

2. For the reasons discussed below, we deny rehearing and the alternative request for consolidation with the ongoing proceedings in Docket Nos. EC10-67-002, *et al.*, accept the compliance filing, and direct Emera Maine to file a refund report.

I. Rehearing Request

3. Emera Maine argues that the June 2016 Order erred in two respects: (1) by determining that “Mistakes” identified by the Maine Customer Group (Customer Group), and not those identified by Emera Maine, are entitled to be corrected for the 2014-2015 Rate Year; and (2) by determining that the capital structure changes resulting from Emera Maine’s debt refinancing should not be reflected in Emera Maine’s transmission rates and, instead, requiring Emera Maine to impute the retired debt balance into the capital structure calculation for the 2014-2015 Rate Year.⁵ Emera Maine asserts that, if the Commission does not grant rehearing and dismiss this second issue, it should set it for hearing and settlement procedures in the ongoing proceeding in Docket Nos. EC10-67-002, *et al.*

A. Interpretation of Maine Public Open Access Transmission Tariff Protocols (MPD OATT Protocols)

1. Background

4. On November 18, 2014, the Customer Group filed a Formal Challenge to Emera Maine’s Maine Public District (MPD) 2014 Annual Update to its formula transmission rate.⁶ The Formal Challenge alleged that the 2014 Annual Update erred by: (1) omitting long-term debt from Emera Maine’s capital structure, which resulted in an artificially inflated equity ratio (approximately 81 percent) and inflated rates to the Customer Group; (2) including \$11,853 in the amortization of long-term debt costs related to a short-term revolving credit facility; (3) making two errors in the amounts included for post-retirement benefits other than pensions and revenue credits; (4) using a federal income tax rate of 35 percent, instead of 34 percent; (5) including the cost of the Flo’s Inn

(filed July 5, 2016) (July 2016 Compliance Filing).

⁵ Emera Maine Rehearing Request at 1.

⁶ Maine Customer Group Formal Challenge to 2014 Annual Update of Emera Maine Formula Rate, ER12-1650 (filed November 18, 2014) (Formal Challenge).

transformer; and (6) including the amortization of prior actuarial losses associated with pension and retiree medical benefit plans.⁷

5. In its Answer to the Formal Challenge, Emera Maine agreed that the errors raised by the Customer Group regarding the amortization of long-term debt and amounts included for post-retirement benefits other than pensions and revenue credits were inadvertent and should be corrected.⁸ Emera Maine also raised a new error—the erroneous inclusion of non-zero values for end-of-year preferred stock issuances.⁹

6. The June 2016 Order granted the Customer Group’s Formal Challenge pertaining to amortization of long-term debt costs, post-retirement benefits other than pensions and revenue credits, and the omission of long-term debt (issues one through three), but set the remaining issues (issues four through six) for hearing and settlement judge proceedings.¹⁰ The June 2016 Order found the errors raised by the Customer Group in the Formal Challenge with respect to the amortization of long-term debt costs and post-retirement benefits other than pensions and revenue credits were encompassed by the definition of “Mistake” in the Formula Rate Implementation Protocols (Protocols) currently included in Attachment J under Emera Maine’s Open Access Transmission Tariff for the Maine Public District (MPD OATT),¹¹ which are to be corrected in the Annual Update for the next Rate Year.¹² The Commission found, however, that the Protocols permit a challenge to formula inputs – as occurred here – and allow for the changes from successful challenges to be corrected in the current Annual Update.¹³ Accordingly, the

⁷ *Id.* at 1-2.

⁸ Emera Maine Answer to Formal Challenge, Docket No. ER12-1650-000, at 16-17 (filed December 18, 2014) (Emera Maine Answer to Formal Challenge).

⁹ *Id.*

¹⁰ June 2016 Order, 155 FERC ¶ 61,233 at P 19.

¹¹ The Protocols defined “Mistake” as “errors or omissions regarding the values inputted into the Attachment J Formula, such as, but not limited to, arithmetic and other inadvertent computational errors, erroneous FERC Form No. 1 references or the like.” Emera Maine, Pro Forma Open Access Transmission Tariff for the Maine Public District, Attachment J Protocols, Section IV.E, Resolution or Challenges (Attachment J Protocols).

¹² June 2016 Order, 155 FERC ¶ 61,233 at P 24.

¹³ *Id.* (citing Attachment J Protocols, Section III.B.2).

