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

Appellee

On Appeal from the Maine Public Utilities Commission

BRIEF OF APPELLEE MAINE PUBLIC UTILITIES COMMISSION

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INTRODUCTION

The Maine Public Utilities Commission (Commission) adopted Chapter 324 of its rules to govern the sometimes difficult and complicated process of interconnecting small generators to the electric distribution system. Chapter 324 requires generator owners and transmission and distribution utilities to enter into commission-approved standard form interconnection agreements as part of the interconnection process. If either party to the agreement disputes the other's interpretation of the agreement or of its obligations under Chapter 324, the parties may undergo a dispute resolution process that, if necessary, culminates in a formal adjudicatory proceeding before the Commission. Under Chapter 324, the Commission convenes a hearing, after which the Commission issues an order applying Chapter 324 and resolves the dispute.

This is an appeal of an order that the Commission issued following a hearing on a dispute between Berwick Solar LLC (Berwick) and Central Maine Power Company (CMP). Berwick and CMP disagreed on the regulatory consequence after CMP missed a deadline set by Chapter 324 and the interconnection agreement to issue an invoice, referred to as a cost reconciliation statement. CMP contended payment remained due, while Berwick argued it was no longer required to pay. Berwick asserted, because it received the invoice late, Berwick should be relieved of its obligation to pay actual costs for the interconnection of its generator to

CMP's distribution system.

As set forth in this brief, however, Berwick's position is directly contrary to the cost responsibility provisions of Chapter 324 and the associated interconnection agreement. In dismissing Berwick's complaint and denying Berwick's interpretation of Chapter 324 and the interconnection agreement, the Commission concluded that nothing in the rule, agreement, or record supported Berwick's claim that Berwick was no longer responsible for paying actual costs. The Court should uphold the Commission's order and dismiss the appeal. [1]

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. REGULATORY BACKGROUND REGARDING CHAPTER 324

The Commission adopted Chapter 324 of its rules to govern the interconnection of small generators to the distribution system. 65-407 C.M.R. ch. 324 (2023) (Chapter 324); (A. 17-59.)[2] As recognized by the Law Court, "the interconnection process is complicated and can easily become protracted." *Snakeroot Solar, LLC v. Pub. Utils. Comm'n*, 2025 ME 64, ¶ 35, __ A.3d __ (citing

[1] In this brief, citations are made to the Appendix (A.) and the Record (R.). Citations to the hearing transcript refer to the location of the transcript in the Record (R. 9), followed by citation to the page in the hearing transcript (Tr.).

[2] In its Order on appeal, the Commission cited the current version of Chapter 324, effective November 20, 2023, and likewise, in this brief all citations to Chapter 324 are to the current version unless otherwise noted. While CMP and Berwick signed the interconnection agreement at issue in this appeal on March 6, 2020, (A. 60), no party argued before the Commission that a prior version of Chapter 324 governed the Commission's review of the parties' dispute, and the parties referenced the current version of the rule before the Commission. At hearing, and as noted at note 2 in the Order, (A. 9), Berwick referred to revisions to Chapter 324 to dispute CMP's authority to assess certain costs, referred to as pooled interconnection overhead costs, (A. 7; R. 7 at 10, R. 9, Tr. 59.) Nonetheless, no party argued before the Commission that it should apply anything but the current version of Chapter 324 to the facts of this case.

Naples Roosevelt Trail Solar 1, LLC, Petition for Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-215, Order at 13 (Me. P.U.C. Mar. 2, 2022)). Projects subject to the process may "experienc[e] the vicissitudes of the normal interconnection process." *Id.* ¶ 35. From application through screening, studies, interconnection, and ongoing operation and maintenance, Chapter 324 establishes the processes and timelines required for utilities and generators to navigate interconnection successfully and interconnect small generators to the electric grid.

Chapter 324 uses several terms of art to describe the entities participating in the interconnection process. An entity that proposes to interconnect a generator is the "applicant," Chapter 324 § 2(C); (A. 19), and also the "interconnection customer," Chapter 324, § 2(FF); (A. 22.) The generator is the "interconnection customer generator facility" (ICGF). Chapter 324, § 2(GG); (A. 22-23.) The distribution system to which the ICGF is interconnecting is owned and maintained by the Transmission and Distribution Utility (T&D Utility). Chapter 324, § 2(MMM); (A. 26.) An applicant acts on behalf of an interconnection customer when the applicant applies to interconnect an ICGF to a T&D Utility's distribution system. The interconnection customer and the T&D Utility then enter into an

"interconnection agreement" to govern the interconnection of the ICGF to the distribution system. Chapter 324, § 2(EE); (A. 22.)[3]

Chapter 324 describes the processes applicants and T&D Utilities must follow before, during, and after entering into an interconnection agreement. The rule requires each T&D Utility and applicant to "follow the review procedures set forth in this Chapter" to interconnect an ICGF. Chapter 324, § 1; (A. 19.) The Chapter 324 sections relevant to the matter before the Court are: § 2(EE) Interconnection Agreement, § 3 Cost Responsibility, § 15(J) Cost Reconciliation, § 16 Penalties, § 17 Dispute Resolution, and § 18 Waiver or Exemption.

A. Interconnection Agreement

The interconnection agreement is a standard form approved by the Commission. Chapter 324, § 2(EE); (A. 22.) The interconnection agreement "governs the connection of the ICGF to the T&D Utility's system, as well as the ongoing operation of the ICGF after it is connected to the system." Chapter 324, § 2(EE); (A. 22.) All interconnection customers enter into an interconnection agreement with a T&D Utility as a part of interconnecting to the distribution system. Chapter 324, §§ 11(I), 12(I), 13(H), and 14(R); (A. 37, 39, 41, 50.) The

[3] In the matter before the Court, Berwick is the interconnection customer and applicant. CMP is the T&D Utility.

interconnection agreement includes an estimate for the costs of interconnection. Chapter 324, §§ 11(H), 12(H), 13(G), 14(L) and 14(O); (A. 37, 39, 41, 49, 50.)[4]

The interconnection agreement provides additional details about the parties' respective obligations for interconnection. Several of those obligations are relevant to the matter before the Court:

(1) Article 4 assigns cost responsibility for interconnection facilities and distribution upgrades, and includes the cost of overheads in both of those categories as follows:

> Article 4.1.2 states "The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with" operation and maintenance of interconnection equipment and interconnection facilities.
>
> Article 4.2 states: "The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to the Interconnection Customer."
>
> (A. 64.)[5]

(2) Article 5 establishes the timelines for issuing bills and providing cost reconciliation.

