

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

Versant Power

)

Docket No. ER23-1598-___

**STIPULATION AND AGREEMENT
(Dated September 18, 2023)**

**ARTICLE 1
INTRODUCTION**

1.1 Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602 (2023), Versant Power, the Maine Public Utilities Commission (“MPUC”), and the Maine Office of Public Advocate (“OPA”) enter into this Stipulation and Agreement (“Stipulation”) to provide for the resolution of all issues raised by the MPUC with regards to Versant Power’s request for approval of the establishment of a regulatory asset and associated amortization schedule for certain costs identified during the audit by Commission Staff in Docket No. FA20-9-000 (the “BHD Regulatory Asset Filing”).¹ Versant Power, the MPUC, and the OPA are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

1.2 This Stipulation shall be filed with the Commission as part of an Offer of Settlement submitted in accordance with 18 C.F.R. § 385.602 (the “Offer of Settlement”). In accordance with 18 C.F.R. § 385.602(c)(1)(ii), such Offer of Settlement shall contain an Explanatory Statement which is not intended to, and does not, alter any of the provisions of this Stipulation. In the event of an inconsistency between the Explanatory Statement and this Stipulation, this Stipulation shall control.

**ARTICLE 2
PROCEDURAL HISTORY**

2.1 On September 16, 2021, the Commission’s Office of Enforcement (“OE”) issued an Audit Report in Docket No. FA20-9-000 regarding an audit undertaken by OE’s Division of Audits and Accounting of Versant Power’s compliance with, among other things, accounting requirements of the Commission’s Uniform System of Accounts Prescribed for Public Utilities and Licensees under 18 C.F.R. Part 101 (the “Audit Report”).² The Audit Report found, among other things, that Versant Power improperly capitalized certain overhead costs to Account 107, Construction Work in Progress – Electric, that instead should have been recorded as operating

¹ The OPA filed a Motion to Intervene Out-of-Time raising no substantive issues.

² *Versant Power*, Docket No. FA20-9-000, Audit Report, Sep. 16, 2021.

expenses, causing Versant Power to overstate its wholesale transmission revenue requirement and overbill wholesale transmission customers.³

2.2 Effective January 1, 2022, Versant Power adjusted its books and records in order to remove from Transmission Plant and General and Intangible Plant balances for the Versant Power Bangor Hydro District (“BHD”) \$18,251,080 in overhead costs that the Audit Report found were improperly capitalized (the “Subject Overhead Expenses”).

2.3 On May 25, 2022, Versant Power issued refunds to BHD wholesale transmission customers under Schedule 21-VP of the ISO New England Inc. Open Access Transmission Tariff (the “ISO-NE OATT”), in accordance with the terms of the Audit Report, to reflect the ratemaking impact of these improperly capitalized overhead costs on these customers.⁴

2.4 On April 7, 2023, Versant Power filed in Docket No. ER23-1598-000 a request for approval of the establishment of a regulatory asset and associated amortization schedule for a portion of the Subject Overhead Expenses (the “BHD Regulatory Asset Filing”).

2.5 On May 3, 2023, the MPUC filed a Motion for Leave to Intervene Out-of-Time and Limited Protest raising certain issues (the “MPUC Limited Protest”).

2.6 On May 5, 2023, Versant Power filed a Motion for Leave to Answer and Answer to the MPUC Limited Protest (the “Versant Power Answer”).

2.7 On May 18, 2023, the MPUC filed a Motion for Leave to Answer and Answer to the Versant Power Answer (the “MPUC Answer”).

2.8 On June 5, 2023, Commission Staff issued a Letter requesting certain additional information from Versant Power.

2.9 On July 5, 2023, Versant Power responded to the Commission Staff Letter.

2.10 On July 19, 2023, the OPA filed a request for leave to intervene out-of-time.

2.11 On August 7, 2023, Versant Power filed an unopposed request to the Commission to delay any order in Docket No. ER23-1598-000 until October 7, 2023, to allow Versant Power and the MPUC time to exchange information in an effort to resolve the concerns raised in the MPUC Limited Protest.

2.12 Subsequently, Versant Power, the MPUC, and the OPA resolved all of the issues raised by the MPUC in the MPUC Limited Protest and the MPUC Answer, as memorialized in the Stipulation.

³ *Id.* at 18.

⁴ *See Versant Power*, Docket No. FA20-9-000, Refund Report filed May 20, 2022.

ARTICLE 3
SCOPE OF SETTLEMENT

3.1 This Stipulation resolves all issues raised by the MPUC with regards to the BHD Regulatory Asset Filing as well as any issues the MPUC or the OPA could raise or could have raised in the MPUC Limited Protest or otherwise with regards to the BHD Regulatory Asset Filing or the ratemaking treatment of the Subject Overhead Expenses under Schedule 21-VP of the ISO-NE OATT (including but not limited to credits to retail transmission customers taking service under Schedule 21-VP).

ARTICLE 4
CREDITS, RATES, CHARGES

4.1 The Parties agree that, in lieu of Versant Power’s requests in the BHD Regulatory Asset Filing:

4.1.1 Versant Power will establish and record to Account 182.3 a regulatory asset of \$15,622,080 (the “Settled BHD Regulatory Asset”), this amount representing the difference between (a) \$24,389,023, which is the Parties’ estimate of the current value (including interest) of the Subject Overhead Expenses, and (b) \$8,766,942, which is the Parties’ estimate (including interest) of the revenues to be refunded to retail customers that result from correction of the overstatement of electric plant in service due to the improper capitalization of the Subject Overhead Expenses;

4.1.2 Versant Power will amortize the Settled BHD Regulatory Asset to Account 560 on a straight-line basis over eight (8) years, starting with the calendar year containing the Effective Date (i.e., Versant Power will record \$1,952,760 to Account 560 for each of these eight years, this value representing one-eighth of the \$15,622,080 referenced in Section 4.1.1); and

4.1.3 Versant Power will include such amortized amount in Annual Charges Updates under the ISO-NE OATT in the same manner as it includes other amounts for Account 560 applicable to the BHD for each the year in which the amortization is recorded.

4.2 The Parties agree that Versant Power will not include any additional interest on the foregoing values set forth in this Article 4.

ARTICLE 5
EFFECTIVE DATE

5.1 This Stipulation shall be binding upon a Party upon the last date that the following two events occur: (a) execution of this Stipulation by such Party and (b) issuance of a final Commission order no longer subject to rehearing approving the Stipulation without modification or condition (the “Effective Date”).

5.2 In the event of a Commission order requiring any modification or condition to this Stipulation, either Party may provide written notice to the other Party within ten (10) business days of any such order that such modification or condition is unacceptable, in which case this Stipulation shall be of no force and effect, unless each Party agrees in writing within an additional fifteen (15) business days of any such notice to modifications acceptable to the other Party that are consistent with any modification and/or condition imposed by Commission order and any such modifications are approved in a final Commission order no longer subject to rehearing (the “Revised Effective Date”). In the absence of such written notice, each Party is deemed to have accepted this Stipulation as modified and/or conditioned.

ARTICLE 6 **MISCELLANEOUS**

6.1 This Stipulation is an integrated package. None of the terms of the Stipulation are agreed to without each of the others. The various provisions of this Stipulation are not severable.

6.2 This Stipulation is submitted pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, and it is agreed by both Parties that until this Stipulation becomes effective in accordance with Section 5.1 or Section 5.2, this Stipulation shall be privileged and shall not be admissible in evidence or made a part of the record in any proceeding.

6.3 It is specifically understood and agreed that this Stipulation represents a negotiated settlement in the public interest with respect to the matters agreed to herein for the sole purpose of the settlement of such matters agreed to herein, and neither Versant Power, the MPUC, the OPA, the Commission, its Staff, nor any other party or person shall be prejudiced or bound thereby in any proceeding, except to enforce its terms or as specifically provided herein. Neither Versant Power, the MPUC, the OPA, the Commission, its Staff, nor any other party, entity, or person shall be deemed to have approved, accepted, agreed or consented to any concept, theory or principle underlying or supposed to underlie any of the matters provided for herein. Further, except as provided herein, this Stipulation cannot be used, and no part hereof shall be used, to advance, support, or resist a position taken before the Commission or the courts by any party to this proceeding. Nor shall any Party’s failure to litigate in this proceeding an issue resolved by this Stipulation affect such Party’s right to raise such issue in a future proceeding. Nothing in this Stipulation shall be deemed a “settled practice” as interpreted by the court in *Pub. Serv. Comm’n of N.Y. v. FERC*, 645 F.2d 1335 (D.C. Cir. 1980).

6.4 This Stipulation constitutes the full and complete agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Parties with respect to the subject matter thereof, and there are no warranties or representations among the Parties in connection with the subject matter hereof except as set forth specifically herein.

6.5 Unless the Parties agree to otherwise in writing, the standard of review for any proposed changes sought by either Party to the terms of this Stipulation shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348

(1956), as clarified in *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008). The standard of review for any changes proposed by a non-Party or the Commission acting *sua sponte* shall be the ordinary just and reasonable standard of review, not the public interest standard of review. See *NRG Power Marketing, LLC v. Me. Pub. Utilities Comm'n*, 558 U.S. 165, 174-75 (2010) and *Devon Power LLC*, 134 FERC ¶ 61,208 at P 10 (2011).

6.6 Nothing contained in this Stipulation shall be construed as affecting in any way the right of Versant Power unilaterally to make an application of any type to the Commission to modify Attachment P-VP pursuant to FPA Section 205 or to oppose any filing made or action taken under FPA Section 206. Nothing contained in this Stipulation shall be construed as affecting in any way the right of the Commission, the MPUC, the OPA, or any other entity unilaterally to make an application of any type to the Commission to modify Attachment P-VP pursuant to FPA Section 206 or to oppose any filing made or action taken under FPA Section 205.

6.7 This Stipulation is binding upon and for the benefit of the Parties and their successors and assigns.

6.8 No provision of this Stipulation may be waived except through a writing signed by an authorized representative of the waiving Party. Waiver of any provisions of this Stipulation shall not be deemed to waive any other provision of this Stipulation. This Stipulation may be amended only by written agreement of the Parties.

6.9 To the extent not governed by federal law, this Stipulation and the rights and duties of the Parties hereunder will be governed by and construed, enforced, and performed in accordance with the laws of the State of Maine, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

6.10 Any dispute regarding this Stipulation or any effort to enforce a provision of this Stipulation may be brought by a Party: (a) before the Commission or, (b) if the Commission lacks jurisdiction to hear such dispute or enforce such provision (by reason of, among other things, a Party not being subject to Commission jurisdiction under the FPA), before a federal or state court of competent jurisdiction in the State of Maine. Each Party irrevocably waives any objection on the grounds of venue, forum *non-conveniens* or any similar grounds and irrevocably consents to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction of such court.

6.11 The titles and headings of the various Articles of this Stipulation are for reference and convenience purposes only, and are not to be construed or taken into account in interpreting the Stipulation and do not qualify, modify, or explain the effects of this Stipulation. This Stipulation is the result of negotiations among, and has been reviewed by, each Party and its respective counsel; accordingly, this Stipulation shall be deemed to be the product of each Party, and no ambiguity shall be construed in favor of or against any Party based on authorship of the Stipulation.

6.12 This Stipulation may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Stipulation.

Each person executing this Stipulation on behalf of a Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize this Stipulation to be executed on behalf of, the Party that he or she represents.

[Signatures on Following Pages]


The following Parties listed below agree to all of the terms and conditions of this Stipulation.

Versant Power

By: 

Name: Kris Chahley

Maine Public Utilities Commission

By:  9/18/2023

Name: Harry Langhear

Maine Office of the Public Advocate

By: 

Name: Andrew Landry