Commission directed that they be corrected for the 2014-2015 Rate Year.¹⁴ Conversely, the June 2016 Order found that the non-zero value error raised by Emera Maine fell within the definition of “Mistake,” but did not also constitute a challenged input. Accordingly, the correction must await inclusion in Emera Maine’s Annual Update for the next Rate Year.

2. Rehearing Arguments

7. On rehearing, Emera Maine argues that the errors raised by the Customer Group and Emera Maine should be treated similarly and that the Commission’s interpretation of the MPD OATT leads to inequitable results.¹⁵ Specifically, Emera Maine contends that the errors identified by the Customer Group should be treated like other “Mistakes,” with refunds paid or surcharges collected in Emera Maine’s Annual Update for the 2017-2018 Rate Year.¹⁶ Emera Maine asserts that the Commission’s different treatment of the errors raised by the Customer Group and Emera Maine violates the filed tariff and the Commission does not provide a reasoned basis for its departure from the terms of the MPD OATT’s plain language.¹⁷

3. Commission Determination

8. We disagree with Emera Maine and find the June 2016 Order properly applied the MPD OATT Protocols, which permit the errors raised by the Customer Group to be treated differently than the error raised by Emera Maine.¹⁸ As explained in the June 2016 Order, the definition of “Mistake” encompasses – but is not limited to – erroneous inputs to formula rates. The Protocols permit different treatment of the errors based upon how and when the errors at issue were raised.¹⁹

¹⁴ *Id.*

¹⁵ Emera Maine Rehearing Request at 6-8.

¹⁶ *Id.*

¹⁷ *Id.* at 7-8.

¹⁸ Attachment J Protocols, IV - Resolution of Challenges, Section E.

¹⁹ *See* June 2016 Order, 155 FERC ¶ 61,233 at P 24 (citing Attachment J Protocols, IV - Resolution of Challenges, Sections III.B.2, IV.H).

9. Here, the amortization of long-term debt costs and post-retirement benefits were included in the Customer Group's timely Formal Challenge. Therefore, the Commission appropriately directed the corrections resulting from this successful Formal Challenge to be made for the 2014-2015 Rate Year of the Annual Update, consistent with Sections III.B.2, IV.E, and IV.H of the Protocols. In contrast, the non-zero value error was not raised by Emera Maine as a Formal Challenge to the formula rate, nor was it raised within the timeframe for such challenges.²⁰ The issue could thus only be characterized as "Mistake" and, pursuant to Section IV.E of the Protocols, be corrected for the Annual Update for the next Rate Year.²¹ Thus, we affirm that the June 2016 Order properly interpreted the MPD OATT Protocols.

B. Capital Structure

1. Background

10. On July 18, 2013, the Commission authorized a merger between Bangor Hydro Electric Company (Bangor Hydro) and Maine Public Service Company (Maine Public), with the surviving entity renamed Emera Maine (Merger).²² In the Merger Order, the Commission accepted Emera Maine's "commitment to hold harmless transmission and wholesale customers from transaction-related costs for a period of five years, consistent with Commission precedent."²³ The Commission interpreted the hold harmless commitment "to apply to all transaction-related costs, including costs related to consummating the [Merger] and transition costs (both capital and operating) incurred to achieve merger synergies."²⁴ The Commission found that Emera Maine provided "adequate assurances that the [Merger would] not have any adverse effect on

²⁰ *Id.*

²¹ *See* Attachment J Protocols, Section IV.E ("Corrections of mistakes in Transmission Provider's FERC Form No. 1 and specific data applied in Attachment J Formulas, and any resulting refunds or surcharges, shall be reflected in the Annual Update for the next effective Rate Year, with interest determined in accordance with 18 C.F.R. § 35.19a.").

²² *Bangor Hydro Electric Co.*, 144 FERC ¶ 61,030 (2013) (Merger Order). For the sake of clarity, we will refer to the actions of Bangor Hydro and Maine Public prior to the Merger as actions of Emera Maine.

²³ *Id.* P 20.

