

UNITED STATES OF AMERICA 105 FERC ¶ 61,082
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Central Maine Power Company

Docket No. ER03-1307-000

ORDER ACCEPTING AND SUSPENDING FILING AS MODIFIED AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 22, 2003)

Summary

1. In this order the Commission accepts for filing an unexecuted “Interconnection Agreement”¹ (IA) and an unexecuted Agreement for Lease of Transmission Line (Line Lease Agreement), suspends them for a nominal period, makes them effective subject to refund, and establishes hearing and settlement judge procedures. This order benefits customers by ensuring a timely inquiry into whether the filings are just and reasonable.

I. Background

2. Central Maine Power Company (Central Maine) is an electric transmission and distribution utility serving wholesale and retail customers in Maine. Androscoggin Reservoir Company (ARCO) owns, operates and maintains the Aziscohos Storage Dam in Oxford County, Maine (Aziscohos Dam or the Dam).

3. On September 5, 2003, Central Maine filed with the Commission: (a) an unexecuted IA; and (b) an unexecuted Line Lease Agreement. Central Maine requests that the Commission allow the IA and the Line Lease Agreement to become effective September 5, 2003.

4. Notice of Central Maine’s filing was published in the Federal Register, 68 Fed. Reg. 55,043, with interventions, protests and comments due on or before September 26,

¹We note that the IA is not an interconnection agreement in the usual sense because the generation facility involved is already interconnected.

2003. On September 22, 2003, ARCO filed a motion to intervene and protest. On October 7, 2003, Central Maine filed an answer to ARCO's protest.

5. To understand this case, it is necessary to explain some of the history of the DAM. On April 17, 1985, the Commission granted Central Maine and ARCO a license for the development of a hydroelectric project (No. 4026) (the Project) at the Aziscohos Dam.² On January 15, 1986, to facilitate the construction of the Project, ARCO executed an Indenture of Lease with the Aziscohos Hydro Company (Aziscohos), providing Aziscohos with real property and water rights near the Dam (Real Property Lease). By unpublished order issued June 30, 1986, Central Maine and ARCO transferred the Project's license to Aziscohos, with ARCO remaining as a co-licensee. Aziscohos completed the development, financing and construction of the Project's generation facilities (the Facility). The Facility is a qualifying facility (QF) under the Public Utilities Regulatory Policies Act (PURPA).³ It sold all of its electric energy and capacity to Central Maine under an October 23, 1984 Power Sales Agreement (PSA) between Central Maine and ARCO, who assigned its interest in the PSA to Aziscohos on July 28, 1986.⁴

6. In connection with the development of the Project Central Maine upgraded approximately 23.5 miles of 12.5 kV line to 34.5 kV, so that the Project could deliver all of its electric energy to Central Maine's system through Central Maine's Rangeley substation. This line stretches from Central Maine's Rangeley substation west along Maine Route 16 for about 23.5 miles to the Project. This portion of the line is included in the Project.⁵ Since the completion of the Project, Central Maine has extended the line approximately 5 miles to Wilson's Mills, Maine. Central Maine now uses that portion of the line to serve customers between Rangeley and Wilson's Mills.⁶

7. On April 7, 1988, Central Maine leased this line to Aziscohos (Aziscohos Line Lease), so that the Facility could transmit its electric energy to Central Maine and to

²31 FERC ¶ 62,066 (1985), order on appeal, 33 FERC ¶ 61,047 (1985)

³16 U.S.C. §§ 2601 through 2645 (2000).

⁴See p.2 of Cover Letter accompanying Central Maine's filing (Cover Letter) and p.1 of the Aziscohos Line Lease Attachment 1 of the Central Maine's filing).

⁵31 FERC, supra, at 63,101.

