

135 FERC ¶ 61,236
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 and
Maine Public Service Company

Docket No. EL08-77-002

ORDER DENYING REQUEST FOR CLARIFICATION
OR, IN THE ALTERNATIVE, REHEARING

(Issued June 16, 2011)

1. Central Maine Power Company and Maine Public Service Company (collectively, the Maine Companies) request clarification or, in the alternative, rehearing of the Commission's November 2009 Order on Rehearing,¹ specifically a statement regarding conditions associated with the transmission rate incentives authorized in this proceeding² pursuant to Order No. 679³ and section 219 of the Federal Power Act (FPA).⁴ For the reasons discussed below, we deny the request for clarification or, in the alternative, rehearing.

I. Background

A. Incentives Order

2. In November 2008, the Commission authorized transmission rate incentives pursuant to Order No. 679 for the Maine Companies' planned Maine Power Connection

¹ *Central Maine Power Company*, 129 FERC ¶ 61,153 (2009) (November 2009 Order).

² *Central Maine Power Company*, 125 FERC ¶ 61,182 (2008) (Incentives Order)

³ *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).

⁴ 16 U.S.C. § 824s (2006).

Project (Project),⁵ subject to two conditions: (1) ISO New England (ISO-NE) including the Project in its Regional System Plan as a Market Efficiency Transmission Upgrade; and (2) the Maine Companies submitting a subsequent filing explaining how the Project's designation as a Market Efficiency Transmission Upgrade satisfies FPA section 219's eligibility requirement.⁶ The Commission authorized a 150-basis point return on equity (ROE) incentive adder 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 the Maine Parties' control (abandonment).

3. The Commission noted that, under Order No. 679, an applicant for transmission incentives must demonstrate that the facilities for which it seeks incentives satisfy the requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion. Order No. 679 also established a rebuttable presumption that a project is eligible for incentives under section 219 if it: (1) results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) has received construction approval from an appropriate state commission or state siting authority.⁷ Additionally, Order No. 679 stated that the Commission will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.⁸

4. In the Incentives Order, the Commission found that the Project did not at that time qualify for the rebuttable presumption under FPA section 219 because it had neither been approved in ISO-NE's Regional System Plan nor received final siting approval from the Maine Public Utilities Commission (Maine PUC). However, the Commission noted that the Project was undergoing consideration in the Regional System Plan process, and accordingly, authorized incentives contingent on ISO-NE including the Project in the

⁵ According to the Maine Companies, the Project includes building approximately 200 miles of new 345 kV transmission line, constructing five new substations, and upgrading two existing substations. The Maine Companies' petition for declaratory order described multiple benefits deriving from the Project, including creating access to diverse resource generation in New England in general, and specifically allowing access to 800 MW of wind energy from the proposed Aroostook Wind Energy Project in Northern Maine.

⁶ *Central Maine Power Company*, 125 FERC ¶ 61,182.

⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 5, 46-50.

⁸ *Id.* P 54, *citing* Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 58 n.39.

Regional System Plan as a Market Efficiency Transmission Upgrade. The Commission additionally made the incentives contingent on the Maine Companies submitting a filing, within 30 days of ISO-NE approving the Project as Market Efficiency Transmission Upgrade, explaining how that designation satisfies the requirements of section 219, i.e., ensures reliability or reduces the cost of delivered power by reducing congestion.⁹

5. Additionally, with respect to the abandonment incentive in particular, the Commission found that the Maine Companies demonstrated a nexus between the risks of the Project and the need to recover prudently incurred costs associated with abandonment of the Project, provided that abandonment is a result of factors beyond the Maine Companies' control, which must be demonstrated in a subsequent section 205 filing. In authorizing abandonment, the Commission stated that the abandonment incentive will be an effective means to encourage the Project's completion. The Commission stated that the Project requires approvals from multiple municipalities, state siting authority, and various federal approvals, and that the Project risks cancellation should it fail to receive approval in ISO-NE's Regional System Plan and state siting authority. The Commission stated that these factors introduce a significant element of risk and that authorizing abandonment will help ameliorate this risk.¹⁰

B. Order Granting Motion To Lodge and Dismissing Rehearing Requests

6. Following the Commission's issuance of the Incentives Order, several parties filed requests for rehearing on issues not relevant to discussion of the clarification or request for rehearing here. Additionally, the Connecticut and Massachusetts parties¹¹ filed a motion to lodge evidence that, subsequent to the Incentive Order's issuance, Aroostook Wind Energy notified the Maine PUC that it had decided to discontinue the Aroostook Wind Energy Project. Houlton Water Company (Houlton) filed an answer to the motion to lodge, stating that the Maine PUC dismissed the Maine Companies' Certificate of Public Convenience and Necessity proceeding in February of 2009. Houlton argued, among other things, that the Commission authorized incentives for the Project subject to the two conditions noted above, and that based on the cancellation of the Aroostook Wind Energy Project and the dismissal of the Certificate of Public Convenience and Necessity proceeding, neither condition can ever be satisfied. Thus, Houlton argued that

⁹ *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 56-57.