²⁴ *Id.*

jurisdictional transmission rates...”²⁵ and that “no wholesale power customers [would] be affected by [the Merger].”²⁶ The Merger Order directed Emera Maine, if it sought to recover transaction-related costs in an existing formula rate, to file a compliance filing in the section 205 docket in which the formula rate was approved by the Commission, as well as in the Merger Order’s section 203 docket, Docket No. EC13-81-000.²⁷

11. Prior to the Merger, Maine Public had two series of tax-free bonds recorded on its books equaling \$22.6 million.²⁸ The June 2016 Order explained that the Merger necessitated “[t]he refinancing of the tax-exempt bonds ... since, after the transaction closed, Bangor Hydro and Maine Public would be operating in more than two counties in the State of Maine and the bonds would lose their tax-exempt status.”²⁹ Emera Maine explained that it was also required to terminate its interest rate swaps, with payment to the financial institution to make it whole for the fair value of the financial investment as part of the refinance.³⁰

12. The refinance and termination of the interest rate swaps impacted Emera Maine’s computation of its weighted average cost of capital. Specifically, in order to refinance the tax-free bonds and terminate the interest rate swaps, Emera Maine borrowed \$25.6 million under a new short-term unsecured non-revolving credit facility. Because the \$25.6 million credit was short-term debt (and the computation of the weighted average cost of capital does not include short-term debt), the amount of long-term debt in the weighted average cost of capital included only half of the \$22.6 million in tax free bonds (because the average of beginning and end of year balances is used), and nine months of interest and interest rate swap costs (because the average of beginning and end of year balances is used).³¹ The cost of long-term debt for wholesale customers

²⁵ *Id.* P 19.

²⁶ *Id.* P 18.

²⁷ *Id.* P 21.

²⁸ Emera Maine Answer to Formal Challenge, Exhibit 1: Affidavit of Peter Dawes 2-3 (Dawes Aff.).

²⁹ June 2016 Order, 155 FERC ¶ 61,233 at P 25 n.42.

³⁰ Emera Maine Answer to Formal Challenge, Dawes Aff. at 3.

³¹ *Id.* at 3-4.

increased from 4.9 percent for the 2013-2014 Annual Update Rate Year to 7.2 percent for the 2014-2015 Rate Year.³²

13. The June 2016 Order determined that the refinancing would increase transmission rates for customers, in contrast to Emera Maine's representations in its application for approval of the Merger and the Commission's findings in the Merger Order.³³ To remedy the effect on rates, the Commission directed Emera Maine to impute the retired debt balance for the tax-free Maine Public bonds, totaling \$22.6 million, into the capital structure calculation for the 2014-2015 Rate Year.³⁴ The Commission found that this resolution would protect customers from the rate increase caused by the Merger and more closely replicate the capital structure that would have existed if the Merger had not required the refinancing of the Maine Public bonds.³⁵

2. Consistency with Audit Findings

a. Rehearing Arguments

14. On rehearing, Emera Maine argues that the June 2016 Order is inconsistent with the audit report which addresses Emera Maine's compliance with the conditions established in the Merger Order (Audit Report).³⁶ Specifically, Emera Maine argues that it properly accounted for its costs and should be permitted to use its actual capital structure when calculating transmission rates because the Audit Report did not recommend or pursue corrective action against Emera Maine regarding the treatment of the short-term changes to its capital structure due to its refinancing.³⁷

³² *Id.*

³³ June 2016 Order, 155 FERC ¶ 61,233 at P 35.

³⁴ *Id.* P 32.

³⁵ *Id.*

³⁶ Emera Maine Rehearing Request at 10-11 (citing Audit of Emera Maine's Compliance with the Order Authorizing Disposition of Jurisdictional Facilities, Docket No. PA15-4-000 (Jan. 4, 2016) (Audit Report)).

³⁷ *Id.* at 11.

b. Commission Determination

15. We do not find any inconsistencies between the June 2016 Order and the findings from the Audit Report, which evaluated Emera Maine's compliance with the Commission's conditions established in the Merger Order.³⁸ The Audit Report did not address the capital structure concern at issue here because it was a contested matter in an ongoing section 205 proceeding. The Commission's practice, which was followed here, is to exclude such ongoing matters from audits.³⁹ This allows the Commission to avoid prejudging matters in a section 205 proceeding which are also under review in an audit, and vice versa, unless and until reviewed in a formal and/or delegated order of the Commission.⁴⁰ Thus, the Audit Report's silence on the changes to Emera Maine's capital structure did not amount to implicit approval of Emera Maine's use of capital structure, nor was it a dismissal of the issue. Furthermore, the capital structure issue raised by the Customer Group was addressed in the context of this section 205 proceeding, Docket No. ER12-1650, *et al.*⁴¹ This forum included notice and comment procedures, and consequently, participation from the Customer Group, which would otherwise not have been available if the issue had been addressed in the context of the audit. Accordingly, we find the Commission's decision to address the capital structure issue separate from the audit is a reasonable exercise of administrative discretion in managing pending proceedings before the Commission.⁴² For these reasons we do not find that the June 2016 Order is inconsistent with the Audit Report.

³⁸ Audit Report at 1.

