

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2008-255
(Phase II)

August 25, 2010

CENTRAL MAINE POWER COMPANY and
PUBLIC SERVICE OF NEW HAMPSHIRE
Request for Certificate of Public Convenience
and Necessity for the Maine Power Reliability
Program Consisting of the Construction of
Approximately 350 Miles of 345 kV and 115
kV Transmission Lines ("MPRP")

ORDER
ON LANDOWNER
DISPUTE RESOLUTION
PROCESS

CASHMAN, Chairman; VAFIADES, Commissioner

I. SUMMARY

In this Order, the Commission establishes a Landowner Dispute Resolution Process (LDRP) that will address disputes between Central Maine Power Company or Bangor Hydro-Electric Company (BHE)¹ and landowners that cannot be resolved by the ombudsman during the construction phase of the Maine Power Reliability Project (MPRP).

II. BACKGROUND

On June 10, 2010, the Commission approved a Stipulation initially entered into by CMP, the Office of the Public Advocate (OPA), the Industrial Energy Consumers Group (IECG), GridSolar, the Conservation Law Foundation (CLF), Environment Northeast (ENE), and the Associated Builders and Contractors Association of Maine (ABC), and subsequently signed by additional parties, and thus issued a Certificate of Public Convenience and Necessity (CPCN) authorizing construction of the MPRP.

The Stipulation included a number of provisions on land-use and property owner issues including terms for the retention of a third party monitor/inspector (ombudsman) to ensure that timely and adequate attention is given to landowner issues during the construction phase of the settlement MPRP. On August 4, 2010, we modified the terms of the June 10, 2010 Order by establishing the process for selecting a permanent ombudsman and creating conditions that would govern the funding, oversight and monitoring of the ombudsman, which would be a contractor or employee of the Commission. August 4 Order at 2-3.

¹ Although the MPRP is a transmission project of Central Maine Power Company, portions of the MPRP may be constructed in BHE's service territory. Any disputes between Landowners and BHE shall also be subject to the LDRP established by this Order.

On July 23, 2010, the Hearing Examiner issued a Proposed Order that recommended the process of resolving matters that could not be resolved/mediated by the ombudsman and which required further consideration by the Commission. The Commission received comments from CMP on August 16, 2010. The Commission also received comments from George and Ruth Benjamin on August 20 and Mary and David Fournier on August 23, 2010.

III. DISCUSSION AND DECISION

Based on the comments received, we modify the Hearing Examiner's Proposed Order and establish the following Landowner Dispute Resolution Process for disputes between the utility and Landowners that are incapable of resolution by the Ombudsman.

A. Jurisdiction

Consistent with the provisions of the Commission's Order Approving Stipulation in this docket and pursuant to the Commission's authority under 35-A M.R.S.A. § 107 to delegate such powers and duties to the Commission Staff as the Commission finds proper, the Commission delegates to the Landowner Dispute Resolution Team (LDRT) jurisdiction to resolve disputes concerning CMP's construction activities in implementing the MPRP as approved by the Commission and to what extent CMP's construction and design standards can safely and reasonably be accommodated or modified to address abutting landowners issues and concerns where the amount in controversy does not exceed \$200,000.² The LDRT is not intended to address, and does not have jurisdiction over, questions involving the need for facilities or corridors/land identified under the order approving the CPCN.

For disputes referred to LDRT in excess of \$200,000, the LDRT shall follow the notification and information gathering process described in Section II (B), however, such matters shall be referred directly to the Commission for decision. The LDRT shall consist of at least one member from the Commission's Consumer Assistance Division, Energy and Gas Division, and Legal Division.

B. The Process

1. Step 1 - Referral

At the point that the Ombudsman concludes that a dispute between a Landowner and the utility cannot be further resolved through negotiations and at least one party wishes to pursue the matter further, the Ombudsman

² The amount in controversy shall be calculated by determining the incremental costs of the mitigation steps requested by the Landowner. In determining whether the proposed mitigation measure is reasonable and prudent, the LDRT may consider, among other things, whether or not the incremental costs of the mitigation efforts will be treated as a Pool Transmission Facility (PTF).

shall refer the matter to the LDRT.³ The referral shall include the name of the Landowner, the Landowner's physical, mailing, and e-mail address (if available), the segment of MPRP affected, the nature of the dispute, an estimate of the dollar amount in controversy, and any other relevant facts.

2. Step 2 – Notification to Parties

Within 2 working days of the referral, the LDRT shall notify the affected parties of the referral and shall provide the parties with any forms to be completed by the affected parties. As used here the term affected parties shall include the Landowner, CMP, and to the extent that the construction activity is to occur in BHE's service territory, BHE. The parties shall then have 5 business days to return the completed forms and also to provide any information they wish to have the LDRT consider in resolving the dispute. The MPRP Ombudsman shall assist the Landowner in completing any required forms and in preparing the submission of the information which supports the Landowner's claim. The Ombudsman will not participate in the decision-making process of the LDRT.

3. Step 3 – Information Gathering

Within 5 working days of receiving the initial written submissions, the LDRT shall notify the parties:

- a) Whether additional information is needed. If so, the notification shall describe the materials needed and the date that such information shall be provided.
- b) Whether a conference of the parties should be held. If so, the notification shall state the time scheduled for the conference.
- c) That no further information is required and that the matter will be decided on the submissions. If so, the matter shall be decided within 5 business days of the notification.

4. Step 4 - Conferences

Parties may participate at LDRT conferences either by phone or in person and shall be provided an opportunity to present evidence through documents, photographs or through statements. If at the conclusion of the

³ Neither party is required to pursue a dispute through the LDRP. However, if one party petitions for further review by the Commission through the LDRP, and the adverse party does not enter any appearance or participate, the non-participating party may be subject to a default decision. Nothing in this Order divests the Commission of its jurisdiction to investigate the prudence or reasonableness of any mitigation efforts or accommodations made or offered by CMP, whether or not such efforts or accommodations cost less than \$200,000.

conference, the LDRT believes additional written information is required, the LDRT will describe the required information and provide a date for submission. If deemed necessary, the LDRT may schedule a site visit of the land which is the subject of the controversy. All affected parties shall be provided notice and shall have an opportunity to attend such site visits.

5. Step 5 - Decision

a) The LDRT shall issue its decision within 5 business days of:

- 1) The issuance of notification pursuant to section C(3) that no further information is required.
- 2) The deadline for the additional information requested in the notification pursuant to Step 3 above, , provided no further information is required.
- 3) The conference, provided no further information is required at the end of the conference.
- 4) The deadline for submission of additional documents required at the conference.

b) The decision of the LDRT shall provide:

- 1) A summary of the positions of the parties;
- 2) A summary of the evidence presented in support of the positions;
- 3) The LDRT's findings and conclusions.
- 4) A statement of the Parties appeal rights as set forth in step 6, below.

6. Step 6 – Appeal Rights

Affected parties may appeal decisions of the LDRT to the Commission by filing a Notice of Appeal within 5 business days of the date of the LDRT's decision.

C. Commission Action

1. Appeals

In appeals of decisions of LDRT, the Commission may either uphold the decision, reverse or modify the decision based on the record, or remand the decision to the LDRT for further factual development.

2. Original Actions

In cases referred to the Commission for decision, the Commission will decide the matter on the record developed by the LDRT. If the Commission determines that additional information is needed to decide the matter, the

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.