> Article 5.1.1 states "The Interconnection Customer shall pay each bill within thirty (30) calendar days of receipt, or as otherwise agreed to by the Parties."
>
> Article 5.1.2 states: "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,

[4] The system impact studies and facilities studies referenced in subsections 14(L) and (O) of Chapter 324 require a cost estimate before parties execute an interconnection agreement.

[5] Article 4 specifies that the costs for which the interconnection customer is responsible include overheads, which include the so-called pooled interconnection overhead costs at issue in this proceeding. (A. 7; R. 9, Tr. 39-41, 63-64.)

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."

(A. 64-65.)[6]

(3) Article 6.6 discusses the process for default: "Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 6.6.2, the defaulting Party shall have 60 calendar days from receipt of the Default notice within which to cure such Default."

(A. 67.)

(4) Article 8 provides as follows: "Dispute Resolution (see provisions in the Maine Public Utility Commission's Standard Small Generator Interconnection Rules)."

(A. 67.)

B. Cost Responsibility

From its inception, Chapter 324 has assigned interconnection customers the costs associated with interconnecting to the distribution system. *Heliotropic Techs.* Request for Resolution About CMP's New Interconnection Policies, *Me. Ass'n of Bldg. Efficiency Prof'ls*, Request for Resolution of Dispute, Nos. 2010-186, 2010-246, Order Regarding Implementation of Interconnection Rules (Ch. 324) at 3 (Me. P.U.C. Mar. 16, 2011) ("Chapter 324 also included provisions intended to

[6] The 90-calendar day regulatory period for cost reconciliation in article 5.2 of the interconnection agreement differs from the 60-day regulatory period for cost reconciliation under subsection 15(J) of Chapter 324. As explained below in the Statement of Facts and Procedural History, section I.C of the brief, however, this variation in the regulatory period is not material to the appeal before the Court.

ensure that other ratepayers were not burdened with the cost of reliably accommodating small generator interconnections."). Pursuant to Chapter 324, an interconnection customer "shall be responsible for (1) the actual construction cost of its Interconnection Facilities, as may be adjusted for Contingent Upgrades pursuant to § 14(F), and (2) all expenses, including overheads, associated with owning, operating, maintaining, repairing and replacing its Interconnection Facilities." Chapter 324, § 3(A); (A. 26.) Similarly, interconnection customers are responsible for "all costs associated with Distribution Upgrades." Chapter 324, § 3(B)(3); (A. 27.)

C. Cost Reconciliation and Reconciliation Deadline

Chapter 324 also sets the process for the reconciliation of costs after the completion of a project. As a part of cost reconciliation, a T&D Utility "shall prepare and submit to the Applicant a final reconciliation statement of its actual costs less any Payment of System Modifications made by the Applicant, with a detailed breakdown for review by the Applicant." Chapter 324, § 15(J); (A. 55.) The cost reconciliation statement is due within a specified regulatory period set by Chapter 324 and the standard form interconnection agreement.

The regulatory periods under Chapter 324 and the interconnection agreement differ. Under the rule, the cost reconciliation statement is due within 60 business days "of the later of (i) T&D Utility's formal Notice of Approved Operation, or (ii)

submittal of final as-built drawings to the T&D Utility." Chapter 324, § 15(J); (A. 55.) As cited in section I.A above, under article 5.1 of the interconnection agreement, the cost reconciliation statement is due within 90 "calendar days of completing the construction and installation of T&D Utility's Interconnection Facilities and Distribution Upgrades." (A. 64.) This difference, however, is not material to the matter on appeal.

In this proceeding there is no dispute that CMP issued the cost reconciliation statement outside of the regulatory period of the rule and agreement. At the hearing, Berwick's representative stated: "[I]t doesn't matter if there's a slight difference in the days between 90 days in the interconnection agreement and 60 business days in the Rule 24 because CMP missed the date -- missed both dates." (R. 9, Tr. 52.) Thus, Chapter 324 and the interconnection agreement establish the time by which a T&D Utility is required to issue a reconciliation notice, and in this brief that deadline is referred to as the "reconciliation deadline."

Chapter 324 and the interconnection agreement also prescribe the information to be included in the cost reconciliation statement. "The detail of the breakdown should match the Distribution Upgrades identified in any detailed design provided by the T&D Utility." Chapter 324 § 15(J); (A. 55.) Twenty days after providing the cost reconciliation statement, "[t]he T&D Utility will send the Applicant an invoice that states any balance due from Applicant or overpayment to

be reimbursed by the T&D Utility." Chapter 324, § 15(J); (A. 55.) If a party disputes the calculation of the amount in the invoice, the rule directs parties to the dispute resolution process in section 17 of Chapter 324. Chapter 324, § 15(J); (A. 55.)

D. Penalties

Chapter 324 establishes consequences for a T&D Utility's failure to comply with any of the rule's timelines. In 2020, the Commission amended Chapter 324 in response to legislation that required the Commission to set consequences for a utility's failure to comply with the timelines in the rule.[7] As a result of these amendments, the "Commission may assess financial penalties on a T&D Utility consistent with the maximum penalties included in 35-A M.R.S. § 1508-A for failure to comply with the required timelines listed in this Chapter." Chapter 324, §16; (A. 56.) Section 1508-A of Title 35-A describes the penalties the Commission may impose on public utilities and, for example, sets a maximum amount of $575,000. 35-A M.R.S. § 1508-A (1).

