

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

Emera Maine

)
) **Docket No. ER19-1470-000**
)

**NOTICE OF INTERVENTION AND COMMENTS
OF THE MAINE PUBLIC UTILITIES COMMISSION**

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission¹ (“Commission”), and the Commission’s March 29, 2019 Combined Notice of Filings #1, the Maine Public Utilities Commission (“MPUC”) hereby files this Notice of Intervention and Comments. On March 29, 2019, Emera Maine filed proposed changes to Schedule 21 -EM of the ISO New England Inc Open Access Transmission Tariff (“ISO-NE OATT”). Emera Maine states that the proposed changes “are needed to ensure that Excess ADITs are properly reflected in the calculations of charges under the Schedule 21-EM (and thus inure to the benefit of customers).”² The Emera Maine filing states that the proposed changes will inure to the benefit of customers but fails to explain how the proposed changes will do so. In addition, the proposed changes lack transparency. Accordingly, the MPUC recommends that this matter be accepted for filing, subject to refund, and set for hearing and settlement procedures.

I. PRELIMINARY STATEMENT

¹ 18 C.F.R. §§ 385.212 and 385.214 (2019).

² Emera Maine, Changes to Maine Public District Open Access Transmission Tariff, March 21, 2019 (“Transmittal”) at 3.

The MPUC's Notice of Intervention is filed pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.214(a)(2) (2019), and the Commission's March 29, 2019 Combined Notice of Filings #1 in which the Commission established April 19, 2019, as the date by which interventions and comments were to be filed in the instant proceeding.

The person to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the person whose name is to be placed on the Commission's official service list is designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2019):

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II. NOTICE OF INTERVENTION

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. 35-A M.R.S. § 101 *et seq.* It is, therefore, a "state commission" under the Commission's regulations, 18 C.F.R. § 1.101(k) (2019). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214(a)(2) (2019) and respectfully requests that the Commission recognize the MPUC as an intervenor in this proceeding, with all rights attendant thereto.

III. BACKGROUND

The Tax Cuts and Jobs Act, signed into law on December 22, 2017, reduces the marginal federal corporate income tax rate from 35 percent to 21 percent. In an Offer of Settlement, filed

in Docket No. ER15-1434-000, Emera Maine agreed, among other things, to address in its annual update of charges for the June 1, 2018 to May 31, 2019 rate year, the impact of the Act's reduction in the marginal federal corporate income tax rate and to make a tariff filing by March 31, 2018 to reflect the Act's reduction in the marginal corporate income tax rate. Emera Maine filed changes to its Schedule 21-EM to address its commitment in the Offer of Settlement. The Commission approved those tariff provisions on November 9, 2018.

On March 15, 2018, the Commission issued a Notice of Inquiry, seeking comment on the effect of the Tax Cut and Jobs Act of 2017 on Commission-jurisdictional rates,³ and on November 15, 2018, the Commission issued a Notice of Proposed Rulemaking ("NOPR") proposing to require that public utilities deduct excess accumulated deferred income taxes ("ADIT") from or add deficient ADIT to their rate bases.⁴

IV. PROTEST

A. Emera Maine's Proposal Fails to Explain or Support its Proposed Methodology for Determining the Allocation of the Excess ADIT Between its Two Divisions and Amortization of Excess ADIT and Thus Lacks Transparency.

Emera Maine states that it has proposed amendments to two sections of Schedule 21-EM. First, it adds a section to include as a regulatory liability, "[t]he federal deferred tax liabilities resulting from the federal Tax Cuts and Jobs Act of 2017 attributed to BHD transmission [FF1 at 278:f]." Second it modifies the formula regarding amortization of Excess ADIT liability to provide:

Transmission-Related Amortization of Excess Federal Deferred Income Tax Liability shall equal (i) the amount of Account No. 410.1 [FF1 at 276:c] attributable to the write down of excess federal deferred tax liabilities resulting from the federal Tax Cuts and Jobs Act of 2017 attributed to BHD transmission [FF1 at 278:f] divided by (ii) the difference of one minus the blended federal and state statutory tax rate multiplied by

³ *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (Mar.15, 2018) (Notice of Inquiry").

