

March 16, 1999

PUBLIC UTILITIES COMMISSION
Metering, Billing, Collections, and
Enrollment Interactions among Transmission
and Distribution Utilities and Competitive
Electricity Providers (Chapter 322)

Order Adopting Rule
and Statement of
Factual and Policy
Basis

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. INTRODUCTION

In this Order, we adopt a Rule governing (1) metering, billing and collections by transmission and distribution utilities and competitive electricity providers operating in Maine, (2) customer enrollment for, and cancellation of, generation service, and (3) the transfer of customer information among transmission and distribution utilities and competitive electricity providers.

II. BACKGROUND

During its 1997 session, the Legislature fundamentally altered the electric utility industry in Maine by deregulating electric generation services and allowing for retail competition beginning on March 1, 2000.¹ At that time, Maine's electricity consumers will be able to choose a generation provider from a competitive market. As part of the restructuring process, the Act requires utilities to divest their generation assets and prohibits their participation (except through unregulated affiliates) in the generation services market.

The implementation of retail access requires the development of provisions to govern billing, metering, and collections for transmission and distribution and generation services.² Provisions to govern processes by which customers initiate and change their enrollment with competitive electricity providers also are required. Finally, the implementation of retail access requires the development of provisions governing requests for customer data to ensure that the needs of all participants are met at a reasonable cost and that costs are allocated equitably. Significant quantities of

¹An Act to Restructure the State's Electric Industry (the Act), P.L. 1997, ch. 316 codified as 35-A M.R.S.A. §§ 3201-3217.

²The Act requires that the provision of electric billing and metering be subject to competition on or before March 1, 2002. The Commission conducted an inquiry (Docket No. 98-688, Inquiry into the Provision of Competitive Meter and Billing Services) to seek comments on the timing and implementation of competitive electric billing and metering.

data must be transferred between transmission and distribution utilities and competitive electricity providers to facilitate business activities. Providers' operational and marketing needs will increase the frequency and quantity of customer-specific data that transmission and distribution utilities will be asked to transfer.

III. THE INQUIRY AND RULEMAKING PROCESSES

Prior to developing the proposed Rule, we conducted an Inquiry in Docket No. 98-482. We solicited written comments by issuing a Notice of Inquiry on July 6, 1998. We received written comments from Bangor Hydro-Electric Company (BHE), CellNet, Central Maine Power Company (CMP), Dirigo Electric Cooperative (Dirigo), the Edison Electric Institute (EEI), EnergyEXPRESS, Enron, ITRON, MainePower, Maine Public Service Company (MPS), and the Office of the Public Advocate. Comments filed in response to the Inquiry were helpful in developing the Rule. The Electronic Business Transactions (EBT) Standards Working Group, initiated in Docket No. 98-522 (Investigation into Electronic Business Transaction Standards for the Exchange of Information in a Restructured Electricity Industry), also provided information useful in developing the proposed Rule. Participants in the EBT Working Group include BHE, CMP, Energy Atlantic (EA), Energy Options, Kennebunk Light and Power, MainePower, and MPS.

After considering the comments in the Inquiry, on November 30, 1998, the Commission issued a Notice of Rulemaking and proposed Rule for comment. The Commission received comments from BHE, CMP, Dirigo, EnergyEXPRESS, ENRON, Green Mountain Energy Resources, L.L.C. (GMER), MPS, and the Public Advocate. On January 7, 1999, the Commission held a hearing to allow interested persons to provide oral comments on the proposed rule. The following interested persons testified at the hearing: BHE, CMP, Dirigo, Enron, GMER, the Public Advocate and Van Buren Light and Power Company (Van Buren).

The Commission appreciates the participation of interested persons in this proceeding and found their comments helpful in developing the final Rule.

IV. GENERAL POLICY CONSIDERATIONS

In developing all rules for retail competition, we attempt to maintain consistency with operations throughout the region in order to prevent confusion, minimize the effort required by market participants, and avoid unnecessary costs. In this way, we seek to create a market environment that facilitates participation by sellers of retail electricity by minimizing the cost and complexity that competitive electricity providers will encounter in complying with the rules.

In addition, we consider factors that are uniquely relevant to the final Rule. A portion of this Rule addresses billing, metering and collections. In developing provisions governing these processes, we must balance two concerns. On the one hand, the ability of competitive electricity providers to offer their own pricing packages

(and associated metering technology) is important to attracting retail providers to Maine and to delivering to consumers the cost-cutting advantages of retail competition. On the other hand, introducing new pricing structures, metering, and billing procedures is complex and costly. For example, existing computer billing systems are often difficult to alter, and new systems are expensive to install in the short term.

We have balanced the need for flexible retail offerings with the need to limit complexity and cost by requiring transmission and distribution utilities to provide a basic level of services for providers. Competitive electricity providers may receive without charge some basic services, including metering and enrollment. Transmission and distribution utilities are required to furnish certain billing and data transfer services at the incremental cost of providing these services. We also allow providers to contract with transmission and distribution utilities for additional services, but do not require that transmission and distribution utilities provide them. We allow utilities to charge for these additional services and negotiate their terms through contract. If a transmission and distribution utility cannot or will not deliver a desired service, the competitive electricity provider or the market may investigate developing it.

When developing the Rule, we considered that billing, metering and collections form the heart of a business's infrastructure. Put simply, these operations must work efficiently for the business to survive. The procedures are far more complex than is immediately obvious; they impact financial health, consumer protection, and safety. By limiting the services that the transmission and distribution utility must provide to those that are not excessively complex, the Rule introduces changes to these systems at a pace and complexity level that can be successfully accommodated by all participants.

V. DISCUSSION OF INDIVIDUAL SECTIONS AND COMMENTS

A. Section 1: Definitions

Section 1 includes definitions changed from the proposed rule to maintain consistency. In addition, the section expands the definition of standard offer provider to properly include the consumer-owned utilities' arrangement and adds definitions related to enrollment.

Many commenters pointed out the ambiguity in the terms "aggregator," "broker," and "competitive electricity provider" as they are used throughout legislation and Commission rules. The term "competitive electricity provider" includes aggregators and brokers, but most of our rules exclude those entities from various provisions, because such entities do not have a direct sales relationship with the customer. While this terminology is confusing, it is based on statutory definitions and is now well established. Therefore, we refer throughout the final Rule to competitive electricity providers, but, as explained more fully below, state in Section 2(A) that all provisions exclude aggregators, brokers and standard offer providers unless otherwise stated.

B. Section 2: Scope

1. Section 2(A): Applicability

Section 2(A) defines the entities to whom the Rule applies. The Rule sets terms for issuing bills, collecting payments, and enrolling customers to carry out the retail sale of electricity to customers. In Maine, aggregators and brokers do not sell directly to customers, and do not perform the functions governed by this Rule. Although standard offer providers sell electricity to customers, the transmission and distribution utility carries out the billing, collection and enrollment functions for these customers; therefore, the Rule does not apply to standard offer providers. Making applicability clearer will mitigate possible confusion over the term "competitive electricity provider" throughout the Rule.

2. Section 2(B): Exceptions to the Rule by Contract

The Rule describes "basic service," or procedures that generally must be followed. Section 2(B) provides that, where specified in individual provisions of the Rule, transmission and distribution utilities and competitive electricity providers may follow procedures different from those defined in the Rule if both entities agree to the terms of the procedures in their contract. The provision does not *require* either entity to agree to alternative procedures.

In his comments, the Public Advocate expressed concern that alternative procedures should not eliminate any consumer protections implicit in the basic services. We agree that alternative procedures should not eliminate consumer protections included in any Commission rule, and section 2(B) contains express language to this effect.

