

September 22, 2014

PUBLIC UTILITIES COMMISSION  
Inquiry into Ownership and Maintenance  
Of Street Lights by Municipalities

INQUIRY FINDINGS

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WELCH, Chairman; LITTELL and VANNOY, Commissioners

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## I. SUMMARY

Based on the information provided in this Inquiry, Central Maine Power Company (CMP) and Emera Maine (Emera) should file terms and conditions that implement the requirements of the Act to Reduce Energy Costs, Increase Energy Efficiency, Promote Electric Supply Reliability and Protect the Environment, P.L. 2013, Ch. 369 (LD 1559), Part E (codified at 35-A M.R.S. § 2523) and are consistent with the agreed upon items described in the Joint Comments Regarding Areas of Agreement filed in this proceeding on July 25, 2014, as well as the guidance provided herein on the disputed issues. The Commission will provide an opportunity for comment on those terms and conditions prior to their going into effect.

## II. BACKGROUND

On June 26, 2013, the Maine Legislature enacted An Act to Reduce Energy Costs, Increase Energy Efficiency, Promote Electric System Reliability and Protect the Environment (the "Act"). Part E of the Act governs street lights and provides that on or after October 1, 2014, transmission and distribution (T&D) utilities (both investor-owned and consumer-owned) shall provide three options to municipalities for street and area lighting provided by light fixtures attached to poles owned by the T&D utility or on shared-use poles in the electrical space under the contractual management of the T&D utility located in the public way.

The first option ("Option 1") states that a T&D utility shall provide all of the components of the lighting system, including installation and maintenance and provide electricity delivery to the lighting system from a power vendor selected by the municipality. 35-A M.R.S. § 2523(1)(A). The T&D utility shall apply a monthly charge for these services, as approved by the Commission, that reflects the total cost to provide street lighting equipment for each light and a separate charge for power delivery. *Id.*

The second option ("Option 2") states that the T&D utility shall install the lighting and connect the light to the power source on the pole, while the municipality shall own

and maintain the lighting fixture. 35-A M.R.S. § 2523(1)(B). Any person performing maintenance work on the street light on behalf of the municipality must be qualified pursuant to applicable federal and state standards or any standards established by the Commission and must have liability insurance in an amount and with terms determined by the Commission. *Id.* The T&D utility may apply a one-time charge per light fixture for installation as established by the Commission. *Id.*

The third option ("Option 3") states that the T&D utility shall connect to the power lines a light fixture owned, installed and maintained by the municipality. 35-A M.R.S. § 2523(1)(C). Under Option 3, any person installing or working on municipally-owned street lighting equipment must be qualified pursuant to applicable federal and state standards or any standards established by the Commission for such work and must have liability insurance in an amount and with terms determined by the Commission. *Id.* The T&D utility may apply a one-time charge per light fixture for connection as established by the Commission. *Id.*

On September 26, 2013, the Commission issued a Notice of Inquiry (NOI) in this matter. The NOI requested comments from interested parties on a variety of issues related to implementing the street lighting legislation. Written comments were received from CMP, Emera, Dirigo Electric Cooperative, Inc., and the Municipal Street Lighting Group. Comments were also filed later in the proceeding by the City of Caribou.

Subsequent to the filings of initial comments, the Commission held multiple technical conferences and additional information was exchanged. The utilities and the Municipal Street Lighting Group held several meetings to narrow the issues of disagreement. On July 25, 2014, CMP, Emera and the Municipal Street Lighting Group submitted joint comments outlining areas of agreement which have been reached as well as areas in which there is no agreement. The Joint Comments are attached to this Order as Appendix A. CMP, Emera, and the Municipal Street Lighting Group all filed final comments on August 22, 2014. On September 8, 2014, the Town of Greenville also filed comments.

### III. POSITIONS OF THE PARTIES

The parties were able to reach agreement on several areas, including that there should be no access charge or pole attachment fee, the minimum qualifications required for working on street lights, equipment approval standards, and other areas more fully described in the Joint Comments attached as Appendix A. There were three areas in which they were unable to reach agreement. These areas are:

1. **Amount of liability insurance:** CMP and Emera request that municipalities be required to purchase \$5 million excess liability insurance with the utility named as an additional insured. According to the utilities, this excess liability coverage of \$5 million is a standard requirement for contractors working for the utility on the utility's electrical infrastructure. The \$5 million insurance coverage is also the

amount required by utilities for municipalities to attach flags to utility poles. The utilities also state that the proper level of insurance coverage by a municipality is in actuality a secondary issue to the issue of proper indemnification requirements. The utilities request that the municipalities be required to indemnify the utility for any costs, losses, or damages that result from a municipal contractor or employee performing work on a utility pole, noting that the required insurance is simply a funding mechanism for whatever indemnification obligations are required of municipalities.

