

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2018-00194

February 19, 2020

PUBLIC UTILITIES COMMISSION
Investigation into Rates and Revenue
Requirements of Central Maine Power
Company

ORDER
**Public/Redacted (Protective
Order No. 4)**

BARTLETT, Chair; WILLIAMSON and DAVIS, Commissioners

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I. INTRODUCTORY SUMMARY

As detailed in this order, the Commission authorizes a distribution revenue requirement for Central Maine Power Company (CMP or the Company) of \$270.586 million per year, which is an increase of \$17.420 million, or 6.88%, over the current annual distribution revenue requirement. For an average residential customer, this rate increase equates to a bill increase of 2.09% (assuming current rate design).¹ The new distribution rates will go into effect March 1, 2020. This revenue requirement is significantly lower than CMP's request for an increase of \$44.7 million.

In so doing, the Commission imposes a substantial reduction to the Company's return on common equity—100 basis points—which alone is equivalent to a \$6.6 million reduction to CMP's annual distribution revenues, and \$9.9 million over the 18-month period during which the reduction will be in effect. This reduction exceeds any prior adjustment by the Commission to a transmission and distribution utility's return on equity due to poor management and results in an allowed return considerably below the common-equity return of any other electric utility in the country. This reduction is supported by substantial evidence of failures by CMP's management to provide reasonable and adequate customer service over recent years, and especially following the transition to its new billing system, which lead us to find that this service has been imprudent. This ROE reduction is directly tied to CMP's service quality; the adjustment will remain in place until CMP improves its performance in several specified areas of customer service over a rolling period of 18 consecutive months (measured beginning March 1, 2020).

II. EXECUTIVE SUMMARY

A. Commission's Duties in Setting Rates

The Commission has a duty to approve utility rates that are just and reasonable. The Commission does not have unfettered discretion to set a utility's rates or deny a rate increase. Maine's public utility code,² the U.S. Constitution, and long-established jurisprudence constrain the Commission's discretion by requiring that the approved rates be supported by substantial evidence in the record, by prohibiting the Commission from confiscating private property without just compensation, and by requiring that the Commission balance the public's interest in low rates with the utility's interest in its continued operations needed to serve the public.

That said, the Commission has broad authority to disallow costs or adjust rates when the Commission finds that a utility has not acted prudently. By this, we mean acted under a "course of conduct that a capably managed utility would have followed in

¹ In a separate decision in this docket, the Commission has directed that no changes be made in CMP's rate design. Consistent with that decision, this rate increase applies equally across the board to all rate classes and all rate elements.

² Title 35-A of the Maine Revised Statutes.

light of existing and reasonably knowable circumstances.”

Boiled down, a utility’s approved return must be “fair” under the circumstances, and what return is “fair” here is a central issue that we handle at length in our order.

B. Nature of This Investigation

The Commission opened this investigation into CMP’s rates after a group of customers filed a complaint alleging that CMP was earning unduly high returns. Because the case was initiated by the Commission, instead of by CMP, the standard nine-month clock on rate cases was not in effect.³ For a few reasons, this case has lasted several months longer than a typical rate case would have. First, the case was slowed early on by a discovery request by the Office of the Public Advocate (OPA), which sought voluminous documentation on CMP’s capital investments over several years. Second, the Commission added the issue of customer service to this rate case, thus expanding the scope of issues under investigation here. Third, over the summer the OPA sought to stay the rate case due to the ongoing investigation into CMP’s metering and billing practices, and in August 2019 the Commission granted that request.

Through this investigation, two major topics—CMP’s revenue requirement and its customer service—have been intensely evaluated. On the issue of the revenue requirement, the Staff’s experts on accounting, operations, finance, engineering, law, ratemaking, and customer service conducted detailed discovery on the Company’s request and filed two major analyses in the record.

On the issue of customer service, the Commission Staff submitted detailed information on several years of experience in recent history with CMP from the Commission’s Consumer Assistance and Safety Division (CASD), and the Commission engaged The Liberty Consulting Group to audit CMP’s customer-service functions. Liberty’s findings—that, over a long period, CMP was not meeting standards in serving customers in call-handling or staffing—are detailed in its December 2018 report and are a part of this record.

Overall—and like the companion case, Docket No. 2019-00015—the work on this investigation has created a voluminous record. In addition to the scores of data requests Liberty posed to CMP as part of its audit, CMP, the Staff, and the parties responded to nearly 1,200 data requests, which included narrative responses and extensive document production. Several days of technical conferences and hearings provided all parties and the Staff an opportunity to question CMP on its case. And in three public-witness hearings, the Commission heard impassioned testimony from nearly 80 customers about the effect on them of CMP’s substandard customer service. The transcripts, prefiled testimony, reports, and analyses filed in the case amount to countless pages of information that supports this decision.

³ See 35-A M.R.S. § 310(2) (2010).

C. Objective of the ROE Adjustment

In addressing CMP's substandard customer service, the Commission has taken a goal-oriented and pragmatic approach. General examples of a more simplistic approach might be a one-time disallowance or penalty (and there are times when that is appropriate), but the Commission has more effective tools at its disposal—tools that create incentives for a utility to address its failings and improve its service for the benefit of customers. The ROE adjustment we approve here is one of those tools. The ROE adjustment is directly tied to a set of customer-service-quality metrics established in this order. The adjustment—which acts as a cost disallowance of \$6.6 million per year—will remain in place for at least 18 consecutive months (for the equivalent of \$9.9 million over that period), and will be lifted only when the Company meets all benchmarks for all service-quality metrics over a rolling period of at least 18 months. In taking this approach, our focus is not merely punitive but is attempting to improve real, on-the-ground outcomes for customers. The ROE adjustment creates a forward-looking incentive for lasting change.

D. Main Drivers of the Increase in Rates

CMP has not had a base distribution rate increase since 2014. Although its distribution rates are adjusted each year, most of those adjustments since 2014 have been rate decreases—and in two years, decreases of between 7% and 9%. At the simplest level, a utility's revenue requirement is the combination of two things: its *recovery of its expenses* and the *return on its plant in service*. Here, the amount of the increase is significantly lower than CMP's requested amount (which was, in the end, \$44.7 million) due to the work of the Commission's Staff experts and the intervenors. It is also consistent with the rate of inflation over the same period (i.e., since 2014).

Some of the main drivers of this rate increase are:

Expenses to Improve Reliability. The rate increase includes more funding for vegetation management due to increases in costs for contracts with third parties to perform routine tree-trimming and the removal of hazardous trees. Also, significantly more frequent smaller storms in CMP's service territory led to an increase in the amount of funds devoted to power restoration after those storms. CMP will engage a third party to study the effectiveness of its current five-year-cycle tree-trimming program to determine whether changes to that program are necessary.

Expenses for New Staff and Wage Increases Based on Inflation. New staffing in the areas of electric operations and customer service are a part of this increase. These new employees will serve critical customer-oriented functions by working to improve both electric reliability and the quality of customer service. Also, over the time since CMP's last rate case, wages have increased for CMP as they have in the general economy. These factors increase the Company's payroll and benefits.

Increase in Rate Base. Any utility earns a return on its rate base. Rate base is the amount of utility plant that is used and useful in providing utility service. The return

on rate base is one of the two major components of the revenue requirement. Here, CMP's rate base has grown over the years. The rate base the Commission calculates for the revenue requirement is forecasted into the future, for the period when rates will go into effect. CMP will be allowed to recover the return on this rate base (simply stated, the rate base × the allowed return).

E. Audit of Management Structure

The Commission also intends to audit CMP and its affiliated service companies, Avangrid Management Company and Avangrid Services Company, to determine whether the current management structure is appropriate and in the interest of Maine ratepayers. Among other things, the audit will help answer the questions of whether there is something endemic in the management structure that has led to a drop in the quality of CMP's customer service over the past several years and, if so, what can be done to avoid this in the future.

III. BACKGROUND

A. Procedural History

A fully detailed procedural history appears in Appendix A.⁴ This section summarizes the essential events leading up to this case and of this case itself.

1. Ten-Person Complaint Alleging Excessive Returns and Decision to Open Investigation into CMP's Rates

On May 29, 2018, the Commission received a complaint signed by Herbert C. Adams and 16 other persons against CMP. See 35-A M.R.S. § 1302. The complaint requested, among other things, that the Commission open a distribution-rate investigation to determine whether CMP and its parent companies were earning an excessive return on their investment. On June 8, 2018, CMP filed a response and motion to dismiss the complaint.

On July 24, 2018, the Commission granted the part of the complaint that sought an investigation into CMP's distribution rates. *Herbert C. Adams et al., 10-person Complaint Requesting Investigation to Determine if Central Maine Power Company and Its Parent Companies Are Making Excessive Returns on Investments*, Docket No. 2018-00123, Order Dismissing Complaint in Part and Granting Complaint in Part at 3 (July 24, 2018). The Commission found that CMP's return on equity for both 2016 and 2017 were significantly higher than the 9.45% ROE used to set rates in CMP's most recently completed rate case.⁵ *Id.* Thus, the Commission decided to examine the justness and reasonableness of CMP's rates as part of a full review of CMP's revenue

⁴ All rate-design-related procedures are detailed in the Commission's Order (Rate Design) in this docket.

⁵ *Central Maine Power Co., Request for New Alternative Rate Plan ("ARP 2014")*, Docket No. 2013-00168, Order Approving Stipulation (Aug. 25, 2014).

requirement. *Id.* The Commission directed CMP to submit a general rate case by October 15, 2018. *Id.*; see also MPUC Rules, ch. 120 (laying out requirements for general-rate-case filings).

The Hearing Examiner issued a schedule under which the case would be decided by August 2019. Oct. 4, 2018 Procedural Order (Scheduling).

2. October 2018–January 2019: Initial Processing of Rate Case

CMP filed its direct case by the deadline. Written discovery and technical conferences followed in November and December 2018.

In early January, the OPA sought several additional weeks to conduct discovery on CMP's new capital additions and to prepare and submit testimony on the subject. The Examiners approved an agreement of the OPA and CMP to allow for this process, thus suspending the entire schedule. Jan. 11, 2019 Procedural Order at 2.

3. January 2019: Decision to Consider Customer-Service Issues in This Docket

In late October 2017, Central Maine Power Company (CMP or the Company) went “live,” or operational, with its new customer billing program, known as SmartCare. This coincided with an extraordinary windstorm, which created the largest power outage in the Company's history. See *Public Utilities Commission, Investigation into the Response by Public Utilities to the October 2017 Storm*, Docket No. 2017-00324, Order at 11 (Oct. 4, 2018). Two months later, on January 1, 2018, the standard-offer electric-supply price increased by 18% for CMP's residential customers. *Commission-Initiated Standard Offer Bidding Procedure for CMP and Emera Maine-BHD Small, Medium, and Large Non-Residential*, Docket No. 2017-00184, Order Designating Standard Offer Providers and Directing Utility to Enter [Int] Entitlements Agreement (Nov. 8, 2017). Also in late December and early January 2018, CMP's service territory experienced approximately two weeks of record-breaking low temperatures and, consequently, record-high electricity usage among customers. Sales Dir.⁶ at 3–5; Tr. at 170 (Dec. 3, 2018 Tech. Conf.). By early 2018, the CASD had received approximately 380 complaints from CMP customers, most of which related to high bills and possible billing errors. A number of these customers also reported difficulty in reaching, or a complete inability to reach, someone at CMP to discuss their billing issues.

Due to customers' complaints about service and possible bill errors, the Commission opened a summary investigation of CMP's metering, billing, and customer communication issues. *Public Utilities Commission, Investigation of Central Maine Power Co. Metering, Billing and Customer Communication Issues*, Docket No. 2018-00052, Notice of Investigation (Mar. 1, 2018). Shortly thereafter, the Commission engaged The Liberty Consulting Group (Liberty) to audit these issues.

⁶ Sales Dir. refers to CMP's Direct Testimony of Michael Purtell and John Hastings on Sales and Customer Forecast, filed October 15, 2018.

Docket No. 2018-00052, Order Initiating Audit (Mar. 22, 2018); see also 35-A M.R.S. § 113. On December 20, 2018, Liberty issued its final report on all aspects of the audit.⁷ This became known as the Liberty Report.

Following the release of the Liberty Report, the Commission opened a full investigation into CMP's metering, billing, and customer-communication issues. The Commission decided that metering and billing issues would be addressed in a separate metering and billing investigation (Docket No. 2019-00015), and customer-service-related issues would be addressed in this docket. In bifurcating the investigation in this way, the Commission stated:

In reaching the conclusion that the billing and metering investigation should be conducted as part of a separate adjudicatory proceeding while the *investigation of the customer service and communication investigation be consolidated into the rate case*, the Commission finds that the billing and metering issues and the customer service issues are distinct enough to have the follow-up investigations of these issues performed on separate tracks. The one area where there may be some overlap is the issue of bill errors or "exceptions." This overlap area can be resolved by including bill error[s] or exception[s] that actually involved wrong or erroneous bills being issued to customers in the separate metering and billing investigation. *Billing error issues involving customer service, communication, and delays in billing customers can be addressed in the rate case.*

Jan. 14, 2019 Order and Notice of Investigation at 9–10 (emphases added).

4. January–September 2019: Continued Processing of This Case

After the Commission opened its investigation with the January 14 order, the processing of the case continued, with the schedule modified to accommodate the incorporation of the customer-service issues. In February and April 2019, the OPA and Intervenor Dot Kelly filed testimony and the Staff issued its Bench Analysis. These were subject to written discovery and technical conferences. The parties submitted rebuttal testimony in April, followed by discovery through May. In June, the OPA and CMP submitted surrebuttal testimony and the Staff submitted its Reply Bench Analysis; these, too, were followed by discovery. Three days of evidentiary hearings were held in late July. The parties submitted their briefs and reply briefs in September.

The processing of CMP's market study on affiliate-service costs was conducted on a parallel track. This track addressed whether the costs CMP incurs for services it receives from affiliates are similar to what it would incur in the market. Four scoping sessions were held from December 2018 to April 2019 to discuss the nature of the market study. CMP filed its market study, the Commission Staff submitted the review of

⁷ The Commission filed the Liberty Report (which is formally titled Final Report – Forensic Audit of CMP's Metering and Billing Systems) in this docket on February 22, 2019.

its consultant on the issue (The Liberty Consulting Group), and CMP filed a response to Liberty's review. All of the filings were subject to discovery. The parties determined that no hearing was necessary on the market study. The OPA and CMP filed their briefs on this subject in November 2019.

5. August 2019: Decision to Grant the OPA's Motion to Stay This Proceeding

In July 2019, the OPA filed a motion to stay the rate case, arguing that a decision in the rate case should not be made before a decision in the metering and billing investigation in Docket No. 2019-00015. NRCM and CMP Ratepayers Unite supported the stay. CMP did not directly oppose the OPA's motion but argued that, if the Commission were to grant the stay, the Commission should approve a deferral mechanism to allow CMP to recover the cost of the lag between the granting of the stay and the actual date of the rate change—in other words, to recover the revenues CMP lost by not having rates go into effect sooner. CMP also requested that any stay should not affect the implementation and tracking of service-quality metrics or other determinations, such as the storm-cost recovery mechanism, that would otherwise be effective October 1, 2019. The Commission granted the OPA's motion for a stay without granting CMP's requests, deciding instead that those would be addressed at a later time. Aug. 7, 2019 Order on Motion for Stay at 3.

6. July 2019: Public Witness Hearings

The Commission conducted three public-witness hearings in this case (in conjunction with the metering-and-billing investigation, Docket No. 2019-00015). The first was held at the University of Southern Maine in Portland on July 16, 2019 (where 31 people provided testimony); the second was held at the University of Farmington on July 18, 2019 (where 15 people provided testimony); and the third was held at the Commission's offices in Hallowell on July 22, 2019 (where 32 people provided testimony). The Commission also accepted affidavits from public witnesses who could not attend one of the hearings, provided the affidavits: (1) were truthful, sworn, and notarized; (2) explained why the individual was unable to attend any of the public-witness hearings; (3) provided testimony on the matters before the Commission in these dockets; and (4) were, no later than Monday, July 22, 2019, either received by the Commission or postmarked and sent to the Commission. Once received, the Commission Staff reviewed the affidavits both to determine whether they met the four conditions and to redact customer-specific information and graphs of usage history from them. Twenty-three affidavits were determined to be admissible and uploaded into the case file.

7. January 2020: Examiners' Report and Exceptions

On January 9, 2020, the Staff issued its Examiners' Report. There, the Examiners recommended approval of a distribution revenue requirement of \$273.622 million per year, an increase of \$20.456 million, or 8.1%, over the current annual distribution revenue requirement, for effect March 1, 2020. That revenue

requirement included a proposed reduction to the Company's return on common equity of 75 basis points, equivalent to a \$4.9 million reduction to CMP's annual distribution revenues, to reflect CMP's substandard customer service. The Examiners recommended that the downward adjustment be tied to a set of customer-service-quality metrics, and that both the metrics and the downward adjustment would remain in effect over at least 12 consecutive months.

On January 23, 2020, the OPA, CMP, and the Solar Energy Association of Maine filed exceptions to the Examiners' Report. Their exceptions are addressed below where relevant.

The Commission deliberated this matter on January 30, 2020.

B. General Overview of Positions in the Case

1. Central Maine Power Company

In its direct case, the Company alleged that, rather than overearning (as the Commission indicated in its order on the 10-person complaint that led to this investigation),⁸ using a July 1, 2017 through June 30, 2018 test year, the Company was underearning. The Company argued that, for a rate-effective year beginning July 1, 2019, it needed a rate increase of \$22.9 million.

The Company stated, however, that it was sensitive to the effect of rate increases to customers and, therefore, proposed to fully mitigate its rate increase by accelerating the amortization of the Company's unprotected excess accumulated deferred income tax (ADIT) liability created as a result of the Tax Cost and Jobs Act of 2017 (TCJA) in the rate-effective year. Policy Dir.⁹ at 8. For later years, the Company recommended mitigation of the increase by continuing the accelerated amortization of the excess ADIT regulatory liability in combination with an acceleration of the cost-of-removal liability, which was then on the Company's books at \$46.6 million with an amortization recovery schedule of 33.6 years. Policy Dir. at 13–16.

The revenue-requirement deficiency the Company identified was, in reality, significantly worse. The deficiency assumed that revenues were based on then-current rate levels, which include several one-time adjustments, such as recovery of the October 2017 storm expense, that the Commission approved in *Central Maine Power Co., Annual Compliance Filing*, Docket No. 2018-00069, Order Approving Stipulation (June 29, 2018), and that were scheduled to be removed from rates on July 1, 2019.

⁸ See *Herbert C. Adams et al., 10-person Complaint Requesting Investigation to Determine if Central Maine Power Company and Its Parent Companies Are Making Excessive Returns on Investments*, Docket No. 2018-00123, Order Dismissing Complaint in Part and Granting Complaint in Part at 3 (July 24, 2018).

⁹ Policy Dir. (or Pol. Dir.) refers to CMP's Direct Testimony of Eric Stinneford and Steve Adams on Policy, filed October 15, 2018.

When these one-time adjustments were removed,¹⁰ the Company's proposed deficiency increased to \$36.6 million. ODR-002-002.

In its rebuttal, the Company increased its proposed revenue requirement of \$22.9 million by another \$12.7 million, resulting in a total proposed revenue requirement of \$35.6 million. The rebuttal case included updated vegetation-management and storm costs, an adjustment to the rate year from July 1, 2019 to October 1, 2019, additional electric operations positions, and other miscellaneous updates.

Once again, the Company's revenue-requirement increase assumed that the one-time adjustments that ordinarily would come out of rates in its Annual Compliance Filing would remain even after the costs associated with those items were recovered. Removing those items from rates, the Company's distribution rate increase would grow to \$49.55 million, equivalent to a rate increase of about 19%. EXM-011-004.

The Company ultimately requested a revenue requirement increase of \$44.737 million.¹¹ CMP Br. at 3. Given the size of its proposed increase, the Company argued that some rate mitigation would be necessary. The Company did not propose a specific mitigation mechanism in its rebuttal, but did propose that any residential rate increase in this case be limited to the rate of inflation, which it estimated to be 2.21% in 2019.

The Company calculated its revenue requirement using a return on equity (ROE) of 10.00%. The Company's witness, Ms. Ann Bulkley, developed a cost of equity in the range of 10.0% to 10.5%. The Company computed a pre-tax weighted-average cost of capital (WACC) of 9.62% and an after-tax WACC of 7.48% using a capital structure of 55% common equity, 42.15% long-term debt, 2.82% short-term debt, and 0.02% preferred stock.

The Company opposed any downward adjustment to its authorized ROE for management efficiency, which the Staff proposed in this case. However, recognizing its shortcomings in customer service, CMP proposed a \$6 million customer-benefit fund to be disposed of at the Commission's discretion. ODR-020-007. According to CMP, the customer-benefit fund would be straightforward, would provide an incentive for the Company to provide high-quality customer service, and would provide a targeted remedy to customers harmed by the implementation of SmartCare and substandard customer service. CMP Br. at 89–90.

¹⁰ The Commission approved removing those amounts in *Central Maine Power Company, Request for Approval of Annual Compliance Filing*, Docket No. 2019-00049, Order Approving Stipulation at 4 (June 25, 2019). This and other changes reduced CMP's distribution revenues by 8.7%. *Id.* at 1.

¹¹ The revenue-requirement model the Company filed on December 20, 2019 showed a total required price change of \$44.781 million. CMP Compliance Filing – Revenue Requirement Model – RRP-2 at “1 Inputs” tab, line 17.

The Company also proposed organizational changes to improve its customer service, and establishment of an energy-audit pilot program with the Efficiency Maine Trust (Trust) to assist customers with unresolved high-usage disputes. CMP Br. at 8. Under the pilot program, a limited number of residential customers would be referred to the Trust for an independent expert to conduct an in-home observation of the customer's electricity consumption and offer recommendations for possible energy-saving programs and products. ODR-020-007.

In its rebuttal, CMP acknowledged that its customer service following the implementation of SmartCare was not up to its standards. Cust. Serv. Reb. at 3. The Company attributed this poor performance to a combination of extraordinary circumstances that occurred at or shortly after the time SmartCare went live on October 30, 2017. These circumstances included the largest outage in Company history from a storm beginning on October 29, 2017, extreme cold temperatures over the 2017–2018 winter, an 18% increase in the standard-offer electricity-supply price beginning on January 1, 2018, and frequent and intense media coverage.

The Company agreed with adopting service-quality metrics for its customer service going forward. The metrics CMP proposed generally aligned with those proposed by Staff, including: 80% of business calls answered within 30 seconds, 7% call-abandonment rate, 0.4% bill-error rate, and no more than 1% of bills based on estimated meter reads. The Company's proposed calculation of the metrics differed somewhat from Staff's, however. CMP Br. at 96–99.

2. Office of the Public Advocate

The OPA argued that CMP has overstated its revenue requirement. The OPA's witnesses recommended several changes to both rate base and expenses to reduce the Company's revenue requirement. In surrebuttal, the OPA's revenue-requirement witness, Mr. Morgan, advocated for a total increase of \$19.748 million. Morgan Dir.¹² at 2. The OPA urged the Commission to adopt the Staff's position on revenue-requirement issues not specifically addressed by its witnesses.

Dr. Griffing, the OPA's cost-of-capital witness, recommended an ROE of 9.18% in his surrebuttal based on his updated analysis of a proxy group and market conditions. He accepted the Company's proposed capital structure. The OPA observed that both its witness and Staff decreased their initial ROE recommendations after updating for more current market conditions.

The OPA supported a downward adjustment to the Company's allowed ROE due to CMP's customer-service failures. According to the OPA, "the imposition of the ROE adjustment is the surest way to send a signal to CMP, its parent organizations and their shareholders that things have gone terribly wrong at CMP." OPA Br. at 56. The OPA rejected the Company's proposal to establish a customer-benefit fund rather than

¹² Morgan Dir. refers to the Direct Testimony of the OPA's witness Lafayette Morgan on Revenue Requirement, filed February 22, 2019.

impose an adjustment to its ROE. According to the OPA, if a customer-benefit fund were established instead of an ROE reduction, the Company would not take a “hit” to its bottom line and the monetary payment could easily become a cost of doing business rather than an incentive for the Company to improve customer service. OPA Br. at 56.

The OPA also supported holding CMP to service-quality metrics, and agreed with Staff that the Company should remain subject to them (and the ROE adjustment) until it meets all four metrics for at least one year.

The OPA cautioned against rate mitigation. Witness Mr. Morgan stated that using regulatory liabilities to reduce rates now would only put off the effect of the change in rates and could lead to a sharp increase in rates when all mitigation is exhausted. Mr. Morgan suggested, however, that the Excess ADIT balance resulting from the TCJA could be considered if the amount of any allowed increase appeared to require moderation.

3. Commission Staff

In its Bench Analysis, Staff proposed a total revenue requirement between \$262.645 million and \$264.262 million, which represented a revenue decrease of between -0.74% and -1.35% from projected rate-year revenue levels (including one-time adjustments slated to be removed on July 1, 2019). BA¹³ at 120–21. The proposed revenue requirement included several adjustments to rate base and expenses included in the Company’s direct case. Staff proposed more changes to the revenue requirement in its Reply Bench Analysis in response to the Company’s rebuttal. Though Staff did not propose a specific revenue requirement in its Reply Bench Analysis, CMP calculated Staff’s proposed increase to the revenue requirement to be \$13.1 million, far lower than CMP’s \$46.6 million. CMP Hr’g Exh. 19. Ultimately, in the Examiners’ Report, the Staff recommended an increase in the revenue requirement of \$20.456 million. ER¹⁴ at 1.

In the Bench Analysis, Staff recommended a base ROE of 9.35% and a capital structure that included 50% common equity. BA at 63. This produced a pre-tax WACC of 8.70% and a post-tax WACC of 8.87%. In the Reply Bench Analysis, with updates for then-current market data, Staff recommended a base ROE of 8.75% and a pre-tax WACC of 8.28%. RBA¹⁵ at 62. Ultimately, in the Examiners’ Report, the Staff recommended a base ROE of 9.25%, which resulted in a pre-tax WACC of 8.60%. ER at 123, 127, 130 Fig. 18.

Staff also advocated, in both the Bench Analysis and Reply Bench Analysis, that a downward adjustment of 75–100 basis points to the base ROE was appropriate due to the Company’s “persistent and substantial” failure to provide adequate service to its customers. Staff recommended that the adjustment remain in place until the Company

¹³ BA refers to the Staff’s Bench Analysis, filed February 22, 2019.

¹⁴ ER refers to the Examiners’ Report, which issued January 9, 2020.

¹⁵ RBA refers to the Staff’s Reply Bench Analysis, filed June 17, 2019.

demonstrates that its customer service has returned to reasonable levels. BA at 94; see also RBA at 14. Staff estimated that this level of downward adjustment would lower the Company's revenue requirement by \$4.849 million to \$6.466 million annually. In making this recommendation, Staff noted that "setting the ROE at the lower end of [the range of reasonableness] allows the Company to attract capital but at the same time holds shareholders accountable for management's lack of efficiency." BA at 94 (citing *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2015-00360, Order – Part II at 84 (Dec. 22, 2016)). Ultimately, in the Examiners' Report the Staff recommended a downward adjustment of 75 basis points, which equated to a \$4.9 million reduction in the annual revenue requirement (as reflected in the recommended \$20.456 million revenue-requirement increase). ER at 1.

To measure the adequacy of the Company's customer service, Staff proposed a number of service-quality metrics, including: 80% of calls answered in 30 seconds, call-abandonment rate not to exceed 7%, and erroneous bills not to exceed 0.4% of all bills. BA at 95–96. Staff also requested that the Company include in its rebuttal a proposal for tracking customers' requests for field-service appointments. In the Reply Bench Analysis, Staff updated and clarified the calculation of the proposed metrics. See RBA at 20–33. Staff recommended that all service-quality metrics be met for a period of at least 12 months before the Company may seek or obtain relief from the ROE adjustment. In making this recommendation, Staff observed that the ROE adjustment reflects poor customer service that needs to be addressed comprehensively rather than piecemeal. RBA at 33. The Examiners' Report also reflected these metrics and the 12-month period. ER at 1, App. B.

In the Bench Analysis and Reply Bench Analysis, Staff did not make a specific proposal on rate mitigation, but observed that the adjustments it has proposed to CMP's revenue requirement could make mitigation unnecessary. Staff stated that any decision on mitigation should consider the potential impact on both current and future rates. BA at 120. In the Reply Bench Analysis, Staff continued to be wary of whether, depending on the ultimate increase to revenue requirement determined in this case, mitigation could be implemented without imposing a significant burden on future ratepayers. RBA at 5–6. Staff also expressed concern that mitigation would tend to mask the real effect of the rate change and the true cost of the Company's proposals. Ultimately, in the Examiners' Report the Staff recommended rejecting any rate mitigation. ER at 201–03.

4. Other Parties

Aside from the OPA and CMP, no other party filed a post-hearing brief in this case. Through prefilled testimony and cross-examination or discovery of CMP, Intervenor CMP Ratepayers Unite (via its Designated Representatives) challenged various aspects of CMP's customer service and alleged mistakes in customers' bills. Through cross-examination, Intervenor Dot Kelly challenged some aspects of CMP's affiliate-services market-study analysis.

IV. THE COMMISSION'S STATUTORY AND CONSTITUTIONAL DUTIES

The law governing the state's public utilities exists "to ensure that there is a regulatory system for public utilities that is consistent with the public interest . . ." Its basic purpose "is to ensure safe, reasonable and adequate service, to assist in minimizing the cost of energy . . .," and to ensure that rates "are just and reasonable to customers and public utilities."¹⁶

The Commission is the economic regulator of the state's utilities. As the regulator, a primary tool at the Commission's disposal is its authority to set the rates that customers must pay for their utility service. The Commission's duty to set utility rates has many facets. Ratemaking is a complex technical exercise. It requires a detailed evaluation of, among other things, a utility's income-tax obligations, the depreciation of its utility plant, the amount of plant used and useful in serving the public, and basic operating expenses from payroll and benefits to vegetation management and property taxes. Ratemaking also involves taking a practical look at the adequacy of the utility's service and how well or efficiently its management is meeting its customers' needs, and responding accordingly.

A. The Fundamentals of the Commission's Ratemaking Authority

Through its rate-setting authority, the Commission determines the expenses the utility may recover, the amount of capital investment on which the utility may earn a return (the rate base),¹⁷ and the rate of return the Company is entitled to earn on that rate base, all while considering the efficiency of its management.¹⁸ At a simple level, the combination of these things—recovery of operating expenses plus return on rate base—comprise the utility's revenue requirement.¹⁹ The rate of return is not guaranteed; instead, the rate of return is set at an allowed amount that an efficiently run utility should be able to earn.

The U.S. Constitution sets crucial parameters for the Commission's ratemaking authority. Failure to give the utility an adequate revenue requirement would violate the Constitution as a taking without just compensation; in other words, the rates the

¹⁶ 35-A M.R.S. § 101 (2010).

¹⁷ Rate base is the value of a utility's investment on which it is allowed to earn a return. *Am. Ass'n of Retired Persons v. Pub. Utils. Comm'n*, 678 A.2d 1025, 1027 n.3 (Me. 1996). It is established by fixing a reasonable value on all property (also known as plant) of the utility that is used or required to be used in its service to the public. *Id.*; see also 35-A M.R.S. § 303 (Pamph. 2018).

¹⁸ See 35-A M.R.S. § 301(4) (2010) (requiring that the Commission approve the revenue requirement the utility needs to serve customers and to attract capital (i.e., debt and equity) on reasonable terms and, in doing so, "consider whether the utility is operating as efficiently as possible and is utilizing sound management practices . . .").

¹⁹ *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 455 A.2d 34, 38 (Me. 1983).

Commission approves “must not be so low as to constitute an unconstitutional confiscation of private property.”²⁰

The Commission’s findings of fact supporting its decision on the revenue requirement must be supported by substantial evidence in the record.²¹

B. Just and Reasonable Rates

In setting rates, the utility “is entitled to only those rates [that] are ‘just and reasonable’ under the circumstances.”²² Whether rates are just and reasonable depends on the quality of the service the utility is providing—that is, whether it is safe, adequate, and reliable.²³ In calling for “adequate” service, the law does not require perfection from a utility, nor that every customer be happy with the utility’s service.²⁴

A crucial objective in rate-setting is “to achieve a proper balance between the right of the utility’s investors’ to earn a fair return on their investment and the right of ratepayers to a fair charge based on the value of the services provided by the utility.”²⁵ In striking this balance, the Commission must weigh the competing public interests “in low utility costs” and in the “utility’s continued operations.”²⁶

²⁰ *New England Tel. Tel. Co. v. Pub. Utils. Comm’n*, 390 A.2d 8, 30–31 (Me. 1978) (citing *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n*, 262 U.S. 679, 692–93 (1923) and *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)); U.S. Const. amend. V (“[N]or shall private property be taken for public use, without just compensation.”) (incorporated to states in *Chicago, Burlington & Quincy RR Co. v. City of Chicago*, 166 U.S. 226, 233–34 (1897) and by application of due process clause, U.S. Const. amend. XIV).

²¹ *Cent. Me. Power Co. v. Pub. Utils. Comm’n*, 150 Me. 257, 260, 109 A.2d 512, 513 (1954) (“[T]he basic question before us is whether or not the Commission has fixed reasonable and just rates, supported by substantial evidence, which will produce a fair return upon the reasonable value of the property of the Company used or required to be used in its service to the public within the state.”).

²² *New England Tel. Tel. Co. v. Pub. Utils. Comm’n*, 390 A.2d 8, 30 (Me. 1978); 35-A M.R.S. § 301(3) (2010).

²³ See 35-A M.R.S. § 301(1) (2010).

²⁴ See *Hogan v. Hampden Tel. Co.*, F.C. 2438, 36 P.U.R.4th 480, 485 (Me. P.U.C. May 16, 1988).

²⁵ *New England Tel. & Tel. Co. v. Pub. Utils. Comm’n*, 448 A.2d 272, 288 (Me. 1982); *Am. Ass’n of Retired Persons v. Pub. Utils. Comm’n*, 678 A.2d 1025, 1030–31 (Me. 1996); *Cent. Me. Power Co. v. Pub. Utils. Comm’n*, 150 Me. 257, 278, 109 A.2d 512, 522 (1954) (“[T]he Commission must strike a nice balance between the essential revenue needs of the Company and the value of the service to the rate payer and his ability to pay.”).

²⁶ *Camden & Rockland Water Co. v. Pub. Utils. Comm’n*, 432 A.2d 1284, 1286 (Me. 1981); see also *Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (“The rate-making process . . . , i.e., the fixing of ‘just and reasonable’ rates, involves a balancing of the investor

C. The Prudence Standard

A central question in setting CMP's revenue requirement and rates in this case is whether CMP has acted prudently in its customer-service (and other) functions and, if it has not, what is the proper remedy for that failure. The law of prudence governs the Commission's regulation of the state's utilities. The Commission first gave clear guidance on the prudence standard in Maine in a 1985 decision known as *Seabrook*.²⁷ In *Seabrook*, the Commission defined prudence as the "course of conduct that a capably managed utility would have followed in light of existing and reasonably knowable circumstances."²⁸ The foundation of the prudence standard is the Commission's statutory duty to establish just and reasonable rates. In examining prudence, the Commission must consider whether a utility is operating as efficiently as possible and using sound management practices.²⁹

In *Seabrook*, the Commission laid out the following factors to consider in determining whether the utility has acted prudently:

1. Senior utility executives are expected to possess a high degree of financial and technical expertise.
2. While the prevailing practice of the utility industry is relevant, it is not determinative. The decisions of utility executives must also be reasonable when viewed against the decisions and courses of conduct of other corporations that make investment decisions of a comparable size and complexity. . . .
3. The size and nature of the undertaking being reviewed must also be considered. . . .
4. Review of utility decisions should consider the utility's legal obligation to provide . . . safe, reasonable and adequate service at the lowest possible cost over time throughout its service territory and to operate "as efficiently as possible" using "sound management practices." 35-A M.R.S. § 51 [now section 301 of Title 35-A]. A utility is not free to tailor its decisions to profit maximization to the degree than an unregulated company would. . . .

and the consumer interests.") (*quoted in New England Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 390 A.2d 8, 14 (Me. 1978).

²⁷ *Public Utilities Commission, Investigation of Seabrook Involvements by Maine Utilities*, Docket No. 84-113 (Phase II) Order (May 28, 1985) ("Seabrook").

²⁸ *Id.* at 12.

²⁹ 35-A M.R.S. § 301(2), (4); *Maine Public Utilities Commission, Investigation into the Annual Reconciliation of CMP's Stranded Cost Revenue Requirements and Costs*, Docket No. 2006-200, Order at 9 (Mar. 24, 2008).

5. A review of prudence requires an examination not only of the initial investment decision but also of the continuing action of the utilit[y] in response to changing circumstances.
6. If a utility has selected from among several reasonable courses of action[,] one [of] which turns out badly, the utility's decision was not imprudent.
7. The utility's course of conduct must be reviewed in light of existing facts and circumstances that either were known or knowable through an effort consistent with the size of the risk at the time decisions were made . . . [and] cannot be defined by hindsight.³⁰

If the Commission finds imprudence, it must determine whether the imprudent action harmed ratepayers. If it did, then the injury or damage from that action must be quantified.³¹

D. The Evidentiary Burden

As "the party adverse to the [C]ommission," CMP bears the general burden of proof in this case, including on the question of prudence.³² "[I]n the absence of a showing of inefficiency or improvidence," the Commission will not substitute its judgment for that of utility managers.³³ Yet there is no presumption of prudence when the issue arises in a proceeding.³⁴ Once a party or the Commission Staff has raised the issue of inefficiency or imprudence "in a sufficiently specific way," the party or Staff has met its burden of production, and the burden then shifts back to the utility to demonstrate that its actions were prudent.³⁵

³⁰ *Seabrook*, *supra* note 27, at 12.

³¹ *Id.* at 13–14.

³² 35-A M.R.S. § 1314(1), (2).

³³ *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 153 Me. 228, 243 (1957); see also *Seabrook*, *supra* note 27, at 9.

³⁴ *Central Maine Power Company, Application for Fuel Cost Adjustment Pursuant to Chapter 34 and Establishment of Short-Term Energy Only Rates for Small Power Producers Less Than 1 MW Pursuant to Chapter 36 (Investigation of QF Contracts)*, Docket No. 92-102, Order at 12 (Oct. 28, 1993) (rejecting the argument that a presumption of prudence exists, and clarifying that only "[i]n the absence of *any* challenge [will] the utility's actions . . . be presumed to be reasonable" (emphasis in original)).

³⁵ *Central Maine Power Co., Annual Price Change Pursuant to Alternative Rate Plan (ARP 2008)*, Docket No. 2011-77, Order at 19 (July 27, 2012); *Central Maine Power Company, Application for Fuel Cost Adjustment Pursuant to Chapter 34 and Establishment of Short-Term Energy Only Rates for Small Power Producers Less Than 1 MW Pursuant to Chapter 36 (Investigation of QF Contracts)*, Docket No. 92-102, Order at 13 (Oct. 28, 1993).

Before discussing prudence, however, the Commission will address the issue of timing—that is, when new rates will go into effect, given the stay the Commission granted in August—and the undisputed issues in the case.

V. THE STAY AND THE RATE-EFFECTIVE YEAR

This case has been stayed since August 7, 2019, when the Commission granted the OPA’s motion requesting that no change in rates be approved before the metering and billing investigation in Docket No. 2019-00015 was completed. Aug. 7, 2019 Order on Motion for Stay. The Commission agreed with the OPA on that question of timing. Because the Commission’s decision in Docket No. 2019-00015 is now rendered,³⁶ though, the Commission hereby formally lifts the stay in Docket No. 2018-00194.

A new question of timing is now before the Commission: when CMP’s new rates will go into effect, and, as a consequence, whether CMP will be allowed to recover the cost of the revenues it lost by not having a decision in the rate case any sooner than now.

When CMP originally filed its request for a rate increase, the case was expected to be completed by July 2019. Delays from a discovery request of the Office of the Public Advocate early in the case pushed the expected completion to October 2019. In July, the OPA asked for the case to be stayed; in August, the Commission granted that request, leaving the end-date of the case somewhat uncertain, but delaying the resolution by at least another three months. In its decision granting the stay, the Commission did not decide on CMP’s requests to defer the revenues lost from delaying the start of the rate-effective year until a date after October 1, 2019.

A. Positions of the Parties

1. Central Maine Power Company

CMP requested that (a) it be permitted to defer its lost revenues with carrying costs from October 1, 2019 to the actual implementation date of any price change as a result of the stay and (b) the stay should not affect the implementation and tracking of service-quality metrics or other revenue-requirement determinations, such as the storm-cost recovery mechanism, that would otherwise have been effective on October 1, 2019. CMP Br. at 16.

CMP explained that the first delay in the expected rate-effective date (from July 2019 to October 2019) increased its revenue requirement by \$2.9 million due to inflation-related increases in its O&M expenses and additional expected plant additions in rate base. CMP Br. at 16. Unless CMP is made whole, the second delay (from

³⁶ The Commission has deliberated the outcome of that case, though the formal written order is forthcoming.

October 1, 2019 to some future date) “will have a material, negative effect on CMP’s financial condition” CMP Br. at 16.

According to CMP, that financial harm has several sources. First, delayed implementation of rates will cause CMP to lose the difference between its current distribution rates and the rates the Commission ultimately approves. CMP Br. at 17. A delay of three months (that is, to January 1, 2020) would mean millions in lost revenues to CMP—anywhere from \$3.29 million (using Staff’s proposed revenue requirement) to \$11.18 million (using CMP’s proposed revenue requirement) (or \$9.6 million, using the OPA’s proposed revenue requirement). CMP Br. at 17.

Second, a delay in the rate year means that CMP’s revenue requirement is understated because it is based on costs as of October 1, 2019—and three (or more) additional months would add millions to the revenue requirement through inflation factors applied to O&M expenses and new plant added to CMP’s rate base. To mitigate this, CMP “requests that the Commission increase its revenue requirement by [\$2.9 million] and permit CMP to defer its lost revenues with carrying costs from October 1, 2019 to the” rate-effective date. CMP Br. at 17.

Third, CMP argues that the delay in the rate-effective year will harm CMP if it is used to delay the start of the 12-month period over which service-quality indices will be measured. CMP Br. at 18. (The service-quality indices are discussed below in Section VIII.H.2.) This means that the date on which CMP may seek relief from the Staff’s proposed management-efficiency adjustment (the downward adjustment in ROE of 75 to 100 basis points) would be later in time. (The downward adjustment is discussed below in Section VIII.H.1.) CMP asks that the Commission avoid this and “set the effective date for these metrics as October 1, 2019.” CMP Br. at 18.

2. Office of the Public Advocate

The OPA urged the Commission to reject CMP’s argument for starting the rate year on October 1, 2019. OPA Reply Br. at 4. The OPA reasons from CMP’s testimony that, had the Commission not compelled CMP to file a rate case in October 2018, CMP would not have filed a case on its own until sometime in 2019—and thus CMP would have been operating under its existing rates at least until late 2019. OPA Reply Br. at 3. For this reason, the OPA appears to find CMP’s arguments about financial harm for the delay in the rate year to be not credible.

The OPA also urged the Commission to have the 12-month period over which SQI will be measured begin on the date of its order. OPA Reply Br. at 10. The OPA reasoned that “CMP will not be prejudiced by starting the SQI clock at the same time that the adjustment to its ROE goes into effect. It should not get the advantage of two months, or more, depending on when the Commission issues its final order in this case, of SQI measurement without the effect of the ROE adjustment.” OPA Reply Br. at 11.

B. Discussion and Decision

By requesting a deferral for the revenues CMP claims to have lost in the delayed start to the rate year, CMP is effectively asking the Commission to grant it a rate increase effective October 1, 2019. For several reasons, we deny this request.

First, to grant CMP's request would be akin to permitting rates to go into effect retroactively. The Commission agrees with the OPA that CMP is not entitled to recover any revenues it may have "lost" through the delay in the start of the rate year. Granting the request would violate the Commission's general prohibition on retroactive ratemaking.

Second, to grant CMP's request would be contrary to the stay the Commission granted. When it granted the stay, the Commission determined that it needed to consider the complete picture of the metering and billing investigation in Docket No. 2019-00015 before deciding on CMP's rate request. But allowing CMP's rates to go into effect retroactively would be inherently contrary to the decision to grant the stay.

Third, we agree with the OPA that the management-efficiency adjustment is tied to the service-quality metrics; under this order, the adjustment will remain in place until the respective service-quality benchmarks have been met over a rolling period of 18 months. If the metrics are already being measured, even before our order issues, then the import of the management-efficiency adjustment erodes. Given our findings on customer service (described below in Section VIII), the Commission refuses to alleviate the burden on CMP to prove that it can deliver reasonable and adequate customer service.

It is important to put these decisions on timing in the context of the peculiarities of this case. Typically, rate cases are initiated by the utility, and those cases run on nine-month clocks. 35-A M.R.S. § 310. Here, the rate case was initiated by the Commission, in an investigatory function that has no clock. In general, there is good reason for rate cases to have statutory deadlines. For one, the passage of time leads to increases in costs, and without a deadline, a rate case could go on interminably while those costs accumulate and need to be recovered. The public interest would not be served by long delays in such decisions.

But generalities have their exceptions, and the circumstances here were unique. While the public interest is clearly served by a timely resolution to a case such as this, the breadth and complexity in issues that required investigation demanded more time. This additional time allowed for completion of Liberty's forensic audit, for completion of the Commission's metering and billing investigation, and for three public-witness hearings to give customers a voice and the Commission an opportunity to understand customers' recent experiences with CMP.

The Commission adopts a rate-effective date of March 1, 2020, because, as explained above, an effective date any earlier (a) would violate the prohibition on retroactive ratemaking, (b) would be contrary to our decision granting the OPA's motion

for stay, and (c) as a matter of precedent would not serve the public's interest in reasonably thorough investigations of utilities' management, practices, and service.

VI. ISSUES NOT IN DISPUTE

Before reaching the disputed issues in the case, the Commission addresses several aspects of CMP's revenue requirement on which there is no dispute. As this case has gone forward, several issues presented in the Company's initial filing were never disputed or, if disputed, the parties ultimately reached an agreement on them. CMP laid out most of these areas of agreement in its brief, CMP Br. at 18–30, and they are summarized below. With one exception, the Commission accepts the agreements the parties and Staff have reached on these issues and, thus, adopts them as just and reasonable components of CMP's revenue requirement. The one exception is discussed in Section VI.F.1, below.

A. Sales and Customer Forecast

CMP's sales forecast supports the Company's estimated future revenues. CMP projected near-flat customer and sales growth from the historical test year to the rate-effective year. Among the reasons for this are extremely low population growth, an aging population, shrinking average household size, a shortage in the labor market, growth in behind-the-meter solar-photovoltaic generation, and energy-conservation programs. Sales Dir. at 7.

Following these trends, CMP's total electricity sales (measured in MWh) were projected to decrease by 0.8% from 2018 to 2019, and to decrease by another 0.3% from 2019 to 2020. Sales Dir. at 6. In its rebuttal, CMP adjusted its sales forecast for catching up with backlogs in setting up new customer accounts. Sales Reb.³⁷ at 1–2. With that adjustment, the test-year sales increased by 0.09% and the rate-effective-year sales increased by 0.29% as compared to the Company's direct case. Sales Reb. at 2–3.

