

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

October 7, 2015

CENTRAL MAINE POWER COMPANY
Request for Approval of Tariff Revisions Related
To Municipally-Owned Street Lighting Service
Pertaining to Central Maine Power Company

Docket No. 2014-00313

EMERA MAINE
Request for Approval of Tariff Revisions Related
To Municipally-Owned Street Lighting Service
Pertaining to Emera Maine

Docket No. 2014-00317

ORDER

VANNOY, Chairman; MCLEAN and WILLIAMSON, Commissioners

I. SUMMARY

For the reasons discussed in this Order, we hereby direct Central Maine Power Company (CMP) and Emera Maine (Emera) to file rate schedules and terms and conditions consistent with this Order and the provisions of 35-A M.R.S. § 2523. We also direct CMP and Emera to work with the members of the Municipal Street Lighting Group (MSLG) and other interested municipalities¹ to develop and file with the Commission Standard Form Agreements related to municipal ownership of street lighting in CMP and Emera Maine's Maine Public Service and Bangor Hydro service territories. Finally, if any municipalities of Consumer Owned Utility (COU) decide to assume responsibility for the streetlights as permitted by the legislation, the COU and municipality should discuss the terms and conditions and present any dispute to the Commission for resolution.

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 streetlights 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

¹ The following entities participated as part of the MSLG: City of Rockland, City of South Portland, the Town of Falmouth, George Woodbury (expert witness for the MSLG), and Richard Davies (consultant to the MSLG). The following municipalities also participated in these proceedings, but not as part of the MSLG: City of Caribou, Town of Greenville, and the City of Auburn.

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 streetlight 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.* The legislation also provides that under Options 2 and 3, the towns may choose to take ownership of the existing streetlights, pursuant to Commission established criteria and process with fair compensation to the utility to be established by the Commission.

The legislation also requires that the Commission: establish approval and denial criteria to be used by utilities when municipalities seek to locate streetlights and that these criteria be based on standard utility industry practice; that the Commission determine appropriate charges for work performed by the utility including any one-time fees to the utility for making the approval and denial determinations; and that the Commission establish basic criteria, consistent with standard utility industry practice, regarding equipment safety and compatibility issues, including a basis for determining when no additional assessment work and associated charges are necessary because the new lighting equipment places equal or less demand on the pole than the existing streetlight. 35-A M.R.S. § 2523(2).

Finally, the legislation requires that the Commission determine the “power delivery” rate for streetlights and that for towns choosing Option 1, this charge be broken out separately from the total monthly charge. The legislation also requires that the Commission determine what, if any, ongoing fees beyond the delivery-only charges may be assessed, including pole attachment fees. 35-A M.R.S. § 2523(3).

On September 26, 2013, the Commission issued a Notice of Inquiry (NOI) in this matter in Docket No. 2013-00448. 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 MSLG. Comments were also filed later in the proceeding by the City of Caribou. On July 25, 2014, CMP, Emera and the MSLG submitted joint comments outlining areas of agreement which had been reached as well as areas in which no agreement had been reached. CMP, Emera, and the MSLG all filed final comments on August 22, 2014. On September 8, 2014, the Town of Greenville also filed comments.

On September 22, 2014, the Commission issued its Inquiry Findings in Docket No. 2013-00448 that provided guidance on the disputed issues and directed CMP and Emera to file terms and conditions that implement the requirements of the Act. On September 29, 2014, CMP filed its proposed terms and conditions which was assigned Docket No. 2014-00313, and on September 30, 2014, Emera filed its proposed terms and conditions which was assigned Docket No. 2014-00317.² On October 1, 2014, the Commission issued a Notice of Filing and Opportunity to Comment on these proposed terms and conditions. On October 8, 2014 the MSLG filed comments on CMP’s terms and conditions and on October 15, 2014, CMP filed a response to the MSLG’s comments.³

On November 12, 2014, the Commission held a technical conference to discuss the terms and conditions, comments, and reply comments. On November 13, 2014, in a follow-up to the technical conference, the Commission issued a

² On October 16, 2014, the Commission suspended CMP’s and Emera’s terms and conditions for an initial period of three months and on January 6, 2015, the Commission extended this suspension for up to an additional five months, through June 15, 2015. As these proceedings had not concluded by this date, and in order to incorporate additional areas of agreement, on June 15, 2015, CMP and Emera withdrew their prior versions of their terms and conditions and refiled amended versions. CMP refiled its amended terms and conditions on June 19, 2015 and Emera Maine submitted its terms and conditions, as annotated by the Commission Staff and attached to the March 30, 2015 Examiner’s Report, on June 23, 2015.

³ None of the MSLG municipalities or other municipalities that participated in these proceedings are located in Emera’s service territory and no comments on Emera’s filings were received.

procedural order seeking comments and additional information in several areas. On November 18, 2014 and December 3, 2014, the Commission received responses to that procedural order from the MSLG, CMP and Emera.