³⁹ See *PPL Electric Utilities Corp.*, 149 FERC ¶ 61,231, at P 15 (2012) ("we clarify that matters under review in the present docket shall not prejudice matters under review in the PPL Audit, and *vice versa*, unless and until reviewed in a formal and/or delegated order of the Commission").

⁴⁰ *Id.*

⁴¹ June 2016 Order, 155 FERC ¶ 61,233 at PP 25-39.

⁴² *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 520 (1978) (*Vermont Yankee Nuclear Power Corp.*) (agencies have broad discretion over the formulation of their procedures); *Telecomm. Resellers Assoc. v. FCC*, 141 F.3d 1193, 1196 (D.C. Cir. 1998) (*Telecomm. Resellers Assoc.*); *Michigan Public Power Agency v. FERC*, 963 F.2d 1574, 1575, 1578-79 (D.C. Cir. 1992) (*Michigan Public Power Agency*) (Commission has discretion to mold its procedures to the exigencies of the particular case); *City of Lafayette, Louisiana v. SEC*, 454 F.2d 941, 953-55 (D.C. Cir. 1971) (*City of Lafayette*)(same).

3. Fair Notice Doctrine

a. Rehearing Arguments

16. Emera Maine argues that the Commission's determination that Emera Maine cannot use its actual capital structure for purposes of setting its transmission rates and must instead impute the retired debt balances into its capital structure calculation violates the fair notice doctrine, which requires that regulated entities be given fair notice of forbidden conduct.⁴³ Emera Maine argues that it filed its 2014-2015 Annual Update on May 1, 2014, and that the Commission had not provided guidance with respect to merger conditions by that time. Moreover, Emera Maine argues that the Commission never defined "transaction-related costs" in the context of a hold harmless commitment to include the retirement of long-term debt and resulting short-term change in capital structure.⁴⁴ Emera Maine asserts that the Commission cannot penalize it for properly applying its formula under these circumstances, particularly when Commission guidance on merger conditions was issued over two years after Emera Maine's filing.⁴⁵

b. Commission Determination

17. As a threshold matter, Emera Maine is incorrect in suggesting that the Commission defined "transaction-related costs" in the context of a hold harmless commitment to include the retirement of long-term debt and resulting short-term change in capital structure.⁴⁶ In the June 2016 Order, the Commission explicitly found "the rate increase resulting from the refinancing is not a transaction-related cost that should be subject to the hold harmless commitment the Commission accepted in the Merger Order."⁴⁷

18. The Commission's direction for Emera Maine to impute the retired debt balances into its capital structure calculation was not due to the application of Emera Maine's hold

⁴³ Emera Maine Rehearing Request at 11 (citing *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012)).

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 12 (citing *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016)).

⁴⁶ *Id.* at 9.

⁴⁷ June 2016 Order, 155 FERC ¶ 61,233 at P 35 n.65.

harmless commitment, but rather, was a result of the Commission's effort to ensure just and reasonable rates. In its application requesting approval of the Merger (203 Application), Emera Maine represented that the Merger would not result in a rate increase to its ratepayers,⁴⁸ and the Merger was approved based on Emera Maine's representations.⁴⁹ Emera Maine did not address or mention the refinancing or its potential impact on Emera Maine's post-merger capital structure.⁵⁰ Yet, the long-term debt retirements had the ultimate effect of a rate increase.⁵¹ As such, in the June 2016 Order, the Commission determined that "allowing the rate increase, which is directly tied to the Merger, to stand would be inconsistent with the representations in the 203 Application and the Commission's findings in the Merger Order that the Merger would not have an adverse effect on rates."⁵² In addition to determining that the rate increase was an "adverse effect on rates," the June 2016 Order found the proposed rate had not been shown to be just and reasonable.⁵³ To insulate ratepayers from the rate increase, the Commission directed Emera Maine to impute the retired debt balances for the tax-free Maine Public bonds into the capital structure calculation for the 2014-2015 Rate Year.⁵⁴ The Commission explained that this remedy most closely replicates the capital structure that would have existed if the Merger had not required the refinancing of the Maine Public bonds and provides a just and reasonable rate.⁵⁵

⁴⁸ 203 Application at 12-13.

⁴⁹ Merger Order, 144 FERC ¶ 61,030 at P 19.

⁵⁰ June 2016 Order, 155 FERC ¶ 61,233 at PP 33-35.

⁵¹ *Id.* P 35.

⁵² *Id.*

⁵³ *Id.* P 32.