The Municipal Street Lighting Group finds this unacceptable. The Municipal Street Lighting Group believes existing municipal insurance policy coverage is sufficient, and urges the Commission to examine the provisions of the Maine Tort Claims Act (MCTA).

2. **Disconnection for work on poles:** The utilities assert that power should be disconnected by the utility before municipalities or their contractors may change a fixture head or cut-in a fuse.<sup>1</sup>

The Municipal Street Lighting Group disagrees and asserts that requiring the utility to disconnect power before allowing a municipality or its contractor to change a fixture head or install an in-line fuse is not standard utility practice in that several regional electric utilities do not disconnect at the secondary before changing a fixture head or cutting in a fuse.

CMP argues that what is "standard utility practice" is not clear, that different utilities have different standards. CMP and Emera argue that such disconnection is currently a utility safety requirement for both utilities for their own line workers, and a requirement for workers from other utilities when those workers work on CMP or Emera's poles. The utilities assert that it is clear that this practice enhances safety, protects the line worker working on the light, protects others that may be working in the area, and prevents power quality issue for customers.

3. **Purchase of Street Lighting Infrastructure:** CMP and Emera propose that a municipality must own 100% of the street lighting infrastructure within the municipality if it chooses to own any of the street lights attached to the utility's poles. The utilities prefer that this purchase be all at once but agree to it being phased in over a three-year period. If phased in, the utilities recommend that the utility provide the maintenance on all the municipal-owned lighting until the total purchase price is paid in order to limit confusion as to which entity is responsible for a light's maintenance. Once the total is paid, the municipality would be free to choose who performs maintenance on their lights. The utilities argue that this will

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<sup>1</sup> The utilities agree that once a fuse is installed - and it is an agreed upon point that all municipally-owned lights on utility poles will be fused within 10 years - most work could be done by the municipality or its contractor without the utility disconnecting the power.

reduce confusion that could be caused by piecemeal ownership/maintenance responsibilities. The utilities state that the purchase price should be based on Net Book Value.

The Municipal Street Lighting Group is not wholly supportive of the utilities' approach, but acknowledges that progress was being made toward a resolution and that it desires to continue working on this issue with the utilities.

#### IV. DISCUSSION AND DECISION

Based on the information provided in this Inquiry, we conclude that CMP and Emera should file terms and conditions that implement the requirements of the Act and are consistent with the agreed upon items outlined in the July 25, 2014 Joint Comments, as well as the guidance provided herein on the disputed issues. Upon the filing of the proposed terms and conditions, the Commission will provide an opportunity to comment, and will notify participants in this Inquiry of that opportunity.

Consumer-owned utilities (COUs) are required to comply with the provisions of the Act. However, we do not request that COUs file terms and conditions at this time, but if in the future a municipality decides to assume responsibility for street lights as permitted by the Act, the COU and municipality should discuss the terms and conditions and present any dispute to the Commission for resolution.

CMP and Emera's proposed terms and conditions should include provisions that require, as a condition of ownership of street lights on a utility's pole, that the municipality purchase liability insurance of \$5 million. The utilities should file two sets of language for the Commission's consideration – one requiring that the municipality purchase \$5 million in additional liability insurance and to indemnify the utility from liability associated with the municipality's ownership and/or maintenance of the street lights and another version that does not include indemnification language.

CMP and Emera's proposed terms and conditions should also include provisions that specify that, as long as it is a practice required of the utilities' own employees and contractors, the utility must disconnect the electric power prior to the municipality, or its contractor, installing a fixture head or cut-in fuse. It is our view that it is reasonable to require the municipalities and their contractors to observe the same safety requirements that the utilities require of their own employees and contractors.

Finally, CMP and Emera's terms and conditions should provide that a municipality must generally take ownership of all of the street lights in its town, but that this ownership transition may be phased in over a three-year period.<sup>2</sup> While existing arrangements or agreements should be honored (including those that may allow partial ownership), we generally agree with the utilities that requiring ownership of 100% of the

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<sup>2</sup> The terms and conditions that are eventually approved shall not disrupt any previous arrangements that municipalities have with utilities regarding street lighting service.



