

of 150 basis points⁴ and 100 percent of prudently incurred costs of abandonment, subject to ISO New England Inc. (“ISO-NE”) approving the project in its Regional System Plan as a Market Efficiency Transmission Upgrade and subject to the Joint Filers submitting a subsequent filing explaining how designation as a Market Efficiency Upgrade satisfies the incentive eligibility requirement of section 219 of the Federal Power Act. *See* November 17 Order at P 1.

As explained in detail below, the Commission erred in conditionally granting rate treatment to Joint Filers for the MPC because the Project is not even approaching an endpoint in the regional planning process with ISO-NE⁵ nor has the project been through the state certificate of public convenience and necessity (“CPCN”) proceeding before the MPUC. Further, the Commission’s award of a 150 basis point adder above the current and Commission-authorized ROE was not based on substantial evidence on the record and was arbitrary and capricious. Finally, the Commission erred when it failed to grant an evidentiary hearing to resolve disputed issues of material fact.

I. BACKGROUND

On July 18, 2008, CMP and MPS filed a joint petition for declaratory order requesting that the Commission authorize transmission rate incentives pursuant to Order No. 679⁶ for the planned MPC. *See Central Me Power, Co. and Me. Pub. Serv.*,

⁴ With regard to MPS, which is currently not a New England Transmission Owner (“NETO”), the November 17 Order conditionally granted similar rate treatment to MPS on the basis that, upon completion of the Project, MPS would be recognized as a NETO and, therefore, that MPS would then be entitled to the base ROE of 11.64 established Opinion No. 489.

⁵ As stated in more detail below, the MPC has not been approved in the ISO-NE regional planning process. A recent system impact study has raised concerns that have not yet been resolved and final approval of the MPC, in any form, is far from over.

⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

Co., Docket No. EL08-77-000 Joint Petition for Issuance of Declaratory Order (July 18, 2008) (“July 18 Petition”).

Specifically, Joint Filers requested a 150 basis point return on equity (“ROE”) adder over the current ROE of 11.64 for New England Transmission Owners (“NETOs”) as well as 100 percent of prudently incurred costs if the MPC were abandoned in whole or in part as a result of factors beyond their control. The MPC is a proposal for approximately 200 miles of new intrastate 345 kV transmission lines and various substations, spanning the gap between existing lines in central Maine to the more rural areas in northern Maine. Currently, the Joint Filers estimate that the MPC will cost \$625 million. On July 1, CMP and MPS also filed a Petition for a CPCN at the MPUC, which is currently delayed due to the need for further system impact studies.

On August 29, 2008, the MPUC and MOPA (“State Parties”) filed a Joint Motion to hold Joint Filers’ petition in abeyance, as well as a protest of the requested incentive rate treatment. The State Parties argued that even if the Joint Filers’ petition was not premature for a determination of rate treatment, their request for 150 basis point ROE adder should be rejected. State Parties asserted, *inter alia*, that Joint Filers already received a generous ROE from FERC’s decision in *Bangor Hydro-Elec. Co.*, 122 FERC ¶ 61,129 at P 2 (2006) (“Opinion No. 489”), that recent changes in market conditions and decline in the ten-year U.S. Treasury Bond data rendered the Joint Filers’ request of a 150 basis point ROE adder exorbitant, and that their requested adder was not appropriate where both CMP – and MPS upon its integration with ISO-NE – would be capable of defraying the Project’s costs through their recovery of formula rates. Further, the State Parties argued that if incentives were found to be appropriate, only prudent Abandoned

Plant Costs should be granted because these incentives would be more than sufficient to address the risks cited by the Joint Filers.

In its November 17 Order, the Commission declined to hold the July 18 Joint Petition in abeyance and rejected numerous requests for an evidentiary hearing. Instead, the Commission granted Joint Filers an ROE adder of 150 basis points as well as 100 percent of CWIP and prudently incurred costs of Abandonment subject to the Joint Filers' appropriate demonstration in future Section 205 filings. *See* November 17 Order at P 98.

II. SPECIFICATION OF ERRORS

Pursuant to Rule 713(c)(1),⁷ Public Parties respectfully submit that the Commission, in its November 17, 2008 Order acted arbitrarily, capriciously and without reasonable basis:

- (1) by failing to stay the instant proceeding or refrain from making any determination as to incentive rate treatment until the completion of the state CPCN proceeding at which time it would be known whether the MPC was approved and at which time details regarding the MPC would be fully known, including the final scope of the MPC as well as the timeframe required for construction of the same;
- (2) by awarding Joint Filers a 150 basis point ROE adder without any factual foundation;
- (3) by awarding Joint Filers an ROE adder despite the fact that Joint Filers' prospective recovery of the project's costs under the formula rate, as well

⁷ 18 C.F.R. § 385.713(c)(1) (2008).

as incentives for prudently incurred costs of abandonment addressed the same risks;

- (4) by failing to take into account the rate impact of the adders in granting Joint Filers a 150 basis point ROE adder;
- (5) by failing to reassess the going-forward ROE established under Opinion No. 489 to reflect changes in costs of equity, including a decline in the U.S. Treasury bond rates since the issuance of Opinion No. 489; and
- (6) by determining the range of reasonableness for a ROE without providing an opportunity for parties to test the bases of for the Commission's analysis.

III. STATEMENT OF ISSUES

In accordance with Order No. 663⁸ and Rule 713(c)(2),⁹ Public Parties submit the following statement of issues:

- (1) Whether the Commission abused its discretion or acted in an arbitrary and capricious manner in failing to stay the instant case pending resolution of the state CPCN proceeding when it is unknown whether the MPC conditionally approved by the Commission will receive state siting approval through the ISO-NE regional planning process, and when, even assuming such approval, the project that may emerge from these proceedings may bear no resemblance (in materials, components and timeframe for completion) from the proposed project relied upon by the

⁸ Revision of Rules of Practice and Procedure Regarding Issue Identification, 71 Fed. Reg. 14,640 (Mar. 23, 2008) (codified at 18 C.F.R. §§ 385.203, 385.713).

⁹ 18 C.F.R. § 385.713(c)(2) (2008).

