

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Maine Public Utilities Commission**     )  
**and Maine Customer Group**            )  
Complainants.

**Docket No. ER15 -1429**

**v.**  
**Emera Maine, Maine Public**            )  
**District**                                    )  
Respondent.

**MOTION FOR LEAVE TO FILE RESPONSE AND RESPONSE OF  
MAINE PUBLIC UTILITIES COMMISSION AND  
MAINE CUSTOMER GROUP  
TO EMERA MAINE ANSWER**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 CFR §§385.212 and 385.213, the Maine Public Utilities Commission (“MPUC”) and the Maine Customer Group (“MCG”) (collectively “Complainants”) hereby file this motion for leave to file and this response to Emera Maine, Maine Public District’s (“Emera Maine”) Answer to the Formal Challenge of Complainants (“Answer”), filed in this proceeding on February, 1, 2019.

**I. INTRODUCTION AND SUMMARY**

Complainants’ Formal Challenge consisted of 8 issues (designated as A – H) related to Emera’s 2018 Annual Update to its formula transmission rate. The Formal Challenge asks that those issues be summarily disposed in Complainants’ favor, with appropriate refunds effective on May 1, 2018. Alternatively, any issues not so summarily resolved should be set for hearing, suspended and set for possible resolution before a settlement judge.

Four of the eight issues involve no dispute about the fact that Emera has overcharged. The only dispute is with respect to the timing of the refunds. *See below Issues C, D, E, and H.* Complainants' Formal Challenge is to Emera's 2018 Annual Update to its formula rate, made effective June 1, 2018. Refunds awarded, seeking to correct overcharges in the 2018 Annual Update, should equally be effective June 1, 2018. The Commission so ruled in a previous Formal Challenge to Emera's Annual Update. *Emera Maine, 155 FERC ¶61,233, P. 23-24 (2015)*. And the Commission has so ruled with respect to refunds of excess ADIT in connection with last year's tax reduction. *165 FERC ¶61,086 at P. 46*.

Issue A involves a mis-allocation of regulatory expenses by Emera. A substantial portion of regulatory expense proposed by Emera is not directly assignable to the Maine Public District (MPD) or the Bangor Hydro District (BHD), but Emera Maine allocated these expenses between BHD and MPD based on a made-up allocation method that appears nowhere in the OATT. Regulatory expenses not directly assignable to BHD or MPD should be allocated just like all other A&G expenses, based on customer/sales allocation factor.

Emera Maine seeks what amounts to a double recovery for amortization of pension investment losses recognized as a result of consolidation of pension funding upon the merger of Bangor Hydro and Maine Public Service. (Merger-related Losses). *See below Issue B.* In response to a formal challenge to those Merger-related Losses, the Commission expressly included that issue among issues set for hearing in Docket No. ER12-1650, et al. Subsequently, all merger-related claims were severed out from that docket and became the subject of a separate settlement in Docket No. EC10-67. (Merger-Cost Settlement). The Merger-Cost Settlement, Section 4.1.2.1, allowed for a fixed amount of amortization (\$260,000) to be recovered over the period 6/1/18 – 5/31/21. Thus, Emera Maine was compensated for amortization of Merger-

related Losses in the Merger-Cost Settlement. Emera tries to claim that the Merger-related Losses were somehow not a part of the Merger-Cost Settlement, but Emera offers nothing to show that the Merger-related Losses issue, expressly recognized by the Commission, was expressly excluded from that Merger-Cost Settlement.

Emera Maine's answer fails to provide support for capitalizing \$8.59 million to the rebuild of Line 6901. (Issue F) Its suggestion that Account 183 provides support for capitalizing general reliability studies or studies for a project not constructed is not supported by the language of Account 183 or case law regarding this account. Emera Maine has failed to demonstrate that all of the \$8.59 million which it claims are pre-construction costs for the Line 6901 rebuild directly and immediately resulted in that rebuild. Emera Maine's argument also is undercut by the fact that it did not enter any expenses for Account 183 in its FERC form 1s for 2012 through 2014.