The Staff and the OPA accepted CMP's forecast and no party has disputed it. The Commission thus accepts the forecast as reasonable.

B. Operations and Maintenance Expenses

There is also agreement on the following expense items.

1. Company Staffing Levels (Except for Electric Operations Staffing) and Compensation and Benefits Amounts

The Company, the OPA, and the Staff do not disagree on setting the customer-service headcount at 155 positions for purposes of calculating CMP's revenue requirement. Tr. at 119 (July 26, 2019 Hrg.). The headcount for other staffing levels are

³⁷ Sales Reb. refers to CMP's Rebuttal Testimony of Michael Purtell on Sales and Customer Forecast, filed April 12, 2019.

also not in dispute, except for the area of electric operations (which is addressed separately in Section VII.B.2).

In the Bench Analysis, the Staff proposed adjustments to the Company's calculation of the ratepayer and shareholder components of variable compensation,³⁸ which would result in more variable compensation being paid for by shareholders, and less by ratepayers. BA at 25–26 & App. A. In its rebuttal, CMP agreed with the Staff's adjustment. Rev. Req. Reb.³⁹ at 5. No party has taken issue with that adjustment to variable compensation (or with the other aspects of compensation or benefits for any of the positions).

2. Pension/OPEB Expenses (Except for ASC 715 Amortization and Recovery)

CMP's projected non-capitalized pension and other post-employment benefits (OPEB) reflect an O&M allocator of 69.71% and a delay in the start of the rate year from July 1, 2019 to October 1, 2019. No party disputes the projected benefits. There is a dispute, however, about the amortization and recovery of a shortfall of pension and OPEB expense due to CMP's adoption of Accounting Standards Codification (ASC) 715. That issue is discussed separately in Section VII.B.4.

3. Inflation Escalator

An inflation escalator is used to adjust CMP's cost and revenue projections where a forecast is not used. The parties and Staff do not dispute that this inflation escalator should be the average of the January 2019 inflation forecasts of the Congressional Budget Office and IHS Markit. See RBA at 78–79; Tr. at 35 (July 24, 2019 Hr'g). The resulting factors are: 2.27% for 2018, 2.22% for 2019, and 2.22% for 2020. CMP Br. at 22.

4. Medical Expenses

In 2019, CMP changed healthcare vendors to Anthem from Excellus. The resulting higher administrative expenses in the historical test year and the projected trend for the rate year resulted in an increase of \$314,000 in distribution expenses, which increases the revenue requirement by this amount. Rev. Req. Reb. at 8–9. No party took issue with this amount.

5. Allocation Factors, Including Capital/O&M Percentage

No party disputes CMP's distribution allocation factors, which are derived from CMP's 2018 FERC Form 1. (These allocation factors are used to allocate costs between transmission and distribution, the two main components of CMP's delivery

³⁸ Variable compensation is another term for bonus compensation.

³⁹ Rev. Req. Reb. refers to the Rebuttal Testimony of CMP's Revenue Requirement Panel (Eric Stinneford, Peter Cohen, and Kirk Pelletier), filed April 12, 2019.

service. The Commission regulates only distribution rates; the Federal Energy Regulatory Commission regulates transmission rates.) The distribution allocation factors are: customer, 50.78%; wage, 75.43%; plant, 42.46%; and O&M, 69.71%.⁴⁰ See RBA at 63–64; CMP Br. at 22–23.

6. 401(k) Expenses

The parties reached agreement on, or did not dispute, CMP’s projected rate-year expenses for the Company’s 401(k) plan. The 401(k) expense allocated to distribution is \$1.757 million. See Rev. Req. Reb. Exhs. 2 and 3 at page 37 of 71, column 1, rows B, C, and D; see also RBA at 52, 63–64; CMP Br. at 23.

7. Property Taxes – Growth Rate of Tax/Plant Ratio

Annual changes in property taxes for forecast plant-in-service balances are projected based on the annual growth in the tax-to-plant ratio. The average annual growth factor for CMP’s tax-to-plant ratio is 5.38%. Rev. Req. Dir.⁴¹ at 23; CMP Br. at 24. No party has taken issue with this.

8. Uncollectibles – Rate per Dollar of Revenue Requirement

Uncollectibles expense (or bad-debt expense) is the loss a utility experiences when amounts owed to the company are determined to be uncollectible from the customer. The uncollectibles factor—which is calculated based on CMP’s three-year average of uncollectibles expense—is multiplied by projected distribution revenues to estimate future uncollectibles expense. In this case, the uncollectibles factor is \$0.0081 per dollar of distribution revenue. Rev. Req. Dir. at 15; CMP Br. at 24. No party has taken issue with this calculation.⁴²

C. Vegetation Management

1. Overview

In its initial testimony, the Company proposed to continue both its five-year cycle trim program and its incidental, hot-spot pruning, and enhanced tree-trimming program on a somewhat expanded basis. CMP’s revenue requirement request was only slightly more than the \$20.3 million that was currently in rates. But at the time of its filing, the

⁴⁰ In the Bench Analysis, Staff included in the revenue requirement an increase to rate base of \$1.740 million to account for the increase in the portion of labor capitalized in the rate-effective year relative to the test year. No party commented on this adjustment during this proceeding. Neither the Staff nor any other party made any updates to the calculation of this adjustment, so the same adjustment amount is included in the revenue requirement approved here.

⁴¹ Rev. Req. Dir. refers to the Direct Testimony of CMP’s Revenue Requirement Panel (Eric Stinneford, Peter Cohen, and Kirk Pelletier), filed October 15, 2018.

⁴² It is worth noting that CMP’s accounts receivable have increased dramatically recently. See ODR-001-029.

Company had not yet selected a contractor to perform the vegetation-management services and had not finalized the amount for the cycle trim services or the details of its enhanced program.

In its rebuttal, CMP updated the pricing for its cycle trim and enhanced vegetation-management programs based on the Company's ongoing negotiations with its selected contractors. These costs are summarized in Figure 1, below.

Figure 1: Vegetation-Management Program Summary

[BEGIN CONFIDENTIAL]

Vegetation Management Program Summary (\$000's)							
	2014	2015	2016	2017	2018	Avg(a)	Inflated (b)
1 Incidental	965	893	887	658	203	\$ 851	[REDACTED]
2 Hot spot	998	1,028	1,003	836	261	966	[REDACTED]
3 Enhanced	<u>1,791</u>	<u>1,799</u>	<u>1,778</u>	<u>1,755</u>	<u>1,217</u>	<u>1,780</u>	[REDACTED]
4 Total	<u>\$ 3,754</u>	<u>\$ 3,719</u>	<u>\$ 3,667</u>	<u>\$ 3,249</u>	<u>\$ 1,681</u>	<u>\$ 3,598</u>	[REDACTED]

Resiliency

5 Total

6 less avoided spend resulting from resiliency spend

7 Net Spend

8 Amortization Period (Years)

9 Amount in Rates

10 Cycle Trim (July 2019-June 2020)

11 Total Vegetation Management

13 plus Impact of Shifting to Oct 2019 as Rate Year

14 Cycle Trim (October 2019-September 2020)

(a) 4 Year Average 2014-2017; 2018 adversely impacted by excessive Tier 1 storm activity.

(b) 7% growth based on comparison of hot spot rates current vs new contract.

[END CONFIDENTIAL]

Ops. & Res. Reb. at 4. (The "net spend" and "amount in rates" were later updated in response to ODR-012-029, Attachment 2, and no party disputed the update.)

2. Five-Year Cycle Trim Program

The Staff supports CMP's proposed continuation of the five-year cycle-trim program, with [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] to be included in rates annually to pay for the program. RBA at 36; CMP Br. at 24. The Staff agreed with an increase in this expense of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL], which is the result of delays in the case that delayed the start of the rate year to October 1, 2019. RBA at 36, n.6; CMP Br. at 24. The costs of the five-year cycle-trim program will be handled through traditional ratemaking and not through reconciliation in CMP's Annual Compliance Filing. RBA at 39; CMP Br. at 24-25.

3. Ancillary Trim Programs (Incidental, Hot Spot, and Enhanced)

CMP's ancillary trim program consists of incidental, hot-spot, and basic enhanced trimming. CMP will continue this program with the following amounts included in the revenue requirement: [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for incidental, [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for hot spot, and [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] for basic enhanced, for a total of [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL]. RBA at 36; CMP Br. at 25. The cost of the ancillary trim program will be reconciled in CMP's Annual Compliance Filing. RBA at 39; CMP Br. at 25.

D. Storm-Cost Recovery Mechanism

1. The Current Mechanism

In its order in Docket No. 2013-00168, the Commission established a multilayer mechanism for funding storm restoration. Under that multilayer approach, Tier 1 storms are defined as storms with incremental restoration costs less than \$3.5 million per event; Tier 2 storms are storms with incremental restoration costs between \$3.5 million and \$15 million per event; and Tier 3 storms are those with incremental restoration costs greater than \$15 million. Of the \$10 million allowed in rates annually for storm recovery, \$4 million is designated for Tier 1 storm costs, while the remaining \$6 million is placed into a reserve storm account to cover Tier 2 storm costs. CMP annually reconciles its incremental, prudently incurred Tier 2 storm costs against the reserve balance. If the reserve balance at the end of the calendar year exceeds \$10 million (positive or negative), CMP and its customers share any overage 50-50, with CMP's share of any negative balance capped at \$3 million per year.

For Tier 3 storms, the first \$15 million of incremental storm costs are subject to Tier 2 treatment and charged against the reserve account. CMP's exposure for sharing under the Tier 2 storm provisions for any single Tier 3 storm event is capped at \$2 million. Tier 3 storm costs above \$15 million are deferred for future recovery. Distribution rates are adjusted on July 1 of the year following the Tier 3 storm for the recovery of deferred amounts over \$15 million. *Central Maine Power Co., Request for New Alternative Rate Plan (ARP 2014)*, Docket No. 2013-00168, Order Approving Stipulation at 5 (Aug. 25, 2014).

2. Modification to Tier 1 Storm-Cost Recovery

CMP's Tier 1 storm costs have increased significantly in recent years. See RBA at 8, Table 3. To account for this, the Tier 1 per-event threshold will remain at its current level of \$3.5 million but the amount included in the revenue requirement for Tier 1 storms will increase to \$8.1 million per year (equal to the annual average of Tier 1 storm costs from 2014 through 2018). RBA at 8; CMP Br. at 26. Also, to enhance CMP's incentive to control storm costs and to limit the risk to ratepayers and the Company arising from the variability in storm costs, a deadband of +/-25% will apply to the

\$8.1 million recoverable amount; amounts over or under the deadband will be shared 50-50 between the Company and its ratepayers. RBA at 9; CMP Br. at 26.

3. Modification to Tier 2 Storm-Cost Recovery

As noted above, if the reserve balance for Tier 2 storm costs exceeds \$10 million (positive or negative) at the end of the calendar year, CMP and its customers share any overage 50-50, with CMP's share of any negative balance capped at \$3 million per year. CMP, the Staff, and the OPA agree that the storm-reserve balance should be reset to zero beginning January 1, 2020. Any reserve balance remaining at December 31, 2019, after sharing would be collected through CMP's 2020 Annual Compliance Filing. RBA at 7; CMP Br. at 26–27.

4. Maintaining Status Quo for Tier 3 Storm-Cost Recovery

The parties and Staff did not dispute that the treatment of Tier 3 storm costs as agreed to in Docket No. 2013-00168 is reasonable. They thus agreed that the mechanism should remain in place.

5. Effective Date of These Modifications

In its exceptions to the Examiners' Report, CMP requested that the Commission clarify that the modified storm-cost recovery mechanism shall be effective January 1, 2020. The Commission so orders.

E. Tax Issues

1. PowerTax

The distribution revenue requirement in this case excludes both the PowerTax regulatory asset in rate base and the amortization of the PowerTax regulatory asset. Tr. at 41–42, 44 (July 24, 2019 Hr'g); see also ODR-020-001. In a separate docket, the Commission has approved a stipulation resolving all outstanding PowerTax issues. See *Central Maine Power Company, Request for Approval of Annual Compliance Filing*, Docket No. 2016-00035, Order Approving Stipulation (Jan. 21, 2020). As set out in that stipulation, the amortization of the PowerTax regulatory asset will be incorporated into rates as part of the Company's next Annual Compliance Filing.

2. Flow-Through Tax Items

a. Tax-Basis Repairs Expense Percentage

For the percentage of book additions that qualify for the tax-basis repairs deduction, CMP and the Staff have used 34%, which is the average of 2016 and 2017.

Tax Dir.⁴³ at 9; BA at 33. Also, the reversal of flow-through benefits has been calculated as \$1.182 million. Tax Dir. at 9. No parties disputed these figures.

b. Other Flow-Through Tax Items

The revenue requirement also includes \$1.12 million of tax expense to recover the rate-year amortization of legacy flow-through impacts. These legacy impacts include equity AFUDC, retirements, removal costs and salvage, and other items, and includes the current-period cumulative effect of other non-normalized balances and ASC 740 adjustments that include state flow-through, non-TCJA rate differentials. Tax Dir. at 11; CMP Br. at 28. CMP plans to continue to use flow-through tax accounting for its distribution business. CMP Br. at 28.

3. Protected Excess ADIT Regulatory Liability Balance and Amortization

The rate-year starting balance of the protected excess ADIT liability is \$122,865,000. CMP Br. at 29. This protected balance must be used to reduce rates no faster than will occur under the average rate assumption method (ARAM). *Id.* The rate-year amortization for the protected balance under ARAM included in the revenue requirement is \$7.201 million. *Id.* This balance has two components: (1) the pre-rate-year amortization of \$4.445 million, and (2) the annual ARAM-calculated amortization of \$2.756 million. *Id.* To avoid a normalization violation, the pre-rate-year amortization must be removed from rates after one year. *Id.* The Company suggested that this adjustment occur as part of its Annual Compliance Filing. *Id.* Because the 2021 Annual Compliance Filing rate change will occur more than a year after rates are set in this proceeding, CMP will need Commission approval to record a deferral. *Id.*

The Commission hereby allows CMP to record the necessary deferrals to ensure that it is not in violation of the IRS normalization rules by returning the \$4.445 million in multiple rate years. CMP should be prepared, however, to explain in its Annual Compliance Filing to be filed later in 2020 why any necessary adjustments could not be made at that time.

4. Unprotected Excess ADIT Regulatory Liability Balance

The rate-year starting balance of the unprotected excess ADIT liability is \$59,983,000. CMP Br. at 29. The amortization period for the return to customers of this unprotected balance was not agreed to and is addressed in Sections VII.C and IX.

⁴³ Tax Dir. refers to the Direct Testimony of CMP's Tax Panel (Steve Adams, David Beber, and Mark P. Kelly), filed October 15, 2018.

F. Cost-of-Capital-Related Issues

1. Cost of Debt

In its brief, CMP stated that there was no dispute on the cost of CMP's short-term or long-term debt. For long-term debt, in its brief CMP noted that it had arrived at a weighted cost of long-term debt for the rate-effective period of 4.45%, and that no party disputed this rate. CMP Br. at 30 (citing Rev. Req. Dir. at 4, Sched. E). But this rate of long-term debt conflicts with updates CMP presented in its rebuttal, which supported a rate of 4.39%. Rev. Req. Reb. at 17. Also, the OPA's cost-of-capital witness used the older rate—4.45%—in each of his testimonies. The references to 4.45% both in CMP's brief and the OPA's consultant's testimony may have been oversights. In any event, this leaves open the question of what cost of long-term debt is appropriate.

For short-term debt, in its brief CMP noted that its projection of 3.50% reflects expected increases in short-term interest rates and short-term borrowing costs over the next several years, and that no party disputed the reasonableness of these projections. CMP Br. at 30. The OPA did, however, dispute CMP's short-term borrowing costs, Griffing Dir.⁴⁴ at 54, so this is a matter for Commission decision.

These discrepancies and the Commission's decisions on the costs of both long-term debt and short-term debt are discussed below in Section VII.D.

2. Flotation Costs

When it issues common equity, a company incurs underwriting and other out-of-pocket expenses, such as legal and registration fees. Together, these are known as flotation costs. No party disputed CMP's proposed adjustment to the ROE of 11 basis points for flotation costs. BA at 59; RBA at 62; CMP Br. at 30; Griffing Dir. at 32–34.

G. Revenue Decoupling Mechanism

The issue of CMP's revenue-decoupling mechanism (RDM) was addressed briefly in the beginning of the case, and there was basic agreement on the subject. The background on this issue and our approval of the changes (which are generally agreed upon) to the RDM are described below.

1. Background

As noted in the Staff's Bench Analysis, CMP's revenue-decoupling mechanism was adopted under a Commission-approved stipulation in CMP's last base rate case, Docket No. 2013-00168. BA at 116–17. Under the RDM, revenue targets are established for two broad customer classes: (1) residential and (2) commercial/industrial. Actual revenues are then reconciled against these targets. Initial revenue targets were established based on the rate-year revenue levels set in

⁴⁴ Griffing Dir. refers to the Direct Testimony of the OPA's witness Dr. Marlon Griffing on Cost of Capital, filed February 22, 2019.

Docket No. 2013-00168 and, in subsequent years, have been adjusted by 75% of the average annual customer-growth rate, negative or positive, in each rate class. *Id.* The RDM adjustments occur annually at the same time as other one-time adjustments to CMP's distribution rates. *Id.*

To date, there have been four RDM adjustments, which are summarized in Figure 2 below:

Figure 2: CMP RDM Adjustments, 2016 through 2019⁴⁵

<i>Effective Date</i>	<i>Amount (millions)</i>
July 1, 2016	(\$10.8)
July 1, 2017	(\$1.0)
July 1, 2018	\$0.9
July 1, 2019	(\$9.7)

2. Positions of the Parties and Staff

In its direct testimony, CMP proposed extending the existing RDM with no changes. Pol. Dir. at 17. Staff raised several concerns about this proposal, including reliance on the accuracy of CMP's sales data, given its recent and ongoing billing issues, and the potential for an RDM to mask and mitigate those billing issues and, thereby, weaken the Company's incentive to detect and correct errors. BA at 119. Staff also recommended that, if a new or extended RDM is adopted, its structure should be greatly simplified. *Id.* Staff noted that the existing RDM seemed overly complicated and has resulted in errors, and thus suggested a simpler structure in which targets would be set and reconciled based on kilowatt-hours (kWh) and kilowatts (kW), and the actual distribution rates in effect during the applicable period. *Id.* In its rebuttal, CMP provided "corrected" sales and customer forecasts, which it used to adjust its rate-year revenue projections and RDM targets. Sales Reb. at 1–3. CMP also expressed its willingness to adopt Staff's proposal for a more simplified RDM structure. Pol. Reb.⁴⁶ at 33. CMP proposed, however, to use its forecast of customer growth to establish RDM targets, and then reconcile the targets based on actual customer growth. Policy Reb. at 33. Finally, CMP provided a detailed illustration of how the revised RDM would operate. EXM-011-022, Att. 1.

⁴⁵ BA at 117, Table 25; see also *Central Maine Power Co., Request for Approval of Annual Compliance Filing*, Docket No. 2019-00049, Order Approving Stipulation (June 25, 2019).

⁴⁶ Policy Reb. or Pol. Reb. refers to the Rebuttal Testimony of CMP's Policy Panel (Steve Adams and Eric Stinneford), filed April 12, 2019.

In its Reply Bench Analysis, Staff noted that the purpose of using forecasted customer growth to adjust the RDM targets was unclear and could introduce unnecessary complexity. RBA at 15. Staff noted that using forecasted customer growth also seemed unnecessary, given that actual customer growth for the prior calendar year would be known well in advance of when the RDM adjustment would be made, presumably on July 1 of each year. *Id.* at 15–16.

Neither the OPA nor the other parties addressed the RDM.

3. Discussion and Decision

RDMs can benefit a utility and its customers by reducing risks associated with sales and sales forecasts. In many respects, these sales risks are due to factors beyond the control of the utility, such as weather, population growth, and the economy. RDMs can also reduce or remove what may be conflicts between a utility's incentives and public-policy objectives, such as those related to energy efficiency and net-energy billing. Finally, as shown in Figure 2 above, the adjustments under CMP's RDM to date have generally benefited customers.

For these reasons, the Commission approves continuation of an RDM for CMP. With respect to Staff's concerns about the accuracy of CMP's sales forecast, as discussed above, ultimately the rate-year sales forecast is not in dispute. With respect to Staff's concerns about the effect an RDM could have on CMP management's incentives to ensure customer bills are accurate, these concerns are more appropriately and effectively addressed in more direct ways, including by the ROE adjustment and the service-quality metrics discussed in Section VIII.H of this order.

For the reasons noted by Staff, the Commission finds that the existing RDM can and should be simplified. The Commission, thus, approves the Staff's proposal, agreed to by CMP, whereby the annual reconciliations would be done on a kWh and kW basis, using actual rates in effect during the RDM period. Finally, the Commission finds that the revenue targets should continue to be adjusted each year by 75% of the actual average annual customer growth for the applicable class, as has been done under the existing RDM, and not by use of CMP's customer-growth forecast.

In its exceptions, CMP proposed that (1) the Commission order CMP to submit a proposal for the simplified RDM within 60 days of this order, for parties to consider and decide upon by July 1, 2020; and (2) the RDM continue to be calculated on a calendar-year basis starting on January 1, 2020, with the applicable targets and rates updated to reflect the start date of the rate-effective year.

The Commission generally agrees and orders that CMP submit within 60 days, as a compliance filing, a proposal for a simplified reconciliation methodology done on a kW and a kWh basis. As the Company has proposed, CMP, Staff, and other interested parties can then work to reach agreement by July 1, 2020 on illustrative examples of the methodology and applicable RDM targets similar to Attachments 5 and 6 to the Stipulation in Docket No. 2013-00168. The Commission also orders that the RDM

continue to be calculated on a calendar-year basis starting on January 1, 2020, with the applicable targets and rates updated to reflect the start date of the rate-effective year, which is March 1, 2020.

H. Annual Compliance Filings

On August 25, 2014, the Commission approved a stipulation in Docket No. 2013-00168 that resolved all rate issues in that case. *Central Maine Power Co., Request for Alternative Rate Plan (ARP 2014)*, Docket No. 2013-00168, Order Approving Stipulation (Aug. 25, 2014). Although the Commission did not approve a comprehensive alternative rate plan for CMP in that proceeding, the stipulation allowed CMP to change rates annually to reflect the operation of various ratemaking mechanisms, including a storm-cost recovery mechanism, a revenue-decoupling mechanism (RDM), and certain flow-through adjustments. The stipulation required that CMP submit a compliance filing every year on April 1 (the so-called Annual Compliance Filing) that includes the information to implement these mechanisms, with a rate adjustment to go into effect July 1. Also, with its Annual Compliance Filing CMP was required to submit an annual reliability report. In the years since the Commission approved the stipulation in Docket No. 2013-00168, CMP has submitted five Annual Compliance Filings, each of which was resolved by a Commission-approved stipulation. Most of those stipulations reduced distribution rates.⁴⁷

As discussed in various sections above, CMP and the Staff agree, and no party disputed, that CMP should continue several of the ratemaking components that comprise the Annual Compliance Filing. Thus there is implicit agreement that CMP should continue the practice of submitting its CMP's Annual Compliance Filings for review and approval, including this year. Going forward, the Annual Compliance Filings should continue to be filed, with any modifications made necessary by this order. The Annual Compliance Filing should continue to include an annual reliability report for the preceding calendar year, and should also include any asset-health assessments/reports completed since the last Annual Compliance Filing.

⁴⁷ *Central Maine Power Co., Request for Approval of Annual Compliance Filing*, Docket No. 2019-00049, Order Approving Stipulation (June 25, 2019) (reducing overall distribution rates by 8.7%); *Central Maine Power Co., Request for Approval of Annual Compliance Filing*, Docket No. 2018-00069, Order Approving Stipulation (June 29, 2018) (increasing residential distribution rates by 0.84% and commercial and industrial distribution rates by 2.09%); *Central Maine Power Co., Request for Approval of Annual Compliance Filing*, Docket No. 2017-00046, Order Approving Stipulation (June 20, 2017) (increasing overall distribution rates by 0.96%); *Central Maine Power Co., Request for Approval of Annual Compliance Filing*, Docket No. 2016-00035, Order Approving Stipulation (June 27, 2016) (reducing residential distribution rates by 4.06% and commercial and industrial distribution rates by 7.28%); *Central Maine Power Co., Annual Compliance Filing*, Docket No. 2015-00055, Order Approving Stipulation (June 25, 2015) (reducing overall distribution rates by 1.02%).

I. Decision

The Commission finds that the resolutions of the parties and Staff on the above issues are reasonable and, thus, adopts them as just and reasonable components of CMP's revenue requirement.

VII. REVENUE REQUIREMENT

In determining CMP's revenue requirement, the Commission addresses the essentials of ratemaking—rate base, operating-and-maintenance expenses, taxes, and cost of capital.

A. Rate Base

1. Attrition Adjustment

a. Background

An attrition analysis is a standard ratemaking technique that has been used in CMP's and Emera Maine's rate cases. Attrition happens when a utility's probability of earning its allowed return is reduced (the opposition situation is called accretion, or negative attrition). *Bangor Hydro-Elec. Co., Proposed Increase in Rates*, Docket No. 97-116, Order at 21 (Feb. 9, 1998). If the balance between a company's revenues, expenses, and rate base have a high likelihood of changing from the adjusted test-year levels, attrition or accretion can occur. *Id.* To reduce the effects of attrition or accretion, the Commission adopts an adjustment to certain elements of a utility's revenue requirement. The Commission has expounded on the concept of attrition as follows:

An attrition analysis looks at a future period, the first rate effective year, and tries to project, using educated estimates and forecasting mechanisms, how that future will affect the operations of the utility. In other words, it tries to determine if there will be a change from the test year level of operations that would reduce or enhance the utility's ability to earn its authorized return. Because an attrition examination is based largely on projections, greater caution must be applied when deciding whether or not to include [this kind of] an adjustment in the Company's revenue requirement calculation.

Id. at 22.

As it has in the past, CMP included an attrition analysis in its revenue-requirement calculations; CMP forecasted changes in its rate base over time to determine a suitable rate base for the rate-effective year. In CMP's last rate case (Docket No. 2013-00168), Staff calculated the rate-effective-year rate base using a trend analysis with a compound annual growth rate (CAGR) based on historical plant balances, adjusted for atypical additions. This has been referred to colloquially as Staff's attrition technique.

b. Positions of the Parties and Staff

i. CMP's Direct Case

CMP used Staff's attrition technique to formulate its CAGR. Rev. Req. Dir. at 26. CMP used its plant balances from June 30, 2013 through June 30, 2018 to arrive at a five-year CAGR of 4.54%. CMP then applied this CAGR to the June 30, 2018 plant balance to arrive at its proposed plant additions of \$75.1 million for the transition year (12 months ending June 30, 2019) and \$78.5 million for the rate-effective year (12 months ending June 30, 2020).

Figure 3: CMP's Initial Calculation of CAGR Using Staff's Attrition Technique⁴⁸

- Distribution Plant Additions Using Staff's Attrition Technique (\$000,000)								
	A <u>Distrib. Plant</u>	B <u>Oct 2017 Storm</u>	C <u>G&I Plant</u>	D <u>ECC</u>	E <u>CRM&B</u>	F <u>G&I to Transmis.</u>	G <u>Total</u>	H <u>Plant Additions</u>
0/2013	\$1,128.9		\$ 261.7	\$ (18.8)		\$ (47.7)	\$1,324.2	
0/2014	1,189.3		267.1	(18.6)		(49.2)	1,388.5	\$ 64.3
0/2015	1,218.3		293.4	(18.1)		(56.0)	1,437.6	49.1
0/2016	1,257.3		309.6	(18.1)		(69.5)	1,479.3	41.7
0/2017	1,320.6		326.7	(16.3)		(75.5)	1,555.6	76.3
0/2018	1,417.0	\$ (24.7)	417.7	(17.2)	\$ (55.5)	(83.9)	1,653.4	97.8
CAGR							4.54%	
0/2019							\$1,795.2	\$ 75.1
0/2020							1,873.6	78.5

ii. Staff's Bench Analysis

In its Bench Analysis, Staff recommended a CAGR of 4.11% by excluding all 2018 plant additions (as shown by the grey row in Figure 4, below). Staff excluded 2018 because that year was considerably higher than previous years and, thus, Staff argued, should be considered an outlier. Staff then calculated a four-year CAGR of 4.11% for the period June 30, 2013 through June 20, 2017. BA at 13–14. As shown in Figure 4 below, applying this CAGR to the test-year plant resulted in plant additions of \$68.0 million in the transition year and \$70.7 million in the rate-effective year.

⁴⁸ Rev. Req. Dir. at 27.

Figure 4: Staff's Initial Calculation of CAGR (\$millions) (Removes 2017/2018)⁴⁹

	A Distrib. Plant	B Oct 2017 Storm	C G&I Plant	D ECC	E CRM&B	F G&I to Transmis.	G Total	H Plant Additions
1	6/30/2013	1128.9	261.7	-18.8		-47.7	1324.1	
2	6/30/2014	1189.3	267.1	-18.6		-49.2	1388.6	64.5
3	6/30/2015	1218.3	293.4	-18.1		-56	1437.6	49
4	6/30/2016	1257.3	309.6	-18.1		-69.5	1479.3	41.7
5	6/30/2017	1320.6	326.7	-16.3		-75.5	1555.5	76.2
6	6/30/2018	1417	-24.7	417.7	-17.2	-55.5	-83.9	1653.4
7	4-yr CAGR						4.11%	4.11%
8	6/30/2019						1,721.4	68.0
9	6/30/2020						1,792.1	70.7

iii. CMP's Rebuttal to the Staff

In its rebuttal, CMP stated that it did not agree with Staff's "asymmetrical" approach to determining plant trend rates, because Staff excluded as anomalous only those plant additions that appeared too high compared to other years, Rev. Req. Reb. at 3, and included years in which additions were low. CMP updated its plant trend analysis by first modifying the study year to a year ending on December 31 and then updating the analysis to capture actual plant balances through December 31, 2018. *Id.* The resulting five-year CAGR was 4.26%, which was lower than the 4.54% CAGR CMP initially proposed.

⁴⁹ BA at 14.

Figure 5: CMP's Rebuttal CAGR Calculation⁵⁰

Table 3 - Updated Plant Trend Rates (\$ m's)		
		Plant Balance Plant Additions
1	Dec-13	1,363.1
2	Dec-14	1,419.9 56.8
3	Dec-15	1,460.4 40.4
4	Dec-16	1,530.7 70.3
5	Dec-17	1,620.5 89.8
6	Dec-18	1,679.6 59.1
7	5 Yr CAGR	4.26%

iv. OPA's Testimony

In supplemental testimony, OPA witness Robert L. Rosenkoetter argued that CMP did not adequately justify most of the plant additions included in its attrition analysis. He thus questioned whether CMP's CAGR was accurate and reasonable. Rosenkoetter Supp. at 2. Mr. Rosenkoetter reviewed project-level documentation for plant additions that were used to calculate the CAGR and project expected plant additions in the interim year and the rate year. Of the \$290.6 million in projects reviewed, Mr. Rosenkoetter determined that \$200.1 million were insufficiently justified. Therefore, the OPA recommended that approximately 69% of the capital projects be excluded from the CAGR calculation. *Id.* at 12.

⁵⁰ Rev. Req. Reb. at 3.

Figure 6: OPA's Recommended Reduction in Plant Additions Due to Insufficient Justification, July 1, 2013 through June 30, 2018⁵¹

A	B	C	D	E
Year	Plant Additions (\$millions)	Insufficient Justification %	Reduction in Plant Additions (\$millions) Col. B × Col. C	Adjusted Plant Additions (\$millions) Col. B – Col. D
July 1, 2013 – June 30, 2014	64.3	66.2%	42.6	21.7
July 1, 2014 – June 30, 2015	49.1	57.5%	28.2	20.9
July 1, 2015 – June 30, 2016	41.7	72.9%	30.4	11.3
July 1, 2016 – June 30, 2017	76.3	85.1%	64.9	11.4
July 1, 2017 – June 30, 2018	97.8	57.6%	56.3	41.5
Total	329.2		222.4	106.8

v. CMP's Rebuttal to Mr. Rosenkoetter

On May 3, 2019, CMP filed rebuttal disputing the OPA's methodology and findings. In its rebuttal, CMP took issue with Mr. Rosenkoetter's classification of projects. CMP argued that "Mr. Rosenkoetter has disallowed projects wholesale without any thought to the nature of the project and the relevance to the business Of the sample set, more than 30% of Mr. Rosenkoetter's categorizations are not consistent with the categorizations documented in the Five Year Plans provided by the Company." CMP Plant Add. Reb.⁵² at 6. CMP asserted that the information it had supplied through data responses was sufficient and that the OPA's consultant had erred in disallowing expenses categorized as Mandatory or Asset Condition, along with several other projects.

vi. Staff's Reply Bench Analysis

In its Reply Bench Analysis, Staff revised its approach to better target the outlier projects. Staff recommended that two specific projects—the \$12.1 million of investment costs associated with the MPRP and Brunswick/Topsham Bright Line projects—should not be included in the trend analysis as those projects were extraordinary, one-time investments. In the case of MPRP-related costs, the Staff noted that the MPRP was a \$1.1 billion, once-in-a-generation, statewide transmission project. RBA at 65. The Bright

⁵¹ Rosenkoetter Supp. at 13.

⁵² CMP Plant Add. Reb. refers to the Rebuttal Testimony of CMP's Plant Additions Panel (Christian Bilcheck, Mary Lou Palmieri, and Kevin Elwell), filed May 3, 2019.

Line costs were also extraordinary because that investment was a result of a NERC⁵³ reclassification of how bulk transmission was defined—another rare event. The exclusion of these extraordinary items resulted in a five-year CAGR of 4.11%—the same CAGR Staff had proposed in its initial Bench Analysis. The CAGR Staff calculated in the Reply Bench Analysis is summarized below in Figure 7:

Figure 7: Staff's Reply CAGR Calculation (\$millions)⁵⁴

		(\$ millions)								
		Distribution Plant	Oct-17 Storm	G&I Plant	ECC	CRM&B	G&I to Transmission	Additional Removals (b)	Total	Plant Additions
1	12/31/2013	1,159.0	-	272.6	(18.6)	-	(49.8)		1,363.1	
2	12/31/2014	1,213.3	-	275.9	(18.1)	-	(51.1)		1,420.0	56.8
3	12/31/2015	1,234.4	-	301.7	(18.1)	-	(57.7)		1,460.3	40.4
4	12/31/2016	1,296.6	-	323.6	(16.3)	-	(73.3)		1,530.7	70.3
5	12/31/2017	1,390.7	(24.7)	408.9	(17.2)	(55.5)	(81.7)		1,620.5	89.9
6	12/31/2018	1,425.7	(24.7)	438.6	(17.2)	(55.5)	(87.3)	(12.1)	1,667.5	47.0
7	5 Year CAGR								4.11%	
8	9/30/2019							(a)	1,718.9	51.4
9	9/30/2020								1,789.6	70.7

(a) only 9/12's of the trend rate was applied to 12/2018 balance to derive the 9/30/2019 balance.

(b) Consists of (as reported in EXM-009-001)

MPRP (Lewiston)	\$ 10.4
Brunswick/Topsham Brightline	1.7
	<u>\$ 12.1</u>

vii. OPA's Surrebuttal

In surrebuttal, Mr. Rosenkoetter amended his position slightly based on additional information CMP provided via data response. As a result, he removed two FERC Bright Line Bulk Electric System (Bright Line) projects with a cost of \$1,757,386 and 32 Fleet projects totaling \$20,746,256 from the list of disallowed projects. Rosenkoetter Surr.⁵⁵ at 7. Mr. Rosenkoetter also calculated the effect of CMP's rebuttal to reflect a calendar year. The first adjustment decreased the percentage of

⁵³ NERC is the North American Electric Reliability Corporation, which is a nonprofit international regulatory authority whose mission is to reduce risks to the reliability and security of the power grid.

⁵⁴ RBA at 66.

⁵⁵ Rosenkoetter Surr. refers to the Surrebuttal Testimony of the OPA's witness on plant additions, Robert Rosenkoetter, filed June 17, 2019.

disallowances from 69% to 61%. The second adjustment slightly reduced the amount of capital plant included in the analysis. *Id.* at 9.

Figure 8: OPA's Recommended Reduction in Plant Additions Using Calendar Years Due to Insufficient Justification, July 1, 2013 through June 30, 2018⁵⁶

A	B	C	D	E
Year	Plant Additions (\$millions)	Insufficient Justification %	Reduction in Plant Additions (\$millions) Col. B × Col. C	Adjusted Plant Additions (\$millions) Col. B – Col. D
January 1, 2014 – December 31, 2014	56.8	61.0%	34.6	22.2
January 1, 2015 – December 31, 2015	40.4	47.9%	19.4	21.0
January 1, 2016 – December 31, 2016	70.3	66.6%	46.8	23.5
January 1, 2017 – December 31, 2017	89.9	77.9%	70.0	19.9
January 1, 2018 – December 31, 2018	59.1	47.3%	28.3	31.1
Total	316.5		198.8	117.7

viii. Post-Hearing Briefs

In its brief, the OPA argued that, based upon Mr. Rosenkoetter's disallowances, a CAGR of 3.91% should be used for the test-year adjusted plant balance. The OPA also cautioned that using a CAGR may provide the Company an incentive to spend more in future years to deliberately inflate the CAGR in future cases. OPA Br. at 68.

In its brief, CMP disputed Staff's removal of the MPRP and Bright Line projects from the analysis, stating that they are representative of future transmission projects and thus are not extraordinary. CMP Br. at 46. Instead, the Company restated its position that 4.26% is the correct value for the CAGR. CMP added that "Mr. Rosenkoetter offers no legitimate basis for the Commission to exclude any historic plant additions made by CMP since July 1, 2013 from the CAGR calculation, and, therefore,

⁵⁶ Rosenkoetter Supp. at 13.

the Commission should reject the OPA’s proposed 3.91% plant attrition growth rate.” CMP Br. at 52.

c. Discussion and Decision

The OPA, CMP, and Staff generally agreed on using a five-year period to calculate the average CAGR, with actual year-end plant balances for 2013 through 2018. The difference between the positions of Staff in the Reply Bench Analysis (at 4.11%) and CMP in its rebuttal (at 4.26%) is the exclusion of \$12.1 million for two major capital projects (MPRP and Bright Line). Staff argued that these projects were extraordinary and, thus, should be excluded as nonrecurring capital expenses. CMP rebutted Staff’s position by claiming that distribution additions resulting from major transmission projects are normal and those costs should be included in the calculation.

There is greater separation between the OPA’s position (3.91%) and that of CMP (4.26%). The OPA’s consultant excluded all capital expenditures during the period that he argued did not have sufficient documentation to meet the Company’s own criteria for budget approval. The OPA sought to exclude from the CAGR calculation capital expenses that, according to its consultant, were not sufficiently vetted, yet the OPA and its consultant did not contest the inclusion of those same projects in CMP’s rate base. Mr. Rosenkoetter testified that he was not arguing that the costs were imprudently incurred, Tr. at 8 (Apr. 23, 2019 Tech. Conf.), nor that the projects were not used and useful additions to infrastructure, *id.*—only that, according to him, the projects were insufficiently documented or vetted, *id.* at 9.

The Commission finds that the OPA’s position on this issue is both internally inconsistent and unsound. If projects should be excluded from the CAGR calculation because they are insufficiently vetted, then the natural implication is that they were somehow improper expenditures in the first place. But this is not what the OPA has argued.

Also, Mr. Rosenkoetter’s testimony at the April 23, 2019, technical conference leads us to conclude that Mr. Rosenkoetter’s testimony on this issue is not credible. For example, Mr. Rosenkoetter admitted that while he accepted in the CAGR various plant additions that he viewed as mandatory, he excluded some that CMP viewed as mandatory—such as distribution line inspections and replacements due to asset condition and even customer line extensions—and in some cases suggested that had he known more about the nature of the expenditures he may have had a different recommendation. See Tr. at 19–21, 24–26 (Apr. 23, 2019 Tech. Conf.). As another example, Mr. Rosenkoetter claimed that all of CMP’s vehicle purchases from 2013 to 2018 should be excluded from the CAGR, even though he took no issue with the number of vehicles CMP purchased, the fact that CMP purchased vehicles, or how CMP managed its fleet, and, in fact, viewed CMP’s purchases as consistent with those of other utilities. *Id.* at 22–24. In later prefiled testimony, he conceded the point. Rosenkoetter Surr. at 3.

Because of (1) the unsoundness of the OPA’s position—that projects should be included in rate base yet excluded from the attrition calculation—and (2) the weak support for Mr. Rosenkoetter’s arguments on CMP’s plant additions, the Commission rejects Mr. Rosenkoetter’s recommendations.

As for the OPA’s concerns about the CAGR’s creating an incentive for CMP to overspend on its distribution-system investments to affect future CAGR calculations, the Commission finds that there is nothing inherent in the CAGR methodology that would cause over-investment. The Commission has monitored, and will continue to monitor, utility capital spending to ensure that investments are at levels appropriate for reasonable and adequate service at just and reasonable rates.

Overall, the Commission finds that the Staff’s position is consistent with past CAGR calculations where extraordinary expenses have been excluded. The Commission notes that Staff did not attempt to exclude other major transmission-related costs from its calculation; instead, Staff removed only those items that were truly nonrecurring, such as the MPRP. In the past, the Commission has approved the removal of nonrecurring capital expenses from the CAGR calculation to ensure a valid trending analysis. The Commission agrees with the Staff’s analysis that the MPRP, a \$1 billion statewide transmission project, was essentially a once-in-a-generation occurrence and that the Brightline project, which resulted from a NERC reclassification of how bulk transmission is defined, was also a rare, nonrecurring event. The Commission thus adopts the Staff’s calculation of 4.11%.

2. Resiliency Additions

CMP plans to make significant capital investments to improve the resiliency of its distribution system in the face of increasing storms and the effect of climate change on service interruptions and reliability. Ops. & Cap. Dir.⁵⁷ Exh. CAP-3. According to the resiliency plan CMP filed in rebuttal, Ops. & Res. Reb.⁵⁸ Exh. OAR-REB-003, CMP will harden its distribution system by upgrading its 101 worst-performing circuits by making annual improvements to targeted circuits in the near term, while planning for larger improvements, such as substation upgrades, in the long term. CMP Br. at 55. The resiliency plan is a new program in which improvements fall into the categories of (1) system hardening (replacing aging poles and using taller and stronger poles, using tree wire instead of bare wire), (2) circuit topology changes (shortening distribution feeder lines to reduce customers’ exposure to outages, increasing ties between circuits to create redundancy to reduce outage duration, installing substations closer to end users), (3) automation (installing remote devices on reclosers and installing SCADA switches with fault detectors, to increase the speed of response to outages), and

⁵⁷ Ops. & Cap. Dir. refers to the Direct Testimony of CMP’s Operations and Capital Investment Panel (Christian Bilcheck, Mary Lou Palmieri, William Ransom III, Juan Martinez Martinez, Kevin Elwell, Pamela Kelly, and Michael Zaffina), filed October 15, 2018.

⁵⁸ Ops. & Res. Reb. refers to the Rebuttal Testimony of CMP’s Operations and Resiliency Panel (Christian Bilcheck, William Ransom III, Juan Martinez Martinez, Kevin Elwell, Michael Zaffina, Thomas DePeter, Robert C. Yardley, Jr., and Myles Collins), filed April 12, 2019.

(4) enhancing its vegetation management (adopting ground-to-sky tree clearance and stronger hazard-tree removal). CMP Br. at 55; Ops. & Cap. Dir. at 8–10. (The enhanced vegetation-management program is a new expense, rather than a rate-base addition, and is discussed below at Section VII.B.3.) To accomplish this, CMP proposes to harden the 12 worst-performing circuits⁵⁹ using a budget of \$25.68 million for 2019–2020. CMP Br. at 55–56; ODR-012-068, Att. 1 (providing breakdown of cost by circuit and by category of investment). There is a dispute in this case as to whether and when CMP should be permitted to include these planned improvements (items (1) through (3) above) in rate base.

a. Positions of the Parties and Staff

i. CMP

CMP made several arguments in support of including the expected costs of the resiliency plan in rate base. First, CMP argued that because the resiliency upgrades were new and “incremental to work the Company already performs,” CMP Br. at 55, they required incremental funding over and above the amount of rate base on which CMP will be permitted recovery using the attrition adjustment. CMP Br. at 57. CMP argued that the attrition adjustment is calculated from historical growth in plant additions. The resiliency plan is, by contrast, a new program and thus is not included in historical investments. Thus, according to CMP, the resiliency plan is not reflected in the plant attrition adjustment and will need its own funding source. CMP Br. at 57.

Second, CMP presented a benefit-cost analysis showing a positive net present value of \$54.3 million over 30 years for the proposed resiliency projects targeting the 12 worst-performing circuits. CMP Br. at 59 (citing Ops. & Res. Reb. Exh. OAR-REB-003 at Fig. 8). CMP asserts that this far outweighs the initial costs of the resiliency plan. CMP Br. at 58.

Third, CMP argues that the costs of the resiliency plan are sufficiently known and measurable and the plan is sufficiently specific to support a forward-looking adjustment to rate base. See CMP Br. at 58. CMP also argues that system resiliency expenditures are not construction work in progress (or CWIP, which is not recoverable in rate base), and are not included in CMP’s baseline capital budget. CMP Br. at 59–60. According to CMP, the upgrades to the 12 worst-performing circuits are intended to be in service in 2020, and these costs are known-and-measurable adjustments because they will be in service during the rate year. See CMP Br. at 59–60.

As part of its resiliency plan, the Company proposes to use tree wire instead of bare wire “in all areas where tree encroachment is possible,” and to use bare wire “only . . . where tree encroachment is not possible,” such as in parking lots and open fields. Ops. & Cap. Dir. Exh. CAP-4 at 4; Tr. at 67–78 (Dec. 7, 2018 Tech. Conf.). CMP later

⁵⁹ For a list of the 12 circuits and the plans for hardening, topology, and automation improvements to each, see CMP Brief at 56 (citing Ops. & Res. Reb. Exh. OAR-REB-003 at Table 5).

explained that “tree encroachment” refers to areas “where there is a reasonable possibility that trees and or branches can potentially come in contact with energized primary overhead wires.” Ops. & Res. Reb. at 19. The Company also plans to use taller and stronger poles (class 1, 2, and 3 poles) as its new standard, discontinuing the use of 30-foot, class 4, and class 5 poles, and to replace poles that have been in service for 75 years or more and poles that fail CMP’s distribution line inspections. Ops. & Cap. Dir. at 2–4; Ops. & Res. Reb. at 17; see also BA at 111.

ii. Staff

In the Bench Analysis, the Staff effectively excluded from rate base the resiliency investments projected for 2019 and 2020. BA at 15. At the time, removing those investments reduced 2019 plant additions by \$4.0 million for the transition year and \$12.0 million for the rate-effective year. BA at 15. Staff initially argued that CMP’s proposed resiliency plan did not meet the known-and-measurable standard—largely because CMP did not file that plan with its direct case. BA at 110. Once CMP did submit the resiliency plan (with its rebuttal case), Staff conceded that CMP had provided much more detail on the resiliency plan. RBA at 47. Yet Staff continued to believe the known-and-measurable standard had not been met. RBA at 47–48. The Staff reasoned that “investment plans for the designated circuits are fluid and not final” and no “investments on the proposed projects have actually been made to date, nor is there a concrete plan as to when such investments will be made or when the projects will be completed.” RBA at 48.