Commission in the November 17 Order. *See Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067 at P 40 (2008) (deferring consideration of the petitioner’s requested CWIP and ROE incentives “given the early stage of the project’s development”); *see also Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955); *Promoting Transmission Investment Through Pricing Reform*, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); 5 U.S.C. § 706(1)(A).

- (2) Whether the Commission abused its discretion or acted in an arbitrary and capricious manner in awarding Joint Filers a 150 basis point ROE adder without any factual foundation. *See Ne. Utils. Serv. Co.*, 56 FERC ¶ 61,269 at p. 62,053 (1991) (acknowledging that formula rates mitigate risk); *Ind. & Mich. Power Co.*, 4 FERC ¶ 61,316 at p. 61,739 (1978) (acknowledging same); *see also Nat’l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955); *Promoting Transmission Investment Through Pricing Reform*, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); 5 U.S.C. § 706(1)(A).
- (3) Whether the Commission abused its discretion or acted in an arbitrary and capricious manner in awarding Joint Filers an ROE adder despite the fact that the Joint Filers’ prospective recovery of the project’s costs under the formula rate as well as incentives for prudently incurred costs of abandonment addressed the same risks. *See Nat’l Fuel Gas Supply Corp.*

v. FERC, 468 F.3d 831 (D.C. Cir. 2006); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955); *Promoting Transmission Investment Through Pricing Reform*, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); 5 U.S.C. § 706(1)(A).

- (4) Whether the Commission abused its discretion or acted in an arbitrary and capricious manner in failing to take into account the rate impact of the adders in granting Joint Filers a 150 basis point ROE adder. *See Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955); *Promoting Transmission Investment Through Pricing Reform*, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); 5 U.S.C. § 706(1)(A).
- (5) Whether the Commission abused its discretion or acted in an arbitrary and capricious manner in failing to reassess the going-forward ROE established under Opinion No. 489 to reflect changes in costs of equity, including a decline in the U.S. Treasury bond rates since Opinion No. 489. *See Bangor Hydro-Elec. Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006); *see also Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955); *Promoting Transmission Investment Through Pricing Reform*, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); 5 U.S.C. § 706(1)(A).
- (6) Whether the Commission abused its discretion or acted in an arbitrary and capricious manner by determining the range of reasonableness for an ROE

without providing an opportunity for parties to test the bases of for the Commission's analysis. See *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955); *Promoting Transmission Investment Through Pricing Reform*, Docket No. RM06-4-000, 116 FERC ¶ 61,057 (2006); 5 U.S.C. § 706(1)(A).

IV. REQUEST FOR REHEARING

In this proceeding, the Commission was required to determine whether Joint Filers' request for a 150 basis point ROE adder and other incentive rate treatments is justified. In determining that incentive rates are appropriate for the MPC and in granting Joint Filers a 150 basis point adder in addition to other rate incentives, the Commission erred for the reasons discussed below.

First, the Commission's consideration of incentive rate treatment for the MPC at this time is premature because (1) it is unknown whether and, if so, in what manner the Project will receive final approval in the state CPCN proceeding; and (2) many of the bases upon which the Commission relied in granting the incentive may change as a result of determinations made in the CPCN. These bases include the cost of the project, the need for accelerated construction, and the nature of the benefits found by the Commission to be factors in its approval of the incentives. Additionally, as stated in more detail below, since the Commission's "conditional" award of the 150 basis point ROE in the November 17 Order, the MPC has been delayed indefinitely in the ISO-NE planning process due to certain issues that have arisen from system impact studies, and it is unknown whether the MPC will be approved, in any form, at this point in time.

Second, the Commission abused its discretion by failing to distinguish or address which factors weighed in favor of granting (rather than rejecting) the Joint Filers' request of a 150 basis point ROE adder, especially where the Joint Filers recognized that their financial conditions were stable, above investment grade and where other rate treatment would minimize the risks associated with the Project.

Additionally, the November 17 Order wrongly rejected the commonsense assertion that Joint Filers' ability to recover costs through a formula rate structure mitigated its risk, and that this risk reduction should be reflected in at least some reduction to the ROE adder, if not in its complete elimination. Instead, the November 17 Order mischaracterized the concern, and found, incorrectly, that the existence of a formula rate structure was irrelevant in determining a transmission owner's incentive and was not required by Order No. 679 or 679-A. *See* November 17 Order at P 80.

Lastly, the Commission erred and committed an abuse of discretion when it rejected the State Parties' arguments that the recent change in market conditions necessitated an update to the ROE currently recovered by NETO under Opinion No. 489. The Commission further erred and abused its discretion when it rendered such a decision without an opportunity for a hearing during which the parties could have advanced evidence in support – and in opposition to – the applicable zone of reasonableness.

A. The Commission Abused Its Discretion When It Failed To Grant The State Parties' Motion To Hold Joint Filers' July 18 Petition For Declaratory Order In Abeyance.

In the August 29 Joint Motion to Hold Petition in Abeyance and Protest, the State Parties urged the Commission to hold Joint Filers' July 18 Petition in abeyance because the petition to the Commission was premature. State Parties pointed to two facts

in support of this proposition. First, State Parties asserted that Joint Filers' CPCN petition, which was filed on July 1, 2008, was the subject of a motion to dismiss for lack of sufficient planning. Second, State Parties stated that the Project had not only not been vetted through the regional planning process with ISO-NE, but was only at the "conceptual" stage in the planning process. *See* Joint Motion to Hold Petition in Abeyance and Protest of the MPUC and MOPA at 1, 8. Based on these undisputed facts, the State Parties argued that holding the July 18 Petition in abeyance would ensure administrative efficiency by ensuring that rate treatment would be decided at a time when the Project had sufficiently evolved through the state CPCN or ISO-NE regional planning process. *See id.* Further, in citing *Baltimore Gas and Electric Co.*, 120 FERC ¶ 61,084 (2007) and *Pacific Gas and Electric Co.*, 123 FERC ¶ 61,067 (2008), the State Parties asserted that the Commission should defer any rate determination until the state CPCN or regional planning process in order to administrative inefficiency of the Commission having to revisit its decision. *Id.* at 10-11.

