occur after the effective date of Maine's restructuring legislation. We deny CMP's motion to clarify our October 27, 1997 Order to state that the Company is no longer obligated to enter any new net energy billing contracts except with Mr. Talmage and Mr. Inoue. CMP remains obligated to enter new net energy billing contracts for terms that extend through February 29, 2000.

## II. BACKGROUND

On October 27, 1997, the Commission issued an Order rejecting CMP's claim that the net energy billing provision of Chapter 36 is preempted by federal law. The Commission directed CMP to comply with the provisions of the existing rule. However, because the Commission is currently considering, in a rulemaking proceeding, the propriety of net energy billing after retail access commences, the Order indicated that there is a question as to whether CMP should be required (pending resolution of the rulemaking issues) to enter new contracts that extend beyond

March 1, 2000. Accordingly, the Commission stated that it would consider a request for a waiver of the requirement to enter contracts beyond that date.

On November 3, 1997, CMP filed a request for waiver of its obligation to enter into long-term contracts and a motion for clarification regarding the Commission's October 27th Order. In its request for waiver, CMP asks to be relieved of Chapter 36's long-term contract requirements so that its net billing arrangements with Mr. Talmage and Mr. Inoue will terminate after February 2000. CMP states that there are serious issues regarding the propriety of net energy billing arrangements that extend after the implementation of electric industry restructuring. These include that transmission and distribution (T&D) utilities, after March 1, 2000, are not allowed to sell energy at retail and thus would not be able to perform a net billing arrangement. Additionally, net energy billing arrangements require utilities to purchase generation in excess of a customer's retail usage that could ultimately add to stranded costs.

In its motion for clarification, CMP asks the Commission to clarify that it is not obligated to enter into new net billing arrangements other than the two specific contracts requested by Mr. Talmage and Mr. Inoue. Specifically, CMP requests that the October 27th Order be clarified to reflect that CMP is under no obligation to sign any new customer net energy billing agreements after September 19, 1997, the effective date of Maine's restructuring legislation, P.L. 1997, ch. 316 (Act). The basis for CMP's clarification request is section 9 of the Act which states that utilities may not be required to enter into contracts to purchase power from qualifying facilities (QFs) after the effective date of the Act.

The Public Advocate and Mr. Talmage filed replies to CMP's request for waiver and motion for clarification. The Public Advocate does not oppose CMP's request for a waiver of the requirement to enter net billing contracts that extend past the date of retail access. The Public Advocate notes that retail choice puts the issue of net metering in a new light and that CMP has raised practical questions regarding how such arrangements would work in a post-restructuring world given that a T&D utility cannot sell or buy power. The Public Advocate opposes CMP's request that the Commission clarify its Order to indicate that no new net billing arrangements other than those of Mr. Talmage and Mr. Inoue must be entered. The Public Advocate points out that section 9 also states that nothing in the section abrogates existing laws and rules that provide QFs the right to sell energy on an as available basis at the utility's short-term-only rate. The Public Advocate states this language requires utilities to

continue to enter net billing arrangements through March 1, 2000.

Mr. Talmage argues that CMP's request for waiver of its obligation to enter long-term contracts be denied. Mr. Talmage states that section 5 of the Act suggests that the utility has a continuing obligation to buy and sell from and to QFs. If this obligation becomes unenforceable after March 1, 2000, net billing customers should be able to contract for their electricity needs in the competitive market and, accordingly, net billing should be a continuing obligation imposed on all competitive electricity providers who sell at retail. Mr. Talmage responds to CMP's purchase of excess generation argument by reiterating that section 5 of the Act provides a continuing obligation to utilities, that any stranded cost would be so small as to be trivial and inconsequential and by noting that, because of the renewable energy mandates in the Act, it is likely that excess generation from net billing customers would command a premium price. Mr. Talmage urges the Commission to recognize that he and other similarly situated net billing customers have invested in generating equipment with certain expectations regarding their ability to offset retail electricity purchases and their ability to sell any excess electricity they generate; these expectations are legitimately based on the legal regime in place when these customers sought to enter into their net billing arrangements.