Emera Maine has provided new information in its answer (Issues F and G). The non-Emera parties have not had an opportunity to test this information through discovery and should be accorded that opportunity through the hearing process.

## **II. MOTION FOR LEAVE TO FILE RESPONSE**

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a) (2), do not permit responses to answers unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where a response clarifies the issues or assists in creating a complete record.<sup>1</sup>

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<sup>1</sup> See, e.g., *Emera Maine*, 155 FERC ¶ 61,233 at P. 18 (2016) (*accepted answer to answer that "provided information that assisted us in our decision-making process"*) ; *Mirant Energy Trading v. PJM Interconnection, LLC*, 122 FERC ¶ 61,007 at P 33 (2008); *BP West Coast Products LLC v. SFPP, L.P.*, 121 FERC ¶ 61,239 at P 34 (2007); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,254 at P 13 (2005); *Pinnacle West Energy Corp. v. Nevada Power Co.*, 105 FERC ¶ 61,053 at P 34 (2003).

In this Response, Complainants respond to newly submitted information in Emera's Answer, and otherwise provide the Commission with information which is useful to the Commission's decision-making process, all of which provides a more complete record. Accordingly, Complainants respectfully request that this Response be permitted.

### **III. RESPONSE TO EMERA'S ANSWER TO FORMAL CHALLENGE**

#### **A. Emera Maine has Mis-Allocated Regulatory Expenses (Account 929)**

##### **[Issue-A from Formal Challenge].**

In its Answer, Emera Maine argues that nothing in the formula prevents it from directly assigning non-assignable regulatory costs to Emera MPD. However, as discussed below the formula allows direct assignment only for regulatory expenses that involve only MPD. Those regulatory expenses not directly assignable to BHD or MPD should be allocated just like all other A&G expenses, based on customer/sales allocation factor. As thus properly allocated, the total account 928 expense allocation to MPD is as shown on *Exhibit 2 to MPUC & MCG Formal Protest*. The operation of the formula is discussed below:

Per Emera's formula rate, A&G expenses are reported in Emera's company-wide amount on line 19 of Exhibit 5, Atch. J to Emera's OATT. That total is then allocated to BHD and MPD using customer/sales allocator. See Atch J, Exhibit 6, lines 10-11.

However, an exception to that allocation method exists for regulatory expenses that can be directly assigned to either MPD or BHD. Atch. J, Exhibit 5, line 25. For example, if a regulatory

proceeding involves only MPD transmission rates, the expenses related to that proceeding would be directly allocated to MPD only.

For purposes of calculating the A&G, the regulatory expenses that are directly assigned are added to A&G expenses after first subtracting all regulatory expenses from total A&G on a customer/sales allocation factor basis. Atch. J, Exhibit 5, line 20.

Instead of applying the formula methodology, Emera Maine has subtracted out all regulatory expense from total A&G expenses but has directly assigned to MPD non-direct assignable regulatory expense. A substantial portion of regulatory expense proposed by Emera is not directly assigned, but instead is allocated between BHD and MPD based on a made-up allocation method that appears nowhere in the OATT. *Emera OATT, Atch. J, Exhibit 5, line 25*. What Emera Maine has called directly assigned regulatory expenses in its filing consists of actual expenses directly assignable to MPD plus an allocated portion of non-direct assignable expense allocated by a hidden allocation factor that is not part of the Formula.

Emera Maine states that the purposes of using Company Records in Atch. J, Exhibit 5 was to provide Emera Maine “latitude in terms of how to assign Account 928 expenses to the MPD transmission function.” Answer at 7. This is incorrect; the use of Company Records is simply to allow Emera to directly assign individual expenses incurred in Acct 928-regulatory expense between the BHD and MPD entities, not to create allocation factors of Emera Maine’s choosing.

**B. Amortization Costs of Merger-Related Losses Should Be Excluded Because Such Costs Were Part of the Settlement in EC10-67 et al.**

**[Issue B from the Formal Challenge]**

Emera MPD's 2018 Annual Update filing includes \$354,828 associated with losses in the Maine Public Service Company pension and retirement plan that were recognized at the time of the 2010 merger. ("Merger-related Losses). Emera MPD's proposed recovery of those Merger-related Losses was originally challenged in a Formal Challenge to Emera's 2014 Annual Update. In an order issued June 2, 2016 (155 FERC ¶61,233, at P. 19), the Commission expressly set that issue for hearing. Emera does not dispute the foregoing in its Answer.