In its November 17 Order granting rate treatment for the MPC, the Commission stated the following:

The Commission decides petitions for incentives pursuant to section 219 and Order No. 679 under different criteria than the Maine Commission decides applications for Certificates of Public Convenience and Necessity. When faced with a request for incentives pursuant to section 219 and Order No. 679, the Commission examines whether the project reduces congestion or ensures reliability, and determines whether there is a nexus between the incentive sought and the investment being made. In contrast, when the Maine Commission evaluates an application for a Certificate of Public Convenience and Necessity it determines whether the project is needed—a different standard that permits inquiry into a broader range of issues. Given these different standards, and the different questions they raise, there is no risk that the Commission will prejudge Petitioners' pending Certificate of Public Convenience and Necessity proceeding by ruling on their petition for incentives. Similarly, because the issues

relevant to the Commission's decision are different than the issues relevant to the Maine Commission's decision, there is no significant increase in administrative efficiency to be gained by holding the petition in abeyance pending the outcome of the Certificate of Public Convenience and Necessity proceeding.

November 17 Order at P 41. The Commission's finding that the CPCN and the ROE incentive proceeding are determined under different criteria fails to address the State Parties' arguments that there may be a different project to emerge from the CPCN proceeding than the one upon which the Commission based its decision. The inefficiency of making a determination that the adders are justified at this early date is that the very features of the MPC, which in the Commission's view justify the adder, might not be present. For example, the Commission based part of its decision on the dollar investment in the project.¹⁰ However, if the CPCN results in a reconfigured project with a significantly smaller dollar investment, one of the factors upon which the Commission based its decision might no longer be present.

In sharp contrast to the Commission's decision to grant an ROE adder even for a project which is at the "conceptual" stage, both dissenting Commissioners Kelly and Wellinghoff recognized that it was premature to *consider* granting an ROE adder at this time. For example, Commissioner Kelly stated, "ISO-NE and its stakeholders have only recently begun to engage the broader issue of METUs and *so the Commission is better served in deferring the ROE question at the present time, given that the future of the MPC Project, in large part if not in full, turns on the METU determination.*" November 17 Order, Kelly Dissent at 2 (emphasis added).

Commissioner Kelly further recognized that the scope of the project might change and

¹⁰ See, e.g., November 17 Order at P 89 ("Petitioners also face significant financial risks, given the Project's \$625 million cost. Our decision to authorize an ROE incentive is consistent with section 219's goal of encouraging transmission investment.")

that deferring consideration of the ROE adder “preserves the Commission’s ability to consider an extended project in its entirety, if and when that comes to fruition.” *Id.* Similarly, Commissioner Wellinghoff contrasted the MPRP stage of development, which has a “planned” RSP project classification, with the MPC, which is in the “concept” phase. Because there is little or no analysis available to support the project in the “concept” phase, and because of an inadequate technology statement, Commissioner Wellinghoff concluded that “it is premature to grant an incentive ROE adder for the MPC project.” November 17 Order, Wellinghoff Dissent at 3. The Commission should have recognized, as did the dissenting Commissioners, that it was premature to consider the ROE request at this stage of the MPC project.

The Commission’s failure to hold the petition in abeyance was also erroneous because it neglected language of Order 679 and Order 679-A that encourages coordination with state bodies in order to ensure that the Commission will not need to revisit or reinvent determinations. In Order No. 679,¹¹ the Commission noted:

With regard to state review, the Commission recognizes that incentives for many utilities are incorporated into rates that must receive state commission approval and that many decisions on siting and permitting of new facilities are under the jurisdiction of state and local government authorities. Because of this, *we will carefully consider the views of any state bodies having jurisdiction over these matters.* We also will, as discussed below, adopt a rebuttable presumption that projects approved by an appropriate state commission or siting authority are eligible for incentives under section 219. We believe that, in these ways, we will appropriately coordinate our consideration of incentives with the views of responsible state agencies.

Order No. 679 at P 54 (emphasis added). On rehearing, the Commission stated, “[t]he Commission created the rebuttable presumption because *we do not wish to duplicate the*

¹¹ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679-A, 72 Fed. Reg. 1152 (Jan. 10, 2007), [2006-2007 Regs. Preambles] FERC Stats. & Regs. ¶ 31,236, *clarified*, 119 FERC ¶ 61,062 (2007).

work of state siting authorities, regional planning processes, or the U.S. Department of Energy (“DOE”) under EPCAct section 1221.” Order 679-A at P 5 (emphasis added).

The Commission’s refusal to even address this contingency was arbitrary and capricious and an abuse of discretion.¹² If the adders are subject to being revisited based on the outcome of the state CPCN proceeding, the degree of “certainty” gained by approving the adders at such an early stage is questionable. In fact, since the November 17 Order, additional information has emerged that the Project “conditionally” approved by the Commission may not even bear any resemblance to the one that may – or that may not – emerge from the regional planning and state CPCN process.

In fact, during a case management conference on held December 2, 2008 in the state CPCN proceeding, counsel for MPS conceded that not only had the MPC not received approval in the ISO-NE planning process, but the planning process was delayed for an indefinite period because a preliminary impact study showed the Project, as designed, had significant problems that the sponsor did not expect to be readily solved:

MR. KENWAY: As -- as the Commission is aware, we have been pursuing with ISO-New England -- and ISO has actually been managing the study process for the system impact study for the Maine Power Connection and also integrating the Aroostook Wind Energy project. We had expected that the studies would have been completed by now. But not only are they not completed by now, but it looks like they’re going to have to continue for a while. Specifically, they’ve done a preliminary -- what’s referred to as a preliminary system impact study which has identified some significant impacts from the system.

HEARING EXAMINER COHEN: Okay.

MR. KENWAY: Now, what I can say about this is constrained by two

¹² See *Knott v. FERC*, 386 F.3d 368, 371-372 (1st Cir. 2004), citing *Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 944 (1st Cir. 1993) (“We ‘defer to the agency’s expertise . . . so long as its decision is supported by ‘substantial evidence’ in the record and reached by ‘reasoned decision-making,’ including an examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made”).

things. First of all, to get into any details would be to begin to discuss critical energy infrastructure information, which we could do *in camera* and under the Protective Order that's already been entered.

HEARING EXAMINER COHEN: Okay.