[7] "The Act requires that the Commission establish financial penalties in the rule to ensure timely actions by the T&D Utilities in the interconnection process." *Maine Pub. Utils. Comm'n*, Amendments to Small Generator Interconnection Rules (Chapter 324), No. 2020-004, Order Amending Rule and Statement of Factual and Policy Basis at 10 (Me. P.U.C. Mar. 6, 2020). "The Act" refers to "An Act to Promote Solar Energy Projects and Distributed Generation Resources in Maine," P.L. 2019, Chapter 478.

E. Dispute Resolution

The dispute resolution process described in section 17 of Chapter 324 involves three phases: (a) good faith negotiation, (b) informal dispute resolution, and (c) request for Commission resolution. Chapter 324, §§ 17(A), 17(B), and 17(C); (A. 57.) The third step, the resolution offered by the Commission, is an adjudicatory proceeding held in accordance with the Commission's rules on practice and procedure.[8] Chapter 324, § 17(C); (A. 57.)

The dispute resolution process in Chapter 324 begins with good faith negotiations between the parties. If one party determines that good faith negotiations are unsuccessful, the parties may request Commission Staff to provide informal dispute resolution. Only after completing these initial phases may a party then request that the Commission formally resolve the dispute. Chapter 324, § 17(C); (A. 57.) Dispute resolution under section 17 is specifically for disputes "arising between the T&D Utility and the Applicant or the Interconnection Customer regarding any matter governed by [Chapter 324]." Chapter 324, § 17; (A. 57.)

[8] "[E]ither Party may send written notice to Commission Staff requesting an adjudicatory proceeding, on an expedited schedule if possible, to resolve the dispute in accordance with Chapter 110 of the Commission's Rules of Practice and Procedure." Chapter 324, § 17(C); (A. 57.)

F. Waiver

An entity subject to Chapter 324 may request that the Commission waive the application of a particular provision of the rule. The Commission may grant the waiver for good cause if the waiver is not inconsistent with the purposes of Chapter 324 or Title 35-A. Chapter 324, § 18; (A. 57-58.)

II. PROCEDURAL HISTORY AND FACTUAL RECORD

A. Procedural History

Berwick and CMP followed the above outlined dispute resolution provisions of Chapter 324. Berwick and CMP first engaged in good faith negotiations and, when those negotiations did not resolve their dispute, requested informal dispute resolution before Commission Staff. (A. 13-16, 57, 82-97.)

Before Commission Staff, Berwick argued the cost reconciliation statement issued by CMP was time-barred and lacked specificity. Berwick asserted the statement was issued outside the regulatory period of the interconnection agreement, or in other words, after the reconciliation deadline, and therefore was not enforceable. (A. 103.) According to Berwick, CMP had stated it continued to work on calculating the final actual costs and thus Berwick's specific requests to CMP for supporting cost information had been unavailing. (A. 103.)

When the informal dispute resolution process before Commission Staff did not resolve the matter, Berwick requested to proceed to the formal process before

the Commission. The Commission opened an adjudicatory proceeding, convened a hearing, and ultimately on January 15, 2025, issued the Order on appeal (Order or Order on appeal). (A. 5-12; R. 2, 9, 14.)

B. Factual Record

The record in this matter consists of information gathered during the informal dispute resolution process, Berwick's pre-filed testimony, the parties' hearing testimony, and CMP's response to an oral data request (ODR) promulgated upon CMP at the hearing.[9]

On March 9, 2020, Berwick and CMP entered into an interconnection agreement. (A. 60-78.) The interconnection agreement, which was the standard form contract approved by the Commission pursuant to Chapter 324, contained the regulatory cost responsibility, invoicing, reconciliation, and default provisions. (A. 60-78.) The interconnection agreement included estimated interconnection costs of approximately $65,000, based on the costs identified within the feasibility/impact final report. (A. 77.) Exhibit 6 of the agreement indicated that Berwick had chosen not to conduct a facilities study, which would have provided more detailed costs of system modifications necessary to connect the Berwick project.[10] (A. 77.)

[9] No party objected to the documents from the informal dispute resolution process being entered into the evidentiary record of the formal proceeding. (R. 9, Tr. 4-5.)

[10] As referenced in the Argument section of this brief, section III.C below, by waiving the facilities study Berwick agreed to pay actual costs, even if those exceeded the estimate in the interconnection agreement by more than 25%.

From February 2022 through May 2023, and after the reconciliation deadline, CMP issued cost reconciliation statements to Berwick pursuant to subsection 15(J) of Chapter 324 and article 5.1.2 of the interconnection agreement. (A. 103.) On February 24, 2022, CMP issued Berwick a cost reconciliation statement seeking $45,502.73 in additional interconnection costs. (A. 103.) Thereafter, CMP reduced the cost reconciliation statement. On January 16, 2023, CMP issued a new cost reconciliation statement seeking $27,655.83. (A. 103.) On May 19, 2023, CMP issued its third cost reconciliation statement, reducing the invoiced amount to $23,655.83.[11] (A. 103.) CMP had not sought a waiver of the reconciliation deadline set forth in Chapter 324 and the interconnection agreement for providing the cost reconciliation statement, and Berwick objected to each statement as time-barred. (A. 103; R. 9, Tr. 29.)

The reason for CMP's delay in providing the cost reconciliation agreement was that it was working with developers to reconfigure its method of allocating pooled interconnection overhead costs. (R. 9, Tr. 27, 33.) CMP refers to its "typical business overhead costs" as "pool costs." (R. 9, Tr. 40.) The "overhead rate that was showing up on projects were [sic] high" and CMP decided to "dig into that and understand the drivers of that." (R. 9, Tr. 31.) CMP spent a year "trying to get our

[11] The dollar figure set forth in the third reconciliation statement, 23,655.83, is the dollar figure CMP confirmed at hearing is due. (R. 9, Tr. 61).

arms around this. You know, when we saw the costs coming in so much higher, you know, we just didn't want to just send these out because the backlash would have been, you know, there." (R. 9, Tr. 34.) CMP chose to revisit how to allocate pooled interconnection overhead costs and did not send out invoices to interconnection customers while it adjusted the methodology for determining overhead cost allocation in response to increasing costs. (R. 9, Tr. 27-29, 43.)