Some commenters warned against abuse of this provision. GMER suggested that there be safeguards against preferential treatment of transmission and distribution utility affiliates. EA suggested that utilities be required to comply with all requests. CMP recommended that transmission and distribution utilities have five days to inform competitive electricity providers of the cost and time required to comply with a request. The final Rule requires transmission and distribution utilities to deliver cost estimates to competitive electricity providers within 15 days. The final Rule does not add further protections against transmission and distribution utility abuse. Any entity may petition the Commission to investigate abuse of Commission rules, including codes of conduct provisions.

BHE suggested adding a provision requiring transmission and distribution utilities and competitive electricity providers to correct errors as soon as possible. We understand that, particularly in the early days of retail competition, many mistakes may be made and corrected. We expect all entities to carry out corrective actions cooperatively and expeditiously. However, we do not believe that adding BHE's suggested language is necessary.

C. Section 3: Bill Issuance for Generation Service and for Transmission and Distribution Service

1. Sections 3(A) and 3(B)

Section 3(A) provides that a transmission and distribution utility shall calculate and issue its own bill. Section 3(B) specifies two options for competitive electricity providers. A provider may either calculate and issue its own bills (provider billing) or opt to have the transmission and distribution utility calculate and issue its bills (consolidated utility billing). These sections remain unchanged from the proposed rule, with the exception of minor changes to terminology.

In adopting these provisions, we acknowledge the strong interest of any business in issuing its own bills as its primary way of interacting with its customers. However, we also agree with EnergyEXPRESS and other commenters which stated that the transmission and distribution utility should be required to offer a basic billing service for generation service provided by competitive providers because the cost of developing a billing system may be a significant barrier to entry for competitive electricity providers. No commenters disagreed with allowing these two options.

The Public Advocate, however, suggested that if the competitive electricity provider decides to provide its own bill, it should be required to provide a clear disclosure statement that the customer will be billed separately by the competitive electricity provider, and the transmission and distribution utility should be required to include the disclosure in its monthly bill. Wherever possible, we have fashioned the Rule to contain costs and limit complexity. We conclude that the Commission's Consumer Education Program, governed by Chapter 302 of the Commission's rules, provides a less costly and more appropriate vehicle for informing the customer about the possibility that he or she may receive separate bills for generation and delivery service. Therefore, we decline to adopt this suggestion.

Consistent with the proposed rule, the final Rule does not allow providers to issue a consolidated bill containing both utility and generation service. Enron expressed its desire to allow providers to supply consolidated bills as soon as possible. It noted that many consumers will prefer "one-stop shopping" for energy services and sought the opportunity to offer such an option. Enron recognized, however, that this issue would be addressed in the rulemaking on competitive billing and metering. GMER also commented on the desirability of offering a consolidated provider bill for customer convenience and as an essential marketing tool for services that may be offered by the competitive electricity provider.

CMP and BHE strongly opposed allowing consolidated provider billing as part of this rulemaking. Both asserted that a utility should not be required to turn over its cash flow and its relationship with customers to a third party. They noted that competitive electricity providers could choose not to serve customers who do not

wish to be billed by the provider but that the transmission and distribution utility does not have the same option. Both commenters also noted that consolidated provider billing introduces additional complexity into the implementation of retail access and that the appropriate forum for considering consolidated provider billing is in the rulemaking on competitive metering and billing.

We agree with the commenters that advocated reserving the issue of consolidated provider billing for the rulemaking on competitive metering and billing. First, we find that consolidated provider billing is not required to implement retail access. Second, by deferring this option to our rulemaking on competitive billing and metering, we will have a greater opportunity to observe the experience of other states in addressing the complex technical and policy issues presented by consolidated provider billing. Finally, we note that the Rule provides the opportunity for competitive electricity provider agency billing for nonresidential customers with a demand of 100 kW or greater. Enron commented that as long as it had the option to provide agency billing to large customers, these provisions of the Rule provide a reasonable interim approach until the Commission addresses the merits of consolidated provider billing in its rulemaking on competitive billing and metering.

2. Section 3(C): Bill Content for Generation Services

Section 3(C) cross-references two of the Commission rules that address generation service bills. We cross-reference other Commission rules throughout the Rule for clarity and completeness. We received no comments on this provision. This subsection remains unchanged except for minor non-substantive modifications.

3. Section 3(D): Bill Format Under Consolidated Utility Billing

Section 3(D) requires a transmission and distribution utility, as a general practice, to use the same format for all generation service bills issued by the utility for competitive electricity providers. This consistency will allow consumers to easily understand their bill for generation service, and the requirement is consistent with the intent of provisions governing generation bill content in Chapter 305. In addition, requiring identical bill formats minimizes production costs.

Section 3(D) allows a provider to request a customized bill. Utilities are not required to accommodate a request for nonstandard bill format but are free to develop terms with the requesting provider through contract. We do not require transmission and distribution utilities to meet all requests for nonstandard formats because they may be unable to respond to some requests without unreasonably disrupting their operations. Should a provider find that the utility does not respond to a request for nonstandard bill format, the provider may create its own generation service bill.

The Rule does not impose format requirements for the generation bill issued by the provider. The provisions of Chapter 305 contain certain bill content requirements for provider bills issued to consumers with relatively small loads (i.e. residential and small business consumers). These requirements address concerns that residential and small business consumers should be able to understand and compare generation service bills.

The Public Advocate commented that the Commission should review nonstandard bill formats and disapprove those that will confuse or harm consumers. We decline to require Commission review of nonstandard formats. We find that the provisions of Chapter 305 which apply to generation bills issued by the transmission and distribution utility are sufficient to address concerns about consumer confusion. Moreover, requiring Commission review of nonstandard formats will add to the expense of providing consolidated utility billing. Finally, the Commission can investigate any provider that uses bill formats which mislead or otherwise harm customers.

BHE asked who would develop the standard format, when the standard format will be developed, and whether the transmission and distribution utility will have input into the development of the format. It recommended that the format of the generation bill be similar for all the generation service bills within a transmission and distribution utility's service territory, but that each transmission and distribution utility be allowed to format the generation service bills in conformance with the limitations of its own billing systems.

We agree with BHE that each utility should be allowed to develop the format of the bill to keep costs as low as possible and have modified this provision to achieve that result. However, we expect utilities to work informally with competitive electricity providers registered in the State to get input on a workable format. To the extent necessary, transmission and distribution utilities and competitive providers could establish an informal working group to exchange ideas on a standard format for a basic consolidated utility bill. We do not require transmission and distribution utilities to file the standard bill format for review, because we do not require competitive electricity providers to get approval of their format.

4. Section 3(E): Prior Competitive Electricity Provider Past Due Amounts under Consolidated Utility Billing.

Section 3(E) describes the transmission and distribution utility's responsibility, under consolidated utility billing, for collecting the past due amounts owed to a provider of generation service by a customer who no longer takes service from that provider. The transmission and distribution utility shall carry the provider's receivables for two billing periods, the final bill and collection period and one past-due bill and collection period. After that time, the provider will be responsible for collecting its past-due receivables. In general, these two billing periods will extend for approximately 60 days. This provision remains unchanged from the proposed rule.

BHE suggested that this provision allow for alternative collection arrangements by contract as long as they are “no less restrictive than this subsection.” BHE appears to be concerned that this provision will conflict with its own bad debt collection system. We do not see any benefit in adding a layer of complexity to this process and therefore decline to adopt BHE’s suggestion.

