

153 FERC ¶ 61,283
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Emera Maine

Docket Nos. ER15-1429-000
ER15-1429-001
EL16-13-000

ORDER ACCEPTING PROPOSED TARIFF REVISIONS, SUBJECT TO
CONDITION, INSTITUTING SECTION 206 PROCEEDING, ESTABLISHING
REFUND EFFECTIVE DATE, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES AND CONSOLIDATING PROCEEDINGS

(Issued December 7, 2015)

1. On April 1, 2015, as supplemented on April 3, 2015, and amended on May 1, 2015,¹ Emera Maine submitted proposed revisions to its Open Access Transmission Tariff for Maine Public District (MPD OATT) as set forth in Attachment J of the MPD OATT.² In this order, we accept for filing Emera Maine's MPD OATT revisions, effective June 1, 2015, subject to condition and the outcome of the proceeding in Docket

¹ On April 3, 2015, Emera Maine submitted workpapers in support of the April 1, 2015 filing. On May 1, 2015, Emera Maine filed revised exhibits, noting that the April 1, 2015 filing was based on draft 2014 FERC Form No. 1 data, and Emera Maine had subsequently filed an updated consolidated FERC Form No. 1. Also on May 1, 2015, Emera Maine filed an informational filing in Docket No. ER12-1650-000 detailing its Annual Update to recalculate the 2015 annual transmission revenue requirement (2015 Annual Update), using the Attachment J Formulas pending in the instant proceeding and populated using the consolidated Form No. 1 data of Emera Maine in order for the formula rate to be effective June 1, 2015 consistent with Emera Maine's merger commitment.

² Emera Maine submitted its tariff revisions as a compliance filing in e-Tariff, not as a filing under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (2012). Pursuant to the Commission's regulations, 18 C.F.R. § 35.7(d) (2015), *accord* 18 C.F.R. § 385.205 (2015), Emera Maine's filing will not be treated as a section 205 filing and does not have a statutory action date.

No. ER12-1650-000. We also find that the MPD OATT has not been shown to be just and reasonable and may be unjust and unreasonable. Accordingly, we institute a proceeding in Docket No. EL16-13-000 pursuant to our authority under section 206 of the Federal Power Act (FPA), and establish a refund effective date of the date of publication in the *Federal Register* of notice of our instituting this proceeding; and we establish hearing and settlement judge procedures.³ We also direct Emera Maine to submit a compliance filing within 30 days of the date of this order, as discussed below.

I. Background

2. On January 1, 2014, Maine Public Service Company (Maine Public) merged into Bangor Hydro Electric Company (Bangor Hydro), resulting in a single public utility named Emera Maine.⁴ Emera Maine is engaged in the transmission and distribution of electric energy and related services to approximately 154,000 retail customers in portions of northern, eastern, and coastal Maine. Emera Maine's MPD OATT provides open access to Emera Maine's transmission facilities in northern Maine. Open access to Emera Maine's transmission facilities in eastern and coastal Maine (the legacy Bangor Hydro Transmission System) is provided pursuant to ISO New England Inc.'s (ISO-NE) Transmission, Markets and Services Tariff (Tariff). The transmission facilities in Emera Maine's two districts are not directly interconnected.⁵

3. Emera Maine offers transmission service over the MPD Transmission System under the MPD OATT pursuant to a Commission-approved formula rate first filed by Emera Maine's predecessor in interest, Maine Public, in 1995, and subsequently amended several times. Attachment J of the MPD OATT contains a formula rate that provides for the recalculation of charges effective each June 1 based on inputs from FERC Form No. 1 (Attachment J Formulas).⁶ As a condition of the merger, Emera Maine was required to file a consolidated FERC Form No. 1 by April 2015 reflecting calendar year 2014 data, which covered both former Maine Public facilities and former Bangor Hydro facilities.⁷

³ 16 U.S.C. § 824e (2012).

⁴ *Bangor Hydro Electric Co.*, 144 FERC ¶ 61,030 (2013) (Merger Order).

⁵ The MPD Transmission System is not directly interconnected with any portion of the United States grid. The entities interconnected with the MPD Transmission System can only access the U.S. transmission grid through transmission facilities in New Brunswick, Canada.

⁶ Emera Maine Transmittal Letter at 2.

⁷ Merger Order, 144 FERC ¶ 61,030 at PP 14, 19 (citing 18 C.F.R. § 141.1(b) (2012) (requiring a FERC Form No. 1 to be filed by each Major electric utility)).