⁵⁴ *Id.* See 16 U.S.C. §§ 824d, 824e (2012). See also *Niagara Mohawk Power Corp. v. Fed. Power Comm'n*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("...we observe that the breadth of agency discretion is, if anything, at zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of policies, remedies and sanctions, including enforcement and voluntary compliance programs in order to arrive at maximum effectuation of Congressional objectives.")

⁵⁵ June 2016 Order, 155 FERC ¶ 61,233 at P 39.

19. Consequently, we do not find that the Commission violated the fair notice doctrine in directing this remedy, but rather, followed Commission practice and abided by Commission policy while ensuring just and reasonable rates. As described in the June 2016 Order, Emera Maine remains free to pursue recovery of the rate increase by making the requisite filing under section 203(b).⁵⁶

4. Net Benefits/Evidence of Refinancing

a. Rehearing Arguments

20. Emera Maine argues that the June 2016 Order is arbitrary and capricious because the Commission failed to address relevant evidence with respect to the net benefits of the refinancing.⁵⁷ Specifically, Emera Maine contends that its expert witness' affidavit details how the benefits of the refinancing outweigh the costs to MPD OATT customers because of the lower borrowing rate and more favorable capital structure.⁵⁸

21. In its Answer to the Formal Challenge, Emera Maine's expert witness estimates that the 2013 refinancing would increase the annual transmission revenue requirement (ATRR) for wholesale customers under the MPD OATT by \$391,271 in 2014-2015.⁵⁹ Emera Maine's expert witness further claims that the 2014 refinancing reduced Emera Maine's average long-term debt and that the Merger further reduced the common equity ratio applicable under the MPD OATT. Emera Maine's expert witness asserts that the wholesale ATRR will have fallen by a combined \$476,000 as compared to what the ATRR would have been absent the 2013 bond refinancing and Emera Maine's more favorable capital structure, with additional savings in years to come.⁶⁰ Emera Maine's expert witness concludes that the costs "to OATT customers as a result of the 2013 retirement of Maine Public's tax-free bonds are far less than the savings that will be enjoyed by OATT customers as a result from the [Merger] and Emera Maine's lower

⁵⁶ *Id.* P 37.

⁵⁷ Emera Maine Rehearing Request at 13.

⁵⁸ *Id.* at 14.

⁵⁹ Emera Maine Answer to Formal Challenge, Dawes Aff. at 4-6.

⁶⁰ *Id.*

borrowing rates and more favorable capital structure” which will continue into the future.⁶¹

b. Commission Determination

22. The June 2016 Order did not ignore Emera Maine’s evidence; the Commission found that Emera Maine’s arguments were not compelling on two grounds. First, the Commission found that Emera Maine’s evidence was not persuasive because Emera Maine did not sufficiently explain how the Merger resulted in lower rates, and ultimately, net cost savings.⁶² Instead of demonstrating that the Merger itself resulted in benefits that offset the adverse effect on rates stemming from the change in capital structure, Emera Maine simply calculated and compared the rate impact of the refinanced debt with the cost of the debt prior to refinancing. Emera Maine thus failed to show that the lower cost of debt was due to the Merger and not attributable to other causes.

23. Second, the Commission found that Emera Maine’s claims that the benefits of the Merger outweigh its adverse rate impacts would require the Commission to revise or revisit its finding in the Merger Order that the Merger would have no adverse effect on rates. Such a course would require the Commission to issue a supplemental order, pursuant to section 203(b), finding that good exists to revisit its findings in the Merger Order.⁶³ However, Emera Maine never asked the Commission to revisit its findings in the Merger Order, and the Commission did not find that good cause existed to revisit those findings *sua sponte* based on the record.⁶⁴ Emera Maine has not persuaded the Commission to reconsider its position on this issue. Again, if Emera Maine elects to pursue recovery of the rate increase for the 2014-2015 Rate Year, it must submit a filing pursuant to section 203(b) requesting that the Commission revisit its finding in the Merger Order regarding the rate effects of the Merger.⁶⁵

⁶¹ *Id.* at 6.

⁶² June 2016 Order, 155 FERC ¶ 61,233 at P 36.

⁶³ *Id.* PP 36-37 (citing 16 U.S.C. § 824b(b) (2012) (the Commission may “for good cause shown make such orders supplemental to any order made under [section 203] as it may find necessary or appropriate.”))

⁶⁴ *Id.*

⁶⁵ *Id.* P 37.