MR. KENWAY: Our second constraint is that we are in a confidentiality agreement with Aroostook Wind Energy. And also the ISO is telling us that we can't get into the details of the study without the express permission of Aroostook Wind Energy. So we conferred with them yesterday, and I'm authorized to tell you what I've told you, which is that there's been a preliminary system impact study which has identified significant problems and it's going to take a while to work those out. So our recommendation is that you basically put the case on hold for a while and we would undertake to file a report at the end of January with a status report on where those studies are. It's very unlikely that we'll come back and say the clouds have lifted, we're rolling forward. It's probably going to be we estimate it'll take X more months in order to work these studies out.¹³

Aroostook Wind Energy, L.L.C. ("AWE"), whose wind generation project proposed in northern Maine is the primary driving force behind the MPC, has also expressed uncertainty about the project. In a letter to the MPUC dated December 5, 2008, AWE addressed the recent problems emerging from ISO-NE's system impact studies as well as the problems that loomed over the final interconnection with AWE's proposed wind generation facilities. AWE's letter stated:

Thus, AWE's project design and interconnection require further study and will likely undergo a revision as a result. The original project of a 2010 start date is no longer operative, and it is not possible at this time to project reliably a new start date. While AWE is committed to addressing the obstacles identified in the ISO-NE and the system impact studies, and

¹³ See Transcript of December 2 Case Management Conference, Petition for Finding of Public Convenience & Necessity to Construct the Maine Power Connection to Enable Interconnection of Aroostook Wind Energy Project (MPC), MPUC Docket No. 2008-256 ("December 2 Case Management Conference"), at 4-5. Relevant sections attached as Attachment A; entirety of transcript available online at: http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_docview&docid=73081&img_rng=212205&vol_id=1.

continue to advance development efforts associated with the project, the characteristics of the project remain unsettled.¹⁴

AWE's December 5 Letter stated that it would be "misplaced and that it is premature" for the MPUC to "evaluate the interplay of AWE's proposed facilities and the [MPC]." *See* AWE's December 5 Letter at 1.

Both the December 2 Case Management Conference and the December 5 Letter are illustrative of the Commission's error in its November 17 Order. The Commission's award of incentive rate treatment for the MPC was premised, in great part, on Joint Filers' assertion that an ROE was necessary in order to address the need for an aggressive construction schedule in order to interconnect with AWE's wind generation and provide a grid interconnection to new renewable resources. The Commission stated:

Petitioners state that they must operate under an aggressive development and construction schedule in order to complete the Project's first phase and begin delivering the first 300 MW of planned wind generation from the Aroostook [sic] Wind Energy Project by November 2010. As a consequence, Petitioners state that they must place significant capital at risk to make the necessary long-term commitments before receiving final construction approval. Petitioners assert that construction of each segment of the Project must be planned carefully and in close coordination with other Maine utilities, New Brunswick, and ISO New England in order to minimize risks to the system and to customers during construction. Petitioners state that to ensure reliability during construction, the commissioning of upgrades and new facilities must be carefully coordinated and timed based on system parameters such as system demand, location and availability of generation and transmission resources, equipment and line ratings, potential contingencies, and other planned system outages. Petitioners contend that physical construction constraints, such as seasonal construction requirements, permit requirements, weather, relocation of existing facilities, and the possibility that some existing facilities may overload and require upgrades, must also be factored into the analysis. Petitioners add that they must build into the schedule adequate time to coordinate construction and system outages

¹⁴ Letter from Aroostook Wind Energy, L.L.C. to Karen Geraghty dated December 5, 2008 ("December 5 Letter") at 2. Attached as Attachment B; also available online at: http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_docview&docid=73085&img_rng=212211&vol_id=1

with ISO New England, and that they must coordinate their schedule with Central Maine's concurrent construction of the Maine Power Reliability Program Project.

November 17 Order at P 23. Given the December 5 Letter and MPS' admissions at the December 2 Case Management Conference, the Commission's reliance on the need for an accelerated or aggressive construction period in its decision to grant rate treatment was, at best, premature, and at worst, was unsupported by any substantial evidence on the record. *See Knott*, 386 F.3d at 371-372, *supra* at 11 and n. 12. As urged by the State Parties in the August 29 Joint Motion to Hold Petition in Abeyance and Protest, common sense as well as notions of administrative efficiency and coordination between the Commission and state regulatory bodies as announced in Orders 679 and 679-A militate in favor of granting rehearing, vacating the November 17 Order and holding the Joint Filers' Petition for Declaratory Treatment in abeyance until the MPUC has received approval in the MPUC's CPCN proceeding. Failure to do so will result in approval of a Project that may emerge in a vastly different form from the Project that may be approved in the state CPCN proceeding or which may even become a nullity.

B. The Commission's Determination That a 150 Basis Point ROE Adder Was Warranted Was Arbitrary And Capricious.

1. The Commission Arbitrarily And Capriciously Failed To Address Protestors' Arguments That Formula Rates Reduce Risk.

In finding an ROE adder is appropriate, the November 17 Order determined that the project is not "routine and that the significant risks and challenges faced by the Project warrant the granting of an ROE incentive." November 17 Order at P 70. In making this determination, the Commission catalogues all of the risks asserted by CMP and MPS. However, the Commission fails to address the State Parties' and other

protesters' arguments that a formula rate regimen significantly reduces the risks faced by Joint Filers, but instead stated the following:

We reject these arguments. There is nothing in Order No. 679, Order No. 679-A, or subsequent Commission precedent that requires applicants for incentives to show that they will build their projects on a specific timetable or that they lack formula rates. Similarly, Order Nos. 679 and 679-A do not require applicants to make a showing of financial weakness in order to receive incentives, and in Order Nos. 679 and 679-A, the Commission rejected requests to make incentives contingent on a cost-benefit analysis. What is required for incentive rate treatment is that the applicants demonstrate a nexus between the incentives being sought and the investment being made. As the Commission explained in *BG&E*, when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has, for purposes of the nexus test, shown that the project faces risks and challenges that merit an incentive. As we have stated, Petitioners have adequately demonstrated that the Project is not routine.

