

I. MOTION FOR LEAVE TO ANSWER

Although the Commission's regulations normally do not permit the filing of an answer to an answer,³ the Commission has the authority to waive this prohibition for "good cause."⁴ The Commission has found "good cause" to permit answers when they are otherwise prohibited in various circumstances, including when the answer would ensure a complete record in the proceeding,⁵ provide information helpful to the disposition of an issue,⁶ permit the issues to be narrowed or clarified,⁷ or aid the Commission in understanding and resolving issues.⁸

In the present case, this Answer in response to the CMP Answer will ensure a more complete record in this proceeding and otherwise assist the Commission in understanding and resolving outstanding issues in the case. Therefore, the Maine State Parties have shown "good cause" to submit the instant Answer and respectfully requests that the Commission accept and consider the same.

³ 18 C.F.R. § 385.213(a)(2) (2009).

⁴ *See id.* §§ 385.101(e), 385.213(a)(2).

⁵ *See, e.g., Pac. Interstate Transmission Co.*, 85 FERC ¶ 61,378 at p. 62,443 (1998), *reh'g denied*, 89 FERC ¶ 61,246 (1999); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at p. 61,259 (2000) (allowing answers to a protest in order to "insure a complete and accurate record"); *N. Natural Gas Co.*, 91 FERC ¶ 61,212 at p. 61,767 (2000) (allowing an answer to a protest "to achieve a complete and accurate record").

⁶ *See, e.g., CNG Transmission Corp.*, 89 FERC ¶ 61,100 at p. 61,287 n.11 (1999).

⁷ *See, e.g., PJM Interconnection, L.L.C.*, 84 FERC ¶ 61,224 at p. 62,078 (1998); *New Energy Ventures, Inc. v. S. Cal. Edison Co.*, 82 FERC ¶ 61,335 at p. 62,323 n.1 (1998).

⁸ *See, e.g., Carolina Power & Light Co.*, 94 FERC ¶ 61,032 at p. 61,068 (2000) (allowing an answer to protests when the answer would assist in the Commission's "understanding and resolution of the issues raised"); *El Paso Natural Gas Co.*, 56 FERC ¶ 61,038 at p. 61,139 (1991) (explaining that the utility conceded "that the Commission in its discretion may accept an answer to a request for rehearing in order to have a more complete record on which to base its decision," and allowing the answer because it "will not delay the proceeding or otherwise prejudice any party"). To the extent necessary, the MPUC requests waiver of Rule 213(a)(2).

II. ANSWER

A. CMP's Answer Reveals a Fundamental Misunderstanding of Its Obligation to the Commission and Ratepayers under the FPA and the Commission's Regulations and Precedent.

Rather than providing any additional information to justify its section 205 filing, CMP asserts that it can recover any amount as CWIP as long as it is subject to true-up. This approach is inconsistent both with the Commission's regulations and precedent. First, CMP fails to even verify what the CWIP balance covers. In a footnote, CMP revises its projected CWIP balance to "approximately \$50 million to \$80 million" but fails to describe or document these expenses.

Second, CMP fails to acknowledge that it cannot determine at this time that construction will result before the end of the year. Nor does CMP comment on the new developments in the case, *i.e.*, its agreement to perform additional analyses. Thus, CMP's Answer does not provide any justification for projecting that construction will begin before the end of the year. Accordingly, CMP's "charge now, justify later" approach is not warranted here because there is no reasonable basis for determining that any charge is justified.

B. CMP Misunderstands the Accounting Requirements.

CMP suggests that its approach is consistent with accounting requirements because "[n]o costs will be transferred from Account 183 until construction has started and CMP will strictly adhere to the Commission's Accounting Instructions prescribed by the Uniform System of Accounts." CMP Answer at 12. However, this approach would be acceptable only if MPUC had already issued a Certificate of Public Convenience and Necessity ("CPCN") and the only question was the amount of the cost. CMP utterly fails

to address the actual language of the regulation that allows the transfer of amounts from Account 183 only “[i]f construction results.”⁹ Thus, the regulations do not allow CMP the discretion to guess at whether construction will result and therefore project that the amounts will be transferred and, importantly, collect the amounts as though there had been a determination that construction would result. Thus, CMP is incorrect to suggest that it can project that the expenditures in Account 183 will qualify to be transferred to Account 107 and collect CWIP as though it were certain that construction will commence.

C. The Cases Cited by CMP Do Not Support CMP’s Proposed Implementation of the CWIP Incentive.

CMP asserts that *Southern California Edison Co.*¹⁰ and *Pepco Holdings, Inc.*¹¹ provide support for its effort to recover CWIP even though it has failed to provide the necessary documentation to support CWIP recovery. However, in both of these cases, the utilities provided significantly more supporting information than has CMP. In *Southern California Edison*, the Commission required the utility to give all parties the opportunity to examine the prudence of the CWIP costs and directed Southern California Edison (“SoCal Edison”) to provide a descriptive list of the costs included as CWIP. Even after SoCal Edison submitted a listing of these costs, the Commission directed SoCal Edison to provide additional information. It stated:

In the February Order, we directed SoCal Edison to submit a descriptive list of costs for the Projects that are included as CWIP in rate base. We explained that the purpose of this compliance filing was “to give all parties the opportunity to

⁹ 18 C.F.R. § 367.1830 (2009).

