

135 FERC 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Maine Power Company

Docket Nos. ER09-938-001
ER09-938-002
ER09-938-003

ORDER DENYING REHEARING AND
ACCEPTING COMPLIANCE FILINGS

(Issued May 19, 2011)

1. In this order, the Commission denies rehearing of its order in *Central Maine Power Company*, 128 FERC ¶ 61,143 (2009). The Commission also conditionally accepts Central Maine Power Company's (Central Maine) compliance filing and accepts ISO New England, Inc.'s (ISO New England) and the Participating Transmission Owners Administrative Committee's (TO Committee)¹ joint compliance filing.

I. Introduction and Background

A. New England Rate Structure

2. In New England, transmission owners recover transmission revenue requirements through a combination of local and regional rates. In general, each transmission owner maintains a Local Network Service Schedule that includes a formula rate used to calculate the total transmission revenue requirement for all of its transmission facilities. Each transmission owner then subtracts from this total transmission revenue requirement the revenues that it receives from other sources, such as the provision of Regional Network Service. The transmission owners credit the revenues from Regional Network Service (and other sources) against their total transmission revenue requirements and recover the remainder from local customers.

¹ The TO Committee is a committee established pursuant to the New England Transmission Owners Agreement (TOA) to allow for the New England Participating Transmission Owners to take certain actions pursuant to that agreement.

3. The Regional Network Service rate recovers costs for service over pool transmission facilities that are eligible for regional cost allocation.² To determine the Regional Network Service rate, each transmission owner must calculate its annual revenue requirement for its eligible facilities pursuant to the revenue requirement formula in the Attachment F Implementation Rule, which is part of the ISO New England Tariff.³ Every year, each transmission owner populates this pro-forma formula with its own company-specific actual costs derived from its FERC Form No. 1 report for the year. These individual revenue requirements are then aggregated into a single revenue requirement and divided by a similarly aggregated monthly coincident peak under Schedule 8⁴ and Schedule 9⁵ of the Tariff in order to calculate the Regional Network Service rates.

B. Incentives Order in Docket No. EL08-74-000

4. In October 2008, the Commission authorized transmission rate incentives pursuant to Order No. 679⁶ for Central Maine's Maine Power Reliability Program Project (Project), subject to ISO New England approving the Project in its Regional System Plan as a Reliability Transmission Upgrade.⁷ The Commission authorized a 125 basis point

² Not all pool transmission facilities are eligible for regional cost allocation. ISO New England determines which pool transmission facilities are eligible for regional cost allocation pursuant to Schedule 12 of its Open Access Transmission Tariff (Tariff).

³ Attachment F consists of two parts: (1) the Attachment F Annual Transmission Revenue Requirements (herein, Attachment F) and (2) the Attachment F Implementation Rule. Attachment F is an overview of the more detailed Attachment F Implementation Rule.

⁴ Schedule 8 governs Through or Out Service - the Pool PTF Rate.

⁵ Schedule 9 governs Regional Network Service.

⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁷ *Central Maine Power Company*, 125 FERC ¶ 61,079 (2008) (October 2008 Order). According to Central Maine, the Project consists of 350 miles of 345 kV and 115 kV transmission facilities and 20 substations, and will cost approximately \$1.55 billion. Central Maine Power Company's April 1, 2009 filing in Docket No. ER09-938-000 at 2-3. The Project will add a new interconnection between the northern New Hampshire interface and Maine, providing southern New England with access to 1,650 MW of

(continued...)

return on equity (ROE) adder, recovery of a return on equity applied to 100 percent of Construction Work in Progress (CWIP) in rate base, and recovery of 100 percent of prudently incurred costs if the Project is abandoned in whole or in part as a result of factors beyond Central Maine's control (abandonment). In authorizing CWIP, the Commission required Central Maine to submit a subsequent section 205 filing addressing the Commission's requirements for CWIP, including a detailed explanation of its accounting methods and procedures to: (1) implement the stand-alone balancing account, (2) comply with 18 C.F.R. §§ 35.13(h)(38) and 35.25, and (3) maintain comparability of financial information.⁸

C. Central Maine's Rate Filing in Docket No. ER09-938-000

5. On April 1, 2009, as supplemented on June 8, 2009, Central Maine unilaterally submitted the section 205 filing required by the October 2008 Order,⁹ which sought, among other things, recovery of a return on the previously-authorized CWIP. Specifically, Central Maine submitted proposed modifications to the ISO New England Tariff Attachment F Implementation Rule (the revenue requirement formula) to add the following as a line item in the formula:

Maine Power Reliability Program Construction Work In Progress ("MPRP CWIP") shall equal Central Maine Power Company's ("CMP's") MPRP CWIP balance as recorded in FERC Account 107 for costs determined to be Pool Supported PTF in Accordance with Schedule 12 of this OATT.¹⁰

potential wind generation in Maine, 3,000 MW of hydroelectric power under development in Quebec, and 5,000 MW to 7,000 MW of hydroelectric and wind power under development in Brunswick/Newfoundland and Labrador, thus interconnecting up to 11,650 MW of renewable generation. The Project is included in ISO New England's current Regional System Plan transmission project listing, dated April 25, 2011, *available at* http://www.iso-ne.com/committees/comm_wkgrps/prtcpnts_comm/pac/projects/.

⁸ October 2008 Order, 125 FERC ¶ 61,079 at P 82.

⁹ The Commission issued a deficiency letter on May 28, 2009 requesting additional information. In response to the deficiency letter, Central Maine supplemented its submission on June 8, 2009.

¹⁰ Generally, Pool-Supported Pool Transmission Facilities are those where ISO New England has determined the costs will be allocated RTO-wide, pursuant to the Tariff's cost allocation rules in Schedule 12.

6. Central Maine also filed revisions to its own tariff sheets for Local Network Service to allow local recovery of any Project costs deemed ineligible for recovery in the regional rate.

7. Several parties filed protests arguing that revisions to the Attachment F Implementation Rule are revisions to the regional rate, and therefore must be filed jointly by the transmission owners in accordance with section 3.04(b)(i)¹¹ of the TOA, rather than unilaterally pursuant to section 3.04(a)(i).¹²

¹¹ Section 3.04(b)(i) provides that:

(b) The [Participating Transmission Owners] acting jointly in accordance with the Disbursement Agreement among them, shall have the authority to submit filings under Section 205 of the Federal Power Act to establish and to revise:

(i) the rates and charges for Transmission Service pursuant to which the revenue requirements for all Transmission Facilities of the [Participating Transmission Owner] used for the provision of Transmission Service are recovered; including the design of any rates or charges for: (A) regional Transmission Service on the New England Transmission System involving the use of more than one [Participating Transmission Owner's] Transmission Facilities; (B) Transmission Service between the New England Transmission System and any other transmission system; (C) Transmission Service through the New England Transmission System between other transmission systems; (D) the recovery of any portion of the revenue requirements of the [Participating Transmission Owners] attributable to the elimination of any rates or charges (e.g., border charges) for any such Transmission Service; (E) the methodology by which the costs of Transmission Upgrades related to generator interconnections are allocated under the [Tariff] and (F) the methodology by which the costs of New Transmission Facilities and Transmission Upgrades are allocated under the [Tariff].

¹² Section 3.04(a)(i) provides that:

(a) Each [Participating Transmission Owner] . . . shall have the authority to submit filings under [s]ection 205 of the Federal Power Act . . .to establish and to revise:

(continued...)