BHE also commented that the Rule should provide that once competitive electricity provider arrears are passed back to the provider for collection, the transmission and distribution utility should return to a customer any payment that the customer intended to pay towards the arrears and that the customer must forward that money to the old supplier unless different arrangements are made pursuant to contract. As we read this suggestion, it would change the methodology for the allocation of partial payments to past due amounts because it would allow the customer to direct how the payment should be allocated. Therefore, we decline to adopt this methodology.

EnergyEXPRESS suggested that the transmission and distribution utility be required to notify the customer that the past due amount has been turned over to the competitive electricity provider for collection. Such a provision, EnergyEXPRESS asserted, would eliminate the potential for customer confusion when the customer receives a bill from the provider. We decline to adopt this suggestion. The competitive provider has the incentive to clearly state in its billing that it, rather than the transmission and distribution utility, is billing for the past due amount beyond the two billing periods. A clear statement by the provider will help to avoid any misimpression by the customer that he or she is paying off an older-than-two-month past due amount from the former competitive provider when he or she pays the next consolidated utility bill.

5. Section 3(F): Charge for Consolidated Utility Billing

Section 3(F) requires the transmission and distribution utility to charge a competitive electricity provider the incremental cost of the utility’s provision of basic bill issuance, bill calculation, and collections services provided to the competitive electricity provider.³ This subsection also requires the transmission and distribution utility to file a term and condition stating the amount of the charge and the terms for providing consolidated billing service. The proposed rule did not contain this provision, but we asked for comment on whether the transmission and distribution utility should charge for services associated with total consolidated billing.

Commenters--both competitive electricity providers and transmission and distribution utilities -- generally supported having the transmission

³Some of these costs may be minimal; others, such as modifications to utility billing and payment processing systems and revisions to software license agreements, as suggested by CMP, may be more substantial.

and distribution utility charge for basic service. Although CMP initially commented in favor of not charging for this service, it recommended in its supplemental comments that utilities be permitted to establish a per-bill charge to competitive electricity providers for basic billing service.⁴ The reasons for its recommendation are

(a) the uncertainty concerning what the requirements and costs for basic billing service will be, and (b) the expressed desire of CEPs to pay a charge for basic billing service in order to avoid creating inequities between CEPs which bill their own charges and those which utilize the consolidated billing service provided by utilities.

CMP recommended that the charge include both the incremental cost of providing the consolidated billing service, as well as a share of the utility's embedded cost of billing and payment processing costs. MPS also recommended that the transmission and distribution utility be permitted to directly bill the supplier for consolidated billing services.

GMER recommended that competitive electricity providers that rely on consolidated utility billing should compensate the transmission and distribution utility for the cost of providing this service. GMER states:

GMER has invested substantial sums for the development of a billing system. Such investments are integral to the sustainability of any retail company, and they will help us and others to be ready for the day when billing and metering services are competitively offered. Making these services available from the utility for no charge will distort market realities, will reward free-riders, and may delay the readiness of providers for fully competitive markets.

Enron and EnergyEXPRESS both stated that they are not opposed to allowing transmission and distribution utilities to seek compensation from competitive electricity providers for the provision of consolidated billing service as long as the charges are cost-based and limited to the utility's incremental cost of providing this service. In addition, both Enron and EnergyEXPRESS believe that the Commission should review transmission and distribution charges for the provision of basic billing service to competitive electricity providers.

EA, on the other hand, advocated the provision of basic consolidated billing service at no charge to competitive electricity providers because this basic level of service is part of the transition to the future competitive market for

⁴CMP also recommended that a definition of basic billing service be added to the Rule. The components of CMP's proposed definition of basic billing service are included in this subsection's delineation of the billing and collection services for which the utility may charge the competitive provider.

billing and metering services. EA stated that if charges are allowed, they should cover only the transmission and distribution utility's incremental costs.

We have concluded that the transmission and distribution utility should charge the competitive electricity provider for the consolidated billing service that it provides. Our decision is based on the principle that the entity that causes costs should pay for those costs. We have weighed this principle against the policy of facilitating the transition to competition and are persuaded by the comments of both the transmission and distribution utilities and the competitive electricity providers that requiring competitive providers to pay the costs of the billing services provided to them by transmission and distribution utilities will not impede, and is in fact consistent with, the development of a robust market.

The argument for not charging a competitive electricity provider for the cost of consolidated billing service is that the development of competition in the electricity supply market will be impeded if startup costs for potential players are too high. This scenario could occur if the utility's costs of implementing consolidated utility billing were high and these costs were spread only over a small number of competitive providers serving a small number of customers. If the costs were too great, the cost of selling energy could be increased to a point where some players might be discouraged from entering the Maine market.

On the other hand, we agree with GMER's argument that the cost of billing is a market reality. Requiring competitive providers that opt for consolidated utility billing to pay at least the incremental cost of providing the service reduces the likelihood that these providers will have an advantage over providers that have already made substantial investments in their own billing system.

In addition, the Standard Offer rule directs the transmission and distribution utility to charge for billing, metering and administrative costs incurred for the standard offer service customers. Requiring providers of standard offer service and competitive providers to pay for costs they incur helps to place each service on an equal footing.

Finally, if the utility's costs of providing billing service were too high, a competitive electricity provider could always subcontract with a third party to provide billing and collection services. For example, even without a rule governing competitive billing and metering, nothing would stop a competitive electricity provider that has its own billing system from providing billing and collection services to another competitive provider.

The Rule balances basic regulatory cost of service policies with our policy favoring a successful transition to retail access by allowing utilities to charge competitive providers the incremental, rather than the fully distributed cost of providing consolidated billing service.⁵ Maintaining this balance is critically important during the

⁵We acknowledge that the charge resulting from the use of an incremental cost

beginning stages of retail access and prior to our rulemaking on competitive metering and billing. We will revisit this decision in our rulemaking on competitive billing and metering.

As suggested by commenters, the Rule requires that utilities' charges for the cost of basic consolidated billing be approved by the Commission. The Rule requires transmission and distribution utilities to file a term and condition for this charge on or before June 1, 1999.

6. Section 3(G) Agency Billing

Section 3(G) of the Rule allows the competitive electricity provider to act as the billing agent for nonresidential customers with demands of 100 kW or above. The proposed rule did not contain any provisions on agency billing, but in the Notice, we observed that the proposed rule does not preclude a provider from acting as a billing agent for its customer. Utilities currently allow a customer to designate an individual or entity to receive and pay his or her bills. See MPUC Rules Chapter 81 § 9(L). The customer, however, remains liable for payment of the bills even if the bills are not sent to the customer's address. We asked for comment about whether competitive providers should be allowed to receive transmission and distribution utility bills on behalf of a customer, and, in turn, bill its customer for bundled utility and generation service. We also asked for comment on whether additional provisions should be implemented to protect consumers when providers default on payment or fail to pass information in the transmission and distribution utility's bill on to the customer. Finally, we queried whether the Rule should permit or require competitive electricity providers to assume legal responsibility for payment and for nonpayment penalties.

EnergyEXPRESS recommended that customers should be allowed to choose to have their utility bills sent to a competitive electricity provider for payment, since customers can currently direct their bills to a third party for payment. It commented that the move to retail access should expand customer options, not limit them. Enron supported allowing agency billing as a step toward competitive consolidated billing. It recommended that the provider and the customer be allowed to decide whether the customer or the provider is legally responsible for payment. Therefore, it recommended that this matter be addressed by contract between the customer and provider rather than by the Commission as part of this rulemaking.