Complainants contend that all merger-related issues, including the Merger-related Losses issue, were severed out of the settlement reached with respect to the 2014 Annual Update and left for resolution in a separate docket in EC10-67. Thereafter, a settlement was reached in EC10-67, and all merger-related claims, including the Merger-related Losses claim, were resolved in a comprehensive Merger-Cost Settlement agreement. The Merger-Cost Settlement covered expenses and capital outlays, including all amortization claims, and allowed for a fixed amount of amortization (\$260,000) to be recovered over the period 6/1/18 – 5/31/21. *Merger-Cost Settlement, Section 4.1.2.1.*

Emera's Answer essentially disputes that the Merger-related Losses issue was included as part of the Merger-Cost Settlement. But despite four pages of argumentation, Emera never explains how or why the Merger-related Losses issue was somehow excluded from the comprehensive Merger-Cost Settlement. Given that the issue was expressly addressed by the Commission in its seminal June 2, 2016 order, Emera would have to show that the Merger-related Losses issue was expressly excluded from the Merger-Cost Settlement. Emera makes no such showing.

Simply put, Emera Maine's effort to recover amortization of Merger-related Losses amounts to double recovery, as that amortization was part of the amortization claims settled for \$260,000 in the Merger-Cost Settlement.

**C. Refunds Are Owed from June 1, 2018 When the Annual Update Became Effective.**

**[Issues C, D, E, and H from the Formal Challenge]**

Emera acknowledges the errors in the implementation of the formula rate identified in the Formal Challenge under issues C, D and E. *Answer at 13-14*. However, Emera erroneously claims that these were "Mistakes" within the meaning of Emera's Protocols, and hence corrections could be made in the next Annual Update. *Answer at 13-14*.

The Commission has previously rejected a similar "Mistake" claim by Emera in connection with a Formal Challenge to an Annual Update. *See Emera Maine, 155 FERC ¶61,233, P. 23-24 (2015)* The Commission said:

Emera Maine's Protocols allow for a challenge to the formula inputs . . . . When such a challenge is successful, the Protocols provide for changes to be made to the current Annual Filing . . . . Because Customer Group's challenges were timely raised and Emera Maine admits that the challenged inputs were erroneous inputs to its formula rate, the Commission finds that Emera Maine's formula rate should be corrected for the current 2014-2015 Rate Year.

In this case, Emera's 2018 Annual Update went into effect on June 1, 2018, subject to challenge by customers pursuant to Emera's Protocols under its OATT. Refunds arising from resolution of such challenges in customers' favor should therefore be made effective June 1, 2018.<sup>2</sup>

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<sup>2</sup> Refunds of Emera's excess ADIT should also be made effective June 1, 2018, as expressly agreed by Emera (*see March 5, 2018 Stipulation and Agreement in Docket No. ER18-960, at § 4.3.2*) and ratified by the Commission. *165 FERC ¶61,086 at P. 46* ("With regard to . . . when flow-back of excess ADIT would begin, the June 1, 2018 effective date. . . entitles customers to flow-back of these amounts as of that date.")

It is also noteworthy that failure to require refunds in the current Annual Update effective June 1, 2018, allows Emera to keep some of the excess revenues under its Formula Rates with respect to the true-up. Under the Formula, for the June 1, 2018 – May, 31, 2019 rate period the Actual 2017 Annual FERC Form 1 costs, as adjusted under the review process, are compared to the previous Estimated 2017 Annual costs (which uses the prior year's Annual FERC 1 costs) and any difference is carried-forward with interest as part of the new Estimated Formula rates in Exhibit 2, lines 35-38. Thus, any adjustment to the As-Filed Actual Formula creates two separate adjustments: (i) it lowers the Estimated costs under the Estimated Formula rates (Exhibit 2, lines 1-33), and (ii) it lowers the True-Up costs (Exhibit 2, lines 35-38.). Emera in its Answer seems to only allow for one of the two adjustments.