Mr. Talmage responds to CMP's motion for clarification by stating that the Company failed to distinguish between the purchase of power by contract and purchase of power on an as available basis. Referring to the second sentence of section 9, Mr. Talmage states that CMP is technically correct that it does not have to enter net billing contracts, but does have a continuing obligation to enter net billing arrangements when the sale of excess energy is on an as available basis.

## III. DISCUSSION

### A. Request for Waiver

We partially grant CMP's request for a waiver of its obligation to enter long-term net billing contracts that extend beyond February 29, 2000. The waiver is applicable only to requests for net billing contracts that occur after September 19, 1997, the effective date of the Act. As illustrated by the arguments of CMP and Mr. Talmage in this regard, the matter of net energy billing in a restructured environment raises a number of issues that must be carefully considered. In our Notice of Rulemaking regarding the impact of restructuring on QF contracts, Docket No. 97-794 (Oct. 31, 1997), we discuss and request comments on a variety of net billing issues, as well as present alternative net billing arrangement approaches for comment. In light of our pending consideration of these issues, it is

reasonable to relieve CMP of its obligation to enter net billing contracts that extend past February 29, 2000. This will diminish the magnitude of obligations that CMP might incur for the post-restructuring period that the Commission may later find to be contrary to or inconsistent with the public interest.

As stated above, the waiver applies only to requests for net billing arrangements after the effective date of the Act. For equity reasons, utility customers that requested arrangements prior to the effective date of the Act should be treated similarly as other previous customers that obtained net billing contracts. Such customers may well have invested in generating equipment with reasonable expectations that they could offset their retail purchases and sell any excess electricity according to then existing rules. Accordingly, CMP shall provide Mr. Talmage and Mr. Inoue with 5-year net billing contracts with initial dates that would have occurred if their requests had been processed in due course.

B. Motion for Clarification

We deny CMP's request to clarify our October 27th Order to state that the Company is only required to enter net billing contracts with Mr. Talmage and Mr. Inoue. We disagree with CMP's interpretation that section 9 of the Act compels us to relieve CMP of its obligation under Chapter 36 to enter new net billing contracts.

The section at issue states:

> **Sec. 9. New Contracts.** Notwithstanding the Maine Revised Statutes, Title 35-A, chapter 33, an electric utility or transmission and distribution utility may not be required pursuant to 35-A, chapter 33 to enter into a contract to purchase power from a qualifying facility after the effective date of this Act. Nothing in the section abrogates existing law or rules that provide qualifying facilities with the right to sell energy to an electric utility prior to March 1, 2000 on an as-available basis at the utility's short-term-only rate or to sell capacity and energy to an electric utility at any time before or after March 1, 2000 on a basis voluntarily and mutually agreed to by the qualifying facility and the electric utility.

Although the first sentence of this section clearly states that electric utilities may not be required to enter into any new contracts, the second sentence just as clearly states that section 9 does not change any existing law or rule with respect to QFs selling energy on an as-available basis. The reasonable interpretation of this section is that the general pronouncement contained in the first sentence is subject to specific reservation of existing law and rules in the second sentence. Consistent with this interpretation, we conclude that section 9 eliminates the requirement for utilities to enter long-term contracts for capacity and energy, but maintains the existing right of QFs to contract to sell energy on an as-available basis at the utility's short-term energy rate. Accordingly, we find that CMP must continue to enter net billing contracts with terms through February 29, 2000 pursuant to the provisions of Chapter 36. Consistent with the above discussion, CMP is only obligated to purchase excess energy at short-term rates.

Dated at Augusta, Maine this 19th day of December, 1997.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Hunt

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of adjudicatory proceedings are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 6(N) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.11) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which consideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.