IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

AVANGRID, INC., AVANGRID NETWORKS, INC., NM GREEN HOLDINGS, INC., IBERDROLA, S.A., PUBLIC SERVICE COMPANY OF NEW MEXICO, and PNM RESOURCES, INC.,

Appellants,

v. **S-1-SC-39152**

NEW MEXICO PUBLIC REGULATION COMMISSION,

Appellee,

and

NEW ENERGY ECONOMY, WESTERN RESOURCE ADVOCATES, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 611, THE OFFICE OF THE NEW MEXICO ATTORNEY GENERAL, COALITION FOR CLEAN AFFORDABLE ENERGY, DINE CITIZENS AGAINST RUINING THE ENVIRONMENT, SAN JUAN CITIZENS ALLIANCE, TO NIZHONI ANI, NAVA EDUCATION PROJECT,

Intervenor-Appellees.

In The Matter of The Joint Application of Iberdrola, S.A., Avangrid, Inc., Avangrid Networks, Inc., NM Green Holdings, Inc., Public Service Company of New Mexico And PNM Resources, Inc. For Approval of the Merger of NM Green Holdings, Inc. with PNM Resources, Inc.; Approval of a General Diversification Plan;

and All Other Authorizations and Approvals Required to Consummate and Implement this Transaction,
NMPRC Case No. 20-00222-UT

NEW ENERGY ECONOMY'S RESPONSE IN OPPOSITION TO JOINT MOTION FOR STIPULATED DISMISSAL OF APPEAL AND REMAND FOR REAHEARING AND RECONSIDERATION AND FOR EXPEDITED TREATMENT

Pursuant to Rule 12-309(E), Intervenor-Appellee, New Energy Economy ("NEE") respectfully responds as follows to the *Joint Motion for Stipulated Dismissal of Appeal and Remand for Rehearing and Reconsideration; Request for Expedited Ruling and Shortened Response and Mandated Periods* ("Motion"). In this response NEE refers to Public Service Company of New Mexico ("PNM"), Avangrid and the New Mexico Public Regulation Commission ("PRC" or "Commission") collectively as "Movants."

Preliminary Statement.

The merger of PNM Resources, parent of Public Service Company of New Mexico ("PNM"), with Avangrid, Inc. would represent a tectonic shift in our state. Today, PNM, warts and all, remains a home-grown, locally managed electric utility whose function is to serve the electricity needs of people and businesses in our state. If PNM is acquired by Avangrid pursuant to the requested merger, our

state's largest electric utility will become a small cog in the multinational operations of Iberdrola, S.A., Avangrid's parent.[1]

Unsurprisingly, PNM's merger application drew the intervention of 23 parties.[2] While a few PNM stakeholders perceived inherent benefits to the acquisition, a wide swath of stakeholders representing small and large consumers, environmental interests, and local government interests expressed serious concerns, which PNM and Avangrid only overcame through a series of concessions, some of which were targeted to regulatory concerns, but also required that Avangrid provide over $100 million in various economic benefits targeted to various interest groups.

An extensive record was created on the benefits and risks (and outright detriments) of the merger in public hearings before the Commission. At the conclusion of the proceeding below, in December 2021, the Commissioners weighed the evidence and determined unanimously that the long-term risks of allowing Avangrid and Iberdrola to acquire PNM, still outweighed the short-term

[1] **80RP39830**, Iberdrola, S.A. owns 81.5% of Avangrid; **80RP40236-40** (Iberdrola/Avangrid) versus **80RP40241** (PNM Resources).

[2] **80RP39810-11**.

financial benefits and regulatory concessions, Avangrid offered up to try to close the deal.

PNM and Avangrid filed the instant appeal, which the Appellee Commission vigorously opposed. As the Commission pointed out in its Answer Brief, the factual findings on which the Final Order are based are supported by substantial evidence, which this Court does not reweigh. Although Appellants argue that the Commission included and considered some evidence in the record it should not have if this Court were to agree, there is far more than enough still undisputed evidence to support the Commission's decision. *See, Albuquerque Cab Company, Inc., v. New Mexico Pub. Regulation Comm'n*, 2017-NMSC-028, ¶ 33, 404 P.3d 1, *citing*, *Regents of the Univ. of Cal. v. N.M. Water Quality Control Comm'n,* 2004-NMCA-073, ¶¶ 13-14, 136 N.M. 45, 94 P.3d 788 (describing the requirement to articulate its reasoning as "unduly onerous for the [c]ommission and unnecessary for the purposes of appellate review" where a sufficient record exists); *see also, Bass Enters. Prod. Co. v. Mosaic Potash Carlsbad Inc.,* 2010-NMCA-065, ¶ 48, 148 N.M. 516, 238 P.3d 885 (requiring "a rational connection between the facts found and choices made" by the PRC in its order). Appellee NMPRC stands in a very good position to be affirmed.

Yet fourteen months after the Final Order, the NMPRC now joins with Appellants in a Motion to dismiss the appeal and remand the case back to the Commission for a rehearing. In their Motion, the PRC, now joined with Avangrid and PNM, ask this Court to remand with an instruction that would direct the PRC to apply its administrative rule 1.2.2.37(F) NMAC, which exists, by its only terms, to allow the Commission to reconsider a recent decision in response to a motion filed within ten days of a decision, with or without reopening the record, and change its ruling. Movants recite that the "Commission has not agreed to, nor made any determinations, with regard to any specific outcome or decision that may result upon the Court's dismissal and remand to the Commission for rehearing and reconsideration of the Commission Order."[3] Pardon us if we are skeptical that Appellants would risk starting over with their appeal in the event that remand and NMPRC rehearing happened to result in the Final Order being sustained.[4]

Moreover, the Motion indicates some urgency, while being vague about why. As a matter of fact, the PNMR-Avangrid Merger Agreement includes an agreement between the two companies that they will have approval by April 2023.[5]

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[3] Movants' Motion at ¶ 3.

[4] The filing of the Motion was preceded by 3 closed executive sessions in which the new Commission discussed the pending appeal.

[5] https://www.pnmresources.com/media/news.aspx

It is not a deadline imposed on them, it is a deadline they agreed between themselves and are now suggesting that somehow, the Court, the PRC, and the parties should all honor.

This Court is well aware of what changed between the Commission's defense of its Final Order and its new interest in cooperating with Appellants in a remand. The five elected (and experienced) Commissioners who unanimously issued the Final Order based on their assessment of the record evidence were replaced by three Commissioners appointed by the Governor on January 1, 2023. Commissioner O'Connell has recused himself from this matter; of the two new Commissioners who will be voting, one, otherwise qualified, has zero regulatory experience at all prior to his appointment.

While new evidence has become known since 2021 (which facts are not in the record and will never be, under Movant's preferred approach), it is clear that the Motion arises, not from a change in the facts or the law, but from a change in

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According to PNM's press release, 3/8/2023, "Under the filed motion, the NMPRC will conduct the rehearing and reconsideration in accordance with its rules of procedure and endeavor to reach a decision and issue a final order in a timely manner. The NMPRC acknowledges that the Joint Applicants are seeking a resolution by no later than April 12, 2023. PNM Resources and Avangrid, Inc. previously entered into an amendment of their merger agreement extending the end date to April 20, 2023. The agreement can be extended 90 days by agreement from both companies."

the fact-finders.[6] The Motion to remand challenges a fundamental tenet of the regulatory compact, which is that decisions are rooted in evidence and law, and not in the whims of the regulators. Not only does the Motion raise the prospect of the newly appointed Commission peremptorily reversing the well-considered unanimous findings of the prior experienced Commissioners, it raises the prospect of them doing so on a timeline calculated to benefit the private interests of Appellants' shareholders, without regard to the public interest.

The Court should deny the Motion and carry this appeal through to its conclusion in the ordinary course of appellate procedure in order to preserve the principles of administrative regularity. Appellants would not be unduly prejudiced by denial of their remand request; they have the ability to refile a new application for their merger, with any new facts they are able to marshal.

In the alternative, if the Motion is granted, this Court should expressly prohibit the Commission from making a peremptory decision on rehearing without

[6] Honorable Justices of the New Mexico Supreme Court are likely aware that the law and the facts pertaining to a woman's right to privacy and access to reproductive health services did not change between the U.S. Supreme Court's Casey decision affirming those rights, and the holding last year in Dobbs that those rights never existed. That the U.S. Supreme Court reversed well-established precedent for no reason other than the appointment of new Justices with differing political views has done incalculable damage to public perceptions of the legitimacy of that body.

providing due process and, if PNM and Avangrid are proposing a new settlement that the Commission is to consider, pursuant to the provisions of Rule 1.2.2.20 NMAC, which require that all parties be permitted to be heard in opposition and to introduce evidence supporting their positions.[7]

What follows is a legal analysis of the Motion brought by Avangrid, PNM and the New Mexico Public Regulation Commission.