Overall, Staff also opined that funding for all of CMP’s resiliency plans could come out of the CAGR attrition adjustment for plant additions. BA at 110. The Staff noted that “[a]utomation, circuit tying, and circuit segmentation are already CMP programs,” BA at 110, RBA at 41, and thus there is no obvious reason why resiliency programs that fall under these categories should be added to rate base outside of the attrition adjustment.

The Staff opposed the broad use of tree wire contemplated in the resiliency plan, criticizing the Company’s proposal to use tree wire anywhere it was possible a tree branch could hit a wire. See BA at 111. The Staff observed that, for CMP’s affiliate, 67% of tree-related outages occur within 10 feet of the right of way, which “suggests that the use of tree wire for outages caused by trees far outside the right of way is of limited value.” BA at 112; EXM-002-013, Att. 1. Also, tree wire costs 50% more than bare wire, which, according to Staff, strongly suggests that its use should be targeted, not widespread. BA at 112 (citing EXM-002-075).

The Staff supported the Company’s proposal to replace its smaller poles with taller and wider poles, but asserted that the attrition adjustment to rate base would “easily accommodate[]” the incremental cost of those larger poles, without the need for another adjustment to rate base. BA at 111. On the proposal to replace all poles that have been in service for at least 75 years, the Staff suggested that, if a pole is regularly inspected, functioning as it should, and does not show signs of wear, it should not be automatically replaced merely due to age. RBA at 47. At a cost of \$6,000 per pole,

replacing every pole on CMP's system that is at least 75 years old would require an investment of \$24 million. RBA at 47.

iii. OPA

The OPA urged the Commission to reject CMP's request for funds for the resiliency investments outlined in the plan. The OPA's witness, Mr. Morgan, argued that the resiliency investments should not be included in rate base because they were neither known and measurable, nor used and useful as plant. OPA Br. at 69 (citing Morgan Dir. at 7 and Morgan Surr.⁶⁰ at 2–3).

The OPA posited that “[r]esiliency is a recent buzz word in the electric utility world. It is, however, indistinguishable from reliability, or at best is merely a [discrete] subset of reliability.” OPA Br. at 70. But regardless of the word one uses, the OPA urged the Commission to balance the benefits of increased resiliency or reliability with the cost. OPA Br. at 71. Increasing spending by a utility each year on more robust equipment, increase vegetative management, inspections, etc., does not eliminate all outages; at some point the increased spending will have diminishing returns for reliability. According to the OPA, CMP ignores balancing the spending with smaller increments of reliability. OPA Br. at 71.

The OPA described the initial investment in the resiliency plan as “experimental at worst, or simply a \$16 million effort to obtain more data at best.” OPA Br. at 72. When the OPA asked CMP whether the resiliency plan would hold CMP to a higher standard for reliability in the future, CMP's consultant responded that reliability and resiliency are indeed related and that “one of the benefits of doing the program is to learn more—learn with real data what the impact is over a year or two or three on the circuits” Tr. at 113–14 (May 22, 2019 Tech. Conf.).

b. Discussion and Decision

We have already applied an attrition adjustment to rate base, as discussed in Section VII.A.1 above, which contemplates new investments and additions to CMP's used-and-useful utility plant in the near future without any discrete, incremental adjustment for the components of the resiliency plan. In deciding whether any part of the resiliency plan justifies yet another adjustment to rate base, the Commission applies the known-and-measurable standard. Under this standard, rate base may be adjusted for new investments only if that change is sufficiently known and measurable. “To be ‘known,’ any change to [the] test year must be reasonably certain as to whether and when it will occur. To be . . . ‘measurable,’ the amount of the change must be reasonably certain.” *Camden and Rockland, Maine and Wanakah Water Cos., Proposed Increase in Rates*, Docket No. 93-145, Order (Part II) at 9 (July 12, 1994).

⁶⁰ Morgan Surr. refers to the Surrebuttal Testimony of the OPA's witness Lafayette Morgan on Revenue Requirement issues, filed June 17, 2019.

The Commission agrees with the Staff that the proposed resiliency investments are addressed already by the attrition adjustment. In the past five years, the Company spent \$37 million on capital investments on its worst-performing circuits. EXM-016-013. These investments for automation and circuit tying are not new types of investments but are made regularly to improve reliability. As such, the Company can and does recover these costs through the attrition adjustment. The resiliency plan is largely a forward-looking plan for improvements to CMP's distribution system, and thus conceptually fits within the attrition adjustment, rather than as a known-and-measurable change. Given the attrition adjustment, there is no reason to increase rate base any further.

Whether one uses the term reliability or resiliency, as a general rule the Commission does not take issue with utilities' planning to improve their distribution system. Increased storm activity and the effects of a rapidly changing global climate have shone a light on the importance of reliability and resiliency planning. But these improvements come with a price tag, and ratepayers can only bear so much of the cost.

Recognizing the importance of obtaining more data on these kinds of improvements, in a separate docket the Commission recently approved several distribution-system betterments in the Jackman area—a circuit that is perennially one of CMP's worst-performing. See *Public Utilities Commission, Investigation of Ten-Person Complaints Concerning Service of Central Maine Power Company in the Towns of Dover-Foxcroft, Jackman, and Caratunk*, Docket No. 2019-00047, Order Approving Stipulation at 7–8 (Nov. 22, 2019). Many of the improvements CMP will pursue under that order and stipulation were originally proposed in CMP's resiliency plan, while others were added through negotiation. The capital-investment piece of these resiliency improvements include the following betterment projects: (a) reconductoring the so-called Jackman Tie Line⁶¹ with tree wire (replacing the bare wire) and installing midspan poles on a nine-mile section of the Tie Line; (b) reconductoring and replacing poles on the 34.5-kv three-phase line serving Long Pond Road in Jackman; (c) adding or upgrading several automated devices on section 823D2, including adding four new SCADA-controlled switches and upgrading to a SCADA-controlled line recloser; and (d) repairing all defects from distribution-line inspections by December 2020 in Jackman, Dover-Foxcroft, and Caratunk.⁶² *Id.* at 5–6.

⁶¹ The Jackman Tie Line is the three-phase radial distribution line running from Harris Station through the right-of-way to Route 201 in West Forks Plantation, then northerly approximately 20 miles to the Town of Jackman.

⁶² This is the rate-base-related portion of the improvements. Expense items include: seeking approval of landowners to conduct hazard-tree removal outside of CMP's existing cleared right-of-way along the Jackman Tie Line; spending \$500,000 to \$1,000,000 (using previously committed but unspent funds) in incremental hazard-tree removal along areas of the Tie Line that have been most prone to tree-caused outages, with 20% of these completed in 2019 and the remainder completed in 2020; providing a "back-up" crew to the Jackman region during certain weather conditions; and providing status reports in its annual filing to document improvements and estimates. *Id.* at 5–6.

A main goal of these investments is to show whether and how each project helps decrease the frequency and duration of outages. The Commission sees those investments as a test case to better understand the objective improvements from specific resiliency investments. The Commission expects valuable information to be gleaned from how these investments affect the measurements of reliability in the Jackman area.

For the reasons detailed above, the Commission (a) rejects the proposal for yet another discrete adjustment to rate base to account for the resiliency plan, but (b) reaffirms our conclusion that the Jackman-area capital investments CMP will make under the stipulation the Commission approved in Docket No. 2019-00047 are prudent.

3. Bonus Compensation

Bonus compensation is one component of CMP's payroll. There is a dispute about how CMP's bonus compensation (which it refers to as variable compensation) should be treated in rate base. CMP's bonus compensation is broken out in two ways that are relevant here: between benefits to shareholders and benefits to customers, and between expense and rate base. Bonus compensation is awarded based on established goals and objectives, and those goals or objectives are tied either to shareholders or to ratepayers based on who should benefit from them. Bonus compensation is either recovered as an expense or capitalized as rate base, depending on the amount of overall labor allocated to capitalized projects.

Staff proposed various adjustments to the Company's calculation of the ratepayer and shareholder components of variable compensation, including removing entirely any ratepayer responsibility to pay for bonuses for directors and executives. These adjustments resulted in more variable compensation being paid for by shareholders, and less by ratepayers—lowering the customer's share to 74.7% from 81.4%. BA at 25–26 & App. A. As described above in Section VI.B.5 no party has taken issue with that adjustment to variable compensation as an expense item, and the Commission finds the adjustment to be reasonable and thus approves it. But there is a dispute about how the capitalized portion of variable compensation should be handled.

a. Positions of the Parties and Staff

Staff proposed that the amount of bonus compensation capitalized in the transition year (i.e., the year between the test year and the rate year) and the rate year (i.e., the year that begins when rates go into effect) be reduced to reflect the agreed-upon lower amount allocated to customer benefit (i.e., 74.7% instead of 81.4%). BA at 16, App. A. Staff calculated a reduction of \$394,000 to the transition-year rate base and a reduction of \$411,000 to the rate-year rate base. BA at 16 (as corrected). See also Tr. at 5 (Mar. 22, 2019 Tech. Conf.).

In its rebuttal case, the Company disagreed with what it characterized as “Staff’s retrospective adjustment to capitalized labor.” Rev. Req. Reb. at 4. CMP did not address this adjustment to rate base in its brief.

The OPA did not comment on this issue.

b. Discussion and Decision

The Commission agrees with Staff that a change in the amount of bonus compensation allocated to customer benefit affects both payroll expense as well as the amount of capitalized labor. It is not clear to the Commission why the Company characterized Staff’s proposed adjustment as “retrospective.” In reducing capitalized variable compensation by the amount it calculated to be attributable to shareholder benefit, Staff reduced the rate base for both the forecasted transition year and the forecasted rate year. Thus, the adjustment is not retrospective in nature. Also, aside from disagreeing with the Staff’s adjustment, CMP did not elaborate on the basis of the disagreement or why Staff’s proposal was unreasonable. No party offered an alternative calculation of the appropriate adjustment amount. Based on the evidence in the record, and to ensure consistency in treatment of the expensed and capitalized portions of variable compensation, the Commission finds that a rate-base adjustment to reduce the capitalized labor attributable to customer benefit is warranted and the methodology used by Staff to calculate the adjustment is reasonable.⁶³

B. Expense

1. Affiliate Service Costs

a. CMP’s Initial Proposal and Background

A major driver of the Company’s claimed revenue-requirement deficiencies in this case was the increase in service charges from its affiliates, including Avangrid Service Company (ASC). CMP sought to include \$42.8 million in affiliate-service charges, which exceeds the current cap on affiliate charges of \$32.5 million. Policy Dir. at 11. That cap was first set by the Commission at \$7 million in 2001;⁶⁴ it was later increased in several subsequent orders, and now sits at \$32.5 million.⁶⁵ CMP included all affiliate-service charges, including amounts above the cap, in its calculation of the revenue requirement. Policy Dir. at 11. CMP also requested that the cap on recovery of affiliate-service

⁶³ The Commission recognizes that the calculation of this adjustment has not been updated to reflect changes in the underlying staffing levels. However, given that there is no alternative calculation in the record, the Commission adopts Staff’s calculation as presented in the Bench Analysis.

⁶⁴ *Central Maine Power Co. et. al., Request for Approval of Affiliated Interest Transaction for Two Service Agreements with Energy East Management Corporation*, Docket No. 2001-00178, Order Approving Stipulation at 4 (July 10, 2001).

⁶⁵ *Central Maine Power Co. et. al., Petition to Increase the Annual Dollar Limit with Certain Iberdrola Affiliates*, Docket No. 2012-00530, Order Approving Stipulation (July 2, 2013).

charges be eliminated, arguing that none of the jurisdictions where CMP's affiliated utility companies operate in have imposed such a cap. Policy Dir. at 12.

In its initial filing, the Company recognized that under the stipulation in Docket No. 2013-00168, CMP was required to do a market study to support the charges from its affiliates, and that it had not done such a study yet. The Company noted that it had retained Thomas Flaherty from Price Waterhouse (PwC) to perform this study, which the Company claimed would support its affiliate-service charges. The Hearing Examiner held a case conference and then several informal technical conferences (scoping sessions) to accommodate the filing of the market study and to attempt to develop an agreed-upon scope of the study.

b. Staff's Position

In its February 22, 2019 Bench Analysis, the Staff described the history of the Commission's cap; its relationship to the Commission's waiver of the requirement that affiliate-service charges be based on market rates granted as part of the initial approval (in 2001) of the affiliate-services agreements between CMP and its then parent, Energy East Corporation; and the requirement that CMP provide a market-rate study when a rate change was later requested. The Staff noted that, despite several rate cases in the years between 2001 and now, CMP had still not provided a market-rate study as required. Although the Company was required under the Stipulation in Docket No. 2013-00168, to develop as part of a collaborative process the market rate information to demonstrate the justness and reasonableness of its affiliate charges, the Company had not yet done so four months following its initial filing and approximately four and a half years following the approval of the stipulation in Docket No. 2013-00168.

The Staff noted that, even if PwC's market rate study was completed in sufficient time to be considered in this case, Mr. Flaherty acknowledged that the study would answer only the question whether the charges to CMP by ASC are reasonable when compared to market rates. It would not answer the question whether those services are cost-effective when compared to the utility itself performing such services. In Staff's view, the lack of such an analysis in the anticipated PwC Study or in CMP's filing in this case made it difficult, if not impossible, to judge the reasonableness of CMP's requested increase in affiliate-service charges. The Staff added that the Commission and the parties were disadvantaged by CMP's failure to request an increase in the affiliate-service charge cap prior to accepting a level of services which, when billed, would be approximately \$10 million more than the existing cap and \$31 million more than the cap that was in place when CMP's Chapter 820 waiver request was first granted. The Staff, thus, did not believe that CMP had met its burden of proof to demonstrate the reasonableness of the charges it proposed to include in the revenue requirement beyond the current cap.

Finally, the Staff did not support the elimination of the cap on affiliate-service charges because the cap was of use in monitoring the level and reasonableness of the charges to CMP by its affiliates.

c. CMP's Response to Staff's Position

In its rebuttal, the Company disputed the Staff's proposed exclusion of the distribution-related affiliated-service charges that exceeded the cap. The Company's witnesses stated that all of the charges were for actual services provided by Avangrid Service Company (ASC) or Avangrid Management Company, LLC (AMC). Policy Reb. at 25. The Company's witnesses noted that later in the case the Company would file its market study, which would support the reasonableness of the Company's charges.

CMP's witnesses testified that the Staff raised in this docket, for the first time, a cost-effectiveness test which, according to the Staff, would include a cost and quality component. According to CMP, this test would impose an additional burden on the Company to justify the inclusion of affiliate-service company charges in rates. Policy Reb. at 29. The Company witnesses added that, other than customer service, no concerns have been raised about the quality of the Company's affiliate services. Since Staff already was proposing a punitive downward ROE adjustment for its customer service performance, according to CMP, Staff's proposed affiliate-service cost disallowance would result in the Company being penalized twice for its performance in the same area.

d. CMP's Market Study Report

After several scoping and technical sessions with the Staff, the Staff's consultant (The Liberty Consulting Group) in this area, the OPA, and other parties, Strategy& conducted the market study of services AMC and ASC performed for CMP. On June 5, 2019, CMP filed the Market Study Report of Strategy& along with the supporting testimonies of Mr. Flaherty and of CMP's witness panel (Robert Fitzgerald, Steve Adams, and Eric Stinneford).

To conduct its study, Strategy& used 2017 financial data. In that year, shared-services costs for Avangrid Network Services (AGR) totaled \$212.1 million. Mr. Flaherty then worked off this total bundle of services to identify the services that would be studied. Mr. Flaherty first eliminated charges from Iberdrola SA (IBSA), identified as CMP's ultimate parent, which, according to Mr. Flaherty, provides corporate services on behalf of all its subsidiaries including those outside the U.S. In 2017, \$26.5 million of IBSA charges were allocated to AGR, of which \$4.9 million were allocated to CMP. Mkt. Rpt. at 6. Mr. Flaherty explained that these IBSA charges were excluded from the analysis because it is a foreign company that has multiple operating subsidiaries around the globe, and that it provides corporate-services governance and oversight on behalf of all of its subsidiaries. According to Mr. Flaherty, while these services are necessary for a holding company to perform, or provide, they cannot be wholly replicated and tested at a U.S. level given the broad global business ownership, the unique composition of these international services and activities, and the different requirements that non-U.S. jurisdictions place upon IBSA.

In addition to IBSA costs, Mr. Flaherty excluded from the pool of services to be studied \$7.5 million related to capital expenditures, \$5.1 million of non-cash expenses

(depreciation), \$5.2 million in non-recurring charges, and \$25.3 million for technical services, which are costs required for the continuity of service and the development of critical infrastructure. These exclusions then left \$142.4 million of “in-scope” or “addressable” costs.

These “in-scope” services were then divided into the following 10 functions:

- Executive and Governance
- Finance
- General Services
- Human Resources
- Information Technology
- Legal
- Marketing and Communication
- R & D, Environment, Quality
- Security
- Supply Chain

These 10 functions were further broken down by activities within each function. The activities were then segmented into the following categories to determine which of the services and activities could actually be tested in the external market:

- Governance – services performed at the executive leadership level and focused on overall stewardship of the business.
- Strategic oversight – services and activities targeted at business growth, market positioning, transformation, and confidential initiatives. These services would not be obtained externally as they are proprietary functions of executive management.
- Support – services and activities related to corporate center and back-office operations. These services and activities could be available for testing, within certain parameters.
- Outsourced – services and activities already performed and fully substituted for internal resources. These services and activities are, by definition, not subject to additional external market testing.
- Analyzed – services and activities previously evaluated for outsourcing to third parties and determined infeasible or uneconomical. These services and activities are, too, by definition, not subject to additional testing.
- Contracted – services and activities already purchased from vendors or suppliers for non-avoidable services through arm’s-length agreements. Again, by definition, these services are not subject to additional market testing.

- Below Scale – services and activities below a spend threshold that may not be economically attractive for third-party provisions. Mr. Flaherty used \$500,000, which translates to \$100,000 to CMP, as the below-scale threshold.
- Testable – services and activities where access to market alternatives exist and can be evaluated and determined to be economically efficient.

Mr. Flaherty identified the following examples of testable services: internal audit accounts payable, accounts receivable, payroll, administration, networking, management, applications development and maintenance, office services and administrative support, non-core legal services, leadership training and development, and security services.

The total costs of these 10 activities was \$19.3 million. Mkt. Rpt. at 71. As the process went forward, however, Strategy& eliminated Space Planning and Security and Fire System Maintenance from the list of testable activities. The removal of these activities reduced the amount of total testable costs to \$16.1 million.

The analysis then went on to compare the internal hourly costs to perform the activity with the external hourly costs. For the internal costs, hourly costs included wages or salaries, taxes, and benefits along with associated variable overhead costs. Variable overheads are non-labor costs that are tied to internal employees and would no longer be incurred if that employee were replaced by a third-party. *Id.* at 77–80.

To calculate external market hourly rates, Strategy& used two different methods: a top-down approach using a proprietary database of aggregated bid data; and a bottoms-up approach using publicly available national survey data on wages, benefits and industry cost structures.

According to Strategy&, the results showed that performing all AMC and ASC testable activities in-house remains more cost-effective than outsourcing to third-party providers. Mkt. Rpt. at 86. Figure 9 below summarizes the results of the Strategy& study:

Figure 9: External Market Test Results Summary (\$millions)

Function	Order Description	Vendor Rate Source*	A AGR Cost Baseline	B Vendor Market Rate Total	C Survey Market Data Total	A - B AGR Cost Differential	A - C AGR Cost Differential
Finance	Internal Audit	1	1.3	4.5	3.7	(3.2)	(2.4)
Finance	Accounts Payable / Accounts Receivable	3	3.2	4.5	5.8	(1.3)	(2.6)
Finance	Payroll Administration	3	1.3	2.1	2.9	(0.8)	(1.6)
IT	Networking and Network Security Management	2	1.7	2.8	3.9	(1.1)	(2.2)
IT	Infrastructure Management	2	2.6	4.4	6.0	(1.7)	(3.3)
IT	Operations Management	2	1.7	2.9	4.0	(1.2)	(2.3)
Security	Threat & Incident Management	2	0.8	0.9	1.2	(0.1)	(0.4)
Supply Chain	Strategic Sourcing & Supplier Diversity	3	3.4	7.4	8.2	(4.0)	(4.7)
TOTAL			16.1+	29.5	35.5	(13.4)	(19.5)

Negative values equate to baseline costs being lower than external market costs, i.e., market cost higher than internal cost

*Vendor Rate Sources: 1) Internal Audit Practitioner; 2) Strategy& IT Benchmarking Database; 3) PwC proprietary vendor database

+Total AGR Cost Baseline reflects 2017 cost data adjusted from 2017 time reporting data for base wage fluctuations throughout the fiscal year.

Separately, the testimony of CMP's witness panel on the market study presented information on a compensation study Avangrid performed to ensure its salaries are competitive with similarly situated organizations. According to the testimony, the survey showed that the compensation levels at AMC and ASC are below market. CMP Mkt. Dir. at 5–8.

e. Liberty's Review and Comments

In addition to its audit of CMP's SmartCare project and CMP's customer-service issues following the implementation of SmartCare, Liberty was separately engaged by the Commission to review and analyze CMP's affiliate Market Rate Study.⁶⁶ As the Commission's consultant on this issue, Liberty participated in several technical conferences on this subject; conducted discovery on the Company; and did a review and analysis of the Strategy& Market Study Report. On August 13, 2019, Liberty submitted its comments reviewing the Market Study Report (Liberty Mkt. Comments).

Liberty stated that the most striking thing it observed was the extremely small portion of total costs that were actually tested in the Market Study. Liberty specifically noted that out of the \$212.1 million total AMC and ASC costs charged in 2017, only 8.1%, or \$16.1 million, was studied. For CMP, this represented \$3.7 million of the \$44.2 million allocated to CMP. The second major area of concern for Liberty was what it saw as potential biases in the affiliate-versus-market comparison of services actually studied.

On the services and costs eliminated from the study, Liberty was most concerned with the elimination of IBSA costs. Liberty noted here that the justification for the elimination of the costs was that they were from a foreign entity and, therefore, any services producing these costs were not testable in the United States. Liberty noted that the IBSA costs eliminated from the study—\$26.5 million—was actually greater than the total costs that were actually studied, \$16.1 million. Liberty also found the elimination of the IBSA costs to be problematic since a number of the services being charged by IBSA were already being provided to CMP by AMC and ASC. Liberty Mkt. Comments at 7.

Liberty also found the total elimination of technical services from the study, which were comparable in size to the IBSA costs eliminated, to be problematic. Liberty noted that these services and activities appear to be similar to what other utilities outsource. Liberty Mkt. Comments at 7.

As to the method Strategy& used to make comparisons of costs for the eight services ultimately tested, Liberty stated that its concern was that fixed costs were included in the market rates, but were not included in the affiliate's rates. Liberty noted that some costs could be avoided with sufficient outsourcing, and ignoring this fact biased the study.

⁶⁶John Antonuk and Charles King performed the market rate analysis work for Liberty in this matter.

Despite these concerns, Liberty concluded that, given the inherent limitations of the study, Strategy&’s analysis was likely as good as one could do. Liberty recognized that, although Strategy&’s method probably biased the results against market alternatives, it would be hard to improve on Strategy&’s approach without issuing actual RFPs for the services studied. The Market Study noted that this was not realistic because it would be difficult to enlist third-party suppliers to participate in a mock RFP.

Liberty, thus, recommended that the Commission:

- Consider excluding World Parent costs from CMP’s revenue requirement absent a sufficient showing from the Company as to why they should be recovered from ratepayers and a demonstration from the Company that the amounts of those charges are reasonable;
- Recognize the inherent imperfections of hypothetical market test analyses as a means of demonstrating the cost competitiveness of internal support services, but also recognize the substantial amount of support services that the Company already outsources or considers for outsourcing as an indicator of control of service company costs; and
- Continue to evaluate the frequency, scope, and diligence of management in aggressively seeking to identify outsourceable services and activities and in pursuing them through regular, cyclical market solicitations.

Liberty Mkt. Comments at 10.

f. CMP’s Response to Liberty’s Comments

On September 24, 2019, CMP filed testimony responding strenuously to Liberty’s comments. Through the testimony of Mr. Flaherty of Strategy&, CMP argued that there was no justification for disallowing any costs for services provided by IBSA, AMC, or ASC. CMP argued that the charges from IBSA did not duplicate those of AMC and ASC, and that the charges were typical of the services a parent company would provide. CMP argued that the charges were necessary.

g. OPA’s Position

In its November 22, 2019 brief on the market-study issues, the OPA supported Liberty’s analysis and its recommendations. OPA Mkt. Br. at 5. The OPA also supported Staff’s position on not increasing the cap on affiliate-service expenses. *Id.*

h. Decision

CMP first came to the Commission seeking approval of an agreement for services to be provided by an affiliate in 2001 in *Central Maine Power Co. et. al, Request for Approval of Affiliated Interest Transaction for Two Service Agreements with Energy East Management Corporation*, Docket No. 2001-00178, Order Approving

Stipulation (July 10, 2001). In that case, CMP sought approval of service agreements with its affiliate Energy East Management Corporation, a subsidiary of CMP's then-parent corporation, Energy East. Under those agreements, affiliate charges were made using fully-distributed costs rather than market rates, thus requiring a waiver of the provisions of Chapter 820 of the Commission's Rules. Under the stipulation in that case, the Company and the OPA agreed to the waiver of Chapter 820's market-rate requirement, subject to a cap on the amount that could be charged to CMP, initially not to exceed \$7 million but which could be increased through a notice filing to \$10 million. The cap was later increased to \$14 million, then to \$25 million, and finally to \$32.5 million. See *Central Maine Power Company, Request for Approval of Reorganization and of Affiliated Interest Transactions to Create Energy East Shared Services Corporation*, Docket No. 2003-00321, Order Approving Stipulation (July 24, 2003); *Central Maine Power Company, Request for Approval of Affiliated Interest Transaction to Increase Dollar Limit for the Energy East Shared Services Corp. & Energy East Management Corp. Support Services Agreement with Certain Energy East Affiliates*, Docket No. 2004-00435, Order Approving Stipulation (Oct. 29, 2004); *Central Maine Power Co. et. al., Petition to Increase the Annual Dollar Limit with Certain Iberdrola Affiliates*, Docket No. 2012-00530, Order Approving Stipulation (July 2, 2013).

In approving the stipulation in Docket No. 2001-00178 initially granting the waiver of Chapter 820's market-rate requirement, the Commission found that the waiver to provide market-based pricing was appropriate for several reasons. First, Energy East's fully-distributed-cost methodology was created under the requirements of the Securities and Exchange Commission (SEC) and subject to SEC scrutiny. Second, CMP was at the time under an ARP and, thus, CMP had a direct incentive to minimize costs. However, in any subsequent rate proceeding where CMP sought recovery of affiliate-service costs, CMP would be required to provide market prices for services or an explanation of why market prices cannot be provided. Finally, the stipulation set a cap on the amount that a utility could be billed for affiliate charges in any one calendar year without further Commission approval. *Central Maine Power Co. et. al, Request for Approval of Affiliated Interest Transaction for Two Service Agreements with Energy East Management Corporation*, Docket No. 2001-00178, Order Approving Stipulation at 4–6 (July 10, 2001).

CMP's conduct under these requirements demonstrates a disregard of the Commission's orders and requirements. First, unlike past instances where CMP has approached the cap on affiliate charges, here CMP did not ask for an increase in the cap before affiliate charges exceeded the cap. Rather, the Commission was first informed that CMP's affiliate costs exceeded the cap as part of CMP's initial filing in this case in October 2018, almost two years after the cap was exceeded and as part of a request to eliminate the cap.

Second, CMP did not, as part of its initial filing, submit the required market study. While the Commission understands that the 10-person complaint that gave way to this investigation may have caught the Company somewhat off-guard, the requirement that the Company provide a market-rate study has been in place since 2001, and despite several rate cases since the imposition of that requirement, CMP had, until the filing of

the Strategy& study in this case on June 5, 2019, not complied with that requirement. In the stipulated result in the Company's last rate case (Docket No. 2013-00168), the Commission required CMP, the Commission Staff, and other interested parties to collaborate to refine what CMP must provide in future ratemaking proceedings to demonstrate the justness and reasonableness of any charges. *Central Maine Power Company, Request for Approval of New Alternative Rate Plan (ARP 2014)*, Docket No. 2013-00168, Order Approving Stipulation, Stip. at § 60 (Aug. 25, 2014). In its Bench Analysis, the Staff reported that despite Staff's frequent suggestions as to what was needed to conduct the market study, the collaborative process went nowhere.

In approving the waiver of Chapter 820's market rates requirement, the Commission on several occasions has pointed to the following language of the stipulation in Docket No. 2001-00178:

For ratemaking purposes, each of the applicants will provide appropriate market information (which shall mean market rates for such services or, if the applicants conclude that no market rates are available, the explanation supporting the unavailability of market rates) to demonstrate that the costs billed under these agreements are just and reasonable. Such market information shall only be required it and to the extent that an applicant is seeking (or another party is requesting) a rate change (whether in a general rate proceeding, pursuant to a bottom-end earnings sharing mechanism, or as a result of a mandated cost) that includes costs billed under the agreements approved herein. In such a proceeding seeking a rate change, any other party is free to contest the reasonableness of the costs incurred under the agreements approved herein and the applicant seeking to include such costs in its rate change shall have the burden of proof as to the reasonableness of such costs.

Docket No. 2001-00178, Order Approving Stipulation at 4–5; see also Docket No. 2003-00321, Order Approving Stipulation, Stip. at 4–5. For the reasons discussed below, the Commission finds that CMP has not met its burden of proving the reasonableness of the \$5.4 million in affiliate-service charges that are above the current cap. The Commission's decision that the Company has failed to meet its burden on this issue is guided both by what evidence has been presented but also by how the Company has presented its evidence.

Figure 10, below, presents costs that affiliates charged to CMP, broken down by service type.

Figure 10: Costs to CMP from Affiliates by Service Type, 2013–2017⁶⁷

Services	2013	2014	2015²	2016	2017¹
Administrative Services	202	270	1,822	2,173	2,164
Communications			293	412	400
Executive Management Services	310	451	607	1,892	3,006
Financial Services	2,491	2,859	3,710	4,361	5,026
Fleet Management			229	225	226
Human Resources	3,324	3,494	10,676	7,877	11,410
Information Technology	14,549	12,337	3,310	2,925	3,062
Internal & External Audit	222	208	2,108	1,128	1,305
Legal Services			1,412	1,690	1,796
Purchasing Services	404	376	607	698	710
Security, Land & Buildings	1,035	1,937	2,094	1,515	682
Tax Services	914	638	1,390	2,002	2,494
Services Total	23,450	22,569	28,257	26,897	32,283
Operational Management Services	8,398	9,369	3,298	9,256	8,650
Maine Cap Entry				(4,828)	(9,516)
Total Allocation to CMP	31,848	31,938	31,555	31,326	31,417

Note 1: Amounts identified in thousands Usd. Differences from what was distributed on 10/2 are the inclusion of the Maine Cap Entry and the exclusion of allocations to CMP capital projects.

Note 2: 2015 represents the transition year associated with the adoption of "self consumption" as well as cost causative drivers.

As Figure 10 shows, affiliate costs allocated to CMP in 2015 totaled \$31.6 million. Affiliate costs allocable to CMP in 2017—prior to application of the cap—totaled \$40.9 million, an increase of \$9.4 million. In 2017, IBSA costs to CMP were \$4.9 million, which, for CMP's distribution rates, account for approximately \$2.8 million out of the \$5.4 million of over-the-cap charges. Significantly, these charges were excluded from the Company's Market Rate Study. Liberty Mkt. Comments at 3.

In December 2015, CMP's American parent at the time, Iberdrola USA, merged with UIL Holdings Corporation of Connecticut to form AVANGRID, Inc. (Avangrid), a publicly traded company, with Iberdrola, SA (IBSA) retaining a majority of Avangrid shares at the time of the closing. As a result, CMP essentially now has two parents: Avangrid and IBSA. Based on the evidence in this case, it is not apparent to the Commission how CMP ratepayers benefit from this double layer of parent organizations, nor is it apparent from the surrebuttal market-study testimony of Mr. Flaherty—which was presented after the hearings in this matter and went beyond the scope of the special market-rate study process—how IBSA charges represent anything other than

⁶⁷ EXM-001-005, Att. 1; Staff Hr'g Exh. 3.

costs that would be incurred by a major corporate-conglomerate shareholder, and that arise to benefit the corporate conglomerate.

Another major factor in CMP's affiliate costs being above the cap are the charges for technical services, which were not included in the Market Study. In 2017, \$7.0 million was allocated for technical services, which have been described as being operational in nature. The Staff challenged the charges above the cap, which would include the technical services costs, on the ground that CMP has not demonstrated their cost-effectiveness. CMP countered that this challenge by Staff represents a new hurdle and that it is intuitive that services provided on a shared basis would be more efficient than services provided on a standalone basis by CMP.

The Commission disagrees with CMP on these points. First, we view the cost-effectiveness test Staff suggested as simply another way of describing the requirements of 35-A M.R.S. § 301 that a utility must demonstrate that its charges are just and reasonable and that it is operating efficiently. The test inherently includes a quality component, since it would not be reasonable or efficient for a utility to pay for services that might cost less than an alternative but which are inferior in quality. The record before the Commission demonstrates that the affiliate-service costs allocated to CMP have grown significantly since 2015 and in 2017 exceeded the Commission's cap on affiliate-service charges by approximately \$9.5 million. The Commission does not find it unreasonable to require the utility to show that this significant increase in costs in excess of the current cap are beneficial to Maine ratepayers—in terms of both costs and quality—before they are included in rates, especially in light of the management issues discussed in Section VIII on customer service. Indeed, the Commission's cap on affiliate-service charges is intended to act as a check on the affiliate costs and services. Rather than come to the Commission when it was clear that CMP was running up against the cap, the Company brought the issue to the Commission only in the context of its request for an increase in rates in this proceeding. The Commission finds that the Company has not met its burden to demonstrate that the affiliate-service costs above the cap were reasonable and, therefore, the Commission declines to put that amount in rates at this time.

The Staff recommended that, at the conclusion of this case, the Commission initiate a management audit of CMP and its affiliated service companies, AMC and ASC, to determine whether CMP's current management structure and the management services provided by AMC and ASC are both appropriate and in the interest of Maine ratepayers. The Commission agrees that this effort is worthwhile and will be helpful both to the Commission and to the Company in addressing the issue of whether the incremental service-company costs that are above the current cap are just and reasonable and should be included in rates. The audit will also help answer the questions of whether the Commission's cap on affiliate-service charges should be modified or eliminated, and whether there is something endemic in the CMP/Avangrid management structure that has led to a drop in the quality of CMP's customer service over the past several years and, if so, what can be done to avoid this in the future. The audit should also consider the effect of moving CMP personnel to Avangrid positions, and whether this has had a negative effect on the management environment.

At this time, and for the reasons outlined above, the Commission denies CMP's request to eliminate the affiliate-service charge cap; the \$32.5 million cap shall remain in place.

On the market-rate study supplied in this case by Strategy&, the Commission finds that, given the difficulties inherent in conducting such a study, the study was likely as good as one could hope for, and for the limited areas where service costs were compared to market costs, the study provided useful information to the Commission. However, the study demonstrated the limits of this approach and the usefulness of such an effort going forward. The Commission, therefore, will relieve CMP of the requirement to file a market study in future rate cases until further notified by the Commission. The Commission does, however, believe that it would be useful, in future rate filings, for the Company to include information about its analyses of outsourcing opportunities and the results of any RFPs issued as a result of that effort. Therefore, on a pilot basis, the Company should include that information in its next general-rate-case filing.

2. Payroll/Staffing

As explained above in Section VI.B.1, the parties agree on all staffing and payroll issues except for electric operations staffing levels. The parties also agree on the salary level, variable-compensation percentage, and all allocators used to determine the portion of the revenue requirement associated with the electric operations staffing. The only item that remains in dispute is the number of new electric operations positions that should be included in the Company's revenue requirement for year 2020.

a. CMP's Position

As explained in its rebuttal, the Company proposed (a) a net hiring of 32 electric operations personnel during the rate year, (b) the re-inclusion of 20 electric operations positions originally proposed for elimination in the Company's direct testimony, and (c) a net hiring of 23 internal electric operations personnel from October 1, 2019 through September 30, 2020. CMP Br. at 31–32 (citing Ops. & Res. Reb. at 10, 11, 20). The incremental cost of these additions is \$1.775 million, CMP Br. at 33–34, and they are part of the total of 593 electric operations positions included in the Company's proposed revenue requirement. *Id.* at 32.

CMP argued that its proposed staffing level is justified by its recently prepared five-year staffing resource plan (filed as OPA-010-024, Att. 1) and is necessary to address its aging workforce and backlog of distribution-line repairs. CMP Br. at 31. The Company added that the staffing levels are consistent with the Memorandum of Understanding between the Company and its union, the International Brotherhood of Electrical Workers Local #1837 (IBEW). *Id.* at 33 (citing EXM-016-020, Att. 1 ¶ 2, where that agreement was filed).

b. Staff's Position

In the Reply Bench Analysis, Staff criticized CMP's raising the issue of greatly increased staffing only in its rebuttal. The new positions were not in response to any

prior testimony, and raising a substantive issue that had such a material effect on the revenue requirement in rebuttal limited the ability of parties and Staff to perform discovery on and analysis of it. RBA at 4–5.

Staff accepted CMP’s proposal to re-include the 20 positions it had originally proposed to eliminate, concluding that the change was both reasonable and consistent with the test year. RBA at 51. Staff also agreed that the 17 incremental positions that had already been hired by that time were also reasonable and known-and-measurable changes to the test year, and, thus, should also be included in the revenue requirement. *Id.*

Staff excluded the remaining new (unfilled) positions from the revenue requirement, in part because unfilled positions did not meet the known-and-measurable standard. See RBA at 51. Staff also questioned whether the Company’s staffing resource plan supported the need for all of the proposed positions, and observed that the Company did not quantify or include in the revenue requirement any offsetting savings from the additional staff. RBA at 49–50.

c. OPA’s Position

The OPA generally “defers to Staff on the issue” of CMP’s payroll and operations positions, but offered some observations about the Company’s proposed staffing plan. OPA Br. at 77. The OPA pointed out that its consultant, Mr. Morgan, suggested removing from the revenue requirement positions that remain vacant because any company of CMP’s size is bound to have vacancies (and would not be incurring costs for those positions). OPA Br. at 77 (citing Morgan Dir. at 10–11). The OPA also noted that, although CMP’s agreement with the IBEW is conditioned on Commission approval of the increased staffing and its incorporation in the revenue requirement, CMP had already filled the 2019 positions without receiving Commission approval. OPA Br. at 79. According to the OPA, by filling 27 of the 55 new positions as of July 31, 2019, the Company had already filled the positions necessary to meet the minimum levels in the union agreement for 2019. *Id.* (citing ODR-012-045 and Tr. at 69–70 (May 22, 2019 Tech. Conf.); ODR-020-009; ODR-020-011; EXM-016-020, Att. 1 ¶ 2).

d. Discussion and Decision

In deciding what part of the anticipated staffing plan should be accepted for purposes of setting rates, the Commission applies the known-and-measurable standard for test-year adjustments. Under this standard, the test year may be adjusted based on new information only if that new information is sufficiently known and measurable. (We explain this standard above in the context of the resiliency plan, in Section VII.A.2.)

In this case, CMP anticipates that the new electric operations positions will be filled, but it is not clear whether or when that will occur, and it is also not clear how many of the anticipated positions will be filled. The cost of the positions is “measurable” only in the sense that, if one knew the number of positions that were to be filled and when, one could quantify the cost to be included in the revenue requirement. But the number of

positions that will be filled is an open question, and thus not a “known.” When the positions will be filled, too, is unknown. The fact that CMP has signed an agreement with IBEW in which it appears to be committing to hiring people to fill these positions adds some level of “certain[ty] as to whether and when [they] will occur,” though not a guarantee. See *Camden and Rockland, Maine and Wanakah Water Cos., Proposed Increase in Rates*, Docket No. 93-145, Order (Part II) at 9 (July 12, 1994). Even if all of the positions were filled during the rate year, the timing of those hires is crucial. If the positions are filled in the first month of the rate year, CMP will incur new costs for the entire year for those positions. But if the positions are filled in the last month of the rate year, the new costs for those positions will be a fraction of that. The uncertain timing of the hires thus has significant implications for the revenue requirement. Given the tight labor market (Tr. at 60–61 (May 23, 2019 Tech. Conf.)) and the number of positions that have been vacant in recent history, the Commission finds that economic forces may prevent CMP from filling all of those positions, or at least from filling them imminently. The Commission shares Staff’s concern about how late in the case these significant additional costs were added to CMP’s proposed revenue requirement; the Commission can only conclude that this limited Staff’s ability to investigate the issue and shortened the period over which the parties could analyze and conduct discovery on the information. All things considered, there is not enough support in the record to find these positions to be sufficiently known and measurable to justify making a pro forma adjustment to the test year. Thus, the Commission excludes these future positions from the revenue requirement.

Finally, by seeking approval of a staffing plan that is a condition under its commitment with the union, CMP appeared to be implicitly seeking the Commission’s approval of its agreement with the union. CMP Reply Br. at 11; see also EXM-016-020, Att. 1 (referring to Commission’s “approval” of the plan). As a general rule the Commission does not approve agreements between a utility and third parties,⁶⁸ but instead reserves for determination in a future rate case any questions about the prudence and reasonableness of those agreements. The Commission makes no exception to that general rule here, and thus neither approves nor denies CMP’s agreement with the union. How CMP decides to hire its electric operations staff is well within the scope of everyday management and not something the Commission will

⁶⁸ Affiliate agreements are exceptions to this general rule. See 35-A M.R.S. § 707. Also, in recent years the Commission has approved and made prudency findings on a number of precedent agreements for natural gas pipeline capacity between natural gas utilities and unaffiliated interstate natural gas pipeline companies, thus creating another exception to the general rule. See, e.g., *Bangor Natural Gas Co., Request for Approval of Precedent Agreements for Westbrook Xpress Phase III Project and Parental Guaranty* (35-A M.R.S. §§ 301, 707, 901/902, 4703), Docket No. 2019-00105, Order (Nov. 7, 2019); *N. Utils., Inc. d/b/a Utilit, Request for Approval of Portland Xpress Project Precedent Agreement with Portland Natural Gas Transmission System*, Docket No. 2018-00040, Order (June 14, 2018); *Me. Natural Gas Corp., Request for Approval of Precedent Agreement on Atlantic Bridge Project, Service Agreements, and Negotiated Rate Agreements with Algonquin Gas Transmission, LLC and Maritimes & Northeast Pipeline, L.L.C.*, Docket No. 2015-00063, Order [Approving Stipulation] Part II (Sept. 24, 2015).

dictate. Staffing levels and any new hires above approved levels will be reviewed in later rate cases.

3. Vegetation Management

As explained above in Section VI.C, by the conclusion of the case, there was agreement on many of the key vegetation-management issues, including the continuation of the cycle-trim and ancillary trim programs, reconciliation of the ancillary trim program, and the completion of an updated ECI study to analyze the effectiveness of the trim programs (ECI is an environmental consulting firm that specializes in vegetation management). The remaining issues, then, are: (a) how the Company's "underspending" on the ancillary trim program in 2018 should be treated, and (b) whether to include in the revenue requirement amounts CMP plans to spend on its proposed ground-to-sky and enhanced hazard-tree programs. The parties' positions and the Commission's decision on this subject are laid out as follows.

- a. Historic Ancillary Vegetation-Management Spending CMP's Position
 - i. CMP's Position

In the stipulation in Docket No. 2013-00168, CMP committed to fund the hazard-tree, hot-spot, and incidental work component of the vegetation-management programs at the levels included in the revenue requirement in that proceeding. *Central Maine Power Company, Request for Approval of New Alternative Rate Plan (ARP 2014)*, Docket No. 2013-00168, Order Approving Stipulation, Stip. at 8 (Aug. 25, 2014).

In the Reply Bench Analysis, Staff raised concerns over 2018 unspent funds associated with the ancillary trimming program. CMP argued that the \$2.043 million underspent in 2018 on its ancillary vegetation-management program is not reconcilable. The Company spent more in 2018 on vegetation for its cycle-trim catch-up and Tier 1 storm recovery than this amount for ancillary trimming. Therefore, the \$2.043 million need not be reconciled. CMP Br. at 35. CMP emphasized that the Stipulation did not allow for reconciliation of the vegetation-management program funds. *Id.*

- ii. Staff's Position

In 2018, CMP's enhanced-program spending was significantly underspent as a result of storm events. The Staff believed that the amount underspent in 2018 should be carried over and used by CMP as part of either the ancillary trim program or as the enhanced resiliency plan program. In its Reply Bench Analysis, Staff asserted that while the cycle-trim program was not reconcilable, CMP was under a commitment to complete all spans within a five-year period. A similar commitment was made to fund the enhanced vegetation management at the level provided in the stipulation in Docket No. 2013-00168. *Central Maine Power Company, Request for Approval of New Alternative Rate Plan (ARP 2014)*, Docket No. 2013-00168, Order Approving Stipulation, Stip. at 8 (Aug. 25, 2014). Therefore, according to Staff, CMP should be required to use the

underspent amounts to benefit ratepayers regardless of whether these funds are reconcilable.

iii. OPA's Position

The OPA shared Staff's concern about the Company's underspending during 2018. The OPA argued that this amount of underspending should be returned to ratepayers with carrying costs. The OPA disagreed with the Staff's position that the \$2.043 million be used to fund the enhanced vegetation-management pilot programs. The OPA contended that if it is to be used, it should be applied solely to the ancillary vegetation-management programs. OPA Br. at 76.

b. Ground-to-Sky and Enhanced Hazard-Tree Programs

i. CMP's Position

The Company stated that this program is a key part of the comprehensive plan to improve the reliability and resiliency of its 12 worst-performing circuits for 2020. The net cost of implementing this enhanced vegetation-management program will be [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL],⁶⁹ which CMP proposed to recover in rates over three years to minimize rate impacts. As discussed in Section VI.C., the Company has agreed to engage in a vegetation-management study similar to the one it presented when it introduced the ancillary trimming program in Docket No. 2013-00168. However, CMP believed that targeted ground-to-sky clearing on the 12 worst-performing circuits is appropriate and cost-justified without the results of that study. CMP pointed to Nexant's benefit-cost analysis, which showed that the interruption costs on the 12 worst-performing circuits that would be avoided from CMP's proposed enhanced vegetation management total more than \$3.4 million per year, while the avoided restoration costs are more than \$59,000 per year. CMP Br. at 38. Based on that, the Company asked that the Commission approve the limited resiliency vegetation-management funding.

ii. Staff's Position

In the Reply Bench Analysis, Staff maintained that CMP had not sufficiently backed up its request for incremental ground-to-sky or enhanced hazard-tree funding noting that CMP had historically performed both ground-to-sky clearing and hazard-tree removal on its worst-performing circuits through its existing vegetation-management program. Using the 2014–2017 time-period, the Company spent an average of \$1.5 million a year targeting trees on the worst performing circuits. EXM-016-013 Att. 2. As discussed above, in 2018, CMP underspent on its basic ancillary program by \$2.043 million. If CMP believes that it would be beneficial to conduct a pilot program that could be done in conjunction with the ECI study, this level of spending when

⁶⁹ In its response to ODR-012-029, Attachment 2, CMP updated the cost that had originally been included in its rebuttal testimony. The number here is the updated number.

coupled with CMP's existing spending on worst-performing circuits should provide CMP with ample opportunity to conduct an effective pilot program.

iii. OPA's Position

The OPA did not address the ground-to-sky or enhanced hazard-tree programs directly other than to state that the results of the ECI study should be examined before granting additional funding for the resiliency-related vegetation-management programs. *Id.*

c. Discussion and Decision

The fact that CMP underspent the 2018 ancillary trim program by \$2.043 million is not in dispute. CMP claimed that the reason for underspending the 2018 ancillary vegetation-management programs was the storm-recovery efforts and catch-up work on the cycle-trim program. CMP claimed that if the Commission were to include the vegetation-related storm expenses in the calculation, the Company would have exceeded the budget. Therefore, CMP reasoned, the Commission need not act on the matter. While 2018 may have been an anomalous year for ancillary trim expense, Staff noted that the Company underspent its approved budget in most years. BA at 98. According to the Staff, CMP's underspending on the ancillary trim program was \$56,000 in 2016 and \$475,000 in 2017. In the stipulation resolving CMP's 2018 Annual Compliance Filing case, Docket No. 2018-00069, the Company agreed to use the cumulative amount underspent in 2016–2017 as an offset to its otherwise recoverable October 2017 storm costs. RBA at 37. Here, the Staff recommended using the available funds to do more trimming or to pilot enhanced trimming as identified in the resiliency plan. The OPA proposed to return the underspent amount to ratepayers.