On March 30, 2015, the Commission Staff issued its original Examiner's Report in Docket Nos. 2014-00313 and 2014-00317 and on April 13, 2015, CMP and the MSLG filed exceptions to that Examiner's Report. As a result of the exceptions, it became clear that it would be helpful to have further clarification on several points. A technical conference was held on April 23, 2015, which was followed by a procedural order issued on May 26, 2015 that requested that CMP file clarification as to how it would determine the amount to charge municipalities to purchase or remove existing street lighting equipment. On June 5, 2015, CMP filed further information, a technical conference was held on the filing on June 15, 2015, and on June 19, 2015, the MSLG filed additional comments on the outstanding issues.

On August 21, 2015, the Staff issued an Amended Examiners' Report, including recommendations based on additional clarifications and information received after issuance of the original Examiners' Report. CMP, MSLG and Emera Maine filed comments and exceptions to the Amended Examiners' Report on September 11, 2015.

III. DISCUSSION AND DECISION -- AREAS OF AGREEMENT

The details for each utility's implementation of the municipal streetlight ownership provisions are included in that utility's terms and conditions. Attachment A and Attachment B are copies of CMP's and Emera Maine's most recent drafts, respectively, annotated to indicate where additional changes are necessary to implement the findings in this Order. Below is a summary of the broad areas of agreement reached in the course of the prior proceeding, Docket No. 2013-00448, and the instant proceedings.

A. Customer-Owned Street Lighting Agreement

In order to own streetlights attached to a utility pole, a municipality must enter into an agreement with the transmission and distribution utility that owns the poles or has contractual management of the street lighting equipment in the electrical space of shared-use poles. It is anticipated that the individual agreements will be based on a standard-form agreement approved by the Commission and that the agreements will include additional details regarding the specific arrangements between each municipality and utility. The provisions, procedures, and details regarding these agreements have not yet been

determined. See Section V for a discussion of the next steps associated with the Customer-Owned Street Lighting Agreements.⁴

B. Power connections to utility infrastructure

Power connections made to utility infrastructure will be done only by the utility.⁵

C. Fusing

A fuse will be installed, if not already present, anytime a light fixture requires service beyond a standard photocell, bulb or lens replacement. Fuses will be purchased and installed by the municipality or its contractor, or purchased by the municipality and provided to the utility for installation under the rate schedule fees. Installation of a fuse requires disconnection of power by the utility prior to installation. As suggested by the MSLG in its comments to the Amended Examiner's Report, we hereby clarify that once a fuse has been installed for the street light, disconnection of power by the utility will no longer be needed before the municipality or its contractor can carry out routine maintenance on or replacement of the street light consistent with the terms of the standard form contract. Fusing of all existing lights acquired by a municipality must be completed within 10 years of the acquisition of the streetlights by the municipality. 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.

D. Notification to utility for municipal work on streetlights

Pursuant to the notification requirements of Maine's Overhead High-Voltage Line Safety Act (M.R.S. 35-A, § 757), prior to working within ten feet of an overhead high-voltage electric line, the person responsible for the work must notify the owner or operator of the overhead high-voltage line. However, the statute also provides that if government entities (and those working on their behalf) have "already made satisfactory mutual arrangements, further arrangements for that particular activity are not required." The entities involved in

⁴ Except as required by the provisions of the legislation or the implementing provisions of this Order, nothing herein is intended to disrupt current arrangements for street lighting service and/or ownership.

⁵ Throughout this document, the term "utility" refers to utility employees or contractors working for the utility. The term "municipality" refers to municipal employees or contractors working for the municipality, except to the extent the utility is performing work on behalf of the municipality, in which case the utility is governed by the provisions of this Order that apply to utilities, not municipal employees or contractors.

this proceeding agree that upon entering the Customer-Owned Street Lighting agreement, no individual notification to the utility by the municipality – either before or after the work is performed – will be required for routine maintenance activities and that this agreement will satisfy the notice provision of the Overhead High-Voltage Line Safety Act. The Customer-Owned Street Lighting agreement will define what activities will be considered routine maintenance and the entities involved in these proceedings agree that Attachment C provides a starting point for the list of work that would be considered routine maintenance.

E. Process for determining acceptable equipment

The entities in this proceeding agree that street lighting equipment must be approved by the utility as acceptable for use on its system. Once specific equipment has been approved by the utility as acceptable, additional use of that equipment in a location where a streetlight currently exists does not require additional approval by the utility as long as the replacement equipment has similar, or less, weight and wind profile as the equipment being replaced. In instances where the new equipment has greater weight or wind profile than the equipment being replaced, or in instances that no light has previously existed on the pole, the utility must review and approve the equipment prior to installation. In the event the utility denies a light in a specific location, the municipality may appeal the denial by filing a notice with the Commission within 21 days of being notified of the denial.