D. August 2009 Order

8. On August 7, 2009, the Commission issued an order accepting the proposed tariff sheets for filing, subject to the outcome of rehearing of the October 2008 Order.¹³ The August 2009 Order found that TOA section 3.04(a)(i) preserved each transmission owner's statutory right to unilaterally make a section 205 filing to revise its individual revenue requirement for all of its transmission facilities, including those eligible for regional cost allocation. The Commission stated that, in interpreting the TOA, it must give a consistent meaning to all provisions.¹⁴ The Commission also stated that it will not find that an entity has given up its statutory filing rights under section 205 of the Federal Power Act (FPA)¹⁵ absent a clear waiver.¹⁶

9. The Commission rejected assertions that Central Maine's filing is governed by section 3.04(b)(iii) of the TOA, which requires a joint filing for any proposal to establish or revise "any rates or charges, and terms and conditions related thereto, that implement an incentive or performance-based rate proposal, applicable to the entire New England Transmission System." The Commission found that incentives authorized in the October 2008 Order are not "applicable to the entire New England Transmission System;" rather, they were authorized only for Central Maine's Project based on the fact-specific determination that the Project satisfied the requirements for incentives under Order No. 679 and section 219 of the FPA.¹⁷ The Commission found that section 3.04(b)(iii) is

(i) the revenue requirements for all Transmission Facilities of such [Participating Transmission Owner] used for the provision of Transmission Service (including Transmission facilities leased to the [Participating Transmission Owner] or to which the [Participating Transmission Owner] has contractual entitlements)[.]

¹³ *Central Maine Power Company*, 128 FERC ¶ 61,143 (2009) (August 2009 Order).

¹⁴ August 2009 Order, 128 FERC ¶ 61,143 at P 37-38 (citing *Cruden v. Bank of New York*, 957 F.2d 961, 976 (2d Cir. 1992) ("The entire contract must be considered, and all parts of it reconciled, if possible, in order to avoid an inconsistency.")).

¹⁵ 16 U.S.C. § 824d (2006).

¹⁶ See *Sithe/Independence Power Partners, L.P. v. Niagara Mohawk Power Corp.*, 76 FERC ¶ 61,285, at 62,458 (1996), *remanded on other grounds sub nom. Sithe/Independence Power Partners L.P. v. FERC*, 165 F.3d 944 (D.C. Cir. 1999).

¹⁷ 16 U.S.C. § 824s (2006).

intended to apply to cases like that presented in Opinion No. 489,¹⁸ where the Commission authorized a New England-wide incentive based on regional concerns and the regional development process.

10. In light of its determination, the Commission held that the language in Attachment F of the Tariff specifying that the TO Committee must approve any change to the Attachment F Implementation Rule is unjust and unreasonable. Therefore, pursuant to FPA section 206,¹⁹ the Commission directed ISO New England to revise Attachment F of the Tariff to remove the requirement that “Any changes to the [Attachment F Implementation Rule] must be approved by the [TO Committee]” and to submit a revised tariff sheet within sixty days of the date of the order.

11. The August 2009 Order also directed Central Maine to submit a compliance filing explaining the specific methodology for providing parties with an annual report of the construction costs in the same detail that the Commission found acceptable in *Maine Yankee*²⁰ and other cases, and consistent with Order No. 679.²¹ The Commission further directed Central Maine to include the allocation of these costs among regional and local customers. Finally, the Commission required Central Maine to file the attestation of a corporate officer to verify cost of service statements and supporting data made by Central Maine.

12. The August 2009 Order also held that ISO New England would determine which aspects of the Project are eligible for regional cost allocation.²² On January 29, 2010, ISO New England issued a letter in response to Central Maine’s cost allocation application pursuant to Schedule 12C. The letter stated the following: “the ISO finds that all of the \$1,375,904,000 requested by CMP is properly categorized as Pool-

¹⁸ August 2008 Order, 128 FERC ¶ 61,143 at P 39 (citing *Bangor Hydro-Electric Co.*, Opinion No. 489, 117 FERC ¶ 61,129 (2006), *order on reh’g*, 122 FERC ¶ 61,265 (2008), *aff’d sub nom. Conn. Dep’t of Pub. Util. Control v. FERC*, 593 F.3d 30 (D.C. Cir. 2010)).

¹⁹ 16 U.S.C. § 824c (2006).

²⁰ *Maine Yankee Atomic Power Co.*, 66 FERC ¶ 61,375, at 62,252-53 & n.10 (1994) (*Maine Yankee*).

²¹ August 2009 Order, 128 FERC ¶ 61,143 at P 62 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 121).

²² August 2009 Order, 128 FERC ¶ 61,143 at P 84.

Supported Pool Transmission Facility ('PTF') Costs under Schedule 12C of the ISO Tariff."²³ Therefore, with a total estimated Project cost of \$1.55 billion, the estimated local costs would be approximately \$0.175 billion (\$1.55 billion - \$1.375 billion).

II. Rehearing Requests and Compliance Filings

A. Rehearing Requests

13. The New England Power Pool (NEPOOL), the New England Consumer-Owned Systems (NECOS),²⁴ and the New Hampshire Electric Cooperative, Inc. and Massachusetts Municipal Wholesale Electric Company (the Joint Protesters) (collectively, Rehearing Parties) submitted timely requests for rehearing of the August 2009 Order. On September 8, 2009, the TO Committee filed a motion to intervene out of time and what it characterized as a motion for clarification. On September 21, 2009, Central Maine filed a motion for leave to answer and answer. On September 23, 2009, National Grid USA and Northeast Utilities Service Company jointly filed an answer to requests for rehearing, and the United Illuminating Company (United Illuminating) filed a motion to intervene out of time, motion for leave to answer and answer.

B. Central Maine's Compliance Filing in Docket No. ER09-938-002

14. On October 6, 2009, Central Maine submitted a filing in purported compliance with the August 2009 Order. The compliance filing specifies the method for allowing the Commission and other parties to review the cost schedules associated with the Project. Specifically, Central Maine states that it will include the annual updates of construction costs and CWIP account balances used in the formula rates as additional supporting documentation to both the local and regional annual informational filings, as applicable. Central Maine also submitted an attestation by a corporate officer to verify cost of service statements and supporting data.

²³ The letter is available on the ISO New England website at http://www.iso-ne.com/trans/pp_tca/req/mprp/iso-mprp-determination.pdf.

²⁴ NECOS includes: Belmont Municipal Light Department, Braintree Electric Light Department, Concord Municipal Light Plant, Groton Electric Light Department, Hingham Municipal Lighting Plant, Littleton Electric Light and Water Department, Middleborough Gas & Electric Department, Pascoag Utility District, Reading Municipal Light Department, Taunton Municipal Lighting Plant, Templeton Light & Water Plant, and Wellesley Municipal Light Plant.

C. Filing Parties' Compliance Filing in Docket No. ER09-938-003

15. The TO Committee, on behalf of the Participating Transmission Owners, and ISO New England jointly (Filing Parties) submitted proposed revisions to Attachment F, Annual Transmission Revenue Requirements of the ISO New England Tariff on October 6, 2009 in purported compliance with the Commission's directive.

III. Notice of Filings and Responsive Pleadings

16. Notice of Central Maine's compliance filing in Docket No. ER09-938-002 was published in the *Federal Register*,²⁵ with protests and interventions due on or before October 27, 2009. NECOS and the Maine Public Utilities Commission (Maine PUC) filed protests. On November 12, 2009, Central Maine filed a motion for leave to answer and answer to the protests.

