

144 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Maine Public Service Company	Docket Nos. ER12-1650-000 ER12-1650-001 ER12-1650-002 EL12-76-000 EL12-76-001
MPS Customer Group	EL12-84-000

v.

Maine Public Service Company

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 8, 2013)

1. In this order, the Commission approves an uncontested joint offer of settlement (Settlement) filed by Maine Public Service Company (MPS) among itself and Houlton Water Company (HWC), Van Buren Light and Power District (Van Buren), Eastern Maine Electric Cooperative, Inc. (EMEC), the Maine Public Utilities Commission (Maine Commission), and the Office of Maine Public Advocate (Maine Public Advocate).

I. Background

2. On April 30, 2012, in Docket No. ER12-1650-000, MPS submitted certain revisions to its formula rate and formula rate protocols, which are contained in its open access transmission tariff (OATT), with a requested effective date of July 1, 2012. On June 28, 2012, the Commission issued an order accepting the proposed revisions, suspending them for a nominal period to become effective July 1, 2012, subject to refund, and set them for hearing and settlement judge procedures.¹

¹ *Maine Public Service Company*, 139 FERC ¶ 61,262 (2012) (June 28 Order).

3. In addition, the Commission held that it would institute an investigation under section 206 of the Federal Power Act (FPA)² “with respect to the justness and reasonableness of MPS’ proposed rate decrease in Docket No. EL12-76-000.”³ The Commission established a refund effective date of July 6, 2012 in the assigned Docket No. EL12-76-000, the date that notice of the Commission’s investigation was published in the *Federal Register*.⁴ The Commission also consolidated Docket Nos. ER12-1650-000 and EL12-76-000 for purposes of hearing and decision. The Commission expressly excluded from this consolidated proceeding the issue of the justness and reasonableness of MPS’ return on equity (ROE) contained in its formula rate.⁵

4. On July 13, 2012, in Docket Nos. ER12-1650-001 and EL12-76-001, HWC filed a request for rehearing of the June 28 Order, seeking rehearing of the Commission’s decision to exclude the ROE from issues subject to the consolidated proceeding. Also on July 13, 2012, Maine Public Advocate, HWC, and Van Buren jointly filed a complaint seeking to reduce the ROE in Docket No. EL12-84-000. Both the rehearing request and the complaint are pending.

II. Settlement

5. On March 5, 2013, MPS submitted the Settlement which resolves all issues related to the proposed revisions to MPS’s OATT set for hearing in the consolidated proceeding in Docket Nos. ER12-1650-000 and EL12-76-000 and pending in Docket Nos. ER12-1650-001, ER12-1650-002, EL12-76-001, and EL12-84-000.

6. On March 25, 2013, Commission Trial Staff filed comments supporting the Settlement, stating that it represents a fair and reasonable resolution of the issues. Commission Trial Staff notes, however, that under the Settlement, MPS will base its rates on historical costs as reflected in its FERC Form No. 1, but will use projected costs for plant-addition. Commission Trial Staff posits that this practice does not follow Commission policy on using synchronized test periods for both rates and plant addition. On April 2, 2013, MPS filed reply comments and on April 3, 2013, HWC, Van Buren, EMEC, the Maine Commission, and the Maine Public Advocate filed reply comments, supporting the certification of the Settlement by the presiding judge to the Commission. Notwithstanding the policy issue raised by Trial Staff, the reply comments noted that the Commission had approved settlements where synchronization was not strictly adhered to

² 16 U.S.C. § 824e (2006).

³ June 28 Order, 139 FERC ¶ 61,262 at P 36.

⁴ 77 Fed. Reg. 40,032 (July 6, 2012).

⁵ June 28 Order, 139 FERC ¶ 61,262 at P 37.

but found that such an approach was not *per se* unjust and unreasonable.⁶ They add that the Commission determination “should not go so far as to disrupt the delicate balance of the Settlement.”⁷

7. No comments opposing the Settlement were filed and, on April 15, 2013, the settlement judge certified the Settlement to the Commission as uncontested.

8. Article 3.4.1, provides that the ROE will be set at 9.75 percent, to be updated in a section 205 filing with the Commission in May 2015.

9. Article 5.7 provides that the “standard of review for any proposed changes sought by any party to the terms of the [Settlement] shall be the ‘public interest’ standard of review . . . and the standard of review for any changes proposed by a non-party or the Commission acting *sua sponte* shall be the ordinary just and reasonable standard of review, not the public interest standard of review.”

10. Article 4 provides that within ten (10) days of the Settlement’s effective date, upon the issuance of this Commission order, HWC shall withdraw its July 13, 2012 request for rehearing filed in Docket Nos. ER12-1650-001 and EL12-76-001, and Maine Public Advocate, HWC, and Van Buren, shall withdraw their July 13, 2012 complaint filed in Docket No. EL12-84-000.

III. Discussion

11. The Settlement resolves all issues in dispute in these proceedings. The Settlement appears to be fair, reasonable and in the public interest and is hereby approved. While Trial Staff raises concerns regarding possible policy implications from approving the Settlement, the Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue involved in this proceeding.⁸ The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA, 16 U.S.C. § 824e (2006).

⁶ MPS Reply Comments at 3.

⁷ Intervener Reply Comments at 1.

⁸ *See, e.g., Okla. Gas & Elec. Co.*, 127 FERC ¶ 61,296 (2009) (approving settlement but noting order does not set precedent where formula rate uses a projection for transmission additions by estimating the 13-month transmission rate base balances for the current rate year, but actual costs of service incurred during a prior rate year). *See also, PPL Elec. Utils. Corp.*, 128 FERC ¶ 61,178 (2009) (approving settlement under which PPL’s formula rate uses actual cost incurred for the preceding year, with a projection of capital additions for the coming year).

12. Pursuant to the requirements of Order No. 714, a compliance filing in e-Tariff format is required to reflect the Commission's action in approving settlement orders.⁹ The revised tariff sheets should also include the corrections that were reflected in MPS's annual transmission rate informational filing submitted in Docket No. ER12-1650-002 on May 1, 2013. The Commission advises MPS that annual updates in forthcoming years should be submitted for informational purpose only, in Docket Nos. ER12-1650-000, *et al.* Upon receipt, the Commission will not act or notice the informational filing because the formula rate implementation protocols provide specific procedures for notice, review, and challenges to the annual update. Therefore, the Commission directs MPS to file within 30 days of the date of this order, revised tariff records in e-Tariff format to be effective July 1, 2012 (the effective date provided for in the June 28 Order).

The Commission orders:

(A) The Settlement is hereby approved, as discussed in the body of this order.

(B) MPS is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).