F. Determining streetlight usage

The entities in this proceeding agree that the utilities' streetlight profiles (dark-hours) will be used in conjunction with the manufacturer's rated input wattage of the equipment to determine the streetlight usage for billing purposes.

G. Street light labeling or marking

The entities in these proceedings agree that unless a municipality owns all the streetlights within its municipality, each streetlight it owns must be labeled, in a way that is readily visible from the ground, to identify the municipality as the owner of the equipment. The entities also agree that all municipally-owned streetlights (regardless of whether the municipality owns all, or a subset, of the streetlights in that municipality) must also be labeled to show the manufacturer's rated input wattage of the equipment.

H. Streetlight failures

The entities in this proceeding agree that municipally-owned streetlights will be set to operate in the "fail off" mode⁶ in order to promote prompt repair and to protect the energy supplier. The utilities will consider intelligent controls when such controls become technologically viable alternatives to current technology.

I. Utility maintenance agreement

The entities in this proceeding agree utilities may enter into maintenance agreements with municipalities to perform streetlight maintenance on behalf of the municipalities but that there is no obligation on the part of the utilities, or the municipalities, to enter into such agreements. To the extent the utilities agree to enter such agreements, the rates to be charged for the maintenance services will be pursuant to the utility's terms and conditions. The entities in this proceeding agree that the rates proposed by CMP and Emera Maine for maintenance services are reasonable.

J. Access (pole attachment) fees

The entities in this proceeding agree that no access, or pole attachment fee, should be charged for street lighting equipment provided that the street lighting equipment is energized and taking service. The entities agree that if a streetlight is not energized for more than 60 days, an access charge may be charged for the streetlight and any associated equipment that is left attached to the utility's poles.

K. Street light audits

The entities in this proceeding agree that to ensure correct streetlight data, the utilities may conduct periodic field audits of the municipality's street lighting equipment, at the utility's expense. To the extent that this field audit results in finding multiple streetlights that are different than, or in addition to, those reported by the municipality, the utility may conduct a full audit of the street lighting equipment and bill the municipality for the reasonable costs of the full audit. Prior to conducting this full audit, the utility will consult and coordinate with the affected municipality regarding the audit.

⁶ "Fail off" mode means that the photo cell will be set such that if the photo cell fails, the light will be off all of the time, rather than if it were set to "fail on," the light would be on all of the time.

L. Protective covers

The entities in this proceeding agree that there will be no charge for the utility to install protective covers over the electrical lines for purposes of protecting municipal employees or contractors working on the streetlights.

M. Municipal employees and contractors required qualifications

The entities in this proceeding agree that all municipal employees or non-utility contractors performing street lighting work on behalf of a municipality must receive the training and certifications described below prior to working on municipally-owned street lighting equipment located on utility owned poles.⁷ The entities further agree that the municipalities will certify that their employees and any non-utility contractors working on streetlights meet all safety training and certification requirements and will require any contractor working on streetlights to maintain (and provide evidence) of adequate general and liability insurance. The entities in this proceeding agree that in order to be qualified to work on municipally-owned streetlights located on utility poles, a municipal employee or contractor to a municipality must have the following qualifications and training.⁸

- a. Must hold a current Maine electrician's license and must be working appropriately under that license (e.g., journeyman electrician must be working under a master electrician);
- b. Must meet the Occupational Safety and Health Administration's (OSHA) Section 1910.269 standards (the OSHA standards applicable to work related to Electrical Power Generation, Transmission, and Distribution);
- c. Must have training regarding the Maine High Voltage Safety Act (M.R.S. 35-A, Chapter 7-A);
- d. Must be trained and certified under the National Fire Protection Association's Standard for Electrical Safety in the Workplace;
- e. Must be trained and certified as an International Municipal Signal Association (IMSA) Roadway Lighting Technician Level One.

⁷ There was disagreement among the group, however, as to whether utility employees performing work on municipally-owned streetlights should be required to meet the same qualifications. This is discussed in detail in section IV(C).

⁸ Some of these qualifications are already required by law to legally perform work on electric lines.

N. Working group

The entities involved in these proceedings agree there should be an ongoing working group to address issues as identified and agreed upon by the working group or as identified by the Commission.

O. Municipal Purchase Option

Under Section 4 of the Act, the municipalities have the option to take over ownership of the existing street lighting equipment from the utility. The entities involved in these proceedings agree that, generally, a municipality must take over ownership of all of the streetlights in the municipality, but that the purchase may be phased in over a three-year period. The entities also agree that a municipality may request to take over ownership of only a portion of the streetlights and that these requests will be considered by the utility on a case-by-case basis with disputes resolved by the Commission.