C. Order on Appeal

In its Order, the Commission acknowledged there was no dispute that CMP issued the cost reconciliation statements after the regulatory reconciliation deadline. However, the Commission further noted that "Berwick had no reasonable expectation that the $65,000 estimate contained in the [interconnection agreement] was the full and final cost." (A. 10.) Nonetheless, the Commission stated it was "concerning that CMP did not notify Berwick clearly of the purpose for the delay," and noted that CMP could have requested a waiver of the reconciliation deadline but failed to do so. (A. 9.)

The Commission concluded that nothing in Chapter 324 gives the Commission authority to release Berwick from its obligation to pay the actual construction costs of the project. (A. 9.) To the extent Berwick sought compensatory damages for CMP's failure to comply with the interconnection agreement, the Commission referenced a previous decision in which it held that the

Commission lacks the jurisdiction to award compensatory damages.[12] (A. 10.) The Commission also found that, if CMP had acted within the prescribed timeline, the cost of reconciliation would have been much higher than the most recent cost reconciliation statement. (A. 10.)

Finally, as to the calculation of the actual costs, the Commission concluded that Chapter 324 does not entitle Berwick to the receipt of actual purchase orders or invoices related to contractor services. (A. 10.) In the context of a dispute resolution adjudication, the Commission declined to rule on the appropriateness of CMP's methodology in determining pooled interconnection overhead costs. (A. 10.) Finally, the Commission concluded that, regardless of the reconciliation statement being untimely, CMP should invoice Berwick for the corrected amount of $23,655.83, which included a downward adjustment to the interconnection overhead pooled costs. (A. 10.) Berwick filed a timely appeal.

ISSUES PRESENTED FOR REVIEW

1. WHETHER THE COMMISSION'S DECISION IS CONSISTENT WITH CHAPTER 324.

2. WHETHER THE COMMISSION'S DECISION IS CONSISTENT WITH ITS PRIOR ORDERS.

3. WHETHER THE COMMISSION'S DECISION IS LAWFUL AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

[12] The Commission cited *Darling's*, Complaint Against Versant Power Related to Interconnection Agreement, No. 2023-189, Order at 7 (Me. P.U.C. Oct. 18, 2023), which is discussed in the Argument section of this brief, section II.B below.

STANDARD OF REVIEW

Contrary to Berwick's argument, this matter does not rest on a question of contract interpretation. (Blue Br. 18.) Rather, this appeal regards an agency's interpretation of its own rule, which is entitled to deference. The Commission's Order, which determined the rights of Berwick and CMP under the rubric of Chapter 324, was based on substantial record evidence and was correct as a matter of law. Accordingly, the Law Court's review of the Commission's decision on appeal is deferential. [13]

"Generally, decisions of the Commission are reviewed only to determin[e] whether the agency's conclusions are unreasonable, unjust or unlawful in light of the record." *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 2014 ME 56, ¶ 18, 90 A.3d 451 (citation and quotation marks omitted). The Law Court "generally refuses to second-guess agencies on matters within their expertise." *Pine Tree Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 634 A.2d 1302, 1304 (Me. 1993) (citation omitted).

[13] To the extent Berwick contends, (Blue Br. 5 n.9), that *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is relevant to the standard of review on appeal, Berwick is mistaken. There is no basis in the Maine Constitution or in this Court's precedents for departing from the longstanding precedent cited in this brief, and Law Court decisions post *Loper* demonstrate deference to agency interpretation under Maine law remains undisturbed. *E.g., Eastern Me. Conserv. Initiative v. Bd. of Envtl. Prot*., 2025 ME 35, ¶ 22, 334 A.3d 706.

As to legal interpretations, in reviewing an agency's interpretation of its own rules or regulations, the Law Court gives considerable deference to the agency. *Enhanced Commc'ns of N. New England v. Pub. Utils. Comm'n*, 2017 ME 178, ¶ 7, 169 A.3d 408 (citation omitted). When reviewing an agency's interpretation of its own regulation, the Law Court begins by "determin[ing] de novo whether the [regulation] is reasonably susceptible of different interpretations and therefore ambiguous." *Id.* (citation and quotation marks omitted). If the language is unambiguous, the Law Court interprets the regulation according to its plain language. *Id.* (citation omitted). Similarly, an "agency's interpretation of an ambiguous statute it administers is reviewed with great deference and will be upheld unless the statute plainly compels a contrary result." *Central Me. Power Co*., 2014 ME 56, ¶ 18, 90 A.3d 451 (citation and quotation marks omitted). The Court has held that the "Commission's ruling will stand unless it is irrational; is unsupported by the record evidence; or violates a statutory mandate, reading any ambiguity in statutory language as the Commission reasonably resolves." *Snakeroot Solar*, 2025 ME 64, ¶ 40, __ A.3d __ (citation and quotation omitted).

As to factual findings, the Law Court's "review of the Commission's findings of fact is limited to only a determination whether they are supported by substantial evidence. If so, there is no legal error and such findings are final." *New England Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 390 A.2d 8, 36 (Me. 1978). The

Law Court's review "does not involve any weighing of the merits of evidence; instead, [the Law Court] will vacate an agency's factual findings only if there is no competent evidence in the record to support the findings . . . even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency." *Snakeroot Solar*, 2025 ME 64, ¶ 37, __ A.3d __ (citation and quotation marks omitted).