¹⁰ *Id.* P 96-98.

¹¹ The Connecticut and Massachusetts parties consist of: the Connecticut Department of Public Utility Control (Connecticut DPUC), the Connecticut Office of Consumer Counsel, the Massachusetts Department of Public Utilities, and the Attorney General of the Commonwealth of Massachusetts.

the Commission should withdraw the incentives and clarify that transmission customers are not responsible for abandonment costs.

7. In the November 2009 Order, the Commission granted the motion to lodge and dismissed rehearing requests.¹² In granting the motion to lodge, the Commission noted that the moving parties presented the Commission with information about a material change in the facts that the Commission relied on in reaching its decision to conditionally authorize incentives that was not available at the time they filed their rehearing request – cancellation of the Aroostook Wind Energy Project. The Commission held that, in light of this evidence, and in light of the Maine PUC’s subsequent dismissal of the Certificate of Public Convenience and Necessity, the Maine Power Connection Project as described in the Incentives Order had ceased to exist. The Commission recognized that the Maine Companies expressed the intent to go forward with some modified version of the Project, but noted that without the Aroostook Wind Energy Project, any redesigned Project would differ significantly from the Project for which the Commission authorized incentives. Consequently, the Commission stated, in order for the Maine Companies to obtain incentives for any redesigned project, they must submit a new filing that demonstrates the nexus between their redesigned project and the requested incentives, and that satisfies the requirements of Order No. 679.¹³

8. The Commission further stated that the Incentives Order authorized the abandonment incentive subject to the two conditions noted above: (1) ISO-NE including the Project in its Regional System Plan as a Market Efficiency Transmission Upgrade; and (2) the Maine Companies submitting a subsequent filing explaining how the Project’s designation as a Market Efficiency Transmission Upgrade satisfies FPA section 219’s eligibility requirement. The Commission held that the Maine Companies had not satisfied those conditions, and therefore may not recover costs pursuant to the conditionally granted abandonment incentive.¹⁴ The Commission noted that nonetheless, the Maine Companies may submit a section 205 filing seeking to recover prudently incurred abandonment-related costs associated with the Project, based on pre-section 219 precedent. Since the Maine Companies had not submitted such a filing, the Commission found Houlton’s and the Connecticut and Massachusetts Parties’ arguments regarding abandonment-related costs to be premature.¹⁵

¹² *Central Maine Power Company*, 129 FERC ¶ 61,153.

¹³ *Id.* P 14-16.

¹⁴ *Id.* P 20.

¹⁵ *Id.* P 20.

II. Discussion

A. Request for Clarification or, in the Alternative, Rehearing

9. On December 18, 2009, the Maine Companies requested clarification, or in the alternative, rehearing of the Commission's November 2009 Order. Specifically, the Maine Companies request clarification regarding the Commission's statements that the abandonment incentive granted in the Incentives Order was subject to the two conditions described above. The Maine Companies argue that the Incentives Order did not impose the two conditions on the abandonment incentive, and that the November 2009 Order "for the first time" states that the abandonment incentive was conditional and subject to the two conditions.¹⁶

10. The Maine Companies state that the Commission granted their request for recovery of 100 percent of prudently incurred costs associated with abandonment if the abandonment is a result of factors beyond the Maine Companies' control, which they must demonstrate in a subsequent section 205 proceeding.¹⁷ The Maine Companies explain that the Commission further stated in paragraph 97 that "the Project risks cancellation should it fail to receive approval in ISO New England's Regional System Plan and state siting authority" and that "[t]hese factors introduce a significant element of risk; authorizing abandonment will help ameliorate this risk by providing Petitioners with some degree of certainty as it moves forward."¹⁸ Thus, the Maine Companies contend that the order "clearly indicates that the abandonment incentive would serve to mitigate the risks associated with a possible failure to obtain approval under the [Regional System Plan] or a state siting proceeding."¹⁹ The Maine Companies assert that "[a]bandonment authority would offer no protection in the [Regional System Plan] or state context if obtaining approval from the ISO-NE and the state were a condition before the abandonment authority became effective."²⁰

11. The Maine Companies further state that the Commission has explained that conditioning a project's abandonment incentive on the approval of a project for inclusion in the Regional Transmission Organization's planning process requires a case-by-case

¹⁶ Request for Clarification at 1-3.

¹⁷ *Id.* at 3 citing *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 96.

¹⁸ *Id.* at 3-4 citing *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 97.

¹⁹ *Id.* at 4.

²⁰ *Id.*

analysis, and that the Commission will attach such a condition to some projects but not others.²¹ The Maine Companies argue that the Commission's statements in the Incentive Order indicate that the abandonment incentive was necessary in this instance in light of the risks that the Project might not be approved in the Regional System Plan or state siting process.