1. **Relevant law:**

Appellants have moved for dismissal pursuant to Rule 12-401(B)(2) NMRA under which an appeal may be dismissed "after motion by the appellant…on such terms as are fixed by the appellate court or agreed upon by the affected parties." By their motion, Appellants and the PRC are seeking not just a dismissal of this appeal but additional relief to which they are not entitled in this multi-party case; a dismissal that will have the effect of a reversal on the merits, coupled with an order of "remand of this case for purposes of effectuating their agreement to resolve this

[7] *See, e.g.,* Rule 1.2.2.20 B (4) NMAC ("A public hearing shall be conducted to determine whether the stipulation shall be approved by the commission. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it. At the public hearing all parties and staff shall be allowed an opportunity to present evidence and cross-examine opposing witnesses on the stipulation.")

appeal by submitting the matter to the Commission for rehearing and reconsideration,[8] … under Rule 1.2.2.37(F) NMAC."[9] Application of that rule to this case would effectively deprive the other parties of the due process otherwise required by the PRC's own rules, as though PNM and Avangrid had prevailed on the merits of their appeal and had somehow become entitled to enter into a settlement of the merits of the merger, following remand, in time to meet the April date that Avangrid and PNM agreed on for their merger, without the protections afforded by the applicable rules of the PRC, including Rule 1.2.2.37 E (4) NMAC, which allows a case to be reopened upon a proper showing, with due process protections for all parties and Rule 1.2.2.20 NMAC, which provides an orderly process for all parties to support or oppose a settlement and establish the evidentiary basis for their support or opposition. The terms that Movants ask this court to "fix" as conditions of the dismissal are unacceptable to NEE and other parties as well. The parties who have responded have objected to dismissal with an outcome – likely a guaranteed outcome – that denies due process and would violate the PRC's own rules, as the PRC, Avangrid and PNM undoubtedly are aware, which explains their desire to invoke an inapplicable PRC rule that would allow

[8] Movants' Motion at ¶2.

[9] Movants' Motion at ¶5.

summary disposition of the merits in time for PNM's and Avangrid's mutually-agreed deadline.

As explained below, Movants' legitimate choices are to see the appeal through to its conclusion or, alternatively, to dismiss this appeal and thereafter pursue the remedy of requesting the PRC to reopen this case under Rule 1.2.2.37 E (4) NMAC, if the conditions for reopening are met. Movant's motion must fail because it seeks unlawful relief; a direction to the Commission to hold a "rehearing" under PRC Rule 1.2.2.37(F) NMAC, which has no applicability to anything other than post-trial motions that must be filed within ten days following a PRC decision.

2. Movants, without having prevailed on appeal and opposed by other parties, request the Court to order a rehearing pursuant to a rule that cannot apply and, even if it could be, would deprive the other parties of due process and violate other PRC rules relating to reopening of cases and relating to settlements.

Movants request more than a simple dismissal. First, they request that the Court condition dismissal on the PRC conducting a rehearing of the PNM/Avangrid merger case. This is the very relief, in some form, that this Court would have ordered in the event that it had reversed the decision of the PRC and remanded for whatever hearing was necessary to correct any error that had merited

reversal, although in such a case the new hearing would be conducted under the PRC rules applicable to hearings on matters. *See e.g.,* Rules 1.2.2.20 and 1.2.2.22-38 NMAC. Now PNM, Avangrid and, surprisingly, the PRC itself request that the Court order the relief of a new hearing without resolving the appeal and without the concurrence of or even participation in negotiations by the other affected parties.

Next, they ask that the Court direct the PRC, at its own request, to conduct the rehearing pursuant to the provisions of 1.2.2.37(F) NMAC, which applies to requests for rehearing within ten days following a decision:

> F. Rehearing: (1) Motion for rehearing: (a) Except as otherwise provided in Sections 62-10-16 and 62-11-1 NMSA 1978, after an order has been issued by the commission in a proceeding staff or any party to the proceeding may within ten (10) days after the issuance of the order move for rehearing of the order with respect to any matter determined in the proceeding.

As NEE explains below, there is no procedure available under the current circumstances for a "rehearing" initiated by the PRC or any party to a proceeding although there is a rule providing for "reopening" the case if the PRC decides that the conditions for reopening are met. Rule 1.2.2.37 E (4) NMAC. Apparently quite aware of this rule's applicability, the Movants decided instead via a process

involving closed executive sessions of the PRC,[10] to approach this Court for an order requiring the PRC to "rehear" rather than "reopen" this case.

By referring the Court to Rule 1.2.2.37(F) NMAC, which has no application, Movants are attempting to avoid the application of Rule 1.2.2.37 E (4) NMAC, which may apply if this case were dismissed and *if* "[t]he commission on its own motion [decided to] reopen [the] proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires." If the Commission were to reopen the proceedings pursuant to Rule 1.2.2.37 E (4) NMAC, all parties, including PNM and Avangrid, would be entitled to the due process protections that quasi-judicial hearings before the PRC must entail. Simply because "reopening" a case will take more time than the abrupt, inapplicable process for post-decision, pre-appeal reconsideration, and interfere with Avangrid's and PNM's desire to close their transaction now, rather than after this appeal is concluded or after the PRC reopens the case, is not a matter for the Court, the other parties or, for that matter, the PRC itself.

[10] The PRC held five "executive closed sessions", on 2/2/2023, 2/17/2023 (twice on that date), 2/21/2023, and 2/27/2023 "pursuant to NMSA 1978 §10-15-1(H)(7): attorney-client privileged discussion of pending litigation to which the NMPRC is a party", during which the PRC presumably arrived at the decision reflected in the joint motion. How the PRC communicated with PNM and Avangrid, during meetings closed to the public, is unknown.

"It is well settled that the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense." *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n*, 2019-NMSC-012, ¶ 63, 444 P.3d 460, citing, *Albuquerque Bernalillo Cty. Water Util. Auth. v. N.M. Pub. Regulation Comm'n,* 2010-NMSC-013, ¶ 21, 148 N.M. 21, 229 P.3d 494 (quoting *Jones v. N.M. State Racing Comm'n,* 1983-NMSC-089, ¶ 6, 100 N.M. 434, 671 P.2d 1145). Although there is a needle-in-a-haystack quality to finding a due process case involving an agency maneuver to reverse a decision summarily and without affording due process to the affected parties, NEE was able to find one: "As an administrative body, the Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness. The Commission cannot make a final determination on an ultimate question before it for adjudication and subsequently change such determination without observing the requirements of due process." *W. Penn Power Co. v. Pa. Pub. Util. Com.*, 174 PA Super 123, 128-29, 100 A.2d 110 (1953) (citation omitted). Faced with the PRC's own rules and the law of due process, the Movants have turned to this Court for the ultimate maneuver around the regulations and the law: Get the Court to order us to do it! This is an improper request to make to this or any court.

Movants understandably failed to alert this Court to the nature and scope of the rule they have requested the Court to impose on the PRC on remand, apparently in the hope that neither the Court nor the other parties would consider the text of the rule they were asking the Court to apply and the Court would simply grant the motion and, following remand, the PRC could say that its hands were tied; that because this Court had ordered it, it had to follow the procedures of its inapplicable rule and could not provide the due process that the other parties are demanding of it.

The rule which Movants ask the Court to require be followed following remand provides for a truncated process under which the Commission rules on the motion for rehearing within twenty days of the motion, without new evidence, without a hearing and even without responses. It is a rule intended to allow parties to make a final request for a change in an order or decision before the time for appeal has elapsed. Under any construction of it, it would not apply to a case, like this one, in which no motion for rehearing was made below and when the deadline for filing such a motion expired before PNM and Avangrid filed their notice of appeal.

Moreover, Rule 1.2.2.37(F)'s application here is statutorily prohibited. Its text recites, in addition to its ten-day deadline after a decision for invoking it, that it applies "[e]xcept as otherwise provided in Section 62-10-16 and 62-11-1 NMSA

1978…" Section 62-10-16 makes clear that the rule cannot be applied here: "After an order or decision has been made by the commission, any party to the proceedings, may within thirty days after the entry of the order or decision apply for a rehearing…" Neither PNM nor Avangrid applied for rehearing within either of the time limits under the rule or under the Statutes. It is settled law in New Mexico (and everywhere else, for that matter), that if a provision allows a period of time after a decision to move for reconsideration, a party cannot allow that time to pass and then somehow revive it. *See, e.g., PennyMac Mortg. Inv. Tr. Holdings, LLC v. Salazar*, No. A-1-CA-36864, 2018 N.M. App. Unpub. LEXIS 219, at *4 (Ct. App. July 31, 2018) (motion to reconsider must be filed before time for filing notice of appeal). In New Mexico, as elsewhere, agencies must follow their own rules. When a regulatory body makes a decision, "the very least that can be expected is that it will play the game according to its own rules." *Miller v. City of Albuquerque*, 1976-NMSC-052, ¶ 20, 89 N.M. 503, 554 P.2d 665.

Significantly, in New Mexico, "in the absence of an express grant of authority, the power of any administrative agency to reconsider its final decision exists only where the statutory provisions creating the agency indicate a legislative intent to permit the agency to carry into effect such power." *Armijo v. Save 'n Gain*, 1989-NMCA-014, ¶ 20, 108 N.M. 281, 771 P.2d 989, citing, *Kennecott Copper Corp. v. Employment Sec. Comm'n,* 78 N.M. 398, 432

P.2d 109 (1967). Reconsideration generally involves reexamination of the issues involved. *See Kerr-McGee Nuclear Corp. v. New Mexico Envtl. Improvement Bd.,* 97 N.M. 88, 637 P.2d 38 (Ct. App. 1981).

Yet Movants' effort is to gain this Court's implicit imprimatur on the Movants' stated purpose: not only to order a rehearing in this case but to employ an inapplicable regulatory process to do so once this case returns to the PRC on remand.[11] It is apparent that Movants' otherwise unnecessary inclusion in their motion of the specific rule they intend to rely on to move for rehearing following remand is an attempt on their part to get this Court, if it simply grants their motion, to thereby inferentially endorse Movant's reliance on a rule that cannot be legally invoked as a basis for rehearing. If Movants could accomplish this, the abbreviated procedures in the rule, which are limited to addressing and expediting consideration of post-hearing motions, would substantially eliminate the due process protections associated if the Commission reopens a previously-decided case if required conditions are met. *See*, *e.g.,* Rule 1.2.2.37 E (4) NMAC.