In addition, Emera's proposal will allow it further unjust enrichment as Emera Maine would get to keep almost all of the excess revenue it collected from its PTP customers in the 2017 rate year. As of October 1, 2018, Emera has issued 100% discounts to the majority of its PTP customers. Emera Maine's proposal to reduce future rates to the PTP customers, rather than provide refunds effective June 1, 2018, is an empty exercise because those PTP customers will be paying nothing from which to subtract refunds. Emera Maine's proposal would permanently deprive the discounted PTP customers of their refunds, thus unjustly enriching Emera Maine.

**D. Emera Maine Has Not Met its Burden of Demonstrating that Expenses Not Directly Related to the Line 6901 Rebuild Should Be Capitalized and Recovered as part of that Rebuild.**

**[Issues F and G from the Formal Challenge]**



**1. Notwithstanding Emera Maine’s Agreement that Costs Associated with the Monticello to Woodstock line Should Not Be Recovered as Part of this Filing, a Factual Investigation is Nevertheless Required to Ensure that these Costs Are Not Included in the Costs that Emera Maine Seeks to Capitalize to Line 6901.**

Emera Maine asserts that none of the \$8.59 million that it has capitalized to the Line 6901 rebuild represents costs associated with the development of the Monticello-Woodstock line. Specifically, Emera states that although it does not consider this project to be abandoned because it “has not given up on the possibility [sic] renewing its efforts to develop this line in the future,” costs associated with the development of the Monticello-Woodstock Line “have been set aside by Emera Maine and Emera Maine does not seek their recovery at this time (as abandoned plant or otherwise.)” Answer at 19.<sup>3</sup> However, there are factual questions regarding whether costs associated with the development of the Monticello to Woodstock line have indeed been set aside or instead are included in the \$8.59 million of Line 6901 plant-in-service. Many of the expenses listed as Line 6901 plant-in-service in Emera Maine’s response to data requests in this proceeding are expressly related to the CPCN proceeding or reliability studies commissioned by Emera in an effort to demonstrate that the Monticello to Woodstock line was required to meet a reliability need.<sup>4</sup> For example, numerous lines on Emera Maine’s response reference the

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<sup>3</sup> Taking Emera at its word, the Complainants agree that *if* Emera Maine does not seek to recover any of the costs associated with the Monticello-Woodstock line, it is not necessary to litigate at this time whether these costs represent abandoned plant. To the extent Emera Maine does seek recovery of any of the costs associated with the development of the Monticello to Woodstock Line and the related CPCN proceeding, it may not do so by claiming in this proceeding that these costs should be capitalized as part of the 6901 rebuild. The Commission’s case law on abandoned plant clearly requires Emera Maine to make a section 205 filing to show that the costs were prudently incurred, and if it makes such a showing, it would be entitled to half of these costs. *See. San Diego Gas & Electric Company*, 164 FERC ¶ 61,066 at PP 2-3 (2014) (discussing the reasoning behind the Commission’s abandoned plant policy which allows a utility to make a section 205 filing to recover 50 percent of its prudently-incurred costs.)

<sup>4</sup> See Emera Maine’s response to MPUC- 1-25 Attachment A, spreadsheet tab 2238, appended to the Formal Challenge as Exhibit 5A)

litigation of the CPCN for the Monticello to Woodstock line.<sup>5</sup> These costs should not be included in the \$8.59 million attributed to the Line 6901 rebuild, according to Emera Maine's own statement in its Answer that it is setting aside such costs. In short, Emera Maine has not met its burden of demonstrating that all of the \$8.59 million it seeks to capitalize to the Line 6901 rebuild are actually costs associated with that line instead of costs associated with the Monticello to Woodstock line that was not approved for construction.