⁶Protest at 3.

provide Aziscohos with sufficient property rights in the line to fulfill the license obligations pertaining to the line. The monthly lease payment was \$32,340.36. On June 16, 2003, ARCO terminated the Real Property Lease because of Aziscohos' failure to meet its lease payments, and took title to the Project.⁷

8. On July 23, 2003, Central Maine terminated the PSA because Aziscohos was no longer in control of the Facility. The Facility was no longer producing electric energy. ARCO is now trying to revive the Facility as a qualifying facility and is seeking transmission service in order to provide electric energy to the New England wholesale power market.⁸

II. The Positions of the Parties

A. Central Maine

9. Central Maine asserts that to obtain transmission service for the Project, ARCO must either assume the Aziscohos Line Lease Agreement, or assume an identical obligation. The unexecuted Line Lease Agreement contains the same terms and conditions as the Aziscohos Line Lease,⁹ and the Interconnection Facilities Support Charges in the IA are consistent with the charges set forth in that lease.¹⁰

10. Central Maine argues that the charges under the proposed Line Lease Agreement are just and reasonable because: (a) the monthly lease payment is set at a rate "equal to

⁷Protest at 4.

⁸See Cover Letter at 2-4.

⁹See Id.; Protest at 4, 5.

¹⁰Central Maine bases these charges on the monthly charge for special facilities under section 13 of Central Maine's Terms and Conditions, as filed with and approved by the Maine Public Utilities Commission (Maine Commission). Central Maine calculates the monthly charge by multiplying its added transmission investment to serve the Facility (which, currently, according to Central Maine, is \$1,757,803.07) by a 1.89 percent special facilities rate. The current monthly payment under the Line Lease Agreement is \$32,340.36. Central Maine then adjusts this amount by an unspecified amount to recognize the effect of each customer to which Central Maine provides transmission and distribution service using this transmission line. See Cover Letter at 3, 6.

the monthly charge for special facilities as set by the Maine Commission, as that rate may change from time to time;”¹¹ (b) the monthly lease payment reasonably compensates Central Maine for the costs of installing and maintaining the line;¹² (c) ARCO, as an alleged successor to the Azischohos Line Lease, is legally obligated to continue the payments under that agreement;¹³ and (d) the Azischohos Line Lease applies to any entity operating the Azischohos Project.¹⁴

B. ARCO

11. ARCO refuses to assume the Azischohos Line Lease Agreement or an identical obligation. ARCO argues that the Azischohos Line Lease was a private business deal between Central Maine and Azischohos, rather than a public cost-of-service tariff.¹⁵ ARCO maintains that it has no contractual liability to Central Maine for Azischohos’ default under a contract that was privately negotiated outside of the Commission’s regulatory framework. ARCO contends that it has come to Central Maine as a new owner of a QF and that it is entitled to transmission services at standard, non-discriminatory rates, terms and conditions.¹⁶

12. ARCO also argues that the monthly lease payment in the proposed Line Lease Agreement is unjust and unreasonable because: (a) ARCO has no obligation to assume private contractual obligations between Central Maine and Azischohos; (b) ARCO is entitled to point-to-point or network transmission service under Central Maine’s OATT at reasonable rates and charges and on a non-discriminatory basis; (c) Central Maine has provided no cost justification for the proposed monthly lease payment; (d) the amount of the monthly lease payment is too high; and (e) the Line Lease Agreement has nothing to

¹¹Id. at 4.

¹²Id. at 3 n.3; id. at 4.

¹³Id. at 5.

¹⁴Id. at 5-6.

¹⁵ARCO notes that Central Maine did not file the Azischohos Line Lease Agreement with the Commission. Id. at 3.

¹⁶Id. at 6.

do with interconnection or transmission service; rather, the Commission should deal with the Line Lease Agreement under Part I of the Federal Power Act (FPA).¹⁷

13. ARCO maintains that Central Maine has provided no support for its transmission investment figure of \$1,757,803.07, and has provided no accounting of how much money it has already collected under the Aziscohos Line Lease. ARCO protests that a perpetual lease payment of \$400,000 per year on top of the charges under Central Maine's Open Access Transmission Tariff cannot be a just and reasonable rate for the use of an interstate transmission line that is already subject to the Commission's open access rules and Central Maine's OATT.¹⁸

14. ARCO contends that, given the Maine Commission's special facilities rate of 1.89 percent on initial investment, which Central Maine uses in calculating the monthly lease payment, Central Maine has recovered \$400,000 per year, or between \$5,175,000 and \$6,000,000 under the Line Lease against an asserted expenditure of \$1,757,803.07.¹⁹ ARCO argues that the monthly lease payment under the proposed Line Lease Agreement threatens the viability of the Project.²⁰