SUMMARY OF ARGUMENT

On appeal, Berwick contends that the Commission's Order must be overturned as arbitrary and erroneous as a matter of law for a series of reasons. The record and applicable law, however, do not support Berwick's assertions on appeal.

In the Order on appeal, the Commission correctly interpreted and applied Chapter 324 and the associated interconnection agreement. Further, the Commission did not err in not applying federal utility transaction case law cited by Berwick because such caselaw is not applicable to the relevant facts and law on appeal. Additionally, contrary to Berwick's assertion, the Order on appeal is consistent with prior Commission orders and does not render the regulatory reconciliation deadline at issue in this matter meaningless. Finally, the Order's findings and conclusions with respect to actual costs, including pooled interconnection overhead costs, and regarding Berwick's assertion of an adverse

impact, are supported by substantial evidence and consistent with the applicable rule. The Commission applied Chapter 324 and the associated interconnection agreement to hold Berwick accountable for the actual costs to interconnect Berwick's generator to CMP's distribution system.

For all these reasons, the Commission's Order should be affirmed and this appeal dismissed.

ARGUMENT

I. THE COMMISSION'S DECISION IS CONSISTENT WITH CHAPTER 324.

The Commission's Order is consistent with Chapter 324 and the standard form interconnection agreement approved by the Commission pursuant to Chapter 324. As concluded by the Commission, the rule and agreement require Berwick to pay the actual interconnection costs, and neither the rule nor the agreement includes a contractual limitation clause indicating that a failure to invoice within the timeframe would result in forfeiture by the utility of the right to obtain the amount owed. Further, federal utility transaction case law cited by Berwick is not applicable to the Commission's interpretation of Chapter 324 due to the lack of limitation clause language in the rule. For these reasons, the Commission properly declined to allow an interconnecting generator to use the dispute resolution process to avoid paying actual interconnection costs even though CMP issued the cost reconciliation statement after the reconciliation deadline.

A. The Commission correctly interpreted Chapter 324 and the standard form interconnection agreement.

Berwick argues that the reconciliation deadline of Chapter 324 and the interconnection agreement acts as a contractual limitation clause such that CMP would be time-barred to collect any further amount from Berwick after the reconciliation deadline. (Blue Br. 18-20.) Berwick has consistently acknowledged, however, that the Commission, in applying its rule, has primary jurisdiction to determine whether CMP's failure to meet the deadline relieved Berwick of its obligation to pay the actual costs of interconnecting. (R. 7 at 11; R. 9, Tr. 15, 54.) The Commission acted within its discretion in applying its rule and rejecting Berwick's argument because Chapter 324 and the interconnection agreement require the payment of actual costs and do not include limitation clause language that would bar CMP from collecting actual costs.

The Commission rejected Berwick's contract law argument because Chapter 324, which governs the contractual relationship between the utility and an interconnecting customer, provides that an interconnection customer "shall be responsible for (1) the actual construction cost of its Interconnection Facilities, as may be adjusted for Contingent Upgrades pursuant to § 14(F), and (2) all expenses, including overheads, associated with owning, operating, maintaining, repairing and replacing its Interconnection Facilities." Chapter 324, § 3(A); (A. 26.) Thus, Chapter 324 expressly requires Berwick to pay CMP its actual costs, regardless of

CMP's failure to provide the final invoice by the regulatory reconciliation deadline. Importantly, Chapter 324 does not expressly provide that a utility's failure to meet the reconciliation deadline could result in a loss of the ability to collect the actual amount owed.

Neither Chapter 324 nor the interconnection agreement contain limitation clause language that would override the cost responsibility language in the rule and in the interconnection agreement. The provision in the interconnection agreement upon which Berwick relies provides:

> 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.

(A. 64-65.) The corollary language in Chapter 324 requires the utility to submit a cost reconciliation statement to the interconnecting customer within 60 days "of the later of (i) T&D Utility's formal notice of approved operation, or (ii) submittal of final as-built drawing to the T&D Utility." Chapter 324, § 15(J); (A. 55.) Based on this regulatory language, the Commission correctly concluded that there was "nothing in the [interconnection agreement] nor in Chapter 324 that allows the Commission to provide Berwick the relief it seeks; namely, to be released from its obligation to pay the actual construction costs of its project." (A. 9.) For these

reasons, the Commission was not required to rely on the contractual limitation clause case law cited by Berwick, (Blue Br. 18-20), because as set forth above the Commission correctly determined the rights and responsibilities of Berwick and CMP by giving full force and effect to all provisions of Chapter 324 and its associated interconnection agreement.

Finally, as a matter of public policy, the Commission notes, in addition to the reconciliation deadline, Chapter 324 contains numerous regulatory deadlines during which a party is directed to act,[14] and the interconnection agreement similarly contains a series of such deadlines.[15] As with the reconciliation deadline language cited above, none of these regulatory deadlines are associated with limitation clause language.[16] The regulatory deadlines, including the reconciliation deadline, are in place to manage an interconnection process that is complicated and that can easily become protracted; they are not intended to relieve a counter party

[14] *See*, *e.g.*, subsection 11(A) Interconnection Application (setting times to acknowledge receipt of applications and request or submit additional information) Chapter 324, § 11(A); (A. 36); subsection 12(C) Time to Process Under Screens (setting the time that a T&D Utility has to determine if an applicant passes screens) Chapter 324, § 12(C); (A. 38); and subsection 13(J) Additional Review (setting the period after receipt of payment at which a T&D Utility must commence additional study) Chapter 324, § 13(J); (A. 42.)

[15] *See*, *e.g.*, article 5.2 (describing when the interconnection customer must make a deposit), (A. 65), and article 3.4.2 Routine Maintenance, Construction, and Repair (setting the number of days in advance that a T&D Utility must provide notice of interrupted service), (A. 63.)