The entities also agree that, consistent with the standard street lighting agreement, there will be no charge to a municipality to remove any street lighting equipment on a pole if it has been 15 or more years from the time the streetlight was originally installed.⁹ The parties further agree that a municipality may purchase existing street lighting equipment at the equipment's Net Book Value (NBV), plus the associated tax effect, and that to the extent a utility's books and records allow it, a municipality may take ownership of some components of the equipment but not others. How the NBV is calculated is a matter that required additional clarification and is discussed in detail in Section IV(D) below.

P. Emera Maine's Terms and Conditions

No concerns or issues were raised with respect to Emera Maine's Rate Schedules or Terms and Conditions. Appendix B contains minor editorial changes to be made as part of the compliance filing.

Q. COUs

Although the entities involved in these proceedings expressed a desire to exempt Consumer-Owned Utilities (COUs) from the requirements of the Act, the entities agree that such an exemption would require a change in the legislative language. In its Inquiry Findings, the Commission agreed that COUs are required to comply with the provisions of the Act but, given the lack of interest in those areas, did not require the COUs to file terms and conditions at this time.

⁹ As noted in Attachment A, the language on Page 150.11 of CMP's Rate Schedules should be modified to clarify this point.

We find these broad areas of agreement and, other than as identified in Attachment A and Attachment B, the terms and conditions associated with these broad areas, to be acceptable.

IV. DISCUSSION AND DECISION – AREAS OF DISAGREEMENT

A. Amount of Liability Insurance

The entities in this proceeding do not agree on whether municipalities should be required to purchase liability insurance and in what amount. CMP and Emera request that the municipalities be required to purchase \$5 million of 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 its 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 Maine Tort Claims Act (MCTA) provides that, except where otherwise expressly provided by statute, governmental entities, which includes municipalities, are immune from tort claims for damages. 14 M.R.S. § 8103. The specific exemptions from immunity include negligent acts or omissions arising from ownership and maintenance of certain vehicles, machinery, and equipment, construction, operation or maintenance of public buildings, discharge of pollutants, and road construction, repair, or cleaning. 14 M.R.S. § 8104-A. The MCTA limits the liability of a governmental entity to \$400,000 for any and all claims arising out of a single occurrence. Though the MCTA provides immunity from all but select types of tort claims and a damages limit, it does not prevent municipalities from acquiring additional insurance over the statutory damages cap of \$400,000. Section 8116 of the MCTA states that governmental entities may acquire liability insurance to protect against potential claims and that if it acquires insurance in excess of the \$400,000 damage limit, the limit of the insurance policy replaces the \$400,000 liability limit. Additionally, Section 8116 states that if the governmental entity buys a policy that covers a situation the entity would ordinarily have immunity from, that entity waives its immunity up to the limits of the policy coverage.

The MSLG believes that the existing municipal insurance policy coverage in the amount of \$400,000 under the MCTA is sufficient. In its Inquiry Findings, issued on September 26, 2014, the Commission directed Emera and CMP to file terms and conditions and stated that:

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 the indemnification language.

CMP and Emera included the above-described language in their filings in the instant proceedings.¹⁰

The MSLG opposes the \$5 million insurance requirement and does not believe that municipalities should be forced to waive any immunity or limitation of liability available under the MTCA as a result of purchasing excess liability insurance. Notwithstanding their objection, the MSLG did provide language that appears to indicate that they would be willing to obtain liability insurance, "in at least the amount of Two Million Dollars (\$2,000,000) per occurrence." Comments of MSLG, Docket Nos. 2014-00313, 2013-00448 (Oct. 8, 2014).¹¹

In its April 13, 2015 exceptions, the MSLG asserted that there is a substantial price difference between the cost for \$5 million of liability insurance for a municipality to attach flags to utility poles compared to insuring streetlight ownership. Although it did not provide direct evidence to support this estimate, MSLG stated that a "day of coverage for flags may run about \$50." It did, however, submit information from the Maine Municipal Association's Risk Management division that provided cost estimates for liability insurance to cover street lights at various coverage levels for the Town of Falmouth (Attachment 3 to its April 13, 2015 exceptions). For the Town of Falmouth, the projected premium for \$5 million excess liability for streetlights was estimated to be just over \$6,000 on an annual basis. This is consistent with prior estimates provided by a representative from the

¹⁰ Pursuant to Chapter 110 §13, this finding did not provide a final determination by the Commission on the issue of whether municipalities should be required to provide \$5 million of liability insurance as inquiries do not result in enforceable actions but rather make findings of fact or provide a preliminary statement of policy which is not intended to be enforceable but which is intended as a basis for implementing a proceeding.

¹¹ In its April 13, 2015 exceptions, MSLG modified its position to an agreement that it would support an additional \$500,000 of liability insurance coverage beyond the \$400,000 amount specified by the MCTA which, it asserts, is the amount municipalities typically insure through Maine Municipal Association's risk pool. Transcript Apr. 23, 2015 at 5.