While returning the funds to customers is one possibility, Staff proposed using the underspent funds to continue to improve reliability through additional vegetation-management efforts. In fact, in approving a stipulation in Docket No. 2019-00047, the Commission has already ordered CMP to spend up to \$1 million to perform enhanced hazard-tree removal in the Jackman area. *Public Utilities Commission, Investigation of Ten-Person Complaints Concerning Service of Central Maine Power Company in the Towns of Dover-Foxcroft, Jackman and Caratunk*, Docket No. 2019-00047, Order at 5 (Nov. 22, 2019). It seems reasonable that for the Company to meet its commitment to the ancillary trim program, the remaining underspent funding be used in a similar fashion.

Beyond the \$2.043 million of unspent ancillary vegetation-management funds, Staff argued that any incremental funding for the enhanced vegetation-management program should be denied until the results from the ECI study are complete and the Company can provide quantifiable metrics that the enhanced program will be cost-effective and provide benefits to customers. The OPA also requested that the Commission deny the enhanced vegetation-management program in an effort to balance reliability and affordability. While CMP agreed to the ECI study, the Company

asked the Commission to approve the funding necessary to perform enhanced vegetation services on the 12 worst-performing circuits.

In determining the average to use for the amount to include in the revenue requirement, the Company removed 2018 ancillary costs in establishing the baseline for those services. If the 2018 expenses were to be included, the revenue requirement would be lower. If on one hand the Company is claiming that storms are becoming more frequent and severe, Ops. & Cap. Dir. at 5–6, while on the other, it is claiming that reduced ancillary trim work, as a result of increased storm activity, should not be included in the average, Ops. & Res. Reb. Exh. OAR-REB at 5–6, it appears the Company is trying to have it both ways. Using this logic, it appears that the amount included in rates for the ancillary trim program is inflated such that much of the proposed enhanced vegetation-management program could be performed within the existing ancillary budget and with the underspend funds from 2018.

As the Company has not adequately quantified the benefits of the enhanced program, and the ECI study has yet to be completed, it is premature to add incremental funding for CMP's enhanced program. In fact, one aspect of the ECI study will be an analysis comparing the effectiveness of ground-to-sky trimming to more aggressive hazard-tree removal. In a state such as Maine, an unlimited amount of resources could be directed at vegetation-management efforts; however, it is critical to take into account the cost and efficacy of such efforts. As noted above, the 2018 funds that were not spent on ancillary services in 2018 are being used for targeted projects in the Jackman area. CMP has the ability and the carry-over budget to pursue some of the projects described in its resiliency plan. As such, there is not currently a need to include incremental funding for the enhanced vegetation-management program, and thus the proposed rate-year amount, **[BEGIN CONFIDENTIAL]** [REDACTED] **[END CONFIDENTIAL]**, is removed from CMP's vegetation-management expense.

4. Pension (ASC 715) Costs

In 2018, CMP adopted Accounting Standard Code (ASC) 715. ASC 715 is a GAAP Financial Accounting Standard that limits the capitalization of pension and OPEB expense to just the service-cost component. As a result of adopting ASC 715, CMP experienced increased distribution expenses in 2018 and 2019, since current distribution rates assumed that all pension and OPEB expenses were capitalized. There is no dispute that CMP may recover the increase in expense associated with ASC 715 going forward. The question for the Commission is whether CMP should be permitted to recover the past-period amounts through an accounting order authorizing deferral and recovery.

a. Positions of the Parties

i. Central Maine Power Company

CMP first sought recovery of the past ASC 715 expense in its rebuttal filing. The Company argued that it should be allowed to recover these increases in pension and

OPEB expenses through a deferral under provision number 16 of Attachment 3 of the Stipulation in Docket No. 2013-00168. That provision allows CMP to use deferral accounting for certain GAAP Financial Accounting Standards. CMP proposed to recover the ASC 715 deferral over two years, which resulted in an increase of \$2.744 million to its proposed revenue requirement. CMP Br. at 39.

ii. Staff

In the Reply Bench Analysis, Staff recommended that the Company not be allowed to recover the increased 2018 and 2019 expenses through the proposed deferral because (1) CMP did not seek an accounting order to create a regulatory asset in 2018 to defer the increased costs and (2) CMP did not seek recovery of the costs in its initial filing, and, thus, seemed to recognize that it did not have authority to defer these amounts. In the Examiners' Report, Staff changed course and recommended agreeing with CMP's interpretation of the stipulation in Docket No. 2013-00168 to allow it to recover these costs.

b. Decision

Attachment 3 to the stipulation approved in Docket No. 2013-00168 is titled "Central Maine Power Company, Distribution Related Deferrals" and states that "CMP will continue deferral accounting for the following distribution-related items in accordance with the terms of the authorizations noted along with such items: . . . 16. GAAP Financial Accounting Standards including: a. FASB 158 Pension & OPEB (ASC 718), b. FAS 109 Taxes (ASC 740), c. FAS 143 Asset Retirement Obligations (ASC 410)." CMP argued that this language applies broadly to all GAAP Financial Accounting Standards, essentially interpreting the word "including" as "including without limitation." CMP also stated that it had not completed its review of the Docket No. 2013-00168 stipulation at the time of its original October 15, 2018 filing, and, thus, had not yet determined that it was entitled to defer these costs under the stipulation. *Id.* at 40 (citing Tr. at 42 (July 24, 2019 Hr'g)).

The Commission approved the Stipulation in Docket No. 2013-00168 on August 25, 2014, more than four years prior to CMP's filing in the case before us. The Commission finds it curious that CMP would not review for necessary accounting adjustments regularly given that its financial statements would be subject to audit for compliance with GAAP annually and would have required the filing of a rate proceeding to determine that such an adjustment was necessary if CMP has always interpreted the Docket No. 2013-00168 stipulation as summarized in this case.

While this item is an increased expense on CMP's books and records, it is not an increased cost. CMP has been incurring these costs but, until its decision to adopt ASC 715—which it agreed it was not required to do but chose to do so that its accounting would be consistent with that of its affiliates, EXM-003-073—CMP had capitalized the cost, recovering it through depreciation with a return on the portion that had not been depreciated.

The Commission finds that although CMP's decision to treat these pension costs consistent with GAAP was reasonable, the language in the Docket No. 2013-00168 stipulation is not as broad as CMP posits. The stipulation provides for three specific GAAP-related deferrals, and no others. Here, the Commission determines that the stipulation is not ambiguous about what accounting changes benefit from a deferral—it allows deferral for only the three listed changes. But even if the language in the stipulation—especially the word "including"—is ambiguous, the Commission applies the principle of interpretation that expression of specific things excludes any other things (*expressio unius est exclusio alterius*) to reach effectively the same conclusion: CMP is not entitled to be granted a deferral for those costs. This conclusion is buttressed by the fact that (as explained above) CMP raised the matter only in its rebuttal, and not nearer in time to the GAAP change at issue.

The Commission thus finds that CMP is not entitled to recover the historic post-ASC 715 costs of \$5,489,000. This results in a decrease of \$2,744,500 to the Company's proposed revenue requirement.

5. Costs to Maintain Legacy Billing System

a. Background

At the end of October 2017, CMP transitioned to a new customer relationship management and billing system, known as SmartCare. CMP's transition to SmartCare was also a transition *from* its legacy billing system. The cost of the legacy billing system was originally scheduled to be eliminated from rates by June 30, 2019. But with the opening of the Commission's investigation into CMP's metering and billing system in Docket No. 2019-00015, CMP elected to keep its legacy billing system "active and available" until that investigation was resolved. Tr. at 91 (July 26, 2019 Hr'g). The ongoing cost to maintain the legacy billing system is just over \$1 million per year. *Id.* In its most recent Annual Compliance Filing, CMP sought to recover the cost of this ongoing maintenance (by reducing the savings associated with it). Ultimately the parties settled the Annual Compliance Filing case, but the stipulation permitted the parties to raise the issue of the legacy billing costs in this rate case or in Docket No. 2019-00015. *Central Maine Power Company, Request for Approval of Annual Compliance Filing*, Docket No. 2019-00049, Order Approving Stipulation at 2, 5 (June 25, 2019). The settled result included the ongoing maintenance costs in rates.

b. Positions of the Parties and Staff

CMP did not brief this question, but from the testimony of its witnesses one can infer that CMP believed these costs to have been prudently incurred and thus that they should be recovered in rates. In its revenue-requirement model filed December 20, 2019, CMP did not include the ongoing maintenance costs in rates; instead, the model shows a savings of those maintenance costs (i.e., shows that they are removed from rates beginning with the rate-effective year).

The OPA asserted that the cost to maintain the legacy billing system “should not be included in rates,” OPA Br. at 49, n.140, but did not provide a rationale for excluding it. One can infer from its brief that the OPA’s rationale for barring recovery of these costs dovetails with the OPA’s rationale for “claw[ing] back” a portion of the costs for SmartCare from rate base—that is, that CMP’s implementation of SmartCare was imprudent and, had its implementation been prudent, there would have been no need for CMP to incur these costs. See OPA Br. at 49.

In the Examiners’ Report, the Staff recommended excluding these costs from rates. In its Exceptions, the Company noted, among other things, that it had maintained the legacy billing system at least in part because the Commission ordered it to retain records that may be relevant to the investigation that began in Docket No. 2018-00052 and continued in Docket No. 2019-00015. CMP Exceptions at 22–23; see also *Pub. Utils. Comm’n, Investigation of Central Maine Power Company Metering, Billing and Customer Communication Issues*, Docket No. 2018-00052, Procedural Order (Record Retention) at 1 (June 6, 2018). CMP also explained that disallowing those costs without more process would be unfair, given a seeming understanding that the question would be dealt with differently than the Examiners proposed. CMP Exceptions at 22–23. CMP proposed that the Commission instead order the parties to make filings within 30 days of this order that respond to the Examiners’ questions about the nature and purpose of the legacy billing costs and state their positions as to how those costs should be reflected in rates. *Id.* at 23. Then the matter can be resolved in CMP’s upcoming Annual Compliance Filing docket. *Id.*

c. Discussion and Decision

In our forthcoming companion order in Docket No. 2019-00015, one question before us was whether the implementation of SmartCare was imprudently managed. As detailed there, the Commission decided that the implementation was indeed imprudently managed. But instead of removing the costs of the new software from rate base, the Commission is requiring CMP to make significant expenditures—paid for by its shareholders—for targeted testing of SmartCare and monitoring of its ongoing performance.

A slightly different question follows: should CMP be allowed to recover the ongoing maintenance of its legacy billing system, which it has maintained only because of the open investigation? CMP has explained that it is maintaining its legacy billing system until the Commission’s metering and billing investigation is resolved. On its face, that does not seem problematic. But, when deciding who should pay for those costs, it is important to be more precise about the reason for maintaining the legacy billing system. Was it maintained because CMP needed the data in that system to calculate the amounts customers owed under the interim payment policy (discussed in our companion order in Docket No. 2019-00015)? Was it maintained because CMP feared the Commission would require CMP to shut down SmartCare and start anew? Was it maintained to allow CMP to compare historical customer data, and is that data not available in SmartCare? And did CMP in fact use the legacy billing system for any purpose in the investigation? The Commission does not have answers to these

questions, but the answers matter. For example, maintaining the legacy billing system to calculate payments under the Commission-mandated interim payment policy would be prudent, if that were the only way to calculate those payments. But maintaining the legacy billing system merely because of the ongoing investigation—when the investigation occurred in part because of CMP’s imprudence—is not obviously prudent. If the imprudence in the way SmartCare was implemented was a principal cause of the investigation, which in turn caused CMP to maintain the legacy billing system, then maintaining the legacy billing system bears the mark of imprudence.

In short, the Commission needs more information before determining whether ratepayers should pay for these costs. The Commission thus grants CMP’s exception and hereby directs CMP (and invites all other parties) to make a filing, within thirty (30) days of this order, that (1) responds to the Examiners’ questions about the nature and purpose of the legacy billing costs and (2) lays out the party’s position as to how those costs should be reflected in rates. The Hearing Examiner is hereby directed to issue any procedural orders necessary to accomplish this process.

The ultimate determination of responsibility for these costs will be decided in CMP’s Annual Compliance Filing docket this year.

6. Rate Case Expenses

Utilities may recover the costs of their regulatory-proceeding expenses—legal, accounting, financial, or other expert or specialized services incurred in a rate case—so long as the Commission finds them to be reasonable. MPUC Rules ch. 85, § 3(A), (B). These regulatory-proceeding expenses are set “on a normalized test year basis.” *Id.* § 3(A). There is a disagreement in this case about the amount of CMP’s rate-case expenses that are reasonable and how those expenses should be normalized.

a. Positions of the Parties and Staff

i. Central Maine Power Company

CMP asserted that it should be permitted to recover all rate-case expenses it had incurred and expected to incur through the conclusion of this docket, and that it should be permitted to do so over a two-year period. CMP argued that this docket was complex and time-consuming, with three parallel tracks being pursued simultaneously, resulting in at least 17 technical conferences and at least four days of hearings. CMP Br. at 41–42. Through July 2019, CMP had incurred \$2,283,711 in consultancy and legal expenses in this docket. CMP Br. at 41; ODR-020-003. CMP stated that it expected to incur at least another \$162,500 in legal expenses through the end of this proceeding. CMP Br. at 41; ODR-020-003. CMP proposed that all rate-case expenses should be recovered over two years, which approximates the amount of time CMP expects to lapse between rate cases, and that individual rate-case expenses should not be assigned different recovery periods. CMP Br. at 42–43.

ii. Office of the Public Advocate

The OPA urged the Commission to adopt the adjustments to rate-case expenses that its witness Mr. Lafayette Morgan has proposed. OPA Br. at 64. After accepting the Staff's proposed adjustments (summarized below), reducing the amount for rate-design consulting to \$250,000 from \$425,000, and removing \$125,000 for the vegetation-management study, Mr. Morgan opined that a reasonable calculation of rate-case expenses would be \$1.32 million. OPA Br. at 64. Mr. Morgan also advocated for a "three-year amortization . . . based upon three-year normalization periods associated with uncollectible expense, variable compensation and overtime payroll." OPA Br. at 64.

iii. Staff

In the Bench Analysis, Staff noted that CMP failed to provide support for several elements of its consulting expenses. Specifically, CMP failed to justify the \$200,000 estimate for consulting expenses related to its Policy Panel testimony and established that only 50% of the Company's healthcare- and pension-consulting expenses, or \$100,000, was rate-case-related. Therefore, Staff recommended that \$300,000 be removed from CMP's rate-case consulting expenses. RBA at 73. (In its rebuttal testimony, CMP agreed with this position. RBA at 73.)

In the Reply Bench Analysis, Staff continued to challenge certain elements of CMP's position. Staff asserted that tax-consulting costs should be removed because CMP did not provide support for this cost item. RBA at 76. Staff also proposed that CMP's healthcare- and pension-consulting fees be reduced by \$65,000 to \$35,000, the amount actually incurred. RBA at 75. Staff recognized that CMP's legal fees would increase throughout the course of this litigation and therefore proposed as a placeholder \$500,000 for legal expenses until CMP's actual rate case legal fees could be determined at the end of this proceeding. RBA at 76. Similarly, the Staff recognized that costs for rate-design consultancy would accumulate during the case and directed that those expenses be updated prior to the close of the record in this case. RBA at 76.

Staff saw the Company's normalization period of two years for all expenses as both too rapid and failing to recognize the different recurrence periods of the individual expense items. RBA at 76–77. Based on the likely recurrence periods of the individual expense items, Staff proposed the following normalization periods:

Figure 11: Staff's Recommended Normalization Periods

Cost Category	Period
Revenue Requirement/Rate Setting (Including Legal, ROE, Pension, Engineering)	4 years
Rate Design	5 years
Vegetation Management Consultant	5 years
Tax Services (Related to TCJA or Power Tax)	10 years
Affiliate Market Rate Study	20 years

b. Decision

Figure 12, below, summarizes the evolution of positions on rate-case expenses in this proceeding.⁷⁰

⁷⁰ On December 20, 2019, CMP filed a supplemental response to ODR-012-064 with updated rate-case expenses. This update was unsolicited, not subject to any discovery, and not in response to a hearing ODR, and thus we do not include it in our decision here.

Figure 12: Summary of Positions on Recovery of Rate Case Expenses

Rate Case Expenses (\$000's)	CMP Oct. Filing	Staff BA	OPA Testimony	CMP Rebuttal	Staff RBA	OPA Brief	CMP Brief/ODR- 020-003
Consultancy Costs							
ROE & Capital Structure	\$ 150	\$ 150	\$ 115	\$ 150	\$ 150	\$ 150	\$ 152
Pension and OPEB Studies	200	100	94	100	35	35	35
Policy	200	0	200	0	0	0	0
Taxes	200	200	200	450	200	200	578
Rate Design	250	250	250	425	250	250	262
Shared Services	250	250	250	375	250	250	554
Resiliency/Benefit Cost Analysis/Resiliency Engineering/RDM							242
BA ECI Study - Vegetation Management	-	0		125			
Subtotal Consultancy Costs	\$ 1,250	\$ 950	1,109	\$ 1,625	\$ 885	\$ 885	\$ 1,822
Legal Costs							
Revenue Requirements							
Rate Design							
Total Legal Costs	885	885	885	885	500	500	624
Total Rate Case Expense	\$ 2,135	\$ 1,835	\$ 1,994	\$ 2,510	\$ 1,385	\$ 1,320	\$ 2,446
Normalization Period	1	4	3	2	4 to 20	3	2
Note: OPA Brief States \$1.32 to be amortized over 3-year period but review of text of brief for individual cost classifications does not total that amount							

In deciding how rate-case expenses should be recovered, the Commission addresses the requirement that rate-case expenditures are recovered through normalization, not amortization; determines the amounts that should be normalized in rates; and determines the period over which the amounts should be normalized.

Chapter 85 of the Commission's rules requires normalization of rate-case expenses. The purpose of normalization is to provide in rates recovery of a normal amount of an expense that is expected to be incurred in an average year during which those rates are likely to be in effect. *Re Camden and Rockland, Maine and Wanakah Water Cos.*, 154 P.U.R.4th 89, Docket No. 93-145, Order (Part II) at 65 (July 12, 1994). Normalization does not guarantee full recovery of those expenses; in the Company's next rate proceeding, amounts for normalized expenses then currently in rates will be altered to reflect expected future normal amounts. *Id.* By contrast, the purpose of amortization is to ensure recovery of a specific expense over a period the Commission deems reasonable. With normalization, actual expenditures may never be fully recovered; with amortization, actual expenditures are designed to be fully recovered. See *id.* Under the Commission's rule, CMP's rate-case expenses must be normalized, and thus recovery of the full amount of the expenses is not guaranteed.

CMP provided updated costs in ODR-020-003, with actual expenses to date. CMP also forecast additional expenses of \$437,500, which no party has disputed.

Based on the costs that CMP provided in response to ODR-020-003, the Commission finds that \$2,446,212 is a reasonable amount to use in calculating the rate-case expense to be reflected in rates. The descriptions in the record of the costs indicate that some of the rate-case services would likely be necessary in future rate cases regularly and, thus, it is reasonable to assume that costs for these services will be incurred as part of a normal rate case.

CMP does not normally file rate cases every two years; thus, it would not be appropriate to include in the revenue requirement rate-case expenses normalized over that period. CMP's last rate case was initiated in 2013⁷¹ and the rate case prior to that was initiated in 2007.⁷² The Commission thus finds four years to be more representative of the period between CMP's rate cases and orders that this period be used to normalize regular, or recurring, rate-case expenses. In so holding, the Commission finds that it is also unlikely that the costs CMP incurred for the EDIT/Tax Basis Repairs will recur, and that a market study is likely to be filed far less frequently. The EDIT review was the result of the TCJA, which was the first major change in federal tax policy since 1986. The costs incurred to review the PowerTax regulatory asset (discussed above in Section VI.E.1) were a result of a change in CMP's tax software, which also does not happen regularly. Therefore, the 10-year normalization period Staff proposed for these rate-case expenses is reasonable. The Commission also finds that Staff's recommended normalization period of 20 years for the market study is reasonable given the amount of time it took to complete the market study and the likelihood of when such a study will be done again considering the nature and complexity of the issue. Therefore, the following periods and amounts shall be reflected in CMP's revenue requirement for normalized rate case expenses:

⁷¹ See generally *Central Maine Power Company, Request for Approval of New Alternative Rate Plan (ARP 2014)*, Docket No. 2013-00168.

⁷² *Central Maine Power Company, Chapter 120 Information Post ARP 2000 Transmission and Distribution Utility Revenue Requirements and Rate Design, and Request for Alternative Rate Plan*, Docket No. 2007-00215, Order Approving Stipulation (July 1, 2008) (establishing a five-year alternative rate plan).

Figure 13: Approved Amounts and Normalization Periods for Rate-Case Expenses

	ODR-020-003 (\$)	Normalization Period (years)	Level in Revenue Requirement (\$)
CMP Rate Case - Pension/OPEB	35,000	4	8,750
ROE/Capital Structure/Other	151,563	4	37,891
Marginal Costs/Tariff Design	262,000	4	65,500
RDM	61,132	4	15,283
Revenue Requirement	587,800	4	146,950
Rate Design	36,470	5	7,294
Service Company Market Study	553,500	20	27,675
EDIT/Tax Basis Repairs	578,000	10	57,800
Resiliency-Engineering Study	68,311	4	17,078
Resiliency/Benefit Cost Analysis	112,436	4	28,109
Total Rate Case Expense	2,446,212		412,330

Finally, as noted above, the costs of the TCJA or Power Tax and vegetation-management consulting are not typical or recurring rate-case expenses. Thus, they should be recovered separately and not be included to determine the normalized amount of rate-case expenses in CMP's revenue requirement.

7. Costs of the Liberty Audit

There remains the question of how the costs of Liberty's audit will be recovered. Under 35-A M.R.S. § 113(3),

[t]he full cost of the management audit must be recovered from ratepayers, except that if the audit of an investor-owned public utility contributes to a commission finding of imprudence that results in a cost disallowance, the commission shall determine how to fairly allocate the cost of the management audit to ratepayers or the shareholders of the investor-owned public utility.

As explained below, Liberty's audit has contributed to the Commission's finding of imprudence with respect to the Company's customer-service function (as determined in this docket) and its implementation of SmartCare and handling of a meter-anomaly issue (as determined in Docket No. 2019-00015, where an order is forthcoming). Those findings resulted in a downward adjustment to CMP's return on equity in this case and several post-investigation audits and programs in Docket No. 2019-00015, the cost of which will be borne by CMP. The Commission is, thus, in a position to decide the appropriate allocation of costs between ratepayers and CMP's shareholders. Before making this determination, the Commission hereby directs the Staff to provide the parties an opportunity to file comments and reply comments on the recoverability of the audit costs. The Commission will make its decision on responsibility for the costs of Liberty's audit after considering the parties' comments.

C. Treatment of Excess Accumulated Deferred Income Taxes

CMP's protected excess ADIT is addressed above in the undisputed items. The unprotected excess ADIT—as well as background on what these terms mean and their relation to the Tax Cuts and Jobs Act of 2017—are discussed here.

1. Background

a. Tax Cuts and Jobs Act of 2017

The Tax Cuts and Job Act of 2017 (TCJA) made major changes to the federal income-tax code, the most significant of which reduced the federal corporate tax rate from 34% to 21%. The Commission opened dockets for each of the large investor-owned utilities in Maine to investigate the effect of the change in the tax code on the utilities' rates. Because the income-tax rate was reduced, the amount of accumulated deferred income taxes (ADIT) recorded on utilities' books became larger than needed to pay the future tax liability. The effect of the TCJA going forward was addressed in CMP's Annual Compliance Filing in 2018 (Docket No. 2018-00069); it was determined that the treatment of CMP's excess ADIT would be handled in this rate case.

b. Description of Excess ADIT Regulatory Liability Balance and Amortization

The reduction of the federal corporate income-tax rate resulted in the accumulated deferred income taxes reflected on a utility's books not reflecting the estimated future tax liability. Deferred taxes are recorded because of differences between how items are treated for tax and book purposes. Rates are set based upon the book treatment of items. In most instances, the book/tax differences are timing-related and will reverse over time. There are both deferred tax assets (where rates were reduced but the company has not yet received the tax benefit) and deferred tax *liabilities* (where the company has received the tax benefit, but rates have not yet reflected the benefit). Deferred tax assets may arise when a company has a net operating loss for tax purposes, meaning that although there is a tax benefit, the company has not yet been able to take advantage of it. Utilities have had net operating losses in the recent past in part because of the use of bonus depreciation and the tax-repair allowance; combined, these deductions are often greater than the company's income. In this proceeding, CMP has referred to the excess ADIT regulatory assets as "recoverable" (from customers) and the excess ADIT regulatory liabilities as "returnable" (to customers). Accumulated deferred income taxes also must be categorized as "protected" or "unprotected," as defined by the Internal Revenue Code. Protected excess ADIT cannot be returned to customers any faster than it would have without the TCJA.

2. CMP's Unprotected Excess ADIT

CMP has indicated that it has unprotected excess ADIT, and that the returnable amount is \$59.9 million and the recoverable amount is \$106.7 million. The Commission is satisfied that CMP has supported its calculation of these amounts. Not considering

any use for rate mitigation, CMP ultimately proposed a 10-year amortization period for the recoverable excess ADIT and a five-year amortization for the returnable excess ADIT.

In its Reply Bench Analysis, Staff recommended deferring the inclusion of the recoverable excess ADIT in rates because of the significant increase in these amounts from CMP's initial case to its rebuttal case.

In response to Staff's discovery questions, CMP provided additional information that supported the increase in the recoverable excess ADIT. CMP determined that it had mistakenly included unfunded deferred taxes in its original calculation of the excess ADIT. ODR-020-018. Generally Accepted Accounting Principles (GAAP) require that utilities record deferred income taxes for all tax differences, but the deferred income taxes related to flow-through items are considered unfunded. Unfunded deferred income taxes exist due to the flow-through treatment of book and tax differences in ratemaking; for flow-through items, rates are set based upon the tax treatment and not the book treatment. Rates are reduced if tax deductions happen faster than book deductions. However, once the tax deductions are no longer available, rates will be higher because there are no remaining deductions against income.

3. Decision

The Commission accepts CMP's calculations of the increase in the unprotected excess ADIT regulatory asset. CMP sufficiently explained that it had mistakenly included unfunded deferred income taxes in its initial calculation. Unfunded deferred income taxes result in taxes that have to be funded in future rates as rates have already been reduced and ratepayers have received the full tax benefit.

On the unprotected excess ADIT regulatory asset, the Commission approves CMP's proposed 10-year amortization period for this recoverable amount. On the unprotected excess ADIT regulatory liability, for the reasons discussed below in Section IX (which discusses CMP's proposal for rate mitigation), the Commission approves CMP's proposed five-year amortization period for this returnable amount.⁷³

⁷³ In its exceptions to the Examiners' Report, CMP noted a "material" inconsistency in that in every respect the Examiners' Report reflected a five-year amortization period for the returnable excess ADIT and a 10-year amortization period for the recoverable excess ADIT, yet one sentence in the Examiners' Report referred to both amounts being approved with five-year amortization periods. This was merely an editorial oversight in the Examiners' Report. We grant CMP's exception and clarify the Examiners' intention here.

D. Cost of Capital and Capital Structure

1. Positions of the Parties and Staff

a. CMP

In its brief, CMP argued that the Commission should authorize a 10.00% return on equity (ROE) as proposed by the Company and supported by the analysis of its cost of equity witness, Ms. Ann Bulkley, which concluded that an ROE of 10.30% was reasonable. CMP Br. at 74. CMP also argued that the Commission should set the common-equity ratio at 55%, a level that is supported by the Company's actual common-equity ratio and the average equity ratio of the proxy group. *Id.* at 78–79. CMP stated that it, Staff, and the OPA “agree that the costs of CMP’s short- and long-term debt are reasonable.” *Id.* at 30. CMP stated that the “weighted cost of long-term debt for the rate year is 4.45% and reflects the effects of retirements, sinking fund requirements, and new issuances. The Company’s cost of short-term debt is 3.50%, reflecting expected short-term borrowing costs over the next several years.” *Id.* CMP’s proposed ROE and capital structure, combined with the costs of debt, resulted in an after-tax weighted cost of capital (WACC) of 7.48%.⁷⁴ *Id.* at 5.

CMP stated that Staff’s recommended ROE of 8.75% was an outlier relative to ROEs authorized in the past two years, was inconsistent with the historical relationship of ROEs to interest rates, and reflected an over-reliance on the discounted cash flow (DCF) model. *Id.* at 63–69. The Company disputed Staff’s focus on the DCF model and questioned Staff’s assumption that the market data used in the DCF model reflected the expectation of higher interest rates and was understood by investors making financial decisions. *Id.* at 68. The Company also argued that Staff’s use of the Capital Asset Pricing Model (CAPM) as a check on the DCF results “suggests Staff’s attempt to engineer an unreasonably low authorized ROE.” *Id.* at 69. CMP urged the Commission to give minimal weight to Staff’s proposed ROE. *Id.* at 72. CMP also opposed the Staff’s proposed common-equity ratio of 50%, stating that it ignores the trend to adjust equity ratios upward in response to the Tax Cuts and Jobs Act of 2017 (TCJA). *Id.* at 79. Instead, CMP asserted that its proposed 55% common equity ratio was reasonable, maintained its ability to attract capital, and reflected its actual capital structure and that of its proxy group. *Id.* at 78.

On the OPA’s recommended ROE, CMP argued that the application of the DCF model by the OPA’s cost-of-capital witness was more reasonable and its results should be preferred over Staff’s. *Id.* at 72. Nevertheless, CMP disagreed with the OPA’s narrow interpretation of the DCF results and stated that it had identified certain infirmities in the OPA’s DCF calculation that understated the ROE. CMP argued that, if the Commission were to rely on the OPA’s proposed ROE, certain adjustments should be applied. *Id.* Specifically, CMP argued that the OPA’s witness considered only the mean and median

⁷⁴ Also see Section VI.F.1. Incorporating a long-term debt cost of 4.39% rather than 4.45% into the calculation of the weighted average cost of capital proposed by CMP appears to result in an after-tax WACC of 7.45% rather than 7.48% as stated in CMP’s brief.

results of the analyses, in contrast to the Company's consideration of the full range of results. *Id.* CMP also stated that the OPA's analysis contained an inconsistency that understated the proposed ROE in that the OPA's witness excluded the results of his multistage DCF in its entirety, which included results that fell below 8.64%, yet did not exclude results below 8.64% from his constant-growth DCF analysis. CMP argued that the OPA's constant-growth DCF results should exclude any ROE below 8.64%. This adjustment, CMP stated, would result in a recalculated mean ROE of 9.78% and a median of 9.25%. *Id.* at 73.

The Company maintained that primary reliance on the DCF in these anomalous market conditions understates investors' expectations going forward, but CMP recognized the Commission's authority to establish an appropriate ROE regardless of methodological approach. If the Commission were to choose to rely primarily on the DCF results, CMP urged that the Commission consider the adjusted results of the OPA's version of the constant-growth DCF model rather than the results presented by Staff. *Id.* at 73–74.

b. Office of the Public Advocate

The OPA argued that the Commission should reject CMP's proposal and authorize an ROE of 9.18% combined with a common-equity ratio of 55%, consistent with the analysis and testimony of its cost-of-capital witness, Dr. Marlon Griffing. OPA Br. at 91. The OPA stated that this would result in a rate of return for CMP of 7.00%.⁷⁵ *Id.* at 86. In developing its recommended ROE, the OPA's witness developed a comparison group of domestic electric and gas utilities with risk profiles similar to CMP's and applied a constant-growth DCF model, a multistage-growth DCF model, and a CAPM model as a check on the reasonableness of the DCF results. This, the OPA argued, is a market-oriented approach used to determine the cost of equity for a regulated public utility and is consistent with Commission precedent. OPA Br. at 80.

The OPA argued that CMP's witness produced a flawed analysis that resulted in an inflated ROE. *Id.* at 86. Specifically, the OPA criticized Ms. Bulkley's analysis because it relied on market information from up to 180 days prior to when the analysis was performed, and used a "projected" DCF model that substituted forecasts of dividends and share prices for actual dividend payment choices made by utilities and share-price decisions made by investors. *Id.* at 88. The OPA also argued that CMP's use of a forecast of Treasury rates as the risk-free rate in the CAPM model, rather than current interest rates, overstated the ROE. *Id.* at 89.

The OPA stated that Staff's analyses, which showed a reduction in the ROE from that recommended in the Bench Analysis to that recommended in the Reply Bench Analysis, reflected the same market trends as Dr. Griffing's direct and surrebuttal testimonies. *Id.* at 90. The OPA argued that these analyses demonstrate that the calculated ROE should be lower due to the changes in the market, contrary to the

⁷⁵ Also see Section VI.F.1. It was not clear whether the OPA incorporated a long-term debt cost of 4.39% rather than 4.45% into its calculation of the weighted-average cost of capital.

Company's rebuttal testimony, which reflected no change in the recommended ROE of 10.00% from the time of Ms. Bulkley's initial calculation in October 2018 and was not reflective of current circumstances. *Id.*

Finally, the OPA argued that its analysis and recommended ROE were consistent with the downward trend in recently authorized ROEs in other jurisdictions. *Id.* at 91. Noting that its ROE witness checked his ROE recommendation against recent authorized ROE awards, the OPA argues that a recently decided case in South Dakota in which the utilities commission approved an ROE of 8.75% established a "new low end to the range of recently authorized ROEs." *Id.* at 90–91.

c. Bench Analysis and Reply Bench Analysis

In its Bench Analysis, the Staff recommended an ROE of 9.35% and the use of a capital structure that included a common-equity layer of 50.00%, a long-term debt component equal to 47.16%, short-term debt equal to 2.82%, and preferred stock at 0.02%, resulting in an after-tax WACC of 6.87% and pre-tax WACC of 8.70%. BA at 64. In its Reply Bench Analysis, the Staff maintained the capital structure and costs associated with the other capital components, but revised its recommended ROE to 8.75%, resulting in an after-tax WACC of 6.57% and pre-tax WACC of 8.28%. RBA at 63.

In arriving at its ROE recommendation, Staff developed a proxy group of gas and electric utilities and used a constant-growth DCF analysis and a CAPM calculation as a check on the DCF results. Staff developed a DCF range of 7.58% to 10.86% in its Bench Analysis and 4.94% to 10.05% in its Reply Bench Analysis. BA at 50; RBA at 58. Staff's CAPM analysis in its Bench Analysis indicates an ROE range of 9.15% to 11.59%. BA at 52. Staff revised its CAPM range in its Reply Bench Analysis to 8.40% to 11.51%. RBA at 60. Staff also recommended the use of a capital structure with a common-equity layer of 50%. BA at 61–63.

2. The *Hope-Bluefield* Standard

Two U.S. Supreme Court decisions of more than 70 years ago, known as *Bluefield* and *Hope*, provide the standards for measuring the reasonableness of a utility's allowed ROE. Taken together, the *Hope* and *Bluefield* decisions establish that:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made . . . on investments in other business undertakings which are attended by corresponding risks and uncertainties . . . The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692 (1923). The idea of associating the allowed return to a common-equity owner with those available from other companies of comparable risk was established in the *Hope* decision:

[T]he return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Fed. Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944). Together, these principles form what is known as the *Hope-Bluefield* standard.

Based on that standard, determining an appropriate ROE for a regulated utility involves determining a market-based cost of equity. For a company that is not publicly traded such as CMP, the cost of equity is determined to be the return investors expect from alternative investments that present no more and no less risk. In practice, estimating the cost of equity involves developing a comparable group of companies (the so-called proxy group), for which market-based information is available, that are in lines of business that present similar financial risks, and using economic and financial models to set an appropriate ROE. The *Hope-Bluefield* standard has long served as the benchmark against which this Commission measures an appropriate ROE.

3. Discussion and Decision

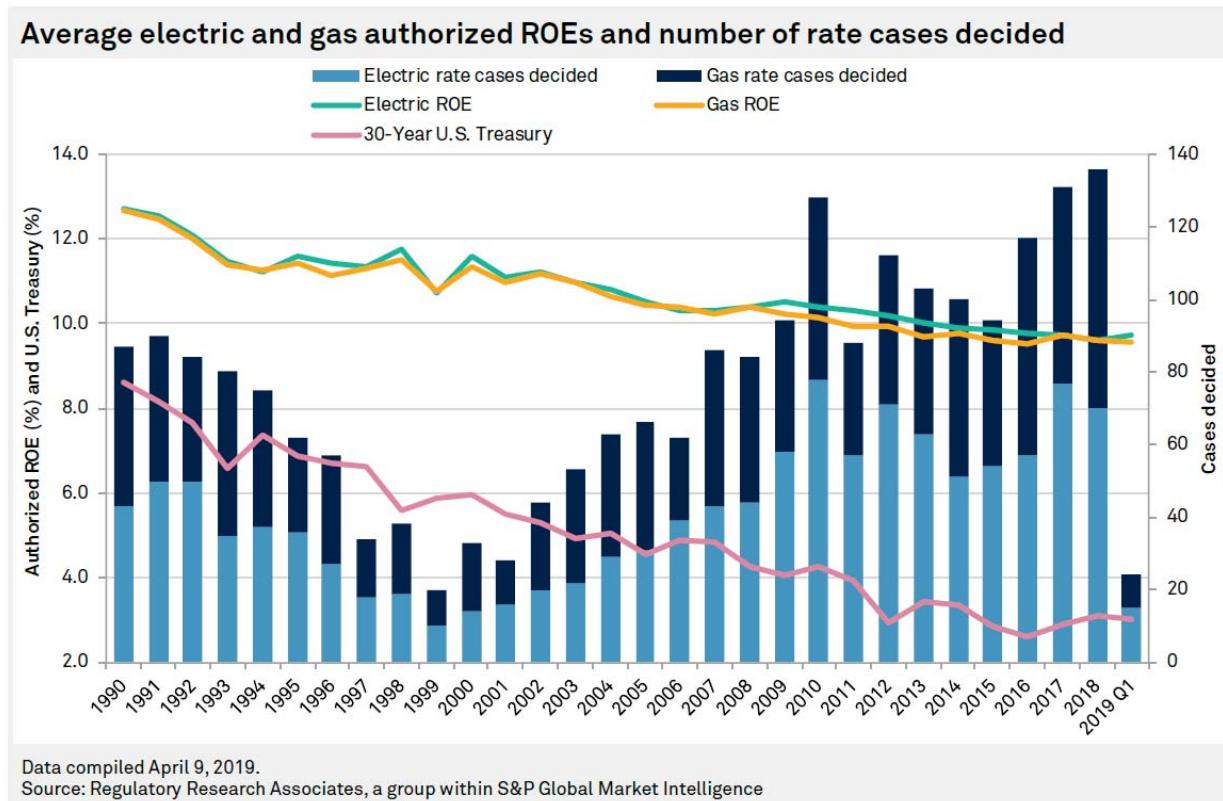
a. Market Conditions

As noted, because the Commission's approach to determining an appropriate ROE is market-based, capital-market conditions and expectations of earnings are fundamental to utility cost-of-equity analysis. The primary models the Commission relies upon—the DCF and the CAPM—are market-based analytical approaches that typically incorporate current market data. As such, the results of any analysis done at a point in time become unreliable as underlying credit and equity market conditions change. Thus, it is appropriate to consider market conditions prevailing as of the date of the analyses presented and to update those analyses as those conditions change. In this case, the ROE analyses in the record were done at various times over the course of the proceeding as shown in Figure 14 below. The most recent analysis is based on capital market and economic data from June 2019.

Figure 14: Dates on Which ROE Analyses Were Filed

	Date Testimony Filed	Date of Market Data
CMP Direct	10/15/2018	8/31/2018
OPA Direct Bench Analysis	2/22/2019	1/31/2019
	2/22/2019	2/13/2019
CMP Rebuttal	4/12/2019	No update
OPA Surrebuttal	6/17/2019	5/24/2019
Reply Bench Analysis	6/17/2019	6/4/2019

As a general matter, although numerous factors influence ROE estimation models, interest rates—especially long-term rates—and equity-market conditions have considerable influence on ROE models. As presented in Staff’s Reply Bench Analysis and illustrated in Figure 15 below, over the past three decades, average authorized ROEs for electric utilities have declined from above 12% in 1990 to 9.60% in 2018. At the same time, the yield on 30-year Treasuries has declined from almost 9% to approximately 3%, and the Dow Jones Industrial Average (DJIA) has increased tenfold from approximately 2,600 at the end of 1990 to almost 26,000 in June 2019. RBA at 53–54.

Figure 15: Electric and Gas Authorized ROEs

Through the first half of 2019, long-term interest rates continued their decline. As noted in the Reply Bench Analysis, as of June 4, 2019, the yield on 30-year Treasuries was 42 basis points lower than at the time of the Company's analysis and 44 basis points lower than on the date of the Staff's Bench Analysis. RBA at 54–55. The Company, the OPA and the Staff all agreed that there is not a one-to-one correlation between interest-rate changes and ROE changes. CMP Br. at 67; OPA Br. at 90; Tr. at 16 (July 26, 2019 Hr'g). Nevertheless, although the Commission declines to attempt to establish a precise mathematical relationship between ROEs and prevailing interest rates, the directional relationship between the two is apparent and supported by decades of observations.

b. Return on Equity – Proxy Group Selection

As an initial matter, ROE analysis requires the development of a proxy or comparable group of companies for which market information can be obtained. The Company's witness followed a customary approach for selecting a proxy group of publicly traded utilities that are representative of the risks and prospects faced by CMP. Beginning with a group of 49 domestic utilities classified by Value Line as Electric Utilities and Natural Gas Distribution Companies, Ms. Bulkley then applied a set of

screening criteria to arrive at a set of 21 comparable companies. ROE Dir.⁷⁶ at 30–34. The OPA's witness followed a similar approach to derive a comparison group of nine electric-utility firms and five gas companies. Griffing Dir. at 15–26. Finally, the Staff developed a comparable group of 22 electric utilities and natural-gas-distribution companies using slightly different screening criteria. BA at 41–45.

Although there are differences among the proxy groups used by the Company, the OPA, and the Staff, there is also substantial overlap. Twelve companies were common to both the OPA and CMP; 13 companies were common to both CMP and the Staff; and nine companies were common to all three. These sample sizes are large enough and consistent enough to allow a meaningful analysis of market returns.

c. Return on Equity – DCF Model Results

Consistent with past Commission practice and orders, Ms. Bulkley, Dr. Griffing and Staff employ a discounted-cash-flow approach to the cost-of-equity analysis. The DCF model is commonly used for estimating the cost of common equity for public utilities and is based on the financial theory that the value or price of any security is the discounted present value of all future cash flows. As explained in materials published by the Society of Utility and Regulatory Financial Analysts:

The DCF model is based upon two fundamental principles. First, DCF is based on the postulate that investors value an asset on the basis of the future cash flows (i.e., dividends and ultimate sales in the case of common stocks) they expect to receive from owning the asset. The second DCF principle is that investors value a dollar received in the future less than a dollar received today (i.e., the “time value of money”). Within their context, the current price of a company’s stock is equal to the present value equivalent of the expected dividends and the proceeds from eventually selling the stock. The discount rate that equates the future anticipated dividends and the future anticipated selling price with the current market price is the cost of common equity.⁷⁷

⁷⁶ ROE Dir. refers to the Direct Testimony of CMP’s witness on Cost of Capital and Capital Structure, Ann Bulkley, filed October 15, 2018.

⁷⁷ Parcell, David C., Society of Utility and Regulatory Financial Analysts, *The Cost of Capital—A Practitioner’s Guide* 124 (2010 ed.) (cited in BA at 46, n.13).

In its simplest form, a DCF estimate of the cost of equity capital uses the formula

$$K = D/P + g$$

where

K = the cost of equity capital;

D/P = the current dividend yield (the current dividend/current stock price); and

g = the long-term expected growth rate.

Generally, the market-based data (market prices, current dividends and the resulting dividend yield) required to conduct any DCF analysis are readily available.

As presented in her testimony, Ms. Bulkley performed her DCF analysis using the current dividend and 30-day, 90-day, and 180-day average closing stock prices as of August 31, 2018 and a projected constant-growth DCF analysis using projected market data from Value Line. ROE Dir. at 43, Exhs. AEB-5 & AEB-6. She eliminated any results lower than 7.00%, noting that such a return would not provide a sufficient return to investors as compared to a utility bond return. ROE Dir. at 47; EXM-006-009. She then calculated DCF mean low, mean, and mean high results using, respectively, the minimum growth rate (i.e., the lowest of the First Call, Zacks, and Value Line earnings growth rates), the average growth rate from all three sources, and the highest of the growth rates for each of the proxy-group companies. Figure 16, below, summarizes the DCF results as presented in the Company's testimony, which includes the effect of an 11-basis-point increase for flotation costs and the elimination of any result less than 7.00%. Based on this presentation, an indicated ROE would fall in the range of a low of 8.79% to a high of 10.94%. The Company did not update its ROE testimony in rebuttal.

Ms. Bulkley's workpapers included calculations that excluded any adjustment for flotation costs and included results of less than 7.00% in the calculation of averages. Exhibits AEB-5 and AEB-6. Using these alternative calculations, Ms. Bulkley's DCF analysis indicates an ROE within the range of 8.16% to 10.84%.

A summary of the Company's DCF results as presented in its testimony and as adjusted by Staff to exclude flotation costs and include results of less than 7.00% is provided in Figure 16.

Figure 16: Summary of CMP's DCF Results as Presented in Testimony and as Adjusted to Exclude Flotation Costs and Include Results Less than 7%

	As Presented in CMP Testimony			Company Data with Staff Adjustments		
	Includes Flotation Cost Adjustment			Excludes Flotation Cost Adjustment and Includes Results less than 7.00%		
Constant Growth DCF	Mean Low	Mean	Mean High	Mean Low	Mean	Mean High
30-Day Average	8.79%	9.56%	10.51%	8.16%	9.18%	10.40%
90-Day Average	8.88%	9.65%	10.61%	8.26%	9.28%	10.50%
180-Day Average	8.96%	9.73%	10.68%	8.33%	9.36%	10.58%
Constant Growth Average	8.88%	9.65%	10.60%	8.25%	9.27%	10.49%
Projected DCF						
2021-2023 Projection	9.06%	9.86%	10.94%	8.59%	9.62%	10.84%

BA at 48–49.

