10.5.3 Appendix E.3 – Rate Impact Limitation

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2010-235

September 28, 2010

MAINE PUBLIC UTILITIES COMMISSION
Long-Term Contracting for Offshore Wind Energy and Tidal Energy Projects

ORDER ON RATE IMPACT LIMITATION PROVISION

CASHMAN, Chairman; VAFIADES and LITTELL, Commissioners[1]

I. SUMMARY

Through this Order, the Commission interprets the rate impact limitation provision contained in recently enacted legislation that directs the Commission to conduct a competitive solicitation for proposals for long-term contracts from deep-water offshore wind energy pilot projects or tidal energy demonstration projects.

II. BACKGROUND

During its 2010 session, the Maine Legislature enacted An Act To Implement the Recommendations of the Governor's Ocean Energy Task Force (Act). P.L. 2009, ch. 615. Section A-6 of the Act directs the Commission, in accordance with the Maine Revised Statutes, Title35-A, section 3210-C, to conduct a competitive solicitation for proposals for long-term contracts to supply installed capacity and associated renewable energy and renewable energy credits from one or more deep-water offshore wind energy pilot projects or tidal energy demonstration projects. The Act requires the Commission to initiate the solicitation by September 1, 2010.

The Act contains the following rate impact limitation provision:

> The commission may not approve any long-term contract under this section that would result in an increase in electric rates in any customer class that is greater than the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered.

Id.

Title 35-A M.R.S.A. § 10110(4) states:

> **Funding level; base assessment.** The commission shall assess transmission and distribution utilities to collect funds for conservation programs and administrative costs in accordance with this subsection and shall make other assessments in accordance with subsection 5. The

[1] This matter was deliberated and decided prior to Commissioner Littell joining the Commission. He, therefore, did not participate in the decision.

> amount of all assessments by the commission under this subsection plus expenditures of a transmission and distribution utility associated with prior conservation efforts must result in conservation expenditures by each transmission and distribution utility, not including expenditures on assessments under subsection 5, that are fixed at a rate of 0.145 cent per kilowatt-hour.

Title 35-A M.R.S.A. § 10110(6) specifies that transmission and substransmission customers are not eligible for conservation programs funded by the assessments in subsection 4 and subsection 5 and those customers are not required to pay in rates amounts associated with those assessments.

III. REQUEST FOR COMMENTS

On July 20, 2010, the Commission requested comments on the proper interpretation of the rate impact limitation provision. Specifically, the Commission requested comments on the following possible interpretations:

1) Should the provision be interpreted to mean that all customers, in any customer class, may have a rate impact up to 0.145 cent/kWh (assuming no change to assessment under subsection 4 and no additional assessment under subsection 5) resulting from any above-market costs that might be associated with long-term contracts; or

2) Given the exclusion in subsection 6 noted above, should the provision be interpreted to mean that transmission and substransmission customers (i.e., industrial class customers) could have no rate increase resulting from any above-market costs that might be associated with long-term contracts, while distribution level customers (i.e., medium and small commercial customers and residential customers) may have a rate impact up to 0.145 cent/kWh (assuming no change to assessment under subsection 4 and no additional assessment under subsection 5).

In addition, the Commission requested comments on the proper interpretation of the following language in the rate impact limitation provision: “the amount of the assessment charged under Title 35-A, section 10110, subsection 4 at the time that the contract is entered.”

3) Given that subsection 4 explicitly references subsection 5, should the provision be interpreted to include only the assessment specified in subsection 4 or should it include the assessment in subsection 4 and any additional assessment pursuant to subsection 5.

The Public Advocate, Industrial Energy Consumer Group, Representative Kenneth Fletcher, Eastport Tidal Power LLC and the National Energy Marketers’ Association filed comments on the statutory interpretation issues.

IV. COMMENTS

A. Public Advocate

The Public Advocate commented that the rate impact limitation provision should be interpreted to mean that all customers may have a rate impact up to 0.145 cents/kWh. According to the Public Advocate, the reference to Title 35-A, section 10110, subsection 4 is only for the purpose of capping the amount that can be added to the rates of "any customer class" resulting from any long-term contract the Commission may approve under the Act. Subsection 4 deals only with the collection of funds for conservation programs, not with long-term contract rate impacts.

