



## **I. PROCEDURAL BACKGROUND**

On April 1, 2009, CMP submitted proposed revisions to the local and regional formula rates contained in Attachment F and Schedule 21-CMP of Section II of the ISO New England (“ISO-NE”) Open Access Transmission Tariff (“ISO-NE OATT”).<sup>1</sup> On April 22, 2009, the MPUC filed its Notice of Intervention and a Request for Rejection, or, in the Alternative, Request for Suspension and Paper Hearing of CMP’s April 1 Filing.<sup>2</sup> On May 7, 2009, CMP filed a Motion for Leave to Answer and Answer and on May 22, 2009, the MPUC and MOPA filed a Motion for Leave to Answer and Answer to CMP’s answer. By letter dated May 28, 2009, FERC’s Director of the Division of Tariffs & Market Development informed CMP that its April 1 filing was deficient, requested additional information from CMP regarding its April 1 filing and stated that the new filing date would be the date that CMP filed the information requested by the Commission.<sup>3</sup> On June 8, 2009, CMP submitted a response to the Deficiency Letter.<sup>4</sup> In spite of the Deficiency Letter’s ruling that the new filing date would be the date of that CMP filed the information missing from its original application, the June 8 Supplemental Filing asks for an effective date of June 1, 2009.

In the MPUC Certificate of Public Convenience and Necessity (“CPCN”) proceeding, CMP has provided additional modeling requested by the MPUC, and this

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<sup>1</sup> *Central Maine Power, Co.*, Docket No. ER09-938, Proposed Revisions to the Local and Regional Formula Rates Contained in Attachment F and Schedule 21-CMP of Section II of the ISO New England Open Access Transmission Tariff, April 1, 2009 (“April 1 filing”).

<sup>2</sup> *Central Maine Power, Co.*, Docket No. ER09-938, Notice of Intervention of the MPUC and Request for Rejection, or, in the Alternative, Protest and Request for Suspension and Paper Hearing (“April 22 filing”).

<sup>3</sup> *Central Maine Power, Co.*, Docket No. ER09-938, Letter from Larry D. Gasteiger to Catherine P. McCarthy dated May 28, 2009 (“Deficiency Letter”).

<sup>4</sup> *Central Maine Power, Co.*, Docket No. ER09-938, June 8, 2009 Transmittal Letter and Responses (“June 8 Supplemental filing”).

modeling is being examined by the parties and the MPUC's advisory staff. In addition, an initial settlement conference has been set for July 2, 2009.<sup>5</sup>

## **II. PROTEST**

### **A. CMP Has Failed To Provide A Detailed Cost Schedule For The MPRP Project For Which It Seeks Construction Work In Progress.**

In its Deficiency Letter, the Commission ordered CMP to, “[p]rovide a detailed cost schedule for the MPRP project under which Central Maine seeks rate base treatment for construction work in progress (CWIP).” Deficiency Letter at 1. CMP’s June 8 filing failed to set forth any detailed cost schedule. Instead, CMP submitted a *cost summary* consisting of forecasted CWIP related expenditures of \$73,611,427 through December 31, 2009. This cost summary sets forth two broad categories of costs: (1) “Pre-2009 Program Costs and (2) Estimated Power Engineers South Gorham Cost. There is no detail provided at all. The schedule states that there are approximately \$28.2 million in pre-2009 program costs but does not even define (and certainly does not describe in detail) what these pre-2009 “program costs” are. Since these are described as “pre-2009” CMP has apparently already spent this money. Therefore, it must have information specifying what it spent the money on. If it refuses to provide this information, in violation of the Commission’s rules, it should not be allowed to collect CWIP money from ratepayers.

