

# **MUNICIPAL ELECTRIC CONSUMER ADVOCATE FIFTH QUARTERLY REPORT**

During the first quarter of 2019, the following matters were addressed by the Municipal Electric Consumer Advocate (MECA):

- **FEDERAL INDICTMENTS OF CMEEC OFFICIALS AND FORMER BOARD MEMBERS:** Undertook the following actions in response to the Federal Indictments of the CMEEC CEO, CFO, and former Board Members:
  - Requested and received documentation relating to the above, from CMEEC General Counsel, including party pleadings, and related caselaw precedents;
  - Conducted independent legal research into state and federal law re: advancement of litigation expenses and indemnification;
  - Retained outside counsel to review issues relating to advancement and indemnification;
  - Held numerous communications with ratepayers seeking information from CMEEC re: the litigation and financial impacts on downstream ratepayers, and raised specific concerns to CMEEC General Counsel;
  - Suggested to CMEEC General Counsel that Board of Directors revisit and strengthen its bylaws on the issue of future advancement and indemnification, in light of the Federal Judge determining that advancement of litigation expenses was appropriate without express Board approval;
  - Suggested to CMEEC General Counsel that CMEEC take steps to protect downstream ratepayers by seeking pre-judgement remedies against advancement of litigation expenses, to better insure reimbursement in the event of an adverse verdict in the criminal litigation;
  - Provided copies, in response to a request by the Press, of communications with CMEEC General Counsel from the date of request back to the date of the indictment, to demonstrate various issues raised by the Municipal Electric Consumer Advocate in response to the indictments, including bonding, directors and officers insurance coverage, restitution, pre-judgement remedies, employment contracts, the so-called Margin “contra-fund”, related party transactions, attestations, advancement and indemnification;
  - Raised suggestion to the CMEEC Board of Directors at their January 24, Board of Directors meeting, that they seek an opinion from the Connecticut Attorney General re: whether indemnification and advancement were required under their bylaws in conjunction with applicable state law, in light of the types of activity alleged in the FBI

indictments; (the Federal judge in the case granted a motion for advancement shortly thereafter);

- Requested the Office of Attorney General advise on the issue of advancement and indemnification, prior to the Judge's ruling on the matter;
- Submitted request by a ratepayer to the Connecticut Office of Attorney General for that Office's investigation into issues relating to criminal litigation.

- PUBLIC TESTIMONY BEFORE THE STATE GENERAL ASSEMBLY: Submitted written testimony before the Connecticut General Assembly's Energy and Technology Committee on March 5, 2019, in support of various aspects of Raised Bill 961, that would further downstream ratepayer interests, including:

- Making CMEEC subject to audit by the Connecticut Office of the Auditor of Public Accounts, a non-partisan auditing agency staffed by certified public accountants and certified fraud examiners;
- Returning to 2018 CMEEC funding levels for the Municipal Electric Consumer Advocate position, to reverse the reduction in funding, which occurred on 1/1/19;
- Adding funding for retention of consultants to assist in examining CMEEC business arrangements and financing;

A copy of my testimony is included as an attachment to this Quarterly Report.

- FORENSIC AUDIT ISSUES: At the January 24, 2019 Board of Directors' Meeting, questioned representatives of CohnReznick following their presentation to the Board, and requested further detail from CMEEC on those expenses the auditors indicated "appeared inconsistent with CMEEC's purpose". After reviewing the financial information provided by CMEEC in response to that request, submitted oral and written comments at the February 28, 2019 Board meeting, highlighting certain excessive expenditures which were not in downstream ratepayers' interests, including the following:
  - Over \$70,000 in a donation to an initiative relating to the USS Groton;
  - Over \$13,700 for bands, food and gift certificates at employee parties;
  - Over \$8,700 for artwork, and
  - Over \$4,600 for board of director golf outings.

As indicated in those comments, the State Office of Consumer Counsel had indicated that donations and sponsorships would not be allowed in regulated utility rates and haven't been for 25 years or more. Further, they indicated that employee party-related expenses are not allowed in ratebase by regulators, as not attributable to providing utility service.