**2. Emera Maine's Claim that It Is Entitled to Capitalize All of the \$8.59 Million as Account 183 Preliminary Survey and Investigation Costs Attributable to the Rebuild of Line 6901 Is Incorrect on both a Legal and Factual Basis.**

Emera Maine has provided no authority for the proposition that it can transfer expenses from one project that is not built to a different project that was ultimately planned in 2015 after the MPUC's October 8, 2015 order and completed in 2016. Specifically, Emera Maine fails both on a legal and factual basis to demonstrate that it should be allowed to capitalize the entire \$8.59 million to the Line 6901 rebuild. Emera Maine suggests that it is appropriate for Emera Maine to capitalize the entire \$8.59 million to the Line 6901 rebuild because Account 183 permits capitalization of pre-construction costs. Answer at 21. However, Emera Maine's discussion of FERC Account 183 fails to address the specific requirements of this account and the manner in which this account interacts with Account 182.3 and other related accounts. Account 183 of the Uniform System of Accounts, pursuant to 18 CFR Part 101, provides:

**183 Preliminary survey and investigation charges (Major only).**

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<sup>5</sup> See, e.g. spreadsheet Lines 920, 921, 923, 930-934, 971, 972, 984, 989, 992, 995, 998, 1003, 1017, 3284, 3385, 4429, 4431, 4627, 4628, all of which reference "CPCN." These expenses amount to approximately \$82,705 and do not reflect items such as attorneys' fees or engineering expenses that are not specifically labeled "CPCN" but which may have been incurred for the purpose of developing and permitting the Monticello to Woodstock line.

A. This account shall be charged with all expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of utility projects under contemplation. If construction results, this account shall be credited and the appropriate utility plant account charged. If the work is abandoned, the charge shall be made to account 426.5, Other Deductions, or to the appropriate operating expense account.

B. This account shall also include costs of studies and analyses mandated by regulatory bodies related to plant in service. If construction results from such studies, this account shall be credited and the appropriate utility plant account charged with an equitable portion of such study costs directly attributable to new construction. The portion of such study costs not attributable to new construction or the entire cost if construction does not result shall be charged to account 182.2, Unrecovered Plant and Regulatory Costs, or the appropriate operating expense account. The costs of such studies relative to plant under construction shall be included directly in account 107, Construction Work in Progress-Electric.

C. The records supporting the entries to this account shall be so kept that the utility can furnish complete information as to the nature and the purpose of the survey, plans, or investigations and the nature and amounts of the several charges.

NOTE: The amount of preliminary survey and investigation charges transferred to utility plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to utility plant.

This account has several important provisions not discussed in Emera's answer. While the provision does allow in this account "costs of studies and analyses mandated by regulatory bodies related to plant in service," the transfer from this account to a utility plant account is only allowed if construction results from such studies, and only to the extent "an equitable portion of such study costs [is] directly attributable to new construction." Emera Maine fails to demonstrate that the study costs prior to its choosing the Monticello to Woodstock project were "directly attributable" to the construction of the 6901 rebuild.

Further, the note to Account 183 states that any charges transferred from this account to a utility plant account "shall not exceed the expenditures which may reasonably be determined to *contribute directly and immediately* and without duplication to utility plant."<sup>6</sup> As discussed

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<sup>6</sup> Note to Account 183 (emphasis added).

below in Section III(D)(3), Emera has failed to demonstrate that all of the costs it has capitalized to the Line 6901 rebuild “contributed directly and immediately” to the rebuild of Line 6901.

In addition, Emera Maine’s argument fails on a factual basis because its FERC Form 1s for 2012 through 2015 indicate that it did not book any general reliability expenses incurred during 2012 through 2014 to Account 183.<sup>7</sup>

Emera Maine’s argument regarding Account 183 is not supported by Commission precedent. For example, in *Algonquin Gas Transmission*, 108 FERC ¶ 61,125, (2004), the Commission did not allow Algonquin Gas Transmission, LLC (Algonquin) to recover, as part of an approval of a certificate project that the company ultimately constructed, certain survey and permitting costs for a project it first sought to undertake. The Commission stated:

Account 183.2 is to be charged with all expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of determining the feasibility of utility projects under contemplation to provide a future supply of natural gas. If construction results, the appropriate utility plant account should be charged. If the work is abandoned, the costs should be written off to expense. Compliance with the accounting requirements with respect to the costs related to the construction of the Everett Extension Project would require that they be written off to expense when the Everett Extension Project was abandoned. *There is no provision for maintaining the preliminary survey costs related to the abandoned Everett Extension Project in Account 183.2, or for capitalizing them as part of the cost of a different project, absent a showing that such costs contribute directly and immediately and without duplication to such project.*<sup>8</sup>

. The Commission noted that Account 183.2 “also provides that the portion of study costs not directly attributable to new construction or the entire cost if construction does not result shall be charged to Account 182.2, Unrecovered Plant and Regulatory Study costs, or the appropriate

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<sup>7</sup> See Attachment A to this Answer. The Complainants note that Emera Maine’s FERC Form 1 for 2015 for both MPD and BHD lists \$7.8 million in Account 183. It is certainly possible that a portion of the \$5.05 million that the MPUC and MCG have identified as recoverable 6901 rebuild costs, incurred after the MPUC decision in Docket No. 2014-00048, is included in this amount. WHY this footnote?

<sup>8</sup> *Algonquin Gas Transmission, LLC*, 108 FERC P 61,125 at P. 11 (emphasis added).

operating expense account.” *Id.* n. 7. The Commission determined that Algonquin had not adequately shown how the costs related to the withdrawn project contribute directly and without duplication to the project actually built. While the Commission provided Algonquin with the opportunity to seek recovery of such costs in a general rate case filed under section 205 of the FPA, it stated that in any such rate case that the company “must substantiate the relationship of such costs to the [] [project actually constructed]. The Commission held that “[w]ithout such substantiation the ‘directly attributable’ standard would be meaningless.” *Id.* P. 14.

In *Southwestern Public Service Company*, 55 FERC ¶ 61,430 (1991), the utility had incurred design and engineering work on a project that it later abandoned but argued that the costs incurred for this work should be amortized over a 30-year period, based on a theory that it gained technical knowledge from the research and development funds expended that it would utilize in the construction of a future power plant. In that case, the Commission held that in the absence of a rate filing under section 205 for recovery of the costs, the utility was permitted to defer the costs in Account 182.2 and to amortize them over a five-year period to Account 407, reasoning that the five-year period would give the utility the opportunity to make a section 205 filing for the recovery of the costs at issue.

Both of these cases illustrate that, for rate recovery purposes, the utility must demonstrate that preliminary survey and investigation charges sought to be attributed to a specific project *immediately* and *directly* resulted in that new construction project. Emera Maine has failed to make that case here.

**3. Emera Maine Has Failed to Meet Its Burden of Demonstrating Which Expenses Are Directly Related to the Line 6901 Rebuild.**

First, to be clear, the Complainants do not object to the capitalization of engineering and construction costs *directly* attributable to the Line 6901 rebuild. However, the material supplied by Emera certainly does not demonstrate that all of the \$8.59 million in expenses that it seeks to capitalize to Line 6901 are directly attributable to that rebuild. Further, Emera Maine does not appear to have complied with the record keeping requirements of Account 183 because at least for the expenses incurred in 2012 through 2014 which Emera Maine now says should be moved from Account 183 to the Line 6901 rebuild, these expenses were not even recorded in Account 183 in Emera Maine's 2012 through 2014 FERC Form 1s.

In trying to determine which portion of the \$8.59 million should actually be capitalized to the Line 6901 rebuild, the Complainants used October 8, 2015, the date of the MPUC's order in Docket No. 2014-00048 in which the MPUC directed Emera Maine to pursue the Line 6901 rebuild, as a demarcation.<sup>9</sup> As best as Complainants can determine from material supplied by Emera Maine, costs directly attributable to Line 6901 ( i.e. those costs incurred by Emera Maine for the purpose of rebuilding Line 6901 after October 8, 2015) amount to \$5.05 million. The information supplied by Emera is discussed below.

