UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Emera, Maine and ISO New England Inc.  )  Docket No. ER18-1213-000
)                                      )                               
Emera Maine                                   )  Docket No. ER18-1244-002
(Not Consolidated)

REQUEST FOR LEAVE TO ANSWER AND ANSWER OF
THE MAINE PUBLIC UTILITIES COMMISSION AND MAINE CUSTOMER
GROUP

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal
Energy Regulatory Commission (“Commission”), 18 C.F.R. §§ 385.212 and 385.213, the Maine
Public Utilities Commission (“MPUC”) and Maine Customer Group (“MCG”) (together
“Intervenors”) file this Request for Leave to Answer and Answer in the above-captioned
proceedings.¹

The Intervenors seek leave to answer the October 17, 2018 answer that Emera Maine
filed (“Emera Maine Answer”). Although Rule 213 of the Commission’s Rules of Practice and
Procedure generally prohibits an answer to an answer or protest, the Commission has exercised
discretion to accept answers such as this one where they provide information that assists the
Commission in its decision-making process.² The Intervenors answer to the Emera Maine

¹ The Intervenors note that the Commission is accepting filings from both dockets only in Docket
No. ER18-1244, as also noted in an August 10, 2018 Answer by the MPUC.

² See, e.g., ISO New England Inc., 161 FERC ¶ 61,123 at P 17 (2017); HORUS Central Valley
29 (2016); New England Power Generators Ass’n, Inc. v. ISO New England Inc., 146 FERC ¶
61,039 at P 45 (2014).
Answer meets this standard because it clarifies that Emera Maine does have an obligation to implement effective June 1, 2018, changes to the Attachment J Formulas to reflect the Tax Cut and Jobs Act’s (“the Act”) reduction to the marginal corporate income tax rate. In highlighting this obligation, the Intervenors’ Answer provides the Commission with a more complete and accurate record upon which to base its decision. Specifically, Emera Maine’s suggestion that “there is no need to rush toward any resolution of these ADIT-related issues” because “the amortization of excess ADITs will only impact charges under Emera Maine’s OATTs effective June 1, 2019 and Emera need not notify customers of or file with the Commission its updated charges until May 1 2019” fails to acknowledge Emera Maine’s commitment to file changes to become effective June 1, 2018 as necessary to reflect the tax reduction provisions of the Tax Cuts and Jobs Act (“the Act”). Emera Maine’s continued efforts to delay implementation of the consumer benefits flowing from the Act are inconsistent with the undertaking to which it stipulated. In addition, the Intervenors’ Answer helps in narrowing the issues by underscoring that Emera Maine has not contested the specific arguments in the Intervenors’ Protest to Emera’s Maine’s Second Deficiency Response. This Protest demonstrated that Emera Maine has failed to support its proposal for a ten-year amortization period for excess/deficient ADIT associated with unprotected assets.

I. ANSWER

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3 See Protest of the Maine Public Utilities Commission, the Maine Customer Group and the Maine Office of Public Advocate to Emera Maine’s Deficiency Response filed on October 1, 2018 in the above dockets.

4 The Intervenors also note that Emera Maine’s Answer appears to obscure the fact that concerns about how Emera Maine will flow through to ratepayers the excess ADIT resulting from the Act’s reduction in the corporate income tax has been the subject of two Deficiency Letters. Thus, this is not a “latest issue” raised by Intervenors as characterized in Emera Maine’s Answer, but rather a fundamental issue raised by Commission Staff and the Intervenors.
Emera Maine’s Answer represents its continued effort to delay implementing tariff provisions to reflect the effect of the Act’s corporate income tax reduction, even though it stipulated to doing just that. Now Emera claims there is no rush toward resolution of the ADIT issues because the charges for rate-year 2018-2019 have already been established (subject to challenges under the protocols) and “the amortization of excess ADITs will only impact charges under Emera Maine’s OATTs effective June 1, 2019, and Emera Maine need not notify customers of or file with the Commission its updated charges until May 1, 2019.” As discussed below, Emera Maine’s Answer and its previous pleadings in these matters all are inconsistent with its commitments made to the MPUC and the Commission. Instead, Emera’s pleadings in these dockets appear to represent efforts to delay passing through to its ratepayers rate relief from the reduced federal corporate income tax rate.

The Language of the MPD and BHD Settlements Makes Clear that Emera Committed to Implementation of Changes to its Formula Rate to Reflect Savings from the Tax Cuts and Jobs Act Effective June 1, 2018.