Bangor Hydro and Maine Public asserted in the merger proceeding that, without formula rate adjustments, a single consolidated FERC Form No.1 would result in a mismatch between charges and associated costs insofar as certain Maine Public costs would be included in the inputs to Bangor Hydro's ISO-NE Tariff formulas and certain Bangor Hydro costs would be included in the inputs to the former Maine Public OATT formula rate.⁸ The Commission's finding in the Merger Order of no adverse effect on jurisdictional transmission rates was based on the representations and commitments made by the applicants, including Emera Maine's commitment to revise the MPD OATT transmission formula rate and the Bangor Hydro transmission formula rates by April 1, 2015, to be effective June 1, 2015.⁹ On April 17, 2015, Emera Maine submitted to the Commission a FERC Form No. 1 reflecting the assets and accounts of both the former Bangor Hydro and the former Maine Public, i.e., assets that comprise the MPD Transmission System, which are subject to the MPD OATT, and assets that are not subject to the MPD OATT. Emera Maine states that changes to the MPD OATT are needed to make sure the charges for service under the tariff properly reflect only the costs of service over the MPD Transmission System.¹⁰

4. Emera Maine states that it is changing the Attachment J Formulas to directly assign and allocate values from the combined FERC Form No. 1 to MPD. Emera Maine adds that the Attachment J Formulas will follow the format Emera Maine has historically used in support of calculations under Schedule 21-EM for the Bangor Hydro District. Emera Maine states that this harmonization will permit the Commission and interested parties to compare calculations of charges under the MPD OATT and ISO-NE OATT to ensure that calculations are correct and allocations are fair and that there is no double counting of any values.¹¹

5. Emera Maine also proposes to change its Return on Common Stock (Return on Equity or ROE), Statement AV of the Attachment J Formulas, from 9.75 percent to 10.20 percent. Emera Maine contends that its proposed ROE is approximately halfway

⁸ *Id.*

⁹ *Id.* P 19.

¹⁰ Emera Maine states that the instant filing is also required by the Stipulation § 3.6 submitted with the 2013 Offer of Settlement in Docket Nos. ER12-1650, *et al.* Emera Maine Transmittal Letter at 4. Settlement approved by the Commission at *Maine Public Service Co., et al.*, 144 FERC ¶ 61,116 (2013).

¹¹ Emera Maine Transmittal Letter at 5.

between the central tendency of the zone of reasonableness and the upper end of the zone, and it reflects the business and financial risks faced by Emera Maine.¹²

6. Further, Emera Maine proposes to change the stated depreciation rates, Statement AJ of the Attachment J Formulas, to reflect the results of a recent depreciation study. Emera Maine states that the depreciation study assesses depreciation rates for the MPD only and that the rates do not reflect the characteristics of any Emera Maine assets not subject to the MPD OATT.¹³

7. Emera Maine also proposes to revise the Post-Retirement Benefits Other Than Pensions (PBOP) value set forth in the Attachment J Formulas from \$202,686 to negative \$20,669. The current Attachment J Formula contains a stated PBOP value and Emera Maine seeks to update the value based on the findings of a recent actuarial study for the year ended December 31, 2014.¹⁴

8. Emera Maine proposes to change the real power loss factor set forth in sections 15.7 and 28.5 of the MPD OATT from a formula rate as set forth in the Attachment J Formulas to a fixed rate of 1.64 percent. Emera Maine explains that this rate is the arithmetic average of the actual real power losses rate on the MPD transmission system for the years 2012 to 2014 as calculated pursuant to the formula previously used by Emera Maine to establish the real power loss factor on an annual basis.¹⁵

9. Emera Maine further proposes certain changes to the timing of hourly, non-firm service requests. Emera Maine explains that the MPD Transmission System is interconnected with the transmission facilities owned and operated by the New Brunswick Power Corporation (NB Power), the MPD Transmission System operates within the NB Power Balancing Authority Area, and energy transactions use both the MPD Transmission System and the NB Power transmission facilities. Because of the interrelationship between the two transmission systems, Emera Maine proposes to amend the MPD OATT to align requests for hourly, non-firm, point-to-point transmission service (Hourly NF Service) on the MPD Transmission System with NB Power's transmission facilities.¹⁶

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *Id.* at 8-9.