Town of Falmouth during a technical conference. Transcript Nov. 12, 2014 at 118-119.

The utilities believe that because it is not a matter of choice for a utility to have municipal employees or their contractors working in or near the electric space on a utility pole, they should not be required to bear additional risks of losses as a result of the requirement to allow municipal ownership of streetlights.

The MSLG also expressed concern that the language proposed in CMP's terms and conditions could result in the municipalities being required to indemnify the utility's work in instances when the utility was performing maintenance or other work on behalf of the municipality. These concerns were discussed during the technical conferences and the MSLG agreed that clarifying language as identified in Attachment A to the original Examiner's Report, Section 53.4(G), would address their concern on this point.¹²

The MSLG also believes that CMP should require insurance and indemnification directly from contractors working for municipalities rather than placing this burden on municipalities. The MSLG has proposed indemnification language for work done by a municipal employee, rather than contractors. CMP does not believe that insurance and indemnity provided by a municipality's contractor is sufficient. CMP states that their contractual relationship will be with each municipality that owns the equipment on its poles and that is the entity with whom CMP would have any claim. CMP states that a municipality's contractor will have no obligation to CMP, contractual or otherwise. CMP also states that it should be able to look to one entity, the municipality itself, for indemnification and should not be put in the position of needing to determine which contractor or which insurance policy to pursue in the event of an occurrence that requires indemnity.

As part of the qualifications for working on streetlights, the legislation provided that "[a]ny person installing or working on municipally owned street lighting equipment ... on behalf of the municipality ... must have liability insurance in an amount and with terms determined by the commission." 35-A M.R.S. § 2523(1)(C). The municipalities that have participated in CMP's program for flag attachments have agreed to provide \$5 million each in liability insurance. We agree with CMP that installing and maintaining streetlights -- which occurs in the

¹² In its June 19, 2015 refiling of its Terms and Conditions, CMP modified the language to suggest a municipality is not required to indemnify the Company for work performed by the Company "in a manner that does not meet applicable industry standards," even if the utility is working on behalf of the municipality. We do not agree that the municipality should be required to indemnify the utility for work performed by the utility itself and do not believe this should be limited to instances when the work is performed in a manner that does not meet applicable industry standards. Accordingly, Attachment A includes a note that this language should be removed.

electric space, within close proximity of the high-voltage lines -- would seem to be a more dangerous activity, with at least a comparable (and likely, higher) potential for liability, than installing flags on the pole, which occurs well below the electric space. However, it would appear that the cost for \$5 million of insurance coverage for street lights would be substantially more expensive to municipalities than providing the same coverage for attaching flags to utility poles. The MSLG further suggested in its exceptions, that given the wording in the legislation allowing municipal ownership of street lights (35-A, M.R.S. 2523(1)(B) and (C)), the Commission lacks authority to require municipalities that own, but do not maintain, street lights on utility poles to carry liability insurance.

Although it appears that neither CMP nor Emera has been requiring additional insurance for the two municipalities that currently own and maintain streetlights on utility poles,¹³ CMP points out, and the Commission agrees, that now that the option for municipal ownership is explicitly allowed by the legislation, the potential liability for the utilities associated with municipal ownership of streetlights could increase dramatically.

We agree that the Maine Tort Claims Act provides protection to municipalities. However, absent additional municipal insurance above the \$400,000 limit, it seems possible that in an instance of shared liability, the utility could be required to pay more than it otherwise would, in order to make up for the municipality's limit. We do not agree with the MSLG's assertion that the Commission lacks authority to require municipalities that own, but do not maintain streetlights, to provide additional liability insurance coverage. The statutory language cited by MSLG provides a minimum requirement that anyone working on street lights on behalf of a municipality must provide liability insurance in an amount determined appropriate by the Commission. However, the language does not prohibit the Commission from requiring liability insurance to be provided by the municipal owners of street lights. In addition, requiring the insurance directly from the municipality makes sense given that the utilities' relationship is with the municipality, not any potential contractors.

¹³ Commission Staff asked the utilities how much insurance is currently required of each municipality that owns and/or maintains its own streetlights located on utility-owned poles. Emera Maine responded in comments on December 3, 2014, that at the present time, the city of Bangor is the only municipality in Emera's territory that owns and/or maintains streetlights and they are not currently required to maintain insurance, though Emera notes that this may be appropriate in the future. CMP responded in comments on December 3, 2014, that at the present time, the City of Lewiston is the only municipality in CMP's territory that owns and/or maintains streetlights on CMP's poles and that it has not required Lewiston to obtain any specific types or levels of insurance coverage.

