

129 FERC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Central Maine Power Company
Maine Public Service Company

Docket No. EL08-77-001

ORDER GRANTING MOTION TO LODGE AND DISMISSING REHEARING
REQUESTS

(Issued November 19, 2009)

1. Public Parties¹ and the Connecticut and Massachusetts Parties² request rehearing of the Commission's November 2008 Order³ in this proceeding. In that order, the Commission conditionally granted the Maine Companies'⁴ petition for declaratory order and authorized transmission rate incentives pursuant to Order No. 679⁵ and section 219 of the Federal Power Act⁶ for the planned Maine Power Connection Project (Project).

¹ Public Parties consist of: the Maine Public Utilities Commission, the Maine Office of the Public Advocate, the New Hampshire Public Utilities Commission, and the New England Conference of Public Utilities Commissioners, Inc.

² The Connecticut and Massachusetts Parties consist of: the Connecticut Department of Public Utility Control, the Connecticut Office of Consumer Counsel, the Massachusetts Department of Public Utilities, and the Attorney General of the Commonwealth of Massachusetts.

³ *Central Maine Power Co.*, 125 FERC ¶ 61,182 (2008) (November 2008 Order).

⁴ The Maine Companies are Central Maine Power Company and Maine Public Service Company.

⁵ *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).

⁶ 16 U.S.C. § 824s (2006).

The Connecticut and Massachusetts Parties also filed a motion to lodge new evidence in this proceeding. For the reasons discussed below, we grant the motion to lodge and dismiss the rehearing requests.

I. Background

2. In March 2007, the Maine Companies and ISO New England Inc. (ISO New England) conducted a study to determine the feasibility of connecting Maine Public Service Company's northern Maine transmission system to ISO New England⁷ and delivering to ISO New England approximately 800 MW of wind power from the proposed Aroostook Wind Energy Project in northern Maine. Based on the preliminary findings of the feasibility study and some additional analysis, the Maine Companies proposed the Project—a 200 mile, 345 kV transmission line from Limestone, Maine to a Central Maine Power Company interconnection near Detroit, Maine. The Maine Companies also planned to build five new substations and upgrade two existing substations.

3. In July 2008, the Maine Companies submitted a petition for declaratory order requesting a 150-basis point return on equity (ROE) adder for the Project and guaranteed recovery of prudently incurred costs if the Project is abandoned in whole or in part as a result of factors beyond their control (abandonment). The Maine Companies stated that the Project would provide benefits to northern Maine and the New England region. The Maine Companies claimed, for example, that the Project would eliminate supply market problems in northern Maine, reduce the level and volatility of electricity prices in New England, lower energy costs to Maine customers by \$189 million, generate renewable compliance savings of \$47 million, generate production cost savings of \$100 million per year, create jobs and tax revenue in northern Maine, enhance reliability in New England, reduce New England's dependence on natural gas, reduce greenhouse gases, help Maine meet the requirements of its renewable portfolio standard, and create the possibility of a new transmission line that could access up to 10,000 MW of hydroelectric and wind power under development in eastern Canada. The Maine Companies estimated that the Project would cost \$625 million and that its first phase would be in-service by November 2010 and its second and final phase by 2012.

4. The Maine Companies also claimed that the Project would face many risks and challenges, including those associated with acquiring the necessary property rights and regulatory approvals. The Maine Companies cited ISO New England's regional planning process as a unique risk, explaining that the Project is the first project to seek inclusion in

⁷ Currently, Maine Public Service Company's northern Maine transmission system is connected to ISO New England only indirectly, through the New Brunswick, Canada transmission system.

the Regional System Plan as a Market Efficiency Transmission Upgrade, and that many stakeholders opposed granting the designation.

5. Several protesters argued that the Project did not qualify for incentives under section 219 of the Federal Power Act because it would not ensure reliability or reduce the cost of delivered power by reducing transmission congestion. The protesters also argued, *inter alia*, that the petition was premature given the Project's early stage and pending Certificate of Public Convenience and Necessity (CPCN) proceeding before the Maine Public Utilities Commission, and that the Maine Companies failed to establish the required nexus between the Project and the requested incentives.

6. In the November 2008 Order, the Commission rejected the protesters' arguments. The Commission found, however, that the Project did not qualify for a rebuttable presumption of eligibility for incentives under section 219 of the Federal Power Act, and that the Maine Companies failed to make an independent showing that the Project would either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. Consequently, the Commission granted the petition and authorized incentives subject to the conditions that: (1) ISO New England include the Project in its Regional System Plan as a Market Efficiency Transmission Upgrade; and (2) the Maine Companies submit a subsequent filing explaining how the Project's designation as a Market Efficiency Transmission Upgrade satisfies section 219's eligibility requirement.