The OPA's consultant, Dr. Griffing, presented both a constant-growth and a multistage-growth DCF analysis but did not rely on the results of his multistage DCF model in his final recommended ROE because the results were too far outside the lower value of 9.10% for authorized ROEs in recent fully litigated rate cases to be a reasonable return. CMP-019-006. As presented in his direct testimony, Dr. Griffing's constant-growth DCF analysis for his electric comparison group established an overall ROE range of 6.95% to 12.37%, with a mean of 9.27% and a median of 9.33%. These results supported Dr. Griffing's recommendation of a 9.33% ROE, inclusive of flotation costs. Griffing Dir. at 34, Exh. MFG-8, Sched. 1. Dr. Griffing updated his DCF analysis in his surrebuttal testimony. His constant-growth DCF analysis for his electric comparison group established an overall ROE range of 6.46% to 12.26%, with a mean of 9.06% and a median of 9.18%. Griffing Surr.⁷⁸ at 18, Exh. MFG-16, Sched. 1.

In its Bench Analysis, Staff employed a method similar in approach to the OPA and the Company, but with adjustments to reflect differences in the proxy group and input data. Staff's constant-growth DCF model produced an indicated ROE range of 7.58% to 10.86%. BA at 50. In its Reply Bench Analysis, Staff updated its DCF calculations to reflect more recent market data. Incorporating updated market data into the DCF analysis supported a determination that an appropriate ROE fell within the range of 7.10% to 10.05%. Prior to any adjustment for flotation costs, this range had a midpoint of 8.60%. RBA at 59.

d. Return on Equity – CAPM Model Results

As the Commission has previously recognized, results from an analysis using the Capital Asset Pricing Model provide a useful check on the DCF analysis. *Central Maine*

⁷⁸ Griffing Surr. refers to the Surrebuttal Testimony of the OPA's witness, Dr. Marlon Griffing, on Cost of Capital, filed June 17, 2019.

Power Company, Proposed Increase in Rates, Docket No. 92-345, Order at 31 (Dec. 14, 1993). The CAPM is a risk-premium approach “that estimates the cost of equity for a given security as a function of a risk-free return plus a risk premium to compensate investors for the non-diversifiable or ‘systematic’ risk of that security. This second component is the product of the market risk premium and the Beta coefficient, which measures the relative riskiness of the security being evaluated.” ROE Dir. at 49. The general form of the CAPM is:

$$K = R_f + \beta (R_m - R_f)$$

where

K = the required ROE;

R_f = the risk-free rate;

β = the Beta coefficient of an individual security; and

R_m – R_f = the overall market risk premium.

The yield on Treasury securities is typically used for the risk-free rate.

The Company presented a CAPM analysis using three sources for the risk-free rate: the current 30-day average yield on 30-year U.S. Treasury bonds of 3.05%; the average projected 30-year U.S. Treasury bond yield for Q4 2018 through Q4 2019 of 3.50% as reported by Blue Chip Financial Forecasts; and the average projected 30-year U.S. Treasury bond yield for 2020 through 2024 of 4.20% as reported by Blue Chip Financial Forecasts. *Id.* at 50. For the Beta coefficient, Ms. Bulkley used the average of the Value Line Betas for her proxy group of 0.676 and derived an expected market-return component of 15.25% based on the S&P 500 Index using the constant-growth DCF formulation. Ms. Bulkley’s CAPM calculations resulted in an indicated ROE range of 11.30% to 11.67%. *Id.* at 54. As with the DCF results, the Company did not update its CAPM analysis in rebuttal.

In his testimony, Dr. Griffing employed a similar approach to the CAPM analysis with two notable variations. First, he used the average yield on a 30-year Treasury Bond for the period January 2–31, 2019 of 3.04% as his risk-free rate. Griffing Dir. at 43. Second, Dr. Griffing calculated his market rate of return similarly to Ms. Bulkley, by applying a DCF formulation to the S&P 500. Notably, however, Dr. Griffing excluded from the S&P 500 universe any companies that did not pay dividends or which had a negative or no value for an earnings growth rate. Both characteristics are essential inputs into the DCF model. *Id.* at 44. Dr. Griffing’s CAPM analysis for his electric group produced an ROE of 10.02% and for his electric-and-gas group produced an ROE of 10.35%. *Id.* at 45. In his surrebuttal testimony, Dr. Griffing updated his CAPM analysis, which produced an ROE of 9.26% for his electric group and 9.55% for his electric-and-gas group. Griffing Surr. at 21.

Consistent with the Commission's preference as described in *Public Utilities Commission, Investigation of Central Maine Power Company's Stranded Costs, Transmission and Distribution Utility Revenue Requirements, and Rate Design*, Docket No. 97-580, Order (Mar. 19, 1999), Staff's CAPM analysis used a current Treasury rate rather than a forecast of interest rates as the risk-free component. Staff incorporated the market risk premium derived by Ms. Bulkley and recently available Value Line Betas and derived an ROE range of 9.15% to 11.59%. BA at 52. In its Reply Bench Analysis, Staff updated the analysis to produce an ROE range of 8.40% to 11.51%. RBA at 60.

e. Bond Yield Plus Risk Premium Model

The Company also presented a Bond Yield Plus Risk Premium analysis in which Ms. Bulkley compared the difference between the allowed ROE and the Treasury yield from 750 electric utility rate cases from 1992 to August 2018. She developed an equity-cost rate by regressing the authorized ROE on the 30-year Treasury yield in effect at the time of the rate case and adding the resulting risk premium to current and projected Treasury rates. Her results ranged from 9.83% to 10.36%. ROE Dir. at 56–57. Neither the OPA nor the Staff presented a bond yield plus risk premium analysis.

As the Staff noted in its Bench Analysis, the analytical approach to determining an appropriate ROE range is based on obtaining and analyzing information that results from the financial decisions of investors. BA at 53. Although the commissions making the ROE decisions presumably had market-based analytical information in front of them, those decisions are likely to reflect other specific information related to the utility and the issues presented in the rate case. As such, the Commission declines to include the results of the Company's Bond Yield Plus Risk Premium analysis in our decision.

f. Return on Equity

As has long been our practice, the Commission relies on the DCF methodology and results to indicate an appropriate ROE. The Commission is cognizant of current equity-market conditions and the characteristics of different analytical tools used to estimate a company's cost of equity in a ratemaking proceeding, and continues to have confidence in the DCF methodology. Overall, the analyses in this case indicate, based on the DCF model, that a reasonable ROE for CMP could fall within the ranges shown in Figure 17, from as low as 6.46% to as high as 12.37%.

Figure 17: Summary of Constant-Growth DCF Results

Constant Growth DCF Results					
	Flotation Cost Adjustment	Range			Recommendation
		Low	High	Mid-point	
CMP Direct	Includes	8.79%	10.94%	9.87%	10.00%
CMP Direct	Excludes	8.16%	10.84%	9.50%	10.00%
OPA Direct	Includes	6.95%	12.37%	9.66%	9.33%
OPA Surrebuttal	Includes	6.46%	12.26%	9.36%	9.18%
Bench Analysis	Excludes	7.58%	10.86%	9.22%	9.35%
Reply Bench Analysis	Excludes	7.10%	10.05%	8.58%	8.75%

The record evidence does not demonstrate that CMP's risk profile differs in any marked way from the risk profile of the proxy group upon which these results were determined. Moreover, the Commission is not persuaded that there exist any anomalous capital-market conditions that would support a specific adjustment to the ROE indicated by the DCF analysis. The Commission gives somewhat more weight to the analyses that were completed later in time, as they may be more reflective of current market conditions, and does not find any basis to disregard the results of any analysis as not worthy of consideration.

As a check on the DCF results, the Commission also considers the results of the CAPM analyses. As indicated, the Commission prefers the use of a current Treasury rate to a forecast of interest rates as the risk-free component in the CAPM analysis. The CAPM results in the Reply Bench Analysis and the surrebuttal testimony of Dr. Griffing reflect both more recent market information and the use of current Treasury rates. The Commission finds Dr. Griffing's CAPM analysis to be more complete in that he derived a market risk premium based on sound DCF principles, as opposed to the Staff's analysis, which simply incorporated the market risk premium presented by the Company. Dr. Griffing updated his CAPM analysis, which produced an ROE of 9.26% for his electric group and 9.55% for his electric-and-gas group, and is consistent with the results indicated by the DCF analysis.

In the Examiners' Report, Staff recommended a 9.25% ROE as appropriate for CMP. In its exceptions, CMP stated that the range of ROEs considered by the Examiners, although flawed, supported an ROE of at least 9.42% and the results of the CAPM analysis justified awarding an ROE above the midpoint of the reasonable range. In its exceptions, the OPA stated that the ROE recommended in the Examiners' Report was too high and that the testimony of the OPA's witness supported an ROE of 9.18%.

As always, the determination of an appropriate ROE involves the exercise of the Commission's judgment. In this case, although the record could support a lower ROE, the Commission finds an ROE of 9.25%, inclusive of flotation costs, to be reasonable.

g. Capital Structure

As noted, in testimony, the Company and the OPA agreed that CMP should be allowed a common-equity ratio of 55% for ratemaking purposes, which would result in an increase from the 50% common-equity ratio currently reflected in CMP's rates. To support this increase, Ms. Bulkley reviewed CMP's historical capital structure and the capital structures of the utility operating subsidiaries of similar proxy companies and determined that the equity ratios of the utility operating subsidiaries in the proxy group ranged from 48.44% to 63.84%, with an average of 55.28%. ROE Dir. at 74–75. Over the past five years, CMP's year-end equity ratio has consistently been between 53.60% and 59.57%, averaging 56.15%. *Id.* at 76. Moreover, Ms. Bulkley asserted that the effects on cash flow of the TCJA must be considered when determining the equity ratio, noting that the credit-rating agencies have expressed concerns about this. The OPA's witness did not perform any independent analysis of the Company's capital structure, noting that he accepted Ms. Bulkley's proposed capital structure. Griffing Dir. at 53.

Staff disagreed with the proposed change in the common-equity ratio, noting that the equity ratios of the operating subsidiaries reflect regulatory, not investor, preference. Rather, Staff argued that it was appropriate to consider the capital structure of the entities for which market data is used—namely, the publicly traded parent companies. BA at 61. In response to a data request, Ms. Bulkley provided the equity ratios of the parent companies in her proxy group, showing that the common-equity ratios for the publicly traded parent companies in her proxy group range from 48% to 64% and averaged 54.9%. EXM-006-011. Staff also provided an analysis of the common-equity ratios of the publicly traded parent companies in its proxy group, showing a range from 28.93% to 62.16%, with an average of 48.10%. BA at 62.

Consistent with the Staff's bench analyses, the Examiners recommended a common equity ratio of 50%. In its exceptions, CMP stated that a 55% equity ratio would result in a more appropriate forward-looking cost of capital and is more reasonable under current market conditions. The OPA, in its exceptions, accepted the recommendation in the Examiners' Report.

The Commission does not find sufficient evidence in the record to support a change in the common-equity ratio for CMP. As noted in the Bench Analysis, CMP's rates have been set based on a capital structure that includes a 50% equity layer for many years. During that time, CMP has been able to maintain its credit rating and to attract capital. *Id.* at 63. Although the Commission is aware of the general concerns of rating agencies about the impact of the TCJA, the evidence in this case does not clearly support the need to increase CMP's common-equity ratio to 55% at this time. The Commission finds that maintaining a 50% common-equity ratio for ratemaking purposes is reasonable.

h. Long-Term and Short-Term Debt Costs

As noted, there seems to be some confusion about the correct cost of long-term debt to be used and some disagreement about the appropriate cost of short-term debt.

In its brief, the Company characterized the 4.45% cost assigned to the long-term debt component and the 3.50% cost assigned to the short-term debt component of its capital structure as non-disputed items. *CMP Br.* at 30. In fact, in its rebuttal, CMP updated its cost of long-term debt to 4.39% to reflect the results of recent bond offerings. Rev. Req. Reb. at 17. Though CMP's brief referenced the out-of-date figure (4.45%) and the OPA's consultant continued to use that same figure in his schedules, no party challenged the updated long-term-debt cost of 4.39%, and the OPA's and CMP's references to the out-of-date figure appear to have been oversights. The Commission finds this updated cost of long-term debt, 4.39%, to be reasonable.

Also, the Company's filing included a cost of short-term debt of 3.50%, reflecting expected increases in short-term borrowing costs over the next several years. *CMP Br.* at 30. Staff found the Company's proposed rate to be reasonable. BA at 63. The OPA rejected the Company's proposal and substituted a cost of 2.58%, which was equal to the average yield for the one-year maturity U.S. Treasury instruments from January 2–31, 2019, noting that CMP's proposed rate was a projection and actual bond yields have fallen short of projected bond yields for some time. Griffing Dir. at 54. Although the Commission appreciates the point that interest-rate projections often turn out to be inaccurate, it is not likely that CMP would be able to borrow funds at the same rate as the federal government and, thus, a Treasury rate is not an appropriate proxy for CMP's borrowing costs. The Commission declines to incorporate the short-term debt rate proposed by the OPA, and instead finds a 3.50% cost to be reasonable.

i. Weighted-Average Cost of Capital

The determination of a 9.25% ROE with a 50% common-equity ratio combined with the adjustments to the cost of long-term debt as noted above produces a pre-tax WACC of 8.60% and an after-tax WACC of 6.80% as shown in Figure 18.

Figure 18: Summary of Decision on Cost of Capital and Capital Structure

	<u>Capitalization Percentage</u>		<u>After-Tax Weighted Cost</u>	<u>Pre-Tax Weighted Cost</u>
Common Equity	50.00%	9.25%	4.63%	6.43%
Preferred Stock	0.02%	6.00%	0.00%	0.00%
Long Term Debt	47.16%	4.39%	2.07%	2.07%
Short Term Debt	<u>2.82%</u>	3.50%	<u>0.10%</u>	<u>0.10%</u>
Total	100.00%		6.80%	8.60%

As discussed in Section VIII.H.1, however, the overall management efficiency of CMP warrants an adjustment to the base ROE, which results in a lower WACC.

VIII. CUSTOMER SERVICE ISSUES

In addition to the more traditional ratemaking issues addressed above, a major focus of this case is CMP's customer service, which has been the source of numerous complaints to the Commission. Those complaints ultimately led the Commission to commence Liberty's audit of CMP's customer service. The Staff's analysis, the findings in the Liberty Report, and the testimony of scores of public witnesses have all highlighted the deterioration in quality of CMP's customer service in recent years. Summaries of these analyses and testimony are presented below, followed by the Commission's findings, conclusions, and remedies for CMP's customer service, which we have found to be inadequate.

A. Background and Legal Standard

Under 35-A M.R.S. § 301, a public utility must provide safe, reasonable, and adequate service to its customers. Because the statutory standard of reasonable and adequate service cannot be defined with precision, the Commission has used the following criteria in determining whether a utility's service practices were unreasonable or inadequate:

- (1) whether the company's practice substantially departs from the regular and accepted practice of the company in question as well as that of other utilities in general;
- (2) whether benefits to the company of the practice are outweighed by the adverse impact of the practice on its ratepayers; and
- (3) whether the company's practice results in inadequacy of service when considering such factors as the number of customers affected, the duration of the impact, the reason for the company's action and the departure from historic trends.

Hogan v. Hampden Tel. Co., F.C. 2438, 36 P.U.R.4th 480, 485 (May 16, 1988). Evidence warranting a finding adverse to the utility on any one or more of these criteria is sufficient to support a finding that the utility's practice is unreasonable. *Id.*

The requirement to provide reasonable and adequate service encompasses more than just the delivery of electric energy. It requires that the utility, as a monopoly service provider, adequately and reasonably communicate with its customers. *George Lee, Appeal of Consumer Assistance Division Decision #2000-8603 Regarding Bangor Hydro-Electric Company*, Docket No. 2001-00597, Order at 9 (Dec. 13, 2002). The duty to reasonably and adequately communicate with customers includes the duty to take calls from customers reasonably promptly, as embodied in the call-answering and call-abandonment standards utilized by the Commission. *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2015-00360, Order – Part II at 49 (Dec. 22, 2016).

B. Liberty Audit

On July 10, 2018, the Commission expanded the scope of Liberty's audit of CMP to include, among other things,⁷⁹ inquiries and complaints customers had made about CMP's customer service since the transition to SmartCare, and CMP's response to those inquiries and complaints. The Commission directed Liberty to address the following questions in the course of its audit:

- Is CMP answering and responding to calls from customers within a reasonable timeframe?
- How has CMP reacted and responded to customer complaints on high bills?
- Is CMP providing reasonable and adequate responses to customers' calls?

See *Public Utilities Commission, Investigation of Central Maine Power Company Metering, Billing and Customer Communication Issues*, Docket No. 2018-00052, Notice of Investigation at 2 (Mar. 1, 2018); see also Liberty Report at 73. Liberty's work, observations, and findings on customer service are detailed in its December 20, 2018 forensic audit report. See Liberty Report at 73–99. Liberty's audit of CMP's customer-service functions examined (among other things) the timeliness and quality of CMP's interactions with customers, including the time required to respond to customers' calls, the responses to high-bill inquiries and complaints, and the reasonableness of responses to customers' calls, call-center and billing performance, customer-service systems and communication plans, and call-center storm-response plans. Liberty Report at 73.

Liberty framed the problem of CMP's ability to effectively communicate with and serve its customers, noting that "[c]oncerns about these aspects of the 'customer experience' have grown since [fall 2017]." Liberty Report at 73. As a general matter, "[h]ow well utilities handle calls and complaints forms a central element of the metrics used by virtually all utilities when measuring how well they are serving customers." Liberty Report at 73. Difficult transitions to new billing systems can impair other customer-service functions and increase skepticism among customers, Liberty noted: "If customers cannot get clear, convincing answers or rely on timely solutions to inquiries, complaints, and billing errors, increasing loss of confidence in their electric utility and concern begins to turn to skepticism. Doubt in the validity of even those answers that are correct and responses that are effective under the circumstances increases." Liberty Report at 73.

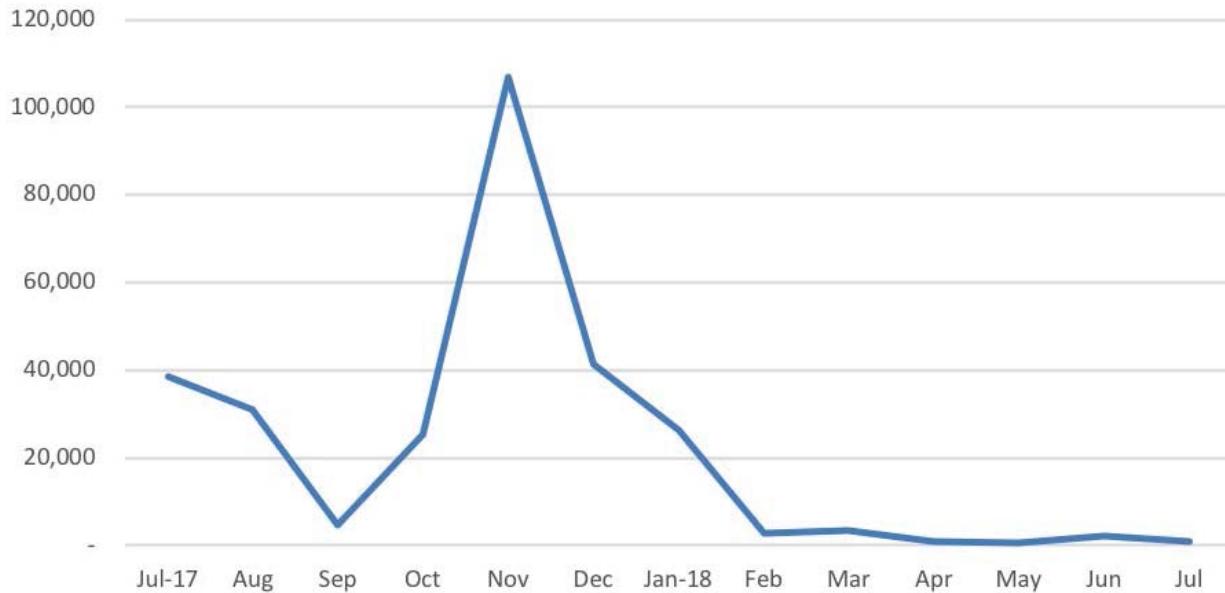
⁷⁹ Liberty's audit was wide-ranging and, aside from customer service and communication, addressed CMP's implementation of SmartCare and allegations of errors in metering and billing, and customer usage that was atypically high. The issues of high usage and allegations of errors in metering and billing have been addressed in the companion case, Docket No. 2019-00015, where a formal written order is forthcoming.

1. Call-Center Performance

Liberty observed that CMP's call-center performance degraded significantly with the deployment of SmartCare, stating: "[T]he number of calls and callers abandoning climbed significantly. Abandonment rates tripled" from 11% in September 2017 to 35% in February 2018. Liberty Report at 74. "Call volumes for the first two months of 2018 ran 70 percent higher than the corresponding months of 2017. More customers were calling, but failing to get through to discuss inquiries, concerns, and complaints." Liberty Report at 74.

CMP experienced a 22% increase in times to handle calls following SmartCare go-live and high rates of calls abandoned by customers before response by the Company. Liberty Report at ES-8. CMP also failed to consistently meet its target level of service (answering 80% of customer calls within 45 seconds, a target consistent with industry experience) as it continued in the second and third quarters of 2018 to struggle to address billing issues. Liberty Report at 97. Insufficient staffing materially contributed to long answer and call-handling times. Liberty Report at 98. Insufficient experience and supervision impaired CMP's ability to resolve specific customer inquiries and complaints and to address the root causes underlying them. Liberty Report at 98.

Liberty found that CMP's problems answering customer calls began before the implementation of SmartCare. When training for SmartCare began in July 2017, many customers attempting to call CMP received a "courtesy message" (meaning they were blocked). This was because the number of customers attempting to reach CMP exceeded the capacity of trunk lines connecting the contact center to the telephone network. Liberty Report at 89. CMP began tracking blocked calls in July 2017 and since then, nearly 350,000 customer calls have been blocked, with a peak of 112,710 in November 2017, following the October 2017 storm event. *Id.* The Liberty Report also stated that call-center best practices dictate eliminating instances of blocked calls through the use of overflow services or additional capacity. Liberty Report at 89. Figure 19 below shows that the worst blockage occurred from July 2017 to February 2018, during the pre- and post-SmartCare go-live periods. During this period, approximately 25% of callers trying to reach CMP received the courtesy message. EXM-001-019, Att. 1.

Figure 19: Calls Blocked Per Month, July 2017 to July 2018⁸⁰

Liberty found that the numbers of callers abandoning their calls before reaching a live person also increased significantly after go-live, peaking in late March and early April 2018, as shown in Figure 20, below.

Figure 20: Percent of Callers Abandoning, January 2017 to August 2018⁸¹

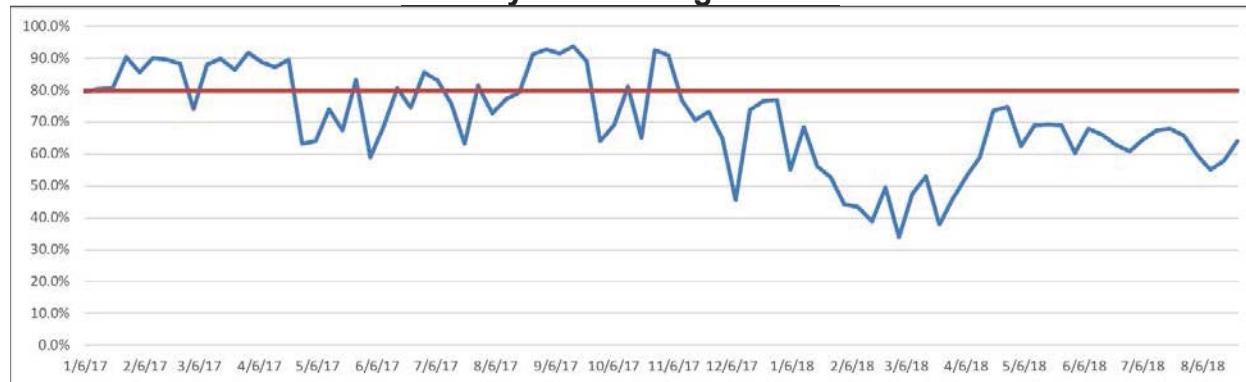
Liberty stated that typical industry abandonment rates range between 5% and 10%; thus, CMP's call-abandonment rates far exceeded industry standards. Liberty Report at 89. Further, when blocked calls (where the customers cannot get through to the Company at all) are considered along with abandoned calls (where customers who do get through to the Company are put on hold for long periods of time and then abandon the call), it becomes clear that a large number of CMP customers were simply unable to reach the Company from July 2017 through January 2018.

⁸⁰ Liberty Report at 89.

⁸¹ Liberty Report at 90.

Liberty also found that CMP's call center was not consistently meeting its call-answer goal of 80% of calls answered within 45 seconds prior to the implementation of SmartCare in October of 2017 and experienced a significant drop in performance after the implementation of SmartCare.⁸² This trend is observed in Figure 21 below.

Figure 21: Percent of Calls Answered Within 45 Seconds, January 2017 to August 2018⁸³



2. Billing Delays and Errors

Liberty found that SmartCare had functioned largely as planned, but defects in its operation contributed to very large numbers of exceptions to expected billing processes. Liberty Report at 10, ES-7. Management took corrective actions to address the billing issues, but the resulting exceptions and delays were substantial, and still affected some 10,000 customers each month by the time the Liberty Report was issued in December 2018. Liberty Report at ES-7. SmartCare's generation of an excessive number of incorrect bills after go-live was the main contributor to delays, as management worked to correct errors found in billings to be issued. Liberty Report at ES-7. Liberty added:

The resources and time needed for system corrections to address process exceptions have delayed bills. They have also required time-consuming manual bill corrections, and generated bill cancellations, rebills, and deposit and refund issues. Without knowledge of the status of fixes and with the need for manual corrections increasing, CMP's customer representatives were frequently unable to give customers meaningful answers about cause, corrections, and time solutions, further increasing concern and frustration.

Liberty Report at ES-7 to -8. (Delayed billing occurs when bills are held up (not issued) due to billing exceptions or defects.)

⁸² Under its previous ARP, CMP's benchmark for reasonable performance for its "% of calls answered" service quality metric was "80% of calls answered in 30 seconds." See BA at 78–79; Liberty Report at 90.

⁸³ Liberty Report at 90.

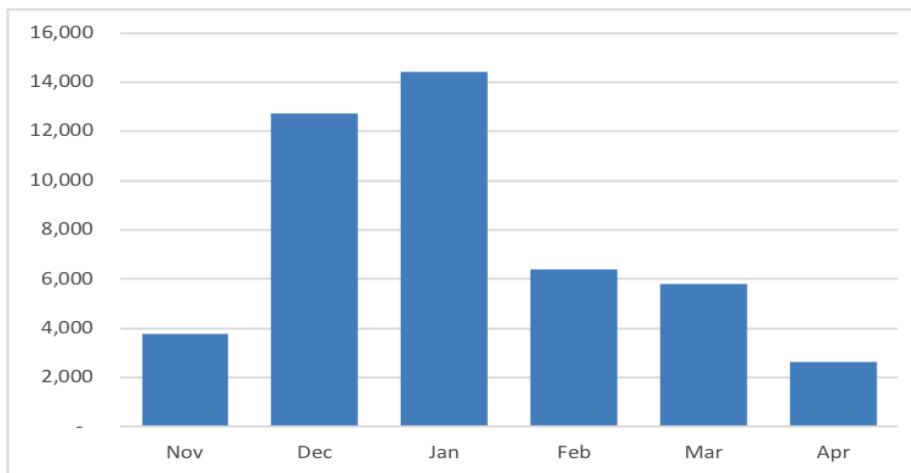
Weaknesses in managing the development of SmartCare and go-live processes contributed to the high level of billing and customer-service challenges. Liberty found ineffective management in the following areas: inadequate testing, insufficient project staffing, lack of a sufficiently strong focus on quality, insufficiencies in project reporting for identifying and planning to address problems, and inadequate project readiness. Liberty Report at ES-8.

Liberty found that the transition to SmartCare introduced problems that drove customer satisfaction below targets and customer complaints well above normal levels. Also, management experienced undue difficulty in eliminating underlying causes of billing complaints and in timely resolving individual customer issues. High rates of complaint generation and extensive delays in resolving them have continued. Delays in resolving billing issues added to already elevated levels of customer concern, creating a cycle of escalating customer impatience and skepticism. Liberty Report at ES-8.

According to Liberty's findings, insufficient staffing in CMP's billing group resulted from an inability to correctly identify the time needed to stabilize SmartCare. This slowed identification and correction of errors at their system sources and in manual efforts required to correct individual bills that were held for issuance due to known problems or identified by customers after receiving them. Bill-presentation errors—which could have been avoided, had management tested presentation well before go-live—contributed to customer confusion and promoted doubt about billing accuracy. Liberty Report at ES-8.

In the months following SmartCare go-live, many bills were also delayed (for December and January in particular) due to CMP's pre-issuance error-identification processes. More than 100,000 accounts experienced billing errors. Liberty reviewed billing data for six months, beginning in November of 2017, to determine the number of bills held up by billing exceptions or defects. Liberty's findings are illustrated in Figure 22 below.

Figure 22: Bills Delayed Due to Outsorts and Out-of-Balance⁸⁴



3. Staffing of Customer-Service Functions

a. Excessive Ratio of Representatives to Supervisors at Critical Period

Liberty found that the number of customer-service representatives hired did not keep pace with management's analyses of needs. Liberty Report at ES-9. An "extraordinarily high ratio of representatives to supervisors impaired efforts to apply experience in addressing the root causes of customer inquiries and complaints, to direct inexperienced representatives, and to provide coaching and training needed to give representatives the skills and confidence to function independently in helping customers with questions and issues." Liberty Report at ES-9. The ratio of representatives to supervisors doubled (to 25:1) during the last several months of testing, training, and preparation for SmartCare go-live. Liberty Report at 98. Liberty found that the insufficient number of supervisors impaired CMP's ability to respond effectively to customer inquiries and complaints. Liberty Report at 98.

b. Slow Hiring Pace

Liberty noted that over the prior three years, CMP had not always staffed the call center to levels recommended by call-center management. Management's failure to maintain a hiring pace sufficient to meet growing call-center needs contributed materially to CMP's inability to properly handle customer calls. In February 2016, a staffing analysis completed by call-center management called for adding 35 permanent representatives to maintain adequate service levels for calls handled by employees in Maine. The analysis used projected call volumes and the expectation of answering 80% of calls within 45 seconds. Instead of the 35 recommended, only 14 were hired. Liberty Report at 98. As a result, call-answering performance was below standard for much of

⁸⁴ Liberty Report at 84.

2016 and 2017. Figure 23, below, shows the number of staff additions recommended by the staffing analysis versus the actual number of people hired.

Figure 23: Customer-Service Representative Additions⁸⁵

Period	Recommended Hires	Actual Hires
1Q 2016	35	14
2Q 2017	24	29
1Q 2018	29	20
3Q 2018	27	25

c. Reorganization

Liberty found that CMP had reorganized customer-service functions in December 2017, after the appointment of Avangrid's Vice President of Customer Service, moving CMP from a decentralized, company-functional organization. The reorganization included moving responsibility for customer-service functions from CMP's Vice President of Customer Service to Avangrid. At the same time, responsibilities for Meter Operations and Meter Services moved from CMP's Customer Service organization to Avangrid's Operations Technologies and Regional Operations. Liberty Report at 74. Avangrid's Director of Customer Care oversees contact centers, key accounts, vendor management, and customer service technologies and CMP's Contact Center Manager reports to the Director of Customer Care, while Avangrid's Director of Customer System Operations and Support oversees billing, payment and collections. CMP's Billing Supervisor reports to Avangrid's Billing Manager, who oversees billing operations within all Avangrid operating companies. *Id.* at 75.

d. Voluntary-Separation Offers

Liberty reported that Avangrid had combined CMP's Portland and Augusta contact centers in 2015 and offered a voluntary-separation package to affected employees. Later, in September 2017, Avangrid again presented four voluntary-separation options to certain nonunion customer-service employees. This offer applied to those working on Avangrid's SmartCare, Click (which is for field-service orders), and New York Meter Services projects. These voluntary-separation offers were part of a large-scale Avangrid reorganization. *Id.* at 76.

Liberty found that the Company's customer-service employees became aware of the separation offers the weekend before SmartCare's go-live date in late October of 2017 and 13 employees accepted the offer, departing the Company in April 2018. These departures came at a time when call volumes, customer complaints, and billing

⁸⁵ Liberty Report at 91.

exceptions were at high levels. Also, six of the departed employees had been members of the Company's customer-service and call-center management team. *Id.* at 76.

Liberty found that losing staff to the voluntary-separation packages detrimentally affected CMP's customer-service employees responsible for billing functions at the Company. At the end of April 2018, with a backlog of billing exceptions growing, two billing analysts accepted the early-separation option and left the Company. Their departures left the billing group below normal staffing levels at a time of significantly increased workload. *Id.* at 77. CMP's management underestimated the level of billing work following SmartCare deployment and failed to staff the billing group adequately to meet the increasing volume of billing exceptions and manual work in the months following the go-live of SmartCare.

C. Issues Presented by Staff

1. Multiple Violation Letters to CMP from the CASD

Staff noted in the Bench Analysis that concerns about CMP's customer service predicated both the issuance of the Liberty Report and the implementation of SmartCare and went back as far as 2016. Staff then described eight separate letters sent by the CASD to CMP, beginning with a letter sent in April 2016, in which the CASD expressed concerns about CMP's customer service and requested information about actions the Company would take to address the concerns/violations. These letters are summarized as follows.

On April 14, 2016, the CASD sent a letter to Leona Michelsen at CMP expressing concerns about CMP call-center representatives' lack of understanding about the Commission's Arrearage Management Program (AMP) and CMP's obligation under Commission rules to administer the AMP.⁸⁶ BA Cust. Serv. Exh. 1. In its response, CMP stated that it was committed to a successful AMP and that it would continue to reinforce AMP requirements with its agents.

On August 4, 2016, the CASD sent a letter to Ann Brooks, Manager of Customer Service Quality at CMP, about the significant increase in violations committed by CMP's call-center representatives in their interactions with customers. BA Cust. Serv. Exh. 2. The violations primarily related to the level of understanding (or lack thereof) by CMP's call-center representatives about the Company's obligations to provide certain information to customers under the Commission's consumer-protection rules. See

⁸⁶ On April 19, 2014, An Act to Assist Electric Utility Ratepayers became law (P.L. 2013, ch. 556) (Act). The Act directs each electric utility to implement an arrearage management program (or AMP) to assist eligible low-income residential customers who are in arrears on their electricity bills. The Act defines an arrearage management program as a plan "under which a transmission and distribution [electric] utility works with an eligible low-income residential customer to establish an affordable payment plan and provide credit to that customer toward the customer's accumulated arrears as long as that customer remains in compliance with the terms of the program." Chapter 317 of the Commission's rules establishes the process by which each electric transmission and distribution utility will implement an arrearage management program.

MPUC Rules, ch. 815, § 13(D). The letter described the threefold increase in the number of violations cited by the CASD against CMP between February 1 and August 1, 2016, in comparison to the same period the previous year, with the majority of these relating to CMP staff's failing to provide proper information to customers and, in some situations, providing incorrect information.

On May 26, 2017, the Commission's General Counsel sent a letter to CMP's Vice President of Customer Service stating that the Commission had serious concerns with the performance of CMP's call center over the prior year. BA Cust. Serv. Exh. 3. The letter stated that on numerous occasions in the prior year, the CASD had brought to CMP's attention concerns about the information that CMP's call-center staff was providing, or failing to provide, to applicants and customers in violation of Commission Rules. The letter also stated that since the start of the summer collection period on April 18, 2017, the CASD had investigated numerous instances where CMP staff had either provided inaccurate information to customers or had failed to follow the disconnection requirements of Chapter 815. The letter concluded that, due to their pervasiveness and persistence, the problems appeared to be systemic. The letter also stated that in previous communications, CMP claimed that it had taken steps to address these violations. Given the ongoing and repeated nature of the violations, however, it seemed that the steps CMP had taken were insufficient.

During the summer of 2017, the CASD began receiving calls from customers who reported that they could not reach CMP to discuss their credit and collection issues. Many of these customers had received a disconnection notice and were instructed in the notice to contact CMP immediately to resolve the billing problem. In response to these complaints, the CASD sent a violation letter to CMP on August 1, 2017. BA Cust. Serv. Exh. 4. The letter stated that the CASD had received a call from a customer under the threat of disconnection who reported that she called CMP several times over the past three days but each time she received a recorded message indicating that all the phone lines were busy. The customer also said she received a message that told her to call again and the call was terminated. The customer was not provided an opportunity to hold for a representative or the opportunity to leave a message to have her call returned. The letter added that the CASD had been receiving this same type of complaint from numerous customers over the past few months and put the Company on notice that the CASD considered this a violation of Chapter 815, section 13(B) of the Commission's rules.⁸⁷ In its response, the Company explained that

⁸⁷ Section 13(B) of Chapter 815 states:

A utility shall have an adequate number of properly trained employees available during business hours to respond to questions from applicants and customers, resolve disputes, and address requests for service. Customers calling the utility must be provided the opportunity to talk to a live customer representative without spending an unreasonable amount of time on hold and without being forced to navigate through an unreasonable number of menu levels in an automated phone answer system. If a customer call is not automatically forwarded to a live person once a menu option is selected, the option to speak to a live representative must be provided as a menu choice. A utility with fewer than five

when its telephone carrier is unable to deliver a call to the call center due to high call volumes, the customer will receive a courtesy message in lieu of a busy signal.⁸⁸ The letter added that from March 5, 2017 through July 29, 2017, 14% of the calls made to CMP's credit and collections call center received the courtesy message. CMP also attributed part of this problem to the need to prepare and train call-center staff for the implementation of its new SmartCare system, training which began on July 6, 2017. But the courtesy-message problem began in March 2017, several months prior to the SmartCare training session that began on July 6, 2017. BA at 71.

The CASD sent another letter to the Company on November 14, 2017, expressing concern about the large number of customers who continued to report that they could not reach the Company to discuss their credit and collections concerns. The letter requested call statistics from the Company for October 1, 2017 through November 14, 2017. BA Cust. Serv. Exh. 5.

The CASD sent another letter to the Company dated January 10, 2018, stating that a review of the call data provided in its response to the November 14 letter showed that 63,970 out of 273,685 calls—one out of every four calls—received the courtesy message instead of reaching a live person. BA Cust. Serv. Exh. 6. The letter acknowledged that while the October 2017 storm exacerbated this problem, the call statistics for the month before the storm showed that thousands of customers could not reach CMP to discuss their credit and collection problem and instead received the courtesy message. Thus, the call-answering problem could not simply be blamed on the storm and was instead a result of CMP's management practices. The January 10 letter also stated that, in addition to the problems relating to the customer call center, callers to CMP's "contractor line" were reporting the same types of problems.⁸⁹ Contractors reported that they were being placed on hold for long periods—sometimes hours—while waiting to speak to a live person at CMP. This was causing significant problems for contractors and customers who were trying to have their electricity connected before winter. Customers and contractors also began reporting that the Company was often not showing up for field appointments or was canceling long-scheduled field appointments for no apparent reason. Due to these problems, the letter required the Company to

full-time employees or fewer than 300 customers is not required to have an informed employee available at all times during business hours. If such a utility achieves contact with a customer before disconnection, the utility must not disconnect the customer until it has offered the customer the opportunity to resolve a dispute or to avoid disconnection by contact with the employee who is authorized to resolve disputes and enter into payment arrangements.

⁸⁸ The "courtesy message" is due to insufficient call capacity at CMP's call centers, which is a separate and distinct issue from a lack of sufficient staff to answer calls.

⁸⁹ The Company maintains a phone line, 866-225-4200, for contractors to call to arrange for a field visit. The purpose of the line is to avoid the need for contractors to call the general information line and to allow them to reach a live person to address their needs reasonably promptly.

report to the CASD monthly call-answer statistics for both its credit and collections line and its contractor line beginning January 2018.

2. Billing Complaints

Staff noted in the Bench Analysis that the CASD began receiving a large number of complaints from customers relating to billing concerns in December 2017 and January 2018. These concerns included customers receiving higher-than-usual bills, customers not receiving proper credits on their bills, customers on payment arrangements having the arrangements changed without notice, and customers not receiving bills at all. The two most prevalent billing complaints the CASD received were about high usage or about not receiving bills (which CMP refers to as delayed bills).

On the high-usage complaints, due to the excessively large number of high use complaints being filed with the CASD, the CASD requested in early February 2018 that CMP establish a specialized group of individuals who were familiar with CMP's billing and metering processes to investigate and resolve customer complaints of high usage. (This process is described in greater detail in our forthcoming companion order in Docket No. 2019-00015.) The intent of this process was to ensure that customer complaints would be resolved efficiently when possible, while incorporating complaints for which a customer's problem of high usage could not be resolved into the Commission's billing investigation for further consideration.

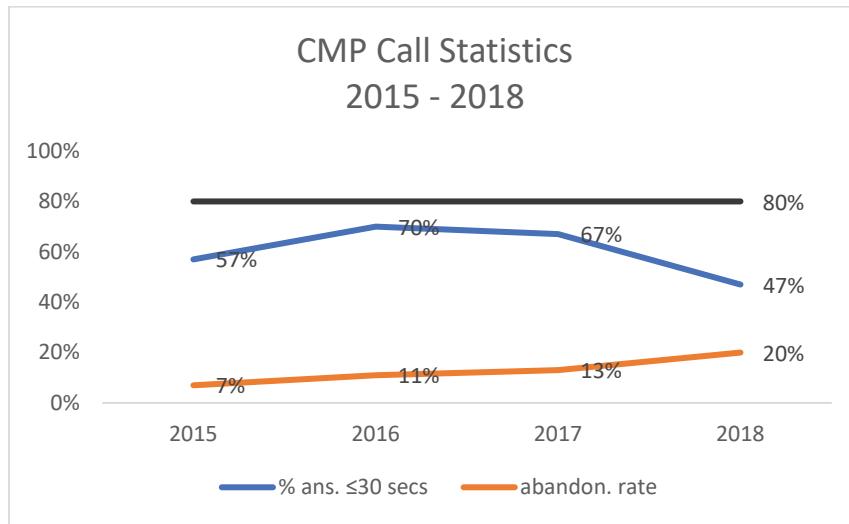
Regarding delayed bills, customers were contacting the CASD stating that they had not received a bill from CMP for a number of months. Customers were concerned that they would end up receiving a large make-up bill at some point in the future that they would be unable to pay. According to CMP, it identified bills with a potential problem and held the bill until the billing problem could be identified and rectified. This issue is discussed in Section VIII.C.4, below.

3. CMP's Call-Center Performance

Staff noted in the Bench Analysis that while Liberty reviewed CMP's call-center performance using the Company's goal of answering 80% of calls within 45 seconds, Staff did not view this level of performance as reasonable and adequate. The Bench Analysis noted that CMP's call-answer metric in its previous ARP was "80% of calls answered in 30 seconds" and Staff continued to view that level of call-answer performance as reasonable and adequate. BA at 78–79.

CMP's poor call-answer performance is depicted in Figure 24 below, which shows the Company's call-answer and call-abandonment rates for the 2015 through 2018. In each of those four years, CMP failed to meet the "80% of calls answered in 30 seconds" benchmark, and CMP's call-abandonment rate exceeded the 5% to 10% industry standard noted by Liberty since 2016.

Figure 24: CMP Call Statistics, 2015–2018⁹⁰

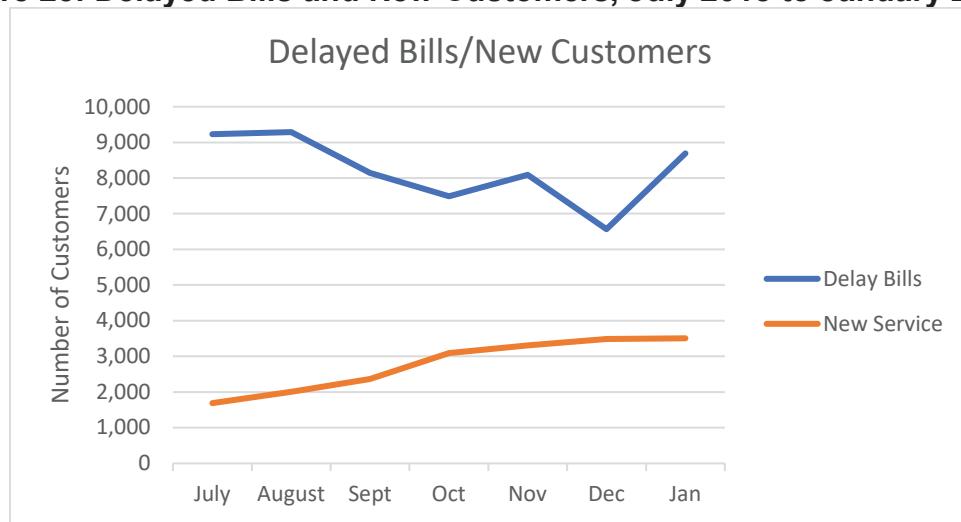


Staff concluded in the Bench Analysis that these call-answer statistics indicated that CMP's problems at its call center were serious and long-lasting, and substantially predicated the Company's implementation of SmartCare. BA at 79.

4. Delayed Bills/New Customer Accounts

Staff also pointed out in the Bench Analysis that the Company experienced significant problems after the implementation of its SmartCare system with certain customers going extended periods of time without receiving a bill for service. Staff noted in the Bench Analysis that the problem of delayed bills worsened after Liberty's review and continued into 2019. Staff was concerned that the problem of delayed bills had continued for more than a year after the implementation of SmartCare without significant improvement. Staff added that one year should be more than enough time either to make the necessary modifications to SmartCare to reduce the number of exceptions or to hire adequate staff to work the exceptions. As of the time of the Bench Analysis, it did not appear that the Company had taken either of these actions. During that time, many new customers went several months without receiving a bill after applying for and receiving service. Figure 25 below shows both of these trends.

⁹⁰ BA at 79.

Figure 25: Delayed Bills and New Customers, July 2018 to January 2019⁹¹

At a technical conference held December 3, 2018, Company witnesses testified that approximately 3,400 new customer accounts had not been established and consequently were not being billed for service.⁹² The Company attributed this problem to a significant number of staff retirements in the group responsible for establishing new accounts, as well as an increase in new customers. Tr. at 110 (Dec. 3, 2018 Tech. Conf.). The Bench Analysis noted that the Company's high-level estimate of the total amount of unbilled revenue for the 3,400 accounts was approximately \$729,675. ODR-001-019.

5. Staffing of Customer-Service Functions

Staff explained in the Bench Analysis that it had communicated to CMP its concerns about call-answer performance since 2016 and believed that the reduction in customer-service positions contributed to the degradation of service. Staff also found that Liberty's findings supported this conclusion. BA at 85.