While we do not seek to impose additional, unnecessary costs on the municipalities, we also do not want to expose ratepayers to possible additional liability resulting from municipal ownership of streetlights. In its exceptions, and as discussed at the April 23, 2015 technical conference, the MSLG offered to carry an additional \$500,000 in liability insurance over the \$400,000 MTCA limit that it already insures through the Maine Municipal Association. During the April 23, 2015 technical conference, CMP indicated that it self-insures for liabilities of up to \$1 million, but that it carries insurance coverage for liability amounts over \$1 million.

Accordingly, we find that the municipalities that seek to own streetlights on utility poles should be required to provide \$1 million liability insurance. The municipalities that have participated in these proceedings have voluntarily agreed to an amount close to this (\$900,000) and some of the municipalities may already carry this amount.¹⁴ Therefore, a requirement for municipalities to carry \$1 million in liability coverage appears to strike a balance at a level of liability coverage that is a manageable expense for the municipalities and provides a measure of protection to ratepayers for amounts not covered by the utility's existing insurance. Additionally, full indemnity is required from each municipality that will be performing work on a utility's poles, though the municipality is not required to indemnify the utility for work performed by the utility itself.

B. CMP Energy-Only Price

Street and area lighting rates are unique from the rates of other classes in that customers pay a set monthly charge per light which includes the delivery charges as well as the costs associated with providing and maintaining the street lighting equipment itself. The legislative language in 35-A M.R.S. §2523 now requires that the equipment and delivery charges be separated:

"The transmission and distribution 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 consistent with subsection 3." 35-A M.R.S. §2523(1)(A).

CMP has, for many years, had a "delivery-only" street lighting rate in its rate schedules that was available to municipalities that own and maintain their own streetlights located on CMP's poles. However, CMP has generally not allowed this arrangement and, at this time, only the City of Lewiston takes service under this rate. CMP proposes to use this delivery-only rate, which was \$0.10 per kWh at the

¹⁴ A representative from the City of Rockland testified that the City of Rockland carries \$ 1 million in liability insurance but wasn't sure if this amount was typical.

time of the Company's original filing,¹⁵ as the rate for providing delivery services to municipalities that own and maintain their own streetlights and as the basis for separating the delivery service from the equipment charges.

The MSLG raised issues with respect to the level of the \$0.10 per kWh rate as the delivery-only rate going forward. The MSLG noted that it was not involved in the general rate and rate design proceeding that resulted in a stipulation on most issues (Docket No. 2013-00168), and in which this rate was set. However, the MSLG raised a concern that this rate is much higher than the distribution rates of other, similarly sized customers.

CMP argued that the streetlight delivery-only rate was part of the overall rate design case that municipalities were notified of, and could have participated in if they chose, and that the instant proceedings, therefore, are not the proper venue for modifying this rate.

While CMP is correct that the rate design case examined inter-class, and some intra-class, allocation issues, the legislative language requires a determination of how the equipment and delivery charges should be separated. The general rate design case did not examine how the equipment and delivery charges should be separated for purposes of the street lighting legislation, a uniform increase was applied to all streetlight unit charges (Stipulation page 22, Docket No. 2013-00168). The instant proceedings are the mechanisms under which all of the details associated with implementing the street lighting legislation, including other fees and charges, are being determined. Therefore, as the legislation requires the Commission to determine the appropriate separation of equipment and delivery charges, we must consider this issue as part of the instant proceedings.

We agree with CMP's general approach of separating delivery and equipment components by backing-out the delivery-only portion from the total rate. However, there is inadequate support to rely on the current delivery-only rate as the appropriate rate to use for these purposes. As noted by the MSLG, this delivery rate is higher than the delivery rate of other similar sized customers and, in fact, is substantially higher than all other CMP delivery rates.¹⁶ In its December 3,

¹⁵ The rate was increased from \$0.09 per kWh to \$0.10 per kWh in the compliance phase of Docket Nos. 2013-00168, 2014-00056, and 2014-00077 and then adjusted back to \$0.09 per kWh, as part of the annual distribution and stranded cost proceedings in Docket Nos. 2015-00045 and 2015-00055.

¹⁶ Currently, CMP's highest average delivery rate is \$0.078 per kWh (for the residential class) and its average overall delivery rate is \$0.053 per kWh. See Compliance Filing Attachment 1, dated June 17, 2015, Docket Nos. 2015-00045, 2015-00055.

2014 response to a request for additional support for this rate and the disparity between it and other delivery rates, CMP described the components (distribution, transmission, low-income program, conservation and stranded cost) included in the current streetlight delivery-only rate, as well as the general process used to allocate the revenue requirement among classes in the rate design case, but did not identify any specific basis for the disparity between the street lighting delivery-only and other delivery rates. CMP also noted as support for the rate that the embedded cost study provided in the rate design case showed lighting revenues that nearly matched the lighting costs. However, given that there have been so few customers on this rate (and now, only one), the revenues and costs associated with the street lighting delivery-only service would be insufficient, relative to the total street lighting embedded costs and revenues, to make any inappropriate disparity obvious by comparing the embedded and actual costs.