5. Consolidation with Ongoing Hearing and Settlement Procedures

a. Rehearing Arguments

24. Alternatively, Emera Maine requests that, if the Commission concludes that the change in capital structure associated with the refinancing should not be included in the transmission rate calculations, then this issue should be consolidated with the ongoing hearing and settlement discussion procedures in Docket Nos. EC10-67-002, *et al.* Emera Maine argues that this issue should be analyzed with all other expenses currently being considered in related proceedings.⁶⁶

b. Commission Determination

25. We deny Emera Maine's request for consolidation with ongoing hearing and settlement procedures. The Commission will consolidate matters for hearing if there are common issues of fact or law, and consolidation will ultimately result in greater administrative efficiency.⁶⁷ Such conditions do not exist here.

26. In Docket Nos. EC10-67-002, *et al.*, Emera Maine submitted two separate compliance filings requesting authorization to recover certain transaction-related costs incurred in connection with the Merger and another prior merger transaction.⁶⁸ As discussed above, the change in capital structure at issue in this proceeding is not a transaction-related cost subject to Emera Maine's hold harmless commitment. The issue is thus separate and distinct from the issues set for hearing and settlement procedures in Docket Nos. EC10-67-002, *et al.* Administrative efficiency therefore would not be served by consolidating this proceeding with those dockets.⁶⁹

⁶⁶ Emera Maine Rehearing Request at 14-15.

⁶⁷ See, e.g., *California Independent System Operator Corp.*, 125 FERC ¶ 61,153, at P 45 (2008) (citing *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,001, at P 25 (2008) (consolidating proceedings because of common issues of fact and law)); *Ameren Services Co.*, 121 FERC ¶ 61,205, at PP 22-23 (2007) (consolidating proceedings with common issues of law and fact and denying consolidation for proceedings where the focus of the issues differs); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008) (denying consolidation of cases involving different questions of law and fact and different parties because it would not result in administrative efficiency).

⁶⁸ *Emera Maine and BHE Holdings*, 155 FERC ¶ 61,230 (2016).

⁶⁹ *Vermont Yankee Nuclear Power Corp.*, 435 U.S. 519 at 520 (agencies have

II. Compliance Filing in Docket No. ER12-1650-007

27. The June 2016 Order required Emera Maine to: (1) revise its 2014-2015 formula rate charges to correct errors that the Customer Group raised in its Formal Challenge with respect to amortization of long-term debt costs and post-retirement benefits, other than pensions; and (2) impute the retired debt balance for the tax-free Maine Public bonds (\$22.6 million) into the capital structure calculation for the 2014-2015 Rate Year.⁷⁰

28. Emera Maine's July 2016 Compliance Filing made three changes to the 2014-2015 Annual Update: (1) it adjusted the amortization of debt costs from \$88,368 to \$76,515; (2) it adjusted the post-retirement benefits other than pensions to \$123,066⁷¹ to correct the identified error; and (3) it imputed \$22.6 million in long-term debt to the 2013 end-of-year balance.⁷² To impute the \$22.6 million in long-term debt, Emera Maine first changed the value of long-term debt from \$11.3 million (originally listed in the 2014 Annual Update) to \$22.6 million. Then, Emera Maine changed the value of interest to \$1,464,895⁷³ to reflect the interest that would have been paid on the \$22.6 million of long-term debt if that debt were carried to the end of 2013. Finally, Emera Maine changed the value of interest rate swaps to \$1,000,211⁷⁴ to reflect the amount that would

broad discretion over the formulation of their procedures); *Telecomm. Resellers Assoc.*, 141 F.3d 1193 at 1196; *Michigan Public Power Agency*, 963 F.2d 1574, at 1575, 1578-79 (Commission has discretion to mold its procedures to the exigencies of the particular case); *City of Lafayette*, 454 F.2d 941 at 953-55 (same).

⁷⁰ June 2016 Order, 155 FERC ¶ 61,233 at Ordering Paragraph B.

⁷¹ As noted below, Emera Maine's cover letter to the July 2016 Compliance Filing incorrectly lists the corrected post-retirement benefits other than pensions figure as \$79,386 whereas the workpapers attached to the July 2016 Compliance Filing properly list the figure as \$123,066.

⁷² Emera Maine's cover letter to the July 2016 Compliance Filing incorrectly states that it will impute the \$22.6 million in long-term debt to the end-of-year balance for 2014, rather than for 2013.

⁷³ Emera Maine explains that this value was calculated by multiplying the original swap payment costs of \$750,159 by 12/9 (to represent the additional three months of costs that would have been incurred had the debt not been retired in September, but rather, at the end of the year).