November 17 Order at P 80. In stating the bases for its decision above, the Commission did not address the State Parties' concern that Joint Filers would both receive formula rates for the MPUC and that such recovery would help offset the MPUC's risks by providing certainty of cost recovery. This failure was arbitrary and capricious, and is contrary to the Commission statement in Order No. 679 that "[w]e agree with several commenters that formula rates can provide the certainty of recovery that is conducive to large transmission expansion programs." Order No. 679 at P 386.

In fact, the Joint Filers' ability to recover their investment through a formula rate regimen should reduce the rate of return needed to attract capital, and should either eliminate the need for an ROE adder, or limit whatever adder is approved. The State Parties provided evidence that formula rates significantly curtail regulatory risk because costs can be recovered quickly and with a minimal expenditure of resources. *See* Joint Motion to Hold Petition in Abeyance and Protest, Attachment C, Kivela Affidavit at

P 35. Thus, the State Parties stated, “[w]here formula rates assure timely recovery of costs, incentive treatment is neither needed nor justified.” August 29 Joint Motion to Hold Petition in Abeyance and Protest at 16. This is consistent with recent testimony before the Commission as part of the October 14, 2008 Technical Conference in *Transmission Barriers to Entry*, Docket No. AD08-13-000. In that conference, Marc Lipschultz of Kohlberg Kravis Roberts & Company addressed the relationship between formula rates and capital costs, stating:

Certainly, as an investor we are drawn to formula-like rate structures, a tracker-type structure, a way to get a near-term recovery, the time value of money, in parts more certainty. But I think having the ability to employ capital, which is in many instances the required need to meet stakeholder requirements and having a way to achieve a return sooner and with certainty will allow you to draw capital at a lower return, all things being equal.¹⁵

The November 17 Order responds to the stated concern about the impact of formula rates by mischaracterizing the concern, and then rejecting an argument that was not made. The Commission’s only response to assertions about the impact of formula rates on risk is to state that “there is nothing in Order 679, Order No. 679-A or subsequent Commission precedent that requires an applicant for incentives to show that ...it lacks formula rates.” This response fails to confront the point that was made – that formula rates *reduce risk*, and that the Commission should have taken this into account in determining project risks, and the need for and amount of any ROE adder to address such risks. Further, the Commission’s obligation to explain its decision is not met by simply citing other cases where utilities which had formula rates were granted adders.

¹⁵ See *Transmission Barriers to Entry*, Hearing Transcript at 64 (Docket No. AD08-13-000, Oct. 14, 2008).

2. The Commission Abused its Discretion by Failing to Take Rate Impacts Into Account In Granting a 150 Basis Point Adder.

In the Joint Motion to Hold Petition in Abeyance and Protest, the State Parties provided evidence that established that the impact of cost of the project with the requested adders (assuming that the project costs do not increase once planning is complete and that there are no cost overruns) is between \$1.93 billion and \$2.01 billion over a 29-year period. *See* August 29 Joint Motion to Hold Petition in Abeyance and Protest at 17-18; *see also* Attachment C, Kivela Affidavit at P 19. In its November 17 Order, the Commission also acknowledged State Parties' assertion that a 150 basis point adder would raise the Project's cost to between \$115 and \$123 million. November 17 Order at P 84.

Despite this evidence, the November 17 Order made no effort to factor this cost impact into its finding that a 150 basis point adder was justified. Because the Commission is required to ensure that the overall ROE is just and reasonable, the Commission should have considered not only whether an enhanced ROE was needed given Joint Filers' ability to recover the Project's costs through formula rates as well as the minimization of risks assured by recovery of abandoned plant cost, but should also have considered whether the rate impact upon consumers of a \$625 million project was just and reasonable.

C. The Commission Abused Its Discretion When It Found That There Was No Need To Update The Going-Forward ROE For NETOs Based On A Change In Market Conditions.

In *Bangor Hydro-Electric Co.*, 122 FERC ¶ 61,265 (2008) ("Order on Rehearing") at P 24, the Commission rejected the State Parties' position that the

Commission should not rely on changes in the ten-year bond yields to update the going-forward ROE for NETOs. *Id.* The Commission stated:

In Opinion No. 489, the Commission accepted an upward adjustment to the midpoint, base-level ROE based on the use of the most recent bond data. The Commission noted that, because capital market conditions may change significantly between the time the record closes and the date on which the Commission issues a final decision, *it has consistently required the use of updated data in setting a public utility's ROE for the period subsequent to the date of the Commission's ruling. The Commission further found that the monthly yields on ten-year constant maturity U.S. Treasury bonds provide a good indicator of these trends and should be relied upon, consistent with Commission precedent.*

Id. (emphasis added). In the November 17 Order, the Commission abused its discretion when it ignored its own precedent and failed to eliminate the 74-basis point adder or take the change in bond yields into account in determining whether any additional ROE adder was appropriate. Instead, in the instant proceeding the Commission summarily rejected the State Parties' position, stating:

We reject the Maine Protesters claim that a recent decline in U.S. Treasury bond yields makes the 74-basis point upwards adjustment to the current New England Transmission Owners' midpoint ROE inappropriate under current market conditions. While it is true that the bond yields upon which the adjustment to the midpoint ROE in Opinion No. 489 was made have declined approximately 120 basis points, this is only one element that determines the midpoint and it has no impact on the zone of reasonableness. The 74 basis point bond adjustment applies only to the midpoint ROE and does not apply to either the low-end or high-end implied cost of equity.

November 17 Order at P 93 (internal citations omitted). In reaching the above conclusion, the Commission failed to acknowledge that the 74 basis points afforded under Opinion No. 489 was "*an upward adjustment to the midpoint,*" *id.* (emphasis added), and thus should have been removed to account for current conditions. The base ROE upon which the adders are calculated includes the adder. Thus, at the very least,

any adder should have been to a lower base ROE. The issue is not whether the bond-yield adder affected the low-end or high-end of the range, but that it inflated the base ROE upon which more 150 basis points are now being added. Common sense and fairness dictate that if the bond yield adder was fair to be considered as an “add-on” in Docket No. ER04-157, lower bond yields should be an offset to the base ROE when conditions go in the opposite direction. Accordingly, the Commission’s failure to, at the very least, remove the adder to account for current conditions, when it previously added to the base ROE to reflect changes in bond yields, was arbitrary and capricious and an abuse of discretion.