At the hearing, Enron acknowledged that agency billing is not likely to be widespread. Because agency billing would involve (1) getting a paper bill from the utility and entering that data on a new bill and (2) including notices included in the utility bill, it will be a labor intensive process, according to Enron. Thus, Enron expects

methodology may differ from market-based rates and will differ from rates based on fully distributed cost methodology. Cf. MPUC Rules Chapter 820. However, during this transitional period prior to our Rule on competitive billing and metering, we determine that incremental cost pricing strikes the proper balance between regulatory cost principles and encouraging the development of a competitive market in electricity supply.

to do agency billing only for large customers, where “the labor is relatively small relative to total invoice.” At the hearing, Enron stated that limiting agency billing to large customers “would not pose a problem” for it.

Both BHE and CMP commented on the difference between the traditional use of agency billing, in which the utility agrees to send the utility bill to a relative or caretaker of a customer who is unable to handle this responsibility, and agency billing by a competitive electricity provider. Both utilities expressed concern over whether the provider's bill would contain all of the information provided by the utility, especially information required by Commission rules. CMP noted that utilities' costs would increase if the only way to provide written information about utility rates and service to customers with provider billing agents is to send separate mailings. Both utilities recommended that a provider billing agent be required to provide all of the information included on and enclosed with the customer bill. CMP additionally recommended that the provider be required to obtain a customer's affirmative authorization in order to act as the customer's agent. In addition, CMP recommended that providers be required to advise customers in writing of the liability they assume by allowing a competitive electricity provider to act as their agent for the purpose of receiving and paying the utility bills.

The final Rule balances a policy of allowing additional customer options and our general policy of avoiding, during this transition to retail access, additional complexity, costs, and potential for customer confusion. Thus, the Rule allows competitive electricity providers to act as billing agents only for larger, nonresidential customers and requires that the provider include in its rebundled bill all of the information required by Commission rule to be provided to the customer. We intend that agency billing be limited to the entity selling electricity to the customer as described in this provision. More extensive agency billing that would allow other third parties to provide competitive billing services will be addressed in our rulemaking on competitive billing and metering. Although we have addressed the utilities' concern about ensuring that information required by Chapter 81 is included on the competitive electricity provider's rebundled bill by limiting the availability of this option to large nonresidential customers, we conclude that it is essential that provider billing agents convey to customers information about the customers' utility service and rates that the utility is required by Commission rule to provide. For example, we expect that notices of rate cases and any other notice affecting rates and service will be included with the provider billing agent's unbundled bill.

Finally, we require the customer, rather than the competitive electricity provider, to notify the transmission and distribution utility that it wishes to have its provider as its billing agent. This requirement addresses concerns about customer authorization. Although it is possible that a customer might request provider agency billing for a provider that does not supply this service, we think it is unlikely. Moreover, we expect that utilities and providers can work out a system for dealing with this contingency. For example, providers could notify utilities if they provide this service and utilities could maintain a list of such providers.

D. Section 4: Bill Calculation for Generation Service and for Transmission and Distribution Service

1. Section 4(A): Standard Rate Structures under Consolidated Utility Billing

Section 4(A) specifies the price structures that transmission and distribution utilities must offer on behalf of competitive electricity providers. No commenters objected to this provision, and the final Rule is substantively unchanged from the proposed rule. The provision states that, under consolidated utility billing, the generation service rate structure for a customer must be identical or less complex than the utility's rate structure for that customer.⁶ This requirement minimizes production costs and implementation time frames. Alternate arrangements are permitted under contract.

Dirigo commented that it can easily bill a rate structure (i.e., with demand charges) that is more complex than its own structures. We imagine this capability might exist for other transmission and distribution utilities as well. We decline to build this capability into the Rule, but transmission and distribution utilities may wish to provide it in their contracts.

EA and EnergyEXPRESS commented that transmission and distribution utilities must carry out this provision equitably among all competitive electricity providers and suggested that competitive electricity providers be allowed to bring a complaint of unfairness before the Commission. The addition of required time frames for rate implementation (discussed later) and required cost estimates (discussed earlier) partially address these concerns. If we discover inequitable treatment, we will act to correct the situation, but we do not believe that we need to provide a dispute resolution procedure in the Rule. If a competitive provider alleges inequitable treatment by a transmission and distribution utility, we may summarily investigate the matter. See 35-A M.R.S.A. §1303.

Comments from BHE, CMP, MPS and Dirigo pointed out that the proposed rule did not allocate reasonable time frames for rate implementation and rate testing. CMP commented that rate structure changes should be performed through contract pursuant to Section 2(B), with no required time frame. BHE commented that previously approved rate changes could be made within 5 business days, and that other rate structure changes could be made within 35 calendar days. MPS commented that they could not implement a rate structure change that required testing within 5 days.

⁶For example, if the transmission and distribution utility rate structure includes both an energy and a demand charge, the generation rate may include an energy and a demand charge or it may include only an energy charge. If the transmission and distribution utility rate structure is time-of-day differentiated, the generation rate may contain the same time periods or it may be non-time-differentiated.

The comments make us realize that the Rule must clearly differentiate between three types of rate changes, and we have done so in Sections 4(B) and 4(C). We believe that, to the greatest extent possible, competitive electricity providers must be assured of the time frame they may expect for each type of implementation to take place, so we have included time frames in the final Rule.

Accordingly, the Rule operates under the assumption that a transmission and distribution utility and a competitive electricity provider specify in their contract the generation rate structures (including the rate levels) under which the transmission and distribution utility will bill. The two entities must verify that resulting bills are accurate, using a method agreed upon through contract. When the competitive electricity provider desires additional rates, those rates also will be tested before being used. Sufficient time must be allowed for testing, to ensure that customer bills are completely accurate. The final Rule differentiates between implementing a tested rate, implementing a standard rate structure (or level) that has not been tested,⁷ and implementing a nonstandard rate structure.

2. Section 4(B): Rate Testing under Consolidated Utility Billing

Section 4(B) specifies the maximum amount of time for transmission and distribution utilities to test and be ready to bill a standard rate structure. We found the 35-calendar-day time frame suggested by BHE to be too long. Competitive electricity providers will likely desire faster implementation to respond to market conditions. On the other hand, we do not see any benefit in imposing a time frame that a transmission and distribution utility simply cannot meet. The final Rule allows 20 business days (about four weeks). If this period is insufficient, a transmission and distribution utility could request a waiver from this provision. However, we expect that a simple change (such as the addition of a per-kWh rate), will take far less than 20 business days to implement. We will monitor this situation to determine whether the 20-day time frame is unduly long for competitive electricity providers in an open market.

Section 4(B) also specifies that a competitive electricity provider may request a nonstandard rate structure, and that the development of that rate and the time frame allowed for development will be determined through contract. We agree with CMP and MPS that it is unreasonable to impose by rule a time frame on nonstandard operations.⁸

⁷Examples include a flat per-kWh rate or a time-of-use rate using time periods identical to those used in the transmission and distribution utility's rate.

⁸Some rate structures, such as real-time pricing, will be complex to implement. In the Notice of Rulemaking, we expressed concern that competitive electricity providers will be unable to receive nonstandard structures in an adequate time frame. If this happens, we expect that providers will investigate implementing their own billing systems.

3. Section 4(C): Implementing Rate Changes under Consolidated Utility Billing

Section 4(C) specifies the maximum amount of time for a transmission and distribution utility to change the generation rate used to bill a customer, when the new rate has already been tested pursuant to Section 4(B). The final Rule allows five business days as suggested by BHE. The proposed rule specified that a customer's rate change would occur on the next normally scheduled read date. No commenters objected to this part of the provision and it remains unchanged in the final Rule.