⁷⁴ Emera Maine explains that this value was calculated by multiplying the original

(continued...)

have been paid by Maine Public on its interest rate swap tied to the \$22.6 million of long-term debt if that debt were carried to the end of 2013.

A. Notice and Responsive Pleadings

29. Notice of the July 2016 Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 45,470 (2016), with interventions and protests due on or before July 26, 2016. The Customer Group filed an Answer to the July 2016 Compliance Filing on July 18, 2016.⁷⁵ On August 8, 2016, Emera Maine filed an Answer to the Customer Group's Answer.⁷⁶

B. Procedural Compliance Matters

30. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2016), prohibits an answer to a protest or an answer, unless otherwise permitted by the decisional authority. We will accept Emera Maine's Answer because it provides information that assisted us in our decision-making process.

C. Substantive Compliance Matters

1. Amortization of Long-Term Debt Costs and Post-Retirement Benefits Other Than Pensions

a. Answers

31. The Customer Group claims that Emera Maine's attempt to fix the identified error in post-retirement benefits other than pensions to \$79,386 is incorrect.⁷⁷ The Customer

long-term debt interest of \$1,098,671 with 12/9 (to represent the additional three months of costs that would have been incurred had the debt not been retired in September, but rather, at the end of the year).

⁷⁵ Customer Group Answer to July 2016 Compliance Filing, ER15-1429-004, ER12-1650-007 (filed July 18, 2016) (Customer Group Answer to July 2016 Compliance Filing). Although the Customer Group styled this pleading as an answer, we will treat it as a protest to the July 2016 Compliance Filing.

⁷⁶ Emera Maine Answer to Customer Group's Answer to July 2016 Compliance Filing, ER15-1429-004, ER12-1650-007 (filed August 1, 2016) (Emera Maine Answer to July 2016 Compliance Filing).

⁷⁷ Customer Group Answer to July 2016 Compliance Filing at 2.

Group contends that the correct amount is \$123,066, which appears in Statement AI, Line 3 of the excel file of the July 2016 Compliance Filing, but Emera Maine's cover sheet to the July 2016 Compliance Filing incorrectly states this figure.

32. In its Answer, Emera Maine does not dispute the fact that its cover letter incorrectly identifies the post-retirement benefits other than pensions as \$79,386, rather than \$123,066. Statement AI Line 3 of the July 2016 Compliance Filing correctly lists the amount as \$123,066.

b. Commission Determination

33. We find that Emera Maine's July 2016 Compliance Filing correctly identifies the post-retirement benefits other than pensions as \$123,066 in Statement AI, and we find that the remaining errors for long-term debt amortization and post-retirement benefits other than pensions are correctly modified in accordance with the June 2016 Order.

2. Interest Expense and Interest Swap Inclusion

a. Answers

34. The Customer Group claims that, in imputing the retired debt balance for the tax-free Maine Public bonds into its capital structure, Emera Maine erred in reflecting: (i) the interest that would have been paid on the \$22.6 million of long-term debt and (ii) the amount that would have been paid by Maine Public on its interest rate swap tied to the \$22.6 million of long-term debt, if that debt were carried to the end of 2013.⁷⁸ The Customer Group argues that the June 2016 Order directed an imputation of debt to the capital structure and did not order a recalculation of the 2014-2015 rates.⁷⁹ The Customer Group claims that the compliance filing should not address mitigation claims that might have been presented in the 203 Application.⁸⁰

35. In its Answer, Emera Maine claims that its recalculated rates should not be lower than what they would have been had it not retired its long-term debt.⁸¹ Emera Maine explains that retirement of the long-term debt impacted more than just the capital

⁷⁸ *Id.* at 2-3.

⁷⁹ *Id.*

⁸⁰ *Id.* at 3.

⁸¹ Emera Maine Answer to July 2016 Compliance Filing at 1-3.

structure that it used in establishing charges under the MPD OATT.⁸² For example, Emera Maine suggests that retirement of its long-term debt reduced the costs of long-term debt of the interest rate swap that are recovered under MPD OATT, and that MPD OATT customers saved \$84,964 as a result of the Maine Public's early retirement of long-term debt. Emera Maine argues that reflecting the long-term debt in the capital structure without including the costs that would have been incurred would give MPD OATT customers rates that are lower than those that would have been charged had the debt not been retired at all.⁸³

b. Commission Determination

36. We agree with Emera Maine that the \$22.6 million in additional costs for interest expense and interest rate swaps should be included in the formula rate to impute the retired debt balance of the tax free Maine Public bonds into the capital structure.⁸⁴ We find that otherwise customers would enjoy a windfall of lower rates they would not have been entitled to if the debt were never retired. We will therefore allow Emera Maine to impute the additional costs that it would have incurred (\$1,464,895 and \$1,000,211) had that long-term debt continued to the end of 2013, and not retired in September 2013. We find this calculation meets the stated intent of the remedy in the June 2016 Order, which was to most closely replicate the capital structure if the Merger had not required the refinancing of the Maine Public bonds.⁸⁵ We accept Emera Maine's quantification of the rate impacts for imputing the \$22.6 million as in full compliance with the June 2016 Order.