During the technical conference, CMP indicated that most customers that own private streetlights take service under the Small General Service (SGS) rate.¹⁷ It appears that the long-run marginal distribution costs for the SGS class are similar to long-run marginal distribution costs to serve the street lighting class.¹⁸ The SGS class rates are much more in line with average delivery rates and have, over the years and as part of the most recent rate design case, been reviewed more closely than the streetlight delivery-only rate that has been applicable to only one or two customers. Absent a basis to support the large disparity between the current streetlight delivery-only rate and other delivery rates, and given that the SGS rate is the rate class that streetlight customers would take service under if they were metered, we set the delivery-only rate for the street lighting class to be the sum of the SGS distribution rate of \$0.028663 per kWh plus \$0.0024 per kWh for customer-related street light energy-only charges as identified by CMP in its exceptions to the original Examiners' Report (CMP April 13, 2015 Exceptions page 5, footnote 3), the low income and conservation charges of 0.000882 per kWh and \$0.00145 per kWh (which are the same for all classes subject to these charges), and the street-light energy-only stranded cost of \$0.000067 per kWh, and the transmission rate of \$0.017234 per kWh for the street lighting class, for a total streetlight delivery-only rate of \$0.050696 per kWh.¹⁹

¹⁷ SGS has a delivery rate of \$0.054040 per kWh, excluding customer charges.

¹⁸ CMP's marginal cost study presented during the rate design case indicated that the long-run marginal cost for the SGS, single-phase, secondary-voltage class is \$103.51 per kW and for the street lighting class it is \$101.90 per kW. See pages 1a and 1b of Table 12, Schedule PMN-3, Volume I, Testimony and Schedules of Paul M. Normand dated August 1, 2013 in Docket No. 2013-00168.

¹⁹ In its exceptions to the original Examiners' Report and the Amended Examiners' Report, CMP suggests that if the Commission adopts lower delivery-only pricing for street lighting in this proceeding, it should allow any resulting shortfall in distribution revenue to be included in the Company's revenue decoupling

C. Utility Worker Qualifications

A concern was raised by one of the municipalities (not a member of the MSLG) that utility employees or contractors might be required to be licensed electricians pursuant to 32 M.R.S. §1201²⁰ if they were installing municipally-owned street lighting equipment or performing maintenance on municipally-owned street lighting equipment. The concern was raised because although 32 M.R.S. §1102 generally exempts employees and contractors of utilities that fall under the Commission's jurisdiction from the electrician licensing requirement of 32 M.R.S. §1201, the language specifies that the exception applies, "only to the extent the entity or its employees are making electrical installations in furtherance of providing its authorized service or activities incidental to that authorized service."²¹

However, it would be illogical to consider an individual qualified to perform work on a streetlight while it was utility owned, but unqualified to perform the same work on the same streetlight if it was purchased by the municipality. Moreover, in this proceeding, and as specifically required by the street lighting legislation, the Commission is determining many of the terms, conditions, provisions, and charges associated with utilities providing maintenance and installation services related to municipally-owned streetlights. Accordingly, such activities are clearly subject to our jurisdiction and are authorized activities of the utility. Accordingly, we disagree that such work by utility employees or contractors would require an electrician's license.

mechanism (RDM). The RDM mechanism was approved as part of a broad settlement resolving CMP's most recent rate-case (Docket No. 2013-00168) and we decline to make any change to the RDM in this proceeding.

²⁰ Title 32, Section 1201 states that "an electrical installation may not be made unless by an electrician or other person licensed by the board except as proved in this chapter."

²¹ The Legislature clarified its intent that utility employees not be required to be licensed electricians in 2011. This followed a 2010 Electrician's Examining Board determination that employees and contractors of public utilities were required to be licensed electricians because transmission and distribution utility employees and contractors are not included in the list of exceptions to the electrician licensing requirement in 32 M.R.S. Section 1201-A. In response to the Electrician's Examining Board's finding, the Legislature amended Section 1102 to make explicit that utility employees and contractors subject to the Commission's jurisdiction, "making electrical installations in furtherance of providing its authorized service or activities incidental to that authorized service" are not required to be licensed electricians.

D. Calculation of Net-Book Value of Equipment

As described in Section III(O), the parties agree that a municipality may purchase existing street lighting equipment at the equipment's NBV, plus the associated tax impact, and that the NBV for the equipment would be the current plant balance less the accumulated depreciation balance (taking into account any applicable salvage value and removal cost). However, subsequent to issuance of the original Examiner's Report, it became clear that there was confusion as to how the NBV was to be calculated. After reviewing the additional material that CMP submitted in response to Oral Data Requests (ODR) as well as CMP's June 5, 2015 response to the May 26, 2015 Procedural Order requesting CMP to clarify its position, it is still not clear how CMP is proposing to calculate the NBV for street lighting equipment.