4. Section 4(D): Bill Adjustments

Section 4(D) contains the provisions governing usage and charge adjustments. Section 4(D)(1) cross-references the provisions for adjusting prior usage and charges in Chapter 81 of the Commission's rules. Section 4(D)(3) cross-references the bulk power system administrators' provisions for adjusting prior loads. No commenters objected to paragraphs (1) and (3), and they remain substantively unchanged from the proposed rule.

Section 4(D)(2) addresses adjustment of competitive electricity provider bills. Under consolidated utility billing, the transmission and distribution utility calculates the usage and the charge for each customer on behalf of the competitive electricity provider. The provision states that the transmission and distribution utility must also calculate revisions to the usage or charge it originally developed. BHE questioned whether this provision required a transmission and distribution utility to refund or collect an amount based on a revision to usage or charges even if the provider is a prior competitive provider for whom the utility is no longer collecting payments under the provisions in section 3(E). This provision does not conflict with section 3(E) which clearly states that a utility should not perform collections for a provider beyond a 60-day period following issuance of a final bill. Section 4(D)(2) simply assigns to the transmission and distribution utility the responsibility to correct errors in basic bill calculation and to provide the corrected information to the provider. Because we find that there is no conflict between section 3(E) and section 4(D)(2), we decline to revise section 4(D)(2).

5. Section 4(E): Non-generation Service Billing

Section 4(E) states that competitive electricity providers may arrange for transmission and distribution utilities to issue bills for non-generation services, through terms agreed upon through contract. The final Rule is unchanged from the proposed rule.

E. Section 5: Metering for Generation Service and for Transmission and Distribution Service

The proposed rule specified that transmission and distribution utilities own, install and maintain all billing meters and read the meters for delivery and generation billing. In the inquiry stage, many commenters stated concerns that meter standards are vital for safety and system integrity and urged careful development of standards before entities other than transmission and distribution utilities were to be responsible for meters. The proposed rule left full metering responsibility with the transmission and distribution utilities, which possess the expertise to comply with standards. With some exceptions, commenters did not object to this approach, and the final Rule remains similar to the proposed rule. In our rulemaking on competitive billing and metering, we will determine all steps necessary to make the provision of metering services subject to competition.

1. Section 5(A): Meter Equipment

Section 5(A)(1) states that transmission and distribution utilities shall install and determine the type of each customer's meter. The provision is unchanged from the proposed rule. Dirigo commented that telemetering will be standard for some customers in its territory; the provision allows for this possibility.

Because a provider may not do its own metering (as it has the option to do its own billing), the Rule must hold transmission and distribution utilities to a higher standard for serving a provider's metering needs. On this issue, the final Rule remains unchanged from the proposed rule. It maintains higher standards by requiring that a utility comply with provider requests for nonstandard metering, rather than making compliance optional. In addition, it includes a prioritizing scheme to guarantee that all providers receive equitable treatment when requesting nonstandard meters.

Enron expressed concern over utility abuse of its privilege to own and control the meter. Similarly, the Public Advocate expressed concern over fair treatment of a provider requesting a meter. The higher standard and prioritizing scheme partially address these concerns. As discussed earlier, we may investigate allegations of inequitable or unreasonable treatment by a transmission and distribution utility.

CMP recommended that the Rule specify a method for determining meter costs. The Rule specifies that utilities charge their incremental costs for owning, maintaining, and installing nonstandard meters, and we decline to include a greater level of detail on cost methodology. We will revisit the accounting methodology for meter costs in our rulemaking on competitive billing and metering. When possible, we prefer that costs be determined outside this rulemaking, possibly when utilities' standard form contracts are developed. CMP suggested that utilities file terms and conditions governing price and procedures for installing nonstandard meters. This suggestion has merit, and we will pursue it when standard form contracts are developed.

Finally, Section 5(A)(2)(c) allows a competitive electricity provider to install its own meter if it will not be used for delivery or generation billing. In response to comments by BHE and CMP, the final Rule expands on the proposed rule by prohibiting additional meters on the generation side of the billing meter.

2. Section 5(B): Meter Standards

Section 5(B) directs transmission and distribution utilities to comply with all relevant meter standards, and, in response to CMP's comment, adds a similar directive to competitive electricity providers that own non-billing meters pursuant to Section 5(A)(2)(c).

3. Meter Ownership

The proposed rule allowed a competitive electricity provider to own its customer's billing meter. Enron recommended that both providers and customers be allowed to own meters, to reinforce the provider's ability to offer comprehensive energy solutions. Enron noted that the utility will still maintain and read the meter. BHE commented that provider ownership of billing meters could deter open market competition, since it is unclear what would happen when the customer switches to a new provider.

We believe there is no compelling reason for a competitive electricity provider to own a billing meter at this time. A provider may request any meter with certainty that the transmission and distribution utility must comply, and it may install its own non-billing meter. Therefore, the final Rule eliminates this option. We will investigate the ownership of meters in the competitive billing and metering proceeding to be carried out before 2002. However, we expect to be informed if a transmission and distribution utility carries out unusual meter investments during the transition period. We will scrutinize such activity to avoid precluding new entries in the competitive metering market from capitalizing on meter investment opportunities after competitive billing and metering is implemented.

4. Meter Cost Recovery

The proposed rule contained a provision to allow transmission and distribution utilities to recover their stranded meter costs. Although we believe this allowance to be valid, we see no reason to include it in this Rule. Utilities' revenue requirements cases allow ample consideration of cost recovery.

5. Section 5(C): Meter Reading

As in the proposed rule, Section 5(C) specifies that transmission and distribution utilities are solely responsible for reading meters for billing purposes. Having one entity do all meter reading minimizes costs and customer confusion that

would likely result if the generation bill and the delivery bill displayed different usage amounts.

BHE and CMP pointed out that a period of time might be required to verify and process the meter read, and that the time frame for providing the reading to a provider should reflect this time. We agree, but believe that a provider should have reasonable assurance of timely receipt of its meter reads. Therefore, the final Rule extends the time frame a utility has for processing the meter reads, but the Rule continues to state the time frame in reference to the meter read, not a "process" or "bill issue" date.

BHE also pointed out that the provider needs the usage that results from the meter read, not the meter read itself. Indeed, translating a meter read to a usage amount is often complex. The final Rule directs the transmission and distribution utility to calculate and transfer the customer's usage (by which we mean kWhs, maximum demand, or any other unit on which the provider's rate structure relies).

Finally, BHE commented that an estimated read should be considered valid for purposes of enrollment. We understand that estimated reads are necessary under certain physical conditions (e.g. seasonal access; extended inclemental weather), but we are concerned that an invalid estimation will cause disputes between two competitive electricity providers at the time a customer changes enrollment. Therefore, the Rule states that an estimated read is only valid for enrollment purposes when physical circumstances make an actual read impractical. Transmission and distribution utilities should make reasonable efforts to perform actual reads whenever possible.

F. Section 6: Collections and Payments

1. Section 6(A): Collections under Provider Billing

Section 6(A) states that when a transmission and distribution utility bills only for delivery service, each entity collects payments of its own bills and manages its own collections. No commenters objected to this provision, and it remains unchanged from the proposed rule.

2. Section 6(B): Collections under Consolidated Utility Billing

Section 6(B) states that, under consolidated utility billing, a transmission and distribution utility must transfer payment to a competitive electricity provider within five business days of receiving payment from customers. The provision is unchanged from the proposed rule. The time frame allows competitive electricity providers to receive payment in a timely manner and also allows adequate time for utilities to make the transfer. In addition, it allows transmission and distribution utilities

to group funds accumulated over a few days into less frequent payments, thereby reducing transfer costs, as some commenters recommended in the inquiry phase. No investor-owned utility objected to this time frame.