17. Notice of the Joint Parties' compliance filing in Docket No. ER09-938-003 was published in the *Federal Register*,²⁶ with protests and interventions due on or before October 27, 2009. No interventions or protests were filed.

IV. Discussion

A. Procedural Matters

18. Rule 713(d) of the Commission's Rules of Practice and Procedure²⁷ prohibits answers to a request for rehearing. Therefore, we reject Central Maine's, National Grid USA and Northeast Utilities Service Company's, and United Illuminating's answers to the rehearing requests.

19. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such a late intervention. The TO Committee and United Illuminating have not met this higher burden of justifying late intervention.²⁸

²⁵ 74 Fed. Reg. 52,798 (2009).

²⁶ 74 Fed. Reg. 53,735 (2009).

²⁷ 18 C.F.R. § 385.713(d) (2010).

²⁸ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

Accordingly, we reject their untimely motions to intervene. In light of our decision to deny the TO Committee's late motion to intervene, we will dismiss its accompanying pleading.²⁹ Because the TO Committee is not a party to this proceeding, it lacks standing to seek rehearing of the August 2009 Order under the FPA and the Commission's regulations.³⁰

20. Several parties, including NECOS and NEPOOL, submitted or cited in their rehearing requests a chart designated "Attachment X," which was included with the New England Regional Transmission Organization (RTO) filing submitted to the Commission on October 31, 2003,³¹ in support of their requests for rehearing. We will reject the submittal in this proceeding of Attachment X, as the Commission generally does not permit parties to introduce new evidence for the first time on rehearing.³² In any case, as discussed below, we do not find Attachment X to be as conclusive as its proponents suggest. Therefore, even if we were to consider such new evidence, we would nonetheless deny the requests for rehearing.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³³ prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept Central Maine's answer to NECOS' and the Maine PUC's

²⁹ In any event, we have addressed the TO Committee's substantive argument herein.

³⁰ See 16 U.S.C. § 825(a) (1994); 18 C.F.R. § 385.713(b)(2010); *Southern Company Services, Inc.*, 92 FERC ¶ 61,167 (2000).

³¹ ISO New England and the New England transmission owners filed a request for approval of formation of an RTO for ISO New England (RTO filing) in Docket No. RT04-2-000. Over a series of subsequent orders, the Commission addressed the establishment of ISO New England as an RTO and the division of filing rights among parties to the RTO agreements. See *ISO New England, Inc.*, 106 FERC ¶ 61,280 (RTO Order), *order on reh'g and compliance*, 109 FERC ¶ 61,147 (2004), *order on reh'g and compliance*, 110 FERC ¶ 61,111, *order on reh'g and compliance*, 110 FERC ¶ 61,335, *order on reh'g*, 111 FERC ¶ 61,344 (2005).

³² See, e.g., *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 n.64 (1994) (stating that "[t]he Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target.").

³³ 18 C.F.R. § 385.213(a)(2) (2010).

protests regarding Central Maine's compliance filing, as they have provided information that has assisted us in our decision-making process.

B. Requests for Rehearing of the August 2009 Order

1. Interpretation of TOA Section 3.04

22. Rehearing Parties argue that the Commission erred in finding that Central Maine's filing to amend the Attachment F Implementation Rule was properly submitted as a unilateral section 205 filing under section 3.04(a)(i) of the TOA, rather than as a regional rate change pursuant to section 3.04(b) of the TOA.

23. Rehearing Parties argue that the amendments to Attachment F are regional rate changes under section 3.04(b) of the TOA, which requires NEPOOL review and advisory vote. Rehearing Parties argue that the Attachment F amendments not only establish and revise Central Maine's revenue requirements, but also add a new element to the formula for calculating the Regional Network Service rate. Rehearing Parties contend that by adding CWIP in the Regional Network Service rate, the Attachment F amendment changes the method by which the formula Regional Network Service rate is determined, and thereby revises "the rates and charges for Transmission Service pursuant to which the revenue requirements for all transmission facilities of the [Participating Transmission Owners] used for the provision of Transmission Service are recovered."³⁴

24. Rehearing Parties argue that the carefully negotiated TOA intended that any changes to Attachment F would be subject to section 3.04(b). NEPOOL asserts that this is evidenced by the very sentence that they claim the August 2009 Order deleted: "Any changes to that rule must be approved by the PTO Administrative Committee, and filed with the Commission." As further support for their arguments, NEPOOL and NECOS each submitted Attachment X, which was part of the 2003 New England RTO filing.³⁵ Rehearing Parties argue that Attachment X clearly shows that section 205 rights for

³⁴ NEPOOL Rehearing Request at 7 (quoting TOA section 3.04(b)(i)); NECOS Rehearing Request at 9-10; Joint Protesters Rehearing Request at 13-14.

³⁵ Attachment X is a chart titled "Implementation of 205 Allocation," which contains an explanatory note stating that: "the following table is provided as an illustration to assist in the review of the allocation of 205 rights under the RTO-NE governing documents. This allocation is set forth in the Transmission Operating Agreement ('TOA') and Merchant Transmission Operating Agreement ('MTOA')."

changes to Attachment F belong to the Participating Transmission Owners acting jointly.³⁶

25. In addition, NECOS states that the August 2009 Order's conclusion is premised on Central Maine not having waived its section 205 rights with respect to changes to Attachment F and the Attachment F Implementation Rule. However, NECOS argues, Central Maine's signature on the transmittal letter accompanying the New England RTO filing, which included Attachment X as part of its contents, is a clear expression of a voluntary relinquishment of a known right. NECOS further contends that under the regime established in New England from the region's initial compliance with Order No. 888, an individual transmission owner does not have any section 205 right to seek unilateral modification of a regional rate. Therefore, there was no unilateral filing right to "waive," and joint control of section 205 filing rights with respect to regional transmission rates is consistent with the regional practice prior to RTO formation.³⁷

26. NEPOOL states that, although it does not take a position on the substance of Central Maine's filing, it does not object to Central Maine's filing because Central Maine voluntarily submitted its proposal for NEPOOL review and vote in accordance with section 3.04(b) and (l) of the TOA. NEPOOL argues that other facts evidence the intent behind section 3.04 of the TOA. First, since the TOA became effective, every amendment to the rate formula contained in Attachment F and the Attachment F Implementation Rule appears to have been filed collectively by the Participating Transmission Owners in accordance with section 3.04(b) of the TOA. Second, two Participating Transmission Owners made a filing in Docket No. ER08-1548-000 to recover, among other things, CWIP costs for pool transmission facilities associated with a large transmission upgrade project. Both Participating Transmission Owners sought to recover CWIP costs through changes to their Local Network Service rate rather than through the Regional Network Service rate mechanism contained in Attachment F.³⁸

27. NEPOOL also disagrees with the Commission's determination that if the Commission were to find that Central Maine's Attachment F amendments were regional rate changes under TOA section 3.04(b), it would effectively read section 3.04(a) out of existence. NEPOOL argues that the collective filing requirement of section 3.04(b) of

³⁶ NEPOOL Rehearing Request at 9-10; NECOS Rehearing Request at 10-11; Joint Protesters Rehearing Request at 9.

³⁷ NECOS Rehearing Request at 12 (citing *New England Power Pool*, 83 FERC ¶ 61,045, at 61,233 (1998)).

