

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT**

Law Docket No. PUC-11-532

ED FRIEDMAN, et al,

Appellants

v.

MAINE PUBLIC UTILITIES COMMISSION

and

CENTRAL MAINE POWER COMPANY

Appellees

ON APPEAL FROM THE MAINE PUBLIC UTILITIES COMMISSION

SUPPLEMENT OF LEGAL AUTHORITIES

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SUPPLEMENT OF LEGAL AUTHORITIES

1. Order Approving Installation of AMI Technology, Docket No. 2007-215(II) (February 25, 2010) 1

2. Notice of Investigation, Docket Nos. 2010-345 and 2010-389 (January 7, 2011) 13

3. Notice of Investigation, Docket Nos. 2010-345, 2010-389, 2010-398, and 2010-400 (February 18, 2011) 21

4. Order Denying Motion for Reconsideration, Docket No. 2010-398 (April 7, 2011) 27

5. Order Denying Motion for Reconsideration, Docket No. 2010-400 (April 15, 2011) 33

6. Order (Part I), Docket Nos. 2010-345, 2010-389, 2010-398, 2010-400, and 2011-085 (May 19, 2011) 40

7. Order (Part II), Docket Nos. 2010-345, 2010-389, 2010-398, 2010-400, and 2011-085 (June 22, 2011) 46

8. Order Denying Reconsideration, Docket Nos. 2010-345, 2010-389, 2010-398, and 2010-400, 2011-085 (August 24, 2011) 64

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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

RECEIVED

Docket No. 2007-215(II)

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February 25, 2010

CENTRAL MAINE POWER COMPANY
Request for Alternative Rate Plan

MAINE PUBLIC
UTIL. COMM.

ORDER APPROVING
INSTALLATION OF AMI
TECHNOLOGY

REISHUS, Chairman; VAFIADES and CASHMAN, Commissioners

I. SUMMARY

Through this Order, we approve Central Maine Power Company's (CMP) advanced metering infrastructure (AMI) project and associated ratemaking treatment as specified below.

II. BACKGROUND

In its most recent distribution rate case proceeding, CMP proposed to implement AMI¹ on a company-wide basis. CMP's proposal included providing solid-state meters or meter modules for all 550,000 of its customer accounts, supported by a two-way communications network and a meter data management system. CMP also examined and provided cost estimates for necessary changes to its back-office and billing processes and systems to allow the AMI system to support supply market programs (e.g., demand response), as well as time-differentiated pricing. The benefits of the AMI installation were in two categories: 1) operational savings (e.g., reduced meter reading costs, storm restoration expenses and service calls); and 2) supply side savings through demand response programs and time-of-use (TOU) pricing.

Due to its substantial cost, estimated at the time to be in the range of \$100 million, the CMP AMI proposal was carefully examined to determine whether the benefits would outweigh the costs. At the conclusion of the rate proceeding, the parties agreed, in part because of rapid changes in the AMI standards and protocols occurring at that time and in part because of the complexity of AMI that the Commission should defer the decision on the AMI proposal and continue the examination of the cost benefit issues. (Stipulation dated June 6, 2008 in Docket No. 2007-215).

Upon the enactment of the American Recovery and Reinvestment Act of 2009 (Stimulus Act), the potential for receipt of federal stimulus funds to establish a cost effective CMP AMI project was examined by the Commission and the parties through a series of meetings and technical conferences. The Stimulus Act included provisions for the Department of Energy (DOE) to provide matching grants up to 50% of the cost of qualifying smart grid investments.

¹ AMI includes meters and related systems with varying levels of capability, including: detailed customer usage measurement; customer usage data storage; automated and remote meter reading; and communications to and from the meter.

In an Order issued on July 28, 2009, the Commission approved the installation of AMI by CMP, subject to the receipt of a substantial DOE grant award. In that Order, the Commission stated its view that AMI is:

an important technology that will ultimately reduce utility operational costs, improve customer service and provide customers with necessary tools to use electricity more efficiently and lower their electricity bills, for example, by reducing or shifting usage during high cost periods in response to market price signals. In particular, AMI and associated systems are necessary to provide customers with the option of obtaining rates that are time-differentiated to more closely reflect the actual power costs through the day.

Order Approving Installation of AMI Technology, Docket No. 2007-215(II) at 2 (July 28, 2009). Accordingly, the Commission stated that it is reasonable and prudent for CMP to aggressively pursue opportunities for the cost-effective deployment of AMI, and that it will allow full and timely cost recovery of CMP's prudently incurred AMI investment, including the full and timely cost recovery of CMP's undepreciated investment in metering plant that may be replaced by the AMI. The Commission noted that this cost recovery will occur according to the Commission's ratemaking practices and relevant prior commitments made by CMP. These prior commitments include the stipulation provisions in Phase I of this proceeding² (Revenue Requirement Stipulation) and in a CMP reorganization proceeding³ (Reorganization Stipulation) that provide for a levelized recovery of reasonable net costs without the recovery of carrying costs associated with the levelization. *Id.* At 3-4.

On August 6, 2009, CMP submitted a smart grid investment grant application to the DOE. To fulfill the DOE grant requirements and provide increased AMI capabilities, CMP estimated the updated project cost in the DOE application to be approximately \$192 million, including the undepreciated value of the current meters. On October 27, 2009, the DOE notified CMP that it had received a \$95.9 million grant award; the details of which would be finally determined through negotiations with the DOE.

After the notification of CMP's DOE grant award, several technical conferences were held to explore the benefits and costs of CMP's current AMI proposal, the capabilities of the proposed AMI system, and various ratemaking issues. Subsequently, CMP, the active intervenors (the Public Advocate and the International Brotherhood of Electrical Workers Local 1837 (IBEW)) and the Advisory Staff entered into settlement negotiations. After several meetings to discuss settlement, the Public Advocate and the

² Paragraph 6 of the June 6, 2008 stipulation, approved by Commission order dated July 1, 2008.

³ Paragraph 25 of the stipulation in the Iberdrola reorganization proceeding (Docket No. 2007-355) dated January 9, 2008 and approved by Commission order dated February 7, 2008.

IBEW stated that they could not support CMP's proposal and would oppose it before the Commission.

On January 19, 2010, CMP submitted testimony in support of its AMI project and corresponding ratemaking treatment. At the request of the IBEW, the Commission conducted a public witness hearing on the matter on January 20, 2010. The Commission held a hearing on January 22, 2010, in which CMP presented its case, intervenors cross-examined CMP's witnesses, and all parties presented oral argument to the Commission.

III. DESCRIPTION OF AMI PROJECT

As described in its January 19, 2010 testimony, CMP's Smart Grid proposal to the DOE is a deployment of AMI throughout the Company's service territory to serve all 600,000 plus residential, commercial and industrial customers at a cost of \$165.9 million. The inclusion of the undepreciated value of the existing meters brings the requested grant funding to \$191.7 million.⁴ CMP's grant application requested and it was granted 50% of this amount or \$95.9 million.⁵

CMP states that its proposed AMI deployment incorporates state-of-the art technology, data management, cyber security, and functionality. CMP's proposed project will support AMI, dynamic pricing and distribution automation applications, and provide a future-proofed flexible framework to support enhanced smart grid functionality. In automating the meter reader process, CMP will realize operational and cost benefits related to billing and account openings and closings. The project will also offer benefits to customers by providing customer usage information via a home area network (HAN). Moreover, CMP's AMI project will support dynamic pricing and enhance CMP's restoration of service after major storms. Finally, the communications network CMP proposes to install will have sufficient bandwidth to support applications beyond AMI that enable future Smart Grid activities, including monitoring of power quality, charging and discharging of plug-in electric vehicles, and future automation of distribution infrastructure.

IV. POSITION OF THE PARTIES

1. Central Maine Power Company

CMP states that its AMI project is cost-effective and provided an analyses showing that the project will provide approximately \$25 million in operational savings over 20 years (not including demand response and other supply-side benefits that will be available to customers once the AMI project is in place). In its filing, CMP proposed a savings and revenue requirement determinations for the AMI project, including a

⁴ Currently, it is unclear whether the DOE grant will include the undepreciated value of the existing meters and, if not, whether the DOE money will be available for other AMI purposes.

⁵ At the current time, it is unclear whether the DOE grant will be considered taxable income to CMP.

levelized AMI-related revenue requirement consistent with the Revenue Requirement Stipulation and the Reorganization Stipulation, as well as a mechanism for recovery of its remaining investment in legacy meters replaced by AMI meters. Moreover, CMP provided an analysis that shows its project is cost effective even if the AMI grant is determined to be taxable. CMP also states that there will be substantial additional benefits to customers, beyond the \$25 million in operational cost savings, in reduced customer outage costs, web portal benefits and demand response benefits.

CMP urges the Commission to issue an order that provides final approval of its AMI project and its ratemaking treatment.

2. Public Advocate

The Public Advocate argues that the Commission should not approve CMP's AMI proposal. The Public Advocate lists a number of risks to ratepayers if the Commission approves the AMI project. These include the speculative nature of CMP's cost and benefit modeling,⁶ the risk that the new technology will fail, and the potential for stranded costs if the meters or systems do not work as expected and are replaced by newer technology. The Public Advocate urges the Commission to wait for a more final verdict from other utilities and let customers in other states bear these risks. The Public Advocate argues that there are risks of unforeseen costs to make the system work and that there is risk of vendor instability, bankruptcy and disappearance. The Public Advocate notes that the industry continues to go through major changes and that the standards are only being discussed and finalized now. In particular, the HAN technology is immature.

The Public Advocate also states that there are risks regarding the demand side benefits, that ratepayers may not be interested in the benefits from AMI, and they have not asked for AMI-enabled dynamic pricing options. The Public Advocate is concerned about the possibility of catastrophic failure of the digital technology given that CMP's AMI proposal involves a digital meter connected to every customer, with radio relays and collector stations, and a multi-million dollar MDM system that is supposed to integrate all the data coming from the meters and into CMP's billing system

Other risks cited by the Public Advocate include the vulnerability of digital equipment to electrical storms, potential for slower storm restoration due to a reduction of employees available to work during storms, lack of adequate cyber security, and the possible taxability of the grant that would significantly reduce the benefits of the proposed investment.

In the event that the Commission approves CMP's proposed AMI investment, the Public Advocate proposes several conditions. These are:

⁶ The Public Advocate noted that the savings estimates offered by CMP have been reduced over time. The purported savings associated with AMI have gone from \$44 million in October, to \$38 million two weeks before the hearing, to \$25 on the day of the hearing.

- That the Commission not allow CMP to recover any cost of the AMI project until all the meters are installed;
- That the Commission not allow CMP to proceed with its investment until there is a resolution of the tax treatment of the DOE grant;
- That CMP be required to engage in meaningful education efforts to achieve the demand response and efficiency benefits; and
- That CMP's shareholders bear the risk of catastrophic failure of the system.

3. IBEW Local 1837

The IBEW agrees with the views of the Public Advocate. In addition, the IBEW asks that the Commission require CMP to engage in a meaningful early retirement program and re-training program for the affected employees so that they can move into CMP available jobs. The IBEW states that there are 185 current CMP employees that will be qualified to retire within the next three years, which is only slightly longer than the implementation period of this project.

4. Public Witness Hearing

As mentioned above, the Commission, at the request of IBEW, held a public witness hearing on January 20, 2010. All the public witnesses at the hearing testified against CMP's AMI proposal. The witnesses generally expressed concerns regarding the use of federal stimulus funds, intended to help the economy, being used in a manner that results in the lay off of 141 workers. Moreover, witnesses were concerned that the AMI project is too costly and will not be economic for customers. Public witnesses also stated that the digital AMI system will be prone to failures and will end up costing more than anticipated. Finally, witnesses stated a concern that the lay off of so many workers would jeopardize storm restoration efforts.

The Commission notes that it did receive numerous letters from the public expressing similar concerns as those stated by the public witnesses.

V. DISCUSSION

1. Overview

As a general matter, the Commission continues to view AMI as an important technology that will ultimately reduce utility operational costs, improve customer service and provide customers with necessary tools to use electricity more efficiently. We understand concerns expressed by the Public Advocate, IBEW and the commenters at the public witness hearing regarding the deployment of new,

sophisticated technology and the consequences of system failures. However, AMI technology is sufficiently mature that we can be reasonably confident that the AMI systems will work as designed. Due in part to the stimulus funds, utilities around the country are installing smart grid technology, thus accelerating the development of the technologies. We note that Bangor Hydro-Electric Company deployed an automated meter reading system several years ago that has functioned as expected and has resulted in lower costs and increased reliability.

Accordingly, for the benefit of its ratepayers, CMP should position itself to take advantage of new smart grid technology that will allow for lower operational costs and more efficient use of electricity. Maine should not fall behind other states in the use of the latest technology to make electric usage more efficient.

We also understand the views regarding the use of stimulus funds in a manner that results in the loss of jobs. However, the stimulus funds were also intended to promote energy efficiency and Maine cannot miss an opportunity to reduce its electricity rates. The importance of moving ahead with CMP's AMI proposal at the current time is magnified by the receipt of a federal matching grant.

2. Cost-Effectiveness of AMI Proposal

The primary issue in this stage of the proceeding is to determine whether CMP's proposed AMI investment is reasonably likely to be cost-effective, taking into account both operational and supply-side benefits, the costs of the investment and possible risks involved with new technology. CMP has provided a cost-benefit analysis that shows with the DOE grant, its proposed AMI investment will result in approximately \$25 million in operational savings over 20 years. This estimate does not include demand response and other supply-side benefits that will be available to customers once the AMI project is in place. Although the quantification of supply-side savings is, by its nature somewhat speculative, CMP estimates them to be over \$338 million over 20 years.

We have carefully reviewed CMP's analysis of the benefits and costs of its AMI proposal. We recognize the view of the Public Advocate and the IBEW that CMP's estimates of operational savings, because they are based on projections and assumptions, are necessarily speculative to some degree. Moreover, we agree that the supply side benefits are difficult to quantify and uncertain by nature. However, based on the record in this proceeding, we find that it is reasonably likely that the operational and supply side savings over time will be substantially greater than the cost of the AMI investment. Accordingly, we approve CMP's proposed AMI project as described in its filing.

As mention above, there is an issue as to whether the DOE grant will be taxable. In the event the grant is taxable, the benefits of the investment will be significantly reduced. The Public Advocate believes that this is a substantial risk and CMP should not be allowed to proceed with the investment until the issue is resolved. CMP believes, while possible, it is highly unlikely that the DOE grant applicable to the

AMI investment will be taxable.⁷ CMP notes that at least one utility has received a private letter ruling from the IRS indicating that such a grant is not taxable to the utility. Moreover, CMP has provided an analysis that shows a positive benefit of \$6 million in operational costs even if the DOE grant is taxed.

Although the Public Advocate is correct that the benefits of the investment are vastly decreased if the DOE grant is taxable, we agree with CMP that it is unlikely that the DOE grant will be taxed. We understand that the private letter ruling reference by CMP is not binding with respect to CMP, but it is an indication that CMP's DOE grant will not ultimately be taxed. It is unclear how long it will take for the taxation issue to be resolved and significant delays in Commission approval could jeopardize CMP's DOE grant award. Therefore, we will not delay Commission approval until the tax issue is resolved as recommended by the Public Advocate. We will, however, require CMP to file an updated cost benefit analysis within two weeks of a determination of the tax issue.

Finally, as mentioned above, CMP's DOE grant is subject to negotiations with the DOE. CMP has stated that, based upon its initial review of a draft agreement provided by the DOE, it does not anticipate any material changes to the project's scope, costs or benefits. We direct CMP to provide notification to the Commission and parties if communications with DOE indicate that there may be material changes to the project.

3. AMI Capabilities

Our approval of CMP's AMI project is explicitly premised on the system having the capabilities specified in CMP's January 19, 2010 testimony and its DOE grant application. These capabilities include:

- o Measuring and storing load on an hourly (or less) interval basis for residential and small commercial customers; a 15-minute interval basis for commercial and industrial (C&I) customers, and a less than 15-minute interval basis for specified customers. The two-way communications network will have adequate capacity and capabilities to allow for real-time meter queries and remote software upgrades. The AMI system will have sufficient capacity to store the hourly billing data for load settlement processes, including potential adjustments and corrections.

- o Measuring and storing the TOU peak demands of each customer as necessary for billing and settling ICAP tags as well as each customer's daily peak demand.

- o Back office and billing systems capable of billing, both T&D and supply, on a TOU basis. These systems will be designed to allow for time periods that differ between T&D and supply and to allow hourly billing for large commercial and industrial customers. The billing and other back office systems will allow loads to be settled in the ISO-NE market systems for all customers based on actual hourly loads rather than load

⁷ CMP states that the portion of grant funding of the costs for the existing or legacy meters would be taxable.

profiles and allow ICAP tags for all customers to be based on actual metered load in the applicable hour, rather than the load profile. The billing and back office systems will allow for multiple standard-offer products within a given standard offer class and allow for bill proration to be performed using metered loads rather than days in the period, as is currently done.

- o Remote disconnections and reconnections.
- o Reliably poll individual meters to evaluate outages and must include an outage tracking system.
- o Monitoring and measuring voltage variances.
- o Accommodate "value added" systems and devices (e.g., in-home displays; load control devices).

4. Ratemaking Issues

a. CMP's Proposed Ratemaking Methodology

CMP has developed estimated costs and operational savings attributable to its AMI project, an estimated resulting revenue requirement projection and a methodology for establishing the initial levelized AMI revenue requirement, as well as subsequent adjustments during the current ARP (through 2013) and during periods subsequent to the current ARP. CMP proposes that the savings determination and revenue requirement and rate treatment of its AMI project be in accordance with the methodology in its January 19, 2010 filing. In particular, CMP's proposal is to use the methodology in its January 19, 2010 filing to establish the initial revenue requirement in rates beginning July 1, 2010. This levelized amount would remain in CMP's rates for the duration of the AMI investment life (22 years). During the ARP 2008 period, annual reconciliations would be made for changes in actual costs and transmission/distribution allocation factors. After the ARP, CMP proposes annual adjustments to the savings based on actual changes in escalation factors, as well as AMI investment costs and transmission/distribution allocator changes.

As a result of discussions with Staff and the parties regarding savings from remote disconnection and reconnection, CMP proposes to perform a time study of the travel involved in a sample of the disconnection and reconnection work during the months of April and May, 2010. CMP will provide the results of this analysis to the Commission in its 2010 ARP price change proceeding and recommend an adjustment, if appropriate, to the levelized revenue requirement resulting from the time study.

Also, as a result of previous discussions, CMP proposes to reflect the AMI investment, costs and savings in customer rates in a manner that provides a fair allocation of costs and savings to customer rate schedules. This is necessary because the AMI-related benefits are disproportionately allocated to transmission rates

relative to costs, which, conversely, are disproportionately allocated to distribution rates. Thus, CMP will, during 2010 ARP proceeding, explore cost allocation and rate design methods that equitably allocate these costs and benefits, and present allocation methodologies for consideration before the July 1, 2010 rate change.