10. Emera Maine requests limited waiver of the Commission's filing requirements in 18 C.F.R. § 35.13 (2015) (Filing of changes in rate schedules, tariffs, and service agreements) to permit the filing and, in the event the filing is set for a trial-type evidentiary hearing, allow Emera Maine's Exhibits 1 through 18 to become the case in chief, subject to the presiding judge permitting the submission of amended or additional materials. Emera Maine also requests waiver of the Commission's eTariff filing requirements¹⁷ 18 C.F.R. §35.7 (2015) (Electronic Filing Requirements) so as to permit the submission of the Attachment J Formulas in PDF format (as opposed to RTF format). Finally, Emera Maine requests waiver of the requirement to submit a blacklined version of the Attachment J Formulas.¹⁸

II. Notice of Filing and Responsive Pleadings

11. Notice of Emera Maine's April 1, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 18,614 (2015), with interventions and protests due on or before April 22, 2015. Notice of Emera Maine's April 3, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 22,171 (2015), with interventions and protests due on or before April 22, 2015. Notice of Emera Maine's May 1, 2015 filing was published in the *Federal Register*, 80 Fed. Reg. 26,921 (2015), with interventions and protests due on or before May 22, 2015.

12. On April 9, 2015, Maine Customer Group¹⁹ submitted a motion to reject the rate filing. On April 22, 2015, Maine Customer Group filed a motion to intervene and protest and Maine Public Utilities Commission (MPUC) filed a notice of intervention and comments.

13. On April 24, 2015, Emera Maine submitted an answer to the motion to reject. On April 29, 2015, Maine Customer Group submitted an answer to Emera Maine's April 24, 2015 answer.²⁰ On May 7, 2015, Emera Maine filed an answer to the comments and protest. On May 22, 2015, Maine Customer Group filed a protest to Emera Maine's May 1, 2015 filing.

¹⁷ Emera Maine Transmittal Letter at 13.

¹⁸ *Id.*

¹⁹ Maine Customer Group is comprised of Maine's Office of the Public Advocate, Houlton Water Company, Van Buren Light and Power District, and Eastern Maine Electric Cooperative, Inc.

²⁰ Maine Customer Group incorrectly indicated that its answer was being submitted by Emera Maine.

14. On May 8, 2015, in both the instant proceeding and in Docket No. ER12-1650-000, in which, as noted earlier, Emera Maine submitted an informational filing containing its 2015 Annual Update to its charges for transmission service under the MPD OATT, Maine Customer Group filed a motion to compel revisions to Emera Maine's 2015 Annual Update.²¹ On May 26, 2015, Emera Maine filed an answer to Maine Customer Group's motion to compel. On May 27, 2015, Maine Customer Group filed a response to Emera Maine's May 26, 2015 response.

III. Protests and Comments

15. MPUC opposes three proposed changes in Emera Maine's filing: (1) the proposed ROE increase from 9.75 percent to 10.20 percent; (2) the proposed change from a measured loss factor calculation to a fixed loss factor; and (3) the proposed deviation from the use of average 13-month account balances for determination of rate base to the use of end-of year account balances. MPUC asserts that Emera Maine has not made a showing that these changes are justified.²²

16. MPUC states that it takes no position on the Discounted Cash Flow (DCF) methodology used by witness Perkins or the results of his analysis including the range of reasonableness of between 6.19 percent and 11.25 percent and the median of this range of 9.09 percent. However, MPUC questions whether the anomalous economic conditions the Commission found present in *Coakley* have been shown to continue to exist and thus whether the upward adjustment to 10.20 recommended by witness Perkins is warranted.²³

17. MPUC states that Emera Maine has not articulated a reasoned basis for replacing a formula that MPUC states has produced measured, accurate loss factors based on metered data with a fixed factor based on the average of past loss factors. According to MPUC, there is no indication that Emera Maine's proposed fixed loss factor of 1.64 percent will accurately reflect loss levels in the coming years, especially in light of the substantial transmission investment Emera Maine plans to make in the next five years.²⁴

²¹ Maine Customer Group incorrectly indicated that its motion was being submitted by Emera Maine.

²² MPUC April 22, 2015 Filing at 1.

²³ *Id.* at 7-8 (citing *Martha Coakley et al. v. Bangor Hydro-Electric Co., et al.*, Opinion 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015) (collectively *Coakley*)).

²⁴ *Id.* at 8-9.