Dirigo commented that five days is not adequate time to allow compliance with the charters and payment procedures of some consumer-owned utilities (COUs). Dirigo further notes that payment should not be made for a *de minimis* dollar amount. These conditions are unique to the COUs, and we agree that COUs' payment time frame should be longer than five days.

We understand that many provisions in this Rule may need revision to be workable for COUs. We anticipate that the COUs will use the waiver provision in Section 11 to obtain revised provisions to meet their unique needs. Therefore, the final Rule does not reflect many of the requests Dirigo made in its comments; we will consider those requests with all others through the waiver provision.

3. Section 6(C): Allocation of Partial Payments under Consolidated Utility Billing

Section 6(C) directs the allocation of funds between the transmission and distribution utility and the competitive electricity provider when a customer does not pay its full bill under consolidated utility billing. The proposed rule specified the method used in Massachusetts and Pennsylvania whereby a partial payment is first allocated to the transmission and distribution utility bill, including all months' past due amounts, before being allocated to any portion of a competitive electricity provider's bill. The final Rule specifies a method that allows competitive electricity providers to receive payment in a more timely manner.

Enron commented that requiring competitive electricity providers to wait for full transmission and distribution utility past due amounts to be paid before awarding any payment whatsoever to competitive electricity providers was unfair and a barrier to entry into Maine's market. EA echoed the sentiment. Enron pointed out that the practice might encourage "redlining."

We agree with these comments; the allocation method contained in the proposed rule reflected a particular aspect of consumer protection. A customer may be disconnected for nonpayment of its transmission and distribution utility bill, whereas at worst the customer will be dropped by its generation provider to standard offer service for nonpayment of its generation bill. However, after weighing the benefits of this consumer protection against market participants' reluctance to enter the market or sell to certain customers or customer groups if the providers' right to receive payment for their product were diminished, we decide to take a more balanced approach.

Therefore, the final Rule applies payments first to the oldest month in which an unpaid charge occurs, and within that month, to the transmission and

distribution utility charge followed by the competitive electricity provider charge. In this way, competitive electricity providers need not wait for full transmission and distribution utility past due amounts to be paid before receiving payment.

However, the Rule allows a transmission and distribution utility to group amounts past due based on its current system. For example, CMP and BHE currently classify account balances as either 30, 60 or 90 or more days old. MPS classifies account balances as either 30, 60, 90 or 120 or more days old. The effect of the interaction of subsection 6(C) with CMP's and BHE's past-due-amount classification system is that a partial payment made by a customer who owes a past due amount of 90 days or more to the transmission or distribution utility will always be allocated first to the transmission and distribution utility.⁹ For MPS, the same is true for partial payments made by a customer who owes past due amounts older than 120 days. We do not expect that this situation is likely to occur. Because the Rule allows a competitive electricity provider to drop a customer mid-cycle, as long as it complies with the notice provisions of Chapter 305 and any other applicable contract provision, the provider need not, and most likely will not, keep a residential customer with a past due amount older than 60 days.

To provide a greater opportunity for competitive electricity provider payment, we would prefer that each month's payment be split between the transmission and distribution utility charge and the competitive electricity provider charge proportionally to the level of the charges. If the split were in proportion to total charges (including past due amounts), it would allow providers to receive at least some payment from every bill. However, according to written comments from CMP and BHE, as well as verbal follow-up with MPS, this splitting would require a substantial expense to change transmission and distribution utility computer systems. We do not wish to add significant expense or risk of failure to the March 1, 2000 implementation process, and therefore will not require utilities to implement this method. However, we will monitor the extent to which competitive electricity providers receive unduly late payments, as well as procedures in other states, and we will revisit the desirability of splitting payments based on these observations after March 1, 2000.

While examining partial payment questions, we have become particularly concerned about instances when a customer owes several months past due

⁹For example, under CMP's and BHE's system for classifying past due amounts, if a customer owes a 6-month-old past due amount to a competitive provider and owes only a 5-month-old past due amount to a transmission and distribution utility, the balance over 90 days old (the fourth and fifth months) that is owed to the utility would be paid first; then the balance over 90 days old (the fourth, fifth and sixth months) that is owed to the competitive provider would be paid; next the utility past due amount that is between 61 and 90 days old would be paid, and then the provider would get paid for the past due amount for the same period. Next the utility past due amount that is between 31 and 60 days old would be paid, and then the provider would get paid for the past due amount for the same period. Finally, the utility's current bill would be paid before the provider's current bill.

amounts to the transmission and distribution utility. These customers are likely to pay through a payment arrangement and might continue to owe a past due amount to a transmission and distribution utility for a year or more despite meeting their payment arrangement obligations. In these cases, a competitive electricity provider will simply never be paid. We are concerned about the implications for a robust competitive market if providers have to initiate collection procedures for or writeoff past due amounts for a potentially large number of customers. Simply put, it is not fair to providers, who may have no way of certifying whether a potential customer owes a substantial past due amount to the transmission and distribution utility.¹⁰

We agree with Enron that this situation may encourage redlining. At a minimum, it will raise market prices. Furthermore, such customers may find that competitive electricity providers that use consolidated utility billing may be unwilling to serve them. The split-payment method in the final Rule may mitigate, but does not solve, the problem. We will monitor the extent to which competitive electricity providers lose all payment due to this situation, and we will revisit possible solutions to the problem based on our observations.¹¹

G. Section 7: Enrollment for Generation Service

1. Section 7(A): Enrollment by Competitive Electricity Provider

Section 7(A)(1) specifies that a competitive electricity provider shall take action to enroll its customer for generation service by notifying the transmission and distribution utility after the rescission period prescribed by Chapter 305 of the Commission's rules. The final Rule is unchanged from the proposed rule.

The Public Advocate recommended that a customer be allowed to rescind its selection of a competitive electricity provider by notifying the transmission and distribution utility. Chapter 305, rather than this rule, addresses procedures for rescission. See Chapter 305 § 4(C). Therefore, we decline to modify this provision of the Rule.

Section 7(A)(2) states that enrollment with a provider that is not the standard offer provider will always take place on the next scheduled read date except for enrollments occurring on March 1, 2000.¹² It further states that a provider must

¹⁰A competitive electricity provider can require a customer to disclose whether he or she owes a past due balance to the transmission and distribution utility. In most circumstances, we expect that customers will comply with such disclosure requests.

¹¹For example, we may explore ways to alert providers that a customer owes utility past due amounts. We may also reconsider requiring that payments be split between the utility and the provider.

¹²We anticipate that customers will be enrolled on March 1, 2000 even if their next meter read is scheduled to take place after that date.

notify the utility to carry out the enrollment at least two business days before the read date, a time frame that the EBT Working Group has determined to be adequate for carrying out the enrollment.

The proposed rule sought comment on language that would allow a customer to be enrolled with a competitive electricity provider on a date other than its normally scheduled read date (i.e., off-cycle),¹³ using either prorated bills or off-cycle meter reads. Many competitive electricity providers commented that, under normal circumstances, enrollment should occur on a customer's read date. They stated that on-cycle enrollments would be administratively easier and less confusing for the customer. However, all competitive electricity providers responded that, on occasion, transferring customers off-cycle was important to a provider's ability to generate revenues and a customer's ability to receive the desired service. Enron and GMER suggested that large customers in particular should not face enrollment limitations, because the financial impact to customer and competitive electricity provider would be significant. GMER commented that customers' confidence in the new market would be compromised if, after enrolling with a new competitive electricity provider, they had to wait for 45 days and receive two bills from an old provider before receiving service from a new provider. EA echoed this sentiment.