⁸² *Id.* at 2-3.

⁸³ *Id.*

⁸⁴ *Portland Natural Gas Transmission Sys.*, Opinion No. 524, 142 FERC ¶ 61,197, at P 284 (2013) (finding debt swap costs to be properly included as part of the cost of the pipeline's current debt financing, because the costs were specifically incurred to maintain the financing necessary to construct the pipeline). *But see SFPP, L.P.*, Opinion No. 522, 140 FERC ¶ 61,220, at PP 245-250 (2012) (finding debt swaps should not be included because the parent company's viability, not the pipeline, would be affected by gains or losses from the swaps, and that the party that assumes the risks should receive the benefits associated with its hedging activity), *aff'd*, Opinion No. 522-A 150 FERC ¶ 61,097, at PP 43-55 (2015).

⁸⁵ June 2016 Order, 155 FERC ¶ 61,233 at P 39.

3. Refunds

a. Answers

37. The Customer Group claims that Emera Maine should pay immediate, actual refunds, with interest, in accordance with the corrections to the revised formula rate.⁸⁶

38. While Emera Maine does not object to the payment of refunds, it objects to the timing in which such refunds are made. Specifically, Emera Maine claims the corrections of “Mistakes,” pursuant to the MPD OATT, should be reflected in the Annual Update for the next effective Rate Year, not immediately as the Customer Group requests.⁸⁷ Emera Maine argues that immediate refunds are logistically difficult, because it has approximately 35,000 customers, many of which have moved and are no longer customers. Emera Maine submits that in such circumstances in the past, it has paid refunds to customers through a reduction in the revenue requirement for the next year.⁸⁸

b. Commission Determination

39. We disagree with Emera Maine that rate refunds must wait until the next rate year. The MPD OATT permits Emera Maine to make these changes at any time. Again, these changes are the result of successful challenges to the formula rate inputs and the June 2016 Order directed such changes to be applied to the formula rate for the current rate year.⁸⁹ Consequently, we will direct Emera Maine to make the proposed adjustments

⁸⁶ Customer Group Answer to July 2016 Compliance Filing at 3-4.

⁸⁷ Emera Maine Answer to July 2016 Compliance Filing at 3-4.

⁸⁸ *Id.* at 4.

⁸⁹ *See supra* Section I.A; *see also* Attachment J Protocols, IV - Resolution of Challenges, Section E states that “[a]t any time following the Publication Date of an Annual Update, such Annual Update and the unit charges resulting therefrom may be changed (1) to reflect the resolution of the Preliminary Challenge or Formal Challenges by settlement, or (2) in accordance with Section IV.H.” Attachment J Protocols, IV - Resolution of Challenges, Section IV.H addresses the finality of the Annual Update, which includes a final Commission order in response to the formal challenge, such as the June 2016 Order.

during the 2014-2015 Rate Year and refund the \$395,066 of excess revenue requirement as shown in its July 2016 Compliance Filing.⁹⁰

40. Accordingly, we will accept the Compliance Filing, and direct Emera Maine to file, within 30 days, a refund report demonstrating how it will refund the excess charges caused by the errors and refinancing of its tax free debt in 2013.

The Commission orders:

(A) The request for rehearing is denied, as discussed in the body of this order.

(B) Emera Maine's July 2016 Compliance Filing is hereby accepted as in compliance with the June 2016 Order, as discussed in the body of this order.

⁹⁰ This refund figure was calculated by determining the difference between the embedded cost of transmission as listed in Schedule 1 of Emera Maine's 2014 Annual Update, (\$3,671,165), with the corrected amount as listed in Schedule 1 of Emera Maine's July 2016 Compliance Filing (\$3,276,099).

(C) Emera Maine is directed to submit, within 30 days of the issuance of this order, a refund report in this docket that demonstrates how it will refund the excess charges for the 2014-2015 Rate Year indicated in its July 2016 Compliance Filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.