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**CASD MEMO 2024-04**

To: All Public Utilities

From: Derek D. Davidson, *Derek D. Davidson*  
Director, Consumer Assistance and Safety Division (CASD)

Date: February 21, 2024

Re: Important Commission Decision Relating to Proper Billing Practices, re: Title 35-A  
M.R.S. § 309(1) and (2).

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The purpose of this memo is to provide guidance to all utilities regarding proper billing practices when initiating a rate change. The Commission recently concluded in Docket No. 2023-00101, that a utility must charge customers the rate in effect at the time the service is used pursuant to 35-A M.R.S. § 309(1). The Commission further concluded that there was no basis to allow a water utility to bill a rate change for usage during a period other than the period on or after the effective date specified on the utility’s approved rate schedule. 35-A M.R.S. § 309(2).

In early 2023, the CASD conducted an informal investigation into an individual customer’s dispute with a water utility regarding the utility’s billing practices and whether that customer had been overbilled. The customer claimed that she was charged for water that was used prior to a rate change taking effect on January 1, 2023, at the higher January 1 rate, instead of the rate that was in effect at the time the water was used. The utility explained to the CASD that it billed the rate change based on a reference to “billing in arrears” contained in its terms and conditions that it believed authorized it to apply a rate in effect when the bill is issued, rather than the rate in effect when the water was used.<sup>1</sup> The CASD determined this billing practice did not conform to 35-A M.R.S. § 309(1) and that a utility must charge customers the rate in effect at the time the service is used. The water utility disagreed with CASD’s determination and requested a review of the decision by the Commission.

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<sup>1</sup> “Billing in arrears” means that a utility bills for usage that occurs prior to the billing date. For example, arrearage billing would result in a January bill for water usage that occurred the previous October, November, and December.

As a general rule, Title 35-A provides, in relevant part, “it is unlawful for any public utility to charge . . . for any service . . . a greater or lesser compensation than is specified in such printed schedules as may at the time be in force . . . .” 35-A M.R.S. § 309(1). Section 309 further provides, however, that “when a public utility changes its rates . . . the [C]ommission may for billing purposes, order that the change be applied to some or all service reflected in meter readings on or after the effective date of the change, or to such other period as it determines just and reasonable.” Id. § 309(2).

The water utility in this case admitted its billing practices were not in accordance with section 309(1), but argued that based upon its terms and conditions, it believed in good faith that it could charge the new higher rates in arrears. The utility contended that section 309(1) is not absolute, and that section 309(2) provides the Commission with discretion to approve the use of a rate schedule for another period when the Commission determines such use would be just and reasonable.

The Commission found in its investigation that section 309(1) prohibits public utilities from applying a new rate without the Commission’s review and approval and the rate becoming effective. The Commission further found that while a utility’s terms and conditions may authorize billing in arrears, such authorization is necessarily limited because section 309(1) does not authorize applying a rate to prior service unless the rate was effective pursuant to Commission order at the time of the prior use. The Commission also concluded that if the utility intended to charge its customers under section 309(2), it should have asked the Commission for authorization in advance of billing its customers, not after. That said, in this case, even if the utility had sought Commission approval prior to applying the new rate to consumption that occurred before the new rate was in effect, the Commission likely would have denied the request given the resulting discriminatory impact on the customers.<sup>2</sup>

If you have questions regarding this CASD memo or the Commission’s decision, please feel free to contact me at [derek.d.davidson@maine.gov](mailto:derek.d.davidson@maine.gov) or at (207) 287-1596.

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<sup>2</sup> The Commission found that the rate increase was applied inequitably to the utility’s customers because different ratepayers were overcharged by different amounts, depending on their consumption and their meter read dates.