D. The Commission Erred In Conducting A Cost Of Capital Analysis Without Holding An Evidentiary Hearing.

Although the Commission refused to make an adjustment to the ROE to eliminate the bond-yield adder, it decided to “perform a discounted cash flow analysis using more recent data to verify that those [Opinion No. 489] findings are still valid.” November 17 Order at P 75. It decided to perform this analysis by importing findings from another case even though the parties had no opportunity to file testimony in response to the analysis in that case or test the assumptions relied upon by the Commission. The Commission’s decision to import the findings from another case failed to provide the parties an opportunity to contest the basis of the Commission’s determination. Further, as Commissioner Kelly stated in her dissent in *Virginia Electric and Power Co.*, that the Commission’s new approach of “establishing an applicant’s ROE without an evidentiary hearing is an inadequate substitute for an evidentiary hearing before an Administrative Law Judge.” Kelly Dissent (September 17, 2008) to *Virginia Electric and Power Company*, 124 FERC ¶ 61,207 (2008).

V. CONCLUSION

For the reasons stated above, the Public Parties respectfully request that the Commission grant rehearing of its November 17 Order.

December 17, 2008

Respectfully submitted,

/s/ Lisa Fink

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ATTACHMENT A

MAINE PUBLIC UTILITIES COMMISSION
AUGUSTA, MAINE

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IN RE:)
)
MAINE PUBLIC UTILITIES COMMISSION) Docket No. 2008-256
) December 2, 2008
)

Petition for Finding of Public Convenience & Necessity to
Construct the Maine Power Connection to Enable Interconnection
of Aroostook Wind Energy Project (MPC)

APPEARANCES:

- CHARLES COHEN, Hearing Examiner
- JAMES BUCKLEY, Maine Public Utilities Commission
- FAITH HUNTINGTON, Maine Public Utilities Commission
- AGNES GORMLEY, Office of the Public Advocate
- JOSEPH DONAHUE, Preti Flaherty, Eastern Maine Electric
Cooperative
- SCOTT HALLOWELL, Eastern Maine Electric Cooperative
- KEN BELCHER, Northern Maine ISA
- PATRICK SCULLY, Bernstein Shur, IEPM, FPL Energy, and Integrys
Energy Services
- ALAN STONE, Houlton Water Company
- JOHN CLARK, Houlton Water Company
- GORDON WEIL, Houlton Water Company
- ANTHONY BUXTON, Preti Flaherty, Industrial Energy Consumer
Group
- NORA HEALY, Verrill Dana, Bangor Hydro-Electric Company
- BRAD BORMAN, Bangor Hydro-Electric Company
- ERIC STINNEFORD, Central Maine Power Company
- KIMBALL KENWAY, Curtis Thaxter, Maine Public Service Company
and CMP
- BRENT BOYLES, Maine Public Service Company
- BILL FERDINAND, Eaton Peabody, ISO-New England
- SEAN MAHONEY, Conservation Law Foundation

1 CONFERENCE COMMENCED (December 2, 2008, 9:02 a.m.)

2 MR. COHEN: Good morning. This is a case management
3 conference in docket number 2008-256, a petition for
4 Certificate of Public Convenience and Necessity filed by Maine
5 Public Service and Central Maine Power Company for -- to build
6 a transmission line, which has been referred to as the MPC or
7 Maine Power Connection. Why don't we begin by taking
8 appearances for the record.

9 MR. DONAHUE: On behalf of Eastern Maine Electric
10 Cooperative, Joe Donahue of Preti Flaherty. Also here is the
11 CEO of Eastern Maine Electric Cooperative, Scott Hallowell.

12 MR. BELCHER: Ken Belcher, Northern Maine ISA.

13 MR. SCULLY: Pat Scully from Bernstein Shur on behalf
14 of IEPM, FPL Energy, and Integrys Energy Services.

15 MR. STONE: Alan Stone on behalf of Houlton Water
16 Company. With me is John Clark and Gordon Weil.

17 MS. GORMLEY: Agnes Gormley with the Public Advocate.

18 MR. BUXTON: Tony Buxton from Preti Flaherty here for
19 the Industrial Energy Consumer Group.

20 MR. BRYANT: Eric Bryant with the Public Advocate.

21 MS. HEALY: Nora Healy from Verrill Dana with Bangor
22 Hydro-Electric.

23 MR. STINNEFORD: Eric Stinneford, Central Maine
24 Power.

25 MR. KENWAY: Kim Kenway from Curtis Thaxter on behalf

1 of Maine Public and CMP. And also here is the president of
2 Maine Public Service Company, Brent Boyles.

3 MR. COHEN: And on the phone I know Brad Borman from
4 --

5 MR. BORMAN: Yes, on the phone, this is Brad Borman
6 from Bangor Hydro-Electric Company.

7 MR. COHEN: Anybody else on the phone? Okay. Prior
8 to the conference we received a motion from EMEC and several
9 other parties asking for a procedural order. I thought that
10 the motion actually was a good -- would be a good framework for
11 discussion of today's -- for today's conference, at least as a
12 start. And my first question, just to the petitioners, with
13 regard to the points noted in the Motion for Procedural Order
14 and as it relates to the letter you filed with the Commission
15 after your filing noting the -- the witnesses. And maybe it
16 would be helpful to go through that, the August 8th letter,
17 Kim?

18 MR. KENWAY: Okay. I've got some matters to go over
19 --

20 MR. COHEN: Okay.

21 MR. KENWAY: -- that might change what your intended
22 course of this --

23 MR. COHEN: Okay.

24 MR. KENWAY: -- conference is.

25 MR. COHEN: Okay. Go ahead.

1 MR. KENWAY: If I could go over that.

2 MR. COHEN: Yeah.

3 MR. KENWAY: As -- as the Commission is aware, we
4 have been pursuing with ISO-New England -- and ISO has actually
5 been managing the study process for the system impact study for
6 the Maine Power Connection and also integrating the Aroostook
7 Wind Energy project. We had expected that the studies would
8 have been completed by now. But not only are they not
9 completed by now, but it looks like they're going to have to
10 continue for a while. Specifically, they've done a preliminary
11 -- what's referred to as a preliminary system impact study
12 which has identified some significant impacts from the system.