Moreover, Movants have no legitimate need to invoke this inapplicable rule if they want the PRC, following dismissal of this appeal, to revisit the merits of the

[11] Movants' Motion at ¶5. ("The Commission shall conduct the rehearing and reconsideration under Rule 1.2.2.37(F) NMAC.")

merger, provided they have a basis for it.[12] Not only is such a rehearing time-barred, under the terms of the rule Movants request that this Court direct them to follow, there is another procedure open to them that allows the PRC to reopen[13] the hearing. Once the hearing is reopened, the rules related to conducting a hearing will apply, including discovery, admission of evidence, cross-examination, etc. *See e.g.,* Rules 1.2.2.22-38 NMAC. It would allow for changing an outcome if there is new evidence, new law, or if the PRC determines that an alteration of its previous decision has come to be in public interest.[14] Rule 1.2.2.37 E (4) NMAC.

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[12] Rule 1.2.2.37(F) NMAC.

[13] Rule 1.2.2.37 E (4) NMAC.

[14] 20-00222-UT, *Certification of Stipulation*, 11/1/2021, p. 31, NMSA 1978, §§ 62-6-12 and -13; "the complexities of mergers should require a positive benefit to ratepayers if they are to be approved," Case No. 2678, *Recommended Decision of the Hearing Examiner* (Corrected), p. 22 (Nov. 15, 1996), adopted by *Final Order Approving Recommended Decision* (Jan. 28, 1997); *see also,* Case No. 3116, *Recommended Decision of the Hearing Examiner*, p. 12 (May 4, 2000), adopted by *Final Order* (May 9, 2000); Case No 04-00315-UT, *Certification of Stipulation*, pp. 17, 39 (May 26, 2005), adopted by *Final Order Approving Certification of Stipulation* (June 7, 2005); Case No. 11-00085-UT, *Recommended Decision*, pp. 15-16; and Case No. 13-00231-UT, *Certification of Stipulation*, pp. 43-44 (June 30, 2014); Both quantifiable and unquantifiable benefits are to be considered. Case No 04-00315-UT, *Certification of Stipulation*, p. 17 (May 26, 2005), adopted by *Final Order Approving Certification of Stipulation* (June 7, 2005); Case No. 2678, *Recommended Decision of the Hearing Examiner* (Corrected), p. 22 (Nov. 15, 1996), adopted by *Final Order Approving Recommended Decision* (Jan. 28, 1997); and p. 34, citing, Case No. 13-00231-UT, *Certification of Stipulation*, p. 80 (June 30, 2014), approved by *Final Order* (Aug. 14, 2014).

Movant's request that the Court direct them to rehear the case pursuant to the rule for reconsidering matters before an appeal is taken, if the Court granted it, would raise another significant problem. Under the PRC's rules, it is the parties themselves who propose settlements to the Commission, which then, through a hearing process conducted by a hearing examiner, addresses any proposed settlement, allowing those in favor and those opposed to be heard, to examine and cross-examine witnesses, during a public hearing. *See,* Rule 1.2.2.20 NMAC. In this case, some of the parties were still negotiating revisions to a contested settlement stipulation during the hearing,[15] and even after its conclusion.[16] The latter of which could have been presented to the Hearing Examiner and the PRC if the parties had moved to reopen the hearing to give all parties the opportunity to address new settlement terms.[17] Importantly for the pending Motion, during the course of the proceeding before the PRC, the Hearing Examiner had to make clear to the Joint Applicants that the settlement process had to include *all parties* and

[15] **80RP39842-3**, **80RP39865-66**, **80RP40012**.

[16] **80RP39866**. ("even after the close of the evidentiary record on August 19, the Joint Applicants continued to negotiate additional modifications")

[17] **80RP39828**. (Proposed new evidence without the opportunities to cross examine the witnesses sponsoring the evidence and provide responsive testimony would "violate the objecting parties' due process rights.")

could not include just some parties, off to the side, entering into new settlement provisions.[18]

It now appears that PNM, Avangrid and the PRC are intent on entering into a settlement of the merits of this case, via a rehearing conducted, without due process, through a procedure that would not only violate the PRC's rules on rehearing/reconsideration, but on its rules regarding how settlements are to be proposed to the PRC, how the parties to the proceeding are permitted to support or oppose them, and how the PRC is to address whether a settlement is in the public interest and decide whether it should be approved or rejected. Rule 1.2.2.20 NMAC.

3. Movants' request that the Court narrow the scope of rehearing appears to be to avoid discovery on Avangrid's post-hearing actions and misconduct and allow a reversal of the PRC's decision without accommodating the parties,' the public's and the ratepayers' interest in being meaningfully heard and having a meaningful opportunity to oppose the reversal.

What is so critical about the distinction between the rule that doesn't apply (post-decision, pre-appeal motions for reconsideration) and the one that does (a motion to reopen a case) is the scope of due process available, which is very

[18] **34RP06483**. (**Decretal paragraph 2:** "The Joint Applicants shall meet with **all parties** to this proceeding to discuss and negotiate in good faith a potential stipulation." (Emphasis in the original))

different when a rehearing is requested within ten days of the full hearing than it is when a hearing is reopened under Rule 1.2.2.37 E (4) NMAC.

Why is it so important to PNM and Avangrid to somehow place the consideration of the buyout under the inapplicable rule rather than the applicable one? Because, first, a rehearing, by the terms of Rule 1.2.2.37(F) NMAC, must be decided in total within 30 days or it is deemed denied. Second, it can be decided without the opportunity to introduce new evidence. It is understandable that PNM and Avangrid would want the quick hearing and no new evidence admitted because they are undoubtedly aware of the new information relating to events that occurred or became known after the conclusion of the 2021 PRC decision before the Court in this appeal, all of which would have to be considered if the case were reopened pursuant to the PRC's regulatory procedures. That evidence, *inter alia,* includes a half-billion dollar fine imposed on Avangrid by the government of Mexico for intentionally violating regulations governing power distribution;[19] a

[19] RESOLUCIÓN POR LA QUE SE RESUELVE EL PROCEDIMIENTO ADMINISTRATIVO DE SANCIÓN INICIADO EN CONTRA DE IBERDROLA ENERGÍA MONTERREY, S.A. DE C.V., RESOLUCIÓN Núm. RES/466/2022, https://www.sinembargo.mx/wp-content/uploads/2022/05/Resolucion-CRE-Iberdrola-27-de-mayo_compressed_compressed-2.pdf; *See also*, https://www.reuters.com/business/energy/mexican-regulator-fines-spains-iberdrola-subsidiary-466-mln-2022-05-27/; https://www.voanews.com/a/mexico-energy-regulator-fines-spain-s-iberdrola-467-million-/6593291.html; https://www.elconfidencial.com/espana/2022-06-27/fiscalia-iberrola-juicio-directivos-inflar-luz_3450533/.

$4.5 million fine of Avangrid after an investigation in Connecticut revealed that it had been garnishing the wages of customers during the COVID crisis in violation of a regulatory moratorium, a behavior that the Connecticut regulatory authority called "particularly egregious";[20] Avangrid's Maine utility found to be guilty of frustrating instead of facilitating connection to the grid by rooftop and community solar projects, a practice Avangrid's Central Maine Power was required to acknowledge and remediate;[21] although Avangrid presented itself in New Mexico as a leader in addressing climate change, Brown University's Climate and Development Laboratory's analysis of the fate of climate legislation in Connecticut found that Avangrid opposed more climate legislation between 2013 and 2020 than any other group identified in the report, spending $2.8 million lobbying against climate bills during that period;[22] fossil fuel companies and fossil fuel-backed corporate lobbying groups, prominently including Avangrid, fought climate action in New York and spent more than $15.5 million on lobbying since 2016 and more

[20] Exhibit 1, NOTICE OF VIOLATION AND CIVIL PENALTY IN THE AMOUNT OF $4,481,650, State of Connecticut Public Utilities Regulatory Authority, Docket No. 22-03-16RE01.

[21] Exhibit 2, ORDER, State of Maine Public Utilities Commission, Docket No. 2021-00035, 2021-00262 and 2021-00270.

[22] See Table 1: Top testifiers for and against priority climate legislation, Connecticut, 2013-2020; chart b (pg 14), of the Brown University report.

than $1.4 million on political donations.[23] There is much more than this about Avangrid that appears in press reports and other publicly-available sources that was not before the PRC at the time of its last decision and has come to light since. NEE points the foregoing out to this Court not in order to persuade the Court that these allegations should be considered as fact at this stage, but in order to show that public information establishes, beyond peradventure, that there is more evidence the PRC must investigate and consider if it is going to reconsider or reopen this case. Avangrid, of course, will have the opportunity to deny and/or explain all of this, but at a minimum it is information that, for the sake of our state and PNM's customers, should be before the PRC before it addresses whether it should reverse the PRC's earlier decision. Anything less than a full hearing on whether the former decision should be reconsidered and, if so, whether the merger should be allowed to occur, would violate the other parties' due process rights and would do a great disservice to the public, whose interest in the outcome of this case cannot be understated. It is an outcome whose consequences the public will have to live with for what will likely be many decades to come.

[23] https://public-accountability.org/wp-content/uploads/2022/11/LittleSisFuelingObstruction_11.02.pdf; https://www.cityandstateny.com/policy/2022/11/fossil-fuel-industry-has-worked-hard-opposing-new-york-climate-action/379212/

4. **Movants' request that the Court condition dismissal on the use Rule 1.2.2.37(F) NMAC, if granted, will effectively set an artificial deadline to accommodate private corporate interests, sidestepping the obligation of the PRC to protect the public.**

Movants ask this Court and the parties to abruptly and hurriedly accommodate Avangrid's and PNM's desire to complete the reconsideration process by April 20, 2023 in time for the Avangrid/PNM merger to be completed according to the timetable set by PNM and Avangrid themselves, due process considerations be damned. Avangrid's and PNM's expressed need to rush to get this motion heard, get the case remanded and get the PRC's December 2020 decision "reconsidered" under an inapplicable PRC rule seems wholly contrived since PNM and Avangrid are the only two parties to the contract that has an expiration date of April 20, 2023.[24] Yet the contract itself, according to PNM, contains a provision allowing the closing date to be extended by 90 days.[25] PNM and Avangrid fail to explain why, if they are the contracting parties to their

[24] https://www.pnmresources.com/media/news.aspx
According to PNM's press release, 3/8/2023, "Under the filed motion, the NMPRC will conduct the rehearing and reconsideration in accordance with its rules of procedure and endeavor to reach a decision and issue a final order in a timely manner. The NMPRC acknowledges that the Joint Applicants are seeking a resolution by no later than April 12, 2023. PNM Resources and Avangrid, Inc. previously entered into an amendment of their merger agreement extending the end date to April 20, 2023. The agreement can be extended 90 days by agreement from both companies."