Emera Maine provided information in a data response regarding which expenses it claimed were associated with Line 6901 and which were associated with the Monticello to Woodstock line. The information supplied in MPUC 1-25 Attachment A (Attached to the

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<sup>9</sup> The MPUC and the MCG note that, notwithstanding Emera Maine's claims to the contrary, it is seeking to recover expenses from the CPCN proceeding as costs related to the Line 6901 rebuild. All of these costs should have been assigned to asset 984A in the Emera spreadsheet as costs that Emera is not seeking to recover. Nothing in the Formal Challenge seeks to prohibit Emera Maine from making a filing under Section 205 of the Federal Power Act to request recovery of 50% of prudently incurred abandoned plant costs for the development of the Monticello to Woodstock line.

Formal Challenge as Exhibit 5A) does not meet the standard set forth in Account 183. First, many of the entries go far beyond preliminary surveys and engineering costs and appear to relate to attorneys' fees, meals and lodging. Second, many of the items relate to general reliability studies that are not appropriate for Account 183. And third, to the extent that the costs relate to Emera Maine's effort to get MPUC approval for its transmission line from Monticello to Woodstock (which the MPUC determined was not needed to meet reliability standards), these costs should have been charged to account 182.2 Unrecovered Plant and Regulatory Costs. Finally, MPUC 1-25 Attachment A fails the requirement that the expenditures "contribute directly and immediately" to the rebuild of Line 6901. Instead the spread sheet is no more than a list of items that either may or may not relate generally to reliability in Northern Maine or relate specifically to a different project that was not built, but clearly do not constitute evidence that all of the expenditures contributed directly and immediately to rebuild of Line 6901.

Even a brief glance at MPUC -MPD 1-25 Attachment A spreadsheet (Exhibit 5A to the Formal Challenge) makes clear that Emera has failed to draw a direct connection between the entries on this spreadsheet and the rebuild of Line 6901. For example, lines 36-39 reference Oxbow Energy Services between February and May of 2013. These costs are identified as general engineering expenses and amounted to approximately \$22,268.00. Emera has failed to draw any connection between these expenses and the ultimate construction of the Line 6901 rebuild, completed in 2016. Similarly, the spreadsheet contains travel costs and attorney fees from law firms Verrill Dana and Gibson Dunn, and Emera Maine has failed to demonstrate that any of these costs should be capitalized as part of the 6901 Line rebuild.<sup>10</sup> Thus, Emera has

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<sup>10</sup> See also lines 40 to 46 on MPUC 1-25 Attachment A, Exhibit 5A to the Formal Challenge, which reference lodging, meal expenses and meeting room fees for general Planning Advisory Committee (PAG) meetings and ARC project meetings over a period from December 2013 to

failed to show that there is a direct relationship between the pre-October 2015 expenses and the Line 6901 rebuild.

**4. Claiming that Expenses Were Incurred as a Result of an Investigation Opened by the MPUC Does Not Establish that the Expenditures Directly and Immediately Led to the 6901 Rebuild.**

Emera claims that “it is unconscionable” for the MPUC to argue that Emera Maine cannot recover costs “which were incurred expressly at the direction of the MPUC and its Staff and for the furtherance of the Line 6901 rebuild.” Answer at 16. This statement is incorrect on several counts. First, the MPUC and the MCG argument is that Emera Maine has not demonstrated that it is appropriate to capitalize to Line 6901 the costs incurred in general reliability studies that it undertook beginning in 2012. Neither the MPUC nor the MCG directed Emera Maine to book these expenses to Account 183. Nor did the MPUC or the MCG direct Emera not to seek approval for a regulatory asset under Account 182.3. These were Emera’s choices. In booking these expenses to Account 183 (if indeed Emera Maine actually booked these expenses to Account 183), Emera Maine must meet Commission requirements for recovery of such costs. This it has failed to do.<sup>11</sup> Indeed, it is not clear from the documentation that Emera Maine has supplied whether Emera Maine has actually expensed some of these costs in the years they were incurred.<sup>12</sup> What is clear from the information that Emera Maine has

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February 2016 (amounting to approximately \$4338) while numerous expenses amounting to over a hundred thousand dollars are identified as relating to alternatively ARC or the Aroostook Reliability Connection engineering costs.