³⁸ NEPOOL Rehearing Request at 11.

the TOA still leaves an individual transmission owner with the ability to make a section 205 filing to establish and revise its revenue requirement for all of its transmission facilities. NEPOOL states that it “would not take a position on what such a filing would look like, but contends that such a filing is possible.”³⁹

28. Joint Protesters argue that the August 2009 Order incorrectly finds that individual transmission owners can revise the rate formula unilaterally if the change only affects their Regional Network Service revenue requirement. Joint Protesters indicate that this would enable individual transmission owners to circumvent the plainly stated requirement that filings to amend the formula rate can be implemented only if pursued on a joint basis. In addition, Joint Protesters argue that there is nothing in the August 2009 Order to prevent a transmission owner from filing unilaterally to modify the Attachment F Implementation Rule to include in Regional Network Service rates the costs of its non-pool transmission facilities. Joint Protesters argue that if the August 2009 Order is not reversed on rehearing, it would effectively read section 3.04(b)(i)(A) out of the TOA.⁴⁰

29. On the other hand, Joint Protesters argue that, contrary to the Commission’s concern in the August 2009 Order, requiring Central Maine to file under section 3.04(b)(i)(A) would not read section 3.04(a)(i) out of the TOA. Joint Protesters state that Central Maine and other Participating Transmission Owners would retain the unilateral right to make filings to revise their Regional Network Service revenue requirements, provided that such filings are consistent with the Regional Network Service rate formula. To the extent that Central Maine’s filing cannot be implemented without a modification to the Attachment F formula, then the revenue requirement revision can be made only if accompanied by a jointly sponsored Participating Transmission Owners’ filing to change the Attachment F Implementation Rule, not an individual filing by Central Maine.⁴¹

30. Joint Protesters note that “[u]nder the dividing line drawn by TOA Sections 3.04(a) and 3.04(b), individual [Participating Transmission Owners] may file unilaterally to increase their revenue requirements *when the costs that they recover through the regional rate design reflected in Attachment F (and the Attachment F Implementation Rule) increase*, but they may not file unilaterally to change the categories of costs recovered through regional rates versus local rates.”⁴² Joint Protesters further note that

³⁹ *Id.* at 11-12.

⁴⁰ Joint Protesters Rehearing Request at 11.

⁴¹ *Id.*

⁴² *Id.* at 12 (emphasis in original).

“[u]nder formula rates, most cost increases flow automatically through the rate formula to produce increased rates – meaning that no section 205 filing is required except to change the formula.”⁴³ Joint Protestors dismiss the argument that, if filings to change the formula must be made jointly by all Participating Transmission Owners, then a Participating Transmission Owner’s unilateral right to make section 205 filings to increase its revenue requirement is meaningless.⁴⁴ Rather, Joint Protestors argue, although individual Participating Transmission Owners currently do not need to make revenue requirement filings under section 205 because the rates are formulary, the formula rate may change to a stated rate in the future, at which point the Participating Transmission Owners would be allowed to file for individual rate increases under section 205. Thus, the unilateral filing right set forth in TOA section 3.04(a) is not a dead letter because utilities are allowed to file unilaterally to change their revenue requirements if the Regional Network Service Rates were to change to a stated rate in the future.⁴⁵

31. Joint Protestors also reiterate on rehearing their argument that Central Maine’s filing is governed by TOA section 3.04(b)(iii). Specifically, they argue that TOA sections 3.04(a)(vii) and 3.04(b)(iii) divide authority regarding incentive rate filings based on whether the rates to be changed are “applicable only to service provided by such [Participating Transmission Owner(s)] under their Local Service Schedules” or are “applicable to the entire New England Transmission System.” Joint Protestors contend that Central Maine’s CWIP proposal falls in the latter category.⁴⁶

32. In support of this position, Joint Protestors refer to the grammatical construction of section 3.04(b)(iii). Specifically, Joint Protestors argue that the placement of a comma after the word “proposal” in section 3.04 (b)(iii) indicates that both phrases in this section – “that implement an incentive or performance-based rate proposal” and “applicable to the entire New England Transmission System”—modify the words “rates or charges.” Joint Protestors argue that, read together, these sections distinguish between incentive rates that will be collected under local service schedules and incentives that will be collected through regional rates. They then assert that the Commission’s interpretation in the August 2009 Order contradicted the plain text of the provision. Because Central

⁴³ *Id.*

⁴⁴ *Id.* at 12.

⁴⁵ *Id.*

⁴⁶ Joint Protestors at 13.

Maine's filing was an incentive based rate proposal, Joint Protesters argue, Central Maine lacked authority to file changes in its revenue requirement unilaterally.⁴⁷

33. In addition, NECOS and Joint Protesters contend that the Commission's interpretation of TOA section 3.04, and the related compliance directive, violates the *Mobile-Sierra*⁴⁸ protection contained in section 11.04(c) of the TOA. Joint Protesters note that the allocation of filing rights set forth in the TOA resulted from lengthy negotiations and the allocations are subject to *Mobile-Sierra* "public interest" protection.⁴⁹ Therefore, according to Joint Protestors, if the Commission seeks to revise the allocation of filing rights in a manner contrary to the terms of section 3.04, it can do so only upon showing that failure to do so would "seriously harm[] the public interest." Rehearing Parties argue that the August 2009 Order does not contain a Commission finding of serious harm to the public interest resulting from the continuation of that allocation.⁵⁰

2. Transmission Incentives

34. In addition, NECOS argues that the August 2009 Order erred in summarily rejecting evidence NECOS submitted that contradicted the Commission's conclusion that Central Maine had shown that the Project was the least cost alternative. Specifically, NECOS submitted as part of its protest written testimony that previously was submitted in a Maine proceeding by an engineering expert witness on behalf of the Maine Office of Public Advocate. This witness testified that (i) there was extensive "gold plating" in the design and specifications of the Project and (ii) Central Maine had not adequately made the case in the Maine Certificate of Public Convenience and Necessity proceeding that the size and scope of the Project actually was necessary. NECOS argued that the Commission's ROE incentives made it more likely that a transmission owner would attempt to "gold plate" new transmission projects, and that the Commission therefore had

⁴⁷ *Id.*

⁴⁸ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

⁴⁹ Joint Protestors at 15 (citing RTO Order, 106 FERC ¶ 61,280, at P 129 (2004)).

⁵⁰ NEPOOL Rehearing Request at 14, NECOS Rehearing Request at 13 *citing* *Dominion Transmission, Inc., v. FERC*, 533 F.3d 845,853 (D.C. Cir. 2008); Joint Protesters Rehearing Request at 15 *citing* *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 128 S. Ct. 2733, 2737 (2008).

particular reasons in this case to scrutinize prudence more carefully than in cases in which those incentives were not present.⁵¹

35. NECOS notes that the Commission awarded Central Maine an incentive ROE adder of 1.25 percent specific to the Project,⁵² on top of 1.24 percent in pre-existing bonus ROE adders awarded by the Commission in other proceedings.⁵³ NECOS states that the total return for Central Maine is 12.89 percent, or 2.49 percent higher than its real cost of equity capital. NECOS argues that the additional return on \$1.5 billion associated with that 2.49 percent excess return is \$37,350,000 per year before gross-up for income taxes, and \$52,290,000 per year after gross-up for income taxes. NECOS argues that the fact that the forecasted cost of the Project almost doubled over the course of two years, \$800 million in 2006 to about \$1.5 billion in 2008 is evidence of “gold plating.”