Finally, CMP's proposal for the ratemaking treatment of its legacy meters is to record the value of the retired meters that are replaced by AMI meters in a regulatory asset account and amortize the regulatory asset account at the related existing depreciation amounts. In the event that CMP obtains DOE funding for these costs,⁸ CMP proposes to reduce that regulatory asset account by such after-tax funding, including any applicable income tax gross-up. CMP will continue to amortize the regulatory asset account at the related existing depreciation amounts, resulting in a shorten recovery period.

b. Commission Decision

We agree with many aspects of CMP's proposed ratemaking methodology. The levelized distribution revenue requirement calculations appear reasonable and consistent with the applicable provisions in the Revenue Requirement and Reorganization Stipulations. In addition, CMP's proposed methodologies for future adjustments provide a useful framework for determining revenue requirements and rates. However, we recognize that changes to the methodology will likely be needed in the event the actual implementation reveals such changes to be necessary or appropriate. CMP is, hereby, directed to file its levelized distribution revenue requirement, consistent with the methodology presented in its January 19, 2010 filing, in its annual 2010 ARP proceeding, subject to updated costs, proposed changes resulting from the time study and reallocations to match transmission and distribution costs and benefits. We will determine, as part of that proceeding, the details associated with the AMI ratemaking for the ARP 2008 period. We specifically leave open the issue of ratemaking for the period beyond the ARP 2008.

We approve CMP's proposed ratemaking treatment for its legacy meters, if it receives DOE funding. In the event that CMP does not receive DOE funding for the legacy meters, but is still eligible for up to \$96 million from the DOE, CMP is directed to notify the Commission so that options can be explored for AMI scope changes that would enable CMP to take full advantage of the DOE funding.

As mention above, as conditions of approval, the Public Advocate recommends that Commission not allow CMP to recover any cost of the AMI project until all the meters are installed and that CMP's shareholders should bear the risk of catastrophic failure of the system. We decline to adopt either of the recommended conditions. First, due to the levelized ratemaking approach dictated by the Reorganization Stipulation, future savings are moved forward in time, providing a significant benefit to ratepayers that would be lost under the Public Advocate's approach of not placing the investment in rates until after the meters are operational.

⁸ As mentioned above, it is unclear as to whether the DOE grant will pay for the costs of the legacy meters

Second, requiring the shareholders to bear the risk of catastrophic failure of the system is inconsistent with ratemaking principles in Maine in which utilities are allowed to recover the costs of prudently incurred investment.

5. Promotion of Pricing Programs

Issues were raised during this phase of the proceeding regarding CMP's role in the promotion and marketing of pricing programs and web portal opportunities that take advantage of its AMI platform. As a condition of approval of the AMI investment, the Public Advocate proposed that CMP be required to engage in meaningful education efforts to achieve the demand response and efficiency benefits.

In its filing, CMP stated that it would work with Staff, interested parties and Efficiency Maine to develop and implement one or more voluntary pricing programs that take advantage of the AMI technology. CMP also stated that it would work with Staff, interested parties and Efficiency Maine to develop and distribute effective and timely customer communications describing the nature and value of the pricing programs. Finally, CMP asks that it be allowed to defer, and be permitted to recover, any incremental costs, including carrying costs, to develop, support, or distribute effective and timely customer communications, provided such costs are not already reflected in AMI costs.

Because these programs have not yet been developed, we recognize that it is premature to make any definitive decisions in this regard. We will, however, initiate a proceeding to consider pricing programs that CMP should implement to take advantage of the AMI platform. We anticipate that CMP will work with Staff, Efficiency Maine Trust and other interested parties to develop programs that take full advantage of the AMI platform. CMP's commitment to work with interested parties on the development and promotion of AMI-enabled pricing programs satisfies the Public Advocate's proposed condition.

We intend to allow CMP to defer and recover incremental customer communication costs, including carrying costs, to develop, produce, or distribute effective and timely customer communications related to AMI use or benefits, to the extent not already reflected in AMI costs. However, we will require CMP to seek prior Commission approval of the expenses it seeks to defer.

6. Employee Transition Issues

We recognize that CMP's AMI investment will result in the loss of 141 full time equivalents or 115 to 120 full time jobs. This represents approximately 10% of CMP's work force. As mentioned above, the IBEW asks that the Commission require CMP to engage in a meaningful early retirement program and re-training program for the affected employees so that they can move into CMP available jobs. The Commission does not want to be involved with CMP's union negotiations or labor relations and we will not at this time adopt any CMP requirements concerning employee transition issues. However, we urge CMP to make all reasonable efforts to accomplish the necessary workforce attrition through early retirement and employee retraining for

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

January 7, 2011

NOTICE OF INVESTIGATION

ELIZA BOXER-COOK, ET AL,
Request for Commission Investigation in
Pursuing the Smart Meter Initiative

Docket No. 2010-345

TERESA SWINBOURNE, ET AL.
Request for Commission Investigation into
Unreasonable, Insufficient and Discriminatory
Decisions to Implement the use of Smart Meters
to CMP Customers Disregarding Choice in
Regards to Wireless Activity and Consumer's
Right to Privacy Within Their Homes

Docket No. 2010-389

CASHMAN, Chairman; VAFIADES and LITTELL, Commissioners

I. SUMMARY

Through this Notice, the Commission initiates a limited investigation into the acts and practices of Central Maine Power Company (CMP) with respect to its advanced metering infrastructure (AMI) or "smart meter" initiative. Specifically, this investigation will determine whether CMP's act or practice of not allowing individual customers to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory. The investigation will include an examination of alternative approaches to allow for customer opt-out to the extent they may be technically and economically feasible.

II. BACKGROUND

1. Advanced Metering Infrastructure/Smart Meters

After extensive proceedings, the Commission, on February 25, 2010, issued an order approving the installation of AMI technology for CMP, finding that the benefits in term of customer supply savings and utility operational cost savings are likely to exceed the costs of the investment. *Order Approving Installation of AMI Technology*, Docket No. 2007-215(II) (Feb. 25, 2010). AMI includes smart meters and related systems that allow for automated and remote meter reading, detailed customer usage measurement and data storage, and communications to and from customer meters. AMI provides both utility operational savings (e.g., lower storm restoration costs) and a platform for programs that allow customers to lower their energy costs through more accurate and timely information and pricing programs that better reflect the hourly and seasonal differences in electricity costs (e.g., time-of-use rates).

In a previous order approving the installation of AMI by CMP subject to the receipt of a Department of Energy (DOE) grant award, the Commission described AMI as:

an important technology that will ultimately reduce utility operational costs, improve customer service and provide customers with necessary tools to use electricity more efficiently and lower their electricity bills, for example, by reducing or shifting usage during high cost periods in response to market price signals. In particular, AMI and associated systems are necessary to provide customers with the option of obtaining rates that are time-differentiated to more closely reflect the actual power costs through the day.

Order Approving Installation of AMI Technology, Docket No. 2007-215(II) at 2 (July 28, 2009). On October 27, 2009, the DOE notified CMP that it had received approximately \$90 million (representing 50% of the cost of CMP's AMI project) in funding under the DOE's Smart Grid Investment Grant Program.

CMP's AMI system is based on a "mesh" network that links individual customer meters and wireless repeaters (generally located on utility poles) into a Neighborhood Area Network. The Neighborhood Area Networks link to the Wide Area Network, which is a high capacity wireless communications network over CMP's entire service area that moves information to and from the Head End System. The Head End System is the "controller" for the AMI System, and coordinates information flows between CMP customers and CMP's Meter Data Management System. The meters and other devices transmit data by sending radio frequency (RF) signals between various points in the network.

2. Boxer-Cook Complaint

On October 25, 2010, the Commission received a complaint signed by Elisa Boxer-Cook and 11 other persons against CMP, stating that CMP's acts and practices with respect to the installation of "smart meters" are unreasonable, inadequate and inconsistent with legislative mandates. Specifically, the Boxer-Cook Complaint states that, when the Commission approved CMP's AMI initiative, it did not consider the full range of health, security and safety issues, which include issues related to the protection of medically sensitive individuals or procedures to allow concerned customers to opt-out of the program. The Complaint cites information and authorities which indicate that the non-ionizing RF radiation that would be emitted by the smart meter mesh network could be a potential cause of cancer and that further research is required. In addition, the Complaint states that there are individuals who suffer from medically confirmed sensitivities to non-ionizing RF radiation and who would be exposed to such radiation involuntarily under CMP's smart meter program.

The Complaint also asks that the Commission:

- mandate an immediate moratorium on the continued installation of smart meters and smart meter related equipment to allow time for a thorough, independent and transparent investigation of the health, safety and security impacts related to the smart meter initiative;
- initiate adjudicative proceedings on the matters raised in the Complaint;
- require CMP to allow customers to opt-out of the smart meter program; and
- require CMP to sponsor and fund an opportunity for the public to evaluate the views and studies of experts on both sides of the health and safety issues.

On October 25, 2010, the Commission issued a Notice of Complaint, notifying CMP of the Boxer-Cook Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302. On November 3, 2010, CMP filed an initial answer to the Boxer-Cook Complaint in the form of a general denial of the allegations. On November 9, 2010, the Public Advocate filed a letter supporting the Complaint's request for the Commission to open an investigation.

On November 16, 2010, CMP filed a response to the Boxer-Cook Complaint, asking that the Commission promptly dismiss the Complaint on the grounds that it is without merit. In the response, CMP states that there is simply no credible support for an assertion that the extremely low power and intermittent radio frequency (RF) transmissions emitted by the AMI devices installed by CMP can have any adverse health effects on any customer. Specifically, CMP states that the use of the AMI devices is approved under the standards for RF by the Federal Communications Commission (FCC), the entity charged by Congress with ensuring the safety of transmitting devices, and that the emissions levels are far below those found by the FCC to be safe for RF exposure. Moreover, CMP states that claims that customers may become sick from radiation in the form of RF emitted from smart meters and associated technology are not supported by the scientific community.

On December 13, 2010, the Complainants filed a Reply to CMP's Request for Dismissal. The Reply states that CMP's view of the scientific debate on smart meters is selective, one-sided, misleading and misses the point of the Complaint, which is that CMP's refusal to allow an opt-out option to residential customers, given the serious and unresolved concerns regarding health risks associated with smart meter installations, is an unreasonable act or practice that the Commission can and should correct in this proceeding.

3. Swinbourne Complaint

On December 13, 2010, the Commission received a complaint signed by Teresa Swinbourne and 9 other persons against CMP, stating that CMP's deployment of smart meters is unreasonable, insufficient and discriminatory in that it disregards customer choice, differentiation among the customer base in regards to wireless activities and the consumer's right to privacy within their homes. The Swinbourne Complaint states that the complainants have requested opt-outs from the wireless smart meters and have been informed by CMP that such opt-outs are not an option. The Complaint states that meter information can be transmitted through dedicated phone lines and therefore the smart grid function does not depend upon wireless service.

On October 25, 2010, the Commission issued a Notice of Complaint, notifying CMP of the Swinbourne Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302.

On December 21, 2010, CMP filed its response to the Swinbourne Complaint, stating that it should be dismissed on the grounds that it is without merit. CMP states that the Swinbourne Complaint raises the same issues as the Boxer-Cook Complaint and specifically suggests that customers be given the option of using a dedicated phone line (hard wired option) instead of a wireless smart meter. CMP states that a hard wired option fails to meet the Company's operational obligations and requirements established by the Commission and the DOE, and may jeopardize the DOE project funding.

On December 22, 2010, the Public Advocate submitted a letter stating that CMP's claims regarding the infeasibility of a hard wired alternative contains many bald statements but not much information, and the Commission should investigate the feasibility of a hard wired alternative to CMP's radio meters.

4. Customer Letters

Over the last several months, the Commission has received numerous letters that expressed concerns regarding CMP's smart meter program similar to those presented in the Boxer-Cook and Swinbourne Complaints.

5. Maine Center for Disease Control

At the request of the Public Advocate, the Maine Center for Disease Control (CDC) conducted an examination of the health impacts of smart meters through the review of health studies and assessments by government agencies and some affiliated private and academic organizations. The CDC report concluded:

In conclusion, our review of these agency assessments and studies do not indicate any consistent or convincing evidence to support a concern for health effects related to

the use of radiofrequency in the range of frequencies and power used by smart meters. They also do not indicate an association of EMF exposure and symptoms that have been described as electromagnetic sensitivity.

Maine CDC Executive Summary of Review of Health Issues Related to Smart Meters, Nov. 8, 2010.

III. DECISION

For the reasons discussed below, we initiate a limited investigation into the acts and practices of CMP with respect to its AMI or "smart meter" initiative. The investigation will consider and determine whether CMP's acts or practices of not allowing individual customers to choose not to have a wireless smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory. The investigation will include an examination of alternative approaches to allow for customer opt-out that may be technically and economically feasible as specified in more detail below.

1. Complaint Standard

The complaints in these proceedings were filed pursuant to 35-A M.R.S.A. § 1302. Section 1302(1) provides:

When a written complaint is made against a public utility by 10 persons aggrieved that the rates, tolls, charges, schedules or joint rate or rates of a public utility are in any respect unreasonable or unjustly discriminatory; that a regulation, measurement, practice or act of a public utility is in any respect unreasonable, insufficient or unjustly discriminatory; or that a service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible, shall, with or without notice, investigate the complaint.

Section 1302(2) of the statute further explains that once the Commission receives the utility's response to the complaint, "if the commission is satisfied that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is without merit, the complaint may be dismissed."

However, the statute does not define the term "without merit." In interpreting section 1302, the Law Court has stated:

The phrase 'without merit' must be understood to mean that there is no statutory basis for the complaint, i.e., that the PUC has no authority to grant the relief requested or that the

rates, tolls or services are not 'in any respect unreasonable, insufficient, or unjustly discriminatory . . . or inadequate.'

Agro v. Pub. Util. Comm'n, 611 A.2d 566, 569 (Me. 1992). Therefore, we consider whether we have the statutory basis to initiate an investigation for the purpose of granting the relief requested in the complaints.

2. Commission Investigation

The Commission has the clear authority to determine whether a utility is providing safe, reasonable and adequate service. 35-A M.R.S.A. § 101. However, it is unclear whether the Commission is the appropriate entity to consider potential health effects from RF related to the smart meter installations, particularly in that (1) the FCC is the federal agency charged with determining RF-related emission standards and (2) the Commission does not have institutional expertise regarding potential RF health impacts.¹

The Boxer-Cook and Swinbourne Complaints focus the question more narrowly on the practical consideration of opt-out alternatives.² In light of the widespread concern regarding the use of wireless smart meters, it is appropriate and within our regulatory authority to initiate an investigation into the feasibility of smart meter opt-out alternatives. If the record of such an investigation reveals that such alternatives are technically and economically feasible, the Commission has the statutory authority and discretion to determine if customers should be allowed the choice to opt out of the wireless smart meter and under what conditions.

We will not order a moratorium on the installation of smart meters to allow for further study of the health impacts of RF related to smart meter systems. Given the numerous studies on the topic that already exist, and the review conducted by Maine's CDC, we do not believe that a moratorium to allow the Commission to conduct further study would advance the state of the scientific or medical knowledge on these issues.

¹ Recently, the California Public Utilities Commission declined to open an investigation into the possible health effects of RF emissions from smart meters, stating that it "generally does not delve into technical matters which fall within the expertise of another agency, in this case we defer to the FCC, which possesses extensive expertise on its staff for evaluating and licensing or certifying Smart Meters devices that operate via the use of wireless technology." *Decision Granting Motion of Pacific Gas and Electric Company to Dismiss Application*, Cal. Pub. Util. Comm'n, Decision 10-12-001 (Dec. 2, 2010).

² In the December 13, 2010 Reply to CMP's Request for Dismissal, the Boxer-Cook complainants specifically state that the Complaint does not seek a dispositive finding on the science of or the health risks related to smart meter radiation; rather, the Complaint addresses the issue of customer choice.

3. Scope of the Investigation

The scope of this investigation is limited to the issue of whether CMP's position of providing no opt-out option in its smart meter installation program is "unreasonable, insufficient or unjustly discriminatory" in the context of our February 25, 2010 Order Approving Installation of AMI Technology (Docket No. 2007-215(II)). In initiating this investigation, we make no determination on the merits of health, safety, privacy or security concerns, the adequacy of existing studies or which federal or state agency has the jurisdiction to make these determinations and this investigation will not include such matters.

Specifically, the investigation will examine technically and economically feasible opt-out alternatives that would allow individual customers to have a choice regarding the installation of wireless meters on their premises. The examination will include, but not be limited to the following:

- The feasibility of options in which communications do not occur through RF (e.g., "hard-wired" options);
- The feasibility of allowing customers to choose to maintain their existing meter;
- The cost (both up front and ongoing) of opt-out options, including whether customers that choose an opt-out should pay any additional costs;
- The impact of opt-out options on the performance of the AMI system and its benefits as outlined in our February 25, 2010 Order (including the impact of opt-out options on CMP's ability to manage load and respond to outages);
- The impact of opt-out options on innovative technologies, such as electric cars and demand response; and
- Any consequences of opt-out options on CMP's DOE funding.

4. Intervention

Any person who wishes to participate in the investigation as a party must file a petition to intervene with the Administrative Director no later than January 18, 2011. The petition should be filed in accordance with the requirements of Section 722 of the Commission's Rules of Practice and Procedure. Copies of the petition to intervene should also be sent to:

Kenneth W. Farber
Central Maine Power Company
83 Edison Drive
Augusta, ME 04336

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

February 18, 2011

NOTICE OF INVESTIGATION

ELIZA BOXER-COOK, ET AL,
Request for Commission Investigation in
Pursuing the Smart Meter Initiative

Docket No. 2010-345

TERESA SWINBOURNE, ET AL.,
Request for Commission Investigation into
Unreasonable, Insufficient and
Discriminatory Decisions to Implement the
use of Smart Meters to CMP Customers
Disregarding Choice in Regards to
Wireless Activity and Consumer's Right to
Privacy Within Their Homes

Docket No. 2010-389

SUZANNE A FOLEY-FERGUSON, ET AL,
Request for Commission Investigation Into
Advanced Metering Infrastructure In
Accordance with the Legislature

Docket No. 2010-398

STEPHEN & DIANE WILKINS, ET AL,
Request for Commission Investigation Into
CMP's Violation of Homeowner Rights and
the Exposure of the Public Health Risk of
Smart Meters

Docket No. 2010-400

CASHMAN, Chairman; VAFIADES, LITTELL, Commissioners

I. SUMMARY

Through this Notice, the Commission consolidates the Complaints filed in Docket Nos. 2010-398 and 2010-400 into the previously initiated investigation in Docket Nos. 2010-345 and 2010-389, insofar as the Complaints in Docket Nos. 2010-398 and 2010-400 concern whether Central Maine Power's (CMP) act or practice of not allowing individual customers to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory.

II. BACKGROUND¹

¹ Extensive background information regarding CMP's advanced metering infrastructure (AMI) or "smart meter" initiative, and the Complaints in Docket Nos. 2010-345 and 2010-389 is contained in the Notice of Investigation issued on January 7, 2011 in Docket Nos. 2010-345 and 2010-389.