¹⁰ 122 FERC ¶ 61,187 (2008).

¹¹ 125 FERC ¶ 61,130 (2008).

examine the prudence of such costs.” SoCal Edison subsequently filed an eleven page listing of actual expenditures from September 1, 2005 through November 30, 2007 of the costs of the Projects that it included as CWIP in rate base, and related expenses. This listing also included SoCal Edison’s projected CWIP in rate base costs from December 1, 2007 through December 1, 2008. In response to SoCal Edison’s filing, the CPUC protests that this compliance filing does not provide adequate information from which it may examine the prudence of these costs. Our review indicates that although the compliance filing provides costs broken down by project and delineated categories, i.e., Home Office, Materials, Construction, Overheads, and AFUDC, we find that this information is insufficient to allow for the opportunity *to examine the prudence of such costs*. SoCal Edison did not include in its submission workpapers that provide detailed information about each specific category of costs, and we find that this information is necessary to allow the opportunity for such examination. Therefore, we direct SoCal Edison to file workpapers and all other appropriate documentation to support its costs for the Projects.¹²

In comparison to what the Commission required in *Southern California Edison*, CMP’s filing is wholly inadequate. Similarly, in *Pepco Holdings, Inc.*, the utility’s filing provided detailed information on its CWIP accounting procedures. CMP provides neither supporting documentation for its proposed CWIP expenses that would allow the parties to examine the prudence of the expenditures nor detailed information on its accounting procedures.

Here, if the Commission does not reject the filing, it should at the very least suspend the rate, set the matter for paper hearing, and require CMP to provide detailed information to support its proposed CWIP collection and allow parties to examine the prudence of the company’s expenditures, as it did in *Southern California Edison*.

¹² 125 FERC ¶ 61,337 at P 11 (internal citations omitted) (emphasis added).

D. The Regional System Plan Process Does Not Include a Prudence Review.

CMP claims that a project approved through ISO-NE's Regional System Plan ("RSP") is essentially immune from a prudence review of the CWIP expenses CMP.¹³ CMP asserts that the Maine State Parties and others "had ample opportunity to participate" in the RSP process and, therefore, apparently are precluded from raising questions of the prudence of the CWIP expenses in this or later cases.¹⁴

CMP's discussion misapprehends the scope of the current RSP process. In fact, ISO-NE recently made very clear that it does not examine any prudence issues through the RSP process and that it does not have the ability either to determine whether a lower cost alternative to the proposed transmission solution exists, or to require implementation of such a solution.¹⁵ In short, ISO-NE made clear that it does not take on "a regulatory role" in examining alternatives to meet the region's needs and that it has no desire to fulfill such a role.¹⁶ Therefore, contrary to CMP's assertion, the Maine State Parties and market participants did not have the opportunity to examine or contest the prudence of the project through the ISO-NE's RSP process.

Finally, CMP argued that the Maine State Parties have not met their burden in questioning the prudence of CMP's CWIP expenditures. As the Commission has recognized in *Southern California Edison*, however, the opportunity to examine the back-

¹³ See Answer at 14 ("But the MPRP is a result of the ISO-NE RSP, process, a Commission-approved regional planning process. In this context, a prudence challenge is very difficult to make.").

¹⁴ *Id.* at 15.

¹⁵ ISO-NE, Filing of ISO New England Inc. and New England Power Pool in Response to Order No. 719, Docket No. ER09-1051, at 118 (Apr. 28, 2009).

¹⁶ *Id.*

up and work-papers for CWIP is necessary for ratepayers to be able to examine prudence. With a filing as deficient as the one made by CMP, there is no basis upon which ratepayers could make a *prima facie* case of imprudence because CMP has made no effort to provide any documentation of its CWIP expenditures.

E. CMP Has Failed to Provide Any Justification for Reneging on Its Commitment to Not Seek CWIP Unless and Until the MPUC Grants the CPCN.

Both the Maine State Parties and the New England Consumer-Owned Systems (“NECOs”) argued that CMP should not be allowed to renege on its commitment to not collect CWIP unless and until a CPCN is granted by the MPUC. CMP specifically committed that it would “not include any incentives in rates until it receives the CPCN from the Maine PUC.”¹⁷ The Commission memorialized this commitment in its Order conditionally granting CMP’s petition for incentive rate treatment.¹⁸ In their joint Protest in this proceeding, the Maine State Parties urged the Commission to reject CMP’s “bait and switch” behavior because allowing it would “undermine confidence in the Commission’s interest in protecting consumers.”¹⁹ Similarly, the NECOs argued that CMP’s filing should be rejected because it contravenes CMP’s commitment not to include CWIP in rates until it has obtained a CPCN for the MPRP. Nowhere in CMP’s Answer does CMP address these arguments. Instead, it pretends that it never made such a commitment. The Commission should not allow CMP to walk away from its commitment as it seeks to do here.