⁴ *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Notice of Proposed Rulemaking, 165 FERC ¶ 61,117 (2018) ("ADIT NOPR").

BHD Plant Allocator (Transmission). The resulting figure shall be further allocated to PTF and Non-PTF functions based on the BHD Transmission Plant Allocator (PTF).

Emera's first proposed change would allow Emera Maine to determine the amount of Excess ADIT that should be allocated to BHD by simply making a direct allocation and posting the result of that direct allocation in its FERC Form 1 Filing. This proposal provides less transparency than the use of an allocator and support for the use of that allocator in the formula rate and supporting workpapers. The lack of any methodology in the formula for allocating the excess ADIT between Emera Maine's two divisions gives too much discretion to Emera to determine the allocation methodology and reduces the ability of the MPUC, other interested parties, and the Commission to question whether Emera's method of allocation is just and reasonable. Emera's second proposed change does not explain how the amortization of the excess ADIT is determined. For example, what does Emera mean by the term "writedown?" There are no worksheets to show the methodology for the calculation. The tariff, or at least worksheets to the tariff, should provide the following information:

- Excess Deferred Income Taxes Balances – Protected and Unprotected;
- Methodology for allocation between Transmission and Distribution;
- Methodology for allocation of Common items between Transmission and Distribution;
- Support for any allocations between BHD and MPD: and
- Estimated amortization period for Protected and Unprotected Deferrals.

The filing's lack of supporting information is inconsistent with the Commission's NOPR in Docket No. RM19-5-000 which states:

We propose to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rates that will annually track information related to excess or deficient ADIT under 18 CFR 35.24. We believe that this reform is necessary to provide interested parties adequate transparency regarding how public utilities with transmission formula rates adjust their rate bases and income tax

allowances to account for excess or deficient ADIT. We also believe that requiring public utilities with transmission formula rates to provide this information on an annual basis rather than a one-time basis will better allow interested parties to follow excess or deficient ADIT as it is included in an annual revenue requirement and provide transparency as to any future changes in tax rates. We also believe that updating the proposed worksheet annually will better align with the nature of the vast majority of formula rates where calculation methodologies and input sources are accepted prior to those inputs being populated.⁵

The NOPR envisions a level of transparency that will allow interested parties, customers and the Commission the ability to understand how the excess ADIT is being calculated and whether the methodology is just and reasonable. This transparency is lacking in Emera Maine's filing.

B. Emera Maine's Filing Fails to Explain the Relationship of the Proposed Changes to the Tariff Changes Recently Approved by the Commission.

While the Emera Maine filing references its earlier-filed tariff provisions which purported to address the Tax Cuts and Jobs Act's effect on Emera's formula rate, its filing contains no discussion that informs interested persons and the Commission regarding the degree to which the current proposed change supplants the recently approved tariff provisions. For example, does the proposed amortization methodology replace the ten-year amortization period proposed in the earlier filing and approved by the Commission? Without any supporting material, it is impossible to determine why the proposed provisions are necessary in view of the recently proposed provisions which purported to address the same purpose.

C. The Filing Should Specify that the Excess ADIT Should Go Back to January 1, 2018.

The ADIT NOPR indicates the Commission's view that "any amounts allowed to be returned under the Average Rate Assumption Method schedule prior to the effective date of proposed tariff provisions made in compliance with the Proposed Rule should still be returned to

⁵ ADIT NOPR P 46

customers.”⁶ Emera Maine has created a regulatory liability for excess ADIT; however, there is no mention in this filing that it will return all of the excess ADIT back to January 1, 2018. This commitment should have been included in Emera Maine’s proposal.

V. CONCLUSION

Because Emera represents that the proposed changes will inure to the benefit of customers, the MPUC believes that the proposed changes should be accepted for filing, subject to refund. However, because the proposed changes lack transparency, the MPUC respectfully recommends that this matter be set for hearing and settlement procedures.

Dated: April 19, 2019

Respectfully submitted,

/s/ Lisa Fink

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⁶ *Id.* P 39.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 19th day of April, 2019.

/s/ Lisa Fink

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