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2013-00448

July 25, 2014

MAINE PUBLIC UTILITIES COMMISSION  
Inquiry into Ownership and Maintenance of  
Street Lights by Municipalities

JOINT COMMENTS REGARDING  
AREAS OF AGREEMENT

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## I. INTRODUCTION

On September 26, 2013, the Commission issued a Notice of Inquiry in the above-captioned proceeding. The Commission's inquiry is the result of the Maine Legislature's passage of An Act to Reduce Energy Costs, Increase Energy Efficiency, Promote Electric System Reliability and Protect the Environment (the "Act"). Part E of the Act governs street lights and provides that on or after October 1, 2014, transmission and distribution ("T&D") utilities (both investor-owned and consumer-owned) shall provide three options to municipalities for street and area lighting provided by light fixtures attached to poles owned by the T&D utility or on shared-use poles in the electrical space under the contractual management of the T&D utility located in the public way.

A technical conference was held on May 13, 2014 in this matter. At that technical conference it was agreed that the parties would work together to develop a document outlining the areas of agreement in implementing the provisions set forth in the "Act. By Procedural Order dated June 30, 2014, the Presiding Officer directed the parties to submit a document outlining areas of agreement by July 18, 2014. On July 18, 2014, the Municipal Street Lighting Group requested an extension of time to file the document outlining the areas of agreement in implementing the Act. By Procedural Order dated July 18, 2014, the Presiding Officer granted the request for extension, requiring that the parties file the document outlining the areas of agreement by July 25, 2014.

Central Maine Power Company (“CMP”), on behalf of itself, Emera Maine and the Municipal Street Lighting Group, hereby files the required document outlining areas of agreement and disagreement, as set forth below.

## **II. AREAS OF AGREEMENT**

1. The parties agree that work involving only replacing a photo cell or light bulb does not require inline fusing and does not require disconnection prior to the municipality or its contractor doing the work.

2. Minimum qualifications for working on street lights are:

- Must hold a current Maine electrician’s license
- Working appropriately under license (Master electrician, or Journeyman working for a Master electrician)
- Meet OSHA (1910.269) standards
- Have training re Maine High Voltage Safety Act (OSHA 1910.269)
- Trained and certified under NFPA 70E
- IMSA Certification

3. Power connection made to utility infrastructure is only done by the utility.

4. Once agreement is reached and signed with a municipality that owns street lights, no individual notification of the utility for routine maintenance by the municipality (either prior to or after maintenance) is required.

5. Process will provide that once a specific light has been approved by the utility as acceptable equipment, additional use of that light as a replacement in a location where a street light currently exists does not require additional approval by the utility as long as the replacement light has a similar or lesser weight and wind profile as the light being replaced. Where no light has previously existed, the process would still require review to be sure the pole/location is acceptable to the utility. In the event the utility denies a light in a specific

location, the municipality may appeal the denial, using a process, similar to that which is provided in the Net Energy Billing rule (Chapter 313), which requires filing a notice by the municipality with the Commission within 21 days of the utility's denial.

6. Consumer owned utilities (are required to comply with municipal street lighting law and Commission process unless relieved by future legislative or Commission action.

7. Utilities' dark-hour tables and profiles will be used to determine usage and operating hours. This agreement does not preclude the future use of new technologies, including (but not limited to) unlimited dimming with real time metering data, and intelligent controls providing metering data in electronic form. The use of new technology shall be a topic for consideration by a joint utility/municipality working group, and the utilities agree to consider new technologies for implementation.

8. Street lights would be set to operate in "fail off" mode, which can be phased in. The utilities recommend that they fail in the off mode to insure prompt repair and to protect the energy provider. The utilities will consider intelligent controls when such controls become technologically viable alternatives to current technology.

9. Each investor-owned utility may decide how to implement pricing for maintenance for those municipalities selecting Option #2 in the street lighting law, either maintenance contracts or "time and materials" contracts. Prices for mandated utility work (when required) such as primary connection, "make ready", engineering review, and other similar work should be determined by the Commission as part of this proceeding. Utilities will submit Street Light Service Fees for approval as rate schedules by the Commission.

10. The parties agree that there should be no access charge or pole attachment fee for any municipal street light attachment which also consumes electricity at the pole.

11. A fuse will be installed, if not already present, anytime a light fixture requires service beyond standard photocell, bulb or lens replacement. Fuses will be purchased and installed by the municipality or their contractor, or purchased by the municipality and provided to the utility for installation under the tariff fees. Fusing of all lights must be completed within 10 years of the acquisition of streetlights by a municipality.