[16] In contrast, the Commission has demonstrated that when it intends to provide a consequence for a rule violation, it knows how to provide for one. For example, subsection 15(J) of Chapter 324 provides that a T&D Utility may disconnect an ICGF if the Interconnection Customer fails to timely pay undisputed amounts. Chapter 324, § 15(J); (A. 55.) Additionally, in its Consumer Protection Standards, the Commission specifically provides that a utility may not issue a make-up bill after a specified period. 65-407 C.M.R. ch. 815 § 8(F).

from its regulatory obligations. If the Commission relieved Berwick of its obligation to pay for actual costs because CMP missed the reconciliation deadline, then, when other regulatory deadlines were missed, the Commission would be obliged to interpret the rule as having similar consequences, with respect to either counterparty. That is not a reasonable interpretation of Chapter 324.

B. The Commission correctly refrained from applying inapplicable federal utility transaction case law when interpreting its rule and standard form.

Berwick next argues the Commission failed to consider two federal cases it asserts support its position that the reconciliation deadline of Chapter 324 and the interconnection agreement operates as a contractual limitation clause. (Blue Br. 20.) The federal cases cited by Berwick address utility transaction law but are nevertheless inapposite because neither the interconnection agreement nor Chapter 324 contain language barring a T&D Utility from collecting the actual costs of interconnection after the reconciliation deadline.

In *Boston Edison Co. v. FERC*, 836 F.3d 361, 362 (1st Cir. 1988), the parties entered into long-term contracts for the sale of electricity that were filed with FERC. The court found that the matter involved an initial rate filing, and that the contract at issue "contained a claims limitation provision, making charges incontestable if not challenged within one year." *Id.* Thus, the court concluded the claims limitation clause was part of the filed rate, which it was required to uphold

and apply. *Id*. at 371. No language in Chapter 324 or the interconnection agreement, however, states that failure to comply with the timelines relieves a party of their obligations under the contract. Therefore, the reasoning in *Boston Edison Co.* is not applicable to the facts of this case.

Berwick also relies on *Oklahoma Gas & Elec. Co. v. FERC, et al.*, 11 F. 4th 821 (D.C. Cir. 2021), but such reliance is similarly unavailing. While the money collected in *Oklahoma Gas and Elec. Co.* was related to interconnection costs, that is where the similarity to the facts of the matter before the Court ends. At issue in *Oklahoma Gas and Elec. Co.* was a filed tariff approved by FERC. *Id*. at 824. The court noted "[a]djustments must be made 'within one year after rendition of the bill reflecting the actual data for such service.'" *Oklahoma Gas and Elec. Co.*, 11 F.4th at 826 (quoting the applicable tariff), and that the filed tariff explicitly stated that adjustments "shall be limited to those corrections and adjustments found to be appropriate for such service within one year after rendition of the bill reflecting the actual date for such service." *Id.* at 827. In affirming FERC, the court concluded FERC lacked discretion to waive a filed rate.[17] *Id*. at 826.

[17] Notably, even if Chapter 324 and the interconnection agreement contained limitation clause language, which they do not, unlike the applicable law in *Oklahoma Gas and Electric Co.*, Chapter 324 expressly provides that the Commission may for good cause waive the regulatory reconciliation deadline at issue on appeal. Chapter 324, § 18; (A. 57); *Central Maine Power Company*, Request for Waiver of Chapter 324 § 13(J), No. 2021-306, Order Granting Waiver (Me. P.U.C. Dec. 16, 2021).

Thus, in *Boston Edison Co.* and *Oklahoma Gas and Elec. Co.* the courts concluded a claims limitation clause was part of the filed rate, which FERC and the courts were required to uphold and apply. *Id*. at 829. No language in Chapter 324 or the interconnection agreement states that failure to comply with the reconciliation deadline relieves a party of their obligations under the interconnection agreement. Therefore, the reasoning in these federal cases is not applicable to the facts on appeal.

II. THE COMMISSION'S DECISION IS CONSISTENT WITH ITS PRIOR ORDERS.

Berwick asserts the Commission acted arbitrarily and capriciously by issuing an order that changed a prior position articulated in *Central Maine Power Company*, Request for Waiver of Chapter 324 § 13(J), No. 2021-306, Order Granting Waiver (Me. P.U.C. Dec. 16, 2021) (Waiver Docket Order). (Blue Br. 15.) Berwick's contrast of the Waiver Docket Order with the Order on appeal is incorrect. Moreover, the Order on appeal is consistent with a prior Commission order in *Darling's,* Complaint Against Versant Power Related to Interconnection Agreement, No. 2023-189, Order at 7 (Me. P.U.C. Oct. 18, 2023) (*Darling's* Order), in which the Commission specifically addressed a contractual claim made by an interconnecting customer seeking dispute resolution with the utility. Each of these prior orders is discussed below.

A. The Order on appeal is consistent with the prior Waiver Docket Order.

In the Waiver Docket Order, the Commission addressed CMP's request to waive the Chapter 324 reconciliation deadline.[18] The Commission referred to the reconciliation deadline as a "deadline," and granted a waiver of the deadline. Waiver Docket Order at 1, 3. Because the Commission granted the waiver, the Commission did not address any consequence for CMP's failure to meet the reconciliation deadline.

Likewise, in the Order on appeal, the Commission referred to the reconciliation deadline as a "deadline," and noted that, unlike in the matter addressed in the Waiver Docket Order, CMP had not in this instance requested a waiver of the reconciliation deadline. (A. 9.) The Commission's use and application of the term deadline with regard to the reconciliation deadline is the same in the Waiver Docket Order and in the Order on appeal. Nonetheless, Berwick asserts that, to act consistently with the prior use of the term "deadline," the Commission must relieve Berwick of the responsibility of paying actual costs incurred during interconnection.