II. Rehearing Requests and Motion to Lodge

A. Rehearing Requests

7. On rehearing, Public Parties argue, *inter alia*, that the Commission: (1) should have held the petition in abeyance pending the outcome of the CPCN proceeding; (2) failed to address arguments that formula rates reduce the Maine Companies' risk; (3) failed to consider the rate impact of a 150 basis point ROE adder; (4) should have updated the final ROE to reflect changes in market conditions; and (5) should have held an evidentiary hearing to determine the cost of capital. In their rehearing request, the Connecticut and Massachusetts Parties argue, *inter alia*, that the Commission: (1) failed to make the requisite finding that the Project was eligible for incentives under section 219 of the Federal Power Act; (2) ignored evidence that the Project would not enhance reliability, reduce congestion, or improve competition or market efficiency; (3) ignored evidence that the Project is a routine generator interconnection transmission upgrade; (4) erred by finding a nexus between the requested incentives and the investment being made; (5) failed to adequately consider whether the total package of incentives was tailored to the Project's risks and challenges; (6) failed to protect the public interest; (7) infringed on states' authority to make resource adequacy determinations; and (8) failed to consider whether the Maine Companies' technology statement satisfied the requirements of Order No. 679.

B. Motion to Lodge and Answers

8. Following submission of the rehearing requests, the Connecticut and Massachusetts Parties submitted a motion to lodge evidence that, on December 31, 2008, Aroostook Wind Energy notified the Maine Public Utilities Commission that it decided to discontinue the Aroostook Wind Energy Project. The Connecticut and Massachusetts Parties assert that the primary purpose of the Maine Power Connection Project was to connect the Aroostook Wind Energy Project to the grid in southern Maine, and that without the Aroostook Wind Energy Project the Maine Power Connection Project is “effectively dead.”

9. The Connecticut and Massachusetts Parties argue that there is good cause to grant their motion because it presents evidence of a material change in the facts that was unavailable at the time they submitted their rehearing request and that bears directly on the Commission’s rationale for authorizing transmission rate incentives. The Connecticut and Massachusetts Parties assert that it would be unjust and unreasonable for the Maine Companies to continue to incur costs and collect rates for a project that is no longer viable, and suggest that customers who have paid incentive rates for the Maine Power Connection Project may be entitled to refunds at least back to December 31, 2008, the date that Aroostook Wind Energy notified the Maine Public Utilities Commission of its decision to discontinue the Aroostook Wind Energy Project. Finally, the Connecticut and Massachusetts Parties argue that the Commission should not allow the Maine Companies to collect any additional abandonment costs.

10. Houlton Water Company (Houlton) and the Maine Companies filed answers to the motion. The Maine Companies filed an answer to Houlton’s answer. The Maine Companies submitted a subsequent letter seeking to clarify that the Maine Power Connection Project is not cancelled.⁸

11. Houlton supports the motion to lodge and adds that, on February 5, 2009, the Maine Public Utilities Commission dismissed the Maine Companies’ CPCN proceeding. Houlton reminds the Commission that it authorized incentives for the Maine Power Connection Project subject to the conditions that: (1) ISO New England include the Project in its Regional System Plan as a Market Efficiency Transmission Upgrade; and (2) the Maine Companies submit a subsequent filing explaining how the Project’s designation as a Market Efficiency Transmission Upgrade satisfies the incentive eligibility requirements of section 219 of the Federal Power Act. Houlton argues that with both the cancellation of the Aroostook Wind Energy Project and the dismissal of the CPCN proceeding, the Maine Power Connection Project no longer exists, and,

⁸ Although not responsive to any pleading in the record, and therefore not strictly an answer, we will treat the letter as an answer to an answer.

consequently, neither condition can ever be satisfied. Houlton maintains, therefore, that the Commission should withdraw the incentives and clarify that transmission customers are not responsible for abandonment costs. Houlton also contends that the Maine Power Connection Project was a generator lead line, and that under the Commission's generator interconnection rules, Aroostook Wind Energy should bear the costs of any system impact studies.

12. In their answer to the motion, the Maine Companies state that they are going forward with the Maine Power Connection Project despite the cancellation of the Aroostook Wind Energy Project and the dismissal of the CPCN proceeding. The Maine Companies explain that they continue to pursue regional and local approval for the Project and plan to reapply for a CPCN at some future date. The Maine Companies also state that they are considering various ways to reformulate the Project, including but not limited to: (1) modifying the Project's physical parameters (e.g. extending the Project to Canada); and (2) evaluating alternatives to seeking designation as a Market Efficiency Transmission Upgrade (e.g. considering a participant-funded approach rather than seeking region-wide cost allocation). Additionally, the Maine Companies dispute the claim that the Project is merely a generator interconnection upgrade.

C. Commission Determination

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁹ prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the Maine Companies' answers to the answer and will, therefore, reject them.¹⁰

14. We grant the motion to lodge. The Connecticut and Massachusetts Parties have demonstrated good cause for granting the motion. Specifically, the Connecticut and Massachusetts Parties have presented the Commission with information about a material change in the facts that the Commission relied on in reaching its decision to conditionally authorize incentives and that was not available at the time they filed their rehearing request—namely, the cancellation of the Aroostook Wind Energy Project.