18. MPUC states that the Commission's regulations require the use of average 13-month account balances, unless the Commission grants a waiver, and further, the utility is required to show that the information used for the average is either unavailable or unrepresentative of the utility's current plan for plant in service.²⁵ MPUC does not believe the information provided by Emera Maine meets the requirements for obtaining a waiver.²⁶

19. In its motion to reject the filing, Maine Customer Group states that Emera Maine's filing is deficient because it reflects rates based on proxy numbers that do not represent the actual rates Emera Maine intends to impose effective June 1, 2015.²⁷ Maine Customer Group argues that the Commission should reject Emera Maine's filing and direct Emera Maine to file an Annual Update to be effective June 1, 2015, in accordance with Emera Maine's OATT. Finally Maine Customer Group states that the Commission should permit Emera Maine to refile its proposed FPA section 205 formula change when relevant FERC Form No. 1 data are available to support it.²⁸

20. In its April 22, 2015 protest, Maine Customer Group requests that the Commission suspend, make effective subject to refund, and set for hearing Emera Maine's proposed formula rate change and suspend the hearing pending settlement proceedings before a settlement judge.²⁹ Maine Customer Group asserts that six changes reflected in the filing are unjust and unreasonable: (1) a change from the average of the 13-monthly balances, (2) an "out-of-period adjustment" to the rate base by proposing to "use a full year, rather than half-year, value for forecasted plant additions," (3) an increase in its ROE from 9.75 percent to 10.20 percent, (4) a proposed capital structure that excludes certain long-term debt refinancing, which Maine Customer Group contends artificially increases the equity component of Emera Maine's capital structure to 61 percent and thereby unlawfully imposes merger-related costs on customers in violation of the Commission's conditions for approving the merger, (5) proposed intercompany cost allocations between the Emera Maine Attachment J Formulas and Bangor Hydro's ISO-NE Tariff formulas, which Maine Customer Group states are not precisely discernable because the relevant FERC Form No. 1 numbers from which the allocations are derived have not been provided, and (6) a proposal to change from Emera Maine's decade-long practice of calculating its

²⁵ *Id.* at 9 (citing 18 C.F.R. § 35.13(4)(i) (2012)).

²⁶ *Id.* at 9-10.

²⁷ Maine Customer Group April 9, 2015 Motion to Reject Rate Filing at 2.

²⁸ *Id.* at 4.

²⁹ Maine Customer Group April 22, 2015 Protest at 2.

transmission system loss factor on an annual basis to a fixed transmission loss factor based on the average of the last three years' real power transmission loss factors. Maine Customer Group argues that there is no basis for concluding that Emera Maine's proposed fixed loss factor will accurately reflect future real power transmission loss levels.³⁰

21. In its April 24, 2015 response to Maine Customer Group's motion to reject, Emera Maine asserts that Maine Customer Group's filing is based on a misunderstanding of the filing and the practical challenges faced by Emera Maine in preparing a first-of-its-kind formula rate that parses utility data between its two operating divisions. Emera Maine states that the data used in its April 1, 2015 filing is preliminary, actual 2014 data, and is subject to updating in a supplemental filing. Emera Maine also states that it is unable to provide an annual update using the formula rate in the current MPD OATT because its present FERC Form 1 data reflect data of both the Maine Public District and the Bangor Hydro District. It requests waiver of the annual update requirement set forth in the MPD OATT as fundamentally impossible given the unique circumstances presented.³¹

22. In its April 29, 2015 answer, Maine Customer Group disputes Emera Maine's contention of a "misunderstanding" and states that Emera Maine offers no support for a claim that an FPA section 205 rate change filing may be based on preliminary numbers or for anything that compels it to file its FPA section 205 rate case before relevant Form 1 data is available.

23. Subsequently, on May 1, 2015, Emera Maine submitted a supplemental filing with updated FERC Form No. 1 data as well as several corrected exhibits. Emera Maine contends that its decision to supplement the April 1, 2015 filing was preferable to withdrawing the filing, because, according to Emera Maine, it was in the best interest of the intervenors to continue under the existing docket number. While the May 1, 2015 filing requests that the Commission issue an order in this proceeding no later than July 1, 2015, Emera Maine, in an errata filed the same day, states that it wants to retain its requested effective date of June 1, 2015.

24. On May 8, 2015, Maine Customer Group filed a motion to compel revisions to Emera Maine's 2015 Annual Update in Docket Nos. ER12-1650-000 and ER15-1429-000. In its motion, Maine Customer Group requests that the Commission reject Emera Maine's 2015 Annual Update and direct Emera Maine to recalculate the annual update using the transmission formula rate that was in effect prior to Emera Maine's Attachment J Formulas filed in Docket No. ER15-1429-000, because the Commission has not acted

³⁰ *Id.* at 18.