<sup>11</sup> The MPUC and the MCG note that Emera could still make a section 205 filing for recovery of a portion of abandoned plant costs. *See San Diego Gas & Electric Co.*, 164 FERC ¶ 61,066 at PP 2-3.

<sup>12</sup> See note to Account 183 of the Uniform System of Accounts requiring that any amount transferred to utility plant be “without duplication.” Given that the FERC Form 1s for 2012 through 2014 have a zero balance in Account 183, it is possible that expenses for 2012 through 2014, listed on Exhibit 5A to the Formal Challenge were actually recovered in other accounts.



supplied in this case, is that Emera Maine has failed to demonstrate that the entire \$8.59 million is recoverable as Line 6901 rebuild capital costs.

Finally, although Emera Maine states that the MPUC could not have arrived at the selection of the 6901 rebuild unless Emera Maine had undertaken all of the general reliability studies it undertook leading up to its selection of the Monticello to Woodstock line, its statement does not prove that this is the case. This is a disputed allegation that requires hearing for resolution. The Complainants note that, although the 6901 rebuild had been identified as a likely reliability solution for a number of years, Emera Maine represented to the MPUC that the 6901 rebuild would not meet the reliability need in Northern Maine. In fact, this representation was based on Emera Maine's application of a reliability standard that did not apply to Emera Maine's MPD division, and the information that Emera Maine sought to apply the wrong standard did not emerge until the discovery stage of the CPCN proceeding.

**5. Emera Maine's Provision of Additional Information in its Answer Curtails the Due Process Rights of the Non-Emera Parties.**

Emera Maine provided information in its Answer that it had not previously provided. Therefore, the parties have not had an opportunity to question this information during the discovery process. In one instance, Emera Maine's Answer provides for the first time the date of the expenditure and its corresponding date in service which it had not done previously.<sup>13</sup> However, the non-Emera parties have not had an opportunity to request support for this information. Further, the information provided does not explain why engineering expenses should be allocated to Account 355 (Poles and Fixtures). Finally, Emera Maine has not

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<sup>13</sup> This information had not been supplied by Emera Maine in its Response to Data Request MPUC 2-4, Exhibit 8 to Formal Challenge.

demonstrated that these costs have not already been expensed in a previous year. To the extent this new information is to be relied upon by the Commission, this matter should be set for hearing so that these factual issues may be resolved.

In addition, Emera states in its Answer that it “incurred a limited amount of costs (approximately \$86,000) in Fall 2012 prior to th[e] MPUC order as part of its own efforts to evaluate reliability issues in Northern Maine.” Emera Maine Answer at 16, n. 36. This information is provided for the first time in the Answer to the Formal Challenge. This new information raises several questions, and the non-Emera parties have no opportunity to test or request support for this additional information. For example, there is no description of the specific line item for this \$86,000 nor an indication of where those costs appears on the spreadsheet supplied by Emera in MPUC 1-25 Attachment A. Again, to the extent the Commission intends to consider this new information, due process requires that the non-Emera parties be given an opportunity to undertake discovery with respect to the new information provided in Emera Maine’s Answer.

#### **IV. CONCLUSION**

The Complainants respectfully request that the Commission grant the relief requested herein and in the Formal Challenge. Specifically, the Commission should summarily order Emera MPD to immediately implement the rate adjustments as requested in the Formal Challenge at section V. A-H, effective June 1, 2018, with appropriate refunds in accordance with the Commission’s regulations. Alternatively, the Commission should suspend the Annual Update Filing and set it for hearing to resolve any issues not resolved summarily by the Commission, but suspend the hearing and set the matter for resolution by a settlement judge.

Respectfully submitted,

/s/ Lisa Fink

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February 19, 2019

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Maine Public Utilities Commission**    )  
**and Maine Customer Group**        )  
Complainants.

**Docket No. ER15 -1429**

**v.**  
**Emera Maine, Maine Public**        )  
**District**                                )  
Respondent.

**CERTIFICATE OF SERVICE**

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 19th day of February, 2019.

*/s/ Greg Williams*

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