[25] *Id.*

agreement, they can't agree to extend the contract's closing date as necessary to let the law take its proper course instead of a contrived, extra-legal process. This is a case of enormous magnitude in which the rights of the public, the public interest, and due process protections are fully at stake. It is a case in which a foreign conglomerate is requesting that the PRC allow it to assume ownership of the monopoly that the people of New Mexico granted to PNM. To say that the decision in this case is not a matter for an expedited, truncated decision-making process is to put it mildly.

The motion makes apparent what has been the assumption of the other parties to this appeal since PNM and Avangrid filed it: The PNM/Avangrid appeal to this Court, until now, was for delay.[26] If they felt they had good grounds for appeal, Avangrid and PNM could await its outcome and, if they were correct, go back before the PRC with the right to a new hearing or whatever other relief this Court deemed their successful appeal merited. Or they could lose the appeal and go back and file a revised application for merger if they had the evidence to justify

[26] *PNM accused of 'charm offensive' as two big appeals await Supreme Court,* Santa Fe New Mexican, May 31, 2022 Updated Jun 1, 2022, ("PNM spokesman Ray Sandoval said the utility's arguments before the Supreme Court are genuine and substantive. 'We believe that we have real issues before them', he said of the Supreme Court justices. 'You don't use the Supreme Court as a delay tactic. I think that's disrespectful of what the court is there to do.'")
https://www.santafenewmexican.com/news/local_news/pnm-accused-of-charm-offensive-as-two-big-appeals-await-supreme-court/article_cb7b9564-e0f9-11ec-9e3f-f37033c0ba32.html

a new application. Or they could move to reopen this case. This appeal, however, was no more than a placeholder until the "old" elected PRC left office and the "new" PRC took its place. This is not a proper purpose for an appeal. What is particularly troublesome about Movant's position is not so much that they want to try again to get their merger approved. They could do that by simply invoking Rule 1.2.2.37 E (4) NMAC and asking the PRC to reopen the case. But that rule would give the public and the parties the right to contest the request that the merger be approved. The vice of that rule, as far as PNM and Avangrid are concerned, is that it allows the other parties through the process of a proper hearing and the public, through public comment, to be actually heard and given an opportunity to prove to the PRC why the merger shouldn't be approved and that it will take more time than PNM and Avangrid want it to take. What is particularly worrisome about the Motion is that it appears to be far-reaching in many respects:

1. It contemplates a dismissal with "remand"[27] for "reconsideration" without a hearing on the merits of whatever new settlement or outcome there may be;

[27] Movants' Motion at ¶ 3.

2. It contemplates a dismissal in order to "allow the Commission to *promptly*[28] rehear and reconsider"[29] the merger, a process that will be conducted without substantive due process;
3. Prejudices Appellees because it shifts the burden from current Appellants in this appeal to future Appellants if the abbreviated, inapplicable regulatory process is followed and there is a "prompt" reconsideration resulting in approval of the merger.

The Motion rests on the unsupported assertion that if the Court will dismiss the case and remand for a summary reconsideration it "serves the public interest and conserves the resources of the Court."[30] Where is the justification in their for this extraordinary assertion? On the record that is before this Court, a review of the Hearing Examiner's Certification of Stipulation and the PRC's December 2021 decision establishes where the public interest lies. What have Avangrid and PNM brought before this Court to suggest that the public's interest has done an about face? Certainly, Movant's have not justified their assertion that the public interest lies in remand for a summary "rehearing." As the PRC decision in this case makes clear, the public interest is the *sine qua non* of the PRC's decision in this case.

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[28] Emphasis added.

[29] Movants' Motion at ¶ 3.

[30] Movants' Motion at ¶ 3.

And PNM/Avangrid and the PRC now ask this Court to take their word for it, without more, that a peremptory reconsideration is in the public interest?

As to conserving this Court's resources, it is difficult to imagine the extent of the tangles in the legal and factual thicket that would end up before this Court if the PRC entered into a summary process of approval of the merger, based on a settlement that none of the other parties have been able even to know about, much less weigh and be heard on, in violation of the PRC's regulatory processes. It is difficult to imagine a process through which the public's interest would be so disserved regarding a matter of such great importance to it.

Whether there should or should not be a motion to reopen the merger case if the appeal is dismissed and whether the requirements for reopening are met will be a matter for the PRC to address after that rule is invoked, under the appropriate and applicable rules of the PRC. It would be a terrible precedent if two big corporations could get the law and its procedures sidelined because they're in a hurry to get their deal closed so that Avangrid can assume ownership and control of New Mexico's monopoly utility without further ado.

5. Movants' Motion fails because its dismissal and remand request does not comport with law

Further grounds for denial of the Motion include:

1. Movants move for "stipulated dismissal," but there is no such stipulation before the Court. *See, McCuistion v. McCuistion*, 1963-NMSC-144, ¶ 8, 73 N.M. 27, 385 P.2d 357 "Rule 41 (a) (1) provides two methods by which an action may be dismissed without an order of the court: one is by notice of dismissal prior to service of the answer, and the other by written stipulation, **signed [*29] by all of the parties** who appeared generally." (Emphasis supplied.)

2. Movants' proposed conditions of dismissal would permit the two remaining Commissioners to reverse the merger decision based on no new evidence, no new law, no independent public interest determination, with the only "change" being their appointment. With great respect to this Court, it should not allow this to happen without the elements of due process being observed for such a momentous moment for our state and its residents.

WHEREFORE New Energy Economy respectfully requests that the Court

a) deny the motion to dismiss as proposed by PNM, Avangrid and the PRC and proceed with the appeal or
b) in the alternative, enter an order granting dismissal pursuant to Rule 12-401(B)(2) NMRA without conditions, which would leave Movants free

to pursue the procedure provided for by the PRC's own rules, which is to move to reopen pursuant to 1.2.2.37 E (4) NMAC. The latter alternative would protect the rights of all parties to this appeal and protect the public's and the state's interest in this important issue.

/s/ John W. Boyd, Esq.
FREEDMAN BOYD HOLLANDER
& GOLDBERG, P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
(505) 842-9960

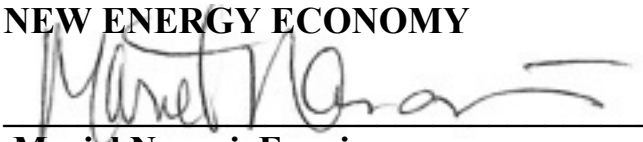
/s/ Mariel Nanasi, Esq.
300 East Marcy St.
Santa Fe, NM 87501
(505) 469-4060

Attorneys for Intervener/Appellee New Energy Economy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing New Energy Economy's Response in Opposition to Joint Motion was electronically served on all counsel of record through the New Mexico Supreme Court's Odyssey filing system on March 23, 2023.

NEW ENERGY ECONOMY



Mariel Nanasi, Esquire

NEE Exhibit 1

STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

October 31, 2022

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION AND CIVIL PENALTY IN THE AMOUNT OF $4,481,650

YOU HAVE TWENTY DAYS FROM THE RECEIPT OF THIS NOTICE TO REQUEST IN WRITING A HEARING BEFORE THE PUBLIC UTILITIES REGULATORY AUTHORITY

Daniel Canavan, Esq.
UIL Holdings Corporation
180 Marsh Hill Road
Orange, CT 06477

Re: Notice of Violation and Assessment of Civil Penalty

DOCKET NO. 22-03-16RE01 PETITION OF THE OFFICE OF CONSUMER COUNSEL FOR AN INVESTIGATION INTO THE UNITED ILLUMINATING COMPANY AND EVERSOURCE ENERGY REGARDING COLLECTIONS PRACTICES DURING THE COVID-19 MORATORIUM – AVANGRID NOV

Dear Mr. Canavan:

The Public Utilities Regulatory Authority (Authority or PURA) has reason to believe that The United Illuminating Company (UI), Connecticut Natural Gas Corporation (CNG), and The Southern Connecticut Gas Company (SCG; collectively, Avangrid or the Companies) failed to proactively and directly contact customers to provide information regarding the COVID-19 Payment Program in violation of Order No. 5 in the Interim Decision dated April 29, 2020 (Interim Decision) in Docket No. 20-03-15, Emergency Petition of William Tong, Attorney General for the State of Connecticut, for a Proceeding to Establish a State of Emergency Utility Shut-Off Moratorium (COVID Docket). In addition, the Authority has reason to believe that Avangrid failed to comply with Conn. Gen. Stat. § 16-262d(g).

Consequently, the Authority issues this Notice of Violation (Notice) for violations of the provisions of Title 16 of the General Statutes of Connecticut (Conn. Gen. Stat.) and orders adopted by the Authority. See Conn. Gen. Stat. § 16-41.[1] As a result of these charged violations, the Authority prescribes an aggregate civil penalty of four million four hundred eighty-one thousand six hundred fifty dollars ($4,481,650).