D. Public Witness Testimony

Many customers who testified at the three public-witness hearings in July 2019 described their loss of trust in CMP and the frustration and difficulty they experienced with CMP's customer service, particularly in the months after the transition to SmartCare. They testified in opposition to the proposed rate increase and asked the Commission to exercise its enforcement powers in responding to these concerns. The full transcripts of these public-witness hearings are in the record; what follows are

⁹¹ BA at 81, 83.

⁹² If the account was not created for more than 30 days after the meter was installed, the Company considered it a "delayed bill." Tr. at 119 (Dec. 3, 2019 Tech. Conf.)

examples of customers' statements on several of these customer-service-oriented themes.⁹³

First, customers described needing to call CMP multiple times, needing to describe their issue to the customer-service representatives repeatedly without getting satisfying answers, not being confident in the information they were receiving from the customer-service representatives, or simply not getting responses from CMP. As several examples:

- "When I asked CMP about this, CMP had no answer and said that it would call back. To date, I have not received an answer [since June 13th]." Tr. at 10–12 (July 16, 2019 Pub. Wit. Hr'g).
- "When I call CMP many times, I swear that the person I'm talking to is just reading from a script telling me, oh, you have too many lights on in your house, . . . 33 percent of your average bill is lighting. Well, I'm a licensed electrician and I deal with power generation on my job. So I kind of know the ins and outs of what's going on in my practice. When I said that to the lady, she's like, oh, well, um, that's what we have. And I'm like you have no idea what I have for lights on in my house. So the customer service that we're getting, these people don't even really know what they're saying to you." Tr. at 12–13 (July 16, 2019 Pub. Wit. Hr'g).
- "I was on the phone for 45 minutes as she tried to decipher my bill and at one point was put on hold for five full minutes as she said she had to, quote, consult with an associate as to what the, quote, SimplePay ending balance portion of my bill meant. This form of billing and customer service is unacceptable, a waste of the consumer's time with inadequately trained customer service representatives. Tr. at 21–22 (July 16, 2019 Pub. Wit. Hr'g).
- "Since October '17 I have been having problems with billing from CMP. I have not been receiving bills unless I call up and request them. When I do finally receive the bills, they are not straightforward and understandable. . . . Under CMP's former billing system, it was very obvious what was being generated by the solar panels, what was being used, and what was being banked. Under their new system, however, I receive convoluted bills that don't indicate what's what, and I have no way of determining whether they are accurate. I have been trying to deal with this through CMP's customer service since January. This has been going on for three months and have made very little progress. . . . Although the customer service representatives I spoke with were always polite, they were, in large part, unable to provide any useful information about my bills, resolve issues, or direct me to someone who could. I felt they were in much of the same box I was with

⁹³ Public-witness testimony on metering and billing issues is discussed in the Commission's forthcoming order in Docket No. 2019-00015.

the exception they were being paid to spend hours on the phone and I was not." Tr. at 23, 24 (July 16, 2019 Pub. Wit. Hr'g).

- "So I call back on 3/15 to pay the 73.79 and confirm that if I do not pay this 104.94 that I'm not going to be disconnected because that's an error on their part, and the woman who picks up that time tells me that if I don't pay the 104.94, then she can't help me because I have a disconnect notice. And I'm like, okay, but you can see that I zeroed out my balance last month, right? And she goes, yes, I can see that. And I said . . . so how do I have a past due balance. She goes, well, that's from at least 60 days ago. And I'm like but you can see that I zeroed out my balance last month. She goes yes. I'm like so how do I have a past due balance from over 60 days ago. Well, if you can't pay the 104.94, I can't help you. I'm like, okay, so I paid the 104.94. Afterwards she goes is there anything else I can help you with? And I say, yes, can you tell me how I have a past due balance. And she goes, well, I can transfer you to one of my colleagues. So I go, yes, please transfer me. So I reach George who tells me, yeah, I can see that you paid off your balance. No, I don't know how that happened. I'm going to have to call you back. So he calls me back in an hour. Oh, well, this is apparently going to take longer than I thought it was and I'm going to have to talk to my supervisor. So it might be Monday before I get back to you. Okay, so, well, actually I get a call back later that day from George's supervisor who says, oh, well, we had to go in and manually clear out your payment plan and blah blah blah blah blah. Okay, so we finally get that straightened out three hours on the phone later, and I have two little kids. So I'm in tears by the end of this, okay? Emotional stress to the max, if that's worth anything." Tr. at 8–9 (July 18, 2019 Pub. Wit. Hr'g).
- "My billing address has been incorrect for almost two years, finally being resolved after multiple calls." Tr. at 18 (July 18, 2019 Pub. Wit. Hr'g).
- "When attempting to get accurate information during a call to CMP, you first present your questions to the rep that answers. Later on, should you need further clarification, you can't speak to the same rep again even if you had the presence of mind to note their name but rather you must tell the whole story all over again to somebody new. I came to realize that the only way to achieve any continuity and/or proof was to communicate with a customer service staff via email because I do not have the apparatus for recording conversations. As long as you keep the string of emails going, you can usually access the same representative again." Tr. at 99 (July 22, 2019 Pub. Wit. Hr'g).
- "I could come here and give you a ton of examples. Frankly, I didn't have the time to put them together. I could give you screenshots of being on hold for an hour with CMP and then having my call dropped and then being on hold for another 55 minutes to get to talk. I could give you, you know, occasions in which I've had to make three calls again, like previous folks, where they've dropped the entire conversation." Tr. at 104 (July 22, 2019 Pub. Wit. Hr'g).

Second, some customers described waiting on hold for 45 minutes or even hours before speaking with a customer-service representative, or CMP's failing to show up for appointments. For example:

- "Try calling yourself. Take a day when you're busy and you're working your job and you call CMP and you're on the phone sitting there for 45 minutes to an hour, waiting for somebody to pick up the phone. Who can do that? I have a job to do. . . . There's no customer service because you can't even talk to them." Tr. at 14 (July 16, 2019 Pub. Wit. Hr'g).
- "[E]very single time I would try and access the bill [online], I would get an error message on the website and I couldn't view either past or present bills. It's been suggested to me that this is because I have solar panels. It took me over six weeks, calling a few times a week, to get through to someone. Sometimes I would be on hold for over an hour. Other times I would leave my number and someone would call me back, and then the call would just drop or I'd see that it was them and I'd try and pick it up but I'd be driving. [I]t was a lot of calling and whatnot over six weeks. . . . Finally I did get through to Bob, and Bob was friendly and he was polite as someone else mentioned. And though he stayed on the phone with me for almost two hours and tried to figure it out, we really couldn't figure out what was going on." Tr. at 35 (July 16, 2019 Pub. Wit. Hr'g).
- "Well, now that I'm a customer instead of a potential customer, I got what sounds like a much more typical CMP reaction. Hold times of an hour to two hours before you get to a real person, dropped calls, never-returned calls. . . . Three months later, after constant calls—if you call CMP, you sit on hold, you get to a person, they have two weeks before they have to respond to you." Tr. at 52 (July 16, 2019 Pub. Wit. Hr'g).
- "Ever since the new billing took place, I've had a billing problem. . . . When I complained to CMP about it, I would get dropped calls, I'd be made to wait almost an hour, I'd have to repeat everything to a new person that answered the phone, and I would never get this resolved." Tr. at 83–84 (July 16, 2019 Pub. Wit. Hr'g).
- "So I had called them back. They finally agreed that they would send somebody out. Made an appointment. I took the day off of work. My husband stayed home. Nobody showed. Not a call, no nothing. I was furious. I called them up, I asked them if it was common practice to leave your customers high and dry, and they basically said we have no idea what happened." Tr. at 87–88 (July 16, 2019 Pub. Wit. Hr'g).
- "And . . . so I called and I said what is going on. And a person who I spoke with after being on hold—so every time when I'm talking to CMP, it's like an hour. Sometimes the call will drop at the end of an hour. There was one then where I called at, like, 3:45 and I was on hold. And I was like, oh, I hope I can make it for that five o'clock deadline. So I was on hold from 3:45 and at 4:58 they pick up

and it's like—and it rings, you know, because . . . they have the horrible music and, like, you're a very important customer at CMP. And so I get there and then, click, they hung up at five o'clock. And I was like I was on the phone since 3:45, this is awesome." Tr. at 102 (July 16, 2019 Pub. Wit. Hr'g).

- "So I asked if I could get the bill. And I had to go through some channels to get those bills. I was on hold one time so long that I drove from my house down here to PUC holding my cell phone on hold, and asked to speak to somebody in the front. And while waiting for someone to come and talk to me, I was still on hold. And when that person came out, asked them if they wanted to stay on hold with me or if I could hang up and they could help me." Tr. at 18–19 (July 22, 2019 Pub. Wit. Hr'g).

Third, customers described frustration about the level of transparency with their CMP bills. For example:

- "CMP's lack of transparency is an outlier among all the other utilities and bills that I pay online. The sense of helplessness and suspicion as a customer is only natural given the lack of information we have. I'm asking for fair and reliable bills that I can access and view. Considering other companies do this every day, it seems a reasonable request." Tr. at 37 (July 16, 2019 Pub. Wit. Hr'g).

Fourth, customers with existing accounts described concerns about long-delayed bills, and customers with new accounts described concerns about the costs of those delayed bills when the Company both did not submit bills to new customers and simply forwent the cost of having served those new customers, in some cases for several months. As several examples of direct experience with these issues:

- "[M]y problems with CMP began when the utility put in a new billing system in October 2017, and for five months after that, they sent me no paper bills. Well, I had a previous record of paying on time. Bills came into the house, I'd mark the due date, I wrote a check, sent it out. I feel very fortunate that I was able to pay the bills. . . . Then I received a letter from CMP signed by Rachel Grenier, director of customer service, and it was dated March 2nd, 2018. And the letter stated that CMP discovered that the generation portion of our bill was overstated. We have taken the necessary steps to correct the issue to accurately reflect your banked generation—and we have solar panels which we've had since 1990, and we only became grid-tied much later. But CMP wrote, 'We have canceled and rebilled your account and your bills are now correct. Because we guarantee that our bills will be accurate as part of our customer service guarantee, we've applied a credit in the amount of \$10 in your account.' CMP concludes the letter by saying, 'We apologize for this error and any inconvenience to you. Your billing is now correct and—in bold—'there is no need to contact us at this time.' Well, at this point, I still had received no paper bills, and I was still in the dark that I hadn't paid CMP for several months. . . . Now fast forward to March 27th, 2018, just three weeks later. Out of the blue I get a disconnect notice stating the disconnect date would be April 12th, 2018." Tr. at 34–36 (July 22, 2019 Pub. Wit. Hr'g).

- “[O]nce we actually got power turned on, some amazing things happened. My mom went six months without getting an electric bill. After a month or two you get kind of worried, worried enough that you’re willing to sit on hold for an hour and a half to talk to someone at CMP. And you get told, oh yeah, it takes us a few months to set up the accounts, don’t worry about it, you won’t get billed for it, you’ll only get billed for the 30 days prior to, you know, your final billing period. So who’s paying for it? Ah, don’t worry about it, that’s our problem. All right, so there’s six months of connection fees that CMP is eating, six months of the actual electrical use that CMP’s eating. My daughter went three and a half months. I went almost four months. So there’s a full year’s of connection fees and electricity that CMP can afford to just piss away. Why do they need a rate hike?” Tr. at 55 (July 16, 2019 Pub. Wit. Hr’g).
- “So I got my power hooked up. And that was first week in August, second week in August, something like that. And I call in October and I say, you know, it’s a new service and I haven’t gotten a bill yet, much like the other gentleman who spoke tonight. And they said, well, it just takes us a couple months. We’ve had a big backlog of new construction. It’s going to take a little while. I said, okay, I just don’t want to get billed for late charges. I’m just calling to find out. Call again in December. Well, the same thing, you know, we’ll take care of it. So I get the first bill that I receive is in late March, and . . . I didn’t use much electricity so I don’t have an issue with that. It was used minimally as the intention. But I wonder about all the other new construction that went in last—well, anywhere—any time last year, how long that backlog is . . . I mean, you’re talking about these rate increases, needing to make up for this. Well, how much money was wasted by you not getting your stuff together?” Tr. at 99–100 (July 16, 2019 Pub. Wit. Hr’g).
- “By February I stopped receiving bills. . . . So I got online, put my account number in, showed a balance, and I paid it. I continued to do this. Come June that summer, I logged on and my balance said I owed 34 cents. I knew we had a problem. So I said I don’t know where I would owe 34 cents. It’s got to be a typo error. I’ve got to owe more money than that. So I called CMP. Was on hold forever. Come to find out, long story short, I hadn’t been receiving bills. I’d been logging on and paying what I thought was my balance and found out that I wasn’t being charged for my usage. So I found out, like, the week of July 4th that I owed them I think almost \$600 that I didn’t know I was aware of I owed.” Tr. at 18 (July 22, 2019 Pub. Wit. Hr’g).

Some customers proposed different ways of resolving CMP’s customer-service and other issues, as follows:

- “And on your own initiative, create a panel consisting, I merely suggest, of one member from the consumer advocate division . . . one member from the PUC staff . . . and one member from the Office of the Public Advocate . . . and one member of the office of the Maine Attorney General experienced in dealing with consumer complaints . . . and one licensed Maine master electrician . . . [H]ave them review the backlog of CMP complaints for the, quote, easy complaints. . . .

And order such consumers, . . . the easy cases, made whole from that CMP fund either in long-term bill credits or cash payments. . . . That panel should report to the PUC. . . . Clear the backlog at least of the larger and the easier ones while the PUC doubles down on the difficult picture overall of consumer misservice and the very large request" for a rate increase. Tr. at 31–32 (July 16, 2019 Pub. Wit. Hr'g).

- "How can CMP and Avangrid make the people whole and compensate them fairly? . . . My recommendation, those customers who have had this hanging over their heads for over 18 months, let them start fresh. Zero out any outstanding balances for documented billing discrepancies. Give them level billing for an average of the 12 months prior to the rollout of the SmartCare from October '16 to September '17 or until this is resolved. And if it's not resolved, give it to them for life. Compensate them monetarily for any and all costs associated with the issue, the buying of generators, anything you can prove that you had to purchase." Tr. at 60 (July 22, 2019 Pub. Wit. Hr'g).
- "And . . . I have some suggestions for this. One is that CMP be forced to pay into a fund to Efficiency Maine. . . . CMP should have to pay for those types of devices to be placed in the residences of homes that have had these issues so that we can get to the bottom of it. We also need to see net promoter scores. . . . It's how you understand how a business is being spoken about. . . . There should be a third-party net promoter score that CMP pays for in the Public Utilities Commission puts out there to see how CMP's customer service is improving, and there need to be rigid benchmarks and huge fines for not meeting those And . . . it's time that the [Commission] makes sure that there is some pain that is felt. Unless CMP is held responsible, we are going to see this continue" Tr. at 109–10 (July 22, 2019 Pub. Wit. Hr'g).

E. OPA and Intervenor Testimony

1. Office of the Public Advocate

The OPA did not present testimony on the issue of customer service but did address the subject in its post-hearing brief. The OPA maintained that CMP had failed to provide adequate and reliable customer service, and that these issues predated SmartCare and grew following the cutover. OPA Br. at 12–50. The OPA pointed to the letters the CASD sent to CMP from April 2016 to October 2017 as evidence that the issues predated SmartCare. OPA Br. at 13–15. Those letters concerned various errors of CMP's customer-service representatives in their dealings with customers, including providing customers with plainly incorrect information and poor call-answering performance. OPA Br. at 13. As evidence that the issues not only continued but grew worse after the transition to SmartCare, the OPA pointed to letters the CASD sent to CMP from November 2017 to February 2019 and to the Staff's discussion in the Reply Bench Analysis. OPA Br. at 13–15.

The OPA argued that CMP failed to properly test SmartCare prior to go-live (OPA Br. at 16–19); did not have enough customer-service staff on hand to handle the problems that followed go-live, and in fact had only months earlier encouraged customer-service staff to depart with voluntary-separation packages (*id.* at 19–21); and inconvenienced thousands of customers who called the Company and experienced long wait times, the need to call repeatedly, or blocked calls (*id.* at 21–24).

The OPA criticized the number of billing exceptions SmartCare was generating and CMP’s inability to adequately handle that number of exceptions. *Id.* at 25–31. The OPA faulted CMP for not communicating with customers whose bills were being held up until billing exceptions were resolved; many customers went many months without receiving bills or any communication from CMP about this. *Id.* at 27–30.

On customers’ high-usage complaints, the OPA criticized CMP for not doing a root-cause analysis that might explain why some customers’ bills appeared to be much higher than normal. *Id.* at 31–44. The OPA also criticized how CMP handled customers’ complaints about high-usage, in effect arguing that CMP’s response (that there is no high-usage error, that customers’ metered usage is the correct usage) has been tone-deaf. See *id.* at 35–37.

Put together, the OPA argued that CMP’s customer service has been imprudent. *Id.* at 46–48. As a remedy for these failings, the OPA supported the Staff’s proposed management-efficiency adjustment to CMP’s ROE and proposed service-quality indices for call-answering and encourages the Commission to require CMP to report on its monitoring of call quality. *Id.* at 25, 59, 63. The “OPA urges the Commission to take whatever steps are necessary to ensure that CMP’s customer service staff are not just answering calls on time but are knowledgeable and responsive to customer input.” *Id.* The OPA also expressed many concerns with CMP’s proposed customer-benefit fund (described below in Section VIII.H.1.c). *Id.* at 55–58.

The OPA also asserted that CMP should be entitled to no rate increase until all SmartCare defects have been resolved for all customers. *Id.* at 50.

2. Lauren Loomis for CMP Ratepayers Unite

Ms. Loomis, a Designated Representative for CMP Ratepayers Unite (a group on Facebook), filed rebuttal testimony on the subject of customer service. Ms. Loomis testified to learning, through the Facebook group, about a number of customer-service problems, including: (1) customers receiving disconnection notices on bills that were still in dispute or on bills they had not yet received, Loomis Reb.⁹⁴ at 8 & Exh. A; (2) customers with open disputes being referred for credit-and-collection action, *id.* at 9 & Exh. B; (3) customers who were unable to dispute their bill because they had already paid it, *id.* at 9 & Exh. C; (4) customers who believed they had open complaints but whose complaints were closed, *id.* at 12 & Exhs. D, E; (5) customer-service representatives providing inaccurate information about the interim payment program, *id.*

⁹⁴ Loomis Reb. refers to the Rebuttal Testimony of Lauren Loomis, filed April 12, 2019.

at 13; (6) customer-service calls not being recorded, *id.* at 13; (7) poor treatment of customers by customer-service representatives, *id.* at 14–15 & Exh. F; (8) eligible customers being denied for assistance under the electricity lifeline program, or ELP, *id.* at 15–16; (9) discrepancies in customers' physical and mailing addresses on CMP bills, *id.* at 17 & Exhs. G, H; and (10) the poor implementation of SmartCare, *id.* at 18–21.

Ms. Loomis made several recommendations for addressing these problems, including: that immediate action be taken on any errant disconnect notices; that CMP's customer-service functions be overhauled and interactions between customer-service representatives and customers be more closely monitored and consequences be in place for those representatives who fail to meet proper standards in those interactions; that both CMP and the community action programs (known as CAPs or CAP agencies) that administer the LIHEAP, the ELP, and the arrearage management program (AMP) have monitoring in place to protect low-income customers; that CMP's SAP, SmartCare, and AMI systems be fully audited by an independent auditor; and that customers with high-bill complaints be billed under CMP's legacy billing system until their correct usage has been verified. *Id.* at 19, 22–23.

F. CMP's Response to Customer-Service Issues

In its rebuttal testimony, the Company acknowledged that its customer service following SmartCare implementation (i.e., beginning November 1, 2017) was not up to its standards. Cust. Serv. Reb.⁹⁵ at 3. At the hearing, the Company's witnesses stated that CMP was not proud of the service it provided to customers over a difficult period in 2018. Tr. at 154–55 (July 25, 2019 Hr'g). They described some of the public-witness testimony as "shocking" and stated that CMP "[does]n't want to be part of offering the service that some customers were describing" and "will not stand for" that level of service. Tr. at 147–48 (July 25, 2019 Hr'g).

In rebuttal, the Company explained that this poor performance was the result of extraordinary circumstances that occurred at or shortly after the time SmartCare went live on October 30, 2017. According to the Company, these extraordinary circumstances included the following:

Largest outage in Company history: A significant coastal storm, referred to as a "bomb cyclone," devastated CMP's service territory beginning on the evening of Sunday, October 29, 2017, producing very high winds and flash flooding and the most outages in CMP's history.

Extreme cold weather, resulting in record electricity demand (Sales Dir. at 3–5; Tr. at 170 (Dec. 3, 2018 Tech. Conf.)): Beginning in November 2017 and continuing for much of the winter of 2017–2018, extreme cold affected customers' energy usage, with many customers experiencing bills that were higher than they expected. New users of

⁹⁵ Cust. Serv. Reb. refers to the Rebuttal Testimony of CMP's Customer Service Panel (Vicky Kelsall, Linda Ball, Jayme Holland, Leona Michelsen, Elizabeth Nowack Cowan, and Tracey Pelella), filed April 12, 2019.

heat pumps seemed especially vulnerable due to confusion about the optimal operation of a heat pump in extreme cold. Cust. Serv. Reb. at 4–5.

Increase in supply prices: Electricity-supply price increases contributed to higher winter bills. The standard-offer electricity-supply price increased by 18% on January 1, 2018 for residential and small-business customers. Competitive electricity providers also raised prices, seemingly without the knowledge of many of their customers. *Id.*

Intense and frequent media coverage: Media attention began with a number of people who took to social media to voice frustration and grew to include regular news segments from investigative reporters. This media attention and resulting customer engagement drove increased calls and complaints. In the days following intense media coverage, CMP experienced year-over-year increases in volumes of calls to customer-service representatives of up to 80%. *Id.*

The Company added that while it planned for both an increase in customer inquiries associated with its newly designed bill and longer calls as customer-service representatives adapted to the new SmartCare system, it did not anticipate or staff for the increased customer engagement that resulted from these combined extraordinary events. The Company stated that while these events affected both customers and the Company and resulted in performance that was below the Company's normal levels for some customers, this combination of events was indeed unprecedented and temporary. *Id.* at 5.

The Company also responded to the eight formal communications from the CASD between April 2016 and January 2018 in which the CASD expressed concern with the Company's customer service. The Company explained that, among other things, it created a Reinforced Customer Service Quality Plan to focus on immediate actions to address the CASD's compliance concerns. The Reinforced Customer Service Quality Plan included three areas of focused improvement, and 35 planned enhancements, in the categories of people, processes, and technology. *Id.* at 8. In addition to the Reinforced Customer Service Quality Plan, the Company explained other actions it took to address the customer-service problems raised in the CASD communications.

In its rebuttal, CMP responded to Ms. Loomis's testimony by arguing that: (1) any disconnections of customers who qualified for the interim payment policy were due to the customer's not paying their bill excluding the so-called set-aside amount; (2) CMP sends only final accounts with unpaid balances—not active accounts—to collections; (3) for high-bill complaints, CMP has properly implemented the CASD's and the Commission's protocols for dealing with disputed amounts; (4) CMP manages complaints as Chapter 815 requires and, for high-usage complaints, according to the process the CASD and CMP have established; (5) CMP has properly implemented the call-back process for complaints or inquiries about high-usage; (6) CMP's customer-service representatives are properly trained; (7) errors with LIHEAP credits and ELP eligibility arose due to incorrect information CMP received from the Maine State Housing Authority and some Community Action Program agencies and programming errors in

SmartCare, and these errors have been corrected and customers have been contacted; (8) there is no systemic issue in SmartCare that is creating discrepancies with customers' physical or mailing addresses; and (9) CMP has already been audited by an independent third party—Liberty—in its Commission-initiated forensic audit. Cust. Serv. Surr.⁹⁶ at 2–17. For numbers (1), (2), (3), (5), and (8), CMP reviewed the specific accounts Ms. Loomis identified (at least, those that were presented with enough information for CMP to identify the accounts) and presented a summary of its findings. Cust. Serv. Surr. at 3–5, 7, 10, 16.

G. Findings of Fact and Conclusions on Customer Service

From the information the parties, the Staff, the public witnesses, and the Company have put into the record, the Commission finds credible evidence of serious problems with CMP's customer-service functions. Although these have exacerbated since SmartCare was adopted at the end of October 2017, the quality of CMP's customer service was deteriorating prior to then.

Before SmartCare, the CASD put CMP on notice of serious problems in its customer-service functions. As far back as the spring and summer of 2016, the CASD notified CMP of errors in CMP's call center, with representatives providing customers incorrect information, and of CMP's failure to correctly handle the arrearage management program. The Commission's General Counsel sent a letter to the Company in 2017 describing worsening call-center performance, erroneous disconnection notices being issued, and a growing number of customers reporting that they were unable to reach anyone at CMP to discuss credit and collections.

Yet the Commission's efforts seem to have fallen on deaf ears. After SmartCare went live—when customers were most likely to raise questions given the transition to a new billing system after decades with the old one—customers had to deal with long hold times, dropped or abandoned calls, an inability to obtain helpful and correct information from customer-service representatives, and bills delayed without adequate explanation.⁹⁷ Customers' negative experiences with the call center and customer-service representatives only grew. For many customers, this frustration has persisted for months or even years since the problem first arose.

At the public-witness hearings, customers gave impassioned testimony about their frustrations with CMP. Customers' anger and frustration with CMP's customer service in recent years is not isolated to a few individuals, nor to one kind of problem. Instead, across customer situations, across towns, and across demographics, these

⁹⁶ Cust. Serv. Surr. refers to the Surrebuttal Testimony of CMP's Customer Service Panel (Vicky Kelsall, Linda Ball, Jayme Holland, Leona Michelsen, Elizabeth Nowack Cowan, and Tracey Pelella), filed June 17, 2019.

⁹⁷ To be clear, consistent with the Commission's January 14, 2019 decision setting forth the issues for determination in this case (customer service, billing delays), this order does not address the problems of billing errors. Those are, instead, being addressed in our forthcoming companion order in Docket No. 2019-00015.

customers largely had a similar assessment: due in large part to their dealings with the Company's customer service, they could not trust CMP.

Customers should be able to trust their utility bill, and when questions arise about that bill but clear, correct, and timely answers are not forthcoming, the Company fails to earn that trust or, if it had any trust with the customer, loses it completely.

From the above, the Commission concludes that CMP's customer service has reached unreasonable and inadequate levels, which are evidence of management inefficiency and imprudence.

This conclusion justifies imposing meaningful remedies. From the Commission's perspective, it is crucial to take an outcome-oriented, forward-looking view of these problems and ask: what can be done to correct the problem and improve the quality of service to customers? With that in mind, the Commission now turns to the remedy for these customer-service failings.

H. Remedy for Customer-Service Issues

1. Staff's Proposed ROE Adjustment and CMP's Proposed Customer Benefit Fund

a. Staff's Proposal

Based on the information provided in the Liberty Report, as well as additional information collected by the Commission's CASD, the Staff took the position that CMP's customer service from 2016 through the present did not meet the reasonable and adequate service criteria the Commission established in *Hogan*. As explained above, under the *Hogan* standard, the Commission considers (1) whether the utility's practice departs substantially from regular and accepted practice, (2) whether the benefits to the utility are outweighed by the adverse effect on customers, and (3) whether the practice results in adequate service considering the duration, the number of customers affected, the justification for the action, and the magnitude of departure from accepted practices.⁹⁸

Here, the Staff believed that the evidence to date demonstrated that CMP's customer service substantially deviated from both the regular and accepted practices of the Company as well as the practices of other capably managed utilities. The Staff also believed that the Company's customer-service practices resulted in CMP's customers receiving inadequate service when considering the number of customers affected, the impact, the reasons for the Company's actions, and the magnitude of the departure from historic trends. BA at 93. The Staff thus concluded that the current evidence warranted a finding that CMP's customer service had failed to meet criteria (1) and (3) of the *Hogan* standard which, in turn, warranted a finding that the Company had failed to meet its obligation to provide reasonable and adequate service to its customers as

⁹⁸ *Hogan v. Hampden Tel. Co.*, F.C. 2438, 36 P.U.R.4th 480, 485 (May 16, 1988).

required under 35-A M.R.S. § 301. Given the persistent and substantial nature of CMP's failure to provide adequate service to its customers, the Staff argued that a 75- to 100-basis-point downward management-efficiency adjustment from the otherwise determined ROE midpoint was warranted. *Id.*

In the Bench Analysis, the Staff established an ROE range with a low end of 7.69% and a midpoint of 9.35%. Deducting a management efficiency adjustment of 75 to 100 basis points from the midpoint ROE resulted in an ROE of 8.35% to 8.60%, which was still above the low end of Staff's reasonable ROE results. The Staff estimated that, based on its proposed rate base, the 75- to 100-basis-point adjustment to the ROE would reduce the revenue requirement by approximately \$4.849 million to \$6.466 million. The Staff recommended that its proposed ROE adjustment remain in place until CMP could demonstrate that the Company's customer service in the areas of call-center operations and billing functions have returned to "reasonable and adequate" levels. BA at 94. As an aid in determining whether the Company had achieved "reasonable and adequate levels" of performance, the Staff recommended that the Commission establish service-quality metrics with performance benchmarks in several key areas of customer service. The Company would then be required to meet these benchmarks for a certain period before it could seek to have the ROE adjustment removed.

b. The Company's Response and Counterproposal

CMP did not dispute that the Commission may impose a downward adjustment on a utility's ROE when the Commission has determined that the public utility is inefficiently or imprudently managed. CMP Br. at 91. The Company argued, however, that the management-efficiency adjustment Staff proposed would send a signal that Maine is trending toward a restrictive regulatory environment and that this would threaten the Company's credit rating and its ability to attract capital. *Id.*

On this point, the Company noted that the Commission has never imposed a downward management-efficiency adjustment of 75 to 100 basis points; to date, a 50-point adjustment was the highest adjustment levied by the Commission. The Company noted that the Staff was not able to point to any decision of a public-utility commission imposing such a large reduction. CMP Br. at 92. Staff's proposed management-efficiency reduction, when coupled with the ROE Staff recommended in its Reply Bench Analysis, would result in an authorized ROE of 7.75% to 8.00%, which would be the lowest in the country. According to CMP, when this unreasonably low ROE was coupled with Staff's other proposed revenue-requirement adjustments, there was a real risk that the Company's rating agencies and investors would perceive CMP's regulatory environment as restrictive, if not hostile. That result would also harm the Company's cash flow, which could undermine the Company's ability to attract capital in the marketplace. *Id.* at 94.

The Company also argued that the management efficiency adjustment was overly punitive given the circumstances presented here. In support of this position, the Company noted that under Staff's proposal, before CMP could even request relief from

the management-efficiency adjustment, it would have had to have met all of the service-quality metrics established in this proceeding for the same 12-month period. CMP argued that because CMP's customer service performance has returned to pre-SmartCare levels, the imposition of the management-efficiency adjustment should be viewed largely, if not exclusively, as a penalty for CMP's past performance. *Id.* at 95.

As an alternative to the Staff's management-efficiency adjustment, CMP proposed establishing a \$6.0 million customer-benefit fund that would be funded by 12 monthly payments from CMP of \$500,000 beginning on the date of the order in this case. CMP Br. at 88; ODR-020-007. The Company proposed that its monthly contributions to the customer-benefit fund would continue beyond the initial 12-month period depending on whether the Company met the service-quality metrics during the period. ODR-020-007. If over the initial 12-month period, CMP's average service quality fell below the benchmark for any individual metric, then CMP would pay the pro rata share of the monthly penalty (\$125,000 per metric) until CMP achieved the target for the metric over a rolling 12-month period.

CMP argued that its structure meets the Staff's objectives for the management-efficiency adjustment and, in dollar terms, is near the high end of Staff's proposed adjustment range. CMP Br. at 89. Also, in contrast to Staff's proposed remedy, the Company's proposed customer-benefit fund could be targeted to those customers who were affected by CMP's inadequate service. For example, the customer-benefit fund could be used to provide bill credits for customers who experienced bill delays or bill-presentment errors. The fund could also be used to reduce distribution rates for all distribution customers to address the effects on customers from the Company's degraded customer call-center performance. CMP Br. at 90.

The Company argued that the Commission has authority to order the customer-benefit fund under 35-A M.R.S. §§ 1306(2) and 3195(1)(D), which authorize the Commission to "order, establish or change terms, conditions, measurement, practice, service or acts" as it sees reasonable and to establish positive or negative financial incentives to promote efficiency in the transmission and distribution of electricity. The Company notes that under 35-A M.R.S. § 3195 the Commission can impose service-quality rebates to address unreasonable customer service. *Id.* at 90.

c. The OPA's Position

The OPA provided no evidence or testimony on the appropriate remedy for CMP's customer-service issues. In its brief, however, the OPA stated its strong support for the Staff's proposed ROE adjustment of 75 to 100 basis points. OPA Br. at 49–59.

In support of the Staff's proposed ROE adjustment, the OPA noted that the proposal is consistent with precedent where the Commission has found that an ROE adjustment was the appropriate means of addressing poor service or inefficiency. OPA Br. at 50–51 (citing *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2015-00360, Order – Part II at 84 (Dec. 22, 2016)). Like the competitive market would do, the ROE adjustment serves the dual purpose of creating incentives for

good management and punishing poor management. OPA Br. at 52. The OPA argued that CMP should not expect to receive a rate of return that it could not earn in the competitive market due to the poor level of customer service it has been providing.

The OPA did not find the Company's arguments about the effect of the ROE adjustment on cashflow and on credit ratings to be persuasive. According to the OPA, the dollar value of the adjustment compared to total Company revenues, the fact that the Company itself has proposed rate mitigation (which would reduce cashflow), and the ability of the Company to point to its performance in relationship to the performance required to remove the ROE adjustment, all indicated that the Company's cashflow arguments are without merit. *Id.* at 53–54.

The OPA argued that the Company's proposed customer-benefit fund as an alternative to the ROE adjustment presents many problems. First, it was not clear that these costs of the fund would be absorbed by the Company's shareholders. Second, the ROE adjustment was the surest way to send a signal to CMP, its parent organizations, and their shareholders that things have gone terribly wrong at CMP. Third, the establishment of the Fund, and putting the Commission in charge of how the fund should be spent, would allow CMP to walk away from its customer-service problems. Finally, CMP's proposal did not provide relief for CMP's general body of ratepayers who have been adversely affected by CMP's conduct nor does it provide relief to the group of customers who were most affected by SmartCare issues—those customers who have received high bills for unexplained usage. OPA Br. at 55–57.

d. Examiners' Recommendation and Exceptions

Ultimately, in the Examiners' Report, the Staff recommended a base ROE of 9.25% and a 75-point downward adjustment to ROE for a 12-month period, tied to a set of service-quality indices. CMP took exception to this ROE and the adjustment for the reasons argued in response to the Staff's bench analyses. The OPA urged the Commission to approve a lower base ROE and a larger downward adjustment to ROE.

e. Decision

As discussed in Section VIII.G, the Company's customer-service performance starting in 2016, and certainly since the implementation of SmartCare at the end of October 2017, was below, and often well below, the levels necessary to provide reasonable and adequate service to its customers under 35-A M.R.S. § 301. The Commission has thus found that the Company failed to provide reasonable and inadequate service, and, that this failure meets the criteria for a finding of imprudence under well-established jurisprudence (as described in Section IV.C of this order).

The Commission has held:

It cannot be persuasively argued that there are no ill effects of mismanagement. CMP, as a public utility, had a duty to follow a course of conduct that a capably managed utility would have followed in light of existing and reasonabl[y] knowable circumstances. . . .

[T]he regulatory response must never be to ignore unreasonable and imprudent utility action because measuring precisely the costs of the reasonable and prudent course of action are difficult or even impossible. In fact, . . . our statutory duty to set just and reasonable rates would be violated if we set rates that reflect costs that are clearly unreasonable.⁹⁹

While CMP may have resisted the concept early in the proceeding, by the end of the case—as reflected in both CMP’s statements to its customers and the arguments in its briefs—CMP had accepted the fact that its customer service was unreasonable and inadequate. Policy Reb. Exh. POL-REB-1; CMP Br. at 6, 85–87; Tr. at 147–48 (July 25, 2019 Hr’g). The Company also accepted that, as a consequence, the Commission is well within its authority to act upon this finding as part of the rate-setting process. The only real questions, then, about the Company’s inadequate customer service and imprudence are: what are the appropriate remedies for the Company’s poor performance? And: what is the appropriate size of any remedies ordered?

On many past occasions, the Commission has held that, when faced with imprudent utility behavior that created harm that was difficult to quantify, the appropriate remedy was an adjustment to the utility’s ROE.¹⁰⁰ In this case, the Company’s proposal to provide \$6.0 million of shareholder money to the customer-benefit fund is roughly equivalent, at least in terms of its impact on the revenue requirement, to the high end of Staff’s proposal for a 75- to 100-basis-point reduction to the Company’s ROE. It appears that the Company’s real objection to the Staff’s proposal is not the monetary value of that adjustment, but the signal that the adjustment would send. The Commission believes, however, that it is precisely this point—the signal that an ROE reduction sends both to the Company and to its investors—that makes it the appropriate remedy for the Company’s actions.

In Docket No. 2015-00360, the Commission found that in a competitive market, shareholders make decisions about which companies to invest in based on how well they are managed and the return they generate for investors through the efficiency and effectiveness of their business operations. *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2015-00360, Order – Part II at 84 (Dec. 22, 2016).

⁹⁹ *Central Maine Power Company, Application for Fuel Cost Adjustment Pursuant to Chapter 34 and Establishment of Short-Term Energy Only Rates for Small Power Producers Less Than 1 MW Pursuant to Chapter 36 (Investigation of QF Contracts)*, Docket No. 92-102, Order at 55 (Oct. 28, 1993) (citing 35-A M.R.S. § 301(1) and (4) (1988)).

¹⁰⁰ See, e.g., *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2015-00360, Order – Part II at 82 (Dec. 22, 2016); *Public Utilities Commission, Investigation into Bangor Hydro-Electric Company’s Performance, Policies and Management Practices in the Areas of Demand-Side Management and Integrated Least Cost Planning*, Docket No. 90-286, Decision and Order (Part III) (May 31, 1991); *Bangor Hydro-Electric Company, Investigation of Reasonableness of Rates*, Docket No. 86-242, Order (Dec. 22, 1987); *Central Maine Power Company, Proposed Increase in Rates*, Docket No. 81-127 and *Central Maine Power Company, Investigation of Justness and Reasonableness of Rates*, Docket No. 81-206, Decision and Order (Mar. 27, 1982).

The Commission went on to state: "If management is to receive a signal for greater or lesser efficiency in managing the business practices and operations of the company they control, it is through the return on equity allowed in a rate case such as this." *Id.*

The Commission thus concludes that a downward adjustment to ROE is the proper means of addressing the Company's inadequate customer service. In so holding, the Commission agrees with Staff that an ROE adjustment will appropriately mimic the effect on profitability of poor customer service in the market where customers have an option of taking their business elsewhere and, although not designed as a penalty, both serves as a response to inefficient management and an incentive for good management. Tr. at 111 (July 26, 2019 Hr'g).

In its Bench Analysis, Staff proposed that the downward adjustment to the otherwise allowable ROE in this case be in the range of 75 to 100 basis points. In its Bench Analysis, the Staff identified the ROE midpoint to be 9.35%; in the Reply Bench Analysis, the midpoint was updated to be 8.75%. In both cases, the Staff took the position that the adjusted ROE was still above the low end of the reasonable range of ROE results, and thus, allowable under precedent of both the Commission and the Law Court. In the Examiners' Report, Staff ultimately recommended a downward adjustment of 75 points from a base ROE of 9.25%.

The Company has argued that Staff's recommendation of a 75-basis-point downward adjustment to CMP's ROE is unprecedented. To this, the Commission responds that the Company's customer-service failures, as documented here, are also unprecedented. As most recently discussed in Docket No. 2015-00360, it is well within the Commission's discretion to establish a return on equity in the range that is supported by the evidence in the case. In its review of the Commission's decision in Docket No. 81-127, in which the Commission set CMP's allowed ROE at the low end of the reasonable range established by the expert witnesses in that case, the Law Court held that "[t]he Commission's determination of CMP's cost of equity in this case is independently supported by the record and falls within a range we find to be reasonable. Accordingly, we must uphold the Commission's decision as a proper exercise of discretion." *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 455 A.2d 34, 39 (Me. 1983).

Based on our assessment of the expert ROE testimony and analysis in this case, the Commission determines that a reasonable ROE could fall within a range from as low as 6.46% to as high as 12.37%; and finds an ROE of 9.25% to be reasonable, prior to any adjustment for management efficiency failures by CMP. In the Examiners' Report, Staff recommended a downward adjustment to ROE of 75 basis points, which would have reduced CMP's annual revenue requirement by \$4.9 million. In its exceptions, CMP again stated that its proposed customer benefit fund is an appropriate remedy for any imprudence on the Company's part. In its exceptions, the OPA stated that, because of the significant issues identified in Docket No. 2019-00015, the downward adjustment should be increased to 100 basis points. The OPA stated that it is a proper exercise of Commission discretion to establish and adjust the allowed return on equity so long as the ROE falls within a range that is reasonable. Given the reasonable range of ROE

results and the Company's enormous customer-service failings, the Commission finds that a management-efficiency adjustment of 100 basis points is the appropriate remedy to address CMP's poor customer service, and we hereby approve it. This downward ROE adjustment is appropriate given the Company's failings and the grief it has caused customers. This 100-basis-point adjustment produces an ROE of 8.25%, which is still well within a reasonable ROE range, and we hereby approve it. This reduced ROE translates into a pre-tax WACC of 7.90% and an after-tax WACC of 6.30%, which reduces CMP's annual revenue requirement by \$6.6 million. The question of how long this adjustment will remain in effect is addressed below.

2. Service-Quality Indices (SQI) and Benchmarks

In the Bench Analysis, to aid the Commission in determining "reasonable and adequate levels" of service going forward, Staff recommended that service-quality metrics with appropriate benchmarks be established in key areas of customer service that the Company must meet for a specified period before it can seek relief from the cost-of-equity adjustment. In the industry, service-quality metrics or indices are commonly referred to as SQI. The Commission Staff recommended that the following SQI be established, and that they be in place and measured over a period of 12 months:

a. *Percent of Business Calls Answered Within 30 Seconds.* This metric measures the "percentage of calls answered by a live customer service representative" within 30 seconds for calls made to CMP's "business line" and the benchmark for this metric was 80%. Business calls are defined as calls received on the Company's customer service business line as specified on customer bills. Calls are considered "answered" once they are initially answered by a customer representative or the Company's Interactive Voice Response (IVR) system. When a customer opts to speak to a customer representative, any additional wait time will be added to the initial wait time. CMP may exclude from this calculation "major event days," which will be determined using the IEEE 2.5 Beta approach. An annual performance result for this metric that is less than the benchmark, after major event days are excluded, will be considered a miss.

b. *Percent of Contractor Calls Answered Within 30 Seconds.* This metric measures the "percentage of calls answered by a live customer service representative" for calls made to CMP's "contractor line" and the benchmark for this metric was 80%. Contractor calls are defined as calls received on the Company's contractor line (866-225-4200). Calls are considered "answered" once they are initially answered by a customer representative. CMP may exclude from this calculation "major event days," which will be determined using the IEEE 2.5 Beta approach. An annual performance result for this metric that is less than the benchmark, after major event days are excluded, will be considered a miss.

c. *Call-Abandonment Rate.* This metric measures the percentage of calls abandoned by callers to both CMP's business line, as well as its contractor line, and the benchmark for this metric was 7%. A call is considered "abandoned" if: (1) the caller hangs up after the call is received by the Company's automatic call distribution system

and the customer makes a choice to speak with a live person; or (2) the caller receives a busy signal or a “courtesy message” because the call cannot be completed. The “call abandonment rate” is calculated by dividing the number of abandoned calls by the total number of calls presented to CMP’s business line. CMP may exclude from this calculation “major event days” as determined using the IEEE 2.5 Beta approach. An annual performance result for this metric that exceeds the benchmark, after major event days are excluded, will be considered a miss.

d. *Bill-Error Rate.* This metric measures the percentage of customer bills issued accurately each year and the benchmark was 0.4%. A bill is considered “erroneous” if it contains an incorrect rate or charge; lacks a proper charge, fee or tax; no monthly bill is issued when one should have been issued; or the total amount due is not correct. Estimated bills are not considered erroneous if issued in compliance with Chapter 815, section 8(L) or a Commission Order approving an alternate meter read schedule. The bill-error rate will be calculated by dividing the number of erroneous bills issued in a calendar year by the total number of bills issued in the same calendar year. This calculation is based on actual bills issued and not on accounts. An annual performance result for this metric that exceeds the benchmark will be considered a miss. BA at 95–96 and App. B.

a. Positions of the Parties and Staff on Staff’s Proposed SQI

The parties’ responses to each element of the Staff’s proposal, and Staff’s reply, are summarized as follows.

i. Percent of Business Calls Answered in 30 seconds

In its rebuttal, the Company stated that it has been achieving a standard of 80% of calls answered within 45 seconds (80/45) since April 2013 and that the change to 45 seconds (from 30 seconds) was the result of Staff’s request for CMP to accommodate promotional activities for the Green Power Supply Option.¹⁰¹ The Company also stated that it assumes that the same definition established in ARP 2008 for this service level

¹⁰¹ During the 2009 session, the Legislature enacted An Act To Establish the Community-based Renewable Energy Pilot Program (Act), P.L. 2009, ch. 329. Part B of the Act required the Commission to arrange for a green power offer that is composed of green power supply and to ensure that the green power offer is available to residential and small commercial electricity customers. In recognition of CMP’s agreement to have its customer service department provide support in the implementation of the statewide green power offer, the Commission modified the Company’s business-calls-answered service-quality metric contained in its ARP so that the metric would be 80% of calls answered within 45 seconds for the remainder of the ARP. *Central Maine Power Company, Chapter 120 Information (Post ARP 2000 Information Transmission and Distribution Utility Revenue Requirements and Rate Design, and Request for Alternative Rate Plan)*, Docket No. 2007-00215(II), Order of Modification at 1 (Apr. 10, 2013).

metric would also apply to the proposed metrics.¹⁰² Though it agreed to the 80/30 call-answer target, CMP stated it would need more customer-service representatives to achieve that performance level. Cust. Serv. Reb. at 38. The Company conducted a workload analysis to determine the incremental headcount required to meet the proposed target of 80/30. That analysis determined that CMP would need another nine full-time customer-service representatives, an increase over the current target of 93 customer-service representatives. *Id.*

In its Reply Bench Analysis, Staff recommended that the Commission eliminate “calls completed in the IVR” from both the numerator and the denominator of the formula. The purpose of this service-quality metric is to measure the “percentage of calls answered by a *live* customer service representative” (emphasis added). Calls handled by the IVR are not “answered by a live representative” and thus will always be “answered” within any designated timeframe. Therefore, including calls handled by the IVR does not add any qualitative aspect to the metric, and diminishes its value. RBA at 22.

ii. Percent of Contractor Calls Answered Within 30 Seconds

The Company disagreed with Staff’s proposed metric for the answer rate for calls to the Company’s contractor line. CMP explained that it offers a contractor line as a courtesy to contractors—a relatively small group of customers with unique needs—and maintaining a separate contractor SQI target would create an inefficient use of resources because of the comparatively low volume of contractor calls. Cust. Serv. Reb. at 39. The Company also argued that an SQI metric for the “percent of business calls answered” that includes contractor calls is the best way to serve all customers because it will ensure a larger pool of representatives available to serve all customers’ needs. *Id.*

Staff responded that they did not realize when they proposed this metric that callers to the Company’s business line are currently offered the opportunity to be forwarded to the “contractor line,” similar to customers who dial the contractor line directly. The Company explained that today, if a person calls the business line and selects the “contractor option” (option #4), the call is routed to the contractor line and handled by the small group of customer-service representatives who are trained to deal with contractors. In the future, the Company plans to further train the customer-service representatives in the call center so that they can handle calls from contractors, thus eliminating the need for a separate “contractor line.” And, because these calls will be received over the business line, they will be included in the “business line” call answering metric. Tr. at 57–58 (May 21, 2019 Tech. Conf.). Staff found this to be

¹⁰² That definition was expressed as follows:

Calls completed in the Company’s Integrated Voice Response System (IVR)
+ calls answered by agents in 30 seconds
+ total agent calls abandoned within 30 seconds

Calls completed in the IVR + total agent calls answered + total agent calls abandoned.

reasonable and agreed to eliminate the separately proposed metric for the contractor line with the understanding that the Company must properly train its customer-service representatives to handle contractor calls and these calls must be included in the calls-answered metric for CMP's business line. RBA at 23–24.

iii. Calls Abandoned

In the Bench Analysis, Staff recommended that a service-quality metric be established to measure the percentage of calls to the Company's business line that are abandoned before answering and that the benchmark for the metric be 7%. BA, App. B. CMP stated that it could agree to the proposed service-quality metric for calls abandoned and the benchmark of 7%, provided that the Commission approve an additional nine customer-service representatives. The Company also agreed with Staff's recommendation that it be allowed to exclude "major event days" as determined using the IEEE 2.5 Beta approach, from the calculation. The Company also suggested an exclusion in the event of a work stoppage. Cust. Serv. Reb. at 39.