36. NECOS further argues that based on the Commission’s summary ruling, which “effectively credits [Central Maine’s] evidence over the testimony that NECOS submitted,” there are fundamental inconsistencies in the record, and there remain contested issues of material fact. Therefore, NECOS argues that the August 2009 Order’s determination of the issues on the basis of such a record, without affording an opportunity for discovery or cross-examination, is arbitrary.⁵⁴

3. Compliance Directive to ISO New England

37. NEPOOL argues that the Commission erred in ordering ISO New England to revise Attachment F because the Participating Transmission Owners acting jointly have the section 205 filing rights over Attachment F, not ISO New England. NEPOOL further requests that the Commission reverse its decision to require ISO New England to amend Attachment F because, according to NEPOOL, any changes to Attachment F are regional

⁵¹ NECOS Rehearing Request at 14-15.

⁵² *Id.* at 15 (citing October 2008 Order, 125 FERC ¶ 61,079 at P 70-74).

⁵³ NECOS Rehearing Request at 15 (citing *Bangor Hydro-Electric Co.*, Opinion No. 489, 117 FERC ¶ 61,129, at P 79-81 (2006), *order on reh’g*, 122 FERC ¶ 61,265, at P 19-22 (2008)).

⁵⁴ NECOS Rehearing Request at 16 *citing Louisiana Public Service Commission v. FERC*, 184 F.3d 892, 898-899 (D.C. Cir. 1999); *Cajun Electric Power Cooperative, Inc. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994); *NLRB v. Deena Artware, Inc.*, 361 U.S. 398, 404 (1960).

rate changes requiring joint Participating Transmission Owner action and must be subject to the NEPOOL review and vote requirement contained in section 3.04(1) of the TOA.⁵⁵

C. Commission Determination

38. The Commission will deny the requests for rehearing of the August 2009 Order. This proceeding turns, in part, on determining the nature of Central Maine's filing. As we stated in the August 2009 Order, Central Maine's filing is, at its core, a company-specific revision to its revenue requirement for its pool transmission facilities.⁵⁶ Thus, the Commission found that Central Maine's proposed Attachment F revisions fell within the purview of TOA section 3.04(a)(i), which permits a transmission owner to unilaterally propose revisions to its own transmission revenue requirement for its transmission facilities, regardless of whether the transmission facilities' costs were allocated regionally or not. The Commission rejected arguments that the proposed revisions fell under TOA section 3.04(b)(i)(A), which does not govern revenue requirements, but rather governs rate design, incentives, or rates -- and thus requires transmission owners to file jointly when seeking to change the rate design, incentives, or rates -- for the entire New England transmission system. The Commission also found no evidence that the transmission owners had waived their statutory right to unilaterally file changes to their revenue requirements. The Commission further found to be unjust and unreasonable certain language in the Tariff requiring pre-approval from the TO Committee before an individual transmission owner may modify its own revenue requirement; therefore, the Commission directed ISO New England to remove the requirement. No argument made on rehearing persuades us that we erred in these findings.

1. Arguments Regarding the Interpretation of TOA Section 3.04

39. We disagree with arguments on rehearing that individual revenue requirement amendments to Attachment F are regional rate changes subject to TOA section 3.04(b). The Attachment F Implementation Rule "sets forth details with respect to the determination each year of the Transmission Revenue Requirements for each P[articipating] T[ransmission] O[wner]."⁵⁷ It does not set forth any rate or charge or otherwise allocate costs, and therefore is not a regional rate. Rather, it is the method for determining the individual transmission owner's revenue requirement, which represents

⁵⁵ NEPOOL Rehearing Request at 14-15.

⁵⁶ August 2009 Order, 128 FERC ¶ 61,143 at P 31.

⁵⁷ Attachment F Implementation Rule.

each transmission owner's cost of providing service, and is one of several inputs into the regional rate calculated under other schedules of the Tariff. Specifically, after each transmission owner calculates its individual revenue requirement pursuant to the Attachment F Implementation Rule, all of the individual revenue requirements are combined and regional rates are calculated, and costs are then allocated under other sections of the Tariff (Schedules 8, 9, and 12).⁵⁸ Central Maine's Attachment F revision neither combines its resulting revenue requirement with other transmission owners' revenue requirements, nor calculates a "rate or charge" or the design of such rate or charge for another transmission owner's facilities, as defined under TOA section 3.04(b)(i). Importantly, Central Maine neither proposed to change the regional "rate or charge" or the design of such rate or charge contained in Schedules 8, 9, and 12 of the Tariff, nor did the Commission require such a change.

40. Additionally, the Attachment F Implementation Rule already includes a provision allowing each transmission owner to "incorporate any incentive ROE adder approved by the FERC under Order No. 679 for other plant investments." Allowing Central Maine to collect a CWIP incentive in its revenue requirement is no different from allowing individual transmission owners to recover company-specific ROE adder incentives.

41. Rehearing Parties argue that amendments to Attachment F are changes to regional rates, which are subject to TOA section 3.04(b). We reiterate our finding from the August 2009 Order that "[t]he addition of Project CWIP as an input in the Attachment F Implementation Rule does not change the relationship among the variables that constitute the formula rate."⁵⁹ Further, as noted above, Attachment F is not a regional rate, but rather is the methodology for determining one input (an individual revenue requirement) into the regional rate. The formula used to calculate the regional network service rate annually under Schedules 8, 9, and 12 remains unchanged.⁶⁰

42. We reject the position that the August 2009 Order effectively allows a transmission owner to unilaterally file to modify the Attachment F Implementation Rule

⁵⁸ Schedule 8 is the formula rate for "Through or Out Service – the Pool PTF Rate." Schedule 9 is the "Regional Network Service Rate" (formula rate). Schedule 12 governs "Transmission Cost Allocation."

⁵⁹ August 2009 Order, 128 FERC ¶ 61,143 at P 34.

⁶⁰ *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,292 (2008); *Virginia Electric and Power Company*, 123 FERC ¶ 61,098 (2008) (when the Commission approves a company's request for a formula rate, it approves the formula itself, which becomes the filed rate. Any data used therein is merely an input and is not part of the formula rate).

to include in Regional Network Service rates the costs of its non-pool transmission facilities. ISO New England determines which facilities are pool transmission facilities eligible for regional cost allocation and which are non-pool transmission facilities that are not eligible for regional cost allocation under Schedule 12 of the Tariff, and there is no proposal or directive to modify that Schedule here.

43. Rehearing Parties also argue that the parties to the TOA intended for changes to Attachment F to be made according to TOA section 3.04(b), and that transmission owners waived their section 205 rights with respect to Attachment F. In support of this argument, the parties seeking rehearing rely primarily on Attachment X to the New England RTO filing. Although, as we stated previously, we reject NECOS' and NEPOOL's attempt to introduce additional evidence at the rehearing stage, in any case, Attachment X is not dispositive. Attachment X is not a tariff sheet or part of an agreement filed with the Commission. It is merely a summary provided to the Commission as part of the transmission owners' 2003 New England RTO filing. Further, Attachment X is not as clear regarding filing rights as its proponents assert. For example, Attachment X includes a line item titled "Schedule 9A Implementation Rule - Attachment F Annual Transmission Revenue Requirement." It is not clear whether this is a reference to Schedule 9 or the Attachment F Annual Transmission Revenue Requirement. In any event, a "Schedule 9A Implementation Rule" does not exist. Finally, the header in Attachment X indicates that the allocation of filing rights to the Transmission Owners Committee is only for "regional rates," not the "revenue requirements" at issue in this case. Thus, Attachment X has little, if any, probative value with respect to ascertaining the parties' intent to waive unilateral filing rights.

44. We reiterate our disagreement with Joint Protestors' contention that Central Maine's filing is governed by TOA section 3.04(b)(iii). As we stated in the August 2009 Order, "the incentives authorized by the Commission in the October 2008 order are not 'applicable to the entire New England Transmission System;' they were authorized specifically for Central Maine's Project based on the determination that the Project satisfied the requirements for incentives under Order No. 679 and section 219 of the Federal Power Act. In our view, section 3.04(b)(iii) is intended to apply to cases like Opinion No. 489, where the Commission authorized an incentive on a New England-wide basis based on regional concerns and the regional development process."⁶¹

45. We also disagree with Joint Protesters that the August 2009 Order would effectively read section 3.04(b)(i)(A) out of the TOA. Transmission owners still are

⁶¹ *Id.* P 39 (citations omitted).

required to jointly file rate design changes (i.e., changes to the relationship among the variables that constitute the rate) under TOA section 3.04(b)(i)(A).⁶²

46. NECOS' and Joint Protestors' argument that the Commission's interpretation of section 3.04 violates the TOA's *Mobile-Sierra* protections is similarly unfounded. In the August 2009 Order, the Commission determined that the TOA allows Central Maine to file unilaterally to change its revenue requirements. This determination does not revise the TOA, and thus does not implicate the TOA's *Mobile-Sierra* clause.

2. Arguments Regarding Transmission Incentives

47. Regarding NECOS' general contention that transmission incentives would result in cost inefficiencies or "gold-plating," these rehearing arguments constitute collateral attacks on Order No. 679. NECOS made these same arguments in the Order No. 679 proceeding, where the Commission addressed them comprehensively.⁶³ Additionally, to the extent NECOS' arguments focus on the transmission rate incentives authorized for the Project, they constitute an impermissible collateral attack on the October 2008 Order.

48. We continue to find that Central Maine has demonstrated that the Project is consistent with a least-cost energy supply program based on the submission of the Needs Assessment study and Transmission Alternatives Assessment. As the Commission previously found, these studies demonstrate that the Project is the most economical transmission solution to Maine's reliability needs.⁶⁴ These studies were submitted to ISO New England, reviewed by the ISO New England Planning Advisory Committee, and vetted by market participants before the Project's inclusion in the 2008 Regional System Plan. And the August 2009 Order addressed Central Maine's prudence demonstration, which is required under section 35.13 of our regulations,⁶⁵ in some detail. In addition, in that order the Commission acknowledged NECOS' argument that the prudence review also must include a review of cost schedules, and thus we required Central Maine to submit a filing specifying a method for fulfilling this obligation.⁶⁶ As discussed further below, Central Maine explains in its compliance filing that it will provide an annual report of construction costs -- which parties will be able to review for prudence. NECOS

⁶² *Id.* P 34-35.

⁶³ *E.g.*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48-65, 146-150.

⁶⁴ August 2009 Order, 128 FERC ¶ 61,143 at P 58-63.

⁶⁵ 18 C.F.R. § 35.13 (2010).

⁶⁶ August 2009 Order, 128 FERC ¶ 61,143 at P 62.

argues that the Commission arbitrarily and summarily rejected evidence that it claims supports its argument that the Project is not the least cost alternative. However, as the Commission explained, the Project has been subjected to a high degree of scrutiny and review that takes account of the interests of each sector and state in New England.⁶⁷

3. Arguments Regarding the Compliance Directive to ISO-NE

49. We find NEPOOL's argument that the Commission erred in ordering ISO New England, rather than the Participating Transmission Owners acting jointly, to submit a filing in compliance with the order to change Attachment F as moot, as ISO New England and the Participating Transmission Owners jointly filed the required changes. More importantly, NEPOOL's argument rests on an incorrect premise. NEPOOL argues that "changes to Attachment F and its Implementation Rule result in changes to regional rates and are subject to Section 3.04(b) and (l) of the TOA" and thus must be filed by the TO Committee.⁶⁸ However, we disagree with NEPOOL's characterization that all changes to Attachment F, without exclusion, constitute regional rate changes. As described above, Attachment F is not a regional rate, but rather is a methodology for determining individual transmission owners' revenue requirements -- one of the inputs into the regional rate. Nevertheless, as clarified further below, changes to Attachment F that propose to modify all of the transmission owners' revenue requirements should continue to be filed jointly.

50. In accordance with our findings above, the Commission also denies rehearing regarding the directive that ISO New England remove language from the Tariff that requires the Transmission Owners Committee to approve modifications to the Attachment F Implementation Rule, regardless of whether the revision is company-specific. As we explained in the August 2009 Order, and as we reiterate here, that requirement improperly interferes with an individual transmission owner's rights to file changes to its revenue requirement under TOA section 3.04(a)(i). However, while company-specific revisions do not require TO Committee pre-approval, any revisions that are not company-specific and that would affect all transmission owners' revenue requirements would be subject to the requirements of TOA section 3.04(b), and thus would require TO Committee approval.

⁶⁷ *Id.* P 63.

⁶⁸ NEPOOL Rehearing Request at 12.

D. Central Maine's Compliance Filing**1. Description of the Filing**

51. On October 6, 2009, Central Maine submitted a filing in purported compliance with the Commission's August 2009 Order. Central Maine's filing explained the methodology it would use for providing parties with an annual report of construction costs. Central Maine also filed an attestation by a corporate officer to verify cost of service statements and supporting data, as required by the August 2009 Order.

52. In describing its reporting methodology, Central Maine states that the formula rates contained in Attachment F (governing Central Maine's recovery of CWIP through Regional Network Service rates) and Schedule 21-CMP (governing Central Maine's recovery of CWIP through Local Network Service rates) of Section II of the ISO New England Tariff already require informational filings to be filed with the Commission on or before July 31, and June 30 of each year, respectively.

53. Central Maine proposes to include the CWIP data as part of both of these annual informational filings for Regional Network Service and Local Network Service, as applicable. Central Maine notes that the annual CWIP report will include: (1) actual amounts of CWIP recorded each month for the Project for the most recent calendar year; (2) a forecast of the year end Project CWIP balance for the current calendar year; (3) a summary and detail of accounting transfers between the Project CWIP and Plant in Service; (4) a statement of the Project's current status and estimated in-service date(s) for each piece of the Project; and (5) the allocation of costs associated with the Project among regional and local customers.

54. Central Maine states that, under the ISO New England Tariff, transmission customers and any other interested parties may review and comment on the draft annual informational filing on the ISO New England website prior to filing with the Commission. Central Maine also states that it participates in a technical conference before the Maine PUC in early June of each year to review the annual updates to all of its transmission charges.

55. Central Maine states that, as part of the annual review process for its Local Network Service formula rates, parties have an opportunity to submit discovery requests related to any data inputs used in the formula rates, the calculations performed using these data inputs, and whether Central Maine has properly applied the formula rate.