15. ARCO further maintains that the proposed Line Lease Agreement has nothing to do with interconnection or transmission service under Part II of the FPA, but instead involves compensation for property rights necessary to comply with Part I of the FPA. ARCO contends that the Commission should address the need for such a property rights agreement in connection with administration of the Project's license and not as part of the provision of interconnection and transmission service.²¹

¹⁷Protest at 5. ARCO intends to request in a separate filing that the Commission amend the Project license to exclude the line from the licensed property, as it is no longer a primary line for purposes of Part I of the FPA. In the alternative, ARCO will ask the Commission to find that the kinds of rights provided in the line lease are not needed to comply with the Commission's licensing requirements. See Protest at 3 n.2, 9 n.7.

¹⁸Id. at 6-8.

¹⁹Id. at 7.

²⁰Id. at 7-8

²¹Id. at 8-9.

III. Discussion

A. Procedural Matter

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), ARCO's timely, unopposed intervention makes it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We find good cause to accept Central Maine's answer since it aids us in the decision-making process.

B. Hearing Procedures

17. This case has come to the Commission at this time because the Aziscohos Dam is a QF that wishes to sell electric power into the New England wholesale power market. The Commission's regulations govern a QF's interconnection with most electric utilities in the United States.²² When an electric utility is obligated to interconnect with a QF under section 292.303 of the Commission's regulations, that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.²³ But when an electric utility does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms and conditions affecting or related to such service, such as interconnections.

18. Here, Central Maine used to purchase the entire output of the Aziscohos Dam, and thus the state commission exercised its authority over the interconnection. ARCO now plans to sell the output of its QF to a third party purchaser. The Commission, therefore, will now exercise its jurisdiction over the interconnection.

19. Central Maine has filed two documents with the Commission. The first is the unexecuted IA under which Central Maine proposes to recover certain operating and maintenance costs. Since all interconnection facilities are in place, the unexecuted IA should be viewed as an operating and maintenance agreement. The second is the Line Lease Agreement, under which Central Maine claims to recover the costs of installing a

²²19 C.F.R. §§ 292.303, 292.306 (2003).

²³See Western Massachusetts Electric Company, 61 FERC ¶ 61,161-62 (1992), aff'd sub nom. Western Massachusetts Electric Company v. FERC, 165 F.3d 922, 926 (D.C. Cir. 1999).

transmission line, which Central Maine characterizes as a part of the interconnection. As discussed below, we are setting the justness and reasonableness of these agreements for hearing.

20. The License for the Aziscohos Dam Project currently includes the 23.5 mile line that is the subject of the Line Lease Agreement. As noted above, ARCO states that it intends to file an application to amend the project license to exclude that line from the Project License on the grounds that it no longer constitutes the Project's primary transmission line as defined in Section 3(11) of the FPA.²⁴ If the Commission denies the application to amend the license, we will require ARCO to obtain title in fee to the line or to acquire the right to use in perpetuity, property rights sufficient to fulfill all license obligations with respect to the line.²⁵ However, until the Commission decides ARCO's license amendment application, transmission over the line, which Central Maine currently owns, must be pursuant to Central Maine's open access transmission tariff (OATT).²⁶ If the Commission grants ARCO's license amendment application, transmission service over the line will continue to be pursuant to the OATT.

21. ARCO has raised issues of material fact concerning Central Maine's proposed IA and Line Lease Agreement that we cannot resolve based on the record before us and that will be more appropriately addressed in the hearing ordered below. Among other difficulties that we face on the record before us is that Central Maine has submitted no cost analysis supporting its transmission investment figure of \$1,757,803.07.

22. Central Maine offers two justifications for its monthly lease charges under the proposed Line Lease Agreement (which Central Maine has incorporated into the IA).²⁷ First, Central Maine argues that ARCO, as successor to Aziscohos, must assume the line

²⁴See n.13, supra.

²⁵Vermont Electric Generation and Transmission Cooperative, Inc. and North Hartland, LLC, 104 FERC ¶ 61,151 P 17 (2003), order on reh'g, 105 FERC ¶ 61,038 at P 19 (2003). The property rights that ARCO would be required to obtain are frequently in the form of an easement or leasehold interest. Id. n.21.

²⁶See North Heartland, LLC, 105 FERC ¶ 61,036 at P 18-21 (2003).