These nine additional customer service representative positions are included in the 155 customer-service positions discussed in Section VI.B.1 above. Staff did not agree with the Company's suggestion that the SQL calculation specifically exclude work-stoppage days. Rather, Staff suggested that the Company petition the Commission in the event of a work stoppage that the Company believes will detrimentally affect its ability to answer customer calls.

iv. Bill-Error Rate

The Company argued that in Emera Maine's Service Quality Index Annual Report for 2017, the data definitions and detailed calculations for the bill-error rate did not include delayed bills or estimated bills. The Company added that Emera Maine's bill-error index tracks the percentage of bills issued incorrectly to customers compared with the total number of bills issued, and that the bills in this calculation (a) are actually received by the customer and (b) do not include estimated bills. Cust. Serv. Reb. at 41. Based on this, the Company recommended that the Commission adopt the following definition for the term bill error: "A bill is considered erroneous if it contains an incorrect rate or charge; lacks a proper charge, fee or tax; or the total amount due is not correct." *Id.*

The Company also recommended that the bill-error rate be calculated by dividing the number of erroneous bills issued in a calendar year by the total number of bills issued in that year. *Id.* The Company noted that including delayed bills in the bill-error metric runs counter to CMP's process for reviewing the accuracy of bills and thus should not be included in the bill-error metric. The Company argued that its process is designed to reduce bill errors, and thus delayed bills created through this process should not be included in the bill-error metric. *Id.* The Company also argued that estimated bills should be excluded from the bill-error metric because CMP has an established process for estimating bills and that an estimated bill is not a billing error. *Id.* CMP proposed that the following errors or events be excluded from the bill-error metric:

- (a) Errors resulting from incorrect or misinformation received from a customer;
- (b) Errors resulting from incorrect or misinformation received from a supplier;
- (c) Storm events; and
- (d) New rate structures or mandated collections policies/plans (e.g., Interim Payment Policy) (delivery or supply) for the first two months of implementation.

Id. at 41–42.

Finally, the Company proposed that the benchmark for the bill-error metric be based on more current information. The Company argued that Staff’s suggested benchmark was based on negotiations in Bangor Hydro Electric Company’s (Emera Maine’s predecessor in name) 2001 alternative rate plan proceeding and that, because the case was resolved through stipulation, there is no documentation of the basis for the 0.4% benchmark. Given this uncertainty, the Company recommended a bill-error benchmark based on the most current average of the actual 12-month rolling bill-error performance, increased by one standard deviation because the billing system is still relatively new. *Id.* at 42

Staff agreed with the Company that events identified as (a) and (b) above should be excluded from the bill-error metric because these events are beyond the Company’s control. Staff disagreed with the Company’s contention that events related to (c) and (d) should be excluded from the metric. As to (c), CMP argued that if a billing change needs to be made on a day when crucial staff are instead deployed to storm duty, and thus the change cannot be made and erroneous bills are issued, the Company would exclude that day. Tr. at 65 (May 21, 2019 Tech. Conf.). Storm events should not affect the issuance of bills because bill-issuance is an automated process. Staff found that the scenario that the Company posed—where a scheduled billing change is not possible because the resources necessary to implement the billing change are working on storm restoration—was implausible. RBA at 27–28.

As to (d), Staff’s position was that this event is within the control of the Company and is a necessary and common occurrence. Staff argued that utilities need to have the ability to modify their billing system to accommodate new and modified rate structures from time to time and to issue accurate bills afterward. Thus, Staff asserted that items (c) and (d) should be included in the bill-error metric. *Id.* at 28.

The Staff also disagreed with CMP’s position on excluding delayed bills and estimated bills from the metric. Staff argued that the purpose of the proposed service-quality index is to help the Commission to determine when the Company’s customer service returns to reasonable and adequate levels so that the Company may receive

relief from the ROE adjustment. Thus, the service-quality metrics need to measure the areas where the Company's customer service has been inadequate. *Id.* at 28–29.

Staff also disagreed with the Company's benchmark calculation. The period CMP recommended the benchmark be based on was a period during which the Company's billing performance was not reasonable or adequate. Thus, establishing a benchmark from that period would defeat the purpose of the metric. Staff added that it would be inappropriate to add a standard deviation to the Company's actual performance, which already represents unreasonable and inadequate service. Given this, Staff continued to recommend 0.4% as a benchmark for the bill-error metric. *Id.* at 29–30.

v. Operation of the SQI

The Company agreed with Staff's recommendation that service-quality metrics be adopted to aid the Commission in determining when CMP's customer service in the areas of call-center operations and billing functions has returned to "reasonable and adequate levels," and also agreed that it should be permitted to seek relief from any downward ROE adjustment based on its performance over any rolling 12-month period. The Company objected, however, to the "all or nothing" approach recommended by Staff for when the Company may seek relief from the ROE adjustment. Pol. Reb. at 24; CMP Exceptions at 34.

The Company argued that the Commission should instead either (1) impose a service-quality index similar to the one contained in ARP 2008,¹⁰³ or (2) retain the ROE adjustment, but allow the Company to seek immediate relief from some or all of the ROE adjustment as soon as its performance on any of the metrics over a rolling 12-month period averages at or above the specified benchmark. In support of the first option, the Company stated that the SQI contained in ARP 2008 was developed so that each service-quality metric was independently measured and any resulting one-year financial adjustment depended on how poorly CMP fared in meeting the metric. The Company stated that this would reflect the importance of meeting the service-quality metrics, but does not result in a full adjustment if only one metric is missed by a small margin. *Id.*

Under the second option, CMP could receive immediate relief from some or all of the ROE adjustment as soon as its performance for any one of the metrics over a rolling 12-month period meets the specified benchmark. At a minimum, the Company argued, the Commission should allow it to reduce the downward adjustment by at least one-third for each of the three applicable metrics when the Company's performance averages at least the specified benchmark for the 12-month period. Finally, CMP proposed that any downward ROE adjustment remain in effect only until it meets the applicable metric. *Id.* at 24–25.

¹⁰³ *Central Maine Power Company, Chapter 120 Information Post ARP 2000 Transmission and Distribution Utility Revenue Requirements and Rate Design, and Request for Alternative Rate Plan*, Docket No. 2007-00215, Order Approving Stipulation (July 1, 2008).

Staff stated in its Reply Bench Analysis that it continued to believe that the ROE adjustment was the appropriate mechanism to address the Company's inadequate and unreasonable customer service, and that the Company's proposal to seek relief from the adjustment piecemeal is inconsistent with the intent of the SQI. The adjustment was intended to address the inadequate and unreasonable customer service discussed in the Liberty Report and in the Bench Analysis and the metrics collectively are intended to aid the Commission in determining when the Company's inadequate and unreasonable service has returned to reasonable and adequate levels. Accepting the Company's recommendation that it be allowed to seek relief from the ROE adjustment if the Company meets any one of the metrics would mean that each component had a specific value in the Commission's ROE adjustment. The Staff stated that it did not believe that this was the case and that the adjustment reflects poor customer service, which needs to be addressed comprehensively rather than piecemeal. Therefore, the Staff continued to recommend that the SQI be met in their entirety before the Company could seek or obtain relief from the ROE adjustment. RBA at 33.

In its brief, CMP agreed with the imposition of an SQI to evaluate its customer service going forward and recommended, based on dialogue with Staff during this proceeding, that the Commission establish the following four metrics and benchmarks:

a. Percent of Business Calls Answered within 30 [Seconds]: 80%
(For purposes of this calculation calls answered by CMP's Interactive Voice Response ("IVR") system will be excluded. Calls that receive a "courtesy message" due to the unavailability of customer service representatives and/or trunk lines to CMP's contact centers will be included in the denominator for purposes of this calculation. "Major event days" determined using the IEEE 2.5 Beta approach will be excluded.)

b. Call-Abandonment Rate: 7% (For purposes of this calculation, calls answered by the IVR will be excluded, but calls that receive a "courtesy message" due to the unavailability of customer service representatives and/or trunk lines to CMP's contact centers will be included. "Major event days" determined using the IEEE 2.5 Beta approach will be excluded.)

c. Bill-Error Rate: 0.4% (This metric represents CMP's acceptance of Staff's proposed target, provided that estimated bills are excluded from the calculation and instead addressed through a separate metric as discussed below and delayed bills are defined for inclusion in the metric as bills not issued during a reasonable period (i.e., 14 days) after the end of the applicable meter read cycle, to allow for the billing exception process to be completed before a delayed bill is deemed a bill error for purposes of the calculation).

d. Estimated Bills: No more than 1% of customer bills based on estimated meter reads, with exclusions or adjustments for estimated reads resulting from CMP's AMI Opt-out program or conditions specified in

Chapter 815, section 8(L). “Major event days” determined using the IEEE 2.5 Beta approach will be excluded.

CMP Br. at 96.

The Company stated that it agreed with Staff’s recommended metrics, except Staff’s suggestions that the bill-error rate include estimated bills and that delayed bills be defined for purposes of the bill-error rate as any bill issued after the end of the three-day meter-read cycle applicable to the customer. Regarding estimated bills, the Company recommended that a separate metric be established to measure the Company’s performance and that the benchmark be that no more than 1% of customer bills may be based on estimated meter reads (with exclusions or adjustments for estimated reads resulting from CMP’s AMI Opt-out program or conditions specified in Chapter 815, section 8(L)).¹⁰⁴

Regarding delayed bills, the Company recommended that a 14-day “grace period” be established to allow CMP time to complete the meter-read and bill-exception process before issuing the bill, while at the same time holding the Company to a standard that ensures that customers receive a bill each month. To CMP, shortening this period to only a few days, as Staff proposed, would undermine the bill-exception process, which ensures that bills are accurate before issuance. *Id.* at 97–98.

In its brief, the OPA argued that the Company should remain subject to service-quality standards for least one year and until it meets all four of the service-quality metrics. The OPA also supported Staff’s recommendation for the SQI. OPA Brief at 59.

The OPA also discussed CMP’s problems answering customer calls in a timely fashion and providing helpful information to customers post go-live for SmartCare. *Id.* at 22–24. In response to this, the OPA urged the Commission to take whatever steps are necessary to ensure that CMP’s customer-service staff are not just answering calls on time, but are also knowledgeable and responsive to customer input. The OPA pointed out that many of the witnesses at the public-witness hearings and the head of the Commission’s CASD described a lack of expertise and empathy for customers at CMP call centers. The OPA pointed to Liberty’s finding that for the past three years, CMP has failed to follow its own policy for reviewing recordings of customer service calls, and has failed to monitor the call quality for its outside call center. Given this, the OPA recommended that the Commission require CMP to meet these internal goals and report its compliance with scoring and monitoring of calls. *Id.* at 25. The OPA added that CMP should be required to review calls from customers who are referred to the high-usage complaint unit; calls there are currently not being recorded. *Id.* at 63.

The Company responded by stating that the OPA is correct that its Quality Assurance program expects consistent monthly quality monitoring and that this allows

¹⁰⁴ The Company also pointed out that the benchmark should take into consideration the specifications of CMP’s AMI system, which was not designed to ensure 100% automated reads each month for all customers.

the Company to measure performance against desired results and identify actions that would improve service to customers. The Company said that it has historically set a target of two calls per representative per month for internal call-center staff and five calls per representative per month for external call-center staff. The Company added that it anticipates implementing speech-analytics technology in 2020, which will further guide the quality-assurance process. The Company agreed to report results of the quality-monitoring program to demonstrate consistency in its efforts; however, it did not believe it was necessary to measure the results on a prescribed number of calls per representative per month. CMP Reply Br. at 30–31.

On the recording and monitoring of calls related to high-usage complaints, the Company clarified that it does not have a permanent, specialized high-usage unit. The Company pointed out that this unit was established after SmartCare go-live due to the significant increase in the volume of high-use complaints made to the CASD. CMP added that every representative in its contact center is trained to take a high-usage call and that customers calling the contact center will get faster service and an opportunity for first-call resolution, and the calls will fall under CMP's quality-monitoring process. *Id.* at 31–32.

The Company added that it will implement the technology to record the calls of the employees who regularly respond to customer complaints to the Commission. CMP noted that customer interactions with this group are regularly reviewed by management as part of the complaint-review process and if a customer has a concern with the quality of this interaction, the customer can share this concern with their assigned CASD case specialist as the case progresses. *Id.* at 32.

In its reply brief, the OPA stated that the Company's SQI proposal should not be accepted without modifications. On the Company's recommended 14-day grace period in relation to the inclusion of delayed bills in the bill-error metric, the OPA stated that 14 days is too much time for CMP to complete the bill-exception process. The OPA argued that CMP has stated that its billing exceptions process has stabilized and that staff is able to handle the additional number of exceptions that SmartCare produces daily. Further, CMP has offered no cogent reason why it should be given a two-week grace period. The OPA noted that allowing a 14-day window puts an undue burden on the customer, who would receive two bills within a relatively short period of time, assuming the next bill was not delayed, and that this would place a burden on customers who live on a fixed income. In light of these concerns, the OPA suggested that delayed bills should be defined for inclusion in the metric as “bills not issued within five days of the meter read.” OPA Reply Br. at 9.

On the Company's recommendation that estimated bills be excluded from the “bill error” metric and that a separate metric be created to measure estimated bills, the OPA stated that the separate metric should include a requirement that CMP report the number of customer accounts that receive estimated bills for multiple months. The OPA argues that these reports will allow the Commission to monitor the opt-out customer population to ensure that the Company is reading these customers' meters every other

month and that these customers are receiving regular meter readings in accordance with Chapter 815. *Id.* at 10.

Finally, the OPA disagreed with starting the clock for measuring the Company's compliance with the SQI at any point prior to the imposition of the management efficiency adjustment. The OPA added that Staff designed the adjustment to incentivize CMP's customer-service performance for a period of one full year to ensure that it could maintain adequate levels. The OPA said that CMP would not be prejudiced by Staff's proposal. *Id.* at 10–11.

vi. Examiners' Report and Exceptions

Ultimately, the Examiners recommended approval of the SQI the Staff supported, over a 12-month period. CMP took exception only to one piece of that SQI, where the business-calls metric included "total calls that received a courtesy message" in the denominator. The OPA supported the SQI.

b. Decision

For the reasons described in the Staff's Bench Analysis and Reply Bench Analysis (summarized above), the Commission finds it appropriate to establish an SQI to aid the Commission in determining when the Company's service quality has returned to "reasonable and adequate levels" in the application of the management-efficiency adjustment. Thus, the Commission approves the Service Quality Index Staff recommended in its Reply Bench Analysis and included in the Examiners' Report, except that the Commission grants CMP's exception seeking a modification to the business-calls metric. The Commission agrees with CMP that the denominator of that metric should not include the "total calls that received a courtesy message," largely because the courtesy-message issue is captured in the blocked-calls metric.

The Commission also expands the period over which the SQI will be measured to 18 months, from Staff's proposal of 12 months. This longer period will help fulfill the Commission's expectations that improvements in CMP's customer service will be long-lasting, rather than short-lived.

The Commission also clarifies the following aspects of the SQI:

i. Start Date for SQI

The measurement of the SQI shall start on March 1, 2020. CMP must meet all four metrics of the SQI over a rolling period of 18 months before the Company may seek relief from the ROE adjustment. We thus reject the piecemeal approach recommended by the Company that would allow it to seek partial relief from management adjustment for meeting individual service-quality metrics. The Commission agrees with Staff that the Company's proposal is inconsistent with the intent of the SQI, which is to aid the Commission in determining when the Company's inadequate and unreasonable service has returned to reasonable and adequate levels before lifting the ROE adjustment.

ii. Separate Metric for Estimated Bills

The Commission agrees with the Company, Staff, and the OPA that estimated bills should be removed from the bill-error metric and that a separate metric be created solely to measure CMP's performance in reading its meters. The Commission also agrees with the Company's proposed benchmark of 1%. The Commission agrees with the OPA that CMP should provide a report to the Commission that lists the customer accounts that receive estimated bills for multiple months and explains why these meters were not read as scheduled. This report must be filed annually as part of the Company's Annual Compliance Filing.

iii. 14-day Grace Period for Delayed Bills

The Commission agrees with the OPA that the 14-day period for issuing bills after the meter read date is excessive and would place an undue burden on the customer. But the Commission also recognizes that the Company needs enough time to review billing exceptions after the meter-read to ensure the accuracy of customer bills. In light of these two competing goals, the Commission finds 10 days to be a reasonable balance. Thus, we direct Staff to include this 10-day period in the description of "delayed bills" in the bill-error service-quality metric.

iv. Knowledge and Performance of Call-Center Staff

The Commission shares the concerns of Staff and the OPA about the knowledgeability and performance of personnel at the Company's call centers. As Staff pointed out in its Bench Analysis, the performance and quality of service of CMP's call center was a problem well before the implementation of SmartCare—going back to April 2016—and grew significantly worse after the implementation. The Commission also finds that while the call-answer metrics being adopted in the SQI will help ensure that the Company answers its calls in a timely manner, the metrics alone cannot ensure that the customer is provided with helpful or accurate information. In light of this, the Commission directs CMP to file a proposal for hiring a third-party entity with expertise in call-center operations and in credit and collections to review the Company's quality-assurance/quality-control policies and procedures and make recommendations for improving them. The Company's proposal must also include steps the third party will take to independently monitor and evaluate the Company's performance in adopting the recommended improvements. In light of the Commission's finding of imprudence regarding the Company's customer service described in Section VIII.H.1.d, the Commission finds that the cost of this audit should be borne by the Company's shareholders. See 35-A M.R.S. § 113. This proposal shall be filed within 45 days of this order.

Because for several years CMP has not been adhering to its in-house policies on monitoring of call-quality, the Commission also directs CMP to adhere to those policies and, with its proposal described in the preceding paragraph, include a means of documenting compliance.

The approved SQI are laid out in Appendix B to this order.

v. Process for Seeking Relief from Adjustment

In its exceptions, CMP asked for clarification on the process it should undertake to seek relief from the downward adjustment to ROE. When that time arises, CMP should file a petition seeking that relief with any supporting documentation to show that it has met the SQI imposed by this order. This filing may, but need not, be made in the context of a general rate case.

Given the regulatory lag that would occur from when CMP makes its filing to when the adjustment is eventually lifted, CMP also sought an accounting order allowing it to defer for future recovery the revenues it does not recover after meeting the SQIs for the applicable period. The Commission suggests that that step may be premature at this time, and that CMP should make the request for an accounting order closer in time to when it believes it will be entitled to seek relief from the adjustment.

3. Fitness to Operate

At the public-witness hearings, some customers challenged CMP's fitness to operate and pressed the Commission to consider whether CMP should be "broken up" or "dissolv[ed]." Many of them claimed that they had lost trust in CMP in recent years. Some customers argued that CMP was unfit to serve or called for the Commission to revoke CMP's license to operate as a public utility. As several examples of these positions:

- "[N]ot only is there no justification for a rate hike . . . there's justifications for . . . dissolving the company." Tr. at 56 (July 16, 2019 Pub. Wit. Hr'g).
- "That CMP is a monopoly. They're gouging the Maine people, and people are either intimidated or afraid to speak up. It's just not right, and I wish the Commission here would do something about this. . . . What we need is another Theodore Roosevelt to break up CMP, that's what we need." Tr. at 86 (July 16, 2019 Pub. Wit. Hr'g).
- "And with the mounting investigations into Iberdrola's business practices, I stand before you tonight to say I do not believe CMP is fit to serve its Maine customers. You have the authority to hold CMP fully accountable for failing their Maine customers." Tr. at 6–7 (July 22, 2019 Pub. Wit. Hr'g).
- "[W]e should rescind Central Maine's mandate for providing us with power because they are not an honest organization. They are deceitful, they're misrepresenting the truth, and they're stealing our money really in a major way." Tr. at 103 (July 22, 2019 Pub. Wit. Hr'g).

Customers' concerns about CMP's customer-service functions are credible and understandable, as are their requests that the Commission use its powers to hold CMP

accountable for these problems. The question of fitness to serve is a larger one that calls into question CMP's existence as a utility.

Section 1511 of Title 35-A gives the Commission the authority to suspend or revoke the authority of a public utility to serve upon a finding that the public utility is unfit to provide safe, adequate, and reliable service at rates that are just and reasonable. As detailed in Section VIII.H.1, above, the Commission is using its ratemaking authority to require CMP to commit to significant improvements in the quality of its customer service. (In a forthcoming companion order in Docket No. 2019-00015, the Commission is imposing other requirements on CMP that are aimed at improving its billing functions, which will likely improve customer service, too.) The consequence of failing to meet these service-quality expectations will be financial and they will be heavy: a cut in the Company's rate of return on equity will go into effect March 1, 2020, and will remain in place until CMP demonstrates that it has significantly improved its performance for no less than an 18-month period.

The Commission does not find, however, that CMP is unfit to serve as a public utility. Despite its challenges, CMP is performing its core function of delivering electricity to consumers. The Commission's focus is on improving outcomes for customers and holding CMP accountable. While many customers still have open complaints about their bills, the outcome of this case and Docket No. 2019-00015 are intended to resolve those complaints and issues, and to hold CMP responsible for its failings.

Above all, the Commission's remedies are intended to be forward-looking and to prompt improvement in CMP's service. CMP will experience financial consequences until it does so; this provides the financial incentive for CMP to take action to improve.¹⁰⁵ Having now held CMP accountable through the management-efficiency adjustment, the Company needs to be given an opportunity to demonstrate that it can improve its customer service.

Section 1511 requires that, before a utility's authority to serve can be suspended or revoked, it must be provided with notice and a reasonable opportunity to comply with its obligations under Title 35-A. What the Commission does here is provide the Company clear notice and opportunity. The Company has stated that it accepts responsibility for its past actions and it is now ready to move on and meet its obligations. But the Company's actions will speak much louder than its words. If, given enough time, the Company is unable to match its words and return to delivering safe, adequate, and reasonable service, it will be appropriate to revisit these questions.

¹⁰⁵ In its most recent session, the Legislature stepped into this arena and authorized the Commission to arrange for a study of public-power options in Maine. Resolves 2019, ch. 107. The Commission has opened a docket where that study is being managed. See *Me. Pub. Utils. Comm'n, Inquiry Regarding Evaluation of Ownership of Maine's Power Delivery Systems*, Docket No. 2019-00280, Notice of Inquiry and Request for Comment and Information (Oct. 25, 2019).

IX. RATE MITIGATION

CMP has proposed to mitigate any increase in its distribution rates using a regulatory liability (i.e., an amount on CMP's books that must be returned to customers over some period) and accelerating its amortization (i.e., returning the amount to customers faster). This method of limiting the rate increase has been referred to in this case as "rate mitigation." For the reasons laid out below, aside from the adjustments to the revenue requirement that have already been discussed throughout this order, the Commission does not adopt any separate mechanism for rate mitigation.

A. Background and Positions of the Parties

1. CMP's Proposal to Mitigate Rate Increase

In its direct case, CMP explained that it was sensitive to the likely effect of its proposed rate increase on customers' bills. Policy Dir. at 13; see also Policy Reb. at 5–6. For that reason, CMP proposed that the Commission mitigate the rate increase "using the accelerated amortization of the unprotected excess ADIT regulatory liability." CMP Br. at 9; see also CMP Br. at 29.¹⁰⁶ In simple terms, this means that CMP would take what it over-collected in rates in deferred income taxes (due to the adoption of the Tax Cuts and Jobs Act of 2017, which lowered marginal corporate income taxes to 21% from 35%) and return that to customers more quickly than it otherwise would. Initially, CMP proposed to return this money in four years instead of 10. Pol. Dir. at 14. While the original goal of the mitigation was to avoid any rate increase, with later updates CMP proposed to use mitigation to hold the annual increase in CMP's delivery rates (the combination of its *distribution* rates, which are subject to Commission jurisdiction, and its *transmission* rates, which are under the FERC's jurisdiction) to no more than the rate of inflation, which CMP projected to be 2.21% in 2019. CMP Br. at 9. According to CMP, "[m]itigating the rate impact in this fashion will minimize the impact of the necessary distribution rate increase in this proceeding and allow rates to rise smoothly and gradually over the next few years." CMP Br. at 9.

2. Office of the Public Advocate

The OPA was hesitant to agree to CMP's mitigation proposal. Mr. Morgan, the OPA's revenue-requirement consultant, testified that "exhausting all the liabilities in the short run could lead to a sharp increase in rates after the three-year period" of mitigation CMP originally proposed. Morgan Dir. at 17; OPA Br. at 91.¹⁰⁷ Mr. Morgan and the OPA

¹⁰⁶ In its direct case, the Company proposed to mitigate the rate increase by accelerating the amortization of both the unprotected excess ADIT regulatory liability and the cost-of-removal regulatory liability balance. Policy Dir. at 14. By the time of its brief, however, CMP appeared to have limited its mitigation proposal to use of the unprotected excess ADIT.

¹⁰⁷ Mr. Morgan also rejected CMP's original proposal to use of the cost-of-removal liability to mitigate rates because a prior stipulation established the cost-of-removal liability balance and, thus, it should not be disturbed. OPA Br. at 91–92. From CMP's brief, it appeared that CMP was no longer advocating for using the cost-of-removal liability to mitigate rates. See *supra* note 106.

were, nonetheless, not opposed to rate mitigation “if the amount of any increase granted by the Commission appeared to require moderation.” Morgan Dir. at 18; OPA Br. at 92.

3. Commission Staff

In the Bench Analysis, the Staff did not make a specific proposal on rate mitigation. BA at 5. Instead, the Staff noted that the determination of whether mitigation through the acceleration of the amortization of regulatory liabilities was wise would depend on the revenue requirement that ultimately comes out of this process, the potential effect of any revenue-requirement deficiency on current rates, and the effect that accelerated amortizations would have on future rates. BA at 5.

As stated in the Reply Bench Analysis, given the size of the Company’s proposed increase to its revenue requirement, Staff was “skeptical that it will be possible to implement mitigation in this case without imposing a significant burden on future ratepayers.” RBA at 5–6. Staff also expressed concern that rate mitigation would mask the true effect of any rate increase and the true costs of the Company’s proposals. RBA at 6. In the Examiners’ Report, the Staff recommended rejection of rate mitigation.

B. Decision

The Commission declines to adopt CMP’s proposal for rate mitigation for two distinct reasons: (1) rate mitigation is not in the public interest because its use could lead to a sudden foreseeable (and yet, to some degree, avoidable) increase in rates at the end of the mitigation period, which merely puts these costs off to another day; and (2) the rate increase we approve here is comparable to inflation over the period since the Commission’s decision in CMP’s last rate case, thus leading us to find that this rate increase does not constitute rate shock and is not fit for mitigation.

1. Rate Mitigation Not in the Public Interest

The Commission finds Mr. Morgan’s concerns to be credible, and agrees with the Staff that it would not be in the public interest to allow CMP to borrow from the not-distant future to suppress rates in the near term. Ultimately, we find that CMP’s proposed rate mitigation would not help customers, as it would merely put off to another day the recovery of CMP’s actual costs to serve, and would too rapidly deplete a tool (the unprotected excess ADIT regulatory liability) that would otherwise be used to offset costs gradually over a longer period.

In this case, there is convincing evidence that rate mitigation as CMP had proposed would be immediately followed by a sudden increase in distribution rates. The Commission finds that Mr. Morgan’s concern that “exhausting all the liabilities in the short run could lead to a sharp increase in rates after the three-year period” of mitigation is well founded. The Commission also agrees with the Staff that the rates ultimately approved in this case should not be at the expense of ratepayers a few years hence. To do so would create inequities among ratepayers—with those customers who are paying rates a few years from now being unable to benefit from the deferred tax liability that would have otherwise helped to offset their rates in those years. One cannot know the

new costs that could arise a few years from now, and having no ability to mitigate those future increases with the unprotected excess ADIT liability could needlessly worsen future rate increases.

To put the problem in yet another perspective, worse still would be a situation in which the Commission approved both the management-efficiency adjustment to ROE and rate mitigation—both of which could come to natural ends around the same time, thus creating two sources of significantly increased rates all at once, with few or no options for significantly mitigating rates any further.

It is worth pointing out that the updated amortization period for the unprotected excess ADIT regulatory liability is already only five years. While CMP had originally proposed to return these amounts to its customers over 10 years, in its rebuttal it shortened that period to five. Rev. Req. Reb. at 13 (“Assumed in this adjustment is the amortization of the Unprotected EDIT liability over a five-year period, as opposed to a ten-year period used in the Company’s initial filing.”). When asked whether this change was simply rate mitigation by another method, CMP responded: “No it [is] not. It represents an updated assumption associated with revised unprotected EDIT liability values from what was used in the Company’s initial filing.” EXM-012-022. CMP did not provide more explanation of this change. Regardless of the reasons, shortening by half the period over which the unprotected excess ADIT liability would be returned to customers had the same basic effect on the rate increase as a slightly longer period of rate mitigation than CMP had originally proposed.

Despite our concerns about rate mitigation as a concept—and certainly about a mitigation period as short as two to four years—the Commission approves the updated five-year amortization period, as discussed above in Section VII.C. The five-year amortization period is still longer than CMP’s original mitigation proposal, and other updates CMP presented in rebuttal so greatly affected the revenue requirement that the Commission finds it would not be sensible to grow the rate increase any further by taking more years to return the unprotected excess ADIT liability to customers.

It is also worth noting that the rate increase we are approving here is smaller than the one CMP proposed even with mitigation, thus obviating the need for any mitigation beyond the standard ratemaking tools the Commission has approved in this case.

2. Rate Increase Comparable to Inflation

To put this 6.88% distribution rate increase into context, it is helpful to consider how inflation has increased over the period since CMP’s last rate case, in Docket No. 2013-00168. The decision in that case issued in August 2014, roughly 5.5 years ago. Over that period, inflation (as measured by U.S. Gross Domestic Product) has been approximately 8.5%, as shown in Figure 26:

Figure 26: Inflation (U.S. GDP) Since Decision in Docket No. 2013-00168¹⁰⁸

2014 Q2 GDP	103.811
2019 Q3 GDP	112.638
GDP Increase	8.827
GDP Pct Increase	8.50%

As demonstrated above, the overall rate increase over the 5.5-year period is less than the rate of inflation over the same period. On top of the concerns we have described about the more rapid depletion of the unprotected excess ADIT regulatory liability, the fact that the rate increase we have calculated is proximate to but below the rate of inflation since CMP's last rate increase buttresses our decision not to apply rate mitigation in this case. Also, while rates should reflect the reasonable costs to provide service, it is standard ratemaking practice to take measures to avoid rate shock, where possible and in the public interest. The comparability of the rate increase to the rate of inflation in recent years supports a finding of no rate shock.

In this case, we have already adopted the largest downward adjustment to ROE in the history of the Commission, as well as several reductions to the Company's expenditures, which have greatly tempered the increase in CMP's distribution rates. For all of the reasons above, the Commission rejects any further rate mitigation as contrary to the public interest.

X. MISCELLANEOUS ISSUES RAISED IN EXCEPTIONS

In its exceptions, CMP raised other items for clarification that are not directly tied to the revenue requirement approved in this order. We address those here.

A. Distribution-Related Deferral Items

CMP shall make a compliance filing within 60 days of this order proposing a list of distribution-related deferrals that CMP is authorized to establish and continue, similar to Attachment 3 to the Stipulation in Docket No. 2013-00168. The Commission hereby directs the Hearing Examiner to provide an opportunity for comments on CMP's filing, and delegates authority to the Director of Electric and Gas Industries to approve the list of deferrals.

¹⁰⁸ This inflation data is the Gross Domestic Product inflation amount prepared by the Bureau of Economic Analysis of the U.S. Department of Commerce (BEA). The BEA data is provided in Appendix D to this order. Parties were provided notice of the Commission's intent to take official notice of these inflation figures under MPUC Rules, ch. 110, § 1(E), and were given until January 23, 2020 to object. No party objected, so the Commission hereby takes official notice of this information.

B. Pricing Flexibility Guidelines

CMP shall make a compliance filing within 60 days of this order proposing new pricing-flexibility guidelines, similar to Attachment 8 to the Stipulation in Docket No. 2013-00168. The Commission hereby directs the Hearing Examiner to provide an opportunity for comments on CMP's filing, and delegates authority to the Director of Electric and Gas Industries to approve the guidelines.

C. Admission of Certain Evidence from Docket No. 2019-00015

With its rebuttal testimony in Docket No. 2019-00015, CMP filed Exhibit MB-8, which consisted of a series of case studies summarizing the situations of each customer who testified as a public witness in the three public-witness hearings held in July 2019. The Hearing Examiners provided those customers an opportunity to respond to CMP's case studies, and 20 customers filed a response in Docket No. 2019-00015. Many of those customers raised concerns about customer service.

In its exceptions, CMP proposed that the Commission admit Exhibit MB-8 into evidence in this case. CMP reasoned that “[f]or the completeness of the record and out of fairness,” the Commission should “at least recognize the Company’s response to this customer testimony filed in Docket No. 2019-00015 to avoid the impression that CMP did not consider and value this important customer feedback sufficiently to merit a response in this proceeding.”

The Commission agrees with CMP and hereby admits Exhibit MB-8 into evidence in this case. On grounds of process and substance, the Commission also, on its own motion, admits into this record the responses to Exhibit MB-8 that 20 customers filed in Docket No. 2019-00015.

XI. APPROVED REVENUE REQUIREMENT

Given the above determinations, the Commission approves an increase to the revenue requirement of \$17.420 million, which is an increase of 6.88% over current distribution rates.¹⁰⁹ The calculations and inputs supporting this revenue requirement are detailed in Appendix C to this order and are summarized below in Figure 27:

¹⁰⁹ The revenue requirement is calculated by making the adjustments discussed throughout this order to the model CMP filed on December 20, 2019.

Figure 27: Summary of Components of Approved Revenue Requirement¹¹⁰

<i>(\$ in millions)</i>	
<i>Operating Expenses:</i>	
Payroll	4.91
Other Employee Related	2.60
Vegetation Management	8.94
Pension Costs	(0.31)
Storm Allowance	(4.36)
Other O&M	(1.16)
Total Operating Expenses	10.62
Depreciation, Taxes, Return on Rate Base, Sales Growth	13.38
Annual ROE Downward Adjustment	(6.58)
Total	17.42

The Commission recognizes that the frustration with CMP's service and billing problems has led to strenuous opposition to any increase in the Company's rates. Indeed, every public witness who testified about CMP's proposed rate increase opposed it. See, e.g., Tr. at 16, 24–25, 30, 56, 61, 82–83, 97 (July 16, 2019 Pub. Wit. Hr'g); Tr. at 20 (July 18, 2019 Pub. Wit. Hr'g); Tr. at 7–8 (July 22, 2019 Pub. Wit. Hr'g). The Commission cannot, however, fulfill its obligations under statutes and the U.S. Constitution by denying CMP any rate increase; doing so would be legally indefensible. As detailed in this order, the Commission has denied several of CMP's cost requests and has imposed the largest downward adjustment in ROE in the history of the Commission. These are the ratemaking tools by which the Commission holds utilities accountable for their failings.

¹¹⁰ As noted above, the Commission is approving an increase in the amount of funds available for restoration following small (Tier 1) storms. The \$4.36 million reduction to the storm allowance reflects the adjustment necessary to reduce the Tier 1 storm expenses actually incurred in the test year (\$12.495 million) to the recoverable Tier 1 storm amount allowed in this case (\$8.136 million).

XII. CONCLUSION AND ORDERS

Accordingly, the Commission

O R D E R S

1. That CMP is granted an annual distribution revenue requirement of \$270.586 million, with new distribution rates to go into effect March 1, 2020;
2. That this distribution revenue requirement reflects an allowed return on equity of 8.25%, which includes a downward adjustment of 100 basis points for management inefficiency;
3. That CMP shall adhere to the service-quality indices set forth in Appendix B to this order for at least an 18-month rolling period (as described in the body of this order) before the downward adjustment may be removed;
4. That CMP shall file new rate schedules reflecting this change in distribution rates no later than **Thursday, February 20, 2020**, for a compliance review;
5. That, with its rate schedules, CMP shall file any necessary analyses as described in its filing letters in Docket Nos. 2019-00290 and 2019-00291;
6. That CMP's storm-cost recovery mechanism shall be modified as described in Section VI.D of this order, for effect January 1, 2020;
7. That CMP shall continue the practice of submitting its Annual Compliance Filings (with modifications to the prior practice of these filings, as described in the body of this order) with the Commission annually by April 1, for modified distribution rates to go into effect July 1;
8. That, **within 30 days of this order**, CMP shall (and other parties may) make a filing that (1) responds to the questions in Section VII.B.5 to explain the nature and purpose of the costs CMP has incurred to maintain its legacy billing system, and (2) lays out the party's position as to how those costs should be reflected in rates. The Hearing Examiner shall issue any procedural orders necessary to accomplish this process. The ultimate determination of responsibility for these costs will be decided in CMP's Annual Compliance Filing to be submitted in April 2020;
9. That, in conjunction with Docket No. 2019-00015, the Hearing Examiner shall provide an opportunity for parties to file comments and reply comments on the apportionment of costs for Liberty's audit prior to the Commission's deciding that question;
10. That, in its next general-rate-case filing, CMP shall include information about its analyses of outsourcing opportunities and the results of any RFPs issued as a result of such effort;

11. That an audit of the management structure of CMP and its affiliated service companies, Avangrid Management Company and Avangrid Services Company, be initiated in a new docket;
12. That, **within 45 days of this order**, CMP shall file with the Commission a proposal for hiring a third party with expertise in call-center operations and in credit and collections to review the Company's quality-assurance/quality-control policies and procedures and make recommendations for improving them. The proposal should also include CMP's plan for ensuring compliance with its in-house quality-control processes;
13. That, **within 60 days of this order**, CMP shall make a compliance filing proposing a list of distribution-related deferrals that CMP is authorized to establish and continue, similar to Attachment 3 to the Stipulation in Docket No. 2013-00168. The Commission hereby directs the Hearing Examiner to provide a brief opportunity for comments on CMP's filing, and delegates authority to the Director of Electric and Gas Industries to approve the list of deferrals;
14. That, **within 60 days of this order**, CMP shall make a compliance filing proposing new pricing-flexibility guidelines, similar to Attachment 8 to the Stipulation in Docket No. 2013-00168. The Commission hereby directs the Hearing Examiner to provide a brief opportunity for comments on CMP's filing, and delegates authority to the Director of Electric and Gas Industries to approve the guidelines; and
15. That Exhibit MB-8 and the 20 customer responses to that exhibit (all as filed in Docket No. 2019-00015) are hereby admitted into the evidentiary record of this docket.

Dated at Hallowell, Maine, this 19th day of February, 2020.

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
 Williamson
 Davis

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)–(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

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

Appendix A: Full Procedural History, Docket No. 2018-00194

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A. Mid-2018: Ten-person Complaint Against CMP Alleging Excessive Returns (Docket No. 2018-00123)

On May 29, 2018, the Commission received a complaint signed by Herbert C. Adams and 16 other persons against CMP (the *Adams Complaint*). The complaint, filed under 35-A M.R.S.A. § 1302, requested that the Commission open a distribution-rate investigation to determine whether CMP and its parent companies were earning an excessive return on their investment. *Adams Complaint* at 1. The complaint also alleged that CMP and its parent companies intended to recover “an inordinate amount of costs associated with the October 2017 windstorm,” which should be denied. *Id.*

On June 8, 2018, CMP filed a response and motion to dismiss the complaint.

On July 24, 2018, the Commission issued an order on the complaint, dismissing it in part and granting it in part. The Commission dismissed the complaint as it applied to CMP’s parent companies and to the recovery of costs for the October 2017 windstorm. The Commission granted the complaint by initiating a proceeding to examine CMP’s rates and return on its investment. *Herbert C. Adams et al., 10-person Complaint Requesting Investigation to Determine if Central Maine Power Company and Its Parent Companies Are Making Excessive Returns on Investments*, Docket No. 2018-00123, Order Dismissing Complaint in Part and Granting Complaint in Part at 3 (July 24, 2018) (*Adams Order*). In its order, the Commission found that CMP’s return on equity (ROE), when recalculated to reflect a 50% common equity ratio as used in the Company’s last rate case, was 9.87% for 2014, 7.73% for 2015, 11.52% for 2016, and 13.01% for 2017. *Id.* at 4. The Commission found that the returns for both 2016 and 2017 were significantly higher than the 9.45% ROE used to set rates in CMP’s most recently completed rate case, *Central Maine Power Co., Request for New Alternative Rate Plan (“ARP 2014”)*, Docket No. 2013-00168, Order Approving Stipulation (Aug. 25, 2014) (hereinafter “*2013-00168 Order Approving Stipulation*”). *Id.* Thus, the Commission concluded that it was appropriate, and consistent with the Commission’s duties under 35-A M.R.S. § 301, to examine the justness and reasonableness of CMP’s current rates as part of a full review of CMP’s revenue requirement. *Id.* The Commission directed CMP to submit a general rate case under Chapter 120 of the Commission’s Rules by October 15, 2018. *Id.*

B. August 2018: Opening of Docket No. 2018-00194

On August 7, 2018, the Commission issued a Notice of Investigation opening this docket and setting deadlines for petitions to intervene and objections to those petitions and scheduling an initial case conference for September 26, 2018.

The following persons or entities filed petitions to intervene by the deadline of September 12, 2018: the Office of the Public Advocate (OPA), the Acadia Center, the Conservation Law Foundation (CLF), the Industrial Energy Consumer Group (IECG), the Natural Resources Council of Maine (NRCM), the Solar Energy Association of Maine, and Dot Kelly. No party objected to any petition to intervene, and all petitions to intervene were granted. Sept. 27, 2018 Procedural Order (Scheduling).

The Examiners established the initial schedule for processing this case in an October 4, 2018 Procedural Order (Scheduling). That schedule culminated in a Commission decision by August 2019.

On October 12, 2018, CMP filed a motion for a protective order concerning proprietary information of IHS Markit. On October 15, 2018, the Examiners issued Temporary Protective Order No. 1 (Proprietary Information of IHS Markit).

C. October 2018: CMP's Rate Case Filing

As the Commission directed in its *Adams* Order, CMP submitted its direct case in this matter on October 15, 2018. CMP's direct case consisted of the following testimonies: the Policy Testimony of Steve Adams and Eric Stinneford (CMP Policy Dir.); the Revenue Requirement Testimony and Exhibits of Eric Stinneford, Peter Cohen, and Kirk Pelletier (CMP Rev. Req. Dir.); the Operations and Capital Investment Testimony and Exhibits of Christian Bilcheck, Mary Lou Palmieri, William Ransom III, Juan Martinez Martinez, Kevin Elwell, Pamela Kelly, and Michael Zaffina (CMP Ops. and Cap. Dir.); the Tax Testimony and Exhibits of Steve Adams, David Beber, and Mark Kelly (CMP Tax Dir.); the Return on Equity and Capital Structure Testimony and Exhibits of Ann Bulkley (CMP ROE Dir.); and the Sales and Customer Forecast Testimony and Exhibits of Michael Purtell and John Hastings (CMP Sales Dir.).

In its direct case, the Company alleged that, rather than over-earning, as the Commission suggested in its *Adams* Order, using a July 1, 2017 through June 30, 2018, test year, the Company was under-earning. The Company argued that, for a rate effective year beginning July 1, 2019, the Company was entitled to a rate increase of \$22.9 million.

The Company stated, however, that it was sensitive to the impact of rate increases to customers and, thus, proposed to fully mitigate its rate increase by accelerating the amortization of the Company's unprotected excess deferred income tax (EDIT) liability created by the Tax Cuts and Jobs Act of 2017 (TCJA) in the rate effective year. Policy Dir. at 8. For subsequent years, the Company recommended that the rate increase be mitigated by (a) continuing the accelerated amortization of the EDIT regulatory liability and (b) accelerating the cost of removal liability, which was then on the Company's books at \$46.6 million with an amortization recovery schedule of 33.6 years. Policy Dir. at 13–16.

The revenue-requirement deficiency assumed that revenues were based on CMP's then-current rates. But those rates included several one-time adjustments, such as recovery of the October 2017 windstorm expenses, which were approved by the Commission in *Central Maine Power Co., Annual Compliance Filing*, Docket No. 2018-00069, Order Approving Stipulation (June 29, 2018). Those adjustments were scheduled to be removed from rates July 1, 2019, which would cause the Company's proposed revenue-requirement deficiency to increase to \$36.6 million. See ODR-002-002.

D. Fall 2018: Initial Processing of Rate Case

On October 22, 2018, the OPA requested an extension of the deadline to submit data requests on CMP’s October 15, 2018 rate case filing. The extension was granted. Oct. 25, 2018 Procedural Order.

The parties served data requests on CMP’s initial filing on October 31, 2018, or, in the case of the OPA’s data requests on CMP’s ROE and capital structure testimony, November 19, 2018. CMP responded to those data requests on November 16, 2018 (and by December 5, 2018, for the OPA’s data requests on ROE and capital structure). A conference of counsel was held November 19, 2019 to establish a witness schedule for the upcoming technical conference on CMP’s direct case. Nov. 14, 2018 Procedural Order (Scheduling). That technical conference was held December 3, 4, and 7, 2019.

On December 18, 2018, the Staff convened a telephonic conference to provide an opportunity for CMP to walk the parties and the Staff through CMP’s revenue-requirement model. Dec. 14, 2018 Procedural Order (Scheduling).

Upon request from CMP, the Examiners issued the following protective orders in late 2018: Nov. 1, 2018 Temporary Protective Order No. 2 (Proprietary Information of Outside Consultants); Nov. 14, 2018 Temporary Protective Order No. 3 (Proprietary Information: Documents and Information Subject to Copyright Laws); Nov. 15, 2018 Temporary Protective Order No. 4 (Highly Confidential Contract Terms and Conditions); Nov. 19, 2018 Temporary Protective Order No. 5 (Confidential Business Information Related to Business Plans and Internal Business Strategy); Dec. 19, 2018 Temporary Protective Order No. 6 (Highly Confidential Personnel Information); Dec. 19, 2018 Temporary Protective Order No. 7 (Confidential Contract Information); Dec. 19, 2018 Temporary Protective Order No. 8 (Customer-Specific Information).