¹⁷ CMP, Petition for Declaratory Order Authorizing Incentive Rates for the MPRP, Docket No. EL08-74, at 45 (July 1, 2008) (“July 1 Petition”).

¹⁸ *Cent. Me. Power Co.*, 125 FERC ¶ 61, 079, at P 14 (Oct. 20, 2008) (“Incentive Rates Order”).

¹⁹ MPUC, Request for Rejection or, in the Alternative, Protest and Request for Suspension and Paper Hearing, Docket No. ER09-938, at 15 (Apr. 22, 2009).

F. CMP Has Failed to Demonstrate that It Will Be Harmed by Honoring Its Commitment to Await the Issuance of a CPCN by MPUC Before Recovering CWIP.

Not only has CMP failed to even acknowledge its commitment to await a CPCN before recovering CWIP, it also fails to show how it will be harmed by honoring its commitment. CMP stated, “If the proposed revisions do not become effective as of June 1, 2009, CMP may not be able to recover any construction costs properly transferable to FERC Account No. 107 - CWIP on a timely basis if it begins construction anytime before December 31, 2009.”²⁰ However, no party has made an argument that CMP will not have an opportunity to recover these costs if a CPCN is eventually granted. CMP simply would have to wait until June 1, 2010 in the event that a CPCN is granted before December 31, 2009 and construction begins before that date. What CMP asks the Commission to do is to allow CMP to speculate with ratepayers’ money in a manner that is not permitted by the Commission’s regulations. On the other hand, it is consistent with the Commission’s regulations, CMP’s *own commitment*, and good regulatory policy to require CMP to wait until MPUC grants it a CPCN before collecting CWIP. Doing so would cause only a short delay in CMP’s ability to recover CWIP.²¹

Finally, there are other approaches available to CMP for recovery of its pre-certification expenses. As demonstrated in the Maine State Parties’ joint Protest, CMP made clear in its incentive rate filing that it did not require, and was not seeking, incentive treatment to recover preliminary expenditures as they are incurred. Order No. 679, however, allows a utility to expense any pre-certification costs for the “conceptual

²⁰ CMP Answer at 7.

²¹ Further, other New England transmission owners have made clear that, if CMP is allowed to prematurely collect CWIP, they will also seek the right to do so. Comments of Nat’l Grid USA and Ne. Utils. Serv. Co. at 7, Docket No. ER09-938 (Apr. 22, 2009).

stage” of projects. CMP does not explain why this route would not address its concern about “timely” recovery of what appear to be pre-certification expenses.²² Similarly, as also noted in the Maine State Parties’ Protest, CMP could have asked for the creation of a regulatory asset as a means to recover pre-certification expenses. CMP’s Answer does not explain why it has failed to make such a request. Accordingly, even if CMP had justified renegeing on its commitment to wait to recover CWIP until its request for a CPCN was granted, and it has not, it will not be harmed by the rejection of this section 205 filing because CMP has other options for recovering its pre-certification expenses.

G. CMP Has Failed to Demonstrate Any Basis for Making the Changes to Its Local Rates.

CMP’s Answer stated that “[t]he revisions to Central Maine’s formula rate for Local Network Service (“LNS”) allows the inclusion of CWIP in rate base and the implementation of the incentive return on equity (“ROE”) for the Localized PTF and non-PTF portion of MPRP investment *also as provided for in the Rate Incentives Order.*”²³ However, CMP fails to cite to any provision of the Rate Incentives Order allowing the imposition of CWIP on local rates; nor did the Rate Incentives Order grant CMP the right to use of CMP’s local tariff as a dumping ground for all costs that CMP cannot recover under its PTF rate. In fact, as discussed in the Maine State Parties’ joint Protest, CMP discussed only the PTF impact of the incentives: “[s]ince this Project is an investment in PTF, *the revenue requirement impact for the ROE incentive will be included in the RNS rates.*”²⁴ That the Rate Incentives Order did not prohibit CMP from

²² CMP Answer at 7-8.

²³ Answer at 2 (emphasis added).

²⁴ July 1 Petition, Attachment B, Affidavit of Paul A. Dumais at P 44 (emphasis added).

applying the incentives to its local rates reflects the fact that CMP did not *ask* the Commission for such authorization. Instead, it characterized the incentives as applying to PTF. Accordingly, the Commission should reject CMP's attempt to impose incentives on local rates because this request goes beyond the scope of the Rate Incentives Order.

III. CONCLUSION

For the above-stated reasons, the Maine State Parties respectfully request (1) that they be granted leave to answer the CMP Answer, as discussed herein; and (2) that the Commission reject CMP's April 1 Filing, or alternatively suspend the April 1 Filing and set forth procedures for a paper hearing, consistent with this Answer and with the Maine State Parties' April 22, 2009 Protest of CMP's April 1 Filing.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 22nd day of May, 2009.

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