This argument is without merit. The Waiver Docket Order did not address the consequence for failure to meet the reconciliation deadline. In the matter now

[18] The reconciliation deadline was in section 13(J) of the version of Chapter 324 relied on in the Waiver Docket Order. 65-407 C.M.R. ch. 324 (2020).

on appeal, Berwick presented the Commission with an additional question when it asked the Commission to determine the consequence for CMP's failure to comply with the reconciliation deadline. Berwick errs in its assumption that the Commission's use of the word "deadline" sets a time after Berwick is relieved of its responsibility to pay actual costs incurred during interconnection. (Blue Br. 13.) For the reason set forth in the Argument section I.A above, the Commission properly applied Chapter 324 and the interconnection agreement and Berwick's argument that the Commission acted arbitrarily and capriciously by reversing its position in the Waiver Docket Order is without merit.

B. The Order on appeal does not render the reconciliation deadline meaningless and is consistent with the prior *Darling's* Order.

Berwick argues that, because the Commission did not relieve Berwick of its obligation under Chapter 324 to pay actual costs, the Commission did not give full effect to the reconciliation deadline. (Blue Br. 18.) Berwick incorrectly correlates the unavailability of a requested remedy with a failure to give credence to all terms of a rule and a standard form. The Order does not state that the timelines in Chapter 324 have no meaning. Instead, the Order states that, in spite of CMP missing a deadline, Berwick still owes the actual costs of interconnecting its ICGF. (A. 10.)

There is, subject to the Commission's enforcement discretion, a consequence when a utility violates regulatory requirement. Chapter 324 provides that, and as

acknowledged by Berwick at hearing, if a T&D Utility fails to comply with any deadline then the Commission may assess financial penalties consistent with Title 35-A. Chapter 324, §16; (A. 56; R. 9, Tr. 15-16.) Thus, in the Order on appeal the Commission distinguishes between the remedies available under the Commission's Chapter 324 jurisdiction and a remedy that may be available in other venues.

The Commission's conclusion in this regard is consistent with the *Darling's* Order. In an earlier proceeding resulting from a Chapter 324 dispute resolution, the Commission stated that a developer seeking damages would need to pursue those damages in a different venue, as the Commission lacks the general authority to award damages. *Darling's* Order at 7. In the *Darling's* Order, the Commission held that even if the utility breached the terms of the interconnection agreement, the Commission did not have jurisdiction to award compensatory damages. *Id.* at 7.

III. THE COMMISSION'S DECISION IS LAWFUL AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Commission's Order focused on the primary claim made by Berwick throughout the informal dispute resolution and during the adjudicatory proceeding that the reconciliation deadline served as a time bar on CMP's collection of any additional amount. (A. 103; R. 7 at 1; R. 9, Tr. 13, 15, 54.) The Commission's Order did not explore in detail secondary issues raised by Berwick on appeal.

On appeal, Berwick contends the Commission's Order is arbitrary and capricious and erroneous as a matter of law because actual costs are not supported

by the record, because the invoicing of pooled interconnection overhead costs is not authorized, and because the Commission did not address alleged adverse impacts of CMP having missed the reconciliation deadline. The record and law, however, support the Commission's conclusions that CMP's lowest invoiced cost reconciliation statement reflected actual costs, that pooled interconnection overhead costs are actual costs, and that Berwick did not suffer an adverse impact. Based on substantial evidence in the record, the Commission's Order correctly determined the rights and responsibilities of the parties as set forth in Chapter 324 and as reflected in the standard form interconnection agreement.

A. The Commission's decision with respect to actual costs is supported by substantial record evidence.

Berwick argues that it requested but did not receive purchase orders and invoices to support CMP's request for the actual costs CMP incurred and is entitled to recover under article 5, the final accounting clause of the interconnection agreement. (Blue Br. 26; A. 64.) Berwick contends the Commission erred by ordering the assessment of costs outside the scope of charges for which a final accounting could be assessed. (Blue Br. 25.) Berwick states that CMP may recover only actual, documented costs incurred to complete construction of the Berwick facility. (Blue Br. 25.) Berwick argues that, because it did not receive purchase orders or invoices relating to the additional cost assessments, Berwick did not have

a reasoned basis to "determine the eligibility or propriety of the assessed costs." (Blue Br. 26.)

The Commission focused on the requirements of Chapter 324 when it considered and determined Berwick was not entitled to the requested purchase orders and invoices under Chapter 324. Chapter 324 requires the cost reconciliation statement of actual costs to provide a detailed breakdown for the interconnection customer's review: "[t]he detail of the breakdown should match the Distribution Upgrades identified in any detailed design provided by the T&D Utility." Chapter 324, § 15(J); (A. 55.) Chapter 324 does not provide for a right to review purchase orders or invoices related to contractor services, nor does the interconnection agreement. Without specific evidence that the detail of the breakdown did not match the distribution upgrades, the Commission acted appropriately when it accepted that the actual costs owed were those that CMP confirmed at hearing were due. (R. 9, Tr. 61.)

B. The Commission appropriately declined to use dispute resolution as a venue to address the methodology to determine pooled interconnection overhead costs.

In its Order, the Commission noted that it would not address Berwick's argument that CMP was not authorized to assess it for pooled interconnection overhead costs because it was not necessary to decide the dispute that was before the Commission. Berwick argues the Commission erred because the pooled cost

issue "is an essential contested issue that goes to the heart of the dispute." (Blue Br. 27.) The record belies Berwick's argument on appeal. The following colloquies occurred during the hearing between two of the Commissioners and representatives for Berwick:

> COMMISSIONER SCULLY: And then it goes on to say that the parties had agreed not to conduct a facilities study which would have provided detailed costs and, therefore, the customer shall be responsible for all costs of such electric system modification, even if they are in excess of the 65,000 plus SCADA cost plus 25 percent. Did that language not put you on notice that there could very likely be additional costs above and beyond that 65 plus or minus 25 percent?
>
> MR. DUFFY: I would say, of course, yes, but within a 90-day period. The question again is not that estimates could have been wrong up -- it says up or down 25 percent. It could have gone either way. But if there was going to be an adjustment, we get back to the fundamental issue of it should have been done within the 90 days.
>
> CHAIR BARTLETT: Let me -- your position is even if you had some indication that they -- that the costs were going to be high, if you were told, look, we're expecting to bill you for a hundred grand because the costs are much higher than we thought, your position is that doesn't matter if they didn't actually bill you within the 90 days?
>
> MR. DUFFY: It's a hypothetical, but yes, that is our position.