On the other hand, many commenters felt that customers would be confused by an off-cycle enrollment, citing prorated bills and a greater likelihood of slamming as potential problems. With this in mind, EnergyEXPRESS and the Public Advocate suggested that a higher level of customer authorization be required when switching off-cycle. CMP commented that allocation of load responsibility could be distorted if off-cycle enrollments were allowed. In response to questions during the hearing, Enron suggested that providers might, under some circumstances, limit off-cycle switches through contract terms. BHE, CMP, and MPS commented that off-cycle enrollment would be difficult if not impossible to operationalize, requiring complex system programming. CMP offered the suggestion that off-cycle enrollment be limited to telemetered customers. However, BHE commented that this approach would require as much operational difficulty as would unlimited off-cycle enrollment.

CMP submitted a document prepared by the EBT Working Group that summarized the operational steps necessary to carry out off-cycle drops and enrollments. The document stated that off-cycle drops are easier to operationalize than off-cycle enrollments. The EBT document advocated a compromise that minimizes the operational problems while providing consumer and provider protection. The compromise would allow: (1) a customer to drop a competitive electricity provider and transfer to standard offer service off-cycle and (2) a competitive electricity provider to drop a customer to standard offer service off-cycle. It would not allow a customer to enroll with a competitive electricity provider (other than standard offer provider) off-cycle.¹⁴ In their comments, BHE, CMP, and MPS accepted this compromise.

¹³Massachusetts, Pennsylvania, and California prohibit off-cycle enrollments or limit them to telemetered accounts.

¹⁴Massachusetts currently limits off-cycle switching through this approach.

We have adopted the compromise proposal as a balance between consumer and provider protection and the need for smooth, affordable implementation on March 1, 2000. The compromise protects a customer against receiving service for an extended period of time from a competitive electricity provider he or she strongly dislikes, and it protects a competitive electricity provider against providing service for an extended period of time to a customer who is not profitable.

We accept the utilities' representations that off-cycle enrollments are difficult to operationalize within their computer systems. We take seriously the need for implementation to be accurate on March 1, 2000. We have often stated our preference that simpler solutions be implemented and tested before introducing more complex alternatives, and we follow that principle in our decision here.

On the other hand, we do not subscribe to the concern that customers would be confused by off-cycle prorated bills; in most cases, the customer would have chosen that option, so the customer would presumably accept the results. We are also unconvinced that off-cycle meter reads would be an insurmountable operational problem; the transmission and distribution utility would be fully reimbursed for its costs and the cost would probably discourage all but a very few customers from requesting an off-cycle read.

Finally, we share the concern voiced by GMER. We worry that small customers in particular, accustomed to instant switches of telecommunications providers, may be dissatisfied with the need to wait until their next meter read to obtain service from a new competitive electricity provider. We understand that small consumers in other states may only enroll on-cycle, and we are informed that this has not been the subject for consumer complaints. However, we will monitor customer dissatisfaction with the re-enrollment process, and revisit our decision if it appears that customers feel the process is unduly restrictive or unfair. We expect consumer education materials to inform customers of the enrollment process and its limitations.

Section 7(A)(3) follows the regional convention of choosing the first competitive electricity provider that notifies the transmission and distribution utility of the customer's impending enrollment. The Public Advocate recommended in its comments that the transmission and distribution utility contact the customer in this instance. We believe that requiring such notification would slow the procedure and thus be detrimental to customers. However, we expect our Consumer Education Program to explain this aspect of the enrollment process.

This provision has been modified to clarify that the first enrollment notification by a competitive electricity provider supersedes a customer's earlier request to receive standard offer service or a competitive electricity provider's earlier notification of its intent to cancel service to a customer. Thus, in the latter circumstance, if a customer's current provider notifies the utility of its intent to drop the customer and another provider subsequently notifies the utility of its intent to enroll the

customer, the customer will be enrolled with the new provider rather than in standard offer service. We believe that, in most instances, this approach will be consistent with the intent of the customer.

Section 7(A)(4) has been added to clarify that the only way a customer may receive generation service from a competitive electricity provider is through contact with the provider. A customer may not choose a competitive electricity provider by notifying the transmission and distribution utility of his or her choice.

Throughout section 7(A), we have clarified the language describing enrollment and cancellation procedures.

2. Section 7(B): Arranging for Standard Offer Service

Section 7(B) cross-references the rules that govern how a customer will be transferred to standard offer service. Consistent with our discussion earlier, we have added language that clarifies that a customer may begin receiving standard offer service on a date other than the normally scheduled meter read date.

3. Section 7(C): Arranging for Transmission and Distribution Service

EA and Enron commented that a competitive electricity provider should be able to arrange for its customer to receive transmission and distribution service, thereby increasing a provider's ability to offer its customers "one-stop shopping" for energy services. We disagree. The transmission and distribution utility must often obtain information from a new customer and may provide information about its own services. When competitive billing and metering is implemented, the ability to offer one-stop shopping will be improved. The final Rule adds a provision that clarifies that the competitive electricity provider may not arrange for its customer to receive transmission and distribution service.

H. Section 8: Cancellation of Generation Service

1. Section 8(A): Cancellation when Delivery Service Remains Unchanged

Section 8(A) specifies the steps the transmission and distribution utility and the competitive electricity provider must take when a customer cancels generation service by notifying the competitive electricity provider or when a competitive electricity provider cancels a customer's service. This section does not apply if the customer moves to a new location. See section 8(B) below. No commenters objected to the substantive portions of this provision (with the exception of

issues related to off-cycle enrollment, which will be treated separately), and they remain unchanged from the proposed rule.

The final Rule conforms with the off-cycle enrollment approach described earlier in this Order. Section 8(A)(2)(a) states the general practice of transferring a customer to a new competitive electricity provider on its normally scheduled read date. However, Section 8(A)(2)(b) provides that a customer may drop its competitive electricity provider and transfer to standard offer service on a date other than its normal read date. As stated earlier, this provision allows a customer to drop, without extended delays, a competitive electricity provider from which the customer no longer wishes to receive service. This section also provides that a competitive electricity provider may drop its customer to standard offer service on a date other than the normal read date. This provision protects a competitive electricity provider against providing service for an extended period of time to a customer who is not profitable because of payment activity or usage characteristics.

We have clarified the language in section 8(A) consistent with similar changes made in section 7(A).

2. Section 8(B): Procedure when Delivery Service Changes

Section 8(B) specifies the steps the transmission and distribution utility and the competitive electricity provider must take when a customer moves to a new location within the utility's service territory. The proposed rule allowed the customer to maintain its current competitive electricity provider by default, even if the customer ended its transmission and distribution service at the old location 30 days before initiating service at the new location. The final Rule revises that term and instead provides that the customer will retain his or her current competitive electricity provider by default only if the customer moves without any interruption of transmission and distribution utility service (i.e., the customer initiates service at the new location before terminating service at its old location). If there is a break in service and the customer has not requested a continuation of service by the current competitive electricity provider, the customer will be transferred to standard offer service.¹⁵

BHE and CMP stated that customers rarely allow an interruption of service when moving to a new location and that an overlap in service is the more normal practice. They commented that maintaining a competitive electricity provider over a 30-day period during which the customer is, in fact, not a transmission and distribution customer would be costly. Enron pointed out that bundled product sales are not necessarily transportable. GMER supported the holdover approach, but stated that a customer should not be inconvenienced by the need to re-indicate its choice of the current provider.

¹⁵Of course, by notifying the competitive provider before a move, the customer can request that he or she be re-enrolled with the competitive provider to ensure that the customer retains the provider instead of being dropped to standard offer service if there is a break in service during the move.