I. APPLICABLE LAWS

UI, CNG, and SCG are public service companies. Conn. Gen. Stat. § 16-1(a)(3). In exercising its powers under Title 16, the Authority examines and regulates "the operations and internal workings of public service companies" in accordance with certain enumerated principles. Id. § 16-19e(a). Notably, those principles include "(2) that the public service company shall be fully competent to provide efficient and adequate service to the public in that such company is technically, financially and managerially expert and efficient." Id.

As a result of the severe economic impact the COVID-19 pandemic had on utility customers, the Authority issued the Interim Decision, which, among other actions, required the Public Service Utilities[2] and Electric Suppliers to establish a payment program for any customer who requested financial assistance during the COVID-19 pandemic (COVID-19 Payment Program) that would provide an option "for all customers to pay what they can, when they can, during this time of uncertainty." Interim Decision, p. 2.

To ensure the effectiveness of the COVID-19 Payment Program, the Authority established specific requirements for the Public Service Utilities to communicate with customers about the COVID-19 Payment Program. Specifically, the Authority required Public Service Utilities to "[p]roactively and directly contact any residential, commercial, or industrial customer after the customer's first missed payment with information regarding the COVID-19 Payment Program . . ." Id., p. 3.

Order No. 5 of the Interim Decision (Order No. 5) required the implementation of the COVID-19 Payment Program as described in the Interim Decision, inclusive of the requirement to "[p]roactively and directly contact" customers and provide payment program information.

On February 23, 2022, Avangrid, jointly with Eversource, filed Motion No. 72 in the COVID Docket seeking clarification on the requirement for the Companies to continue to offer the COVID-19 Payment Program in light of the expiration of the Governor's authority

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[1] If the Authority has reason to believe that a violation has occurred for which a civil penalty is authorized by Conn. Gen. Stat. § 16-41(a), the Authority must notify the alleged violator and (1) identify the statute, regulation or order involved; (2) provide a short and plain statement of the alleged violation; (3) state the prescribed civil penalty for the violation; and (4) advise the alleged violator of the right to a hearing. Conn. Gen. Stat. § 16-41(c).

[2] "Public Service Utilities" refers to all electric, natural gas, and water public service companies that are regulated by the Authority pursuant to Title 16 of the General Statutes of Connecticut. Interim Decision, p. 2.

to issue emergency orders. COVID Docket, Motion No. 72, p. 2. The Authority clarified that the Companies were mandated to continue enrollment of residential and non-residential customers in the COVID-19 Payment Program through June 30, 2022. Motion No. 72 Supplemental Ruling, Apr. 22, 2022, p. 2.

In addition to the obligation under Order No. 5, electric distribution, gas, and water companies are prohibited from submitting any information about a residential customer's nonpayment to a credit rating agency, unless the customer's balance is more than 120 days outstanding. Conn. Gen. Stat § 16-262d(g). Furthermore, any company that "intends to submit to a credit rating agency information about a customer's nonpayment" must provide the customer with at least 30 days' notice by mail and include the following statement:

> AS AUTHORIZED BY LAW, FOR RESIDENTIAL ACCOUNTS, WE SUPPLY PAYMENT INFORMATION TO CREDIT RATING AGENCIES. IF YOUR ACCOUNT IS MORE THAN ONE HUNDRED TWENTY DAYS DELINQUENT, THE DELINQUENCY REPORT COULD HARM YOUR CREDIT RATING.

Id.[3]

II. STATEMENT OF VIOLATIONS CHARGED

A. VIOLATION OF ORDER NO. 5 OF THE INTERIM DECISION

The Authority investigated the Companies' collection practices and has reason to believe the Companies violated Order No. 5 of the Interim Decision by failing to contact customers "directly and proactively" prior to filing wage garnishment applications. See Docket No. 22-03-16, Petition of the Office of Consumer Counsel for an Investigation into the United Illuminating Company and Eversource Energy regarding Collections Practices during the COVID-19 Moratorium.[4]

As part of its standard collection practice, Avangrid refers customers with outstanding balances who fail to make payments or to enroll in a payment arrangement to a legal collections firm. Response to Interrogatory CAE-02. If the customer does not make payments or enroll in a payment option, the collections firm files a lawsuit, which may result in a court ordered judgment against that customer. Id. If a customer fails to make payments in accordance with the ordered judgment, the collections firm can exercise its discretion and apply to the court to garnish the customer's wages. Response to Interrogatory CAE-15. The Companies did not suspend all collection activities as a result of the COVID-19 pandemic or the Interim Decision; instead, Avangrid instructed its legal collections firm to use a "softer approach". Response to Interrogatory CAE-08.

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[3] Public Act 18-116 increased the number of days an account must be delinquent before it may be referred to a credit reporting agency from 60 days to 120 days. The amendment became effective October 1, 2018.

[4] Cites to record evidence refer to the record in Docket No. 22-03-16.

Since the issuance of the Interim Decision and Order No. 5 on April 29, 2020, Avangrid's legal collections firm filed at least 204 applications for wage garnishments against customers. Response to Interrogatory OCC-14.[5] The Companies suspended the filing of any new lawsuits by the legal collections firm on March 19, 2020, but continued pursuing collection activities for those lawsuits pending before the pandemic, including applying for wage garnishments if a customer failed to comply with a judgment. Tr. 07/11/22, p. 30; Response to Interrogatory CAE-08.

Notably, Avangrid instructed its collections firm to provide COVID-19 Payment Program information to Avangrid customers, except to those with a judgment against them. Response to Interrogatories CAE-29 and OCC-26. The Companies admitted that "[w]ith one exception, the firm has not offered a Covid-19 payment arrangement to customers with a pre-Covid 19 judgment." Response to Interrogatory OCC-26. Because the Companies failed to "[p]roactively and directly contact" these customers and provide COVID-19 Payment Program information, each application for a wage garnishment since April 29, 2020, is a violation of Order No. 5.

B. VIOLATION OF CONN. GEN. STAT. § 16-262d(g)

The Authority also has reason to believe the Companies violated Conn. Gen. Stat. § 16-262d(g) by referring inactive accounts to third-party collection agencies without providing adequate notice to residential customers that their information would be submitted to credit agencies.

Avangrid had knowledge that its third-party collection agencies refer customers to credit bureaus. Avangrid Response to Interrogatory CAE-12; Tr. 07/11/22, p. 85. Consequently, by referring inactive accounts to the collection agencies, Avangrid demonstrated its intent to submit customer information to credit bureaus and, therefore, was required to mail a notice to those customers that includes specific statutory language. See Conn. Gen. Stat. § 16-262d(g).

The Authority's investigation revealed that Avangrid failed to comply with Conn. Gen. Stat. § 16-262d(g). Avangrid's witness testified that the Companies do not have a procedure in place to proactively notify customers that third-party collection agencies could report their debt to credit bureaus; rather, Avangrid intends in the future to incorporate language into its final bill and reminder language. Tr. 07/11/22, pp. 85-86. Although Avangrid later took the position that it does notify customers, the revised final bill notice language used by UI, SCG, and CNG does not comply with the statute. Avangrid Revised Response to Interrogatory CAE-10, Attachment 4. Specifically, the

[5] Attachment 1 is a list of court dockets where a Superior Court Form JD-CV-3 was filed from September 30, 2020 (when courts reopened) through March 4, 2022. The list includes two incomplete court docket numbers and one case where a Superior Court Form JD-CV-3 has been filed twice since May 28, 2020 (HHD-CV-20-6125831-S). Each of the 204 JD-CV-3 forms alleged missed payments from the named customer account; therefore, triggering the Authority's order that states each Public Service Utility must "[p]roactively and directly contact any residential, commercial, or industrial customer after the customer's first missed payment with information regarding the COVID-19 Payment Program . . ." Interim Decision, p. 2.

language refers to 60 days of delinquency instead of the 120 days required by Conn. Gen. Stat. § 16-262d(g).

The Authority has reason to believe that UI, CNG, and SCG violated Conn. Gen. Stat. § 16-262d(g) by failing to provide the required statutory notice to residential customers.

III. PRESCRIBED CIVIL PENALTIES

Pursuant to Conn. Gen. Stat. § 16-41(a), the Authority may prescribe civil penalties of up to $10,000 for each violation arising under Title 16. Each distinct violation of any such provision of this title, order or regulation shall be a separate offense and, in the case of a continued violation, each day thereof shall be deemed a separate offense. Conn. Gen. Stat. § 16-41.

The Authority has reason to believe that Avangrid violated Order No. 5 at least 204 times by submitting applications to garnish wages without proactively and directly informing the customers of the COVID-19 Payment Program.

Importantly, the Authority did not find credible the rationale provided by Avangrid for failing to offer the COVID-19 Payment Program to customers with existing judgments. Avangrid initially claimed that court requirements prohibited offering the payment plan to customers after a judgment was entered. Response to Interrogatory OCC-26. However, this explanation was not true. Tr. 07/27/22, pp. 47-48. Alternatively, Avangrid asserted that the COVID-19 Payment Program was less favorable or less affordable for customers than a court judgment. Tr. 07/11/22, p. 78. However, this argument was also not substantiated by the record. Tr. 07/27/22, p. 52.

Garnishing wages is one of the most severe forms of debt collection; therefore, violations of Authority orders that may have resulted in unwarranted or avoidable wage garnishments are particularly egregious and necessitate substantial sanctions.

Moreover, a previous Notice of Violation was issued against UI alleging violations of the Interim Decision and the Motion No. 16 Ruling in the COVID Docket. UI Notice of Violation and Assessment of Civil Penalty, Jan. 19, 2021. The violation involved UI's Customer Service Representatives providing inconsistent information to customers about the COVID-19 Payment Program, among other things. UI paid the assessed civil penalty, with the matters asserted being deemed admitted. Compliance, Feb. 9, 2021; see Conn. Gen. Stat. § 16-41(d). Thus, this is not Avangrid's first violation related to communicating COVID-19 Payment Program information to customers.