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<sup>5</sup> See *Petition for Finding of Public Convenience and Necessity for the Maine Power Reliability Program Consisting of the construction of approximately 350 miles of 345 kV and 115 kV Transmission Lines*, MPUC Docket No.: 2008-255, Procedural Order, June 25, 2009 (“June 25 Procedural Order”) at 2-3. Document available online at MPUC website at: [http://mpuc.informe.org/easyfile/cache/easyfile\\_doc217670.DOC](http://mpuc.informe.org/easyfile/cache/easyfile_doc217670.DOC)

Exhibit 1.A.1 is similarly devoid of information about what kind of items are included in the \$24.3 million of “estimated Power Engineers South Gorham” cost category. It is not clear whether CMP has already spent this money or if it expects to spend the money if the certificate is granted. As in the pre-2009 category, if CMP has already spent the money, it should have the back-up information to show what it spent the money on. The cryptic label for this \$24.3 million of expenses does not provide any kind of useful information and certainly does not constitute a “detailed description.” Moreover, while the spreadsheet provides estimates of the costs of the various components of the MPRP as proposed in the CPCN proceeding, none of these estimates are broken down into cost components; there is none of the information that would be needed to determine the prudence of the expenditures. Of even greater significance however is that the various components listed in the spreadsheet all indicate that construction *is not expected to begin until April of 2010* (except for the expansion of the Gorham substation which CMP indicates is separate from the MPRP). Thus, far from providing support for recovering CWIP in rates beginning in 2009, Exhibit 1.A.1 indicates that CMP should not have requested that the rate filing become effective June 1, 2009, but should have waited until after the CPCN case was concluded to make its filing.

Finally, there is a false precision to Exhibit 1.A.1 because all of the components and estimates are based on the assumption that the MPRP will be approved as proposed in the CPCN proceeding. At this time, however, this assumption is merely *guess work* on the part of CMP. CMP originally had it right when it recognized that it could not recover the incentives unless and until the CPCN was granted. *See Central Maine Power Co., Docket No. EL08-74-000, Motion for Leave to Answer and Answer of Central*

Maine Power, Company, August 18, 2008 (“August 18 Answer”) at 18, *infra* at 8. At this time, the information CMP has provided is by, its very nature, deficient, because the cost estimates provided are for a project that, at the end of the CPCN proceeding could be similar to or significantly different from that proposed (if a CPCN is granted). It is simply not possible for ratepayers to question the prudence of future expenditures for an inchoate project.<sup>6</sup>

The costs of the MPRP are unknown and cannot be assumed, because the scope and cost of the MPRP project remains in flux. The possible outcomes of the MPRP certificate proceedings are that (1) the certificate will be granted for the project as proposed, (2) a certificate will be granted for a modified project, or (3) the certificate will not be granted. Without knowing the scope of the project that may receive a CPCN, it is impossible for CMP to provide any detailed estimates of these costs. Accordingly, CMP’s filing should be rejected.

**B. CMP Has Failed To Identify All Alternatives To The MPRP Being Considered As Well As Information That Demonstrates That The MPRP Is The Least Cost Alternative.**

In its Deficiency Letter, the Commission ordered CMP to identify all alternatives to the MPRP project, their costs and to demonstrate that the MPRP represented the least cost alternative. Deficiency Letter at 1-2. CMP’s June 8 Supplemental filing was non-responsive to this request. Rather than provide information regarding the alternatives, CMP provided the general assertion that the MPRP project was the most cost-effective solution for the long term reliability needs of the Maine Bulk Power System, that it

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<sup>6</sup> See, e.g., *Southern California Edison, Co*, 125 FERC ¶ 61,130 P.11 (2008) (Section 205 filing to collect CWIP must provide detailed back-up information sufficient to allow the opportunity to examine the prudence of such expenditures).

resulted from the ISO-NE regional planning process, and that the MPRP was reviewed and endorsed by ISO-NE's management and it was included as part of ISO-NE's 2000 Regional System Plan ("RSP"). June 8 filing, Tab 1, page 2.