15. In light of the cancellation of the Aroostook Wind Energy Project, and also in light of the Maine Public Utilities Commission's subsequent dismissal of the CPCN proceeding, we find that the Maine Power Connection Project, as described in the petition for declaratory order, has ceased to exist. We recognize that the Maine Companies have

⁹ 18 C.F.R. § 385.213(a)(2) (2009).

¹⁰ Specifically, we reject the Maine Companies' answer to Houlton's answer and their subsequent letter answer. We accept, however, their answer to the motion.

expressed an intent to go forward with some modified version of the Maine Power Connection Project; however, without the Aroostook Wind Energy Project, any redesigned Maine Power Connection Project will differ significantly from the Project described in the petition for declaratory order and for which the Commission authorized incentives in the November 2008 Order. The Maine Companies themselves implicitly acknowledge this reality, as they admit that they are considering significant changes to the Project's physical parameters and method of funding.

16. In addition to satisfying the eligibility requirement of section 219 of the Federal Power Act, an applicant for incentives under Order No. 679 must demonstrate that there is a nexus between the incentive sought and the investment being made. The nexus test is fact-specific and requires the Commission to review each application for incentives on a case-by-case basis.¹¹ Any redesigned Maine Power Connection Project will involve facts different from those described in the petition for declaratory order. Consequently, if the Maine Companies do, in fact, redesign the Maine Power Connection Project and want a transmission rate incentive pursuant to Order No. 679 for their redesigned project, they must submit a new filing that demonstrates a nexus between their redesigned project and the requested incentives and satisfies the other requirements of Order No. 679.

17. In light of our finding that the Maine Power Connection Project, as described in the petition for declaratory order, has ceased to exist, we find that Public Parties' and the Connecticut and Massachusetts Parties' requests for rehearing of the November 2008 Order have been overtaken by subsequent events. Therefore, we dismiss the requests for rehearing.

18. Finally, in its answer to the motion to lodge, Houlton argues that the Commission should clarify that the Maine Companies are not entitled to an abandonment incentive because the Project did not satisfy the conditions for incentives that the Commission established in the November 2008 Order, and because the Project is a generator lead line subject to the Commission's generator interconnection rules. Similarly, the Connecticut and Massachusetts Parties suggest in their motion that the Commission should not allow abandonment-related costs associated with the Project beyond a certain date.

¹¹ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 24; *Baltimore Gas & Electric Co.*, 120 FERC ¶ 61,084, at P 47, *order granting incentive proposal*, 121 FERC ¶ 61,167 (2007), *order denying reh'g*, 122 FERC ¶ 61,034, *order denying rehearing*, 123 FERC ¶ 61,262 (2008).

19. In Order No. 679-A, the Commission clarified that rate mechanisms to recover abandoned plant costs “have been found previously to be just and reasonable under the Commission’s authority pursuant to section 205”¹² and “may be needed (and requested) in advance of a project being approved through a regional planning process or receiving any necessary siting approvals.”¹³ The Commission further stated that “where an applicant has satisfied our nexus requirement and has been granted authority to recover ... abandoned plant, and subsequently the applicant’s project is, for example, unable to obtain state or federal siting authority (and thus no showing is made with respect to ensuring reliability or reducing the cost of delivered power by reducing congestion because the applicant was relying on those processes), we would not require refunds for the costs already prudently incurred by the applicant.”¹⁴ The Commission explained that “[t]o require refunds in such circumstances would be contrary to our long-standing policy, which permits recovery of all prudently incurred costs.”¹⁵

20. In the November 2008 Order, the Commission authorized the abandonment incentive subject to the conditions that: (1) ISO New England include the Project in its Regional System Plan as a Market Efficiency Transmission Upgrade; and (2) the Maine Companies submit a subsequent filing explaining how the Project’s designation as a Market Efficiency Transmission Upgrade satisfies section 219’s eligibility requirement. The Maine Companies have not satisfied those conditions and, for that reason, may not recover costs pursuant to the conditionally granted abandonment incentive. Nonetheless, as discussed in the above-quoted statements from Order No. 679-A and the pre-Section 219 Commission precedent cited therein, the Maine Companies may submit a section 205 filing seeking to recover prudently incurred, abandonment-related costs associated with the Project. The Maine Companies have not submitted such a filing. Therefore, we find Houlton’s and the Connecticut and Massachusetts Parties’ arguments with respect to abandonment-related costs to be premature.

¹² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115 (citing *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 58-61, *reh’g denied*, 113 FERC ¶ 61,143, at P 9-15 (2005); *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,068, 61,081-83, *order on reh’g*, 43 FERC ¶ 61,285 (1988); *Public Service Co. of New Mexico*, 75 FERC ¶ 61,266, at 61,859 (1996), *order approving settlement*, 87 FERC ¶ 61,040 (1999)).

¹³ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

¹⁴ *Id.* P 116.

¹⁵ *Id.*

The Commission orders:

The motion to lodge is hereby granted and the requests for rehearing of the November 2008 Order are hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.