1. Foley-Ferguson Complaint (Docket No. 2010-398)

On December 17, 2010, the Commission received a complaint signed by Suzanne A. Foley-Ferguson and 10 other persons against CMP (Foley-Ferguson Complaint). The Foley-Ferguson Complaint was assigned Docket No. 2010-398 and was noticed to the CMP and the public on December 20, 2010 pursuant to 35-A M.R.S.A. § 1302. In the Complaint, the complainants requested that the Commission open a proceeding to investigate the potential health effects of radio frequency (RF) radiation that is emitted from wireless smart meters. *Foley-Ferguson Complaint* at 2. Additionally, the complainants asked the Commission to explore alternative modes of data transmission, including, specifically, hard-wired as opposed to wireless smart meters. *Id.* at 2, 5.

On December 23, 2010, CMP filed its Response to the Complaint. In its response, CMP denied the allegations in the Complaint, and stated that the Complaint raised the same issues as the earlier Complaints in Docket Nos. 2010-345 and 2010-389. CMP incorporated its response to the earlier Complaints and stated its belief that the instant Complaint lacked substantive merit and should be dismissed. Additionally, on January 13, 2011, CMP supplemented its December 23, 2010 Response with more detailed information regarding the feasibility of hard-wired as opposed to wireless smart meters.

In the interim, the lead complainant in Docket No. 2010-398, Suzanne Foley-Ferguson, petitioned for and was granted leave to intervene in the investigations in Docket Nos. 2010-345 and 2010-389.

2. Wilkins Complaint (Docket No. 2010-400)

On December 22, 2010, the Commission received a Complaint signed by Dianne Wilkins and 13 other persons against CMP (Wilkins Complaint). The Wilkins Complaint was assigned Docket No. 2010-400 and was noticed to CMP and the public on December 22, 2010 pursuant to 35-A M.R.S.A. § 1302. In the Complaint, the complainants asked that the Commission open an investigation into whether CMP has the legal right to (1) enter private property to replace existing meters, and (2) enter private property via radiofrequency waves. *Wilkins Complaint* at 2-3. Additionally, the complainants asked that if the Commission determines that CMP is within its legal authority to enter private property, Commission order the installation of non-RF emitting smart meters instead of wireless smart meters. Furthermore, the Complaint briefly touched on issues of the health effects of RF radiation exposure and increased risk of house fires due to installation issues. *Wilkins Complaint* at 2.

On January 3, 2011, CMP filed its Response to the Complaint. In its response, CMP denied the allegations in the Complaint, and stated the Wilkins Complaint raised the same public health concerns as the Complaints in Docket Nos.

2010-345 and 2010-389, and the same product safety (*i.e.*, house fires) concerns as those raised in a complaint filed by Avery Hill, et al., in Docket No. 2010-346 (Hill Complaint). CMP incorporated its response to the Complaints in Docket Nos. 2010-345 and 2010-389 and reiterated its belief that the public health concerns in instant Complaint lacked substantive merit and should be dismissed. Additionally, CMP incorporated its November 4, 2010 response to the Complaint in Docket No. 2010-346 and stated that the product safety concerns in the instant complaint lacked merit and should be dismissed. With regard to the property rights concerns in the Wilkins Complaint, CMP explained that under CMP's Commission-approved Terms & Conditions of service (T&C), CMP has the right to select and install the meter of its choice and to have access to a customer's property as a condition of providing electrical service to a customer. Accordingly, CMP asserted that the property rights concerns in the Wilkins Complaint should be dismissed as without merit.

In the interim, two of the complainants in Docket No. 2010-400, Julie Tupper and lead complainant Diane Wilkins, petitioned for and were granted leave to intervene in the investigations in Docket Nos. 2010-345 and 2010-389.

III. DECISION

1. Consolidation

We find that the issues raised in the Foley-Ferguson and Wilkins Complaints that involve a desire of the complainants to opt-out of the AMI program are similar to the issues raised in Docket Nos. 2010-354 and 2010-389. Accordingly, in the interest of achieving an orderly and efficient resolution of the opt-out issue, we consolidate the Foley-Ferguson and Wilkins Complaints into the investigation in Docket Nos. 2010-345 and 2010-398 insofar as those Complaints concern whether CMP's act or practice of not allowing individual customers to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory. Furthermore, as explained below, the property rights concerns as expressed in the Wilkins Complaint are dismissed as being without merit. As with the Complaints in Docket Nos. 2010-345 and 2010-389, we make no determination on the merits of health and safety concerns expressed in the Foley-Ferguson and Wilkins Complaints. Finally, the consolidated investigation will not include an examination of whether the technology of CMP's AMI program should be changed to an entirely non-wireless alternative. The costs and benefits of CMP's proposed AMI technology, as well as the viability of alternatives, were considered in the proceeding in which the Commission approved CMP's installation of AMI (Docket No. 2007-215(II)).

2. Complaint Standard

The complaints in these proceedings were filed pursuant to 35-A M.R.S.A. § 1302. Section 1302(1) provides:

When a written complaint is made against a public utility by 10 persons aggrieved that the rates, tolls, charges, schedules or joint rate or rates of a public utility are in any respect unreasonable or unjustly discriminatory; that a regulation, measurement, practice or act of a public utility is in any respect unreasonable, insufficient or unjustly discriminatory; or that a service is inadequate or cannot be obtained, the commission, being satisfied that the petitioners are responsible, shall, with or without notice, investigate the complaint.

Section 1302(2) of the statute further explains that once the Commission receives the utility's response to the complaint, "if the commission is satisfied that the utility has taken adequate steps to remove the cause of the complaint or that the complaint is without merit, the complaint may be dismissed."

However, the statute does not define the term "without merit." In interpreting section 1302, the Law Court has stated:

The phrase 'without merit' must be understood to mean that there is no statutory basis for the complaint, i.e., that the PUC has no authority to grant the relief requested or that the rates, tolls or services are not 'in any respect unreasonable, insufficient, or unjustly discriminatory . . . or inadequate.'

Agro v. Pub. Util. Comm'n, 611 A.2d 566, 569 (Me. 1992). Therefore, we consider whether we have the statutory basis to initiate an investigation for the purpose of granting the relief requested in the complaints.

3. Property Rights Concerns of Wilkins Complaint.

Pursuant to 35-A M.R.S.A. § 304, all public utilities are required to file their T&Cs with the Commission. Under the T&Cs filed by CMP, CMP has the right to select the type and make of metering equipment, and may, from time to time, change or alter the equipment. *CMP T&C* § 12.1. Further, CMP has the right to access a customer's property and premises for "the purpose of reading meters, or inspection and repair of equipment used in connection with its energy, or removing its property, or for any other purpose." *Id.* § 10.4.

CMP's rights to access the property of its customers in conjunction with the installation, repair, or replacement of its meters is clear. Indeed, customers agree to allow this access by virtue of their agreement to purchase service from CMP. Accordingly, we find that portion of the Wilkins Complaint that alleges a violation of customers' property rights to be without merit, and dismiss those portions of the Wilkins Complaint.

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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

April 7, 2011

SUZANNE A FOLEY-FERGUSON, ET AL,
Request for Commission Investigation into
Advanced Metering Infrastructure

ORDER DENYING MOTION
FOR RECONSIDERATION

VAFIADES and LITTELL, Commissioners¹

I. SUMMARY

Through this Order, we deny the Motion for Reconsideration filed by Suzanne A. Foley-Ferguson in the above-captioned proceeding.

II. BACKGROUND

1. Foley-Ferguson Complaint

On December 17, 2010, the Commission received a complaint signed by Suzanne A. Foley-Ferguson and 10 other persons against Central Maine Power Company (CMP) (Foley-Ferguson Complaint). The Foley-Ferguson Complaint was assigned Docket No. 2010-398 and was noticed to CMP and the public on December 20, 2010 pursuant to 35-A M.R.S.A. § 1302. In the Complaint, the complainants requested that the Commission open a proceeding to investigate the potential health effects of radio frequency (RF) radiation that is emitted from wireless smart meters. *Foley-Ferguson Complaint* at 2. Additionally, the complainants asked the Commission to explore alternative modes of data transmission, including, specifically, hard-wired as opposed to wireless smart meters. *Id.* at 2, 5.

On December 23, 2010, CMP filed its response to the Foley-Ferguson Complaint. In its response, CMP denied the allegations in the Complaint, and stated that the Complaint raised the same issues as the earlier complaints in Docket Nos. 2010-345 and 2010-389. CMP incorporated its response to the earlier complaints and stated its belief that the Foley-Ferguson Complaint lacked substantive merit and should be dismissed. Additionally, on January 13, 2011, CMP supplemented its December 23, 2010 Response with more detailed information regarding the feasibility of hard-wired as opposed to wireless smart meters.

On January 28, 2011, Ms. Foley-Ferguson filed a supplemental response, stating that CMP's response did not address the issues raised in the Complaint. On February 7, 2011, Ms. Foley-Ferguson filed a second supplemental response, providing further information in support of the Complaint.

¹ Chairman Jack Cashman was with the Commission when this Order was deliberated, but left the Commission prior to the issuance of this Order.

In the interim, the lead complainant in Docket No. 2010-398, Suzanne Foley-Ferguson, petitioned for and was granted leave to intervene in the Commission's smart meter opt-out investigation. See, *Notice of Investigation*, Docket Nos. 2010-345, 2010-389 (Jan. 7, 2011).

On February 18, 2011, the Commission issued a Notice of Investigation (NOI) that consolidated the Foley-Ferguson Complaint into the previously initiated smart meter opt-out investigation in Docket Nos. 2010-345 and 2010-389, insofar as the Foley-Ferguson Complaint concerned whether CMP's act or practice of not allowing individual customers to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory.²

2. Motion for Reconsideration

On March 10, 2011, Ms. Foley-Ferguson filed a Motion for Reconsideration of the Commission's February 18, 2011 NOI. In the Motion, Ms. Foley-Ferguson states that the Commission's NOI did not address two major issues in the Complaint: 1) the re-opening of the advanced metering infrastructure (AMI) approval proceeding to discuss hardwiring instead of a wireless mesh AMI; and 2) the request for a proceeding to address health issues.³

With respect to the first issue, the Motion states that the original AMI proceeding did not properly consider the relative costs and benefits of a wireless mesh network as opposed to a hard wired system. Specifically, Ms. Foley-Ferguson argues that the Commission was not presented with all of the potential costs and risks associated with the wireless system (such as those related to security, interference and health issues) and did not make an assessment of those risks relative to a hard wired alternative.

The second issue raised in the Motion is the Commission's decision not to open an investigation to specifically consider potential health effects associated with wireless smart meters. The Motion states that the Commission has the responsibility to either make a determination or to find the appropriate body to make a determination on the health and safety of wireless meters and to assure that the public has an opportunity to be heard on the matter.

III. DECISION

For the reasons discussed below, we deny the Motion for Reconsideration filed by Suzanne A. Foley-Ferguson in this proceeding.

² The Commission also consolidated a fourth ten person complaint into the opt-out investigation (Wilkins Complaint, filed December 22, 2010, Docket No. 2010-400).

³ Ms. Foley-Ferguson stated in the Motion that she does not object to the opt-out portion of the Complaint being consolidated with the opt-out investigation.

1. Reopening of AMI Approval Proceeding

The Motion for Reconsideration states that the original AMI proceeding did not properly consider the relative costs and benefits of a hard wired system as opposed to a wireless network and the Complaint seeks such a Commission investigation at this time. Thus, the Complaint in this respect is essentially a late-filed request to re-open and reconsider the original AMI proceeding. Based on the Complaint and the information provided in this docket, we find there is no basis to re-open and reconsider the AMI docket.

CMP's AMI proceeding was an extensive, several year review of the potential benefits of an AMI system in terms of operational savings and energy cost savings, as well as the costs of installing and operating the systems. The examination included the potential costs of AMI systems that would have varying capabilities. At the conclusion of the process, the Commission approved an AMI project for CMP that included several specified capabilities. *Order Approving Installation of AMI Technology*, Docket No. 2007-215(II) (Feb. 25, 2010). To implement the AMI project, CMP sought proposals for the design and installation of an AMI system that would satisfy the operational requirements of the Commission (as well as those of the federal Department of Energy which provided CMP with a grant for the AMI project). CMP's choice of a wireless system was a result of a competitive bid process for the design and installation of the AMI system (which did not result in any proposals for a hard wired system).

Thus, the original AMI proceeding properly included a comprehensive review of the costs and benefits of an AMI system for CMP and the necessary operational requirements of that system. A competitive bid process is the appropriate mechanism to determine the precise design of an AMI system that meets the desired operational requirements in the most cost effective manner. There has been no indication that CMP's bid process was deficient or flawed. Accordingly, there is no basis to re-open and reconsider the original AMI approval proceeding and, therefore, the portion of the Foley-Ferguson Complaint that seeks a review of the original proceeding is denied.

2. Proceeding to Address Health Issues

In the Notice of Investigation that initiated the proceeding to consider opt-out alternatives, the Commission stated that the FCC is the federal agency charged with determining RF-related emission standards and the Commission does not have institutional expertise regarding potential RF health impacts. *Notice of Investigation*, Docket Nos. 2010-345, 2010-389 at 6 (Jan. 7, 2011). The Commission also stated that, considering the number of studies that already exist on the topic and the review

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

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

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

April 15, 2011

ORDER DENYING MOTION
FOR RECONSIDERATION

STEPHEN & DIANE WILKINS, ET AL,
Request for Commission Investigation Into
CMP's Violation of Homeowner Rights and
the Exposure of the Public Health Risk of
Smart Meters

Docket No. 2010-400

WELCH, Chairman; VAFIADES and LITTELL, Commissioners¹

I. SUMMARY

Through this Order, we deny the Motion for Reconsideration filed by Dianne Wilkins in the above-captioned proceeding.

II. BACKGROUND

A. Wilkins Complaint

On December 22, 2010, the Commission received a Complaint signed by Dianne Wilkins and 13 other persons against CMP (Wilkins Complaint). The Wilkins Complaint was assigned Docket No. 2010-400 and was noticed to CMP on December 22, 2010 pursuant to 35-A M.R.S.A. § 1302. In the Complaint, the complainants asked that the Commission open an investigation into whether CMP has the legal right to (1) enter private property to replace existing meters, and (2) enter private property via radiofrequency waves. *Wilkins Complaint* at 2-3. Additionally, the complainants asked that if the Commission determines that CMP is within its legal authority to enter private property, Commission order the installation of non-RF emitting smart meters instead of wireless smart meters. Furthermore, the Complaint briefly touched on issues of the health effects of RF radiation exposure and increased risk of house fires due to installation issues. *Wilkins Complaint* at 2.

On January 3, 2011, CMP filed its Response to the Complaint. In its Response, CMP denied the allegations in the Complaint, and stated the Wilkins Complaint raised the same public health concerns as the Complaints in Docket Nos. 2010-345 and 2010-389, and the same product safety (*i.e.*, house fires) concerns as those raised in a complaint filed by Avery Hill, et al., in Docket No. 2010-346 (Hill Complaint). CMP incorporated its response to the Complaints in Docket Nos. 2010-345 and 2010-389 and reiterated its belief that the public health concerns in instant Complaint lacked substantive merit and should be dismissed. Additionally, CMP incorporated its November 4, 2010 response to the Complaint in Docket No. 2010-346 and stated that the product safety concerns in the instant Complaint lacked merit and should be dismissed. With regard to the property rights concerns in the Wilkins

¹ Chairman Welch joined the Commission on April 12, 2011, after this matter was deliberated and did not participate in this matter or in the decision.

Complaint, CMP explained that under CMP's Commission-approved Terms & Conditions of service (T&C), CMP has the right to select and install the meter of its choice and to have access to a customer's property as a condition of providing electrical service to a customer. Accordingly, CMP asserted that the property rights concerns in the Wilkins Complaint should be dismissed as without merit.

In the interim, two of the complainants in Docket No. 2010-400, Julie Tupper and lead complainant Diane Wilkins, petitioned for and were granted leave to intervene in the investigations in Docket Nos. 2010-345 and 2010-389.

On February 18, 2011, the Commission issued a Notice of Investigation (NOI) that consolidated the Wilkins Complaint with the previously initiated smart meter opt-out investigation in Docket Nos. 2010-345 and 2010-389, insofar as the Wilkins Complaint concerned whether CMP's act or practice of not allowing individual customers to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory.²

B. Motion for Reconsideration

On March 8, 2011, Ms. Wilkins filed a Motion for Reconsideration of the Commission's February 18, 2011 NOI. In the Motion, Ms. Wilkins raises three major issues: 1) that the Commission did not address the allegations in the Wilkins Complaint that CMP has violated several criminal and civil statutes under Maine law, and committed civil rights violations under the United States and Maine Constitutions; 2) that the Commission's NOI erroneously neglected to include within the consolidated proceeding an investigation into the trespass of radiofrequency radiation (RF) into homes; and 3) that, notwithstanding the fact that the PUC may not have the authority to determine the health effects of RF, the Commission should nevertheless make a finding regarding whether or not smart meters are "safe."

As relief, the Motion requests that the Commission separate the Wilkins Complaint from the consolidated proceeding and open a separate investigation into the allegations and issues contained in the Motion.

III. **DISCUSSION AND DECISION**

A. Statutory Issues

The Motion alleges violations of the following Maine statutes: 17-A M.R.S.A. §§ 402(1) and 511, 5 M.R.S.A. § 4682, 14 M.R.S.A. § 7551-B, 33 M.R.S.A. § 458, 35-A M.R.S.A. §§ 2520 and 3136.³

² The Commission also consolidated a fourth ten person complaint into the opt-out investigation (Foley-Ferguson Complaint, filed December 17, 2010, Docket No. 2010-398).

³ One section of the Wilkins Complaint refers to 35-A M.R.S.A. § 3136, while another section refers to 35-A M.R.S.A. § 3135. As Section 3135 has no relevance to any of the substantive issues in the Wilkins Complaint, we will assume that the

1. 17-A M.R.S.A. § 402(1)

Title 17-A M.R.S.A. § 402(1) is a criminal statute that sets forth the elements of the crime of trespass. By its terms, Section 402 applies only to “[a] person,” and, thus, cannot apply to trespass by RF.

2. 17-A M.R.S.A. § 511

a. Section 511(1)(A)

Title 17-A M.R.S.A. § 511 is a criminal statute that sets forth the elements of the crime of violation of privacy. Section 511(1)(A) pertains to a civil trespass with the intent to “overhear or observe.” Putting aside the issue of whether or not “trespass” by RF is civil or common law trespass (see discussion in Part III(E) below), smart meters receive and transmit energy usage information, but do not overhear or observe as contemplated by the statute.

b. Section 511(1)(B), (C)

Section 511(1)(B) pertains to the installation or use, without consent, of a “device for observing, photographing, recording, amplifying or broadcasting sounds or events,” and Section 511(1)(C) pertains to devices that hear, record, amplify, or broadcast sounds. First, as stated in the NOI, customers give consent for the installation of electric meters by virtue of their acceptance of electricity service. Notwithstanding consent, a smart meter does not observe, photograph, record, broadcast, or amplify sounds or events as contemplated by the statute.

c. Section 511(1)(D)

Section 511(1)(D) pertains to visual surveillance. As mentioned above, smart meters are not capable of visual observation.