- OPERATIONAL BENCHMARKING: Issues relating to refining the CMEEC benchmarking process this quarter included the following:
  - Received Benchmarking Report from CMEEC on March 22, 2019, after prior discussions and requests commencing in 2018, requesting inclusion of comparative monthly data relating to the Town of Wallingford's municipal electric utility (MEU) wholesale power purchase costs. Such would provide another entity in CMEEC's monthly reports (other than Eversource) against which to compare CMEEC's performance;
  - Reviewed report and annotated with questions and comments for further discussion with CMEEC staff;
  - Provided copies of the report to the following entities for their review, feedback and suggestions for further analysis:
    - Eversource - as the benchmarked entity against which CMEEC compares itself each month;
    - Town of Wallingford Electric Utility - as the MEU which received its wholesale electric power from CMEEC in the past, but which now uses a power purchasing agent instead;
    - Energy New England - Wallingford's electric power purchasing agent; and
    - The Connecticut Office of Consumer Counsel.
  
- CMEEC BUSINESS OPERATIONAL REVIEW: Reviewed various operational matters at CMEEC, including the following:
  - Requested a copy of CMEEC's new draft "charitable giving policy", for review and comment from a downstream ratepayer perspective, having raised concerns in the above-referenced oral and written comments to the Board re: charitable donations by CMEEC which did not provide any contribution to reducing the price paid for power supplied to downstream ratepayers. No draft has been shared to date;
  - Continued review of "CMEEC 101" background operational information provided to new CMEEC Board members and public officials;
  - Submitted initial request for information on CMEEC contracts. After receiving CMEEC's initial response, requested information on all CMEEC contracts with vendors \$10,000 or more in each of the last 5 years. Negotiations are ongoing, and an alternative set of parameters will be discussed, for efficiency, for consistency with the scope of review of contracts in PUC utility expense reviews, and in order to limit the volume of materials requiring review. The latter is of particular concern if the General Assembly does not pass legislation making CMEEC subject to audit by the State Auditor of Public Accounts, or to funding utility industry consultants, as referenced above;
  - Provided a copy of a ratepayer newsletter from the Massachusetts Municipal Wholesale Electric Company (MMWEC) to the CMEEC General Counsel as an example of a communication which should be

reproduced at CMEEC to further operational transparency and public education; suggested it be shared with the Board and be discussed at a future Board meeting;

- Provided the Interim CEO and General Counsel with a copy of a website communication from MMWEC informing the public of their right to documentation under Massachusetts Public Records law (their equivalent to Connecticut's Freedom of Information Act). CMEEC's Interim CEO indicated that the organization has plans to release such a communication in the near future.
  
- BOARD OF DIRECTOR MEETINGS; Attended Board of Directors meetings held on January 24, 2019 in Norwalk, CT, and February 28, 2019 and March 28, 2019 in Norwich, CT. Raised questions and comments re: ratepayer interests as indicated above. Followed up on issues raised during meetings with CMEEC General Counsel and staff.
  
- BOARD COMMITTEE MEETINGS: Attended multiple Board committee and/or subcommittee meetings including: January 4, 2019 and February 21, 2019 Legislative Committee Meetings (including objecting to the characterization of indictment-related remedial activities in a draft of materials to be provided federal legislators and their staff in Washington D.C.); February 21, 2019 Governance Committee Meeting; March 15, 2019 Joint Audit Committee (providing comments on proposed new charter); and non-executive session portions of several meetings of the Special Committee of the Board.
  
- RATEPAYER COMMUNICATIONS: Communications via phone and email with ratepayers, and communications with the Press, re: issues including the Federal indictments, advancement of legal fees, CMEEC bylaws revisions, potential CMEEC litigation expenses, and the forensic audit.
  
- OUTREACH TO MUNICIPAL LEADERS: Provided fourth quarterly report to municipal heads as required by statute.
  
- MISCELLANEOUS LEGAL RESEARCH: Researched multiple legal issues relating to matters as referenced above.