In its June 5, 2015 filing and in its response to the ODRs, CMP notes that it depreciates street lights using a group depreciation method. Under group depreciation, assets are not tracked and depreciated separately but rather as a group, based on an average depreciation rate for the whole asset group. Depreciation expense is calculated based on the average depreciation rate for the group applied to the plant balance of the group and the depreciation expense is added to the group's accumulated depreciation balance. When equipment in the group is retired, the original cost of the equipment is removed from both the plant balance and the accumulated depreciation balance.²² Unlike assets that are depreciated individually over an expected life and become "fully depreciated" at the end of that life, under group depreciation as long as an asset is still in service, regardless of its age, it remains in the plant balance and contributes to the accumulated depreciation at the average depreciation rate applied to the group. To the extent this approach results in excess depreciation being collected for an asset (as compared to what would have been collected if the asset had been depreciated individually), the difference gets picked up when depreciation rates are next set because there is a lower remaining balance associated with the assets that needs to be collected.

This group methodology is consistent with how streetlight depreciation has been calculated in CMP's rate cases as well CMP's hypothetical example of how the NBV would be determined for a municipality to purchase existing street lights (response to ODR-01-01). However, in response to ODR-01-02, it appears that on a municipality-by-municipality basis, CMP may be treating the street lighting equipment more like individually depreciated assets than group depreciated assets, as CMP appears to have stopped adding to the accumulated depreciation after the equipment reaches 100% of its original cost (plus 9% for removal costs).

²² The accumulated depreciation balance is also adjusted for removal and or salvage costs.

In its comments dated June 19, 2015, MSLG notes that aspects of CMP's method and calculations were not clear and requested a full NBV analysis, "with all values and formulas that drive the calculation being obvious." Accordingly, we hereby direct CMP and Emera to calculate the NBV for equipment to be purchased by a municipality in a manner consistent with the group methodology example identified in ODR-01-01 Attachment 1, and to show separately for each year, the additions, retirements, removal cost, salvage value, applicable depreciation rate, depreciation, plant balance and accumulated depreciation balance for all street lighting equipment (both retired and still in service) from the year that street lighting equipment was initially installed in the municipality.²³ In addition, if a municipality seeks to purchase and leave the existing equipment in place, we direct the utilities to credit back any removal costs for plant still in service that is included in the accumulated depreciation balance.

To the extent a utility does not have sufficient records to make the above-described NBV calculation, an alternative method for determining the NBV of the equipment to be purchased by the municipality may be developed by the utilities and MSLG as part of development of the Standard Form Customer Service Agreement that will be filed with the Commission as described in Section V, below.

V. DISCUSSION AND DECISION – NEXT STEPS

CMP and Emera are hereby directed to file updated rate schedules and terms consistent with the terms of this Order and the comments in Attachment A and Attachment B within ten days of this Order. In addition, as discussed in the November 12, 2014 Technical Conference, CMP and Emera are directed to work with the MSLG to create an initial draft of the proposed Standard Form Customer Service Agreements consistent with the terms of this Order which should be filed with the Commission within 60 days of the date of this Order. In that filing, any points where agreement could not be reached and that require Commission action should be identified as well as areas in the standard form agreement that are anticipated to require customization for individual municipality circumstance.

Finally, we note that 35-A M.R.S. § 2523 also allows municipalities of Consumer Owned Utility (COU) to own and maintain their own streetlights as well. We hereby direct that, if in the future a municipality decides to assume responsibility for the streetlights as permitted by this legislation, that the COU and municipality should discuss the terms and conditions and present any dispute to the Commission for resolution.

²³ In its comments to the Amended Examiners' Report, CMP stated that it does not have sufficient detail for all vintage years to provide this information by municipality, especially additions and retirements, but stated that it believes that its accounting system calculates NBV consistent with the NBV method in the Amended Examiners' Report.

Accordingly, the Commission

O R D E R S

1. That Central Maine Power Company and Emera Maine shall work with the Municipal Street Lighting Group to create an initial draft of the proposed Standard Form Customer Service Agreements and file this with the Commission within 60 days of the date of this Order.
2. That Central Maine Power Company and Emera Maine shall file updated rate schedules and terms and conditions consistent with this Order by November 1, 2015.
3. That a working group is hereby established to provide guidance and recommendations regarding future issues related to municipal ownership of streetlights. Members shall include Central Maine Power Company, Emera Maine, the Municipal Street Lighting Group and its member municipalities, City of Caribou, Town of Greenville, and the City of Auburn as well as any other interested entities affected by municipal ownership of streetlights.

Dated at Hallowell, Maine, this 7th day of October, 2015

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy
McLean
Williamson