3. 5 M.R.S.A. § 4682 and 14 M.R.S.A. § 7551-B

Title 5 M.R.S.A. § 4682 and 14 M.R.S.A. § 7551-B are civil statutes with private rights of action against offenders. As such, the Commission does not have jurisdiction to prosecute either action on a consumer’s behalf.

4. 33 M.R.S.A. § 458

Title 33 M.R.S.A. § 458 pertains to the installation of utility services on easements established on or after January 1, 1990. There is no indication in the Wilkins Complaint that CMP has an easement over the property of any of the Complainants, or, if such easements do exist, whether or not they were established on or after January 1, 1990. However, neither of these considerations is necessary to our

reference to Section 3135 is a typographical error and all relevant portions of the Wilkins Complaint are intended to refer to Section 3136

discussion of this issue because, as noted above and in the NOI, customers give consent for the installation of electric meters by virtue of their acceptance of electricity service.

5. 35-A M.R.S.A. § 2520

Title 35-A § 2520 requires the consent of the property owner before a utility may affix telephone or electric facilities to a building. As noted above and in the NOI, customers give consent for the installation of electric meters by virtue of their acceptance of electricity service.

6. 35-A M.R.S.A. § 3136

Title 35-A M.R.S.A. § 3136 pertains to eminent domain rights of transmission and distribution utilities. As noted above and in the NOI, customers give consent for the installation of electric meters by virtue of their acceptance of electricity service, so eminent domain is not at issue here.

B. Reporting of Criminal Activity to Attorney General

Complainants are correct that under 35-A M.R.S.A. § 115 the Commission has a duty to inquire into violations of state laws and report possible criminal violations to the Office of the Maine Attorney General. However, as discussed above and below, we do not find that CMP is in violation of any state civil law with regard to its smart meter program, nor do we find that CMP has possibly violated any state criminal law.

C. Federal Civil Rights Violations

The Wilkins Complaint alleges that in allowing RF to enter homes, CMP has violated the 4th, 5th, and 14th Amendments to the United States Constitution. Claims for violations of rights guaranteed by the federal Constitution may be brought pursuant to 42 U.S.C. § 1983, which states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The Commission does not have the jurisdiction to bring a suit under Section 1983 on behalf of the Complainants.

D. Maine Civil Rights Violations

The Wilkins Complaint alleges that in allowing RF to enter homes, CMP has violated Article I of the Maine Constitution. Claims for violations of the Maine Constitution may be brought by the Office of the Maine Attorney General pursuant to 5 M.R.S.A. § 4681 which states:

Whenever any person, whether or not acting under color of law, intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage or destruction of property or trespass on property with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State or violates section 4684-B, the Attorney General may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

The Commission does not have the jurisdiction to bring a suit under Section 4681 on behalf of the Complainants.

E. Common Law Trespass

In the NOI, the Commission found that the portion of the Wilkins Complaint that alleged a violation of customers' property rights to be without merit, and dismissed those portions of the Wilkins Complaint. The Motion alleges that the NOI did not specifically address the subject of trespass by RF, and, accordingly, did not specifically dismiss the portion of the Wilkins Complaint that concerned that issue. Further, the Motion alleges that during deliberations on the NOI, "the Commission unanimously agreed and found that Complainant's allegation of trespass of Radiofrequency into the home raised a legal issue; was not dismissed; and would be allowed to be addressed by Complainant during the Adjudicatory Proceedings with the consolidated cases." *Motion* at 1.

As to the merits of the RF trespass claim, any such trespass would be considered to be an "intangible trespass," *i.e.*, invasion of property by dust, particulates, vibrations, or other intangible matter. Such trespass claims cannot be maintained because trespass requires the invasion of property by some tangible matter. See *Darney v. Dragon Prods. Co.*, 640 F. Supp. 2d 117, 124 (D. Me. 2009). Accordingly, we decline to include in the consolidated proceeding any claims for trespass.

F. Health Implications of Smart Meters

Complainants allege in the Motion that in consolidating the Wilkins Complaint the Commission failed to make a determination regarding whether smart meters are "safe" as required by 35-A M.R.S.A. §§ 101 and 301(1) which require the Commission to ensure that utilities are providing "safe, reasonable and adequate service," notwithstanding the fact that the Commission has already determined that it does not have the authority or expertise to make determinations regarding the potential health implications of RF. Complainants then cite several studies regarding the health effects of RF that the Commission should rely upon to make a determination regarding the safety of smart meters. It is impossible for the Commission to decide that smart meters are safe, or unsafe, without first reaching a conclusion regarding the health effects of RF. Consistent with our prior decisions in Docket Nos. 2010-345, 2010-389, 2010-398, and this Docket, under the doctrine of primary jurisdiction the Commission is not the appropriate entity to consider potential health effects from RF related to the smart meter installations given that the FCC is the federal agency charged with determining RF-related emission standards and the Commission does not have institutional expertise regarding potential RF health impacts. See *Eliza Boxer-Cook, et al., Request for Commission Investigation in Pursuing the Smart Meter Initiative*, and *Teresa Swinbourne, et al., Request for Commission Investigation into Unreasonable, Insufficient and Discriminatory Decisions to Implement the use of Smart Meters to CMP Customers Disregarding Choice in Regards to Wireless Activity and Consumer's Right to Privacy Within Their Homes*, Docket Nos. 2010-345 and 2010-389, Notice of Investigation (Jan.7, 2011); *Suzanne A. Foley-Ferguson, et al., Request for Commission Investigation into Advanced Metering Infrastructure*, Docket No. 2010-398, Order Denying Motion for Reconsideration (Apr. 7, 2011). Accordingly, we decline to widen the scope of our investigation to include the "RF safety" of smart meters.

IV. CONCLUSION

For all of the foregoing reasons, the March 8, 2011 Motion for Reconsideration filed by Dianne Wilkins is **DENIED**.

Dated at Hallowell, Maine, this 15th day of April, 2011.

BY ORDER OF THE COMMISSION



Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Vafiades
Littell

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

May 19, 2011

ORDER (PART I)

ELISA BOXER-COOK, ET AL,
Request for Commission Investigation in
Pursuing the Smart Meter Initiative

Docket No. 2010-345

TERESA SWINBOURNE, ET AL.,
Request for Commission Investigation into
Unreasonable, Insufficient and
Discriminatory Decisions to Implement the
use of Smart Meters to CMP Customers
Disregarding Choice in Regards to
Wireless Activity and Consumer's Right to
Privacy Within Their Homes

Docket No. 2010-389

SUZANNE A FOLEY-FERGUSON, ET AL,
Request for Commission Investigation Into
Advanced Metering Infrastructure In
Accordance with the Legislature

Docket No. 2010-398

STEPHEN & DIANE WILKINS, ET AL,
Request for Commission Investigation Into
CMP's Violation of Homeowner Rights and
the Exposure of the Public Health Risk of
Smart Meters

Docket No. 2010-400

JULIE TUPPER, ET AL
Request for Commission Investigation to
Allow CMP Customers to Retain Existing
Analog Meters

Docket No. 2011-085

WELCH, Chairman; VAFIADES and LITTELL, Commissioners¹

This Part I Order describes the Commission's decision in the above captioned proceedings. Pursuant to Chapter 110, § 1003 of the Commission's Rules, the Commission may issue an Order in two parts. A complete Part II Order providing the background, analyses, and reasoning underlying the Commission's decision will be issued in the near future.

¹ Chairman Welch did not participate in the above captioned proceedings, did not participate in the Commission's deliberations of these matters, and takes no part in this Order.

Our decision in this case concludes an investigation that arose from several complaints filed by Central Maine Power (CMP) ratepayers that expressed concern regarding CMP's advanced metering infrastructure (AMI) or "smart meter" program. We have thoroughly reviewed all the filings and information provided by the Parties in this matter, as well as the numerous letters and comments submitted by CMP's ratepayers expressing their opinions and concerns regarding CMP's smart meter program. We have also reviewed the Bench Analysis submitted by Commission Staff on April 22, 2011, and the comments and exceptions to the Bench Analysis.

After considering all of the foregoing information, we order CMP to implement an "opt out" program with respect to its smart meter program whereby CMP customers who do not wish to have a wireless "smart meter" may choose to retain their existing analog electric meter or obtain a "smart meter" with the transmission function disabled. Customers choosing to opt-out will incur a one-time charge and a recurring monthly charge designed to allow CMP to recover the incremental costs associated with the design and implementation of the opt-out program. Low income customers who are eligible for the Low-Income Home Energy Assistance Program (LIHEAP) may receive a discount on both the one-time and monthly opt-out charges. We also order CMP to develop and implement a customer communication plan that will explain the various opt-out options, describe the benefits of the AMI program, describe the functionality of the available meter options, describe the charges associated with the opt-out, and describe the process by which a customer may opt-out. Further, we will allow CMP to defer for future recovery variances in costs of the opt-out program caused by the difference between the assumed and actual opt-out program participation levels. Treatment of the amounts deferred will be addressed concurrently with or as part of the Commission's reevaluation of CMP's current alternative rate plan (ARP).

Accordingly, we

O R D E R

1. That any CMP residential or small commercial customer that chooses not to have a standard wireless smart meter installed on their premises shall be provided two alternatives from which to choose consistent with this Order:²
 - a. An electro-mechanical meter (likely the customer's existing meter);
 - b. A standard wireless "smart meter" with the internal network interface card (NIC) operating in receive-only mode.³

² Pursuant to CMP's existing Terms and Conditions, customers may also choose to relocate their meter to another location on their home or property.

³ Standard wireless smart meters with the NIC operating in receive-only mode are being developed but are not currently available. In the interim, customers may retain their existing electro-mechanical meters.

2. That before beginning deployment in a particular area, CMP provide notice to customers in that area about the opt-out options available consistent with the communications plan described in this Order, and provide customers with 30 days from when the notice is sent to make an opt-out enrollment decision and inform CMP of their election. CMP shall begin providing such notifications as soon as reasonably possible, but in no event later than 30 calendar days after the date of this Order;
3. That, within 30 calendar days after the date of this Part I Order, for customers in areas in which deployment has occurred, CMP contact customers that have requested that a smart meter not be installed and provide notice to those customers about the opt-out options available consistent with the communications plan described in this Order. CMP may notify customers who use e-billing to pay their monthly CMP bill by email or phone and all other customers by phone;
4. That the customer charges for participating in the opt-out program be as follows:
 - a. For the electro-mechanical meter option: an initial, one-time charge of \$40.00 and a recurring monthly charge of \$12.00;
 - b. For the standard wireless "smart meter" with the NIC operating in receive-only mode: an initial, one-time charge of \$20.00 and a recurring monthly charge of \$10.50;
 - c. For any customer that does not enroll in the opt-out program within the 30 period specified above and later chooses to do so: a \$25.00 surcharge. CMP may waive the surcharge if it determines there is a sufficient reason for the customer's failure to notify CMP within the 30-day period.

The assessment of the Initial Charge will occur on the later of the customer's election of the applicable option or CMP's implementation of the required billing system enhancements. The Monthly Charge would be assessed to all enrolled opt-out customers beginning on October 1, 2011. Customers who are not yet enrolled in an opt-out option on October 1, 2011 because, for example, smart meters have not yet been deployed in their area, would begin to be assessed the Monthly Charge when they elect an opt-out option;

5. That for customers determined eligible for LIHEAP whose income is determined to be equal to or less than 100% of the Federal Poverty Guidelines, both the Initial and ongoing Monthly Charges associated with the opt-out option selected by the customer will be reduced by 50%, and for LIHEAP-eligible customers whose income is determined to be greater than 100% of the Federal Poverty Guidelines, the charges will be reduced by 25%.

The program administration for this assistance would be integrated with CMP's current Electric Lifeline Program (ELP) and funding would be provided from CMP's distribution rates through a separate, reconcilable mechanism that would be reviewed and adjusted by the Commission on an annual basis concurrent with the review and reconciliation of ELP funding;

6. That, within 30 days of the date of this Part I Order, CMP develop and implement a communication plan that shall inform customers about the opt-out program during smart meter deployment. The communication plan must provide the following information:
 - a. A description of the smart meter program, including wireless smart meter capabilities and communication mode;
 - b. The benefits of wireless smart meters and the smart meter program;
 - c. The opt-out options available;
 - d. Information regarding the development of standard wireless smart meters with the NIC operating in receive-only mode and an estimated date that they will be available for deployment;
 - e. The capabilities and communication modes of the opt-out options;
 - f. The process to select an opt-out option;
 - g. The opt-out option charges (i.e., the Initial and Monthly Charges and the late opt-out election surcharge); and
 - h. The existing meter relocation alternative.

The communications plan should incorporate both written communications and communication via CMP's website. The term "wireless" shall be used when describing standard smart meters. CMP shall continue the plan until such time as the Commission determines it is no longer of benefit to ratepayers;

7. That CMP defer any positive or negative difference in costs caused by the difference between assumed and actual participation levels. CMP shall track and annually report actual opt-out program participation information, including the amounts deferred. Concurrently with or as a part of the reexamination of CMP's distribution rates after the term of its current ARP, the under- or over-recovery of incremental costs due to any difference between assumed and actual participation in the opt-out program will be addressed and rates adjusted prospectively as determined to be just and reasonable by the Commission. The deferral and reconciliation shall be limited only to

differences in participation levels, and shall not include true-ups for other items;

- 8. That within 10 calendar days of the date of this Part I Order, CMP shall file Rate Schedules and Terms and Conditions that reflect, as necessary, the above conditions;
- 9. That within 30 calendar days of the date of this Part 1 Order, CMP shall file a proposal for how amounts deferred in accordance with this Order will be tracked and calculated;
- 10. That the approval of compliance filings is delegated to the Director of Electric and Gas Industries;
- 11. That CMP conduct manual reads of the meters of opt-out program participants on a bi-monthly basis. To effectuate bi-monthly meter reads, we waive with regard to CMP the requirement under Chapter 815, Section 8(L) of the Commission's Rules that requires monthly meter reads;
- 12. That the Chapter 815, Section 10(C) prohibition against disconnecting an opt-out customer when the latest bill issued was based on an estimated read be waived with regard to CMP, provided that the customer's meter had been read consistent with the above bi-monthly meter reading requirement; and
- 13. That estimated meter readings that are attributable to opt-out customers be excluded from CMP's ARP Service Quality Indicators (SQI), and that SQI performance for non opt-out customers be measured against a requirement of six meter readings per year.

Dated at Hallowell, Maine, this 19th day of May, 2011.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Vafiades
Littell

COMMISSIONER ABSENT: Welch

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

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2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

June 22, 2011

ORDER (PART II)

ELISA BOXER-COOK, ET AL,
Request for Commission Investigation in
Pursuing the Smart Meter Initiative

Docket No. 2010-345

TERESA SWINBOURNE, ET AL.,
Request for Commission Investigation into
Unreasonable, Insufficient and
Discriminatory Decisions to Implement the
use of Smart Meters to CMP Customers
Disregarding Choice in Regards to
Wireless Activity and Consumer's Right to
Privacy Within Their Homes

Docket No. 2010-389

SUZANNE A FOLEY-FERGUSON, ET AL,
Request for Commission Investigation Into
Advanced Metering Infrastructure In
Accordance with the Legislature

Docket No. 2010-398

STEPHEN & DIANE WILKINS, ET AL,
Request for Commission Investigation Into
CMP's Violation of Homeowner Rights and
the Exposure of the Public Health Risk of
Smart Meters

Docket No. 2010-400

JULIE TUPPER, ET AL
Request for Commission Investigation to
Allow CMP Customers to Retain Existing
Analog Meters

Docket No. 2011-085

WELCH, Chairman; VAFIADES and LITTELL, Commissioners¹

I. SUMMARY

Through this Order, the Commission directs Central Maine Power Company (CMP) to include customer "opt-out" alternatives as part of its advanced metering infrastructure (AMI) or "smart meter" initiative. Specifically, CMP is directed to provide its customers with alternatives to a standard wireless smart meter under the terms and

¹ Chairman Welch did not participate in the above captioned proceedings, did not participate in the Commission's deliberations of these matters, and takes no part in this Order.

conditions specified in this Order and the Part I Order. We issue this decision in two parts. On May 19, 2011, the Commission issued a Part I Order that contained its decision in this proceeding. This Part II Order contains the background, analyses, and reasoning underlying the decision in this proceeding.

II. BACKGROUND

A. Advanced Metering Infrastructure/Smart Meters

After extensive proceedings, the Commission, on February 25, 2010, issued an order approving the installation of AMI technology for CMP, finding that the benefits in terms of customer supply savings and utility operational cost savings are likely to exceed the costs of the investment. *Order Approving Installation of AMI Technology*, Docket No. 2007-215(II) (Feb. 25, 2010). AMI includes smart meters and related systems that allow for automated and remote meter reading, detailed customer usage measurement and data storage, and communications to and from customer meters. AMI provides both utility operational savings (e.g., lower storm restoration costs) and a platform for programs that allow customers to lower their energy costs through more accurate and timely information and pricing programs that better reflect the hourly and seasonal differences in electricity costs (e.g., time-of-use rates).

In a previous order approving the installation of AMI by CMP, subject to the receipt of a Department of Energy (DOE) grant award, the Commission described AMI as:

an important technology that will ultimately reduce utility operational costs, improve customer service and provide customers with necessary tools to use electricity more efficiently and lower their electricity bills, for example, by reducing or shifting usage during high cost periods in response to market price signals. In particular, AMI and associated systems are necessary to provide customers with the option of obtaining rates that are time-differentiated to more closely reflect the actual power costs through the day.

Order Approving Installation of AMI Technology, Docket No. 2007-215(II) at 2 (July 28, 2009). On October 27, 2009, the DOE notified CMP that it had received approximately \$90 million (representing 50% of the cost of CMP's AMI project) in funding under the DOE's Smart Grid Investment Grant Program.

CMP's AMI system communicates and transmits data using a "mesh" network made up of individual customer meters, wireless repeaters and other devices that will be installed throughout CMP's service territory. A radio device in the meters communicates with other meters and network devices within a Neighborhood Area Network. The Neighborhood Area Networks link to the Wide Area Network, which is a high capacity wireless communications network over CMP's entire service area that moves information to and from the Head End System. The Head End System is the "controller" for the AMI System, and coordinates information flows between CMP

customers and CMP's Meter Data Management System. The meters and other devices transmit data by sending radio frequency (RF) signals between various points in the network.

B. Customer Complaints

1. Boxer-Cook Complaint

On October 25, 2010, the Commission received a complaint signed by Elisa Boxer-Cook and 11 other persons against CMP, stating that CMP's acts and practices with respect to the installation of smart meters are unreasonable, inadequate and inconsistent with legislative mandates. Specifically, the Boxer-Cook Complaint cited information and authorities which indicate that the non-ionizing RF radiation that would be emitted by the smart meter mesh network could be a potential cause of cancer and that further research is required. In addition, the Boxer-Cook Complaint stated that there are individuals who suffer from medically confirmed sensitivities to non-ionizing RF radiation and who would be exposed to such radiation involuntarily under CMP's smart meter program.