**The Energy and Technology Committee  
Public Hearing, March 5, 2019**

**Testimony of Bill Kowalski,  
Connecticut Municipal Electric Consumer Advocate**

**Raised Bill No. 961  
*An Act Concerning Municipal Electric Utilities and  
Municipal Electric Energy Cooperatives***

Good Morning. I am providing this testimony as Connecticut's first Municipal Electric Consumer Advocate, appointed by State Consumer Counsel, Elin Katz, under Public Act 17-73. It was suggested that given the newness of the position, I briefly update the Committee on my work in that role to date.

As Municipal Electric Consumer Advocate, I have worked on behalf of the downstream ratepayers of the Municipal Electric Utilities ("MEUs") that make up the Connecticut Municipal Electric Energy Cooperative, or "CMEEC". My efforts have been detailed in reporting in the Norwich Bulletin and The Day, and in my quarterly reports to the heads of the municipalities in which the MEUs are situated, to the Office of Consumer Counsel and to CMEEC itself. Those reports are also available to the general public on the OCC and CMEEC websites. I provided my goals for the position in a presentation at the January, 2018 CMEEC Board of Directors meeting, and recounted my progress in a public forum last October.

As indicated in those meetings and presentations, my focus for the first year in this position has been on improving CMEEC's internal structural processes, bylaws, and operations, in ways that better serve its downstream ratepayers. This was accomplished through participation with the Board in its creation of a new ethics code, new limitations on corporate travel reimbursement, and adoption of changes to its bylaws relating to indemnification of officer and employee litigation expenses. I also successfully lobbied the Board to rescind its initial award of a contract for a statutorily mandated forensic audit (due to an existing business relationship), and participated in the rebidding and selection processes that resulted in the selection of an auditor with no prior history with CMEEC. I have worked with CMEEC to improve the transparency of its website, so that notices of upcoming meetings of the Board of Directors and CMEEC Committees are more easily accessed by ratepayers and the public at large. I also researched and provided suggested content and format for a potential annual report to CMEEC's downstream ratepayers, and continue to work on improving the comparison of CMEEC's performance or "benchmarking" to other wholesale electricity provision in the state.

The language in Section 1 of Raised Bill No. 961 will further these efforts to improve CMEEC transparency and accountability, by making CMEEC subject

to audit by the State Auditors of Public Accounts, the State's non-partisan auditing office. As a public nonstock corporation consisting of public - not private – utilities; as an entity with a history of spending on initiatives which provide little or no return on investment to downstream ratepayers; as an organization with Board members and officers currently under FBI indictment; and as an entity created over 40 years ago with no external auditing in that time by any public authority of which I am aware, such minimal oversight is long overdue, and is in the public interest.

As I've also indicated in CMEEC board meetings, newspaper articles and presentations, my goal for the second year of my two-year appointment, is to review CMEEC's external business relationships; namely, its five-year business plan, its most significant business contracts, its power purchase agreements, and its bonding initiatives. Section 2 of Raised Bill No. 961 will assist in that effort, by continuing the level of funding required to be paid by CMEEC in year one, through the first six years. Section 2 also adds an additional \$30,000 annually for retention of utility and finance consultants with the necessary expertise required for such review. The continuation of funding for my position at the 2018 level, and the addition of the consultant budget, will have a de minimus impact on CMEEC's revenues and operating budget. It would add approximately fifty cents per year, per customer, (or .04 cents per customer, per month) to CMEEC's administrative overhead, compared with that required by the funding for year two in PA 17-73. I would urge you to consider what was accomplished in year one of my tenure, when reviewing the proposed changes in Section 2 of Raised Bill No. 961.

I support most of the remaining sections of Raised Bill No. 961 – i.e., those providing for additional transparency and accountability of CMEEC, municipality and related boards. These include recovery of legal fees incurred by officers or employees convicted of crimes, disclosure of capital and operating budgets and contracts, and implementation of forensic audit recommendations. Until a review of CMEEC's external business arrangements is completed, I have no opinion on the proposed language in Raised Bill No. 961 which would place limitations of the types of business arrangements in which CMEEC could engage. I also have no opinion on the language contained in Section 8 of the bill requiring CMEEC to use a standard billing format, as I do not believe such a requirement would impact downstream municipal ratepayers.

Thank you for the opportunity to provide testimony to the Committee.

-Bill Kowalski

Connecticut Municipal Electric Consumer Advocate

March 5, 2019