²⁷See Cover Letter at 3.

lease. Second, Central Maine argues that the lease payment is equal to a special facilities charge that the Maine Commission has approved.²⁸

23. We reject Central Maine's argument that ARCO must assume Aziscohos' obligations under the Aziscohos Line Lease Agreement. As a new owner of the Facility, ARCO is entitled to interconnection and transmission service at reasonable rates and charges under Central Maine's OATT. As to the second argument, Central Maine has neither demonstrated that the line is a special facility under the terms of its tariff with the Maine Commission, nor supported a special facilities charge of 1.89 percent.²⁹ In any event, the Maine Commission's approval is not dispositive of our analysis. We also note that Central Maine acknowledges that it has already collected \$5,622,805.36 in lease payments for this line.³⁰

24. Section 2.5 of the Interconnection Agreement refers to the construction and installation of Central-Maine owned interconnection facilities and other direct assignment facilities. Section 2.5 states that ARCO has requested Central Maine to build such facilities and that Central Maine will do so expeditiously and at ARCO's expense. Section 2.5 goes on to spell out the rights of the parties regarding the construction of these facilities, including a disclaimer of warranties. Sections 2.6 and 2.7 refer to testing and timely completion of the facilities.

25. ARCO has requested that Central Maine remove these sections from the IA.³¹ We will direct Central Maine to remove these sections from the IA since: (a) it is clear from ARCO's protest that it has not requested Central Maine to build interconnection facilities; (b) Section 2.5 does not identify the interconnection facilities or other direct assignment facilities that Central Maine will construct at ARCO's expense; and (c) there is no need to construct interconnection facilities; the transmission line has long been in place and there is nothing to interconnect.

26. Our preliminary analysis indicates that the proposed IA and the proposed Line Lease Agreement have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we

²⁸Id. at 3-4.

²⁹See Protest at 7 n.5.

³⁰See Central Maine Answer, Attachment 1,

³¹Cover Letter at 3 n.4; Protest at 9-10 and Exhibits.

will accept the proposed IA³² and the proposed Line Lease Agreement³³ for filing, suspend them for a nominal period, make them effective September 5, 2003, as requested,³⁴ subject to refund, and set them for hearing.

27. ARCO and Central Maine are continuing to negotiate the terms of the Line Lease Agreement and seem disposed to work out their differences. We note that the Line Lease may not be necessary depending on the outcome of the Part I application. ARCO has sent Central Maine suggested changes to the Line Lease Agreement and Central Maine is considering those changes. Central Maine states that it is willing to continue working with ARCO to develop a Line Lease Agreement acceptable to both parties and will respond to ARCO's suggested changes in the near future.³⁵

28. To assist the parties in resolving these matters, we will hold the hearing in abeyance and direct Settlement Judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.³⁷ The settlement judge

³²Original Service Agreement No. 193 under FERC Electric Tariff, Fifth Revised Volume No. 3.

³³Original Sheet Nos. 1-6 under Rate Schedule FERC No. 202.

³⁴We find good cause to grant Central Maine's request for a waiver of the Commission's 60-day prior notice requirement to permit an effective date of September 5, 2003, since ARCO has expressed an interest in resuming operation of the Facility on or about that date. See Cover Letter at 3 n.4. See also 18 C.F.R. § 35.3 (2003); Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶61,106, order on reh'g, 61 FERC ¶ 61,089 (1992).

³⁵See Cover Letter at 3 n.4; Protest at 9-10 and Exhibits.

³⁶18 C.F.R. § 385.603 (2003).

³⁷If the parties decide to request a specific judge, they must make their joint request to the Chief Judge in writing or by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov - - click on Office of Administrative Law Judges).

shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed IA and Line Lease Agreement are hereby accepted for filing, as modified to conform with the discussion in the body of this order, suspended for a nominal period, to become effective September 5, 2003, as requested, subject to refund and set for hearing as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held in Docket No. ER03-1307-000 into the reasonableness of the proposed rate schedules, as discussed in the body of this order. As further discussed in the body of this order, we will hold the hearing in abeyance to give the parties time to conduct settlement judge negotiations.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

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(E) If settlement discussions fail, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(F) Within 60 days from the date of this order, Central Maine will submit a compliance filing modifying the IA as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.