13 MR. COHEN: Okay.

14 MR. KENWAY: Now, what I can say about this is
15 constrained by two things. First of all, to get into any
16 details would be to begin to discuss critical energy
17 infrastructure information, which we could do *in camera* and
18 under the Protective Order that's already been entered.

19 MR. COHEN: Okay.

20 MR. KENWAY: Our second constraint is that we are in
21 a confidentiality agreement with Aroostook Wind Energy. And
22 also the ISO is telling us that we can't get into the details
23 of the study without the express permission of Aroostook Wind
24 Energy. So we conferred with them yesterday, and I'm
25 authorized to tell you what I've told you, which is that

1 there's been a preliminary system impact study which has
2 identified significant problems and it's going to take a while
3 to work those out.

4 So our recommendation is that you basically put the
5 case on hold for a while and we would undertake to file a
6 report at the end of January with a status report on where
7 those studies are. It's very unlikely that we'll come back and
8 say the clouds have lifted, we're rolling forward. It's
9 probably going to be we estimate it'll take X more months in
10 order to work these studies out. But our recommendation -- I
11 mean, if you would like us to answer the Examiner's data
12 request, we will. But it's possible that one outcome of these
13 studies is that the configuration of the project changes such
14 that those studies for whom you sought the work papers would
15 have to be re-done and the work papers wouldn't do you a lot of
16 good.

17 MR. COHEN: Okay.

18 MR. KENWAY: It could be that the project goes
19 forward just as proposed, in which case those studies would be
20 good. Perhaps they might need to be updated. But we would not
21 recommend that anybody spend a lot of time on this case right
22 now and for the next probably couple of months until we can get
23 this situation straightened out.

24 In looking at the papers that were filed with respect
25 to the Motions to Dismiss a couple of months ago, the primary

1 concern that we heard from the interveners loud and clear was
2 that they didn't want to spend a whole lot of money litigating
3 a case that was in an uncertain posture. We -- we did not
4 anticipate that there were going to be these problems with the
5 system impact studies as there have been. I'm told part of it
6 is that with the new NERC standards, ISO-New England has ramped
7 up the granularity, if you will, and the strictness of these
8 studies. Also some projects, I'm told, have come online that
9 have had impacts that were discovered after the fact, which has
10 caused ISO-New England to go back and as I -- just like with
11 the NERC standards, ramp up the -- the strictness of these
12 studies. And we're really running into that now. A lot more
13 than that, I really can't say because of the restrictions that
14 I described to you earlier.

15 MS. HUNTINGTON: Can I ask --

16 MR. COHEN: Go ahead.

17 MS. HUNTINGTON: Kim, can I ask a question?

18 MR. KENWAY: Yeah.

19 MS. HUNTINGTON: Is the ISO doing these studies as if
20 the MPC and Aroostook Wind Energy are one project? In other
21 words, they're not -- are they looking at the MPC system impact
22 separately or not?

23 MR. BOYLES: They are not. To my knowledge, they are
24 looking at what happens when you inject 800 megawatts into the
25 system --

1 MR. KENWAY: From a wind project.

2 MR. BOYLES: -- that's a long ways away on the -- you
3 know. When they first started, they looked at what's the
4 minimum to interconnect northern Maine to southern Maine, and
5 you know, they started -- that was -- I don't remember if they
6 called it phase 1 or part A.

7 MR. KENWAY: Part A.

8 MR. BOYLES: But that was a 138-kV line that went
9 from basically the Mullen Houlton to, you know, somewhere and
10 tap the MEPCO lines. They looked at that. And then they went
11 immediately to the 800 megawatts, what would it take to get 800
12 megawatts of wind generation located in various spots in
13 northern Maine.

14 MS. HUNTINGTON: So -- so the problems that they're
15 running into are -- problems I think was your term, Kim -- are
16 not problems that are caused by the MPC. They're caused by the
17 injection of 800 megawatts of wind, is that correct?

18 MR. BOYLES: I think we can say that. Again, we have
19 some pretty strict restrictions, according to ISO-New England,
20 about what we can and cannot say about the studies. And I have
21 to defer to counsel whether he feels comfortable talking about
22 what the problems are.

23 MR. COHEN: Let me just -- my question was going to
24 go to that -- is if we went into *in camera* session with the
25 material covered by the critical energy infrastructure

1 protective order, is that -- are you -- (inaudible) okay or are
2 you --

3 MR. KENWAY: Well, I've said all I've been released
4 to say by Aroostook Wind Energy. And -- and our message from
5 the ISO is if you get into an *in camera* session under a
6 Protective Order, then you can say -- you can discuss -- get
7 into the details as far as the customer. We'll release you to
8 do so. And we were in contact with Aroostook Wind Energy, and
9 we're authorized to say that there's a preliminary system
10 impact study, it's identified some significant problems, and
11 they're working on it.

12 MR. COHEN: Okay.

13 MR. KENWAY: Now, if you would like maybe one way to
14 do this is we could try to file a report under seal in two
15 weeks or something like that that gets into more detail to help
16 you evaluate, you know, where we are.

17 MR. COHEN: Okay.

18 MR. KENWAY: But I'd prefer to do something like
19 that, like, at the end of the month. We might have something
20 more substantive to say. But in the meantime, I wouldn't -- we
21 just don't think it makes sense to have people --

22 MR. COHEN: Okay.

23 MR. KENWAY: -- getting into data requests
24 (inaudible).

25 MR. BUCKLEY: Do you still need Aroostook Wind's

1 permission to file something two weeks from now?

2 MR. KENWAY: I think what we would do is review it
3 with them and secure their permission.

4 MR. COHEN: Go ahead, Alan.

5 MR. STONE: In light of what Maine Public's just
6 revealed, I think it would be appropriate if we would have the
7 opportunity to consult with our clients and with each other and
8 take a break --

9 MR. COHEN: Okay.

10 MR. STONE: -- so that can talk about this before we
11 respond.

12 MR. KENWAY: I think that's reasonable.

13 MR. COHEN: Okay. That's fine. One thing, just to
14 get to a pending procedural matter, there is the impleader
15 still pending that I've got an order drafted. I think it might
16 go out this afternoon. And what's contemplated in there is a
17 supplemental hearing, at which point Aroostook Wind Energy and
18 the petitioners would answer some questions for the Examiner to
19 clarify some issues.