Consequently, due to the egregious nature of the violations, the Authority prescribes a civil penalty of $10,000 per violation as follows:

Company	Violations	Penalty
UI	107	$1,070,000
SCG	46	$460,000
CNG	51	$510,000
Total	**204**	**$2,040,000**

A penalty of $10,000 per violation is warranted because the violations stand in direct contradiction to the stated purpose of establishing the COVID-19 Payment Program, which is to provide a flexible payment option for customers in an effort to support them retaining access to vital utility services during the public emergency.

The Authority also has reason to believe that Avangrid violated Conn. Gen. Stat. § 16-262d(g) by referring inactive accounts to third-party collection agencies without providing appropriate notification that customer information would be submitted to credit agencies. Notably, Avangrid referred at least 48,833 inactive accounts to third-party collection agencies between April 29, 2020 and April 29, 2022. Avangrid Response to Interrogatory OCC-04. Each referral is a separate violation; therefore, the Authority prescribes a civil penalty of $50 per violation as follows:

Company	Violations	Penalty
UI	25,393	$1,269,650
SCG	11,232	$561,600
CNG	12,208	$610,400
Total	**48,833**	**$2,441,650**

IV. RIGHT TO A HEARING

The Companies have the right to request a hearing by delivering to the Authority a written application for a hearing within 20 days from the date of receipt of this Notice. If a hearing is not requested, then this Notice shall, on the first day after the expiration of the 20-day period, become a final order of the Authority, and the matters asserted or charged in the Notice shall be deemed admitted.

V. ORDERS

The Authority orders as follows:

1. The total civil penalty of four million four hundred eighty-one thousand six hundred fifty dollars ($4,481,650) shall be paid by the Companies based on the number of violations attributed to each Company. UI shall pay two million three hundred thousand dollars ($2,300,000), SCG shall pay one million dollars ($1,000,000), and CNG shall pay one million one hundred thousand dollars ($1,100,000) to Operation

Fuel, Inc., to provide financial assistance to customers experiencing difficulties. Such payment shall be made via electronic transfer no later than 20 days from the date of receipt of this Notice and when the Company arranges such payment it shall directly inform Operation Fuel of the pending transfer by emailing the Director of Finance, Andrea Taylor, at finance@operationfuel.org, and the Director of Policy and Public Affairs, Gannon Long, at gannon@operationfuel.org, indicating the docket number in the subject line. UI shall pay the remaining thirty nine thousand six hundred and fifty dollars ($39,650), SGC shall pay the remaining twenty one thousand six hundred dollars ($21,600), and CNG shall pay the remaining twenty thousand four hundred dollars ($20,400) by certified check, company check, bank check or money order, payable to the order of "Treasurer, State of Connecticut", or by wire transfer. If the Company makes payment by check it shall agree to pay any fees associated if the check does not clear and an interest fee of 1% per annum until the civil penalty is paid in full. If the Company intends to make payment by wire transfer, the Company should contact PURA for instructions. This civil penalty shall be transferred or delivered to the Public Utilities Regulatory Authority, Ten Franklin Square, New Britain, CT 06051 no later than 20 days from the date of receipt of this Notice. The payment shall be identified as "22-03-16RE01 NOV Compliance". Documentation of both payments shall be contemporaneously submitted as a compliance filing in this proceeding. The entire penalty, including any portion paid to Operation Fuel, is assessed as a result of a violation of law and not for purposes of remediation or restitution. Therefore, the entire penalty amount is nondeductible for tax purposes.

2. If the Companies recover any or all of the civil penalty prescribed from another source (e.g., a contractor or an insurance company), the recovered money must be returned to gas ratepayers through the Purchased Gas Adjustment clause and to electric ratepayers through the Systems Benefits Charge. The Company shall file documentation with the Authority, no later than 20 days from the date of receipt of this Notice, showing the amount of money recovered, or if no money will be recovered, a statement to that fact. If the Company has not come to final resolution on this issue at the time of its compliance filing, the Company shall continue to file updates with the Authority every 30 days until it is fully compliant with this order.

By order of the
PUBLIC UTILITIES REGULATORY AUTHORITY

Marissa P. Gillett
Chairman

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

March 23, 2022

ORDER

MAINE RENEWABLE ENERGY ASSOCIATION AND COALITION FOR COMMUNITY SOLAR ACCESS
Request for Commission Investigation into Interconnection Practices Pertaining to Central Maine Power Company

Docket No. 2021-00035

CON EDISON CLEAN ENERGY BUSINESS
Request for Review of Transmission Cluster Study Process

Docket No. 2021-00262

MAINE RENEWALBLE ENERGY ASSOCIATION & COALITION FOR COMMUNITY SOLAR ACCESS
Request for Review of Cluster Study Practices

Docket No. 2021-00270

BARTLETT, Chair; DAVIS and SCULLY, Commissioners

I. SUMMARY

The Commission approves the Stipulation joined by Central Maine Power Company (CMP), the Maine Renewable Energy Association and Coalition for Community Solar Access (MREA/CCSA), the Office of the Public Advocate (OPA), Con Edison Clean Energy Businesses (ConEd), and Natural Resources Council of Maine (NRCM) (collectively the "Stipulating Parties").[1]

II. PROCEDURAL HISTORY

A. Small Generator Interconnection Practices Investigation - Docket No. 2021-00035

On February 10, 2021, MREA/CCSA jointly filed a request with the Commission in Docket No. 2021-00035 seeking an investigation of CMP's small generator interconnection practices. Among other concerns, MREA/CCSA alleged that CMP's

[1] Note that the Stipulation indicates in its opening paragraph that Competitive Energy Services, LLC (CES) and Industrial Energy Consumer Group (IECG) also joined the Stipulation. However, the Stipulation does not include signature pages from those parties. Moreover, CMP's cover letter filed with the Stipulation indicates that CES and IECG did not join the Stipulation, but that they do not oppose it.

delays in the interconnection process and CMP's increases in estimated interconnection costs had significantly harmed their members.

More specifically, MREA/CCSA alleged that beginning in approximately January 2021, CMP began to notify developers of significant, unanticipated upgrade costs that would be required for the interconnection of their facilities. These upgrade costs were largely related to CMP's identification of "transmission ground fault overvoltage" issues (T-GFOV).[2] MREA/CCSA claimed that CMP should have identified these issues in the initial screenings and studies rather than subsequently. In several cases, MREA/CCSA asserted that CMP and developers had already executed Interconnection Agreements (IAs), and in some instances had completed construction, prior to the time T-GFOV risks (and associated upgrades) were even considered or identified by CMP. MREA//CCSA provided three examples:

- Developer A - Had signed an Interconnection Agreement with anticipated upgrade fees of $100,000. CMP is required to send back the countersigned Interconnection Agreement within 10 business days. Instead of receiving the countersigned original IA, the developer received a new Interconnection Agreement with an upgrade fee of $1,420,000 plus additional costs to be determined;
- Developer B - Received notice that six of its projects were implicated by this necessary upgrade, with additional fees and a longer schedule. Five of these projects were fully constructed, with the sixth slated to begin construction in Q2 2021; and
- Developer C - Received notice that seven of its projects were impacted, five of which had executed Interconnection Agreements and one that was under construction. One of the projects with a signed Interconnection Agreement for $239,000 in upgrade costs was then assessed a $12,239,000 upgrade cost for a project under 2 megawatts in size.

MREA/CSSA further stated that they had surveyed their members about the impact of the T-GFOV issue and:

> [b]ased on their replies, the impact is deeply concerning: dozens of projects; over 80% of them having fully executed Interconnection Agreements; across more than 74 different municipalities; over 540

[2] According to CMP, islanding is a condition in which a distributed generator's facilities continue to provide power to a collection of customer loads when electricity from a T&D utility's grid is no longer supplying power to those customers. T-GFOV occurs following a single-phase fault on a transmission line when backfeed flow through a distribution transformer occurs as a result of an unintended islanding condition. When this happens, the voltage rise on un-faulted phases of the transmission circuit can result in extremely high voltage on these phases for indefinite periods of time unless appropriate protections are added to the system. EXM-001-001.

> megawatts; and representing hundreds of millions of dollars of new investment. Both net energy billing projects and grid-scale solar facilities, including some that won contracts through the Commission's procurement process last year, are being impacted.

MREA/CCSA Feb. 10, 2021 Letter at 1. Thus, MREA/CCSA asked the Commission to:

1. Order CMP to utilize its extensive resources, and those of its parent company Avangrid, to absorb the costs of the over-voltage risk for projects with Interconnection Agreements since it is too late in the development cycle of these projects to bear these unanticipated costs, and honor existing construction schedules;

2. Order CMP to utilize its extensive resources, and those of its parent company Avangrid, to develop and share with developers a clear communication plan and timeline for when it will communicate the complete technical analysis performed, scope, schedule, and costs for each impacted substation with a focus on interconnecting as many currently suspended megawatts as it can. This plan should focus on prioritizing projects first based on project maturity (in full construction or in development) and second based on dates interconnection payments have been made;

3. Require CMP to provide weekly reports itemizing their ongoing communication plan with interconnecting customers, progress of their technical review, substations assessed, additional study costs incurred, and upgrades and mitigations reviewed, and current forecasts for timeline and costs;

4. Initiate an independent third-party audit to investigate interconnection processes and management oversight (in addition to the inquiry initiated in Docket 2021-00033);

5. Require CMP to file an updated transmission "cluster study" timeline, factors which may cause that timeline to be changed, and efforts being taken or planned for to mitigate or fully avoid any of those potential causes of further delay in the cluster study process;

6. Grant to impacted projects an immediate 6-month extension to the mechanical completion deadline contained in Net Energy Billing contracts due to unforeseen delays in the performance of technical analysis and interconnection timelines; and

7. Allow Interconnecting Customers the ability, upon election, to suspend current interconnection construction activity until notice of revised scope, costs, and schedules are provided by CMP.

Id. at 2.

Through February and March, the Commission gathered preliminary information in response to MREA/CCSA's request. CMP responded to MREA/CCSA's allegations in a response filed on February 19, 2021, and MREA/CCSA replied on March 3, 2021.

Because these filings did not resolve the issues presented, on April 6, 2021, the Commission issued a Notice of Formal Investigation pursuant to 35-A M.R.S. § 1303. The Notice specified six issues that would be the subject of the Commission's investigation.

1. Whether CMP acted prudently with respect to the enactment of LD 1711?[3]
2. Whether the timeliness of CMP's identification of the T-GFOV issue was prudent under the circumstances?
3. Whether CMP's response to the T-GFOV issue was prudent under the circumstances?
4. Whether the "less traditional" solution to the T-GFOV issue selected by CMP was "safe and reliable" and "just and reasonable" and would ensure that interconnection-related costs are born by interconnection customers and not ratepayers?
5. Whether CMP's communications to generation developers and other stakeholders associated with the T-GFOV issue and its costs were reasonable?
6. Whether the Commission should impose on CMP any penalties pursuant to Chapter 324 § 14 and 35-A M.R.S. § 1508-A associated with the issues listed above?

OPA, IECG, NRCM, and CES intervened in the proceeding.[4]

[3] In May 2019, the Maine Legislature passed LD 1711, "An Act To Promote Solar Energy Projects and Distributed Generation Resources in Maine." The purpose of the Act was to encourage the development of solar and other small renewable energy projects in the State. The Act created strong financial incentives for distributed energy resources (DERs) and resulted in significant numbers of projects seeking to interconnect in Maine.

[4] Kathryn Cox-Arslan of Borrego Solar filed public comments on February 18, 2021, on behalf of itself, Longroad Energy, TurningPoint Energy, ConEd, NexAmp, Cenergy. and CMP (advising the Commission of a "collaborative effort to resolve constructively and transparently interconnection challenges which have been or may be identified by the Cluster Studies"). John Webster of Southern N.H. Hydroelectric Dev. Corp. filed public comments on March 11, 2021 (explaining its own challenges with the interconnection process). None of the generators listed above individually intervened in the proceeding.

Discovery included responses by CMP to approximately 80 data requests from several parties, including a number of voluminous responses to relatively broad data requests. Technical conferences were held on May 26 and August 13, 2021.

On September 14, 2021, Staff issued a Bench Memorandum assessing the issues in the case as of that date. The Bench Memorandum concluded that CMP's conduct and related management actions and inactions raised significant issues regarding CMP's prudency. Staff noted that its recommendations with respect to these issues would be provided in the Examiners' Report after consideration of the parties' responsive comments (as well as such other process if required).

On October 12, 2021, CMP and MREA/CCSA each filed comments in response to the Bench Memorandum. Following a series of extension requests, the deadlines for reply comments were repeatedly extended.

In response to communications advising the Hearing Examiners that a settlement had been reached, on December 22, 2021, the Hearing Examiners issued an order suspending the litigation schedules in Docket Nos. 2021-00035, 00262, and 00270, and scheduling a settlement conference for January 6, 2022.

On January 10, 2022, CMP filed the executed Stipulation. The filing included a cover letter that addressed, clarified, and confirmed certain aspects of the Stipulation.

B. ConEd Cluster Study Review - Docket No. 2021-00262

On August 24, 2021, ConEd filed with the Commission in Docket No. 2021-00262 a request to review CMP's processing of aggregate transmission-level interconnection studies conducted pursuant to ISO New England (ISO-NE) Interconnection Requirements (so called "Cluster Studies").[5] On August 26, 2021, the Hearing Examiners issued a Notice of Filing and Request for Comments. CMP, the OPA, and MREA/CCSA filed responsive comments.[6]

C. MREA/CCSA Cluster Study Review - Docket No. 2021-00270

On August 27, 2021, MREA/CCSA filed a request with the Commission in Docket No. 2021-00270. Similar to ConEd's letter, MREA/CCSA requested that the Commission take certain remedial actions with respect to CMP's processing of Cluster Studies. The Hearing Examiners issued a Notice of Filing and Request for Comments on September 3, 2021. On September 10, 2021, CMP filed responsive comments to MREA/CCSA request.

[5] ConEd's letter was dated July 26, 2021. ConEd directed its letter to Chairman Bartlett, and did not itself file the letter in the Commission's Case Management System. Staff filed the letter in CMS on August 27.

[6] Note that ConEd is a member of MREA.

In those comments, CMP indicated that it had already addressed many of MREA/CCSA's requests, including:

- Agreeing to make public filings of bi-weekly reports to the MPUC and solar industry;
- Actively advancing multiple cluster studies in parallel to the extent technically possible;
- Agreeing to public[7] cluster study dependencies;
- Filing Terms and Conditions to address cluster studies, which account for attrition and include strict deadlines for study participants to provide necessary information to run the Cluster Studies;[8]
- Addressing the issues raised in the June 16, 2021 Transmission Working Group letter to CMP.
- A commitment by the CMP to consider non-traditional mitigation techniques including utilizing built-in inverter, transformer load tap changer, and other device capabilities along with consideration of operational and curtailment practices where feasible; and
- Implemented measures to ensure that CMP resources are not causing cluster study delays.

CMP indicated that it likewise addressed some of the concerns raised by ConEd, specifically:

- CMP established challenge sessions that are designed to challenge the typical network upgrade approach and look for mitigation recommendations that may be both more cost-effective and facilitate more rapid interconnection of DG projects; and
- CMP has readily and repeatedly agreed to consider mitigation techniques that include utilizing capabilities that are built into the inverters, transformers, and other devices, as well as utilize utility control operations practices, and potential curtailment options where feasible.

D. Consolidated Proceeding

On September 29, 2021, the Hearing Examiners issued a Procedural Order (Consolidation and Scheduling), consolidating Docket Nos. 2021-00262 and 2021-00270 and scheduling a technical conference in the consolidated proceeding for October 12, 2021. A process was then adopted which called for the filing of briefs and

[7] It appears that "public" is a typo and that CMP intended to use the word "publish."

[8] On September 1, 2021, CMP filed proposed Terms and Conditions (T&Cs). Those T&Cs are currently pending before the Commission. *Cent. Me. Power Co., Request for Approval of New Terms and Conditions Section 60 (Generator Interconnection Transmission Impact Studies)*, Docket No. 2021-00277.

reply briefs. CMP and MREA/CCSA each filed initial briefs. The deadline for reply briefs was repeatedly extended until the December 22 Procedural Order suspended the litigation schedule.

III. STIPULATION PROVISIONS

The Stipulation addresses the issues presented in this proceeding through significant commitments by CMP.

First CMP, "acknowledges and accepts responsibility" for its shortcomings:

> While CMP team members worked hard to mitigate the T-GFOV issue so that it would not impact interconnection customers, in hindsight the scope and the need for T-GFOV mitigation could and should have been identified sooner and CMP's communications about the scope of the issue to interconnection customers were deficient in timeliness and clarity.

Stipulation § III(11)(i).

Second, CMP commits to implementing the remedies that it agreed to implement as described in its October 12, 2021 Comments on the Bench Memorandum.

Third, CMP commits to funding $700,000 to be used to support a number of other settlement terms. *Id.* § III(11)(ii). Importantly, CMP later confirmed in the cover letter accompanying the Stipulation that this funding was to be borne by CMP's shareholders, not ratepayers.

Those other settlement terms included:

- Payment to be used by the Commission for the funding of a consultant mutually agreed upon by parties to facilitate the Commission's DG Interconnection Working Group for a period of two years (as much as $150,000). *Id.* § III(12).
- Funding for as many as six contracted analyst resources to support the interconnection process (in areas of transmission planning, distribution planning, and interconnection projects) for a period of two years (as much as $550,000). The additional resources will be particularly focused on the transmission level cluster study process (CMP will disclose the identity of the contracted analyst and relevant contractor). *Id.* § III(13).
- Regarding Docket Nos. 2021-00262 and 00270, CMP commits to meeting the most recent cluster study timelines,[9] subject to the qualifications set forth in the Cluster Study Timelines for changes that CMP could not reasonably foresee or avoid (such as exceptionally complex mitigation

[9] The most recent Cluster study timelines cited are those published on October 22, 2021.

[pre or post PSCAD analysis], ISO-NE queued projects triggering unforeseen re-assessments, or restudies needed due to the impacts of attrition), plus up to an additional 20 business days to allow for queue attrition between cluster study phases. If CMP's schedule forecasts identify potential additional delays, including the incurrence of a PSCAD modeling delay or coordination with a FERC-jurisdictional queue position, CMP will provide to the Commission, subject to notice and comment by interested parties, a detailed report explaining the reasons for the forecasted delays, describing the factors outside CMP's control and why they could not be anticipated, and any remedial actions the company is taking to minimize the schedule impact. If CMP expects additional delay of more than 20 business days due to a restudy resulting from project attrition, then CMP will provide to the Commission, subject to notice and comment by interested parties, a report explaining why the restudy requires more than 20 business days, the expected duration, and any efforts by CMP to minimize the duration of the restudy. *Id.* § III(15).

- CMP commits to start planning now for adequate resourcing for the design and construction of any pre-existing upgrades that impact these clusters and newly identified transmission upgrades in a time efficient manner. CMP commits to provide cost estimates and construction schedules that are more detailed than the (-50%/+200%) cost estimate and high-level construction schedule of identified Network Upgrades in Phase 1 as part of its Phase 2 deliverable at the end of Phase 2.[10] CMP agrees to incorporate this plan into the interconnection working group going forward. *Id.* § III(16).
- CMP commits to continued cooperation and engagement with the solar industry on continuous improvement to refine the cluster study process, specifically continued cooperation, engagement, and transparency on efforts to implement alternative mitigations in response to cluster studies (e.g., curtailment options and ISO-NE approvals). *Id.* § III(17).
- CMP and MREA/CCSA agree to support advancing efforts before the Commission to add additional CMP staffing, technology enhancements, and system improvements that would proactively encourage future renewable resource expansion. The goal of these efforts would include the development of actionable renewable resource forecasts, technological system upgrades, headroom assessments, etc. to benefit renewable resource integration. This information would be used to proactively encourage interconnections in specific areas of the CMP system that have been upgraded to accommodate additional renewable resources. CMP agrees to work collaboratively with MREA/CCSA, as an outcome of Phase 1 cluster study mitigation review, to identify additional cost allocation and

[10] The Stipulation does not clarify the references to Phases 1 and 2.

cost-sharing mechanisms where there are shared utility customer and future DER customer benefits. *Id.* § III(18).[11]

A settlement conference was held on January 6, 2022, to discuss the Stipulation and its terms. Following the settlement conference, CMP filed the Stipulation on January 10, 2022. As noted above, the cover letter accompanying the Stipulation addresses, clarifies, and confirms certain aspects of the Stipulation, including:

- CMP confirms that the full amount of the $700,000 funding would be contributed by CMP shareholders, and not funded by ratepayers.
- With respect to the DG Interconnection Working Group, CMP clarifies that should the Commission decide that it would not be the contractual counterparty with the DG Interconnection Working Group consultant facilitator, CMP will contract as the counterparty (as well as fund the contract). In that case, the Stipulating Parties will have the opportunity to review and approve the selection of the facilitator and the scope of work.
- CMP specifies that the remedies that it had already agreed to implement (referenced in its October 12, 2021 Comments on the Bench Memorandum) include:
    - Within 60 days of an order CMP will demonstrate it has integrated the interconnection process functions through a filing with the Commission.
    - CMP will conduct quarterly workshops on an ongoing basis regarding the small generator interconnection process.
    - As CMP improves its system data and modeling tools, it will facilitate more efficient interconnection, including hosting maps to signal favorable interconnection locations.

CMP also recognizes that the Commission's decision in Docket No. 2021-00205 left resolution of the appropriate allocation of T-GFOV costs of two Dirigo Solar projects to be determined in Docket No. 2021-00035. CMP explained that the Stipulating Parties view this as a CMP specific issue and thus did not resolve the issue. The Stipulating Parties suggest that it be addressed as a stand-alone issue in a separate docket.

CMP also incorporates by reference its Performance Improvement Plan submitted in Docket No. 2021-00303. According to CMP, the Performance Improvement Plan demonstrates "integration of the interconnection process functions (transmission planning, distribution planning, interconnection, and protection and controls, among other things)."

[11] CMP subsequently clarified that this commitment does not require CMP to advocate for any particular position before the Commission or the Legislature and the CMP will continue to advance positions that, in its view, are appropriate weighing all relevant considerations, including those of its general ratepayers.

CMP explains that the quarterly workshops are already occurring and reaffirms its commitment to continue them. CMP also reaffirms its commitment to continue to improve its system data and modeling tools to facilitate more efficient interconnection.

IV. LEGAL STANDARD

A. Statutory Standard

The Commission's overarching purpose "is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy available to the State's consumers and to ensure that the rates of public utilities subject to rate regulation are just and reasonable to customers and public utilities." 35-A M.R.S. § 101. The interconnection of generation facilities is one of the services provided by CMP to its customers.

Further, the Commission adopted Chapter 324, governing the small generator interconnection process, pursuant to its 35-A M.R.S. § 111 rulemaking authority and response to Resolves 2007, ch. 183, Section 2; *see also Me. Publ. Utils. Comm'n, Small Generator Interconnection Standards Chapter 324*, No. 2009-219, Order Adopting Rule and Statement of Factual and Policy Basis, at 1-2 (Jan. 4, 2010).

Moreover, pursuant to 35-A M.R.S. § 1306(2), the Commission has authority to order a change to "terms, conditions, measurement, practice, service, or acts" of a public utility if it finds, after a public hearing, "that a service is inadequate or that reasonable service cannot be obtained." The Commission has similar authority with respect to unjust rates. *Id.* § 1306(1).

B. Criteria for Stipulation Approval

Chapter 110 of the Commission's Rules of Practice and Procedure provides that, in deciding whether to approve a stipulation, the Commission will consider the following:

a. Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

b. Whether the process that led to the stipulation was fair to all parties;

c. Whether the stipulated result is reasonable and is not contrary to legislative mandate; and

d. Whether the overall stipulated result is in the public interest.

MPUC Rules, ch. 110, § 8(D)(7).

V. DISCUSSION AND DECISION

A. Spectrum of Interests

Here the Stipulating Parties include CMP, OPA, MREA/CCSA, ConEd, and NRCM. CMP's cover letter indicates that the Stipulating Parties include all but two of the parties to the proceeding, CES and IECG. No party opposes the Stipulation.

In the past, the Commission has held that a utility and the OPA, with differing views and interests, represent a broad spectrum of ratemaking interests. *See Cent. Me. Power Co., Annual Price Change Pursuant to Alternative Rate Plan (ARP 2000),* Docket No. 2012-00063, Order Approving Stipulation (June 21, 2012). Additionally, in this case, MREA/CCSA, ConEd, and NRCM have also joined the Stipulation. Accordingly, the Commission finds that the parties joining in the Stipulation represent a sufficiently broad spectrum of interests. The Commission further finds that nothing in the record indicates that there is any appearance or reality of disenfranchisement.

B. Fairness of Process

CMP's cover letter explains that the settlement process was fair. The settlement process was open to all parties and took place by phone or video conference due to concerns about in-person meetings during the COVID-19 pandemic. In addition, the Commission held a settlement conference on January 6, 2022 (prior to CMP's filing of the Stipulation). All parties had the opportunity to attend the settlement conference, and all parties except ConEd elected to attend the settlement conference. No party has expressed any concern that the settlement process was anything but fair. Consequently, the Commission is satisfied that the settlement process was fair.

C. Reasonableness of Result and Public Interest

As an initial matter, it should be noted that, after having been identified by CMP as a matter that would result in significantly increased interconnection costs, the T-GFOV matter at issue was ultimately resolved by CMP in a manner that was substantially less costly than CMP had initially estimated. Although CMP's actions created uncertainty, confusion, and delay, no MREA or CCSA member has alleged that they ultimately were forced to pay unreasonable interconnection costs associated with addressing the T-GFOV risk. Further, as explained above, in Docket No. 2021-00262, and 00270, CMP detailed a number of actions that it was taking independently to address the concerns raised specifically in those cases.

Against that background, the Stipulation goes further and resolves the major issues before the Commission in these three interrelated dockets. The Commission appreciates the efforts of the Stipulating Parties to resolve these complicated issues.

Importantly, CMP has made substantial commitments designed to improve the interconnection process for small generators. In the context of such commitments, CMP acknowledges responsibility for failing to identify the T-GFOV issue earlier and to

communicate clearly with interconnecting generators about that issue. Looking forward, in addition to the process steps noted above, CMP commits $700,000 of shareholder funds to additional staffing and processes that are intended to supplement CMP's resources for small generator interconnection matters, enhance transparency in the interconnection process, and minimize interconnection related disputes. Although not labeled as such, this $700,000 shareholder funded investment is akin to a penalty.

Moreover, the Stipulation contains a host of other more technical commitments designed to improve the small generator interconnection process.

Consequently, the Commission concludes that the Stipulation, as further clarified and confirmed in CMP's cover letter, is reasonable and is in the public interest. The Commission notes that, in approving the Stipulation, it does not in any way pre-approve any potential future ratemaking treatment with respect to any of the Stipulation provisions or CMP's other commitments should CMP elect to continue those going forward. For example, should CMP decide to retain the contracted analyst resources beyond the two-year period funded by shareholders, or to eventually fill those positions with CMP employees, the Commission would address the appropriate ratemaking treatment of those costs at the time that CMP may propose to recover them in its rates.

The Commission expects full compliance with the Stipulation and on this record has no reason to believe otherwise. However, the Commission notes that violations of the Stipulation would be enforced pursuant to 35-A M.R.S. § 1306 or such other statutory provisions as may be implicated.

With respect to the provisions related to the distributed generator interconnection working group, given that potential interconnection-related matters (including disputes) that may come before it, the Commission is not in the position to sponsor or participate in such a working group.

Further, with respect to Docket No. 2021-00205 and yet unallocated Dirigo Solar T-GFOV related costs, the Commission will address those in Docket No. 2021-00205 or a similar docket independent of the three dockets that are the subject of the Stipulation.

Finally, as discussed earlier, the Commission has pending before it CMP's proposed Terms and Conditions related to the ISO-NE cluster study process. Approval of this Stipulation does not serve as precedent with respect to a Commission determination in that proceeding, nor constitute a finding or determination regarding related legal or jurisdictional issues. *See Central Maine Power Company, Request for Approval of New Terms and Conditions Section 60 (Generator Interconnection Transmission Impact Studies*, Docket No. 2021-00277; Stipulation § IV(19).

Accordingly, the Commission

ORDERS

1. The Stipulation, as further clarified and confirmed in the cover letter accompanying the Stipulation, is approved.

2. The Commission will address the yet unallocated Dirigo Solar T-GFOV related issues in Docket No. 2021-00205 or a similar docket independent of the three dockets that are the subject of the Stipulation.

Dated at Hallowell, Maine, this 23rd day of March 2022.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
Davis
Scully

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.