The Public Advocate further commented that the exclusion of transmission and subtransmission level customers in subsection 6 applies only to conservation programs and not to rate increases resulting from long-term contracts. The Public Advocate notes that, if the Legislature had intended to insulate transmission and subtransmission level customers from any rate increase that would result from the Act, it would have done so in a much more straightforward manner.

Finally, the Public Advocate views the rate impact limitation as including only the assessment amount in subsection 4 (currently 0.145 cents/kWh) and not any additional assessment that may be in place pursuant to subsection 5. The Public Advocate reaches this conclusion because the plain meaning of the reference to subsection 5 means "not including expenditures on assessments under subsection 5," leaving only those expenditures specified in subsection 4, and capping those expenditures by no more than 0.145 cents per kilowatt-hour.

B. Industrial Energy Consumer Group

The Industrial Energy Consumer Group (IECG) commented that the plain language of the Act is clear that under current law, transmission and subtransmission customers cannot face any rate increase resulting from costs that might be associated with long-term contracts for ocean energy resources. According to the IECG, the Legislature drafted this language to reflect the fact that transmission and subtransmission level customers do not currently pay a system benefit charge and that this is the entire purpose of the language. In the event the language is found to be ambiguous, the IECG stated that the legislative intent was to limit each customer class's rate exposure to ocean energy costs to a particular customer class's exposure to the system benefit charge, which is zero for transmission and subtransmission customers.

The IECG stated that, under established statutory construction principles, words and phrases shall be construed according to the common meaning of the language and to give the full effect to the entire statute. The IECG argued that, if the Legislature intended that all customers would be exposed to a rate impact of 0.145 cents/kWh, there would have been no need to include the phase "in any customer

class." Instead, the Legislature would have referred merely to the "increase in electric rates."

With respect to the issue of whether the rate impact limitation provision should be interpreted to include only the assessment specified in subsection 4 (currently 0.145 cents/kWh) or should also include any additional assessment pursuant to subsection 5, the IECG agreed with the Public Advocate that the plain language dictates that the rate exposure to customers will be limited to only the charges specified in subsection 4.

C. Other Commenters

The other commenters generally agreed with the positions of the IECG, stating that the Legislature intended to exclude the transmission and subtransmission customer class from any rate impact that might result from long-term contracts for ocean energy.

V. DECISION

Although the rate limitation statutory provision could have been more clearly drafted, we conclude that the Legislature intended that customers that take service at transmission and subtransmission voltage would not have a rate impact resulting from any ocean energy long-term contracts.

As stated by the IECG, words and phrases in legislation must be interpreted to give full effect to the entire statute, and statutes should be interpreted to give effect to all of its provisions-so that no part will be inoperative, superfluous, void or insignificant. *Darling v. Ford Motor Co.,*1998 ME 232, ¶ 5, 719 A.2d. 111, 114; *Estate of Whittier,* 681 A.2d 1, 2 (Me. 1996); 73 Am. Jur. 2d Statutes §§ 164, 165. We agree with the IECG that, if the Legislature intended that all ratepayers may be exposed to a rate impact up to the assessment specified in subsection 4, there would not have been any need to include the phrase "in any customer class." An interpretation that all ratepayers could be exposed to an additional rate increase of up to 0.145 cents/kWh would render the phrase "in any customer class" superfluous and inoperative. Accordingly, we interpret the rate impact limitation provision of the Act to mean that customers may not experience a rate impact any greater than the assessment charged to their customer class pursuant to subsection 4. Because transmission and subtransmission level customers do not pay an assessment under subsection 4, they cannot be exposed to any rate impact from ocean energy long-term contracts.[2]

[2] In the event that subsection 4 is amended to allow for an assessment to transmission and subtransmission level customers, then those customers would be exposed to a rate impact from ocean energy project long-term contracts up to the amount of that assessment.

We also agree with the Public Advocate and the IECG that the rate impact limitation provision of the Act should be interpreted to include only the assessment specified in subsection 4, and not any additional assessment that might be imposed pursuant to subsection 5. The rate impact limitation provision specifies the "assessment of the amount charges under [subsection 4]," without any mention of additional assessment that might be charged under subsection 5. Because the language of the Act refers only to the assessment charges under subsection 4, the assessment charged pursuant to that subsection constitutes the rate impact limitation that may occur from ocean energy long-term contracts.

Dated at Hallowell, Maine, this 28th day of September, 2010.

BY ORDER OF THE COMMISSION

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Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Cashman
Vafiades

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.