On October 25, 2010, the Commission issued a Notice of Complaint, notifying CMP of the Boxer-Cook Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302. On November 3, 2010, CMP filed an initial answer to the Boxer-Cook Complaint in the form of a general denial of the allegations. On November 9, 2010, the Public Advocate filed a letter supporting the Complaint's request for the Commission to open an investigation.

On November 16, 2010, CMP filed a response to the Boxer-Cook Complaint, asking that the Commission dismiss the Complaint on the grounds that it is without merit. In the response, CMP stated that there is no credible support for an assertion that the extremely low power and intermittent RF transmissions emitted by the AMI devices can have any adverse health effects on any customer. Specifically, CMP stated that the use of AMI devices is approved under the standards for RF by the Federal Communications Commission (FCC), the entity charged by Congress with ensuring the safety of transmitting devices, and that the emissions levels are far below those found by the FCC to be safe for RF exposure. Moreover, CMP stated that claims that customers may become sick from radiation in the form of RF emitted from smart meters and associated technologies are not supported by the scientific community.

On December 13, 2010, the Complainants filed a Reply to CMP's Request for Dismissal. The Reply stated that CMP's view of the scientific debate on smart meters is selective, one-sided, misleading and misses the point of the Complaint, which is that CMP's refusal to allow an opt-out option to customers, given the serious and unresolved concerns regarding health risks associated with smart meter installations, is an unreasonable act or practice that the Commission can and should correct.

In response to the Boxer-Cook Complaint, and the subsequently filed Swinbourne Complaint (see section II (B)(2) below), the Commission initiated an

investigation into whether CMP's act or practice of not allowing customers the option to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory. *Notice of Investigation*, Docket Nos. 2010-345, 2010-389 (January 7, 2011) (Opt-Out Investigation).

2. Swinbourne Complaint

On December 13, 2010, the Commission received a complaint signed by Teresa Swinbourne and 9 other persons against CMP, stating that CMP's deployment of smart meters is unreasonable, insufficient and discriminatory in that it disregards customer choice, differentiation among the customer base in regards to wireless activities and consumers' right to privacy within their homes. The Swinbourne Complaint stated that the complainants have requested opt-outs from the wireless smart meters and have been informed by CMP that such opt-outs are not an option. The Complaint stated that meter information can be transmitted through dedicated phone lines and therefore the smart grid function does not depend upon wireless service.

On October 25, 2010, the Commission issued a Notice of Complaint, notifying CMP of the Swinbourne Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302. On December 21, 2010, CMP filed its response to the Swinbourne Complaint, stating that it should be dismissed as without merit. CMP stated that the Swinbourne Complaint raises the same issues as the Boxer-Cook Complaint and that the requested hard wired option fails to meet the Company's operational obligations and requirements established by the Commission and the DOE. On December 22, 2010, the Public Advocate submitted a letter stating that the Commission should investigate the feasibility of a hard wired alternative to CMP's wireless meters.

As mentioned above, the Commission responded to the Swinbourne and Boxer-Cook Complaints by initiating the Opt-Out Investigation.

3. Foley-Ferguson Complaint

On December 17, 2010, the Commission received a complaint signed by Suzanne A. Foley-Ferguson and 10 other persons against CMP, requesting that the Commission open a proceeding to investigate the potential health effects of RF radiation that is emitted from wireless smart meters. Additionally, the complainants asked the Commission to explore alternative modes of data transmission, including hard-wired as opposed to wireless smart meters.

On December 20, 2010, the Commission issued a Notice of Complaint, notifying CMP of the Foley-Ferguson Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302. On December 23, 2010, CMP filed its Response to the Complaint, denying the allegations and stating that the Complaint raised the same issues as the earlier Boxer-Cook and Swinbourne Complaints. CMP incorporated its response to the earlier Complaints and stated its belief that the Foley-Ferguson Complaint lacked substantive merit and should be dismissed. Additionally, on January 13, 2011, CMP supplemented its December 23,

2010 Response with more detailed information regarding feasibility and cost issues associated with a hard-wired system as opposed to wireless smart meters.

On February 18, 2011, the Commission issued a Notice of Investigation that consolidated the Foley-Ferguson Complaint (as well as the Wilkins Complaint, see section II (B)(4) below) into the Opt-Out Investigation insofar as the Complaint concerned CMP's act and practice of not allowing customers the choice to opt-out of having a wireless smart meter installed.²

4. Wilkins Complaint

On December 22, 2010, the Commission received a complaint signed by Dianne Wilkins and 13 other persons against CMP, asking that the Commission open an investigation into whether CMP has the legal right to (1) enter private property to replace existing meters, and (2) enter private property via RF waves. Additionally, the Wilkins Complaint asked that, if the Commission determines that CMP is within its legal authority to enter private property, it order the installation of non-RF emitting smart meters instead of wireless smart meters.

On December 22, 2010, the Commission issued a Notice of Complaint, notifying CMP of the Wilkins Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302. On January 3, 2011, CMP filed its Response to the Wilkins Complaint, denying its allegations and stating the Complaint raised the same public health concerns as the earlier complaints. CMP incorporated its response to the Boxer-Cook and Swinbourne Complaints and reiterated its position that the public health concerns in the Wilkins Complaint lacked substantive merit and should be dismissed. With regard to the property rights concerns in the Wilkins Complaint, CMP stated that under its Commission-approved Terms and Conditions, it has the right to select and install the meter of its choice and to have access to a customer's property as a condition of providing electrical service. Accordingly, CMP asserted that the property rights concerns in the Wilkins Complaint should be dismissed as without merit.

On February 18, 2011, the Commission issued a Notice of Investigation that consolidated the Wilkins Complaint into the Opt-Out Investigation insofar as the Complaint concerned CMP's act and practice of not allowing customers the choice to opt-out of having a wireless smart meter installed.³

² In its February 18, 2011 Notice of Investigation, the Commission stated that the consolidated investigation would not include an examination of whether CMP's AMI technology should be changed to an entirely non-wireless alternative.

³ In the February 18, 2011 Notice of Investigation, the Commission dismissed as without merit that portion of the Wilkins Complaint that alleged a violation of customers' property rights, stating that under its filed Terms and Conditions, CMP has the right to select the type of metering equipment and access a customer's premises for purposes of installing or replacing metering equipment.

5. Tupper Complaint

On February 23, 2011, the Commission received a complaint signed by Julie Tupper and 10 other persons against CMP, requesting that the Commission: 1) require CMP to allow its customers to choose to retain their existing analog meters; and 2) investigate the feasibility of "reasonable" smart-meter-free areas around homes of individuals who have been physically impacted by smart meters.

On February 23, 2011, the Commission issued a Notice of Complaint, notifying CMP of the Tupper Complaint and directing that a response be filed within 10 days as required by statute, 35-A M.R.S.A. § 1302. On March 4, 2011, CMP filed its Response to the Complaint, incorporating by reference its responses in Boxer-Cook and Swinbourne Complaints and asking the Commission to deny the request to investigate the alleged health concerns consistent with the Commission's January 7, 2011 Notice of Investigation. In addition, CMP stated that the opt-out issues raised in the Tupper Complaint are already being addressed in the ongoing investigation and a new investigation is not warranted.

On April 22, 2011, the Commission issued a Notice of Investigation and Consolidation that consolidated the Tupper Complaint into the Opt-Out Investigation insofar as the Complaint concerned CMP's act and practice of not allowing individual customers the choice to opt-out of having a wireless smart meter installed and to retain their existing meters.⁴

6. Customer Letters

The Commission has received a large number of letters from CMP customers expressing serious concerns regarding the smart meter program. These concerns included potential health and safety impacts, privacy and security risks, and possible interference with wireless devices.

C. Maine Center for Disease Control

At the request of the Public Advocate, the Maine Center for Disease Control (CDC) conducted an examination of the health impacts of smart meters through the review of health studies and assessments by government agencies and some affiliated private and academic organizations. The CDC report concluded:

In conclusion, our review of these agency assessments and studies do not indicate any consistent or convincing

⁴ In its April 22, 2011 Notice of Investigation, the Commission dismissed as without merit that portion of the Tupper Complaint that sought the establishment of smart meter-free areas, stating that the concept would preclude customers in specified geographical areas from obtaining a wireless smart meter which is now the standard meter type in CMP's service territory.

evidence to support a concern for health effects related to the use of radiofrequency in the range of frequencies and power used by smart meters. They also do not indicate an association of EMF exposure and symptoms that have been described as electromagnetic sensitivity.

Maine CDC Executive Summary of Review of Health Issues Related to Smart Meters, Nov. 8, 2010.

III. OPT-OUT INVESTIGATION

A. Scope of Investigation

In its January 7, 2011 Notice of Investigation (NOI), the Commission stated that the scope of the Opt-Out Investigation would be limited to the issue of whether CMP's position of not providing opt-out alternatives in its smart meter installation program is "unreasonable, insufficient or unjustly discriminatory" in the context of the February 25, 2010 Order Approving Installation of AMI Technology (Docket No. 2007-215(II)). In initiating the Opt-Out Investigation, the Commission specifically stated that it is making no determination on the merits of health, safety, privacy or security concerns with respect to wireless smart meters.

The Commission stated the Opt-Out Investigation would examine technically and economically feasible opt-out alternatives that would allow individual customers to have a choice regarding the installation of wireless meters on their premises. The examination would include, but not be limited to the following:

- The feasibility of options in which communications do not occur through RF (e.g., "hard-wired" options);
- The feasibility of allowing customers to choose to maintain their existing meter;
- The cost (both up front and ongoing) of opt-out options, including whether customers that choose an opt-out should pay any additional costs;
- The impact of opt-out options on the performance of the AMI system and its benefits as outlined in our February 25, 2010 Order (including the impact of opt-out options on CMP's ability to manage load and respond to outages);
- The impact of opt-out options on innovative technologies, such as electric cars and demand response; and
- Any consequences of opt-out options on CMP's DOE funding.

NOI at 7.

B. Intervention

Through procedural orders issued on January 31, 2011, February 28, 2011, and March 23, 2011, the following individuals were granted intervenor status and made parties in the Opt-Out Investigation:

- Elisa Boxer-Cook

- Teresa Swinbourne
- Public Advocate
- Diane Wilkens
- Suzanne Foley-Ferguson
- Averyl Hill
- Amy Blake
- Melissa Hutchison
- Julie Tupper
- Aaron Scifres
- Karen D'Andrea
- Rep. Heather Sirocki
- Rep. Ellie Espling
- Elysia Drew

C. Investigation Process

In response to the NOI, CMP filed its direct case on the opt-out issues on January 18, 2011. Subsequently, technical conferences on the filing were held on January 24, 2011, January 26, 2011 and February 24, 2011. In addition, CMP responded to two sets of oral data requests. The parties and the Commission's Advisory Staff entered into settlement discussions that were ultimately unsuccessful.

After the conclusion of settlement discussions, the parties agreed to a process that would allow for a Commission resolution of the issues in the Opt-Out Investigation in an expedited manner. The parties agreed that the Staff would submit a bench analysis into the record and the parties would then have an opportunity to file written comments on the bench analysis. The parties declined an opportunity for an evidentiary hearing or an oral argument before the Commission. The parties agreed that, for purposes of resolving the issues of the Opt-Out Investigation, the Commission could consider all materials that have been submitted in the consolidated dockets.

IV. STAFF PROPOSED OPT-OUT PROGRAM

A. Staff Bench Analysis

On April 21, 2011, the Advisory Staff submitted for Commission consideration the components of an opt-out program for customers that choose not to have a standard smart meter installed.⁵ Under the opt-out program, any CMP residential or small commercial customer would be provided two opt-out alternatives: 1) an electro-mechanical meter (existing meter option); or 2) a standard smart meter with the internal network interface card (NIC) operating in a receive-only mode (transmitter-off option). Customers electing either opt-out option would be assessed both an initial

⁵ The proposed opt-out program described in the bench analysis was the result of input and information provided by the parties throughout the Opt-Out Investigation process.

charge and a monthly charge intended to cover the incremental system costs CMP would incur to provide and maintain the opt-out options.⁶ The proposed charges would be a \$40.00 initial charge and a \$12.00 monthly charge for the existing meter option and a \$20.00 initial charge and a \$10.50 monthly charge for the transmitter-off option.

Because the smart meter deployment is ongoing throughout CMP's service territory and many customers have already notified CMP of their desire to opt-out,⁷ the bench analysis included two approaches for customer outreach and enrollment. First, CMP would contact by telephone customers who have already indicated that they did not want a standard smart meter. Second, before beginning deployment in a particular area, CMP would notify customers in that area about the available opt-out options and provide 30 days for customers to make an opt-out enrollment decision. Customers who do not elect an opt-out option during the 30-day enrollment period, and subsequently request an opt-out after the enrollment deadline, would be subject to a surcharge of \$25.00 in addition to the applicable opt-out charges.

As part of the program, CMP would be required to develop and implement a communication plan intended to inform customers about the opt-out program during AMI deployment. Under the bench analysis proposal, the costs of the communication plan would not be assessed to opt-out customers, but rather included in the general smart meter project revenue requirements to be assessed to all customers.

Under the proposed opt-out program, customers eligible for the Low-Income Home Energy Assistance Program (LIHEAP) would be eligible for financial assistance. Such customers whose income is equal to or less than 100% of the Federal Poverty Guidelines would receive assistance that covers 50% of both the initial and ongoing monthly and customers whose income is greater than 100% of the Federal Poverty Guidelines would receive assistance that covers 25% of the charges.

Finally, the bench analysis included a deferral and reconciliation mechanism to capture the difference between the assumed opt-out participation level of 9000 customers⁸ and actual participation levels. The mechanism was proposed

⁶ The proposed charges in the bench analysis were based on the incremental costs associated with the options that were initially estimated by CMP in ODR-02-08 submitted on March 10, 2011. Staff reduced or eliminated certain costs it considered to be unsubstantiated, not incremental, or unduly speculative. The details of these adjustments were provided in Attachment 1 to the bench analysis.

⁷ Upon request, CMP agreed to allow customers to maintain their existing meters pending the outcome of the Commission's Opt-Out Investigation.

⁸ As noted in the bench analysis, the estimate of 9,000 customers participating in an opt-out program was based on 1.5% of the customer population that had already asked CMP not to install a smart meter. As of January 7, 2011, after 100,000 smart meters had been installed, 1.5% of customers requested that a smart meter not be installed. With approximately 609,000 active customer meters across CMP territory, if

because the Staff viewed actual participation rates to be very difficult to predict and participation rates that are higher or lower than assumed levels could result in CMP either over-recovering or under-recovering incremental opt-out program costs.

B. Comments on Bench Analysis

The following parties filed comments on the bench analysis: CMP, the Public Advocate, Ms. Boxer-Cook, Ms. Foley-Ferguson, Ms. Swinbourne, Ms. Wilkins, Ms. D'Andrea, Ms. Tupper and Rep. Sirocki.

1. Central Maine Power

CMP urged the Commission to reject the opt-out program presented in the bench analysis on the grounds that there is no basis to conclude that the smart meter project without a customer opt-out provision is unreasonable, insufficient or unjustly discriminatory. CMP argued that any opt-out option is inconsistent with the required AMI capabilities specified in the Commission's February 25, 2010 Order in the AMI proceeding (Docket No. 2007-215(II)) and that there is no credible scientific evidence to warrant any opt-out option. In the event the Commission decides to adopt an opt-out program, CMP argued that it should not include an existing meter alternative, because multiple options will create confusion and complicate administrative and operational impacts of the program. Moreover, CMP stated that the transmitter-off option provides substantially greater functionality that will streamline and standardize the load settlement process, support participation in demand response and time of use programs, simplify testing and inventory management and avoid separate meter troubleshooting tools and processes.

In addition, CMP opposed recovery of the costs of the communication plan and AMI vendor development costs from the general body of ratepayers and asks that the communication plan sunset once the initial AMI deployment is complete in 2012.

Finally, CMP asked that it be allowed to recover any major expenses related to the opt-out program that may not have been foreseen in this investigation. CMP points out that it developed the incremental costs of an opt-out program over what CMP calls an extremely accelerated schedule and, accordingly, it should be allowed recovery of legitimate and prudently incurred costs of the opt-out program.

2. Intervenors

The Public Advocate and other intervenors commented generally in support of the opt-out program described in the bench analysis as a reasonable approach that is in the overall public interest. These parties noted that an opt-out option

1.5% of customers opt-out of the program, this would result in approximately 9,000 opt-outs.

is justified by the large number of customer complaints submitted to the Commission and the very strong concern expressed by customers over a requirement that, in order to receive electric service from CMP, they must have a wireless smart meter installed on their premises. The Public Advocate and intervenors stated that to address the health, privacy and other concerns, customers must have the option to maintain their existing meters. They note that the transmitter-off option still involves a wireless meter that receives signals and collects interval data that can be subject to hacking.

Ms. Foley-Ferguson, Ms. D'Andrea and Ms. Tupper commented that customers should not be charged to opt-out of the wireless smart meter program, because no one should have to compromise when it comes to their health and privacy concerns in their own homes and the additional opt-out costs would be small if charged to all ratepayers. Ms. Foley-Ferguson also argued that the estimated incremental cost of customer opt-outs is over-estimated because the number of assumed additional "repeaters" to make up for gaps from fewer wireless meters is extremely speculative and that customers should not have to pay more because their premises cannot be used to transmit other customers usage data. Ms. Foley-Ferguson also commented that, in light of the fact that it is likely that most opt-out customers will choose the existing meter option, there would be no benefit to providing the transmitter-off option. Ms. Foley-Ferguson noted that this option would have a significant incremental cost to CMP ratepayers in that the "transmitter-off" meter would have to be designed by the manufacturer. In the event CMP proceeds with the transmitter-off option, Ms. Foley-Ferguson stated that CMP should have an ownership interest in the newly developed design.

With respect to the low-income customers, the Public Advocate suggests that a more realistic option would be for LIHEAP customers to pay an up-front charge to opt-out, but the monthly charges should be completely eliminated.

V. DISCUSSION

As discussed below, we conclude that CMP's failure to provide its customers with the ability to choose an alternative to a wireless smart meter as part of its AMI initiative is an unreasonable utility act and practice. Accordingly, we direct CMP to provide its customers with an option to opt-out of the installation of a standard wireless smart meter under the terms and conditions specified in this Order and our Part I Order.⁹

A. Smart Meter Opt-Out

At the outset, we affirm our support for CMP's AMI initiative and smart grid technology more generally. This technology will not only allow access to usage information and pricing programs that will provide individual customers with

⁹ In the event the Commission finds a utility act or practice is unjust, unreasonable, insufficient or unjustly discriminatory, it is authorized by statute to order the utility to establish an alternative act or practice that it finds to be just and reasonable. 35-A M.R.S.A. § 1306(2).

opportunities to lower their electricity bills, but will also result in more efficient electric grid and utility operational improvements for the benefit of all electricity users. We note that CMP has responded reasonably and prudently to the State's policy regarding smart grid technology, 35-A M.R.S.A. § 3143, and to the Commission's direction to pursue new technology that will enhance the efficiency of its distribution and metering system. CMP successfully competed nationally and received a DOE smart grid investment grant for half the cost of its AMI project. With federal support to implement national and State smart grid objectives, we found CMP's AMI project to be cost-effective and technically sound. *Order Approving Installation of AMI Technology*, Docket No. 2007-215(II) (Feb. 25, 2010).