Emera Maine’s Answer does not even reference the Settlements that triggered the filings that are at issues in these cases. However, Emera Maine committed to the following:

Emera Maine further agrees to make a filing with the Commission under Federal Power Act section 205 filing by March 31, 2018 with such changes to the Attachment J Formulas, effective June 1, 2018, as necessary to reflect the Act’s reduction to the marginal corporate income tax rate; provided, however, that (i) such filing shall be consistent with any guidance or orders that the Commission may provide prior to March 15, 2018, and (ii) Emera Maine may amend such filing in order to reflect any guidance or orders that the Commission may provide subsequent to March 15, 2018 or withdraw such filing if inconsistent with any such guidance or orders; and provided further, that the MPUC agrees that in response to such filing the MPUC will not seek changes (or support directly or


6 Emera Maine Answer at 2-3.
indirectly any party’s request for changes) to any aspect of the Attachment J Formulas not necessary to reflect the Act’s reduction to the marginal corporate income tax rate.\textsuperscript{7} This language makes clear that Emera Maine should move ahead with implementing tariff changes to reflect the Tax Cut and Jobs Act’s reduction to the marginal corporate income tax, and there is no exception for ADIT. These changes are to become effective June 1, 2018 by agreement of the parties, \textit{not in 2019 as now proposed by Emera}. Emera Maine’s filing of general tariff language and its resistance to providing information upon which the parties and the Commission could determine that its proposal is just and reasonable is inconsistent with its obligation to make tariff changes \textit{“as necessary to reflect the Act’s reduction to the marginal corporate income tax.”}\textsuperscript{8}

The proof that Emera is acting in a manner inconsistent with its agreed-to obligation can be found in Emera Maine’s pleadings in this matter. First, Emera stated that concerns about the specifics of how Emera Maine intends to implement the tariff language \textit{“should be raised . . . in response to Emera Maine’s annual charges update to be submitted by May 15, 2018.”}\textsuperscript{9} But in its latest pleading, Emera states that it has no obligation to make changes to ADIT to implement the effects of the Tax Cuts and Jobs Act until 2019.\textsuperscript{10} It further claims for the first time that since, according to Emera, it has no obligation to reflect the effect of the Tax Act rate reductions on its formula rate until its 2019 Annual Informational Filing \textit{“it is nonsensical that Intervenors ask for Emera Maine’s filings to be accepted subject to refund because the tariff changes Emera}

\textsuperscript{7} MPD Settlement § 4.3.2. (emphasis added). \textit{See also}, similar language in the BHD Settlement § 4.5.2.

\textsuperscript{8} \textit{Id}.

\textsuperscript{9} Emera Maine Request for Leave to Answer and Answer, filed on May 4, 2014 (emphasis in original).

\textsuperscript{10} Emera Maine Request for Leave to Answer and Answer, filed on October 16, 2018.
Maine filings in these proceedings have no impact on rates currently charged to customers.”11 Now Emera appears to indicate that it never had any intention of actually implementing, effective June 1, 2018, tariff changes to reflect the Act’s reduction to the marginal corporate income tax rate.

Further evidence of Emera Maine’s lack of commitment to representations made to the MPUC and the Commission is found in its failure to follow through with its plans to provide its ADIT analysis by September 30 2018. In its September 10, 2018, Deficiency Response (“Second Deficiency Response”), Emera Maine represents that it expects to provide its analysis of excess/deficient ADIT amounts resulting from the Act by September 30 2018; however, a month has passed since September 30th and Emera Maine has not provided any analysis, nor has it explained its failure to do so.

Finally, the Intervenors note what Emera Maine’s Answer does not do. It does not contest any of the arguments made by the Intervenors in their October 1, 2018 Protest to Emera Maine’s Second Deficiency Response. This Protest demonstrated that Emera Maine has failed to support its proposal for a ten-year amortization period for excess/deficient ADIT associated with unprotected assets.

The Intervenors urge the Commission to put a stop to Emera Maine’s delay tactics and quickly set this matter for hearing and settlement. In the absence of quick Commission action, Emera Maine’s ratepayers will be subjected to another round of answers to answers and continued delay by Emera Maine in passing through to customers all the benefits of the Act’s corporate tax reduction. Such a result is not consistent with the Commission’s interest in ensuring “customers obtain relief from the reduced federal corporate income tax rate in a timely

11 Id.at 3, n. 10 (citations omitted).
Emera should not be allowed to keep these benefits for its shareholders by simply dragging its feet.

II. CONCLUSION

Based on this Answer and the Intervenors’ protests and answers filed in this matter, the Intervenors respectfully request that the Commission act quickly to accept the March 30 filing in Docket No. ER18-1244 and the March 29 filing in Docket No. ER18-1213 and allow the tariff changes to go into effect on June 1, 2018, subject to refund, and set these matters for hearing and settlement judge procedures.

Dated: October 29, 2018

Respectfully submitted,

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12 See, Central Maine Power Company, 163 FERC ¶ 61,228 (2018) (granting waiver to allow tax reductions to be reflected in rates earlier than may have been warranted under the tariff so that customers may obtain relief from the reduced federal corporate income tax rate in a timely manner).
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 29th day of October, 2018.

/s/ Lisa Fink
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