12. In regard to ensuring correct street lights data, the utilities may conduct any street lighting audit of the components of a municipality's street lighting system located in a transmission and distribution utility's space on shared use poles it wishes at its own expense. The Towns may participate if they believe it would be in their mutual interest to do so. In the event the utility discovers the Town is installing unapproved fixtures or making unreported changes to the system that require reporting then the cost of a full audit to determine the extent of the violations would be at the expense of the Town.

13. There will be no charge for provision by the utility of normal and limited protective cover. The utility may recommend the use of protective cover for safety reasons. A municipality may request protective cover from the utility.

14. The Maine Department of Labor, Safety Works program, enforces OSHA standards for safety of municipal workers. OSHA enforces safety standards for private sector entities. Municipalities will secure safety training for their employees (if any) working on street lights, and will require that any contractor hired to work on the municipality's street lights must use workers who have received all required safety training and provide the municipality with evidence of that training. Municipalities will certify that any of their employees or contractors working on street lights meet all safety training and certification requirements, and will require

any contractor working on street lights to maintain adequate coverage and provide evidence of both general and liability insurance in order to allow it to perform work for the municipality.

15. The parties agree there should there be a working group going forward, implemented by way of a letter agreement between the utilities and the Municipal Street Lighting Group, and filed with the Commission. The issues the working group can address are limited to a specific list of topics agreed to by the parties, plus additions made by mutual agreement of the parties, and items requested by the Commission.

### **III. AREAS ON WHICH AGREEMENT COULD NOT BE REACHED**

1. Amount of Liability Insurance: The utilities request \$5 million excess liability insurance with utility named as an additional insured. This excess liability of \$5 million is a standard requirement for contractors working for the utility on the utility's electrical infrastructure. The \$5 million insurance coverage is also the present amount being required by CMP and Emera Maine and agreed to by municipalities attaching flags to utility poles. The insurance is to protect the utility as the utility would not be protected by or have claims limited to that covered under the Maine Tort Claims Act.

The Municipal Street Lighting Group finds this unacceptable. The Municipal Street Lighting Group believes existing municipal insurance policy coverage is sufficient, and urges the Commission to examine the provisions of the Maine Tort Claims Act.

2. The utilities assert that disconnection by utility at secondary connection point before municipalities or their contractors may change a fixture head or cut-in a fuse should be required. CMP and Emera Maine have stated that disconnection at the secondary is a present utility safety requirement for the utilities' own line workers, as this requirement protects the line worker

working on the light, protects others that may be working in the area, and prevents power quality issue for customers.

The Municipal Street Lighting Group disagrees and, based on information received during the pendency of this proceeding from other New England electric utilities and street lighting contractors working for regional electric utilities by George Woodbury (consultant for the Municipal Street Lighting Group), asserts that the view expressed by the utility parties in this docket is not standard utility practice, and further states that several regional electric utilities do not disconnect at the secondary before changing a fixture head or cutting in a fuse.

3. Purchase of Street Lighting Infrastructure: CMP and Emera Maine propose that a municipality must purchase 100% of the street lighting infrastructure, preferably all at once but may be phased in over a three year period. If phased in, then the utility would provide all maintenance on all the municipal owned lighting, and paid the tariff-approved maintenance fees, until the total purchase price is paid. Once the total is paid the municipality would be free to choose who does the maintenance on their lights. Purchase price of the lighting infrastructure would be based on Net Present Value.

The Municipal Street Lighting Group has some problems with this approach, but acknowledges that progress is being made toward a resolution. It is their desire to continue working on this issue with the utilities to see if they can address the important issues, including:

- Finding an alternative means of getting a reasonable approximation of the ages of fixtures in Emera Maine's territory because they lack this information which is important in determining Net Present Value of assets that a municipality in their service area need in making the decision to purchase street lighting infrastructure; and
- Addressing the need for close coordination between a municipality and the utility in making the transition from utility ownership to municipal ownership of street lights, particularly in the removal of depreciated utility lights and related

equipment and replacing it with municipally-owned fixtures in ways that minimize the costs of the transition.

#### IV. CONCLUSION

CMP appreciates the opportunity to provide these joint comments on behalf of itself, Emera Maine, and the Municipal Street Lighting Group. Please contact me if the Commission needs any further information.

Respectfully submitted,



Richard P Hevey  
Senior Counsel  
Central Maine Power Company