However, concurrent with the start of CMP's smart meter installation process in the fall 2010, we began to receive numerous letters and e-mails from customers expressing serious concerns regarding wireless smart meters, including potential health and safety impacts, privacy and security risks, and possible interference with wireless devices. These communications have continued throughout CMP's deployment process and our Opt-Out Investigation. In addition, we have received seven ten-person complaints regarding CMP's smart meter program and over a thousand customers have asked CMP not to install a smart meter on their premises.

In light of the magnitude of concerns among a significant portion of its customers, CMP's response that those concerns lack of credible scientific evidence misses the point. CMP is a public utility that provides a monopoly service. Customers that are dissatisfied with CMP service cannot obtain electricity transmission and distribution service from another provider. As such, responsiveness to customer concerns and customer acceptance of the terms and conditions of service are important considerations with respect of public utility service. Under the circumstances presented in this case, it is clearly an unreasonable act and practice for a utility to ignore the concerns of a significant number of its customers and refuse to permit a smart meter opt-out option if doing so is technically and economically feasible and those customers assume and bear the additional costs. The Staff bench analysis and information in the record in this proceeding demonstrate that a smart meter opt-out in the context of CMP's AMI program is technically and economically feasible. We, therefore, find that CMP's AMI initiative, without an opt-out alternative, is an unreasonable utility act and practice and we direct CMP to provide customers with opt-out alternatives as specified in this Order.

B. Opt-Out Alternatives and Pricing

We find that the set of opt-out alternatives and pricing as presented in the Staff bench analysis to be supported in the record, has a reasonable cost basis and is in the public interest. Thus, CMP is directed to include in its terms and conditions the following opt-out alternatives and pricing:¹⁰

¹⁰ In addition to the above options, customers will continue to have the existing option to relocate a smart meter to a different point on their home, business or other location on their property. Under this option, customers would pay the cost of relocating the meter, but would not incur any additional charges associated with an opt-out option.

<u>Option</u>	<u>Initial Charge</u>	<u>Monthly Charge</u>
Existing Meter Option	\$40.00	\$12.00
Transmitter-Off Option	\$20.00	\$10.50

In addition, any customer who does not elect an opt-out option during the 30-day enrollment period (see section V (D) below), and subsequently requests an opt-out after the enrollment deadline, would be subject to a surcharge of \$25.00 in addition to the applicable opt-out charges.

We disagree with CMP's argument that a smart meter opt-out program should not include an option for an electro-mechanical meter. In our view, providing two opt-out options will not be overly confusing to customers and, based on the smart meter complaints and customer letters, the vast majority of customers that have concerns regarding smart meters desire to maintain an existing meter. It would be of little purpose to provide an opt-out alternative in response to customer concerns when that alternative is not acceptable to most of the customers as a means to address those concerns.¹¹ Moreover, although we agree with CMP that the existing meter option does not provide the functionality required by our February 25, 2010 AMI approval order (Docket No, 2007-215(II)), much of that functionality would benefit the individual customer. Therefore, a customer's choice to opt-out and keep the existing meter will also be a choice to forego the benefits of the AMI system.

We also do not agree there would be no benefit to offering the transmitter-off option as a second alternative. Although it may be true that most opt-out customers (at least in the near term) are likely to choose the existing meter option, we believe that there is value to providing an alternative that will allow customers the ability to participate in some of the benefits of the AMI system, including dynamic pricing programs.¹² We also believe there will ultimately be value in an AMI system in which CMP can remotely turn the smart meter transmitter on or off depending on changes in customer desires or the occupancy of the premises. Because of its value to the system more generally, we conclude (contrary to CMP's position) that the incremental costs of establishing the transmitter-off option (such as the design of the meter and development of the necessary firmware)¹³ should be recovered from all ratepayers as part of the overall AMI revenue requirement, as proposed in the Staff bench analysis.

¹¹ We expect CMP to take reasonable actions to maintain the equipment and resources necessary to support both opt-out options.

¹² The transmitter-off option meter will measure hourly usage, thus enabling a customer to participate in dynamic pricing programs (such as time-of-use pricing).

¹³ In her comments, Ms. Foley-Ferguson stated that, because CMP is paying for the development of new technology, it should receive some interest or benefit from that development. Ms Foley-Ferguson raises a valid point in this respect. We expect CMP

Some intervenors argued that the incremental costs of providing the opt-out alternatives should not be charged directly to the opt-out customers, but paid for by all of CMP's ratepayers. We disagree with this position. The AMI smart meters are now CMP's standard meter. It has been the practice in Maine that customers that desire alternatives to the utility's standard meters pay the incremental costs of the alternative metering. See, e.g., Chapter 322, § 5(A)(2). We see no reason to change this practice in the context of CMP's smart meter program. As a general utility ratemaking principle, customers that request non-standard services should pay the incremental costs of those services.¹⁴ In our view, it would be inconsistent with ratemaking principles and basically inequitable for CMP to recover the costs caused by an individual customer's decision to opt-out of receiving a standard wireless meter from its general body of ratepayers.

Finally, as noted above, Ms. Foley-Ferguson argued that the estimated cost of the incremental mesh infrastructure is extremely speculative and should not be charged to opt-out customers. Although we agree that these estimated costs cannot be known with a large degree of certainty, such lack of certainty in estimated costs is not unusual in utility ratemaking. We conclude that the estimated costs of the additional infrastructure caused by customer opt-outs as presented in the Staff bench analysis is reasonable and supported by the record in this proceeding, and should be included in the determination of the opt-out charges.

C. Low-Income Assistance

We adopt, as part of the opt-out program, the low-income assistance proposal contained in the Staff bench analysis. Accordingly, customers that are eligible for LIHEAP will qualify for low-income assistance as follows: customers whose income is equal to less than 100% of the Federal Poverty Guidelines will receive a 50% reduction in the initial and ongoing opt-out fees; and customers whose income is greater than 100% of the Federal Poverty Guidelines will receive a 25% reduction in the initial and ongoing opt-out fees. The program administration for this assistance will be integrated with CMP's current Electric Lifeline Program (ELP) and funding would be provided from CMP's distribution rates through a separate, reconcilable mechanism that would be reviewed and adjusted by the Commission on an annual basis concurrent with the review and reconciliation of ELP funding.

We find this low-income assistance plan to be balanced and in the overall public interest. Accordingly, we decline to adopt the Public Advocate's alternative proposal that LIHEAP customers pay only the upfront charge with the monthly charges eliminated.

to take steps to secure any benefits for its ratepayers from the development of the transmitter-off option that may be reasonable and consistent with industry practice.

¹⁴ The primary incremental costs associated with the opt-out options are for meter readers and additional network devices (e.g., repeaters) needed to avoid gaps in the mesh network that would otherwise exist due to there being fewer standard smart meters receiving and transmitting meter data.

D. Enrollment Process

We adopt the opt-out enrollment process described in the Staff bench analysis. Under this process, CMP will contact by telephone customers who have already indicated that they do not want to have a smart meter installed and inform those customers of the opt-out options pursuant to the communications plan (discussed in section V (E) below). In addition, before beginning deployment in a particular area, CMP will notify customers in that area about the AMI program and the opt-out alternatives. Those customers will then have 30 days from when the notice is sent to make an opt-out enrollment decision. This approach will make the deployment process more efficient and less costly, because CMP will know, with a reasonable degree of certainty, which customers have decided to opt-out before deployment in the area starts. If a customer has been notified in this manner and does not request an opt-out within the 30-day enrollment period, and later requests to opt-out, that customer will be charged an additional \$25.00. This charge is intended to provide customers with an incentive to make the opt-out choice within the enrollment period and to cover some of the costs of changing out the meter after deployment in the area. CMP may waive the surcharge if it determines there is a sufficient reason for the customer's failure to notify CMP within the 30-day period.

E. Communication Plan

As part of the opt-out process, CMP is directed to develop and implement a communication plan consistent with that described in the Staff's bench analysis. This communication plan should inform customers about CMP's AMI initiative and opt-out alternatives and should be available on CMP's website. Specifically, the plan should use the term "wireless" in describing the standard smart meters and provide the following information:

- description of the smart meter program, including smart meter capabilities and communication mode;
- potential customer benefits of the smart meter program;
- the opt-out options available;
- the capabilities and communication modes of the opt-out options;
- the process to select an option;
- the opt-out option charges; and
- the existing meter relocation alternative.

In our view, CMP could have been more proactive in its prior efforts to inform customers of the smart meter program and its potential customer benefits. The development of the smart meter communication plan as required by this Order should help improve CMP's efforts to inform its customers of all aspects of the smart meter program.

The communications plan will provide useful and important information to all of CMP's customers and is important for the success of the AMI program. We, therefore, agree with Staff that the costs of developing and implementing the communication plan should be recovered from all ratepayers as part of CMP's overall

AMI revenue requirement. Accordingly, we reject CMP's argument that the costs of the communication plan be recovered through opt-out charges. We also reject CMP's request that we specify in this Order that the communication plan requirements will end with the completion of the initial AMI deployment in 2012. CMP's communication plan implementation should continue until otherwise directed by the Commission.

F. Opt-Out Metering

Customers that choose either of the opt-out alternatives (i.e., existing meter option or transmitter-off option) will have their meters read manually by CMP (in contrast to the standard smart meter which will be read remotely), and CMP will conduct these manual meter reads on at least a bi-monthly basis. These bi-monthly meter reads will allow CMP to comply with ISO-NE rules regarding load data reporting requirements.

To allow CMP to implement the opt-out program with bi-monthly meter reads, we hereby waive Chapter 815, section 8(L) of our rules so that CMP will not be required to make monthly meter reads for opt-out customers. We also waive the Chapter 815, section 10(C) prohibition against disconnecting an opt-out customer when the latest bill issued was based on an estimated read, as long as the customer's meter had been read consistent with the bi-monthly meter reading requirement.¹⁵ Furthermore, the six scheduled estimated meter readings that are attributable to opt-out customers would be excluded from CMP's ARP Service Quality Indicators and performance will be measured against a requirement of six actual, on-schedule meter readings per year.

G. Opt-Out Cost Deferral and Reconciliation Process

We adopt the cost deferral and reconciliation process recommended in the Staff's bench analysis. The opt-out charges specified in this Order reflect an assumed level of 9,000 customers participating in the opt-out program (total over both options). Actual participation rates, however, are very difficult to predict and participation rates that are higher or lower than assumed levels could result in CMP either significantly over-recovering or under-recovering incremental opt-out program costs. This result occurs because some of the costs to provide the opt-out options are fixed in nature or do not vary in direct proportion to participation levels (e.g., costs for meter reading).

We, therefore, adopt an opt-out cost recovery mechanism under which there will be a deferral and subsequent reconciliation of costs to capture the difference between assumed and actual participation levels. CMP is directed to track and annually report actual program participation information. Then, when CMP's distribution rates are re-examined after the term of its current alternative rate plan (ARP), the under- or over-recovery of incremental costs due to any difference between assumed and actual participation will be addressed and rates will be adjusted prospectively as determined to be just and reasonable by the Commission. Specifically, the deferral and reconciliation will be limited only to differences in participation levels, and will not include true-ups for

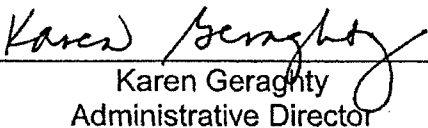
¹⁵ Section 16 of Chapter 815 provides that the Commission may, for good cause, waive any requirement of this rule that is not required by statute.

other items, including costs that turn out to be higher or lower than that assumed in determining the opt-out charges. We reject CMP's proposal that it be allowed to defer for future recovery incremental costs of the opt-out program that may have been unexpected as CMP had in effect many months to develop details costs for both opt out options which were detailed, well documented and comprehensive. Any such costs (as with any unforeseen costs) will be subject to the terms of CMP's ARP.

Accordingly, CMP is directed to implement a smart meter opt-out program as specified in the Part I and Part II issued in this proceeding.

Dated at Hallowell, Maine, this 22nd day of June, 2011.

BY ORDER OF THE COMMISSION



Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Vafiades
Littell

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

August 24, 2011

ORDER DENYING
RECONSIDERATION

ELISA BOXER-COOK, ET AL,
Request for Commission Investigation in
Pursuing the Smart Meter Initiative

Docket No. 2010-345

TERESA SWINBOURNE, ET AL.,
Request for Commission Investigation into
Unreasonable, Insufficient and
Discriminatory Decisions to Implement the
use of Smart Meters to CMP Customers
Disregarding Choice in Regards to
Wireless Activity and Consumer's Right to
Privacy Within Their Homes

Docket No. 2010-389

SUZANNE A FOLEY-FERGUSON, ET AL,
Request for Commission Investigation Into
Advanced Metering Infrastructure In
Accordance with the Legislature

Docket No. 2010-398

STEPHEN & DIANE WILKINS, ET AL,
Request for Commission Investigation Into
CMP's Violation of Homeowner Rights and
the Exposure of the Public Health Risk of
Smart Meters

Docket No. 2010-400

JULIE TUPPER, ET AL
Request for Commission Investigation to
Allow CMP Customers to Retain Existing
Analog Meters

Docket No. 2011-085

WELCH, Chairman; VAFIADES and LITTELL, Commissioners¹

I. SUMMARY

Through this Order, we deny the Motion to Reconsider Order filed by Suzanne Foley-Ferguson in the above-captioned proceeding.

¹ Chairman Welch did not participate in the above captioned proceedings, did not participate in the Commission's deliberations of these matters, and takes no part in this Order.

II. BACKGROUND

A. Opt-Out Investigation

On January 7, 2011, the Commission initiated a proceeding to consider whether CMP should provide customers with the option to opt-out of the installation of a smart meter on their premises. *Notice of Investigation*, Docket Nos. 2010-345, 2010-389 (Jan. 7, 2011). The Investigation was initiated in response to two ten-person complaints (Elisa Boxer-Cook, et al., Docket No. 2010-345; Swinbourne, et al., Docket No. 2010-389) and the Commission limited the scope of the proceeding to the issue of whether CMP's position of not providing opt-out alternatives to the installation of a smart meter was an unreasonable, insufficient or unjustly discriminatory utility practice.

B. Foley-Ferguson Complaint

On December 17, 2010, Ms. Foley-Ferguson filed a ten-person complaint (Docket No. 2010-398) requesting that the Commission open a proceeding to investigate the potential health effects of radio frequency (RF) radiation that is emitted from wireless smart meters and to consider alternatives to wireless smart meters (such as a hard-wired alternative). On February 18, 2011, the Commission issued a Notice of Investigation that consolidated the Foley-Ferguson Complaint into the previously initiated smart meter opt-out investigation in Docket Nos. 2010-345 and 2010-389, insofar as the Complaint concerned whether CMP's act or practice of not allowing individual customers to choose not to have a smart meter installed or to otherwise opt-out of the program is unreasonable, insufficient or unjustly discriminatory.²

On March 10, 2011, Ms. Foley-Ferguson filed a Motion for Reconsideration of the Commission's February 18, 2011 Notice of Investigation. In the Motion, Ms. Foley-Ferguson stated that the Commission did not address two major issues in the Complaint: 1) the re-opening of the advanced metering infrastructure (AMI) approval proceeding to discuss hardwiring instead of a wireless mesh AMI; and 2) the request for a proceeding to address health issues. On April 7, 2011, the Commission issued an Order Denying Motion for Reconsideration, finding that there was no basis to reopen the AMI docket and reiterating that the Federal Communications Commission (FCC) is the federal agency charged with determining RF-related emission standards.

² Subsequently, the Commission consolidated two other ten-person complaints into the Opt-Out Investigation to the extent that they concerned CMP's failure to allow customers to choose not to have a smart meter installed. *Stephen & Diane Wilkins, Et Al, Request for Commission Investigation Into CMP's Violation of Homeowners Rights and Exposure of the Public Health Risk of Smart Meters*, Docket No. 2010-400; *Julie Tupper, Et Al, Request for Commission Investigation to Allow CMP Customers to Retain Existing Analog Meters*, Docket No. 2011-085.

C. Opt-Out Orders

During the Opt-Out Investigation, the Commission's Advisory Staff submitted an analysis containing the components of an opt-out program for customers that choose not to have a standard smart meter installed and the parties filed comments on the Staff analysis. On May 19, 2011, the Commission issued the Part I Order and on June 22, 2011 issued the Part II Order (collectively, the "Opt-Out Orders").³ The Opt-Out Orders directed CMP to include opt-out alternatives as part of its smart meter initiative. Specifically, the Commission concluded that CMP's residential or small commercial customers would be provided two opt-out alternatives: 1) an electro-mechanical meter (existing meter option); or 2) a standard smart meter with the internal network interface card (NIC) operating in a receive-only mode (transmitter-off option). Customers electing either opt-out option would be assessed both an initial charge and a monthly charge intended to cover the incremental system costs CMP would incur to provide and maintain the opt-out options.

D. Foley-Ferguson Motion to Reconsider

On July 12, 2011, Ms. Foley-Ferguson filed a Motion to Reconsider Order on the general grounds that the evidence in the case was not well considered and should be re-examined to provide a basis for changes to the AMI program. Specifically, the Motion stated the grounds for reconsideration as follows:

1. New health information has been released that makes the Commission's decision to require wireless functionality for smart meters a health hazard, contrary to the requirement that utilities provide safe services. The new health information is the May 2011 World Health Organization/International Agency for Research on Cancer (WHO) reclassification of RF radiation as a possible carcinogen.⁴

2. The opt-out program does not address RF radiation effects created by meters other than one's own. This new health information means that the Commission has ordered CMP to expose ratepayers to a possible carcinogen even when they opt-out because of the effects of neighbors' meters.

3. Asking a person to pay to protect their health from what the WHO determines is a possible carcinogen amounts to extorting money for a perceived public benefit. For this reason, there should be no customer cost to opt-out.

³ The Part I Order described the Commission's decision in the proceeding and the Part II Order provided the background, analyses, and reasoning underlying the Commission's decision.

⁴ In a cover letter to the Motion filed on July 13, 2011, Ms. Foley-Ferguson attached a letter written to the California Public Utilities Commission by Olle Johansson, a researcher from the Karolinska Institute in Sweden, expressing specific concerns regarding the health effects of wireless smart meters.

4. The Commission failed to address the legal issues surrounding CMP's use of a customer's property to transmit other people's energy data. CMP's inability to use an opt-out customer's meter to transmit energy data results in opt-out customers being obligated to pay for the resulting higher infrastructure costs.