CMP also stated that the MPUC does not require CMP to engage in "integrated resource planning." While this statement is correct, any implication that the MPUC does not require a study of alternatives in a CPCN proceeding is incorrect. The examination of whether there are lower cost alternatives is a *critical* component of the state CPCN proceeding currently pending before the MPUC. Chapter 330 of the MPUC's rules *require* the utility petitioning for a CPCN to provide the following information in its certificate filing.

**6. NEW TRANSMISSION FACILITIES ... (I) Alternatives to construction of transmission line.** The Petitioner shall state whether alternatives including conservation, distributed generation or load management to the proposed transmission line project were investigated. If the Petitioner has investigated alternatives, the petition shall include all studies, reports, or other data relied upon in the investigation of such alternatives and shall clearly state the process by which Petitioner decided upon the proposed construction, rebuilding, or relocation project. Specifically, the Petitioner should state the purposes and benefits of the proposed project (such as the promotion of reliability and line loss reduction) and whether cost-benefit analyses have been performed.

Maine Public Utilities Commissions Rules, Chapter 330, §6 (I). Whether any of the alternatives listed above would meet the need for the proposed transmission will be one of the factors that the MPUC considers in determining whether to grant a CPCN for the MPRP.

CMP asserts that ISO's approval of the MPRP through the regional planning process is "sufficient to demonstrate that the MPPR project represents the least cost alternative." June 8 Supplemental Filing at 5. This statement, on its face, is entirely

inconsistent with ISO-NE's own description of the ISO-NE role in the planning process. ISO-NE made very clear in its recent filings in response to Order 719 that it does *not* examine lower-cost alternatives to transmission and it does not undertake any sort of prudence review:

As the Compliance Filing explained, the ISO Tariff gives ISO-NE responsibility only to plan the transmission system and require transmission construction if a reliability need exists. If the market meets the identified need, through generation, demand response or otherwise, the transmission need determination will be withdrawn. Again *the ISO-NE Tariff does not grant ISO-NE the authority to determine the relative costs and benefits of alternatives to transmission and advocate for the alternative with the "lowest reasonable cost."*<sup>7</sup>

Finally, CMP's reliance on *Northeast Utilities Service, Co.*, 114 FERC ¶ 61,089 (2006), to suggest that the Commission should rely on the information submitted during the ISO-NE planning process is misplaced. In *Northeast Utilities*, the four transmission projects for which CWIP was sought had not only received approval through the ISO-NE review process, *but had also received approval from the Connecticut Siting Council* ("CSC").<sup>8</sup> In fact, in contrast to the circumstances present here, the projects at issue in *Northeast Utilities* had been thoroughly vetted through the state siting process in which the costs and benefits of alternatives had been examined. *See id.* ("NU submits that all of the projects have been reviewed during extensive hearings before the CSC, which included consideration of various alternatives to each of the projects. NU submits further

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<sup>7</sup> *ISO New England, Inc.*, Docket No. ER09-1051-000, Motion for Leave to Answer and Answer of ISO New England, Inc., June 15, 2009, at 39-40 (emphasis original). *See also ISO-NE England, Inc.*, Docket No. ER09-1051-000, Filing of ISO New England Inc. and New England Power Pool in Response to Order No. 719, April 28, 2009, at 118 (stating that examining the relative costs and benefits of alternatives to transmission "would [replace] its function as the operator of regional markets with a regulatory role in which it determines the alternatives that meet the region's needs" and such a requirement would be "a fundamental change its role, and one that it does not seek to fulfill.").

<sup>8</sup> *See Northeast Utilities Service, Co.*, 114 FERC ¶ 61,089 (2006) at ¶10.

that the CSC's review process took into account a number of other factors, such as route alternatives, electric and magnetic field issues, and engineering costs.”)