Central Maine further states that it will provide a level of detail that is equivalent to what the Commission has accepted in other proceedings, including *Maine Yankee* and *Duquesne Light Co.*⁶⁹

56. At the time of this compliance filing, Central Maine stated that, since it had not received the Certificate of Public Convenience and Necessity associated with the Project, the forecast Project CWIP as of December 31, 2009 was zero. Central Maine stated that it had not revised the inputs to the formula rates, in effect as of June 1, 2009 to May 31, 2010, to reflect such forecast because there were no changes to the charges at the time. Central Maine stated the necessary information regarding the new or revised inputs would not be filed until the necessary permits and certificates were acquired and in accordance with the provisions of the ISO New England Tariff.⁷⁰

2. Protests

57. In its protest, NECOS states that Central Maine's compliance filing is "remarkable" for both its brevity and lack of content, does not fulfill the Commission's requirements for transparency in CWIP reporting, and requests that the Commission reject the compliance filing. NECOS states that because the Project covers approximately 55 transmission line projects and 20 substation projects,⁷¹ Central Maine's annual reporting obligation requires more detail than Central Maine proposed in its compliance filing. NECOS states that Central Maine's proposal to report the data in aggregated form for all 75 upgrades it has gathered under the Project precludes a prudence review and defeats the purpose of the reporting requirement.⁷² NECOS argues that Central Maine's annual reporting proposal does not include upgrade-by-upgrade detail, subaccounts, workpapers, or the impact of CWIP expenses in line-item detail.

⁶⁹ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007).

⁷⁰ Subsequent to this compliance filing, on June 30, 2010 and in Docket No. ER09-938-000, Central Maine filed its annual update to formula rates in Schedule 21-CMP of the ISO New England Tariff. This annual update reflects costs associated with those portions of the Project that have received a Certificate of Public Convenience and Necessity.

⁷¹ NECOS Protest at 3-4 *citing* Central Maine's January 29, 2009 presentation to the ISO New England Transmission Cost Allocation Stakeholder Group (excerpt attached to NECOS Protest as Ex. No. 1).

⁷² *Id.* at 4.

58. NECOS argues that the Commission's regulations require that "recovery of CWIP costs via a formula rate should not place [a utility] in a position different than that of a utility which does not employ a formula rate."⁷³ NECOS states that the Commission should require Central Maine to submit a compliance filing providing:

- a. actual amounts of CWIP recorded for each project, related accounts, such as [Allowance for Funds Used During Construction] and regulatory liability, all subaccounts, and the resulting effect on the CWIP revenue requirement, in line item detail;⁷⁴
- b. a demonstration of the related amounts of Allowance for Funds Used During Construction (AFUDC) that are offset or eliminated as a result of the CWIP treatment;⁷⁵
- c. a demonstration of the effect of including CWIP and AFUDC in rate base on Central Maine's revenue requirement;⁷⁶
- d. a description of any CWIP or AFUDC accounting changes during the year preceding the report, together with the explanation demonstrating that the changes do not erode the protections against accrual of AFUDC on CWIP balances included in rate base;⁷⁷
- e. workpapers with detailed information about the specific cost categories to allow for a prudence review as required by *Southern California Edison Co.* 125 FERC ¶ 61,337 at P 11 (2008);⁷⁸
- f. detailed explanations of accounting procedures (and accounting entries) explaining the manner in which the costs of a work order will be traced to

⁷³ *Id.* at 3 (citing *Southwestern Electric Power Co.* 36 FERC ¶ 61,081, at 61,201 (1986)).

⁷⁴ *Id.* at 3 (citing *Boston Edison Co.*, 111 FERC ¶ 61,266, at P 12 (2005), and *NSTAR Electric Co.* 125 FERC ¶ 61,327, at P 23 (2008)).

⁷⁵ *Id.* at 7.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 5.

specific FERC accounts based on the appropriate accounting treatment, and accounting procedures showing and explaining specific accounting entries that ensure no improper capitalization occurs as required by *Trans-Allegheny Interstate Line Co.* 119 FERC ¶ 61,219 at P 47 (2007);⁷⁹

- g. for each segment identified in the proposed plan application, the ISO New England information consisting of a short description of the project, the year the project was approved through the ISO New England process, and the ISO New England Project identification number. This information should identify the most recent construction forecast describing the project, the page of the plan at which the project begins, Central Maine's numeric designation and the description of the project, project work orders, and a description of each work order;⁸⁰
- h. Central Maine's most recent annual construction forecast;⁸¹
- i. to the extent not stated in the construction forecast, a detailed statement of the reasons for significant modifications to any segments of the Project, the benefits to be derived from the changes, and alternatives to or consequences of not undertaking the modifications;⁸² and
- j. an update on the status of each segment of the project, material changes in estimated costs, estimated in-service date, and whether there is any change in the need for each segment or the alternatives to each segment.⁸³

59. The Maine PUC states that Central Maine's compliance filing does not commit to provide the kind of detailed cost information demonstration required by 18 C.F.R. § 35.13(h)(38) to show that the costs being recovered are prudently incurred. The Maine PUC argues that, in *Southern California Edison Co.*, 125 FERC ¶ 61,337, at P 11 (2008) (*SoCal Edison*), the Commission found that simply listing CWIP costs by category is

⁷⁹ *Id.*

⁸⁰ *Id.* at 7.

⁸¹ *Id.*

⁸² *Id.* at 7-8.

⁸³ *Id.* at 8.

insufficient for an examination of the prudence of these costs and therefore Central Maine should be required to file the documentation required by *SoCal Edison*.⁸⁴

3. Answer

60. Central Maine argues that the parties misunderstand Central Maine's proposed methodology and its obligations under the Tariff to provide Project cost information to ISO New England and the stakeholders. Central Maine states that as part of the cost review process for projects that are eligible for regional cost support under the ISO New England Tariff, Central Maine already is required to provide periodic cost estimates to ISO New England that fulfill the Commission's reporting requirements.⁸⁵ Central Maine states that these cost estimates must be submitted to ISO New England in a specific format and must provide estimates on each component of the project, including such detail as materials, labor and equipment, rights of way (including real estate), engineering, permitting, indirects, escalation, AFUDC (when applicable), and contingency.⁸⁶ Central Maine states that in addition to providing estimated costs, it will provide the actual costs for these same cost elements provided for estimated costs.

61. Central Maine clarifies that, as proposed in its compliance filing, the exact same information that is submitted to ISO New England will also be provided to stakeholders and the Commission as part of the annual review process already in place for the inputs to the formula rates used by Central Maine.

4. Commission Determination

62. We accept Central Maine's compliance filing, effective as of June 1, 2009, subject to the conditions discussed below. In the August 2009 Order, we stated that, "we have previously determined that recovery of CWIP on a formula basis is not permitted without prior Commission review of the cost schedules. In Order No. 679, we allowed public utilities to propose a method to limit this CWIP-related formula rate filing obligation to once a year. We have also previously permitted applicants to propose this methodology on compliance, and we will do so here."⁸⁷ We found that Central Maine's

⁸⁴ Maine PUC Protest at 3-4.

⁸⁵ Central Maine Answer at 2 (citing ISO New England Planning Procedure No. 4, *Procedure for Pool-Supported PTF Cost Review*).

⁸⁶ *Id.* citing ISO New England Project Cost Estimating Guidelines.