The schedule for the remainder of the case was affected by a data request from the OPA (discussed below in section E) as well as the Commission’s mid-January 2019 decision following an audit of CMP’s metering, billing, and customer-communication and customer-service systems (discussed below in section F). That audit was initially conducted in Docket No. 2018-00052.

E. January 2019: OPA’s Request for Additional Time Relating to CMP’s Plant Additions

On January 4, 2019, the OPA filed a request for an extension of time to file its testimony. The original due date was January 11, 2019. In its motion, the OPA explained that it needed CMP’s response to ODR-002-012 to complete its testimony. In ODR-002-012—an oral data request (ODR) the OPA posed to CMP at the technical conference on CMP’s direct case—the OPA sought documentation supporting the plant additions shown in CMP’s testimony, going back five years. The OPA explained in its motion that CMP’s response would likely “contain voluminous information necessary for our consultant to evaluate CMP’s assertions regarding its historic plant additions in the last five years.” Jan. 4, 2019 Office of the Public Advocate’s Motion for Extension of

Time. The OPA thus sought an extension of three weeks from whatever date CMP's response was ultimately filed. The OPA explained that CMP consented to some amount of additional time but not the full relief the OPA sought.

The Examiners scheduled a conference of counsel for January 8, 2019 to discuss the OPA's request. Jan. 4, 2019 Procedural Order. Because the dispute over ODR-002-012 was not fully resolved at that conference, a second conference of counsel was held January 11, 2019. Jan. 11, 2019 Procedural Order at 1. At that conference of counsel, counsel for the OPA explained that it would be willing to limit its request for information in ODR-002-012 to 562 plant additions valued above a specific dollar amount, such as \$100,000. Representatives of the Company explained that compiling a response addressing that quantity of plant additions would be very time-consuming. The OPA's consultant stated that, assuming he were to receive the information as requested, it could take him approximately three to four weeks to evaluate the information. The Examiners directed CMP to comment on the OPA's modified request by January 16, 2019. *Id.* at 2. Also, the OPA made three ODRs at the conference of counsel (set ODR-003). *Id.*

To allow for this additional process on the OPA's requests—which had the potential to add several weeks to the case schedule—the Examiners suspended the schedule in the rate case. *Id.*

In its January 16, 2019 comments, CMP argued that the OPA's proposed \$100,000 threshold was "unnecessarily intrusive and overly burdensome," and that it "represents over 93% of CMP's total capital expenditures" over the five-year period beginning July 1, 2014. CMP estimated that it would take seven weeks to provide this information. CMP requested that the threshold instead be \$1 million, which would reduce the number of plant additions under review to 87, but which would still be more than two-thirds of CMP's capital expenditures during that period. CMP explained that it would need only three weeks to respond to the OPA's request using a \$1 million threshold. CMP also provided estimates of the time it would need to provide the information under two other review thresholds.

The Examiners directed CMP and the OPA to confer and make a good-faith effort to resolve their dispute over ODR-002-012, and to report to the Staff by January 22, 2019. Jan. 17, 2019 Procedural Order.

On January 23, 2019, CMP filed a letter stating that the OPA and CMP had (1) reached agreement on the scope of the response to ODR-002-012 (a \$1 million threshold plus an additional 170 specified projects above a threshold of \$100,000) and (2) agreed that the OPA's testimony on CMP's plant additions could be submitted by April 2, 2019. Jan. 29, 2019 Procedural Order (Scheduling). The Examiners thus ordered that the OPA's testimony be submitted by then. *Id.*

F. January 2019: Decision to Consider Customer-Service Issues in Rate Case After Commission's Investigation in Docket No. 2018-00052 and Liberty Audit

Due to numerous customer complaints and varied problems customers were experiencing with their bills, as well as ongoing call-answer problems, the Commission opened a summary investigation of CMP's metering, billing, and customer-communication issues on March 1, 2018, to determine whether CMP was meeting its obligation to provide reasonable, adequate, and reliable service to its customers. *Pub. Utils. Comm'n, Investigation of Central Maine Power Co. Metering, Billing and Customer Communication Issues*, Docket No. 2018-00052, Notice of Investigation (Mar. 1, 2018).

On March 22, 2018, given the complexity of the metering and billing issues, the Commission initiated a forensic audit of the Company's customer billing system pursuant to the provisions of 35-A M.R.S. § 113. Docket No. 2018-00052, Order Initiating Audit (Mar. 22, 2018). The Commission contracted with The Liberty Consulting Group (Liberty) to complete the forensic audit. On July 10, 2018, the Commission concluded that, based on Liberty's expertise and the interrelationship between metering, billing, and customer-communication issues, the scope of Liberty's audit would be expanded to include the customer-communication issues identified in the Commission's March 1, 2018 Notice of Investigation. Docket No. 2018-00052, Order Modifying Scope of Audit at 1 (July 10, 2018).

On December 20, 2018, Liberty issued its final report on all aspects of its audit (the Liberty Report). The Liberty Report included the following findings regarding CMP's customer service:

- Significant gaps in SmartCare testing and training, and in the transition to it, produced in its initial phase of operation an unnecessarily large number of errors, which required time-consuming manual correction before bill issuance.
- A shortage of personnel contributed to the inability to eliminate errors before the go-live date of SmartCare. Continuing shortages of experienced personnel after go-live unduly delayed fixes to the errors, caused customers significant difficulty in reaching CMP representatives and in obtaining answers to questions and concerns, and created excessive delays in resolving billing problems. CMP's customer-service metrics fell below norms and remained so for some time, including to the date of the Liberty Report.
- The extent and degree of performance degradation contributed strongly to a level of customer frustration, doubt, and skepticism that was already high due to uncharacteristically large bills in winter 2017–2018.

In a January 14, 2019 order, the Commission decided that the customer-communication and customer-service issues in the Liberty Report warranted further investigation as part of a formal adjudicatory proceeding and that this further investigation would be done as part of this rate case. In so holding, the Commission

noted that addressing customer-service issues in the rate case was likely the most expeditious means of doing so since the Commission could incorporate any determinations regarding the reasonableness or prudence of CMP's customer service in its order at the end of the rate case. Jan. 14, 2019 Order and Notice of Investigation at 9. As part of that same order, the Commission concluded that further investigation of CMP's metering and billing issues was warranted and would be done in a separate adjudicatory proceeding, Docket No. 2019-00015. The Commission identified bill errors or "exceptions" as one overlap area between the two investigations. The Commission stated that billing errors involving customer service or customer communication and delays in billing customers would be addressed in the rate case. *Id.* at 10.

To allow persons affected by customer-service issues to participate in the rate case, the Commission set a new deadline for intervention of January 30, 2019. *Id.* at 11. Objections to those petitions to intervene were to be due February 7, 2019. *Id.*

G. Early 2019: Continued Processing of Newly Expanded Rate Case, Beginning, with New Intervenors and New Rulings on Confidential Information

The processing of CMP's rate case continued after the Commission's January 14, 2019 Order and Notice of Investigation. As part of the case, all of the more than 200 responses CMP made to the data requests Liberty posed during the forensic audit were filed in this docket as DR set TLCG-001.

The Examiners scheduled a conference of counsel for January 31, 2019, to address petitions to intervene on customer-service-related issues (and any objections to those petitions, which the Examiners decided were to be made orally at the conference) and to establish the procedural schedule for the case. Jan. 29, 2019 Procedural Order (Scheduling).

1. Intervenor Status

The following interested persons filed petitions to intervene by the deadline of January 30, 2019: (1) Lauren Loomis, a CMP ratepayer, on behalf of herself and the informal group CMP Ratepayers Unite; (2) Judith Hopkins, a CMP ratepayer and a member of the informal group CMP Ratepayers Unite; (3) Valery Harris, a CMP ratepayer and a member of the informal group CMP Ratepayers Unite; (4) Kristy Pottle, a CMP ratepayer and a member of the informal group CMP Ratepayers Unite; and (5) CMP ratepayers Mark Levesque, Christie Decker, Lisa Mcleod, Michael Platt, Katie Morin, Nicole and Phillip Riley, Brittney Russell, Marc and Jen Day, Carol Foss, and Julia Lawson, on behalf of themselves (collectively, the Levesque Parties) and all other similarly situated. According to their petition to intervene, the Levesque Parties were represented by three law firms: Trafton, Matzen, Belleau & Frenette, LLP of Auburn, Me., and Napoli Shkolnik PLLC of New York, N.Y., Law Offices of Sumner Lipman, LLC of Scarborough, Me.

Ms. Loomis, Ms. Hopkins, and Ms. Harris—all appearing pro se—attended the January 31, 2019 conference of counsel. Neither Ms. Pottle nor the Levesque Parties were in attendance. No party objected to the petitions to intervene and, therefore, the Hearing Examiners granted all five petitions to intervene for the individuals specifically named on each petition to intervene (but not “others similarly situated”). Feb. 5, 2019 Procedural Order at 1.

Ms. Loomis, Ms. Hopkins, Ms. Harris, and Ms. Pottle were directed to consolidate their participation in this case on behalf of themselves and the members of the informal group CMP Ratepayers Unite, in accordance with Commission Rule Chapter 110, § 8(B)(5) and the Maine Administrative Procedure Act, 5 M.R.S. § 9054(4). *Id.* at 2. By agreement, Ms. Loomis and Ms. Pottle were ordered to serve as the Designated Representatives of CMP Ratepayers Unite, but the group retained the right to substitute others as Designated Representatives. *Id.* Also, the Designated Representatives were granted the right to access confidential information on behalf of their group, but no others from CMP Ratepayers Unite were granted access. *Id.*

The Levesque Parties were also directed to consolidate their participation in this case. *Id.* Also, the Examiners ruled that if the Levesque Parties desired to represent “all others similarly situated” under Rule 23 of the Maine Rules of Civil Procedure, they would need to file a motion requesting certification under that rule. *Id.* (No such motion was ever filed.) The attorneys for the Levesque Parties, but not their clients, were granted access to confidential information in the case. *Id.*

2. Access to Confidential Information

On February 14, 2019, the Examiners convened a case conference on CMP’s proposed protective orders. Feb. 7, 2019 Procedural Order. CMP’s proposed protective orders included language that would have allowed parties to use the confidential information for a purpose other than this proceeding. Among the issues to be discussed were: (1) the Commission’s authority under statute to allow counsel to use designated confidential information in any other court proceeding; (2) whether parties, represented or unrepresented by counsel, should be allowed access to designated confidential information; (3) maintaining the consistency of protective orders in Docket Nos. 2019-00015 and 2018-00194; and (4) any objections filed to the proposed scope of confidential access set out in the Commission’s February 5, 2019 procedural order. *Id.* Based on the case conference, it was determined that the unrepresented parties, the attorneys for the Levesque Parties (but not their clients), and the Designated Representatives of CMP Ratepayers Unite (but not the group’s other members), would have access to confidential information. See Feb. 20, 2019 Amendment to Temporary Protective Orders.

On February 14, 2019, as the processing of the case went back on track, the Examiners issued a new case schedule for a fully litigated case. Feb. 14, 2019 Procedural Order (Scheduling). That case schedule called for hearings in July 2019 and culminated with Commission deliberations on October 1, 2019. *Id.* at 3, 4.

CMP was ordered to file its responses to data requests from Liberty—the data requests that Liberty made to CMP during the forensic audit—into the docket of this case, subject to a confidentiality review. Feb. 20, 2019 Procedural Order; Feb. 26, 2019 Procedural Order. These were designated as data-request set TLCG-001.

H. February–April 2019: The Staff’s Bench Analysis and Intervenors’ Direct Testimony

The Examiners established February 22, 2019 as the new deadline for the Staff’s Bench Analysis and intervenor testimony on revenue-requirement and ROE-related issues. Feb. 5, 2019 Procedural Order at 3. Intervenor testimony on customer service and customer communication and plant additions was due April 2, 2019. *Id.*

1. February 2019: The Staff’s Bench Analysis

In its February 22, 2019, Bench Analysis, the Staff explained that it had performed a traditional review of the Company’s proposed revenue requirement, including the separation of transmission and distribution costs, additions to rate base, rate-year expense adjustments and projections, and the cost of capital to applied rate base. This traditional review, which included a recommended (unadjusted) ROE of 9.35%—yielded a \$20 million reduction to the Company’s proposed revenue-requirement deficiency.

The Staff added that it had found the Liberty Report to be consistent with the Staff’s own observations and findings on CMP’s customer-service performance. The Staff presented a detailed account of its own observations of and experiences with CMP’s customer service over recent years. In the Staff’s view, CMP’s performance had significantly and consistently fallen below standards reasonably expected of a utility to provide adequate service, and substantially departed from the regular and accepted practice of both the Company and other utilities. Based on this, the Staff proposed that a management efficiency adjustment be made to reduce the Company’s ROE by 75 to 100 basis points. This management efficiency adjustment would further reduce the Company’s revenue requirement deficiency by \$4.8 million to \$6.5 million, based on Staff’s proposed rate base.

Along with its Bench Analysis, the Staff formally entered the Liberty Report into the docket of this case.

2. February and April 2019: Direct Testimony of the OPA’s Witnesses

The OPA presented the direct testimony and exhibits of three witnesses: Dr. Marlon Griffing (on cost of capital and capital structure) (Griffing Dir.), Lafayette Morgan (on revenue requirement and rate mitigation) (Morgan Dir.), and Robert Rosenkoetter (on plant additions) (Rosenkoetter Dir.).

a. Dr. Marlon Griffing's Testimony on Cost of Capital and Capital Structure

On February 22, 2019, the OPA filed the direct testimony of Dr. Marlon Griffing. Based on his analysis, Dr. Griffing recommended an ROE of 9.33%. Griffing Dir. at 3. Using the Company's proposed capital structure and its costs of preferred stock and debt, his recommended cost of capital was 7.08%. Griffing Dir. at 3.

b. Lafayette Morgan's Testimony on Revenue Requirement and Rate Mitigation

On the same date, the OPA filed the direct testimony of Lafayette Morgan. Mr. Morgan calculated CMP's revenue requirement deficiency to be \$5.434 million, approximately \$17.438 million less than CMP's requested deficiency of \$22.872 million. Morgan Dir. at 5. Mr. Morgan also explained his reservations about CMP's proposed to mitigate rates, stating that "exhausting all the liabilities in the short run could lead to a sharp increase in rates after the three-year [mitigation] period." Morgan Dir. at 17.

c. OPA Witness Robert Rosenkoetter's Testimony on Plant Additions

On April 2, 2019, the OPA submitted the testimony of Mr. Rosenkoetter on CMP's plant additions (see discussion of this issue above in section E). According to Mr. Rosenkoetter, where CMP did not follow its own procedures for budgeting of capital expenditures, those capital expenditures should be excluded from the calculation of CMP's growth in rate base (that is, its compound annual growth rate, or CAGR). Mr. Rosenkoetter stated that nearly 70% of the total dollar amount of plant additions he reviewed were insufficiently justified.

d. Supplemental Direct Testimony of Lafayette Morgan

On the same day, Mr. Morgan filed supplemental direct testimony to reflect Mr. Rosenkoetter's adjustments described above.

3. Direct Testimony of Dot Kelly

Intervenor Dot Kelly also submitted testimony.

4. March and April 2019: Discovery

A technical conference on the Bench Analysis and intervenors' testimony (except for Mr. Rosenkoetter's) was held March 21 and 22, 2019. Feb. 14, 2019 Procedural Order (Scheduling) at 2.

A technical conference on Mr. Rosenkoetter's testimony was held April 23, 2019. *Id.*

I. April 2019: Additional Party and Changes in Party Representation and Issues with Confidential Information

1. Multiple Firms Representing the Levesque Parties

In their petition to intervene, the Levesque Parties were represented by three law firms: Trafton, Matzen, Belleau & Frenette, LLP of Auburn, Me., and Napoli Shkolnik PLLC of New York, N.Y., Law Offices of Sumner Lipman, LLC of Scarborough, Me. In March 2019, a fourth law firm—Eaton Peabody of Bangor, Me.—filed a notice of appearance on behalf of the Levesque Parties. In April 2019, Napoli Shkolnik PLLC withdrew its appearance on behalf of the Levesque Parties. Less than two weeks later, another law firm—Murray, Plumb & Murray of Portland, Me.—entered its appearance for the Levesque Parties. In a procedural order, the Examiners requested that the Levesque Parties confirm their party representatives, Apr. 29, 2019 Procedural Order, but they made no responsive filing. By the time of our decision on the revenue requirement in this case, all four Maine-based law firms (Trafton, Matzen; Eaton Peabody; Murray, Plumb & Murray; and Law Offices of Sumner Lipman) were still on record as representing the Levesque Parties.

2. Designated Representatives of CMP Ratepayers Unite

Initially, Ms. Pottle and Ms. Loomis were deemed the Designated Representatives of CMP Ratepayers Unite. On April 23, 2019, Ms. Loomis filed a request that Ms. Harris replace Ms. Pottle as Designated Representative. The Examiners granted the request. *Id.*

3. Rulings on Confidential Customer-Specific Information

Following a discussion with the parties, the Examiners determined that they would permit parties to access customer-specific information (CSI) only if they have signed a nondisclosure agreement, per CMP’s request. *Id.* Also, parties were given instructions on how to deal with CSI. For starters, if CSI did not need to be produced for parties to obtain the information they need, then the CSI should not be requested or produced. *Id.* Also, as much as possible, CSI should be produced only on a need-to-know basis—i.e., to those parties that intended to use the CSI in this proceeding, and not to any party that has no use for the CSI. *Id.* Parties that submitted documents that contain CSI were told to provide the documents in a redacted form whenever possible. *Id.* Similarly, parties that issue data requests seeking documents that may contain CSI, but the party does not need the CSI, should note that the party is not seeking any CSI. *Id.* Where redaction of CSI was impossible, the parties were instructed to alert the Hearing Examiners; disclosure would either be limited in accordance with the discussion above or subject to the appropriate protective order and nondisclosure agreement. *Id.*

4. Late-filed Petition to Intervene of the International Brotherhood of Electrical Workers Local #1837

On April 25, 2019, the IBEW Local #1837, a labor union representing a majority of the employees who work at CMP, submitted a late-filed petition to intervene. No party

objected, so the Examiners granted the petition. May 3, 2019 Procedural Order Granting Late-filed Petition to Intervene.

J. April–May 2019: Parties’ Rebuttal Testimony

The following parties filed rebuttal testimony: CMP, Lauren Loomis, and the Levesque Parties. The OPA filed no rebuttal testimony.

1. CMP’s Rebuttal Testimony

On April 12, 2019, CMP submitted rebuttal testimony of the following witness panels: Tax (CMP Tax. Reb.); Sales and Customer Forecast (CMP Sales Reb.); ROE (CMP ROE Reb.); Revenue Requirement (CMP Rev. Req. Reb.); Policy (CMP Policy Reb.); Operations and Resiliency (CMP Ops. Reb.); and Customer Service (CMP Cust. Serv. Reb.). In its rebuttal case, CMP revised its revenue requirement to a proposed increase of \$35.6 million, an increase of \$12.7 million from its initial case. As with its direct case, the Company’s revenue requirement increase in rebuttal assumed that the one-time adjustments that would ordinarily come out of rates in the annual compliance filing process remained even after the costs associated with such items were recovered. If such items were removed from rates as part of the annual compliance filing, the Company’s distribution rate increase would grow to \$49.55 million, or approximately 19%. EXM-011-004.

In its Rebuttal Case, the Company agreed with the Staff’s position that whether mitigation through the acceleration of the amortization of regulatory liabilities was wise would depend on the revenue requirement that ultimately comes out of this process, the potential impact of any revenue requirement deficiency on current rates, and the impact that accelerated amortizations would have on future rates. CMP also agreed with the OPA’s position that the mitigation should not be funded through an acceleration of the cost-of-removal liability since that would lead to an increase in the Company’s depreciation rates. But the Company continued to believe that some rate mitigation was necessary in this case. Therefore, the Company proposed that any residential rate increase in this case be limited to the rate of inflation, which it estimated to be 2.21% in 2019. The Company did not, however, propose a specific mitigation mechanism in its rebuttal.

On May 17, 2019, CMP filed the supplemental rebuttal testimony of its witness Donna McNally on SmartCare Implementation (CMP SmartCare Reb.).

2. Lauren Loomis’s Rebuttal Testimony on Customer Service

On April 12, 2019, Ms. Loomis submitted testimony detailing customer-service-related problems CMP customers were having in various areas, including incorrect addresses, erroneous disconnect notices, discrepancies in LIHEAP and Electricity Lifeline Program (ELP) administration, and problems with the implementation of SmartCare. Ms. Loomis also laid out recommendations for how CMP should remedy these issues, including by working with Community Action Programs, overhauling customer service, holding customer-service personnel responsible for any failings, and

using CMP’s legacy system to cross-check information for customers with high-bill complaints.

3. Levesque Parties’ Rebuttal Testimony on Customer Service and Subsequent Withdrawal of that Testimony

On April 12, 2019, the Levesque Parties filed the rebuttal testimonies of the following witnesses: Mark Levesque, Katie Morin, Nicole and Philip Riley, Britney Russell, Marc and Jen Day, Carol Foss, and Julia Lawson. The subject of these testimonies was the individuals’ experience with CMP’s customer service.

On April 24, 2019, CMP posed DRs on each of the testimonies (specifically, data request sets CMP-009, -010, -011, -012, -013, -014, and -015). On April 26, 2019, the Levesque Parties sought 10 additional days to respond to those data requests. The Examiners granted the request. Apr. 29, 2019 Procedural Order Granting Motion for Enlargement of Time.

On May 2, 2019, the Levesque Parties filed a “Notice of Withdrawal of Testimony,” informing the Commission that they intended to withdraw their testimony. The Examiners directed counsel for CMP and the Levesque Parties to confer on the status of the outstanding data requests and attempt to resolve this question. Then either party was to make a filing that provided a status update, comments on, or a request to clarify the status of the outstanding data requests. May 3, 2019 Procedural Order on Withdrawn Testimony. On May 7, 2019, CMP filed a letter stating that, given the withdrawal of the testimony, it did not seek responses to the data requests.

K. March–May 2019: OPA’s Requests Relating to SmartCare Implementation

1. Data Request Set OPA-007

On March 1, 2019, the OPA propounded on CMP data request set OPA-007, which consisted of 94 data requests on SmartCare implementation. On March 4, 2019, CMP objected to the data-request set as extraprocedural. The Examiners convened a conference of counsel to discuss the objection on March 5, 2019, and subsequently ruled that CMP did not need to respond to set OPA-007 by the March 11, 2019 deadline. At the conference of counsel, both the OPA and CMP sought guidance on the question of which docket was best suited to address questions on the issue of SmartCare implementation. In a procedural order, the Examiners determined that SmartCare implementation could be examined in both dockets, given that it was relevant to the issues the Commission set for determination in both dockets, and ruled that CMP should respond to set OPA-007 (and set a deadline for doing so). Mar. 13, 2019 Procedural Order. The Examiners also decided that the data requests should be responded to in both Docket Nos. 2018-00194 and 2019-00015.

2. Questions about Testimony on SmartCare Implementation

On May 9, 2019, the OPA filed a letter requesting a case conference to discuss how the issue of SmartCare implementation would be addressed between the metering-and-billing investigation docket (Docket No. 2019-00015) and this docket.

The Examiners granted the OPA’s request for a case conference. May 9, 2019 Procedural Order Granting Motion for Continuance and Scheduling Case Conference.

In a May 14 procedural order, the Examiners clarified how SmartCare implementation would be addressed between the two dockets. May 14, 2019 Procedural Order Clarifying Treatment of SmartCare Implementation Issue. The import of the Examiners’ clarification was that “SmartCare implementation is not a standalone issue in this case; rather, the issue of SmartCare implementation is addressed in either docket *to the extent it relates to the issues the Commission ordered be treated in the docket.*” *Id.* at 5. The Examiners added:

In other words, SmartCare implementation is relevant in Docket No. 2018-00194 if a party’s testimony on SmartCare implementation in that case relates to how it affected billing delays, customer service, and customer communication issues. SmartCare implementation is relevant in Docket No. 2019-00015 if a party’s testimony on SmartCare implementation in that case affects metering and billing issues. Even with this clarification, it is possible that there will be some overlap between the two dockets, but if the parties focus on the issues the Commission set out for determination—metering and billing in Docket No. 2019-00015, and customer communication/customer service in Docket No. 2018-00194—this overlap should be manageable and non-prejudicial.

The Examiners gave the OPA the option to file testimony in either or both dockets. *Id.* at 5–6.

L. June 2019: CMP’s Revenue Requirement Update, Staff’s Reply Bench Analysis, and Parties’ Surrebuttal Testimony

1. CMP’s Revenue Requirement Update

On June 7, 2019, CMP filed an update to its revenue requirement. The update incorporated several changes that had been discussed at the technical conference on May 23, 2019, including the effect of removing the one-time annual-compliance-filing adjustments from rates on July 1, 2019, as well as several other minor changes. With this update, CMP’s total unmoderated increase in the revenue requirement was calculated to be \$46.557 million.

2. Staff’s Reply Bench Analysis

In the June 17, 2019 Reply Bench Analysis, the Staff responded to the Company’s position on the issues in the case as known at the time. Based on new

market information, the Staff proposed an updated ROE of 8.75% before any management-efficiency adjustment. The Staff did not, however, provide a calculation of its updated proposed revenue requirement. Given the size of the Company's proposed increase to its revenue requirement, the Staff expressed skepticism that rate mitigation would be possible without imposing a significant burden on future ratepayers. The Staff also expressed concern that mitigation would mask the real impact of any rate increase.

Due to the changes in the case schedule, including the delay in an expected decision from August 2019 to October 2019, the Staff agreed with CMP's proposal for a rate effective year beginning October 1, 2019.

The Staff repeated its position that the Company's ROE should be subject to a management efficiency adjustment, and responded to CMP's testimony on the Company's customer service issues and proposed service metrics.

3. CMP's Surrebuttal Testimony on Customer Service

On June 17, 2019 CMP submitted the surrebuttal testimony of its customer-service panel (CMP Cust. Serv. Surr.). This surrebuttal testimony, which addressed many aspects of CMP's customer service and the way it handles complaints from customers, was in response to the testimony of Lauren Loomis, a Designated Representative for CMP Ratepayers Unite.

4. Surrebuttal Testimony of the OPA

The OPA submitted the surrebuttal testimonies of its three witnesses.

a. Dr. Marlon Griffing on ROE

In his surrebuttal testimony, Dr. Griffing recommended an updated ROE of 9.18% (slightly lower than his original 9.33%, based on new market information), and an updated rate of return of 7.00%.

b. Lafayette Morgan on Revenue Requirement

Based on CMP's rebuttal testimony on revenue requirement, in his surrebuttal testimony Mr. Morgan recommended an increase in CMP's revenue requirement of \$19,748,000 (as compared to the \$4,590,000 he recommended in his supplemental direct testimony). According to Mr. Morgan, this was \$15,808,000 less than the increase CMP requested in its rebuttal testimony. Among other adjustments, this amount reflects a proposed reduction in the five-year CAGR to 3.68% based on Mr. Rosenkoetter's testimony on plant additions.

c. Robert Rosenkoetter on Plant Additions

In his surrebuttal testimony, Mr. Rosenkoetter continued to argue that many of CMP's plant additions in recent years have had insufficient cost justification. In his initial testimony, Mr. Rosenkoetter stated that nearly 70% of the total dollar amount of plant

additions he reviewed were insufficiently justified; in his surrebuttal testimony, Mr. Rosenkoetter adjusted that amount to 61%.

5. Technical Conferences

A technical conference on parties' surrebuttal testimony was held July 10, 2019. A technical conference on the Staff's Reply Bench Analysis was held July 12, 2019. July 10, 2019 Procedural Order (Scheduling – Technical Conferences and Settlement Conference). A technical conference on Mr. Rosenkoetter's surrebuttal testimony for the OPA was scheduled for July 15, 2019, but it was canceled because there were no questions for Mr. Rosenkoetter. *Id.*

M. July 2019: Settlement Conference

One settlement conference was held in this case, on July 15, 2019. *Id.* at 1–2. No party objected to Staff's participation in that settlement discussion. No settlement was ultimately reached.

N. July 2019: Public Witness Hearings and Evidentiary Hearings

1. CMP's Notice to Customers of Public Witness Hearings

On May 29, 2019, the OPA filed a motion making two requests. The first was that the Commission hold public-witness hearings in CMP's rate case and in conjunction with Docket No. 2019-00015, the Commission's investigation of CMP's metering and billing issues (this docket was described above in section F).

On June 11, 2019, the Staff issued a notice of upcoming public-witness hearings. The public-witness hearings were held in conjunction with Docket No. 2019-00015. Three public-witness hearings were scheduled, for the following dates and locations: July 16 in Portland, July 18 in Farmington, and July 22 in Hallowell. June 11, 2019 Notice of Public Witness Hearings.

The OPA's second request was that the Commission order CMP to issue a notice to customers of the proposed rate increase. The OPA stated:

Noting that CMP significantly increased its requested revenue requirement in its recent [r]ebuttal testimony, I . . . strongly request that the Commission require CMP to send to all customers a new notice of its updated rate increase so that customers understand the full current magnitude of what CMP seeks to put into rates.

Although the OPA referred to "a new notice," CMP's October 2018 initial filing in this matter stated that it did not intend to issue a customer notice, unless the Commission were to direct otherwise. Oct. 15, 2018 CMP Ch. 120 Info. at 37. CMP did not issue a notice at the outset of its case because the Commission's rules did not require it to do so. Those rules require notice to customers only when the *utility* initiates a general rate

case—not when the *Commission* initiates the matter, which was the case here. See MPUC Rules, ch. 110, § 8(A)(1)(c).

At its June 24, 2019 deliberation session, the Commission granted the OPA’s request. In doing so, the Commission required that the notice describe CMP’s request for a rate increase, list the details of the upcoming public-witness hearings, explain the opportunity for customers to submit “public comments” in the Commission’s Case Management System, use plain language and avoid trade terms, and work with the Director of the Commission’s Consumer Assistance and Safety Division and the OPA to craft appropriate language for the notice. June 25, 2019 Order at 2–3.

On June 25 and 26, 2019, the Hearing Examiners convened case conferences to provide suggestions and feedback on CMP’s customer notice. June 24, 2019 Procedural Order Scheduling June 25 Case Conference; June 25, 2019 Procedural Order Scheduling June 26 Follow-up Conference. Soon after, CMP issued the notice to its customers. July 3, 2019 CMP Filing of Rate Case Customer Notice.

2. Access to Confidential Information from Docket No. 2018-00052

Given that Docket No. 2018-00052 was incorporated into Docket No. 2019-00015, the Examiners granted the parties in Docket No. 2019-00015 access under the protective orders issued in Docket no. 2019-00015. This allowed those parties to access confidential responses to data requests filed in Docket No. 2018-00052 prior to the hearings. July 19, 2019 Procedural Order on Access to Confidential Information in Docket No. 2018-00052; see also Docket No. 2018-00052 Amended Protective Order No. 2 (Confidential and Proprietary Vendor Business Information), Second Amended Protective Order No. 1 (Customer-Specific Information).

3. Public Witness Hearings

a. Allowing Participation by Affidavit

In response to informal inquiries to the Commission Staff, on July 8, 2019, the Examiners issued a procedural order proposing that public witnesses be permitted to participate in the upcoming public-witness hearings by affidavit. The Examiners proposed that individuals who were unable to attend any of the public-witness hearings but wished to submit sworn testimony could submit an affidavit that (a) explains why the individual was unable to attend a public-witness hearing in person and (b) provides the individual’s testimony on the matters before the Commission in Docket Nos. 2018-00194 or 2019-00015. July 8, 2019 Procedural Order on Participation in Public Witness Hearings.

Only July 10, 2019, the OPA filed comments supportive of the Staff’s proposal.

On July 11, 2019, the Examiners formally approved the plan to allow participation by affidavit and included a template affidavit for customers’ use. July 11, 2019 Procedural Order on Participation by Affidavit in Public Witness Hearings. The Examiners set four conditions on the affidavits that would make them admissible. They

required the affidavits to: (1) be truthful, sworn, and notarized; (2) explain why the individual was unable to attend any of the public-witness hearings; (3) provide testimony on the matters before the Commission in the two dockets; and (4) be received at the Commission or postmarked and mailed to the Commission no later than July 22, 2019. *Id.* at 1–2.

The Commission received several affidavits by the deadline.

b. Three Public Witness Hearings (July 16, 18, and 22, 2019)

The Commission and Staff presided over three public-witness hearings where 80 public witnesses testified. The first was held July 16, 2019, at the University of Southern Maine in Portland. The second was held July 18, 2019, at the University of Maine in Farmington. The third and final hearing was held July 22, 2019, at the offices of the Commission in Hallowell. All public witnesses gave their testimony under oath. Several public witnesses offered documents to accompany their testimony.

c. Transcripts and Related Documents Uploaded in CMS

In early August, following a redaction process, the transcripts, exhibits, and affidavits for these public-witness hearings were posted in the CMS. See Aug. 2, 2019 Procedural Order on Public Witness Affidavits.

4. Evidentiary Hearings (July 24–26, 2019)

a. Prehearing Process

On July 9, 2019, the Examiners issued a prehearing order setting forth the requirements for parties' case management memoranda and describing how the hearings would be managed. July 9, 2019 Prehearing Order. The following parties submitted case management memoranda by the deadline of July 19, 2019: the OPA, CMP, and Lauren Loomis. The Staff submitted a bench memorandum the same day.

The Examiners presided over a prehearing case management conference July 22, 2019. Feb. 14, 2019 Procedural Order (Scheduling) at 3. Following that conference, the Examiners issued their rulings on evidentiary disputes. July 23, 2019 Prehearing Order No. 2.

On July 24, 2019, the Staff submitted a supplemental bench memorandum that modified one of its exhibits.

b. Hearings

The evidentiary hearings were held at the Commission's offices in Hallowell July 24–26, 2019. Only the OPA, CMP, CMP Ratepayers Unite, and the Staff/Bench questioned witnesses at the hearings.

On July 24, 2019, the following witnesses or panels were examined: the OPA’s witness Lafayette Morgan; CMP’s revenue-requirement and policy panels; and the Staff’s witnesses on revenue requirement, affiliate transactions, and rate mitigation.

On July 25, 2019, the following witnesses or panels were examined: CMP’s panels on operations and capital investment, resiliency, and customer service; the Staff’s witnesses on operations and capital investment, resiliency, and customer service; and witnesses from the Staff’s consultant, Liberty, on customer service and SmartCare implementation.

On July 26, 2019, the following witnesses or panels were examined: CMP’s witness panels on SmartCare implementation, capital structure and return on equity, tax, and policy-related matters; the OPA’s witness Dr. Marlon Griffing on capital structure and return on equity; and the Staff’s witnesses on capital structure, ROE, and tax.

After the hearing, data request set ODR-019 was issued to the OPA and data request set ODR-020 was issued to CMP’s witnesses.

O. August–September 2019: Post-Hearing Process, Including Stay of Rate Case

1. August 2019: Commission’s Granting of OPA’s Motion to Stay

On July 19, 2019, amid the public-witness hearings, the OPA filed a motion to stay the rate case. In its motion for stay, the OPA argued that the customer service issues in this proceeding are related, in some cases closely, to the metering and billing issues being addressed in Docket No. 2019-00015. Given the public concern with a potential rate increase, the OPA argued that “there is no compelling reason why this case should proceed . . . to a premature conclusion . . .”—that is, before the metering and billing investigation has concluded. The OPA also pointed out that, because this case was opened under the Commission’s standard investigatory powers, 35-A M.R.S. § 1303, there is no deadline for the Commission to decide this case. (By contrast, a traditional rate case must be decided within nine months. See 35-A M.R.S. § 310.) For those reasons, the OPA asked (a) that the Commission not decide the rate case under the established October 1, 2019 deadline, and (b) that any decision in this rate case be postponed until the metering and billing investigation in Docket No. 2019-00015 is resolved.

One week later, CMP, Natural Resources Council of Maine (NRCM), and Lauren Loomis (a Designated Representative for CMP Ratepayers Unite) filed responses to the OPA’s motion.

CMP did not oppose the OPA’s motion but raised two concerns: First, any postponement of a decision in the rate case should not be excessive; because a decision in the metering and billing case is anticipated by year’s end, CMP urged that any delay should not exceed two to three months. Second, a delay in the decision will result in both a revenue loss to CMP and delayed implementation of service quality

metrics—to the detriment of customers. To counter this, CMP argued that (a) it should be permitted to defer its lost revenues with carrying costs from October 1, 2019, to the actual implementation date of the price change; and (b) any stay should not affect the implementation and tracking of service quality metrics or other revenue requirement determinations, such as the storm cost recovery mechanism, that would otherwise be effective October 1, 2019.

NRCM filed comments in support of the OPA's motion for stay. In its comments, NRCM expressed concern with CMP's rate design proposals—especially changes to time-of-use rates and increases to fixed monthly charges (alongside decreases in per-kWh rates)—and CMP's ability to effectively implement and communicate to customers about those proposals.

Speaking for CMP Ratepayers Unite, Lauren Loomis commented in support of the OPA's motion for stay, and argued that the stay should be in place until any metering anomalies have been fully investigated.

On July 31, 2019, the OPA filed its reply to those responses. In its reply, the OPA addressed CMP's concerns about timing for a resolution. The OPA kept open the possibility of seeking more time to complete the metering and billing investigation in Docket No. 2019-00015, but expressed hope that it could be resolved by the end of 2019. The OPA again noted that there was no statutory deadline for a decision in this docket. The OPA also asked that, if the stay is granted, the Commission give more time for parties to file their post-hearing briefs in this case.

On August 7, 2019, the Commission issued its order granting the OPA's motion for stay. The Commission stayed the schedule for the revenue requirement track of this docket so that a decision would occur only once the Commission has decided the metering and billing docket (Docket No. 2019-00015). A decision in that docket was then anticipated by the end of 2019. Also, the Commission ordered that the two other tracks of this docket—(1) rate design and (2) the affiliate services market study—proceed on their existing schedules, except that decisions on those tracks could not occur before the Commission's decision on the revenue requirement track. The Commission decided not to address CMP's request to defer lost revenues with carrying costs or its request that the proposed service quality metrics and other tracking mechanisms be effective October 1, 2019. Instead, the Commission decided that those matters would be addressed later in the context of the Commission's ultimate decision in the rate case.

2. September 2019: Briefs and Reply Briefs

Under the case schedule, briefs were due August 14, 2019, and reply briefs were due August 21, 2019. See Feb. 14, 2019 Procedural Order (Scheduling). Given the Commission's granting the OPA's motion to stay, parties sought additional time to file their briefs. The Examiners granted these requests. Aug. 7, 2019 Procedural Order on OPA's Motion to Extend Briefing Schedule; Sept. 10, 2019 Procedural Order Granting Request for Extension of Time to File Reply Briefs.

Only two parties submitted a brief or reply brief: the OPA and CMP. Their briefs were submitted by the deadline of September 11, 2019. See Aug. 7, 2019 Procedural Order on OPA’s Motion to Extend Briefing Schedule. Their reply briefs were submitted by the deadline of September 23, 2019. See Sept. 10, 2019 Procedural Order Granting Request for Extension of Time to File Reply Briefs. (The content of these briefs is summarized in the discussion of substantive issues in this order, rather than in this procedural history.)

P. October 2018–October 2019: Parallel Processing of Affiliate-Service Cost Market Rate Study

One of the issues in this rate case was the cost CMP incurs for services it receives from its affiliates. This track of the docket—the so-called market-study track—was run in parallel to the revenue-requirement track.

A separate initial case conference was held October 2, 2018, to address the processing of the market study. Sept. 27, 2018 Procedural Order (Scheduling); Oct. 4, 2018 Procedural Order (Scheduling).

On December 20, 2018, an informal technical conference and scoping session was held on the market study. The purpose of the conference was to help delimit the scope of the market study. Dec. 13, 2018 Procedural Order (Scheduling). CMP filed information about its market study on February 6, 2019, and a follow-up session was held telephonically February 13, 2019. Jan. 24, 2019 Procedural Order (Scheduling); Feb. 12, 2019 Procedural Order (Scheduling). CMP filed more information about its market study on March 18, 2019, and a third session was held March 27, 2019. Feb. 28, 2019 Procedural Order (Scheduling). CMP again filed more information about its market study on April 3, 2019, and a fourth session was held April 19, 2019. Apr. 9, 2019 Procedural Order (Scheduling).

On May 22, 2019, a case conference was held to discuss the schedule for processing the market study. See May 3, 2019 Procedural Order (Scheduling); see also May 31, 2019 Procedural Order (Scheduling – Affiliate Services Market Rate Study).

On June 5, 2019, CMP submitted its market-study filing. The filing consisted of: a market study report, along with exhibits and addenda, prepared by CMP’s consultant Strategy& (a division of PwC); the direct testimony of Tom Flaherty of Strategy&; and the direct testimony and exhibits of CMP’s witness panel—Robert Fitzgerald, Steve Adams, and Eric Stinneford—on market information supporting the affiliate service company charges. The OPA and the Staff served data requests on CMP on June 17, 2019; CMP responded on June 28, 2019. See Aug. 14, 2019 Procedural Order (Scheduling – Market Study). A technical conference was held July 12, 2019. See *id.*

On August 13, 2019, The Liberty Consulting Group (Liberty) (the Commission’s consultant on market-study-related issues) filed a report laying out its review of CMP’s June 5, 2019 filing. See *id.*

On August 20, 2019, a telephonic case conference was held to discuss the next steps in the case. Deadlines were set for discovery on Liberty's August 13, 2019 filing, see *id.*, but no parties conducted discovery.

On September 6, 2019, the Examiners memorialized the remaining procedural steps in this track of the case. Sept. 6, 2019 Procedural Order (Scheduling).

On September 24, 2019, CMP filed its response to Liberty's report.

On October 30, 2019, the Staff submitted its Bench Memorandum and CMP and the OPA submitted their case management memoranda.

On November 7, 2019, the Examiners granted an extension of the deadline to file briefs from November 13 to November 22. Nov. 7, 2019 Procedural Order Granting Motion for Extension (Market Study).

On November 22, 2019, CMP and the OPA filed their briefs.

Q. January 2020: Examiners' Report, Exceptions, and Deliberations

The Staff issued its Examiners' Report on January 9, 2020. Among other things, the Examiners' Report recommended approval of an increase to CMP's revenue requirement in the amount of \$20.456 million, or 8.1%. As part of that revenue requirement, the Staff recommended a 75-point downward adjustment to CMP's base ROE to reflect management inefficiency, primarily in the area of customer service, to endure for at least 12 months, in conjunction with a set of customer-service-quality indices and benchmarks.

CMP, the OPA, and the Solar Energy Association of Maine submitted timely exceptions on January 23, 2020.

The Commission deliberated this matter on January 30, 2020.

Service Quality Index Applicable to Central Maine Power Company

The Service Quality Metrics and appurtenant benchmarks are set forth below. These metrics go into effect March 1, 2020. If the Company's performance during a rolling 18-month period (which may begin no earlier than March 1, 2020) does not meet the benchmark for all four of the metrics (as measured over the entire 18-month period), the Company may not seek relief from the ROE adjustment.

1. Percent of business calls answered within 30 seconds

The benchmark for this metric is "80% of calls answered within 30 seconds." For purposes of this metric, business calls are defined as calls that are received on the Company's customer service business line as specified on customer bills. Measurement of the "call answer time" will begin when the caller chooses to speak to a live customer service representative or does not make a choice and the Company's call system transfers the call to a live customer service representative and will end when the call is first answered by a live customer service representative. This metric is calculated by *dividing* the number of calls answered by agents within 30 seconds plus total agent calls abandoned within 30 seconds (all within an 18-month rolling period) *by* the total agent calls answered plus total agent calls abandoned (all in that same 18-month period). Calls handled exclusively by the IVR will be excluded from both the numerator and the denominator of this calculation. CMP may exclude from this calculation "major event days" which will be determined using the IEEE 2.5 Beta approach. An 18-month performance result for this metric that is less than the benchmark, after major event days are excluded, will be considered a miss.

Formula:

$$\frac{\text{Calls answered by agents within 30 seconds} + \text{total agent calls abandoned within 30 seconds}}{\text{Total agent calls answered} + \text{total agent calls abandoned}}$$

2. Call abandonment rate

The benchmark for this metric 7%. For purposes of this metric, a call is considered "abandoned" if: (1) the caller hangs up after the call is received by the Company's automatic call distribution system and the customer makes a choice to speak with a live person; or (2) the caller receives a busy signal or a "courtesy message" because the call cannot be completed. Calls handled by the Company's IVR will be excluded from this metric; however, calls that receive a "courtesy message" due to the unavailability of customer-service representatives or trunk lines to CMP's call center will be included in this metric. This metric is calculated by dividing the number of abandoned calls in an 18-month rolling period by the total number of calls presented to CMP's business line in the same 18-month period. CMP may exclude from this calculation "major event days," which will be determined using the IEEE 2.5 Beta approach. An 18-month performance result for this metric that exceeds the benchmark, after major event days are excluded, will be considered a miss.

Formula:

$$\frac{\text{Calls abandoned} + \text{calls that receive a busy signal or the courtesy message}}{\text{Total number of calls made to CMP's business line where the caller opts to speak with a live customer-service representative}}$$

3. Bill error rate

The benchmark for the bill error rate metric is 0.40%. For purposes of this metric, a bill is considered erroneous if it contains an incorrect rate or charge; lacks a proper charge, fee, or tax; no monthly bill is issued when one should have been issued; or the total amount due is not correct. Estimated bills are excluded from this metric. Bills issued within 10 days of a meter read will be considered “on time” and bills issued beyond 10 days of a meter read will be considered “erroneous.” This metric is calculated by dividing the number of erroneous bills issued in an 18-month rolling period by the total number of bills issued in the same 18-month period. This calculation is based on actual bills issued and not on accounts. An 18-month performance result for this metric that exceeds the benchmark will be considered a miss.¹

Formula:

$$\frac{\text{Total number of erroneous bills issued}}{\text{Total number of bills issued}}$$

4. Estimated bills

The benchmark for this metric is 1%. For the purposes of this metric, no more than 1% of the Company’s bills may be based on estimated meter reads over an 18-month period. A bill is considered “estimated” when an actual meter read is not obtained, either through the Company’s SmartCare system or through a manual read. For customers participating in CMP’s opt-out program, a bill will be considered “estimated” when it is not based on an actual read during a month where the customer’s meter is scheduled to be manually read. The Company may exclude from this calculation meter reads that fall on “major event days,” which will be determined using the IEEE 2.5 Beta method, as well as estimated reads that meet the conditions specified in Chapter 815, section 8(L). This metric is calculated by dividing the total number of estimated bills issued in an 18-month rolling period by the total number of bills issued in the same 18-month period. This calculation is based on actual bills issued and not on accounts. An 18-month performance result for this metric that exceeds the benchmark, after major event days and meter reads that meet the conditions specified in Chapter 815, section 8(L) are excluded, will be considered a miss.

Formula:

$$\frac{\text{Total number of estimated bills issued}}{\text{Total number of bills issued}}$$

¹ There is no “major event day” exclusion applicable to this metric.