20 MR. STONE: Concerning whether or not they should be
21 impleaded?

22 MR. COHEN: Yes. Okay. Just sort of wanted to
23 inform people of that.

24 MR. KENWAY: Thank you.

25 MR. STONE: I didn't know if Kim was done, though. I

1 didn't mean to interrupt him at all.

2 MR. KENWAY: That's about it, Alan. That's really
3 about it.

4 MR. COHEN: Okay. You want to take ten minutes? Is
5 that good, Alan, or are you --

6 MR. STONE: Perhaps. We'll let you know if we need
7 more.

8 MR. BUCKLEY: -- happens in ten minutes.

9 MR. STONE: What?

10 MR. BUCKLEY: It always takes more than ten minutes.

11 MR. COHEN: We'll say 9:30.

12 MR. BUXTON: We're going to do a system impact study.

13 MR. MAHONEY: So for those of us on the phone, we
14 should call back in at 9:30?

15 MR. COHEN: I think I'll just leave the line on.

16 MR. MAHONEY: Okay.

17 MR. COHEN: Who's on the phone?

18 MR. MAHONEY: This is Sean Mahoney of the
19 Conservation Law Foundation.

20 MR. COHEN: Okay, thanks.

21 CONFERENCE RECESSED (December 2, 2008, 9:13 a.m.)

22 CONFERENCE RESUMED (December 2, 2008, 9:40 a.m.)

23 MR. COHEN: Okay. We're back on the record, and took
24 a break to allow the interveners to caucus. And, Alan, I don't
25 know if you want to respond.

ATTACHMENT B

Aroostook Wind Energy LLC

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THIS IS A VIRTUAL DUPLICATE OF THE ORIGINAL HARD COPY SUBMITTED TO
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INSTRUCTIONS

FILED ELECTRONICALLY ON DECEMBER 8, 2008

Karen Geraghty
Administrative Director
Maine Public Utilities Commission
242 State Street, State House Station 18
Augusta, ME 04333-0018

Re: Central Maine Power Company and Maine Public Service Company
Docket No. 2008-256

Dear Ms. Geraghty:

Maine Public Service Company (MPS) and Central Maine Power Company (CMP) (jointly, the "Project Sponsors") have informed Aroostook Wind Energy LLC (AWE) of the Hearing Examiner's December 2, 2008, procedural order in this docket. AWE has also received the Hearing Examiner's December 3, 2008, order on the August 8, 2008, motion to implead AWE and Horizon Wind Energy (HWE) in the docket. From these orders and other developments in the docket, it is clear that some of the parties have come to consider AWE's proposed wind generation facilities to be a principal subject of the docket. For the reasons discussed below, AWE believes that any such interpretation of the scope of the docket is misplaced and that it is premature to evaluate the interplay of AWE's proposed facilities and the Maine Power Connection (MPC) in any event.

In its November 24, 2008, order in this docket denying the motion to dismiss filed by Eastern Maine Electric Coop, *et al.*, the Commission noted concerns about the reliability and market issues resulting from northern Maine's electrical separation from the rest of New England and that "the competitive situation in northern Maine had gone from worrisome to one of obvious failure." Order at 7. The order also referenced the Commission's legislative report on the matter, noting that "the status quo in northern Maine is unacceptable" and the northern Maine market "is too small and isolated to support a competitive market." *Id.*

At the time it began exploring interconnection with the Project Sponsors, moreover, AWE contemplated individual wind generation projects of 300 MW, 250 MW, 150 MW, and 100 MW. To date, however, the draft system impact studies have evaluated an 800 MW block of capacity and draft studies identify a number of significant issues as explained in the December 5, 2008, submission to the Commission by the Project Sponsors. These issues can affect AWE project generation size and MPC Project costs.

Karen Geraghty
Administrative Director
Maine Public Utilities Commission
December 5, 2008
Page 2

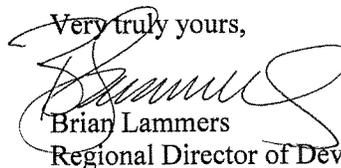
Thus, AWE's project design and interconnection require further study and will likely undergo revision as a result. The original projection of a 2010 start date is no longer operative, and it is not possible at this time to project reliably a new start date. While AWE is committed to addressing the obstacles identified by ISO-NE and the system impact studies, and continues to advance development efforts associated with the project, the characteristics of the project remain unsettled.

Given the foregoing, AWE proposes that this docket be the subject of a "collaborative scoping session" to conform the docket to the priorities identified in the Commission's November 24 order. The Commission can thereby focus on the structural changes needed in the northern Maine market, including the role the MPC can play in such restructuring. With the foregoing as the docket scope, the inquiry does not depend upon the activities of any particular proposed generation development, such as the proposed AWE wind facilities. It does depend, however, on the measures needed to develop adequate transmission facilities that will spur generation development to aid in restructuring the northern Maine market.

The proposal to scope this docket as described above should not be viewed as a lack of commitment by AWE to pursue wind generation in northern Maine. AWE remains committed to resolving the technical issues that have arisen in the course of the system impact studies and its project development activities. To date, AWE has invested millions of dollars in the development of wind generation in northern Maine. It has leased or optioned tens of thousands of acres of land, undertaken a very detailed wind resource assessment of the region, and has submitted interconnection requests for 1200 MW and initiated study of interconnection capacity of 800 MW. For 2009, among other things, it expects to continue comprehensive land acquisition and wind resource analysis efforts.

AWE proposes, then, that the Commission hold a scoping session and restructure the docket as described above. HWE has participated in similar dockets and task forces elsewhere, and is prepared to work with the Commission on such an effort in Maine. AWE further proposes that the Commission discontinue or indefinitely stay its consideration of AWE's proposed wind generation facilities as part of this docket. Finally, given the foregoing disclosures and proposals, AWE requests that the technical conference now scheduled for December 10, 2008, be vacated.

Very truly yours,



Brian Lammers
Regional Director of Development

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 17th day of December, 2008.

/s/ Harry A. Dupre
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