5. The Commission did not evaluate the reconciliation process for fairness to opt-out customers. Specifically the Commission did not require that CMP keep track of whether new or additional repeaters and infrastructure were even needed as a result of opt-out customers.

On July 20, 2011, CMP filed a response to Ms. Foley-Ferguson's Motion, stating that the Motion does not meet the standards for reconsideration and should be rejected as without merit. CMP's response stated the WHO's re-classification of RF is linked to cell phone use and that RF health concerns and associated scientific studies were introduced into the record during the proceeding. CMP argued that the recent WHO determination does not rise to the level of new material related to the use of CMP smart meters. With respect to the arguments of trespass, extortion and takings, CMP stated that there is simply no basis under law to support these arguments and that the Commission has responded to and dismissed similar arguments raised in the Wilkins complaint. *Order Denying Motion for Reconsideration*, Docket No. 2010-400 (April 15, 2011). Finally, CMP argued that it provided an ample engineering analysis to support the expected rate of incremental repeaters⁵ and that the Commission appropriately determined that this should not be a reconcilable variable in the rate adjustment process.

On August 4, 2011, Ms. Foley-Ferguson filed a reply to CMP's response to the Motion to Reconsider Order, disputing CMP's argument that the Motion does not meet the standard for reconsideration. Ms. Foley-Ferguson stated the action of the WHO was not available when the Commission deliberated the issues in the Opt-Out investigation, and the Commission is being asked to reconsider zero cost opt-outs in light of the new information. Additionally, Ms. Foley-Ferguson argues that her Motion seeks reconsideration based on omissions and errors regarding the repeater reconciliation process and the use of customer premises to transmit other customers' data.

III. DISCUSSION AND DECISION

For the reasons discussed below, we deny the Motion to Reconsider Order filed by Ms. Foley-Ferguson in the above-captioned proceeding.

A. Standards for Reconsideration

Section 1004 of the Commission's Rules of Practice and Procedure allows parties to petition for reconsideration of a Commission order. Section 1004 does not

⁵ CMP cites ODR 01-30 as containing the analysis.

provide a standard of review with respect to petitions for reconsideration. Therefore, as specified in Section 101 of the Rules, motions for reconsideration of a Commission order are subject to the standard established in Rule 7(b)(5) of the Maine Rules of Civil Procedure which states:

Motions for reconsideration of an order shall not be filed unless required to bring to the court's attention an error, omission or new material that could not previously have been presented....

It is often the case that parties in a proceeding disagree or are disappointed with a Commission determination. Nevertheless, a motion for reconsideration must raise matters that could not have been presented earlier. It is not appropriate for a motion for reconsideration to reargue points that were or could have been argued during the proceeding.

B. World Health Organization Reclassification

The WHO's reclassification of RF to 2B classification does constitute new information. However, the evidence that was reviewed and evaluated was specific to users of wireless telephones.⁶ The exposures to RF from wireless telephones are potentially much higher than those from smart meters.⁷ Thus, the new information presented in the Foley-Ferguson Motion regarding the WHO reclassification does not warrant reconsideration of our conclusions as to smart meters, expressed in the Notice of Investigation initiating the Opt-Out Investigation and other orders regarding smart meters, that the appropriate entity to consider potential RF health impacts is the FCC in consultation with the Food and Drug Administration. *Notice of Investigation*, Docket Nos. 2010-345, 2010-389 at 6 (Jan. 7, 2011); *Order Denying Motion for Reconsideration*, Docket No. 2010-398 at 3-4; *Order Denying Motion for Reconsideration*, Docket No. 2010-400 at 6 (April 15, 2011); *Order*, Docket No. 2011-120 at 3 (June 14, 2011). The FCC is the entity that should address RF-related

⁶ WHO press release dated May 31, 2011, pg 2. The Director of the International Agency for Research on Cancer was quoted in the press release as follows: "Given the potential consequences for public health of this classification and findings, it is important that additional research be conducted into the long-term, heavy use of mobile phones...." Moreover, we are informed that Dr. Johansson's letter expressing concerns with respect to smart meters (attached to the Foley-Ferguson Motion) do not represent the official position of the Karolinska Institute.

⁷ A report from the California Council on Science and Technology found that "wireless smart meters, when installed and properly maintained, result in much smaller levels of radio frequency exposure than many existing common household electronic devices such as cell phones and microwave ovens." *Health Impacts of Radio Frequency from Smart Meters*, California Council on Science and Technology, Page 4 (Jan. 2011).

emission standards because the FCC also has jurisdiction over wireless telephones as well as other household wireless devices.

C. Other Issues Raised in Motion

The other issues raised in the Foley-Ferguson Motion do not rely on new information and are essentially re-arguments of issues that were raised and addressed either in the Opt-Out Orders or other Commission decisions made in response to smart meter complaints.

1. Trespass Issues

The Foley-Ferguson Motion raises trespass issues with respect to RF from neighbors' meters. The issues of trespass were addressed by the Commission in previous decisions. *Notice of Investigation*, Docket No. 2010-400 at 4 (Feb. 18, 2011); *Order Denying Motion for Reconsideration*, No. 2010-400 (April 15, 2011).

2. Customer Costs to Opt-Out

The Foley-Ferguson Motion argues that there should be no cost to customer who choose to opt-out of a smart meter installation and that charging customers to opt-out amounts to extorting money for a perceived public benefit. The Commission addressed this issue of charging customers who opt-out for the incremental costs that CMP will incur in the Part II Order. *Order (Part II)*, Docket Nos. 2010-345, 2010-389, 2010-398, 2010-400, 2011-85 at 14 (June 22, 2011)

3. Transmission of Other Customer Data

The Foley-Ferguson Motion argues that the Commission failed to address issues surrounding charging customers who opt-out for incremental infrastructure costs resulting from CMP's inability to use those customers' property to transmit other people's energy data. The Commission addressed this matter in the Part II Order by stating that the smart meters (with their ability to transmit data from other customers' meters) are now CMP's standard meter and the use of these meters is a Commission-approved term and condition of service. Thus, it appropriate to charge opt-out customers for the installation and use of non-standard meters. *Id.*

4. Reconciliation Process

The Foley-Ferguson Motion argues that the Commission did not evaluate the reconciliation process for fairness to opt-out customers, in that CMP was not required to keep track of whether additional infrastructure was needed as a result of customer opt-outs. The Commission addressed this argument as well the reconciliation process more generally in the Part II Order. *Id.* at 16-17.

Dated at Hallowell, Maine, this 24th day of August, 2011.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Vafiades
 Littell

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 21 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

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

SECTION 1
THE ELECTRIC DELIVERY RATE SCHEDULE

1.1 FILING

A copy of the Rate Schedule, which constitutes the Rates, Service Territory, and Terms & Conditions under which electric delivery service will be provided to its customers by Central Maine Power Company, together with a copy of the Company's Handbook of Requirements for Electric Service and Meter Installations revised January 1, 2009, and Supplement to The Handbook of Requirements revised January 1, 2009 are on file with the Public Utilities Commission of the State of Maine and are also open to inspection at the commercial offices of the Company.

1.2 REVISIONS

This Rate Schedule may be revised, amended, supplemented, or otherwise changed from time to time in accordance with the Laws of Maine, and such changes when effective, shall be subject to the Terms & Conditions as effectively as though originally incorporated therein.

1.3 APPLICATION

The provisions of the Rate Schedule apply to everyone lawfully receiving electric delivery service from the Company, under the rates therein, and receipt of electric delivery service shall constitute the receiver a customer of the Company as the term is used herein, whether service is based upon contract, agreement, accepted signed application or otherwise.

1.4 BASIS OF CHARGE

Except as otherwise specifically provided for short term service or temporary service, the rates named in this Rate Schedule are predicated upon the furnishing of service for periods of not less than one year, but are priced upon a monthly basis and provide that service shall be billed at monthly intervals and be subject to monthly minimum payments.

1.5 TERMS & CONDITIONS

The Terms & Conditions filed as a part of this Rate Schedule are a part of every contract for service made by the Company and govern all classes of service where applicable, unless specifically modified by a rate provision.

Effective Date: January 1, 2009

Eric N. Stinneford

Docket No.: 2008-470

Vice President – Controller, Treasurer & Clerk

SECTION 1
THE ELECTRIC DELIVERY RATE SCHEDULE

1.6 BILLING LIMITATION FOR CERTAIN GENERAL SERVICE RATES

This Section cancelled effective May 1, 1993.

1.7 APPLICATION OF SEASONAL RATES

Customers who take service under certain rates contained in this Rate Schedule are subject to seasonally differentiated prices. As specified in these seasonal rates, winter prices apply for the billing months of December through March and non-winter prices apply for the billing months of April through November. These price changes will be implemented in the months of April and December on a non-prorated basis for meter readings beginning with the Company's billing Cycle A. The Company's billing Cycle A is scheduled to be read on or about the first of each month.

1.8 CONTRIBUTIONS IN AID OF CONSTRUCTION

Customers required by the Company to make contributions in aid of construction must make contributions sufficient to reimburse the Company for the net federal and state income tax impacts of such contribution.

The amount by which the contribution in aid of construction must increase to cover the income taxes is based upon current federal and state depreciation deduction schedules and CMP's cost of capital. CMP will revise this income tax adder whenever federal or state depreciation deduction schedules or CMP's cost of capital change materially. Below are the income tax adder rates in affect since 2001.

Construction Dates	Income Tax Adder
January 1, 2001 through September 10, 2001	29.5%
September 11, 2001 through December 31, 2001	20.6%
January 1, 2002 through May 31, 2002	22.0%
June 1, 2002 through May 4, 2003	20.6%
May 5, 2003 through December 31, 2004	16.9%
January 1, 2005 through December 31, 2007	29.5%
Beginning January 1, 2008 through June 30, 2008	16.9%
Beginning July 1, 2008 through September 8, 2010	15.6%
Beginning September 9, 2010 through December 31, 2011	3.9%
Beginning January 1, 2012 through December 31, 2012	15.6%
Beginning January 1, 2013	27.3%

Effective Date: February 7, 2011

Eric N. Stinneford

Docket No.: 2011-16

Vice President – Controller, Treasurer & Clerk

SECTION 1
THE ELECTRIC DELIVERY RATE SCHEDULE

1.8 CONTRIBUTIONS IN AID OF CONSTRUCTION (Continued)

If CMP determines that these rates should have been materially different due to changes in the underlying depreciation deduction schedules, CMP will make the appropriate changes to these rates and any CIAC tax charged to customers based upon these rates.

Examples of some situations that can result in contributions in aid of construction that will be subject to the income tax provision are:

1. The construction portion only of residential and single-phase line extensions is subject to the income tax adder. Maintenance charges such as removal costs, transfer costs, and transformer removal and transfer costs, are not subject to the tax adder.
2. The construction portion only of polyphase line extensions, including transformer installation. Maintenance charges, such as removal costs, transfer costs, and transformer removal and transfer costs, are not subject to the tax adder.
3. Facilities necessary to permit the delivery of cogenerators and small power producers capacity and energy to the Company's transmission and distribution system in accordance with IRS Tax Ruling 88-129.
4. Costs of underground service.
5. Customer required facilities that are beyond what is normally supplied by the Company to connect such customers. For example, special facilities as described in Section 13 of the Company's Terms & Conditions.

Contributions in aid of construction related to relocation of Company facilities are subject to the income tax charge, except for relocation work resulting from a State of Maine or municipal road construction or public improvement project, which is not subject to the income tax charge. The charge for Temporary Service is not subject to the income tax charge. Charges to individuals for costs incurred in replacing a broken pole are not subject to the income tax charge.

The fair market value of facilities constructed by the customer and subsequently contributed to the Company is considered a contribution in aid of construction by the Internal Revenue Service and therefore subject to the income tax charge.

In the event that any portion of the contribution in aid of construction is subject to a refund, the amount of such refund shall be determined according to the following table:

Effective Date: February 7, 2011

Eric N. Stinneford

Docket No.: 2011-16

Vice President – Controller, Treasurer & Clerk

SECTION 1
THE ELECTRIC DELIVERY RATE SCHEDULE

1.8 CONTRIBUTIONS IN AID OF CONSTRUCTION (Continued)

REFUND SCHEDULE

The percentages stated are to be applied only to the applicable tax, which was charged on the portion of the contribution being refunded.

Percent of Tax Adder to be Refunded Year of Refund	
(1)	(2)
1	100%
2	83%
3	69%
4	57%
5	47%
6	38%
7	31%
8	25%
9	20%
10	16%

For example, if the \$1,000 contribution referenced above is due to be refunded in the 7th year after it was taken, the amount of tax which was collected on that amount should first be determined by multiplying \$1,000 by income tax adder in affect at the time (29.5%) to arrive at the income tax adder amount of \$295. Therefore, multiply \$295 (income tax amount only) times .31 (amount in column 2) to arrive at \$91.45 (amount of tax to be refunded) plus \$1,000 = \$1,091.45 (total amount of refund).

There is no refund of the income tax portion of the contribution after 10 years from the date in which the contribution was collected.

Operation and maintenance charges (O&M) as specified in the Company's Terms & Conditions are to be applied to the base cost of the contribution only. It is not charged to the income tax portion.

Effective Date: September 1, 2003

Curtis I. Call

Docket No. 2003-474

Vice President

SECTION 1
THE ELECTRIC DELIVERY RATE SCHEDULE

1.9 LEGAL HOLIDAYS FOR TIME-OF-USE RATE APPLICATION

Legal Holidays for time-of-use rate application shall be as follows: New Year's Day, January 1st; Martin Luther King, Jr., Day, the 3rd Monday in January; Washington's Birthday, the 3rd Monday in February; Patriot's Day, the 3rd Monday in April;

Memorial Day, the last Monday in May; the 4th of July; Labor Day, the first Monday of September; Columbus Day, the 2nd Monday in October; Veterans' Day, November 11th; Thanksgiving Day, the 4th Thursday in November; and Christmas Day. When any one of the holidays named in this section falls on Sunday, the Monday following shall be observed as a holiday.

1.10 PRORATED BILLS

When any service (year-round, seasonal, short-term or temporary) is billed on other than a full month basis, the base bill, including minimum charges if applicable, shall be prorated. The base bill is defined as the amount calculated under the rate before application of the fuel adjustment provision and Maine State Sales Tax.

When no meter reading is taken for several months and it is known that energy usage occurred in some but not all of the months, kilowatt-hours may be billed for the month(s) energy was used and minimum charges billed for the remaining month(s) of zero energy use.

The following shall not be prorated: 1) Charge for Establishment of Service, 2) Short-Term Service Charge, 3) Installation and Removal Charges for Temporary Service and 4) Initial and Recurring Monthly Charges for the Smart Meter Opt-Out Program.

1.11 ADMINISTRATIVE SUPPORT CHARGE

For services performed at the Customer's request, CMP will include in its costs a charge to recover indirect administrative and general expenses. An Administrative Support Charge to recover such costs will be applied as follows:

- a. For single-phase and polyphase line extensions, the Administrative Support Charge will be 16% of the total cost associated with the construction of the line, excluding the Contribution in Aid of Construction as described in Section 1.8 of CMP's Terms and Conditions;

Effective Date: July 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk

SECTION 1
THE ELECTRIC DELIVERY RATE SCHEDULE

1.11 ADMINISTRATIVE SUPPORT CHARGE (Continued)

- b. For miscellaneous services whereby CMP charges upfront for such services, the Administrative Support Charge will be 16% of the total cost of the service, excluding the Contribution in Aid of Construction as described in Section 1.8 of CMP's Terms and Conditions.

Effective Date: July 1, 2008

Eric N. Stinneford

Docket Nos. 2007-215 & 2008-111

Vice President, Controller, Treasurer & Clerk

SECTION 2
APPLICATION FOR SERVICE

2.1 PLACE OF APPLICATION

Applications for electric delivery service may be made in person or by phone at any business office of the Company.

2.2 SERVICE CONTRACT

Whether or not a signed application for service is made by the customer and accepted by the Company, the rendering of the service by the Company, at the request of the customer, shall be deemed a contract between the parties and subject to all provisions of the rate applicable to the service.

2.3 UNAUTHORIZED USE

Unauthorized connection to the Company's electric delivery service facilities, or use of service obtained from the Company without authority or through false pretense, may be terminated by the Company in accordance with the provisions of Maine Public Utilities Commission Rules, Chapter 815 – Consumer Protection Standards for Electric and Gas Transmission and Distribution Utilities, as applicable. The use of service without proper notification to the Company will, in addition to any lawful remedies which the Company may have, render the user liable for the service so unlawfully used at the rate or rates applicable thereto; the amount thereof to be determined by the Company by measurement where possible, otherwise by estimate.

2.4 SPECIAL CONTRACTS

Standard contracts shall be for terms as specified in the rate, but where large or special investment is necessary for the supply or extension of supply of service, contracts for a longer term than specified in the rate, with or without special guarantee of revenue, or other special conditions, may be required to safeguard such investment.

Effective Date: April 16, 2008

Eric Stinneford

Docket No. 2008-158

Vice President – Controller, Treasurer & Clerk

LEGAL AUTHORITIES 000078

SECTION 3
CLASSIFICATION OF SERVICE

3.1 RESIDENTIAL SERVICE

Residential service is defined as the delivery of electric service to dwelling units such as homes, apartments, flats, or other living quarters occupied by a person or persons who constitute distinct households and use the energy for general domestic purposes. Use of residential service may be extended by the customer from his domestic meter for the operation of lights and equipment in private garages, barns, and other structures which are adjacent to, connected with, and used for noncommercial purposes by the occupants of the residence being served. The residential service rate is predicated upon the delivery of all energy for residential purposes through one meter, however, separate service through a separate meter for service to a private water pump, private garage, barn or other structure or device, used solely for residential purposes will be considered residential service. If the customer's energy usage registered on the multiple meters are added together and combined into one bill, with one customer charge, these meters must be the same type of meter. The customer may choose standard wireless smart meters, standard wireless smart meter with the internal network interface card operating in receive-only mode, or electro-mechanical meters. Customers who choose not to have a standard wireless smart meter installed on their premises may select and pay the associated charges for one of the alternatives described in CMP's Term and Condition 12.11. The delivery of energy used for other than residential service will be made through a separate meter and under a different rate.

3.2 GENERAL SERVICE

General service is defined as the supply of electric service for any and all purposes, except as it may be limited elsewhere under these Terms & Conditions or under the particular rate.

3.3 STREET LIGHTING SERVICE

Street lighting service is defined as the supply of electric service and/or equipment to municipalities or other governmental agencies for outdoor lighting of streets, roadways, highways and other public areas.

3.4 AREA LIGHTING SERVICE

Area lighting service is defined as the supply of electric service and/or equipment for general outdoor lighting.

