

March 10, 2015

PUBLIC UTILITIES COMMISSION  
Investigation of the Provision of Generation  
Service in Maine by CMP's Affiliates

NOTICE OF INVESTIGATION

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## I. SUMMARY

By this Notice, pursuant to 35-A M.R.S. § 1303, we open an investigation into the applicability of 35-A M.R.S. § 3204(5) to the provision of generation and generation-related services by Central Maine Power Company's (CMP's) affiliates in light of the Law Court's recent ruling in *Houlton Water Company, et al. v. Public Utilities Commission*. 2014 ME 38, 87 A.3d 749 (March 4, 2014) ("*Houlton Water*").

## II. BACKGROUND

### A. Central Maine Power Company's Filing

On December 4, 2014, CMP filed a request for approval of a proposed affiliated interest agreement with Atlantic Wind, LLC (Atlantic Wind). *Central Maine Power Company, Request for Approval of an Affiliated Interest Transaction*, Docket No. 2014-00364 (Dec. 4, 2014). CMP and Atlantic Wind are both indirect subsidiaries of Iberdrola, S.A. and are, therefore, affiliated interests as defined by 35-A M.R.S. § 707(1)(A). Atlantic Wind is planning to construct a 100 MW 50 turbine wind generation facility, referred to as Fletcher Mountain Wind Farm, in Somerset County, Maine which is part of CMP's service territory. Atlantic Wind has requested generation interconnection service for the wind farm pursuant to the ISO-New England (ISO-NE) Open Access Transmission Tariff. A Notice of Proceeding was issued on December 16, 2014 and an initial case conference was held on January 7, 2015.

The Commission previously granted approval, pursuant to section 707, to two feasibility study agreements between CMP, ISO-NE, and Atlantic Wind for the Fletcher Mountain Wind Farm and one system impact study agreement between CMP, ISO-NE, and Atlantic Wind for this same project, finding that the agreements were not adverse to the public interest. *Central Maine Power Company, Request for Exemption from Affiliated Interest Approval Requirements for Certain Classes of Transactions*, Docket No. 2012-00568, Order (June 4, 2013). As discussed below, however, since that time the Law Court has provided the Commission with additional guidance on how to determine whether a relationship between a transmission and distribution (T&D) utility and an affiliate which has an interest in generation assets violates the Restructuring Act.

## B. The Emera/First Wind Transaction and Appeal

On April 30, 2012, the Commission issued an Order approving: (1) Emera's acquisition of a 49% interest in Northeast Wind Partners II, LLC (Northeast Wind), the remaining 51% of which is owned by First Wind Holdings LLC (First Wind), and which owns and operates wind generating assets located in Maine and other Northeast states; and (ii) Emera's exercise of stock subscription agreements with Algonquin Power & Utilities Corporation (APUC) resulting in Emera holding a 25% interest in APUC. *Bangor Hydro-Electric Company and Maine Public Service Company, Request for Exemptions and for Reorganization Approvals*, Docket No. 2011-00170, Order (April 30, 2012). The Commission's approval was subject to approximately fifty conditions applicable to Emera Maine, First Wind and other affiliates.

The Commission also found that under 35-A M.R.S. § 3204(5) of the Restructuring Act, Emera Maine would not have a prohibited financial interest in generation or generation-related assets. The Commission interpreted the Restructuring Act to require that a utility have some type of control over an affiliates' generation assets in order to have a prohibited financial interest. The Commission noted that an example of this type of control would be if a utility owned a subsidiary that owned or operated generation assets. The Commission concluded that, under the Proposed Transactions, Emera Maine would not have any equity interest or voting securities that would allow it to exercise any direct or indirect management control over the development or operation of generation assets and, therefore, the Proposed Transactions did not violate the Restructuring Act.

In June 2012, Houlton Water Company (HWC), the Office of the Public Advocate (OPA) and the Industrial Energy Consumer Group (IECG) appealed the April 30, 2012 Order to the Maine Supreme Judicial Court. Appellants argued, among other issues, that the Commission's interpretation of 35-A M.R.S. § 3204(5) was contrary to the Restructuring Act.

The Law Court vacated the Commission's April 30, 2012 Order on March 4, 2014, holding that the Commission had misinterpreted 35-A M.R.S. § 3204(5) and remanded the case back to the Commission for further consideration in light of the Law Court's holding. *Houlton Water*, 2014 ME 38. The Court's decision was based on its conclusion that the Commission's interpretation of 35-A M.R.S. § 3204(5), as requiring that a T&D utility have some type of control over an affiliate's generation assets to have a prohibited financial interest, was incorrect. *Id.* at ¶ 33.

The Court agreed with the Commission that 35-A M.R.S. § 3204(5) does not prohibit all "affiliations" between a T&D utility's corporate parent and entities that own generation assets. 2014 ME 38 at ¶ 29. As the Court noted, the Legislature was aware of affiliate issues at the time it enacted the electric industry restructuring statutes and could have explicitly prohibited affiliated ownership if that was the intent. *Id.* at ¶ 28.

