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CASD Bulletin No. 2016-03

To: Arrearage Management Program (AMP) Stakeholders
From: Derek D. Davidson, Director, 
Consumer Assistance and Safety Division (CASD)
Date: June 7, 2016
Re: AMP Eligibility Question

A question has been raised regarding the definition of “eligible customer” and the amount and age of the arrearage required under Chapter 317 for a customer to qualify for the AMP. Section 1(C)(11) of Chapter 317 defines “eligible customer” as

...a residential transmission and distribution utility customer or applicant who is taking or has applied to take residential electric service on a continuing year-round basis, is eligible for LIHEAP in the State of Maine, *and has carried an Arrearage Amount of \$500 or more for at least 90 days.* (emphasis added)

This definition reads slightly different than the eligibility criteria stated in section 3(A)(2). This subsection states “...the residential customer must have an arrearage amount equal to or greater than \$500 that is at least 90 days in arrears.”

This difference has caused confusion and resulted in at least one utility interpreting these sections to require a customer to have an arrearage amount of at least \$500 that remains in arrears for at least 90 days. With this interpretation, the 90 day clock does not begin until the arrearage amount reaches \$500. Once the arrearage amount reaches \$500, then it must remain in arrears for at least 90 days in order for the customer to be eligible for the AMP. This ultimately results in an arrearage amount significantly higher than \$500 and significantly older than 90 days. This interpretation is not consistent with other utilities' and CASD's interpretation of these sections. CASD's interpretation of section 3(A)(2) is that a customer's account must be in arrears for least 90 days and have a total past due amount of at least \$500 to qualify for AMP. This means that some of the \$500 arrearage amount will not necessarily be 90 days in arrears, but the account as a whole is 90 days in arrears. This interpretation is based on the eligibility language of section 3(A)(2), as well as comments made in the rulemaking proceeding.

When sections of a rule are potentially conflicting or ambiguous, the Commission must examine the underlying purpose and intent of those sections in its interpretation of the rule. In this situation, this

examination shows that the interpretation that the 90 day clock does not begin until the arrearage amount reaches \$500 is unworkable and inconsistent with the intent of the rule. I reach this conclusion for a couple of reasons. First, this interpretation renders the \$500 arrearage amount, as well as the 90 day arrearage age, almost meaningless because by the time the \$500 arrearage amount remains in arrears for at least 90 days, the actual amount in arrears will likely be much higher than \$500 and the arrearage amount as a whole will be significantly more than 90 days old. For example, the CASD recently dealt with a customer that had an arrearage amount of approximately \$1,200 whose account had been in arrears for approximately 270 days. This customer was viewed as ineligible for AMP by the utility because \$500 of the total amount in arrears had not been in arrears for 90 days. Second, this interpretation creates an incentive for a customer to not pay something towards their bill each month. Because the Commission's payment allocation rule requires partial payments to be applied to a customer's oldest balance first, a customer that consistently pays something each month towards their bill, but not the full amount owed, may never reach \$500 that remains in arrears for 90 days, even though the customer's total amount in arrears may exceed \$500 and the account as a whole may exceed 90 days in arrears. This is because the oldest past due amount is getting paid each month by the customer's partial payments.

In light of the discussion above, I find that the correct interpretation of section 3(A)(2) of Chapter 317 is that a customer's account must be in arrears for a total of 90 days and have a total past due amount of at least \$500 to qualify for the AMP. This means that some of the \$500 arrearage amount will not necessarily be 90 days in arrears, but the account as a whole is 90 days in arrears. Any utility that has not been using this interpretation for purposes of implementing the rule should immediately begin to do so. Further, such utilities should conduct a review of their customer accounts and notify any customer who meets this criterion of the existence of the AMP and provide instructions on how to apply. It is also important for utilities in this situation to notify customers who meets this criterion as quickly as possible because CAP agencies will cease processing LIHEAP applications on July 1.

This bulletin is issued pursuant to section 7(C) of Chapter 110 of the Commission's rules. It represents an interpretation by the CASD and does not constitute *res judicata* or legal precedent in any subsequent proceeding, nor is it binding on any party. In any subsequent enforcement action initiated by the Commission, however, any person's justifiable reliance upon the bulletin may be considered in mitigation of any penalty sought to be assessed.

If you have any questions, please feel free to contact me at: derek.d.davidson@maine.gov, or by phone at: 207-287-1596.

DD/kp