Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), the Maine Public Utilities Commission (“MPUC”) opposes the request by Central Maine Power Company (“CMP”) dated July 15, 2009 (“July 15th filing”) to answer the MPUC’s protest in the above-captioned docket. Rather than clarify and assist the Commission, the CMP answer provides inaccurate and misleading information. Therefore, as discussed below, CMP has failed to demonstrate “good cause” for the Commission to grant permission to answer protests. If, however, the Commission grants permission for CMP’s July 15th filing, the MPUC respectfully requests that the Commission permit the instant answer because it is necessary to correct a factual misstatement made by CMP in its most recent filing.

In support of the instant pleading, the MPUC states as follows:

I. OPPOSITION TO MOTION FOR LEAVE TO ANSWER OR, ALTERNATIVELY, MOTION FOR LEAVE TO ANSWER

CMP has not shown good cause for allowing it to answer the protests of the MPUC the Maine Public Advocate and the New England Consumer Owned Systems (“NECOs”). Rather, than helping to provide clarity on the issues before the Commission, CMP’s answer contains factual misstatements. Rule 213 of the Commission’s procedural rules specifically
bar an answer to protests “unless otherwise ordered by the decisional authority.” 18 C.F.R § 385.213(a)(2). The Commission has required the showing of “good cause” for the Commission to grant permission for an answer to a protest and has found such good cause where the answer would assure a complete record in the proceeding,¹ provide information helpful to the disposition of an issue,² permit the issues to be narrowed or clarified,³ or aid the Commission in understanding and resolving issues.⁴

CMP’s answer does none of these things. Rather, as discussed below, it misrepresents facts relating to the MPUC’s Certificate of Need and Public Necessity (“CPCN”) proceeding. Because CMP has failed to demonstrate good cause for the Commission to grant permission to answer the protests, CMP’s motion for leave to answer should be denied.

If, however, the Commission grants CMP’s request for leave to answer and considers CMP’s July 15th filing, the MPUC requests that the Commission also accept the following brief answer in order to correct a misstatement made by CMP and in order to ensure a complete and accurate record. The correction of an inaccurate assertion made by CMP demonstrates “good cause” to submit the instant answer and the MPUC respectfully requests that the Commission accept and consider the same.


² See, e.g., CNG Transmission Corp., 89 FERC ¶61,100 at p. 61,287 n. ll (1999).


⁴ See, e.g., Carolina Power & Light Co., 94 FERC ¶ 61,032 at 61,068 (2000) (allowing an answer to protests where 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 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...”),
II.  ANSWER OF THE MPUC

The MPUC takes this opportunity to clarify a factual misstatement made by CMP.

CMP states the following with regard to the state CPCN proceeding for the Maine Power Reliability Project (“MPRP”):

The certificate proceeding, which, under Maine law, is expected to last for six months in most cases, has lasted for almost two years. No party involved in this Project could have anticipated this delay.

July 15th filing at 2. This statement is inaccurate and misleading. Contrary to CMP’s assertion, the CPCN proceeding has been ongoing for one year – a far cry from the “almost two years” alleged by CMP. Of greater significance, however, is CMP’s failure to disclose to the Commission that it assented to the course of the MPUC proceeding which necessitated the performance of additional modeling by CMP.

CMP filed its CPCN Petition on July 1, 2008. On February 11th of this year, after having conducted numerous technical conferences and reviewing thousands of pages of discovery, the MPUC staff expressed concerns to CMP regarding the modeling criteria upon which CMP relied in its petition. Staff recommended an amended schedule whereby CMP would be given additional time to conduct additional analyses based on assumptions developed by the MPUC’s

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5 The statement finds good company among other misleading and disparaging remarks made by CMP which do not merit discussion. See, e.g., CMP July 15 filing at 3 (“...even assuming that the MPUC certificate proceeding would result in further delays in construction or changes to the scope of the project...”).


staff. The additional modeling would be followed by technical conferences through which the
parties and the staff would examine the information developed by CMP. CMP chose to perform
the additional modeling rather than asking the MPUC to decide the case on the basis of the
information supplied in the company’s petition. Specifically, CMP agreed to an amended
schedule in order to conduct these additional analyses. Counsel for CMP made the following
statement with regard to an extended process:

So we would invite the process. We just want to make sure the process moves
along and we can collectively work well to identify what we want to study,
what are the alternatives, and then we will set about doing it. And I -- I really
like and invite the back and forth so we could have a series of technical
conferences where we can then talk about the results and have a meaningful
dialogue.8

In accordance with CMP’s agreement to perform the additional modeling, CMP provided
additional model runs on May 29, 2009. Follow-up technical conferences were held on June
17th and 18th and July 14th. An additional technical conference is scheduled for July 30th.
In addition, one settlement conference was held at the request of CMP and another one is
scheduled for July 30, 2009. Thus, the “back and forth” invited and welcomed by CMP is
continuing to occur and the parties will soon determine whether the additional modeling
performed by CMP will help form the basis of a settlement or additional information in the
litigated case. In any event, CMP’s assertion that the case has lasted two years is untrue, and,
contrary to the implications in CMP’s July 15 filing, CMP has not only been a willing
participant in the course taken in the CPCN proceeding but has, in fact, invited the “back and
forth” information exchange that has occurred to date.

8 See February 11 Transcript at 15.
III. CONCLUSION

For the foregoing reasons, the MPUC opposes CMP’s request to submit its answer to protests. If the Commission chooses to consider CMP’s July 15th answer, the MPUC requests that the Commission consider the above answer and, for the reasons set forth in the MPUC’s protests and answers in this docket, hold CMP to its commitment not seek collection of CWIP until and unless the MPUC grants a certificate in the state CPCN MPRP proceeding.9

Dated: July 30, 2009

Respectfully submitted,

_/s/___________________
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Public Utilities Commission
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9 See CMP Petition for Declaratory Order Authorizing Incentive Rates for the MPRP, Docket No. EL08-74 at 45 (July 1, 2008); see also, Central Maine Power Co., 125 FERC ¶ 61,079 at P 14 (2008) (memorializing CMP’s commitment not to include incentives in rates until CMP receives a CPCN from the MPUC).
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 30th day of July, 2009.

/s/ Benjamin J. Smith
Benjamin Smith
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Public Utilities Commission
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18 State House Station
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