12. Thus, the Maine Companies request clarification that the abandonment incentive approved in the Incentives Order applies to the Maine Companies' earlier efforts to obtain ISO-NE approval under the Regional System Plan and in associated state proceedings. Alternatively, the Maine Companies request rehearing of the November 2009 Order, arguing that language in that order intended to condition the abandonment incentive constitutes an unexplained reversal of the Incentives Order and is therefore arbitrary and capricious.

B. Responsive Pleadings

13. The Connecticut DPUC and Houlton²² filed answers to the Maine Companies' request for clarification or, in the alternative, rehearing. The Maine Companies filed a motion for leave to reply and reply to Houlton's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits answers to a request for rehearing and answers to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers and will, therefore, reject them.

III. Commission Determination

14. The Commission denies the request for clarification or, in the alternative, rehearing. The Incentive Order states that the incentives granted to the Maine Companies for the Project as described in their petition for declaratory order are contingent upon: (1) ISO-NE including the Project in its Regional System Plan as a Market Efficiency Transmission Upgrade; and (2) the Maine Companies submitting a subsequent filing explaining how the Project's designation as a Market Efficiency Transmission Upgrade satisfies FPA section 219's eligibility requirement.²³ In arguing that the abandonment incentive is not subject to either condition, the Maine Companies point to a single sentence in paragraph 97 of the Incentives Order;²⁴ however, when viewed in light of the

²¹ *Id.* at 5 citing *Green Energy Express LLC*, 129 FERC ¶ 61,165, at P 54 (2009).

²² Houlton filed its answer one day out of time.

²³ *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 1.

²⁴ *See* Request for Clarification at 3.

totality of the discussion in the Incentives Order, and in light of our precedent on transmission incentives, it is apparent that the Commission intended for the abandonment incentive granted to the Project to be subject to the above-noted conditions.

15. Specifically, the Incentives Order consistently refers to the “incentives” (i.e., more than one incentive) being granted subject to the above-noted conditions several times throughout the order.²⁵ As the Maine Companies only requested, and the Incentives Order only granted, two incentives (150 basis point ROE and abandonment), it is apparent that the Commission intended for the conditions to apply to both incentives.

16. More importantly, as noted previously, the Commission relied upon the Project being considered for inclusion in the Regional System Plan as the basis for the Project meeting the “rebuttable presumption” requirements outlined in Order No. 679 for eligibility for incentives under section 219.²⁶ Since the Maine Companies did not otherwise demonstrate that the Project satisfies section 219’s threshold requirement that it either ensure reliability or reduce the cost of delivered power by reducing transmission congestion, the Incentives Order necessarily imposed the two conditions on both the 150 basis point ROE adder and abandonment incentives.

17. The Maine Companies argue that discussion in the Commission’s *Green Energy Express* order supports their request for clarification or rehearing. In *Green Energy Express*, the Commission distinguished the facts in that proceeding, where the Commission conditioned abandonment costs on the Green Energy project’s inclusion in the California ISO’s regional plan, from other cases where the Commission did not condition incentives on such approval, emphasizing that the developers in those other proceedings had independently shown that their projects satisfied section 219’s requirements.²⁷ As in *Green Energy*, the applicant here, Maine Companies, failed to make an independent showing that the Project satisfies section 219’s requirements.

²⁵ See *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 56 (“[W]e will authorize incentives contingent on ISO New England including the project in the Regional System Plan as a Market Efficiency Upgrade.”); and P 57 (“[W]e will also make the incentives contingent on Petitioners submitting a filing, within 30 days of ISO New England approving the Project as a Market Efficiency Upgrade”); and Ordering Paragraph (conditionally granting the entire “petition for declaratory order,” without distinguishing the two incentives sought in that petition).

²⁶ *Central Maine Power Company*, 125 FERC ¶ 61,182, at P 56-57.

²⁷ *Green Energy Express LLC*, 129 FERC ¶ 61,165, at P 52, 54.

18. As discussed in the November 2009 Order, the Maine Companies may submit a section 205 filing seeking to recover prudently incurred, abandonment-related costs associated with the Project based on pre-section 219 precedent.²⁸

The Commission orders:

The request for clarification, or in the alternative, rehearing, is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁸ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115 (describing the Commission's prior determinations outside the "incentive-based rate treatment" precedent finding abandoned plant rate mechanisms to be just and reasonable pursuant to section 205) citing *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 58-61, *reh'g denied*, 113 FERC ¶ 61,143, at P 9-15 (2005) (recovery of 100 percent of prudently incurred abandoned or cancelled plant costs); *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,068, 61,081-83, *order on reh'g*, 43 FERC ¶ 61,285 (1988) (recovery of 50 percent of prudently incurred cancelled plant costs); *Public Service Co. of New Mexico*, 75 FERC ¶ 61,266, at 61,859 (1996), *order approving settlement*, 87 FERC ¶ 61,040 (1999) (recovery of 50 percent of cancelled plant costs).