In the state CPCN proceeding, the MPUC is currently examining additional modeling done by CMP and will then explore the cost-effectiveness of possible alternatives to meet whatever need is determined to exist.<sup>9</sup> Once the MPUC has concluded the CPCN proceeding, there would be some basis for an argument that alternatives have been explored. Until that time, however, CMP’s filing will be deficient. CMP itself earlier recognized in the underlying incentive case that *it could not implement the incentives until it had state commission approval*: “CMP recognizes that construction will not commence until the CPCN is issued *and also that the requested ROE incentive adder and CWIP recovery will not be effective until the CPCN is issued by the Maine PUC.*” *Central Maine Power Co.*, Docket No. EL08-74-000, Motion for Leave to Answer and Answer of Central Maine Power, Company, August 18, 2008 (“August 18 Answer”) at 18 (emphasis added). Accordingly, the Commission should reject CMP’s filing to change its rates to collect CWIP at this time as premature and should hold CMP to its commitment not to seek CWIP in rate base until after the MPRP has received a CPCN.<sup>10</sup>

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<sup>9</sup> Among various alternatives is a proposal from GridSolar, L.L.C. (“Grid Solar”) to build a solar generation project.

<sup>10</sup> *See Cent. Me. Power Co.*, 125 FERC ¶ 61,079 (2008) (“October 20 Order”) at ¶ 14 (“Central Maine commits that it will not include any incentives in its rates until it receives the CPCN from the Maine Commission.”)

**C. CMP Has Failed To Provide The Requested Information Relating To Precertification Expenses Under Account 183 And Has Failed To Justify Recording Any Account 183 Expenses Into Account 107.**

In its Deficiency Letter, the Commission ordered CMP to explain its accounting for precertification costs; indicate whether any such costs are included in Central Maine's forecasted MPRP CWIP; describe when CMP will begin recording precertification costs in Account 107; and provide any justification for recording such costs prior to the start of construction. Deficiency Letter at 3.

In response, CMP stated: "the portion of the costs expected to be transferred to CWIP (Account 107) by year end 2009 from Account 183 – but have not yet been transferred – are currently included in Central Maine's forecasted MPRP Project CWIP, as disclosed in Exhibit No. CMP-102, page 1 at line 7." June 8 filing, Tab 4, page 1. CMP's answer indicates that this amount is \$123.2 million which is inconsistent with the total estimated CWIP for 2009 established under schedule 1.A.1 which sets the estimated CWIP amount at \$73,611,427. Thus, it is unclear what amount is currently in Account 183, the extent of these funds that CMP intends to transfer into Account 107 once construction commences, and critically, what the expenses are for. Most importantly, CMP has failed to justify recording such costs in Account 107 prior to the start of construction. CMP states:

[T]he FERC USofA allows utilities to transfer funds from Account 183 to Account 107 when construction begins. *Utility accounting practices consider a detailed design phase of the project to constitute the beginning of construction.* Therefore, CMP's proposed method of transferring funds is consistent with FERC's USofA.

June 8 filing, Tab 4, page 2 (emphasis added). CMP offers no authority to support its response. Nothing in the text accompanying Account 107 or Account 183 permits a

utility to consider the “detailed design phase” of a project to constitute the commencement of construction. Nor is the operative language “the beginning of construction.” Rather, the plain language accompanying Account 183 allows a utility to roll precertification expenses into Account 107 “if construction results.”<sup>11</sup> As discussed in the MPUC’s prior filings, there can be no determination that “construction will result” until the CPCN is granted. CMP’s effort to avoid compliance with the rule should not be allowed.

**D. The Commission Should Deny CMP’s Request For A Waiver To The Requirements Of 18 C.F.R. § 35.13(h).**

CMP asks alternatively, if its supplemental June 8 filing does not meet the requirements of 18 C.F.R. § 35.13(h), that CMP be granted a waiver from these requirements.

The Commission should deny CMP’s request for a waiver. First, CMP’s request is an impermissible collateral attack on the underlying October 20 incentive order in

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<sup>11</sup> 18 C.F.R. § 101 provides:

**183 Preliminary survey and investigation charges (Major only).**

A. This account shall be charged with all expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of utility projects under contemplation. If construction results, this account shall be credited and the appropriate utility plant account [Account 107] charged. If the work is abandoned, the charge shall be made to account 426.5, Other Deductions, or to the appropriate operating expense account.

18 C.F.R. § 101 (2008).

Docket No. EL08-74.<sup>12</sup> The Commission’s award of incentive rate treatment to CMP for the MPRP was *expressly conditioned* on CMP meeting the Commission’s CWIP requirements under Order 298.<sup>13</sup> CMP did not request rehearing of the Order. CMP should not be permitted to now evade the consumer safeguards set forth in the underlying order. Further, even if the request for the waiver were not a collateral attack on the underlying order, the request is untimely in this case since it was not made on the date of the original filing. The only reason for making the waiver request *now* appears to be CMP’s concern that the Commission may find that its Supplemental June 8 filing fails to cure the deficiency. This concern does not provide justification for granting the waiver of a condition that allows consumers an opportunity to question whether expenditures being placed in rate base are prudently incurred.

**E. Because The Effective Date Of The Proposed Tariff Revisions Can Be No Earlier Than June 8, 2009, CMP’s Filing Should Be Rejected.**

The Deficiency Letter stated that “[t]he information requested in this letter will constitute a supplement to your filing *and a new filing date will be established, pursuant to Duke Power Company, 57 FERC ¶ 61,215 (1991).*” This means that the new filing date will be the date that the deficiency is cured. Thus, *if* the June 8 Supplemental Filing cured the deficiency, the new filing date would be June 8, 2009. However, since the

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<sup>12</sup> See, e.g., *New York Independent System Operator*, 127 FERC ¶ 61,147 at P.16 (2009) (Where parties failed to file rehearing of an order requiring an action, their later criticism of the requirement constituted an impermissible collateral attack on the underlying order). See also *NSTAR Electric Company v. ISO New England, Inc.*, Docket No. EL07-81-000, Order Denying Complaint (Issued September 21, 2007) at ¶ 33 (“Collateral attacks on final orders and relitigation of applicable precedent, especially by parties that were active in the earlier case, thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.”).

<sup>13</sup> See October 20 Order at ¶¶ 13-14.

material filed on June 8, 2009, still fails to cure the deficiency, the filing date has yet to be established. Even assuming, *arguendo*, that the June 8 Supplemental Filing does cure the deficiency, the requested effective date of June 1 still would be impermissible under the FPA because it would *predate* the filing date for the proposed tariff changes.

CMP has made clear that unless its proposed tariff provisions are effective June 1, 2009, the annual updates cannot include the projected CWIP amounts for 2009 because “June 1 is the effective date for formula rate updates reflecting 2008 historical data and forecasted data for 2009.” Motion for Leave to Answer and Answer of Central Maine Power at 7-8. Since the effective date could be no earlier than June 1, 2009, CMP’s filing should be rejected because, in the absence of tariff provisions allowing CWIP into rate base, CMP would not have the right to forecast CWIP in rate base. Rejecting the filing would not prejudice CMP since its June 8, 2009 filing makes clear that MPRP construction is not projected to begin until April 2009. Further, CMP should be directed to await the outcome of the CPCN to re-file its tariff proposals.<sup>14</sup>

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<sup>14</sup> Nothing in this pleading constitutes a waiver of the MPUC’s prior arguments that the provisions relating to CWIP applying to local rates are unauthorized by the October 20 Order in Docket No. EL08-74 and should be rejected as unjust and unreasonable.

**III. CONCLUSION**

For the reasons stated above, the MPUC and MOPA respectfully request that the Commission reject CMP's proposed tariff revisions or, alternatively, find that the June 8 Supplemental Filing fails to cure the deficiencies of the April 1, 2009 filing and order such other appropriate relief as requested above.

Dated: June 30, 2009

Respectfully submitted,

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**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 Augusta, Maine, this 30<sup>th</sup> day of June, 2009.

/s/ Benjamin J. Smith  
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