We conclude that maintaining a customer-provider relationship for as long as 30 days during which the customer is not receiving delivery service is not advisable. Apart from the operational difficulties of this approach, we are uncertain that it is always the desired course for a customer. Furthermore, it is a rare occurrence. However, a customer who moves without leaving the transmission and distribution utility grid is likely to maintain his or her current competitive electricity provider, and the operational difficulties in allowing this are apparently not great. We agree with GMER's suggestion; we do not want to see customers dropped to standard offer service because they inadvertently do not re-enroll with their competitive electricity provider. Therefore, the final Rule allows a customer to maintain his or her competitive electricity provider without re-enrolling when he or she moves to a new location without an interruption in transmission and distribution utility service. Our Consumer Education Program will inform customers of this practice. We do not address Enron's concern regarding portability in the Rule, but anticipate that a competitive electricity provider will cover such a situation in its contract with its customer.

I. Section 9: Transfer of Customer Data

1. Section 9(A): Transferred Data

a. Section 9(A)(1) and 9(A)(2)

Section 9(A)(1) defines the customer-specific data that a transmission and distribution utility must send to a competitive electricity provider. The proposed rule specified 12 months of kWh and kW history. In the final Rule, we have added fields and qualifiers based on comments.

CMP recommended sending certain data fields consistent with its recently revised term and condition Section 18.3. Such data would identify the customer and provide information related to the customer's usage to the competitive electricity provider. We agree that identifying information is necessary. In the final Rule, we require identifying data but leave the definition of that data to the entities involved. BHE recommended clarifying that only data that is available should be sent; we have added this language to the final Rule.

When issuing the proposed rule, we sought comments on how to avoid repetitive, burdensome requests for customer history. Competitive electricity providers indicated that a healthy market requires prompt access to customer data. Enron recommended that no limits be placed on the availability of customer history, but accepted payment of a fee for repetitious requests. Many providers accepted limitations on the number of annual requests. EnergyEXPRESS, CMP, and BHE commented that repetitive requests would not be burdensome if providers paid the transfer costs. Many commenters pointed out that electronic transfer will be far less costly than current methods. CMP, BHE, and MPS commented that tracking the number of requests per year would be cumbersome.

We agree that competitive electricity providers must receive customer history quickly and that data must often be received for marketing purposes before taking action to enroll a customer. We believe it is reasonable that the competitive electricity provider (rather than transmission and distribution utility ratepayers) pay some portion of the cost of that data, as would any business that requires data for its normal business operations. Based on utilities' lack of concern over request frequency, we do not limit the frequency of competitive electricity provider requests for customer history; however, in Section 9(A)(2) we require that the requesting provider pay the utility's incremental cost of providing the data.

b. Section 9(A)(3) and 9(A)(4)

Section 9(A)(3) specifies that transmission and distribution utilities must send certain data to competitive electricity providers as part of daily business practices, as described in the EBT Standards filed at the Commission. Section 9(A)(4) specifies that competitive electricity providers may receive additional data upon request and under the terms of their contract. No commenters objected to these provisions and they remain unchanged from the proposed rule.

c. Section 9(A)(5)

Section 9(A)(5) requires that a competitive electricity provider obtain appropriate customer authorization before it receives a customer's data. The final Rule is unchanged from the proposed rule, and simply cross-references the appropriate Maine statute. We interpret the statute to require that transmission and distribution utilities receive written customer authorization before releasing customer data.¹⁶ Many commenters suggested that customer authorization is most important if the customer is not enrolled with the requesting competitive electricity provider. Commenters also stated that competitive electricity providers, rather than transmission and distribution utilities, should retain responsibility for obtaining authorization, in order to avoid cumbersome administration. GMER commented that requiring written authorization after enrolling a customer is unnecessary and burdensome to the competitive process.

We agree with GMER and have wrestled with this requirement in other rules. We believe that a customer who has agreed to receive generation service from a competitive electricity provider should be considered to have given implicit authorization for that provider to receive the customer's data from the transmission and distribution utility. We intend to support revision or clarification of the statute to so state. The easiest way to compensate for a changing statute is to simply reference the statute in the Rule, which we have done. We also agree that customer authorization, in whatever form it occurs, is the responsibility of the competitive electricity provider; transmission and distribution utilities need not verify the authorization. No revision to the proposed rule is necessary to reflect this position.

¹⁶In its comments, GMER disagrees with this interpretation.

2. Section 9(B): Transfer Procedures

a. Section 9(B)(1): EBT Standards

Section 9(B)(1) requires that competitive electricity providers and transmission and distribution utilities follow the guidelines for exchanging data that are developed and filed by the Electronic Business Transactions Working Group sponsored by the Commission.

Dirigo commented that small entities may find compliance with EBT standards to be onerous and excessively complex for what will likely be small numbers of transactions. We sympathize with Dirigo's concerns. However, because the EBT standards are consistent throughout the region, we are concerned that competitive electricity providers will not be willing to operate in territories that require alternative operations. We will continue to work with Dirigo to find a workable solution to this problem. Accordingly, in the final Rule, we allow consumer-owned utilities to carry out alternative procedures that will be determined over time.

GMER recommended that each entity pay its own cost to transfer EBT data, as is done in Pennsylvania. We understand that some states require providers to bear all transfer costs. On balance, we believe that all consumers are best served if transfer is efficient, and therefore have directed that each entity pay its own costs of sending data. We retain the exception that competitive electricity providers will be charged the utility's incremental cost of transferring requested customer history pursuant to Section 9(A)(2), because that transfer is clearly at the provider's option and for the provider's benefit.

b. Section 9(B)(2): EBT Training

Section 9(B)(2) specifies that competitive electricity providers and transmission and distribution utilities must carry out training and testing according to the EBT Standards. Many competitive electricity providers supported the usefulness of such training. The final Rule remains substantively unchanged from the proposed rule.

Most commenters recommended that competitive electricity providers receive training before enrolling customers. We agree and leave in place the original language. BHE requested a 90-day time frame for testing. We believe the testing requirement needs no specific time frame. Some commenters recommended that competitive electricity providers contribute to training costs. This recommendation has merit, but we conclude that the expense is relatively small and all ratepayers benefit if market participants are knowledgeable. Therefore, the final Rule remains unchanged on this issue.

We have removed the section in the proposed rule that prescribed data transfer methods before March 1, 2000. Transfer methods will evolve toward EBT Standards at a pace determined by the entities involved. We conclude it is not desirable to define required methods during this evolution.

J. Section 10: Contract

Section 10 specifies that transmission and distribution utilities and competitive electricity providers must enter into a contract, subject to review by the Commission.¹⁷ No commenter objected to this provision and it remains unchanged from the proposed rule.

K. Section 11: Waiver

This sections contains the standard waiver provision. No commenter objected to this provision and it remains unchanged from the proposed rule.

Accordingly, we

O R D E R

1. That the attached Chapter 322, Metering, Billing, Collections, and Enrollment Interactions among Transmission and Distribution Utilities and Competitive Electricity Providers, is hereby adopted;

2. That the Administrative Director shall file the adopted Rule and related material with the Secretary of State; and

3. That the Administrative Director shall send copies of this Order and attached Rule to:

A. All electric utilities in the State;

B. All persons who have filed with the Commission within the past year a written request for Notice of Rulemaking;

C. All persons listed on the service list in Docket No. 98-482 and Docket No. 98-810; and

4. That the Administrative Director shall notify all persons on the Commission's list of persons who wish to receive notice of all electric structuring proceedings that the rule was adopted and is available upon request.

¹⁷The process provided for under the Rule will accommodate a streamlined approach to review routine contract revisions.

Dated at Augusta, Maine this 16th day of March, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond