STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PUC-25-51

BERWICK SOLAR, LLC,

Appellant

v.

MAINE PUBLIC UTILITIES COMMISSION, et al.,

Appellee

ON APPEAL FROM THE MAINE
PUBLIC UTILITIES COMMISSION

BRIEF OF APPELLEE CENTRAL MAINE POWER COMPANY

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INTRODUCTION

As a small generator seeking to interconnect to Central Maine Power Company's ("CMP") distribution system, Berwick Solar, LLC ("Berwick") signed an interconnection agreement with CMP (the "Agreement")—a standard form agreement required by Chapter 324 of the Maine Public Utilities Commission's ("Commission") Rules and drafted and adopted by the Commission thereunder.

The Agreement, like Chapter 324, requires Berwick to pay the costs associated with its interconnection. Berwick does not dispute this. Instead, Berwick contends that it should be relieved of its full payment obligations because CMP issued a final reconciliation statement beyond the 90-day timeline outlined in the Agreement. That is wrong. The 90-day timeline merely lays out a process for providing the reconciliation statement; nothing in the Agreement states that Berwick's payment obligations are conditioned upon CMP's issuance of a reconciliation statement within 90 days. That is why the Commission correctly rejected Berwick's argument, finding no basis for its position in the language of the Agreement or Chapter 324.

Now Berwick asks this Court to overturn the Commission's plain-language interpretation of the standard form agreement that the Commission itself drafted. The Court should decline to do so. ***First***, because Berwick entered into the Agreement pursuant to Chapter 324, the Rule's mandates are incorporated into the

Agreement and override any conflicting terms. Chapter 324 requires Berwick to pay its interconnection costs notwithstanding the late reconciliation statement, regardless of whether the Agreement could support a differing interpretation. ***Second***, the Agreement does not support any such differing interpretation. It unambiguously requires Berwick to pay the remaining interconnection costs and does not condition Berwick's payment obligations on the timing of the reconciliation statement. Accepting Berwick's invitation to read such a condition into the Agreement would not only contravene the plain language but would create inconsistencies with numerous other provisions that place the cost responsibility solely on Berwick. ***Third***, even if the Agreement were ambiguous (it is not), the Commission's interpretation of the Agreement—a standard form it drafted—is reasonable and should be upheld. The Commission's interpretation, unlike Berwick's, is both consistent with the Agreement's language and Chapter 324, and gives force and effect to all the Agreement's provisions.

The Law Court should also reject the other arguments asserted by Berwick on appeal—that the Commission acted arbitrarily and capriciously in finding Berwick was not prejudiced by CMP's delay, in refusing to require CMP to provide Berwick with contractor invoices and purchase orders, and in finding that Berwick's cost responsibility includes paying for the overhead pooled costs associated with its interconnection. Like its determination with respect to the 90-

day timeline, these conclusions were grounded in the language of the Agreement and the requirements of Chapter 324. The Law Court should uphold them.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. THE INTERCONNECTION AGREEMENT

CMP and Berwick executed an Interconnection Agreement on March 6, 2020 for Berwick's Level 4 Project. (App. 60.) The Agreement is a standard form contract mandated by Chapter 324 and drafted and adopted by the Commission thereunder. (App. 27, Ch. 324 § 4(A)). Under the Agreement, CMP is required to complete the construction and installation of the "Interconnection Facilities" [1] and "Distribution Upgrades" [2] required to interconnect Berwick's facility to CMP's system, and Berwick is required to pay the costs, including overheads, associated with that installation and construction. (App. 64, Article 4.1 (requiring Berwick to "pay for the cost of the Interconnection Facilities itemized in the Exhibits to this Agreement" and providing Berwick "shall be responsible for its share of all reasonable expenses, including overheads" associated with "operating, maintaining, repairing, and replacing" the Interconnection Facilities), Article 4.2

[1] Chapter 324, Section 2(HH) defines "Interconnection Facilities" as "facilities and equipment located on the customer-owned infrastructure side of the Point of Common Coupling that are necessary to physically and electrically interconnect the [interconnection customer's equipment] to the T&D Distribution System." (App. 23.)

[2] Chapter 324, Section 2(O) defines "Distribution Upgrades" as "the additions, modifications, and upgrades to the Interconnecting T&D Utility's Distribution System at or beyond the utility-owned infrastructure side of the Point of Common Coupling to accommodate interconnection of the ICGF." (App. 20.)

(providing that the "actual costs of the Distribution Upgrades, including overheads, shall be directly assigned to" Berwick).) Exhibit 6 to the Agreement, which sets forth the estimated costs for the construction and installation, expressly states that Berwick "shall be responsible for all costs of [the] electric system modifications, even if they are in excess" of the estimate and that by executing the Agreement Berwick was "agreeing to proceed forward financially." (App. 77.)

The Agreement also sets forth invoicing, payment, and cost reconciliation timelines, including Article 5.1.2 ("the Final Accounting Clause"). (App. 64.) The Final Accounting Clause provides that within 90 days of completing the required construction and installation, CMP shall provide a "final accounting report of any difference" between the "actual cost incurred to complete the construction and installation" and Berwick's "previous deposit and payments" (a "Reconciliation Statement"). (*Id.*) The clause goes on to separately provide that if Berwick's "cost responsibility exceeds its previous deposit and aggregate payments," CMP shall invoice Berwick "for the amount due" and Berwick "shall make payment" within 30 days. (*Id.*) If, on the other hand, Berwick's previous payments exceed its cost responsibility, CMP must provide a refund. (App. 64-65.)

II. THE DISPUTE AND ITS RESOLUTION BY THE COMMISSION

When CMP completed the construction and installation required under the Agreement, the company was in the process of reevaluating its method for

assessing projects overhead costs, including "pooled costs," which are program-specific overhead costs that CMP incurs on a generalized basis. (App. 86-87.) The purpose of this reevaluation effort was to reduce the amount of overhead costs assigned to projects. (*Id*.) Because this effort was ongoing and CMP wanted to ensure the accuracy of Berwick's reconciliation costs, CMP did not send Berwick the Reconciliation Statement required by the Final Accounting Clause within the subscribed 90-day period. (App. 86.) Under the Agreement, Berwick had the option to notify CMP that CMP was in default after not providing the Reconciliation Statement within the 90-day period, which would have required CMP to cure the default. (App. 67, Article 6.6.) But Berwick never sent a default notice. (App. 10, 88.)

Instead, once it received the Reconciliation Statement from CMP, Berwick disputed the charges as time barred. (App. 13.) Berwick also disputed the assessment of overhead pooled costs, arguing such costs are not allowable under the Final Accounting Clause. (*Id*.) CMP and Berwick then began an informal dispute resolution process. (*Id*.) During negotiations, Berwick requested additional details regarding the charges reflected in the Reconciliation Statement. Even though the Reconciliation Statement's detail met the requirements of Chapter 324, CMP provided a further breakdown of costs to Berwick, including a breakdown of costs by category with explanations. (App. 90.) Berwick also

requested contractor purchase orders and invoices. Due to their confidential nature, however, CMP did not provide that information. (8/14/24 Berwick Br. at 9.)

Ultimately, CMP and Berwick could not resolve their dispute, and so Berwick submitted the dispute for Commission resolution pursuant to Section 17(C) of Chapter 324. (App. 15-16.) After briefing and a hearing, the Commission issued a decision dismissing Berwick's Complaint (the "Order"). (App. 3, 5-11.) The Commission found that CMP's delay in sending the Reconciliation Statement did not bar it from recovering reconciliation costs from Berwick because "Section Chapter 324 is explicit that Interconnection Customers shall pay the actual costs of the Interconnection Facilities and Distribution Upgrades." (App. 9.) The Commission further explained that, instead of releasing Berwick from its payment obligations, the missed deadline gave Berwick the option to notify CMP that it was in default, which would have required CMP to cure the default. (App. 10.) The Commission also found that Berwick was not prejudiced by CMP's delay for a number of reasons, including that, given the language of the Agreement, Berwick had no reasonable expectation that the estimate was the full and final cost. (*Id*.) In addition, the Commission rejected Berwick's argument that it was exempt from paying overhead costs and further

found that nothing in the Agreement or Chapter 324 required CMP to provide Berwick with contractor invoices and purchase orders. (App. 9 n.2, 10)

ISSUES PRESENTED FOR REVIEW

1. Whether Chapter 324's mandate that interconnection customers, like Berwick, pay the cost of their interconnection overrides any conflicting provisions in the Agreement when the Agreement is standard form agreement mandated by Chapter 324?

2. If Chapter 324 does not control, whether the Agreement unambiguously requires Berwick to pay its remaining interconnection costs, regardless of whether the Reconciliation Statement was sent beyond the 90-day timeline, when the Agreement expressly places cost responsibility on Berwick and does not condition Berwick's payment obligations on the timing of a Reconciliation Statement?

3. If the Agreement is ambiguous, whether the Commission's construction, that Berwick was not released from its payment obligations due to the late Reconciliation Statement, was reasonable when the Commission itself drafted the agreement and its interpretation is consistent with the Agreement's language and Chapter 324?

4. Whether the Commission's finding that Berwick was not prejudiced by CMP's delay in issuing the Reconciliation Statement was clearly erroneous when the Commission's Order identified substantial evidence to support its finding?

5. Whether the Commission erred or abused its discretion in refusing to require CMP to provide Berwick with supporting contractor invoices and purchase orders when neither Chapter 324 nor the Agreement requires a utility to provide an interconnection customer such information?

6. Whether the Agreement unambiguously requires Berwick to pay pooled costs when the Agreement expressly states that Berwick's cost responsibility includes overheads?

7. If the Agreement is ambiguous on the issue of pooled costs, whether the Commission's construction that Berwick is responsible for such costs was

reasonable when that construction is consistent with the language of the Agreement, Chapter 324, and Commission policy?

STANDARD OF REVIEW

The Law Court applies the same two-part inquiry when reviewing the Commission's interpretation of its own regulations or a contract approved by the Commission. *Cent. Maine Power Co. v. Pub. Utilities Comm'n*, 90 A.3d 451, 458 (Me. 2014); *Guilford Transp. Indus. v. Pub. Utilities Comm'n*, 746 A.2d 910, 914 (Me. 2000) (apply the same standard for reviewing the Commission's interpretation of its regulations to the Commission's interpretation of a contract approved by it). First, the Court determines de novo whether the regulation or contract is "reasonably susceptible of different interpretations" and therefore ambiguous. *Cent. Maine Power Co.*, 90 A.3d at 458. Second, if the regulation or contract is unambiguous, the Court "plainly construe[s]" it. *Id*. If, on the other hand, the regulation or contract is ambiguous, the Court reviews "the Commission's construction" for "reasonableness." *Id*. The Commission's interpretation of an ambiguous regulation or contract "is reviewed with great deference and will be upheld unless the [regulation or contract] plainly compels a contrary result." *Competitive Energy Servs. LLC v. Pub. Utilities Comm'n*, 818 A.2d 1039, 1046 (Me. 2003) (internal quotations omitted).

With respect to factual findings, the Law Court will "uphold the action of the Commission so long as it is reasonable and supported by substantial evidence."

Maine Water Co. v. Public Utils. Comm'n, 482 A.2d 443, 451 (Me. 1984). The factual findings of the Commission are "clearly erroneous" only if there is no competent evidence in the record to support them. *Pine Tree Tel. & Tel. Co. v. Public Utils. Comm'n*, 631 A.2d 57, 61, n.4 (Me. 1993). The Law Court, however, is "not a super-commission" and will not substitute its judgment for that of the Commission because of the institutional deference to the Commission's expertise. *Pine Tree Tel. & Tel. Co.*, 631 A.2d at 61.

ARGUMENT

I. THE COMMISSION DID NOT ERR IN CONCLUDING THAT THE LATE RECONCILIATION STATEMENT DID NOT RELEASE BERWICK FROM ITS PAYMENT OBLIGATIONS.

The Law Court should uphold the Commission's interpretation of the Agreement, which concluded that CMP's late Reconciliation Statement did not release Berwick of its remaining payment obligations, for at least three reasons. First, Chapter 324 mandates that Berwick pay the costs of its interconnection, and that mandate controls even if the Agreement could support a different conclusion. Second, even if Chapter 324 did not control, the outcome is the same because the Agreement unambiguously requires Berwick to pay its remaining interconnection costs, notwithstanding the late Reconciliation Statement. Third, even if the Agreement were ambiguous, the Commission's interpretation of the Agreement is

reasonable because it is not only consistent with the Agreement's language and Chapter 324 but it also gives force and effect to all the Agreement's provisions.

A. Chapter 324 Is Incorporated into the Agreement and Unconditionally Mandates that Berwick Pay All Costs Associated with Its Interconnection.

The Law Court has long recognized that when a contract is precipitated by a statute or regulation, the contract "is presumed to incorporate all relevant mandatory provisions of the [law] under which it was made" and is read as if the statute or regulation were a "constituent part thereof." *Wescott v. Allstate Ins.*, 397 A.2d 156, 166 (Me. 1979); *Hallissey v. Sch. Admin. Dist. No. 77*, 755 A.2d 1068, 1072 (Me. 2000). Moreover, should such agreements contain any provisions contrary to a regulatory mandate, the mandate "control[s] and override[s]" such provisions. *See Skidgell v. Universal Underwriters Ins. Co.*, 697 A.2d 831, 833 (Me. 1997). Here, the Agreement is a standard form required by Chapter 324 and drafted and adopted by the Commission thereunder. (App. 27, Ch. 324 § 4(A)) ("Standard forms adopted by order of the Maine Public Utilities Commission shall be used for all . . . Interconnection Agreements"); *Maine Pub. Utils. Comm'n, Small Generator Interconnection Standard Chapter 324 (Forms and Agreements)*, No. 2009-219, 2010 WL 515274, Order Adopting Small Generator Interconnection Forms and Agreements, (Me. P.U.C. Feb. 10, 2010); *Id.*, 2012 WL 1794701, Order Updating Forms, (Me. P.U.C. Apr. 17, 2012). As such, the provisions of Chapter

324 are incorporated into the Agreement and any conflicting provisions in the Agreement must give way to the Rule.

Here, Berwick's argument that CMP's late Reconciliation Statement released it from its obligation to pay the remaining interconnection costs is squarely foreclosed by Chapter 324, which states that a Level 4 Interconnection Customer, like Berwick, "shall be responsible" for "the actual construction cost of its Interconnection Facilities" and "all costs associated with Distribution Upgrades."[3] (App. 26-27, Ch. 324 §§ 3(A), (B)(3).) Because Chapter 324 mandates that Berwick pay its full interconnection costs, that mandate "control[s], and override[s] any contrary provisions" in the Agreement. *Skidgell*, 697 A.2d at 833-34 (rejecting contractual provision contrary to statute); *Globe Indem. Co. v. Jordan*, 634 A.2d 1279, 1283 (Me. 1993) (same). Thus, even if the Agreement supported a different interpretation (it does not, as explained below), the Rule controls the outcome here.

Indeed, Chapter 324's mandate—that interconnection customers pay the cost of their interconnection—is absolute. It nowhere conditions cost responsibility on

[3] The Rule in effect when Berwick executed its Agreement is essentially the same. *Compare Maine Pub. Utils. Comm'n, Amendments to Small Generator Interconnection Rules (Chapter 324)*, No. 2019-00303, 2019 WL 7568103, Order Adopting Emergency Rule (Nov. 27, 2019) (Effective December 11, 2019) (providing an Interconnection Customer "shall pay for the actual construction cost of Interconnection Facilities" and "the actual construction cost of the Distribution Upgrades"), *with* App. 26-27, Ch. 324 §§ 3(A), (B)(3) (providing an Interconnection Customer "shall be responsible" for "the actual construction cost of its Interconnection Facilities" and for "all costs associated with Distribution Upgrades").

the timing of a Reconciliation Statement. Nor has Berwick claimed any error in the Commission's conclusion that "Chapter 324 does not provide that CMP's delay in issuing its cost reconciliation invoice relieves Berwick of its obligation to pay the actual costs incurred by CMP to interconnect its project." (App. 10; Appellant's Br. at 8 (raising issues solely related to the Commission's interpretation of the Agreement).) Moreover, while Chapter 324 includes a provision setting a timeline for CMP to send a Reconciliation Statement, that timeline is not a claims limitation, as Berwick argued below. Regulations "that intend to create a statute of limitations or a time bar use language to that effect," such as "no claim or action shall be commenced" after a particular a time. *See Doe v. Bd. of Osteopathic Licensure*, 242 A.3d 182, 187 (Me. 2020) (holding statutory provision that required agency to provide notice within 60 days did not constitute a claims limitation). Chapter 324 contains no such language. Rather, the Rule expressly states what may occur if a utility misses the Reconciliation Statement timeline: the Commission may impose penalties, but the utility does not lose the right to assess an interconnection customer its remaining interconnection cost. (App. 56, Ch. 324 § 16.)

Because Chapter 324 mandates that Berwick pay its interconnection costs, that mandate controls the outcome here, even if the Agreement could support a different interpretation (it cannot). In other words, the Law Court need not look

any further than Chapter 324 to uphold the Commission's determination that Berwick must pay its remaining interconnection costs.

B. Putting Aside Chapter 324, the Agreement Itself Is Unambiguous—Berwick Must Pay, Notwithstanding the Late Reconciliation Statement.

Where a contract is unambiguous, that is not "***reasonably*** susceptible of different interpretations," the Law Court must plainly construe it. *Cent. Maine Power Co.*, 90 A.3d at 458 (emphasis added); *Guilford Transp. Indus*, 746 A.2d at 914. Here, even if Chapter 324 did not control, the outcome is the same; the Law Court must construe the Agreement the same way the Commission did below because the Agreement cannot support a reasonable, different interpretation. Rather, the Agreement unambiguously requires Berwick to pay its construction and installation costs, notwithstanding CMP's delay because (1) the Final Accounting Clause nowhere conditions Berwick's payment obligations on the timing of a Reconciliation Statement, (2) it is not necessary to read such a condition into the Agreement to give the 90-day deadline effect, given the Agreement's default provision, and (3) doing so would conflict with the numerous other parts of the Agreement that plainly place all cost responsibility on Berwick.

1. The Final Accounting Clause does not condition Berwick's payment obligation on the timing of a Reconciliation Statement.

A court "may not read into [a contractual] provision a condition or language that is not present." *Brazas Sporting Arms, Inc. v. Am. Empire Surplus Lines Ins. Co.*, 220 F.3d 1, 6 (1st Cir. 2000). Here, the Final Accounting Clause does not condition Berwick's payment obligation on CMP providing a Reconciliation Statement within 90 days, and so no such condition can be read into the clause.

The Agreement's Final Accounting Clause requires CMP to send Berwick a Reconciliation Statement within 90 days of completing the construction and installation required under the Agreement and then ***separately*** requires Berwick to pay the reconciliation amount:

> Within ninety (90) calendar days of completing the construction and installation of T & D Utility's Interconnection Facilities and Distribution Upgrades described in the Exhibits to this Agreement, T & D Utility shall provide the Interconnection Customer with a final accounting report of any difference between (1) the actual cost incurred to complete the construction and installation and the budget estimate provided to the Interconnection Customer and a written explanation for any significant variation. (2) the Interconnection Customer's previous deposit and aggregate payments to T & D Utility for such Interconnection Facilities and Distribution Upgrades. If the Interconnection Customer's cost responsibility exceeds its previous deposit and aggregate payments, T & D Utility shall invoice the Interconnection Customer for the amount due and the Interconnection Customer shall make payment to T & D Utility within thirty (30) calendar days. If the Interconnection Customer's previous deposit and aggregate payments exceed its cost responsibility under this Agreement, T & D Utility shall refund to the Interconnection Customer

> an amount equal to the difference within thirty (30) calendar days of the final accounting report.

(App. 64-65.) The 90-day timeline and the requirement to pay the reconciliation amount are separate obligations; the latter is not conditioned on the former. Indeed, the only condition the Final Accounting Clause places on Berwick's payment obligation is that Berwick's cost responsibility exceeds its previous deposits and payments. If the intent was to also condition Berwick's payment obligation on CMP meeting the 90-day deadline, that condition could have easily been placed at the beginning of the sentence requiring payment. It was not, and the Court cannot now insert such a condition into the Agreement. *See State v. Murphy*., 861 A.2d 657, 661–62 (Me. 2004) (overturning lower court's interpretation that read a condition into the agreement that was not present). Rather, the plain and unambiguous language of the Final Accounting Clause requiring Berwick to pay must be given effect. *See Svensson v. Found. for Long Term Care, Inc*., 140 A.D.3d 1385, 1386 (N.Y. App. Div. 3d Dep't 2016) (reversing lower court where "plain and unambiguous language of contract—while establishing defendant's right to defer payment of late invoices to the next quarter—did not relieve defendant of the obligation to pay.").

2. The 90-day deadline has force and effect without reading a condition into the Agreement that is not present.

When interpreting a contract, a court should "look at the whole instrument" and "give force and effect to all of its provisions." *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 814 A.2d 989, 993 (Me. 2003). Here, given the Agreement's default provision, the Final Accounting Clause's 90-day deadline has force and effect when construed according to its plain language, rather than as a condition for payment.

Article 6.6, the Agreement's default provision, provides that "[u]pon a Default, the non-defaulting Party shall give written notice to the defaulting Party" and have the "right to terminate" the agreement if the default is not cured within 60 days. (App. 67.) The term "Default" is not defined in the Agreement and thus should be given its ordinary meaning—"to fail to perform a contractual obligation." DEFAULT, Black's Law Dictionary (12th ed. 2024); *Barr v. Dyke*, 49 A.3d 1280, 1286 (Me. 2012). CMP's failure to provide the Reconciliation Statement within 90 days was a failure to perform a contractual obligation and thus constituted a default under the Agreement. Because Article 6.6 sets forth Berwick's rights in the event that CMP misses the Final Accounting Clause's 90-

day timeline, that timeline has force and effect without reading into the clause a condition that is not present.[4]

3. Reading the 90-day timeline as a condition for payment would conflict with other parts of the Agreement.

When interpreting a contract, a court must construe each part to be consistent with every other part. *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 63-64 (1995). Here, interpreting the Final Accounting Clause as conditioning Berwick's payment obligations on CMP providing a Reconciliation Statement within 90 days would not only inject words into the clause that are not present, but would also create inconsistencies with other parts of the Agreement that place cost responsibility on Berwick.

In at least five places, the Agreement expressly provides that Berwick shall have responsibility for all costs associated with its interconnection:

- Article 4.1.1 requires Berwick to "pay for the cost of the Interconnection Facilities itemized in the Exhibits to this Agreement" (App. 64);
- Article 4.1.2 provides that Berwick "shall be responsible for its share of all reasonable expenses, including overheads, associated with . . . operating, maintaining, repairing, and replacing T & D Utility's Interconnection Facilities as set forth in the Exhibits to this Agreement" (*id*.);

[4] As noted above, the Commission's rules establish an avenue for addressing timeline related offense by CMP via its penalty provision; such penalty would be assessed and levied by the Commission in a standalone proceeding.

- Article 4.2 provides that the "actual costs of the Distribution Upgrades [constructed and installed by CMP], including overheads, shall be directly assigned to" Berwick (*id.*);
- Article 5.1.1 provides that Berwick "shall pay each bill" sent by CMP for the "design, engineering, construction, and procurement costs of the T&D provided Interconnection Facilities and Distribution Upgrades contemplated by this Agreement" (*id.*); and
- Exhibit 6 provides that Berwick "shall be responsible for all costs of [the] electric system modifications, even if they are in excess" of the total cost estimate provided by CMP and that by executing the Agreement Berwick was "agreeing to proceed forward financially" (App. 77).

These provisions plainly place all cost responsibility on Berwick. Construing the Final Accounting Clause's 90-day deadline as releasing Berwick from its outstanding payment obligations—and thereby placing the responsibility for those costs on CMP—would be contrary to these provisions. *See Am. Lease Ins. Agency Corp. v. Balboa Cap. Corp.*, 579 F.3d 34, 42 (1st Cir. 2009) (rejecting interpretation that would have rendered two provisions inconsistent with each other).

C. Even if the Law Court Were to Find the Agreement Ambiguous, Berwick Still Must Pay, as the Commission's Interpretation of the Agreement is Entitled to Deference.

As explained above, both the Agreement and Chapter 324 are clear that Berwick must pay its full interconnection costs. But even if the Law Court were to find there is some ambiguity as a result of the Agreement's 90-day timeline, the Court still must defer to the Commission's determination that CMP's delay did not release Berwick's payment obligations because that determination is reasonable.

1. The Commission's interpretation of the Agreement it drafted is reasonable.

While courts generally look to extrinsic evidence to determine the parties' intention with respect to ambiguous language, such an inquiry is inappropriate here, where the Agreement is a standard form agreement drafted by the Commission. *Kolbe v. BAC Home Loans Servicing, LP*, 738 F.3d 432, 436-37 (1st Cir. 2013) (explaining parties' intent is irrelevant where disputed language was a standard provision drafted by a governmental body, as the language "was not drafted or negotiated by the parties and was not the result of give-and-take in the marketplace"). Instead, "the fact that the [Agreement] was drafted and mandated by [the Commission] requires that its meaning be that meant by the [Commission] when it drafted" the Agreement. *Id*. at 437.

In its Order, the Commission explained what the Final Accounting Clause's 90-day deadline means: it is a contractual obligation that, if not met, triggers the

Agreement's default provision; it does not operate to "release[]" Berwick "from its obligation to pay the actual construction costs of its project." (App. 9-10.). There is nothing unreasonable or unlawful about the Commission's decision. To the contrary, the Commission's interpretation is, as explained above, consistent with the Agreement's language and grounded in Chapter 324, which is "explicit that Interconnection Customers shall pay the actual costs of the Interconnection Facilities and Distribution Upgrades." (App. 9.)

Because the Commission's interpretation is reasonable in light of the words of the Agreement and the requirements of Chapter 324, the Commission's interpretation is entitled to deference and should be upheld. *See id.* at 437 (deferring to the United States' position on what a contractual provision drafted by it meant where the United States' position was consistent with the language of the agreement and federal policy).

2. Berwick's arguments that the Commission acted arbitrarily and capriciously lack merit.

i. The Commission has not reversed positions.

Berwick contends that because the Commission has previously referred to the Final Accounting Clause as a "deadline," it acted arbitrarily and capriciously by finding CMP's delay in issuing the Reconciliation Statement did not release Berwick of its obligation to pay for its interconnection costs. (Appellant's Br. at

13-18) According to Berwick this was a reversal of position unsupported by reasoned analysis. (*Id*. at 18) Berwick is mistaken.

In none of the orders cited by Berwick did the Commission conclude that missing the Final Accounting Clause's 90-day deadline released the interconnection customer of its payment obligations.[5] Rather, in those decisions, the Commission simply granted CMP a waiver from Chapter 324, Section 15(J)'s deadline to issue a final Reconciliation Statement.[6] There was not even any discussion of the standard form agreement's Final Accounting Clause, let alone any suggestion that a utility's failure to meet that deadline released an interconnection customer of its obligation to pay any reconciliation amounts.

At bottom, Berwick's position rests on a false assumption—that if the Commission referred to Section 15(J) as a "deadline" that means the Commission implicitly found the consequence of missing the corresponding deadline in the Agreement is to release an interconnection customer from its remaining payment obligations. But nothing in the Commission's prior waiver decisions supports that leap in logic. Nor does anything in the Agreement or Chapter 324. To the

[5] Appellant Brief at 14-15 (*Maine Pub. Utils. Comm'n, Request for Approval of a Waiver Pertaining to Section 12(J) of Ch. 324,* No. 2021-00306, Order Granting Waiver (December 16, 2021) & *Id.*, Order Granting Temporary Extension of Waiver (September 30, 2022)).

[6] Nor can CMP's request for a waiver be construed as an admission that the failure to meet the 90-day deadline is a bar to it assessing an interconnection customer its remaining costs. As explained below, Chapter 324 permits the Commission to assess penalties on a utility that fails to meet one or more of Chapter 324's timelines.

contrary, as explained above, each identifies the consequence of a missed deadline, neither of which is to release an Interconnection Customer from its payment obligations. Under the Agreement, the missed 90-day timeline gave Berwick the right to provide notice of default. (App. 67.) And under Chapter 324, the Commission could have assessed "financial penalties" on CMP for its "failure to comply with the required timelines listed" in the Rule. (App. 56, Ch. 324 § 16.) Given that both the Agreement and Chapter 324 set forth the consequences in the event CMP misses the 90-day timeline, there is simply no basis to assume that the Commission's use of the term "deadline" meant some other unidentified consequence applied.

Because the Commission has never previously found that a utility missing the Final Accounting Clause's 90-day timeline releases an Interconnection Customer from its payment obligations and no such conclusion can be inferred from the Commission's prior use of the term "deadline," Berwick's contention that the Order was an unsupported reversal of the Commission's prior position is without merit.

ii. The Commission's interpretation did not render the Final Accounting Clause a nullity.

Berwick contends the Commission's interpretation of the Agreement rendered the Final Accounting Clause's 90-day timeline a nullity. Not so. As explained above in Section I.B.2, the 90-day timeline has force and effect under

the Commission's interpretation because, pursuant to Article 6.6, "Berwick had the option to notify CMP that it was in default after not providing the cost reconciliation statement within the 90-day period." (App. 10, 67.) *See Transwood, Inc. v. WRR Env't Servs. Co.*, 809 N.W.2d 901, ¶ 7 (Wis. Ct. App. 2012) (rejecting argument that interpretation would render "payment deadline provision [ ] meaningless" where "[a]nother portion of the contract" set forth the parties' rights in the event of a contractual breach).

iii. The Commission did not act arbitrarily or capriciously by failing to address the non-binding and inapposite cases cited by Berwick.

Berwick also contends that the Commission acted arbitrarily and capriciously by failing to consider the First Circuit and D.C. Circuit cases cited by Berwick, in which decisions by the Federal Energy Regulatory Commission ("FERC") rendered under Federal law were reviewed. (Appellant's Br. at 20-24.) But Berwick cites no case law for the proposition that a state commission must consider FERC cases when issuing a decision premised solely on state law. Nor could it. Such cases are not binding on state commissions considering state law.

In any event, the two cases cited by Berwick, *Bos. Edison Co. v. FERC* and *Oklahoma Gas & Elec. Co. v. FERC*, are inapposite. Neither case involved FERC interpreting a standard form contract that it drafted and mandated by regulation. And both applied the filed rate doctrine to tariffs with express limitations language.

See Boston Edison Co. v. F.E.R.C., 856 F.2d 361, 368, 371-72 (1st Cir. 1988) (applying filed rate doctrine to tariff that stated claims were "incontestable if not challenged within one year"); *Oklahoma Gas & Elec. Co. v. FERC*, 11 F.4th 821, 825, 828 (D.C. Cir. 2021) (applying filed rate doctrine to tariff that stated adjustments "shall be limited" to a one-year period). Berwick's cited cases are thus inapplicable to this contractual dispute, which involves no filed rate but instead the Commission's interpretation of a standard form contract that it drafted without express limitation language. Thus, even if these decisions were binding (they are not), the Commission did not act unreasonably by failing to consider them, as they are factually distinguishable.

II. THE COMMISSION'S FINDING THAT BERWICK WAS NOT PREJUDICED BY CMP'S DELAY IS SUPPORTED BY COMPETANT EVIDENCE.

The Law Court should uphold the Commission's factual findings unless "there is no competent evidence in the record to support it." *Pine Tree Tel. & Tel. Co.*, 631 A.2d at 61, n.4. Here, competent evidence supports the Commission's finding that CMP's delay in sending the Reconciliation Statement did not prejudice Berwick. Such evidence includes:

- CMP's delay led to a reduction in charges (App. 10);
- Berwick operated and collected revenue for three years without paying costs (*id.*);

- Berwick had the option to notify CMP that it was in default, which would have required that CMP cure the default, but Berwick chose not to do so (*id.*); and
- Exhibit 6 to the Agreement explicitly stated Berwick would be responsible for all costs more than the initial estimate, and so Berwick had no reasonable expectation that the $65,000 estimate was the full and final cost (*id.*).

Because competent evidence supported the Commission's finding that Berwick was not prejudiced by CMP's delay, the Law Court should affirm it. *See Pine Tree Tel. & Tel. Co.*, 631 A.2d at 61 (explaining the Law Court is "not a super-commission" and should not substitute its judgment for that of the Commission).

While Berwick complains that the Commission's Order ignores "uncontroverted testimony of the adverse impact of allowing additional interconnection charges beyond the 90-day period of the Agreement," that is simply not the case. (Appellant's Br. at 28.) The Commission took that testimony head on and rejected it because Berwick had no reasonable expectation that the "$65,000 estimate contained in the [Agreement] was the full and final cost option" and could have engaged in self-help by sending a default notice but chose not to. (App. 10.)

III. THE COMMISSION DID NOT ABUSE ITS DISCRETION IN CONCLUDING CMP WAS NOT REQUIRED TO PROVIDE BERWICK CONTRACTOR INVOICES AND PURCHASE ORDERS.

Chapter 324, Section 15(J) (previously codified as 13(J)) and the Agreement's Final Accounting clause identify precisely what supporting information must be provided with a utility's final reconciliation. Specifically, Section 15(J) of Chapter 324 provides that the Reconciliation Statement must contain "a detailed breakdown of costs" and that the "detail of the breakdown should match the Distribution Upgrades in any detailed design provided by the T&D Utility." (App. 55) The Agreement's Final Accounting Clause provides that a "written explanation of any significant variations" between actual costs and the estimate should be provided. (App. 64.)

Nowhere does either the Rule or the Agreement require a utility to provide supporting contractor invoices and purchase orders. Thus, CMP did not. And the Commission did not, as Berwick claims, act arbitrarily or capriciously by refusing to require CMP to provide that information.[7] *In re West, No*. A-6738-04T2, 2007 WL 1556677, at *1 (N.J. Super. Ct. App. Div. May 31, 2007) ("It is not arbitrary, capricious, or unreasonable for any administrative agency to enforce a statute as written."). Berwick's argument that "supporting purchase orders and invoices is a

[7] Berwick also appears to claim that CMP failed to provide a "written explanation" or "detailed breakdown of costs." Appellant's Br. at 22. But that is untrue. The Reconciliation Statement included a breakdown of costs, and CMP provided a further breakdown of costs to Berwick, which included written explanations. (*See* 8/04/24 CMP Br. at 8-9; 8/27/24 Tr. at 4:17-5:11.)

reasonable and customary condition to establishing the eligibility and propriety of assessments for actual costs incurred" is, in essence, a complaint that underlying Rule should require the utility to provide such information. But this case is not a rulemaking proceeding, and the Commission cannot be said to have acted arbitrarily or unreasonably by enforcing the rule as it is written.

IV. THE COURT SHOULD UPHOLD THE COMMISSION'S CONCLUSION THAT BERWICK MUST PAY POOLED COSTS.

As explained above, when reviewing the Commission's interpretation of a contract, the Law Court must first determine whether the contract is ambiguous, and then either "plainly" construe the unambiguous contract or review the Commission's construction of an ambiguous contract for "reasonableness." *Cent. Maine Power Co.*, 90 A.3d at 458; *Guilford Transp. Indus*, 746 A.2d at 914. Here, the Law Court should uphold the Commission's determination that Berwick is responsible for "pooled costs" because (1) the Agreement unambiguously requires Berwick to pay the overhead costs associated with its interconnection; and (2) even if the Agreement were ambiguous on the issue of pooled costs (it is not), the Commission's construction is reasonable because it is consistent with Chapter 324 and the Commission's policy that costs be borne by the cost causer.

A. The Agreement Unambiguously Requires Berwick to Pay Pooled Costs.

The Agreement contains no ambiguity with respect to Berwick's obligation to pay pooled costs, which are overhead costs, like warehouse space and truck leases, incurred by CMP to perform interconnections. (*See* 8/27/24 Tr. 40:4-8, 22-24.)

Article 4.1 provides that Berwick shall "pay for the cost of the Interconnection Facilities" and shall be responsible for "its ***share of all reasonable expenses, including overheads***, associated with . . . operating, maintaining, repairing, and replacing T & D Utility's Interconnection Facilities." Article 4.2 similarly provides that Berwick shall be assigned "the actual cost of the Distribution Upgrades, ***including overheads***." Because the Agreement expressly provides that Berwick is responsible for overhead costs, and pooled costs are a type of overhead costs, the Agreement plainly requires Berwick to pay pooled costs. (*See* 8/27/24 Tr. 40:4-8, 59:3-7.)

This conclusion is not altered by the language in the Final Accounting Clause referring to costs "actually incurred to complete the construction and installation of the T&D Interconnection Facilities and Distribution Upgrades." Overhead costs ***are*** actual costs, and but for CMP incurring them, it would not have been able to complete the construction and installation necessary for Berwick's interconnection. Additionally, it would make no sense to interpret the

Final Accounting Clause's "actually incurred" language as excluding overheads when the Agreement elsewhere makes clear that Berwick's "actual cost[s]" include "overheads". (App. 64, Article 4.2.)

B. Even If the Agreement Were Ambiguous with respect to Pooled Costs, the Commission's Conclusion that Berwick Is Responsible for Such Costs Is Reasonable and Should Be Upheld.

Even if the Final Accounting Clause's language somehow created ambiguity with respect to Berwick's responsibility for pooled costs (it does not), the Commission's determination that Berwick is responsible for such costs is reasonable and should be upheld.

In rejecting Berwick's argument that pooled costs were not assessable under the Agreement, the Commission properly (and reasonably) looked to Chapter 324. Specifically, the Commission found that Chapter 324 requires Berwick to pay "the actual costs of the Interconnection Facilities and Distribution Upgrade" and, based on the "history of Chapter 324 Rulemakings," rejected Berwick's argument that it was exempt from paying overhead costs. (App. 9 & n.2.) The Commission's reliance on Chapter 324 was reasonable, considering the Agreement must be read to incorporate the Rule's mandates and be interpreted consistently with it, as explained above in Section I.

Additionally, the Commission's decision is also reasonable in light of public policy. *Cajun Elec. Power Coop., Inc. v. F.E.R.C.*, 924 F.2d 1132, 1135–36

(D.C.Cir.1991) (explaining that when an agreement must be approved by an agency it "takes on a public interest gloss" so when "the agency reconciles ambiguity in such a contract it is expected to do so by drawing upon its view of the public interest"). The Commission has long maintained the policy that costs should be borne by the cost-causer. *See e.g.*, *Maine Pub. Utils. Comm'n, In Re Constr. Standards & Ownership & Cost Allocation Rules for Elec. Distribution Line Extensions (Chapter 395)*, No. 2001-701, 2001 WL 1915292, Notice of Rulemaking (Oct. 23, 2001) ("Our general policy is that cost causers should pay"); *Maine Pub. Utils. Comm'n, Request for Approval of a Waiver Regarding Ch. 324, Order Granting Waiver*, No. 2021-00082, 2021 WL 1945602, at *3, Order Granting Waiver (Me. P.U.C. May 6, 2021) (granting waiver of Chapter 324 cost-sharing mechanism and approving modifications that ensured "the interconnecting projects will share the costs of the required upgrades such that none of the costs will be borne by CMP's ratepayers"); *In Re Cent. Maine Power Co.*, 192 P.U.R.4th 173 (Mar. 19, 1999) (describing the "basic principle" that "rates should reflect cost-causation"). The Commission's conclusion that interconnection customers should pay pooled costs is consistent with this policy. Otherwise, the substantial indirect costs CMP incurs to perform Chapter 324 interconnections would be socialized to and paid for by CMP's ratepayers who did not cause the costs in question.

Berwick's contention that the Commission's Order was arbitrary and capricious because it failed to address Berwick's argument on pooled costs is wrong. (Appellant's Br. at 27.) The Commission did, in fact, address the issue of whether Berwick was required to pay pooled costs—it expressly rejected Berwick's argument that it was not responsible for overheads and directed CMP to issue an invoice that included overhead pooled costs. (App. 9, n.2 & 10.) The footnote cited by Berwick, which states the Commission will not address the appropriateness of assessing pooled costs (App. 10, n.3), relates to CMP's ***method*** for assessing pooled costs. While that method was discussed at length during the hearing (*see e.g.* 8/27/24 Tr. at 26:23-28:18, 31:3-33:3), the Order did not address it, as it was not necessary to resolve Berwick's dispute, which challenged ***any*** assessment of pooled costs, not the amount assigned under CMP's methodology. (8/14/24 Berwick Br. at 9.) That the footnote related to CMP's methodology is demonstrated by its second sentence, explaining "the pooled costs approach resulted in reduced costs for Berwick." (App. 10 n.3.) As CMP explained at the hearing, before issuing the Reconciliation Statement, CMP adopted a new approach for calculating overhead costs that reduced the costs assigned to Berwick. (8/27/24 Tr. at 26:23-27-15.) Berwick is thus incorrect that the Commission failed to address its argument regarding pooled costs, and because the Commission's

determination on the issue of pooled costs is reasonable, the Law Court should affirm it.

CONCLUSION

For the foregoing reasons, CMP respectfully requests that the Law Court deny the relief sought by the Appellants and instead affirm the Commission's January 15, 2025 Order.

Respectfully submitted,

DATED: August 5, 2025

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CERTIFICATE OF SERVICE

I, Carlisle Tuggey, hereby certify that I have electronically served a copy of the above Brief of Appellee Central Maine Power Company upon the following parties in the above-described matter. Upon approval by the Clerk of the Law Court of the electronically filed brief, I shall cause one printed copy of the brief to be served on upon the following parties.

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