3.5 PERMANENT SERVICE

Service to buildings, structures or other facilities shall be considered permanent service where such buildings, structures or facilities are in themselves considered to be

Effective Date: July 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk

SECTION 3
CLASSIFICATION OF SERVICE

3.5 PERMANENT SERVICE (Continued)

permanent in nature and location and where the customer requesting service signifies their intent to take service on a permanent and ongoing basis. Buildings, structures and other facilities will normally be considered permanent in nature and location when constructed on foundations and having water and sewerage connections. Installations of mobile homes will be considered permanent in nature provided they are installed on property in which the customer has sufficient interest and have independent or publicly supplied water and sewerage connections, or are installed within the confines of a mobile home park as defined in Term & Condition 18.8 A. Installations not falling under the definition of Permanent Service shall be considered temporary.

3.6 SHORT-TERM SERVICE

Short-term service is defined as any service, other than temporary, which is provided for less than twelve consecutive months to an establishment (including residential) that is normally occupied or operated for less than twelve consecutive months. Such occupancy or operation may be seasonal or occasional (such as weekends, summer, winter or other seasonal periods).

The service to establishments that are normally occupied or operated on a year-round basis will not be considered short-term. A short-term customer may elect to take service on a seasonal basis paying the monthly minimum charges during periods when the service is not used.

3.7 SEASONAL SERVICE

Seasonal service is defined as electric delivery service for twelve consecutive months or more to an establishment (including residential) that is normally occupied or operated seasonally or occasionally (such as weekends, summer, winter or other seasonal periods).

3.8 TEMPORARY SERVICE

Temporary service is electric delivery service provided for a limited period at a location where the facilities devoted especially to the service are not expected to have further usefulness at that location after the service in question has been discontinued, and includes any service where the useful life of the installation is substantially less than that which would normally be expected of such facilities.

Effective Date: March 1, 2000

Raymond W. Hepper

Docket No. 97-580

General Counsel

SECTION 3
CLASSIFICATION OF SERVICE

3.8 TEMPORARY SERVICE (Continued)

A. INSTALLATION AND REMOVAL COSTS

In addition to any other requirements, customers taking service on a temporary basis will be required to pay the non-salvage costs of the Company's facilities, including the installation and removal costs, plus applicable administrative and general overheads. For a single-phase temporary service involving the installation and removal of only a service drop and meter, there will be a flat charge of \$312.00. If the temporary service also includes the installation and removal of a single phase transformer, of 25 KVA or less, there will be a flat charge of \$448.00. If the temporary service involves the installation and removal of more than the amount of facilities provided for in either the \$312.00 or the \$448.00 cases, the charge for installation and removal costs will be based on the actual cost of the whole job. Payment of these costs may be required in advance.

Under ordinary circumstances the temporary service facilities will be removed within a reasonable time after the discontinuation of the use of them by the customer. Prior to such removal, however, if satisfactory arrangements are made by the same or a different customer to establish permanent service within a suitable length of time, the Company will leave the facilities in place. On the resumption of service there will be no further charge for installation and removal of facilities, unless, there are additional facilities involved, in which case the charge for rendering the new service will be based on the actual cost. When service is resumed by the same or different party with the same facilities it becomes either short-term service or regular service if permanent.

B. ESTABLISHMENT OF SERVICE CHARGE

A separate charge shall be made in all cases for establishment of service in accordance with Term & Condition 18.5, in addition to the charge for installation and removal costs.

Effective Date: December 1, 1993

David E. Marsh

Docket No. 92-345

Senior Vice President

SECTION 3
CLASSIFICATION OF SERVICE

3.8 TEMPORARY SERVICE (Continued)

C. RATE CHARGES

Charges shall be made according to the applicable rate. Minimum bills are to be prorated in conformance with Term & Condition 1.10.

D. SERVICE TO FAIRGROUNDS, ATHLETIC FIELDS, AND OTHER SIMILAR INSTALLATIONS

Fairgrounds, athletic fields and other similar nonprofit organizations may be considered as receiving temporary service during those brief periods when loads are abnormally high, providing the customer does the following:

1. Relieves the Company of any investment in distribution transformers and secondary facilities (except metering) beyond the point of delivery. Rental of facilities constitutes relief of investment.
2. Pays the estimated installation and removal costs upon each establishment of temporary service each year, whether or not the Company owned facilities are actually installed and removed.

If short-term service is desired following a period of temporary service, the customer will be subject to the full-short-term service charge as provided for in the applicable General Service rate.

3. If service is normally taken for twelve months on a seasonal basis (includes period of temporary service), short-term service charges are not applicable. When seasonal customers take service for less than twelve consecutive months, they will be considered to be short-term customers as provided for in the applicable General Service rate.

Effective Date: March 1, 2000

Raymond W. Hepper

Docket No. 97-580

General Counsel

SECTION 3
CLASSIFICATION OF SERVICE

3.8 TEMPORARY SERVICE (Continued)

E. CLASSIFICATION

Temporary service for building construction purposes will be provided under the applicable general service rate regardless who the customer may be and regardless who may be the actual party engaged in erecting the building.

3.9 STANDBY (BACK-UP) SERVICE

Standby (back-up) service means electric delivery service supplied by the T&D utility to a customer whose entire electrical requirements on the customer's premises are not regularly delivered by the Company due to the customer's ability to generate its own electricity. This includes customers whose primary business is the generation of electric energy.

3.10 SUPPLEMENTARY POWER

Cancelled.

3.11 MAINTENANCE POWER DELIVERY

Maintenance Power Delivery means the delivery of electric energy during scheduled outages of the facility.

3.12 INTERRUPTIBLE POWER DELIVERY

Interruptible Power Delivery means the delivery of electric energy provided by a T&D utility subject to interruption by the T&D utility under specified conditions.

3.13 LOAD MANAGEMENT SERVICE

Load management service is defined as electric delivery service for a number of hours each day as may be specified under the particular rate and in the Company's Handbook of Requirements for Electric Service and Meter Installations. This service is available by contract only to customers having load management equipment approved by the Company, and where the Company deems its facilities adequate.

Effective Date: April 25, 2006

R. Scott Mahoney

Docket No. 2006-243

Vice President – Controller, Treasurer & Clerk

SECTION 10
CUSTOMER'S PREMISES

10.1 CUSTOMER'S PREMISES

The Company shall not be liable for damage to the person or property of the customer, or to any other persons, arising from the use of electricity, or the presence of the Company's appliances and equipment on the customer's premises. All property owned by the Company and located on the customer's premises shall be deemed to be personal property and title thereto shall remain in the Company, and the Company shall have the right at the expiration of service to remove all of its property whether affixed to the realty or not.

10.2 COMPANY MAINTENANCE

The Company shall keep in repair and maintain its own property installed on the premises of the customer.

10.3 CUSTOMER'S RESPONSIBILITY

The customer shall be responsible for the safekeeping of the property of the Company on his premises, and, in the event of damage to it, shall pay to the Company any cost of inspection and repairs. The customer shall protect the equipment of the Company on his premises, and shall not permit any person, except an authorized representative of the Company, to break any seals upon, or do any work on, any meter or other apparatus of the Company located on the customer's premises.

10.4 ACCESS TO PREMISES

The Company shall have the right of access to said premises and to all property furnished by the Company installed therein, at all reasonable times during which service is provided to the customer, and on its termination, for the purpose of reading meters, or installation, inspection and repair of equipment used in connection with its energy, or removing its property, or for any other proper purposes.

The customer, at their expense, shall maintain suitable and safe access to all equipment owned by the Company on the customer's property. If the customer's property is secured by a gate, chain or similar device, the customer shall install the device to allow installation of a Company owned lock for access to this property.

Effective Date: October 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk

SECTION 10
CUSTOMER'S PREMISES

10.5 PROTECTIVE APPARATUS

The Company reserves the right to install protective apparatus so arranged as to disconnect the service on the premises, if the Company's capacity at that point is exceeded.

Effective Date: June 1, 1991

Lynn K. Goldfarb

Docket No. 89-68

Vice President

SECTION 12
METERS

12.1 SUPPLY OF METERS

The measurement of electric service shall be by meters installed, owned, and maintained by the Company. The Company will select the type and make of metering equipment, and may, from time to time, change or alter the equipment.

12.2 SPECIAL MEASUREMENTS

The Company shall have the right, at its option and its own expense, to place demand-meters, load survey meters, or other instruments and equipment on the premises of any customer for the purpose of measuring the demand, collecting interval data, or for other measurements of all or any part of the customer's load.

12.3 METER TESTS

The Company, at its expense, will make periodic or sample tests and inspections of its meters in order to maintain them at a high standard of accuracy. The Company also will perform such other tests as it deems necessary for the proper administration of its rates, or as required by law.

12.4 REQUEST TESTS

The Company will make additional tests or inspections of its meters at the request of a customer provided said meter has not been tested within the previous 12 months. The Company reserves the right to make the charge provided for in Maine Public Utilities Commission Rules, Chapter 320 - Service Standards of Electric Utilities when such test shows the meter to be in error no more than plus or minus (+/-) four percent (4%). The customer(s) shall be allowed to be present during such testing.

12.5 ADJUSTMENT OF BILL - REFUND

- a) When the Company determines that it has over-billed a residential customer because 1) the test of his or her meter reveals its average accuracy to be more than four percent (4%) high, 2) the Company discovers that the meter records have been switched or 3) for other reasons, the Company will refund to the customer excess charges for the previous six (6) months, or the actual period of error, not to exceed six (6) years, if the actual period can be determined.

Effective Date: August 1, 2000

Raymond W. Hepper

Docket No. 2000-615

General Counsel

SECTION 12
METERS

12.5 ADJUSTMENT OF BILL - REFUND (Continued)

- b) When the Company determines that it has over-billed a non-residential customer because 1) the test of his or her meter reveals its average accuracy to be more than four percent (4%) high, 2) the Company discovers that the meter records have been switched or 3) for other reasons, the Company will refund to the customer excess charges for the previous six (6) months, unless it can be shown from the records of either party that the error has existed for a greater or lesser period, in which case the refund shall cover the actual period; provided, that in no case shall a refund cover a period longer than the previous six (6) years.

12.6 ADJUSTMENT OF BILL - CHARGE

- (a) When the Company determines that it has under-billed a residential customer because 1) the test of his or her meter reveals the meter's average accuracy to be more than four percent (4%) low, 2) the Company discovers that the meter records have been switched or 3) for other reasons except for unauthorized use or fraud by the customer, the Company may issue a make-up bill for the unbilled charges for the previous six (6) months, or the actual period of error, not to exceed twelve (12) months (consistent with Section 8E1 of Chapter 815 of the Maine Public Utilities Commission), if the actual period can be determined. In the event of unauthorized use or fraud by a residential customer, the Company may issue a make-up bill for the unbilled charges for the previous six (6) months, or the actual period of unauthorized use or fraud, not to exceed six (6) years, if the actual period can be determined.
- (b) When the Company determines that it has under-billed a nonresidential customer because 1) the test of that customer's meter reveals the meter's average accuracy to be more than four percent (4%) low, 2) the Company discovers that the meter records have been switched or 3) for other reasons except for unauthorized use or fraud by the customer, the Company may issue a make-up bill for the unbilled charges for the previous twelve (12) months, or the actual period of error if the actual period can be determined; provided, however, that in no case shall the Company issue a make-up bill for a period longer than the previous six (6) years.

12.7 RENTAL METERS

Cancelled.

Effective Date: April 16, 2008

Eric Stinneford

Docket No. 2008-158

Vice President – Controller, Treasurer & Clerk

SECTION 12
METERS

12.8 METER LOCATION ADJUSTMENT

When service is metered at a lower or higher voltage than the delivery voltage, the measured kWh will be increased or decreased respectively by 2% for billing purposes or, at the option of the Company, a continuous on-site adjustment will be made through compensating metering equipment or a factor applied based on the transformer manufacturer's data.

12.9 NONSTANDARD METER INSTALLATIONS

The Company will install a nonstandard meter at the request of a customer and will accommodate requests for nonstandard meters as quickly as practicable in the normal course of the Company's business. Nonstandard meters include meters installed as part of CMP's Smart Meter Opt-Out Program.

With the exception of meters installed as part of CMP's Smart Meter Opt-Out Program, the Company will charge its incremental costs of owning, maintaining, and installing the nonstandard meter to the customer. The Company, at its sole discretion, may require advance payment from the customer.

Section 12.11 of CMP's Terms and Conditions describes requirements for participation in the Company's Smart Meter Opt-Out Program.

12.10 MASTER METERING STANDARD

1. RESIDENTIAL SERVICE

Each dwelling unit in a building that contains more than one residential dwelling unit will be separately metered unless the occupant of each such unit does not have control over any portion of the electric energy used in such unit, or with respect to any portion controlled by the occupant, the long-run benefits to the electric consumers in such building do not exceed the costs of purchasing and installing separate meters in such building. Master metered residential services existing as of December 16, 1983 may be continued.

2. GENERAL (NON-RESIDENTIAL) SERVICE

All new commercial buildings that will contain more than one separately leased or owned unit will be separately metered unless the occupant of each such unit does not have control over any portion of the electric energy used in such unit, or with respect to any portion controlled by the occupant, the long-run benefits to the electric consumers in such building do not exceed the costs of purchasing and installing separate meters in such building.

Effective Date: July 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk

SECTION 12
METERS

12.11 SMART METER OPT-OUT PROGRAM

Any residential customer or any non-residential customer eligible to take service under CMP's SGS or SGS-TOU Electric Delivery Rate Schedule and who chooses not to have a standard wireless smart meter installed on their premises may select one of the following alternatives:

- a. an electro-mechanical meter. A customer selecting this alternative will pay (i) an Initial Charge of \$40.00 per meter, which will appear on the customer's first bill following the date the customer chooses this alternative and; (ii) a Recurring Monthly Charge of \$12.00 per meter beginning by the later of October 1, 2011 or the date the customer chooses this alternative.

If the customer's existing meter is a properly functioning electro-mechanical meter, the customer may retain said meter and will pay the Initial Charge and Recurring Monthly Charge described above. The Company, at its sole discretion, may replace the customer's existing electro-mechanical meter with an equivalent meter.

- b. a standard wireless smart meter with the internal network interface card operating in receive-only mode. A customer selecting this alternative will pay (i) an Initial Charge of \$20.00 per meter, which will appear on the customer's first bill following the date the customer chooses this alternative and; (ii) a Recurring Monthly Charge of \$10.50 per meter beginning by the later of October 1, 2011 or the date the customer chooses this alternative.

If these meters are not available at the time the customer requests this option, the customer may retain their existing electro-mechanical meter and pay the Initial Charge and Recurring Monthly Charge described in subsections b(i) and b(ii). A customer who initially selects a standard wireless smart meter with the internal network interface card operating in receive-only mode but decides to retain their existing electro-mechanical meter will be billed the Initial Charge and Recurring Monthly Charge described in subsections a(i) and a(ii). CMP will include these charges beginning with the first bill following the date the customer notifies CMP of their decision to retain their existing electro-mechanical meter.

- c. A customer will be subject to the charges outlined above each time they establish service at a new premise location.
- d. If a customer has multiple meters that are not standard wireless smart meters and the energy usage registered on those meters is added together and combined into one bill, with one customer charge, the customer will pay a single Initial Charge and Recurring Monthly Charge. For all other multiple meter situations, the customer will pay an Initial Charge and Recurring Monthly Charge for each meter that is not a standard wireless smart meter.

Effective Date: July 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk

SECTION 12
METERS

12.11 SMART METER OPT-OUT PROGRAM (Continued)

- e. A customer choosing to convert to a standard wireless smart meter from an electro-mechanical meter or from a wireless smart meter with the internal network interface card operating in receive-only mode will not be charged for the conversion. The customer remains responsible for any unpaid opt-out charges incurred by said customer prior to conversion to a standard wireless smart meter.

Residential Electricity Lifeline Customers

If the customer participates in the Company's Residential Electricity Lifeline Program described in CMP's Term and Condition 33 and has an income level equal to or less than 100% of the Federal Poverty Guidelines, the customer will pay fifty percent (50%) of the Initial Charge and Recurring Monthly Charge related to their opt-out selection. If the customer participates in the Company's Residential Electricity Lifeline Program and has an income level greater than 100% of the Federal Poverty Guidelines, the customer will pay seventy-five percent (75%) of the Initial Charge and Recurring Monthly Charge related to their opt-out selection.

Short-Term and Temporary Service

For any short-term service customer participating in the Company's Smart Meter Opt-Out Program, the Company will bill the Recurring Monthly Charge consistent with the billing of the Service Charge or Minimum Charge. The Company will bill the Initial Charge on the customer's first bill following the date the customer chooses their opt-out alternative.

For any temporary service customer participating in the Company's Smart Meter Opt-Out Program, the Company will bill an Initial Charge and Recurring Monthly Charge consistent with subsections a and b above. If the temporary service customer becomes a permanent service customer, the Company will continue to bill a Recurring Monthly Charge but will not bill an additional Initial Charge.

Selection Period

- (a) Through the earlier of December 31, 2012 or the conclusion of the standard wireless smart meter deployment period, the Company will communicate with customers regarding opt-out alternatives using an opt-out enrollment mailing. A customer must notify the Company of their opt-out selection within thirty (30) days of the date of the opt-out enrollment communication from the Company. A customer who has received an opt-out enrollment mailing from the Company and who notifies the Company of their opt-out selection after the thirty (30) day period will be subject to a \$25 surcharge in addition to the charges outlined in subsections a and b above. The Company will apply the surcharge to the customer's first bill following the date the customer chooses their opt-out alternative. The Company may waive the surcharge if the Company determines the customer had sufficient reason for their failure to notify the Company of their opt-out selection within the thirty (30) day period.

Effective Date: October 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk

SECTION 12
METERS

12.11 SMART METER OPT-OUT PROGRAM (Continued)

Selection Period (continued)

- (b) Customers who do not notify the Company of an opt-out selection and who refuse to allow the Company to install a standard wireless smart meter shall be deemed to have selected the electro-mechanical opt-out alternative and shall be charged in accordance with Paragraph a on Page 12.3 of the Company's Terms and Conditions. Prior to the first billing containing opt-out charges, the Company shall notify each Customer of the additional charges and shall explain why the Company is assessing the charges. If a Customer refuses to pay for the opt-out alternative and continues to refuse installation of a standard wireless smart meter, the Company shall take appropriate action as allowed under Chapter 815 of the Maine Public Utilities Commission's Rules.

Inaccessible Meters

In accordance with Section 10.4 of the Company's Terms and Conditions, a customer, at their expense, shall maintain suitable and safe access to all equipment owned by the Company on the customer's property. If the Company receives no response from a customer after repeated attempts to arrange to install a standard wireless smart meter for said customer, the customer shall be deemed to have selected the electro-mechanical opt-out alternative and shall be charged in accordance with Paragraph a on Page 12.3 of the Company's Terms and Conditions. Prior to the first billing containing opt-out charges, the Company shall notify each Customer of the additional charges and shall explain why the Company is assessing the charges. If a Customer refuses to pay for the opt-out alternative and does not schedule an appointment with the Company to install a standard wireless smart meter, the Company shall take appropriate action as allowed under Chapter 815 of the Maine Public Utility Commission's Rules.

Effective Date: October 15, 2011

Eric N. Stinneford

Docket Nos. 2010-345, 2010-389,
2010-398, 2010-400, 2011-085

Vice President – Controller, Treasurer & Clerk