(R. 9, Tr. 23.)

> COMMISSIONER SCULLY: But let me just ask a -- the breach that you're alleged -- that you asserted here and doesn't appear to be in dispute, is that CMP -- not that CMP issued an invoice or conducted a reconciliation, but they did it late. So had they issued the invoice for one of these amounts, let's say the $27,000 amount, on day 89, we wouldn't be here.
>
> MR. DUFFY: That's correct.

MR. GORDON: We would have asked for the breakdown --

MR. DUFFY: Well, we'd still ask for the breakdown, but yes.

COMMISSIONER. SCULLY: -- breakdown that you were looking --

MR. DUFFY: That is correct.

COMMISSIONER. SCULLY: But the primary issue we're talking about here today wouldn't exist.

MR. DUFFY: That is correct.

(R. 9, Tr. 54.) Thus, before the Commission, Berwick acknowledged that the fundamental issue for determination at hearing was whether the reconciliation deadline operated as a contractual limitation clause. (R. 9, Tr. 54.) These exchanges confirm that Berwick was asking the Commission to relieve it of any obligation to pay any additional cost, whether pooled interconnection overhead costs or otherwise.

In any event, Chapter 324, the interconnection agreement, and the record support the Commission's Order authorizing CMP to invoice Berwick for an amount that included pooled interconnection overhead costs. (R. 9, Tr. 28.) Pooled costs are actual costs of interconnection, (R. 9, Tr. 29), and section 3 of Chapter 324 requires an interconnection customer to pay for the actual costs of interconnection, Chapter 324, § 3; (A. 26-27.) The Commission was within its discretion to refrain from using the dispute resolution as a venue for investigating the revised methodology for billing practices with respect to pooled costs that CMP

described at hearing and about which CMP was subject to cross examination. (R. 9, Tr. 41.)

The dispute resolution process set forth in section 17 of Chapter 324 is designed to facilitate the resolution of a dispute between the utility and its interconnection customer. The Commission properly declined to address the propriety of the assessment methodology of pooled costs in a proceeding where only one utility and one interconnecting customer were present and represented. At present, Chapter 324 does not expressly provide a methodology for the calculation and allocation of overhead costs, and thus, to the extent Chapter 324 is ambiguous in this regard, the Commission's Order is entitled to deference. If the Commission were to address this issue, it would not do so through an adjudicatory proceeding.

C. The Commission's Order addressed the alleged adverse impact.

Berwick argues that the Commission acted arbitrarily by failing to address its testimony that it suffered an adverse impact of allowing additional interconnection charges beyond the reconciliation deadline and "thereby creating an unquantifiable contingent liability." (Blue Br. 28.) Berwick's pre-filed testimony posited that lack of certainty gained through a "period of repose" would be a serious impediment to project financing. Berwick's argument is not supported by

Chapter 324 and the interconnection agreement, as reflected in the Commission's Order, and as provided for by the Chapter 324 dispute resolution process.

Berwick had means to finalize the cost reconciliation process. As discussed in the Commission's Order, under the interconnection agreement, Berwick could have timely resolved the matter by exercising its rights under the default provision. (A. 10, 67.) The Commission held that "under the [interconnection agreement] Berwick had the option to notify CMP that it was in default after not providing the cost reconciliation statement within the [regulatory] period. This would have required that CMP cure the default within 60 days by providing Berwick its cost reconciliation statement." (A. 10.) Further, Berwick could have invoked the Chapter 324 dispute resolution process upon CMP's failure to timely provide the reconciliation statement and asked the Commission to order CMP to comply with the requirement to provide the reconciliation statement. Chapter 324, § 17; (A. 57.) Berwick did not avail itself of the Chapter 324 dispute resolution process or the default provisions contained in the interconnection agreement.[19]

At the hearing, Berwick acknowledged that it did not seek a default, and it made clear that it did not because it believed it was in a "safe position" because the

[19] Moreover, The Commission relied on evidence that Berwick had not suffered from the delayed and late reconciliation statement. (A. 10.) For example, Berwick had been operating its generator for several years without having to pay the final reconciliation costs, and CMP's re-calculation of pooled interconnection overhead costs resulted in a lower invoice. (R. 9, Tr. 11, 29.)

regulatory period had run.[20] (R. 9, Tr. 58.) In its Order, however, the Commission concluded that Berwick's assumption that it was not responsible for any further costs beyond the initial estimate was not a reasonable interpretation of the interconnection agreement. (A. 9.) During the hearing, Berwick acknowledged that the language in exhibit 6 of the interconnection agreement provides only a cost estimate and confirms that an interconnection customer is responsible for all costs of electric system modifications, even if those costs exceed the original estimate. (A. 77; R. 9, Tr. 22-23.) For these reasons, the Commission addressed, and properly rejected, Berwick's allegation of an adverse impact and did not err in its application of Chapter 324 and the interconnection agreement.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this honorable Court affirm the Commission's January 15, 2025, Order on appeal.

DATED: August 5, 2025

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[20] At the hearing, Berwick's representative acknowledged that after the 90 days had passed it took no action to seek a final invoice. "The 90 days had passed. We were content not to seek, like, do you want to charge us additional money. We were confident that our 90-day period had run and we were as -- in a safe position." (R. 9, Tr. 58.)

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CERTIFICATE OF SERVICE

I, Rikka E. Strong, hereby certify that an electronic copy of this Brief of Appellee Maine Public Utilities Commission was served upon counsel at the address set forth below by email on the date of filing and a hard copy will be served by first class mail, postage-prepaid once the clerk has accepted the format pursuant to M.R. App. P. 7(c)(4).

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