However, the Court overruled the Commission's interpretation of the Section 3204(5) prohibition as requiring that the T&D utility have some type of control over the affiliate's generation assets. *Id.* at ¶ 33. The Court held that a T&D utility has a prohibited financial interest in generation assets or generation-related assets in violation of Section 3204(5) if there exists a sufficient financial interest in assets of a generator that the interest is likely to produce incentives for favoritism that would undermine the purpose of the Restructuring Act. *Id.* at ¶ 35. The Court noted that one of the purposes of the Restructuring Act was to separate T&D from generation sufficiently to ensure competition and innovation among electricity generators and developers of electricity generation projects. *Id.* at ¶ 3.

The Law Court concluded that since the statute requires an interpretation of Section 3204(5) that is contrary to the Commission's interpretation, the Commission must reexamine the proposed transactions by applying Section 3204(5) as interpreted by the Court. Accordingly, the Law Court vacated the Commission's decision and remanded the matter back to the Commission for further consideration consistent with its opinion. *Id.* at ¶ 38.

On October 9, 2014, the Commission issued its order on remand in the Emera/First Wind case. *Bangor Hydro-Electric Company and Maine Public Service Company, Request for Exemptions and for Reorganization Approvals*, Docket No. 2011-00170, Order (Oct. 9, 2014). In its October 2014 Order, the Commission applied the Court's interpretation of Section 3204(5) and found that although the Proposed Transactions approved by the Commission resulted in Emera Maine having a financial interest in generation through Emera's common ownership interest of Emera Maine and Northeast Wind, that indirect financial interest was adequately addressed through section 708 conditions imposed by the Commission and, thus, was not sufficient to create an incentive for Emera Maine to favor the generation assets of Northeast Wind or First Wind.

### III. SCOPE AND PURPOSE OF THIS PROCEEDING

During the initial case conference regarding CMP's request for approval of the proposed affiliated interest agreement with Atlantic Wind, CMP, the OPA, IECG and HWC all commented on how the Commission should approach the case in light of the Law Court's holding. CMP stated that the Commission should follow a two-step process here that would first review the E&P contract with Atlantic Wind under 35-A M.R.S. § 707 and after this is completed, then open an investigation into the financial relationship between CMP and Atlantic Wind in light of the Law Court's decision in *Houlton Water*. The OPA and IECG did not object to this sequencing, while HWC suggested that the Commission schedule discovery and briefing on the threshold legal issue of generation ownership and after that, if necessary, the Commission could conduct discovery and examine the CMP/Atlantic Wind transaction.

On January 29, 2015, the Hearing Examiner issued a Procedural Order in the CMP/Atlantic Wind docket, setting a procedural schedule for that case and concluding that the 3204(5) issue and the section 707 issue are interrelated since the information concerning the proposed contract may inform the Commission's decision on the underlying relationship between Atlantic Wind and CMP and an examination of the underlying relationship may also inform the Commission's decision on the affiliated interest transaction. The Hearing Examiner also noted that it is not clear how the Commission would approve an affiliated interest transaction with an affiliated generator which is proposing to own and operate generation in CMP's territory prior to the Commission's approval of the relationship per the Law Court's holding in *Houlton Water*.

The Commission agrees with the Examiner that it is appropriate to review CMP's relationships with affiliated generators at this time given the Law Court's decision in *Houlton Water*, and therefore, formally opens an investigation. As part of this investigation, the Commission will determine whether the relationship(s) between CMP and Atlantic Wind and/or other generator projects contemplated to be developed by CMP affiliates are allowable under the *Houlton Water* test. In addition, as part of this investigation, the Commission will consider whether and what conditions should be applied to the relationship between CMP and its affiliates for the relationships to satisfy the Law Court's *Houlton Water* test.

#### IV. OPPORTUNITY TO INTERVENE

Parties in Docket No. 2014-00364 will be considered parties to this investigation at the outset. Other interested persons wishing to participate as parties should file a petition to intervene in accordance with Section 8 of the Commission's Rules of Practice and Procedure by March 24, 2015. Copies of this Notice will be provided to the service list in CMP's last rate case (Docket No. 2013-00168).

Accordingly it is,

#### ORDERED

1. That an investigation of the relationships between Central Maine Power Company and its affiliates that have a financial or ownership interest in generation assets in Maine is initiated.
2. That, as part of this investigation, the Commission will consider whether the relationship(s) is in accordance with the provisions of 35-A M.R.S. § 3204(5) and whether and what conditions should be applied to such a relationship; and
3. The Hearing Examiner will develop a procedural schedule and may consider consolidation of this case with Docket No. 2014-00364.



## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 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 11(D) 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. Any petition not granted within **20** days from the date of filing is denied.
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. § 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. § 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.