⁸⁷ August 2009 Order, 128 FERC ¶ 61,143 at P 62 (citations omitted).

compliance filing “should explain Central Maine’s specific methodology for providing parties with an annual report of the construction costs. These annual reports should be in the same detail that we found acceptable in *Maine Yankee* and other cases, and consistent with Order No. 679, will not subject Central Maine to a comprehensive rate review.”⁸⁸

63. We find that Central Maine’s proposed method fulfills this compliance requirement with one exception.⁸⁹ We previously have required use of a mechanism to ensure that the actual CWIP costs are allocated to the appropriate customers.⁹⁰ It is unclear whether Central Maine’s formula rate contains a true-up provision for both costs and loads applicable to the CWIP component, or whether, as required in *Boston Edison*, Central Maine has in place a mechanism to ensure that allocation of CWIP is based on actual customer usage. Therefore, to the extent that this is not already provided for in Central Maine’s CWIP protocols, Central Maine must make such a demonstration as part of its annual report.

64. Apart from this exception, we find that the level of detail Central Maine proposed in its compliance filing is consistent with the Commission’s requirements in *Maine Yankee* and other formula rates with CWIP recovery.⁹¹ In response to the Maine PUC’s concerns, we find that Central Maine provided the detailed information required by 18 C.F.R. § 35.13(h)(38) (2010), by demonstrating that its Project provides reliable and economic power and by the Project’s inclusion in the ISO New England Regional System Plan. As discussed in the August 2009 Order, Central Maine demonstrated that the Project is consistent with a least-cost energy supply program based on several assessments that examined 18 different reliability scenarios, multiple transmission and non-transmission alternatives to this transmission project and demonstrated that the Project is a more economical solution to Maine’s reliability needs and, therefore, prudent.

⁸⁸ *Id.*

⁸⁹ In earlier proceedings, the Commission required the utility to report the date on which each project received the state siting and permitting approvals. *See, e.g., Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284, at P 68 (2007). However, because Central Maine already is required to report this information in its Form 730, we will not duplicate that requirement here.

⁹⁰ *See, e.g., Boston Edison Company*, 109 FERC ¶ 61,300 (2004), *order on reh’g*, 111 FERC ¶ 61,266 (2005) (*Boston Edison*); *Northeast Utilities Service Company*, 114 FERC ¶ 61,089 (2006).

⁹¹ *E.g., Boston Edison*, 109 FERC ¶ 61,300 at P 33; *Northeast Utilities Service Company*, 114 FERC ¶ 61,089 at P 23; *Duquesne Light Company*, 118 FERC ¶ 61,087 at P 77.

65. In response to NECOS' concerns, we reiterate here that, in the August 2009 Order, we accepted Central Maine's accounting proposal, based on its declaration that it will not transfer the costs to Account No. 107 prior to receiving a Certificate of Public Convenience and Necessity and completing its detailed design process and including the following conditions: (1) Central Maine must be incurring costs related to construction activities on a planned progressive basis at the time that it transfers amounts from Account No. 183 to Account No. 107; and (2) Central Maine must cease accruing AFUDC on the amounts when CWIP is included in rate base or, prior to including the costs in rates, during delays in construction or periods when it does not incur construction costs on a continuous planned progressive basis.⁹² As Central Maine clarified in its answer, the detailed information that NECOS complains is missing from the filing proposal will be included in Central Maine's required submissions to ISO New England as part of the cost review process for projects that are eligible for regional cost support and need not be duplicated here.

66. We also find that Central Maine has adequately addressed the issues that NECOS raises relating to construction forecasts in this initial section 205 proceeding.⁹³ Central Maine's participation in the ISO New England regional planning process satisfies this requirement.⁹⁴ More specifically, as a Reliability Transmission Upgrade in ISO New England's Regional System Plan, the Project has already been subject to scrutiny and a review that takes account of the interests and input of each sector and state in New England.⁹⁵ Additionally, Central Maine submitted a Needs Assessment study⁹⁶ and a Transmission Alternatives Assessment.⁹⁷ Thus, we reject NECOS' claim that Central Maine has not provided sufficient information regarding construction forecast.

⁹² August 2009 Order, 128 FERC ¶ 61,143 at P 75-76.

⁹³ *See* 18 C.F.R. § 35.13h(38).

⁹⁴ *See, e.g., Pepco Holdings, Inc.*, 125 FERC ¶ 61,130, at P 106 (2008); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, *order on reh'g*, 121 FERC ¶ 61,009 (2007).

⁹⁵ *Id.* P 63.

⁹⁶ Attachment K to the ISO New England Tariff describes the needs assessment process.

⁹⁷ The Transmission Alternatives Assessment reviewed the costs of each of the transmission solutions available to resolve the needs identified in the Needs Assessment. *See* Central Maine Deficiency Response, Docket No. ER09-938-000, at 3 (filed June 8, 2009).

67. We reject NECOS' and Maine PUC's argument that Central Maine should provide workpapers with detailed information about each specific category of cost, which was required in *SoCal Edison*, in each annual report. In this proceeding, Central Maine's annual reporting requirement is based on the requirements outlined in *Maine Yankee* and upheld in Order No. 679, which applies to CWIP recovery through formula rates. In contrast, the CWIP recovery at issue in *SoCal Edison* is through stated rates, rather than formula rates. Thus, the two circumstances are different, and as the Commission has noted, the "prudence of investment decisions and associated costs is a matter of fact in each case."⁹⁸

68. NECOS' and Maine PUC's arguments regarding the level of detail are also premature. Interested parties will have sufficient opportunity to review Central Maine's adjustments to the formula rate and request additional information from Central Maine regarding construction costs and CWIP account balances through the informational filing process. Specifically, Section 10.2 of Schedule 21-CMP of the ISO New England Tariff allows interested parties to submit discovery requests and contest issues related to any data inputs used in the formula rates. In addition, Attachment F and Schedule 1 of the ISO New England Tariff provide an opportunity for transmission customers and any other interested parties to review and comment on the informational filing reflecting the calculation of regional transmission charges. Therefore, based on the facts of this case, we will accept Central Maine's proposal.⁹⁹

E. Filing Parties' Compliance Filing

69. On October 6, 2009, ISO New England and the TO Committee (Filing Parties) jointly filed in purported compliance with the August 2009 Order. The Filing Parties explain that they have revised Attachment F by deleting the sentence requiring that changes to the Attachment F Implementation Rule must be approved by the TO Committee. The Filing Parties state that the TO Committee voted 98.89 percent in favor of the proposed revision, with the remaining 1.11 percent abstaining. The Filing Parties

⁹⁸ *Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base*, Order No. 298, FERC Stats. & Regs. ¶ 30,455, at 30,516, *order on reh'g*, Order No. 298-A, FERC Stats. & Regs. ¶ 30,500 (1983), *order on reh'g*, Order No. 298-B, FERC Stats. & Regs. ¶ 30,524 (1983).

⁹⁹ As stated above, on June 30, 2010 and in Docket No. ER09-938-000, Central Maine filed its annual update to formula rates in Schedule 21-CMP of the ISO New England Tariff.

request a June 1, 2009 effective date, consistent with the Commission's August 2009 Order.

Commission Determination

70. The Commission finds that the filing meets our compliance directive and thus accepts the proposed revision, effective as of June 1, 2009.

The Commission orders:

(A) The Commission denies rehearing, as discussed in the body of this order.

(B) The Commission conditionally accepts Central Maine's October 6, 2009 compliance filing regarding the methodology for annual construction costs reports, effective as of June 1, 2009, as discussed in the body of this order.

(C) The Commission accepts ISO New England's and the TO Committee's October 6, 2009 compliance filing proposing revisions to Attachment F, to be effective as of June 1, 2009, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.