³¹ Emera Maine April 24, 2015 Answer at 3.

on the Attachment J Formulas in that proceeding. Further, Maine Customer Group requests that the Commission order a revised 2015 Annual Update based on the old formula rate, to be effective June 1, 2015, in accordance with the MPD OATT. Maine Customer Group also requests that the Commission suspend Emera Maine's proposed tariff revisions for five months, from July 1 to December 1, 2015, to be effective on December 1, 2015, subject to refund and set this matter for hearing and settlement judge procedures.³²

25. In its May 22, 2015 protest, Maine Customer Group asserts that the May 1, 2015 filing is the same as the April 1, 2015 filing, but with actual 2014 FERC Form No. 1 numbers. Thus, Maine Customer Group incorporates by reference its motion filed in response to that filing and raises the same six objections here.³³ Citing Commission precedent, Maine Customer Group maintains that the suspension period for the proposed rates should be five months because: (1) the proposed formula rate changes are unjust and unreasonable and substantially excessive; (2) Emera Maine has not shown that a five-month suspension of the proposed rate increase will produce harsh and inequitable results; and (3) conversely, imposition of a 46 percent rate increase (based on Maine Customer Group's calculations) on a relatively poor community such as Aroostook County, Maine is bound to have harsh consequences, even if subject to refund.³⁴

26. In its May 26, 2015 answer, Emera Maine reiterates that it filed its proposed tariff changes on April 1, 2015, before FERC Form No. 1 data were finalized, because a filing by this date was required by the Commission's 2013 Merger Order.³⁵ Emera Maine contends that Maine Customer Group's filing creates false comparisons that conflate issues in two fully separate proceedings. According to Emera Maine, Maine Customer Group's assertion of a rate increase is based entirely on a false comparison that picks and chooses elements of Emera Maine's current tariff and elements of Emera Maine's proposed tariff.³⁶ In fact, according to Emera Maine, its proposal will result in a 4.2 percent decrease, not an increase, and it asserts that its charges for the 2015-2016 year are based on the current formula rate. Emera Maine states that the most practical approach would be for the Commission to accept the proposed tariff revisions effective June 1, 2015, subject to refund, hearing and settlement procedures, allowing the parties to work

³² Maine Customer Group May 8, 2015 Motion to Compel at 7.

³³ Maine Customer Group May 22, 2015 Protest at 2-3.

³⁴ *Id.* at 4-5 (citing *inter alia*, *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982)).

³⁵ *Id.* at 2.

³⁶ *Id.* at 3.

through the various issues raised.³⁷ Emera Maine also maintains that any suspension period should be nominal only and states that Maine Customer Group has shown no justification in its changed position to request a five-month suspension when it previously requested a one-day suspension.³⁸

27. Maine Customer Group, in its May 27, 2015 answer, responds that “in attempting to correctly apply the formula, [it] (i) used the only formula template provided by [Emera Maine], and (ii) backed out those elements of the formula that [Emera Maine] proposes to change, and substituted in their place those same rate elements accepted by the Commission in the current rates.”³⁹ It also states that, while the re-calculated rate may not be precise, the intent of the re-calculation is to provide an order of magnitude. Maine Customer Group contends that by not filing an Annual Update correctly, Emera Maine will hide the effect of revenue credits and increased system use behind a huge proposed rate increase.⁴⁰

IV. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits answers to a protest and answers to answers unless otherwise ordered by the decisional authority. We will accept the answers filed here because they have provided information that assisted us in our decision-making process.

30. Maine Customer Group filed its Motion to Compel Revision to MPD’s Annual Update in the instant docket and in Docket No. ER12-1650-000. The annual update is not the subject of this proceeding. Therefore, the motion is beyond the scope of this proceeding and we dismiss it here.

31. Additionally, Maine Customer Group’s Motion to Reject Rate Filing is denied in light of the action directed in this order.

³⁷ May 26, 2015 Answer to Motion to Compel at 1.

³⁸ *Id.* at 3-6.

³⁹ Maine Customer Group May 27, 2015 Answer at 1-2.

⁴⁰ *Id.* at 2.

B. Substantive Matters**Section 206 Proceeding**

32. The Commission's preliminary analysis indicates that Emera Maine's proposed revisions to the MPD OATT have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we accept for filing Emera Maine's MPD OATT revisions, effective June 1, 2015, subject to condition and the outcome of the proceeding in Docket No. ER12-1650-000, as discussed below, and we institute a proceeding under section 206 of the FPA in Docket No. EL16-13-000, to examine these provisions. In addition, because the proceeding involves a number of issues of material fact concerning the proposed formula rate and its Protocols that cannot be resolved based on the record before us, we set the matter for a trial-type evidentiary hearing.

33. In cases where, as here, the Commission institutes a proceeding under section 206 of the FPA, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months subsequent to that date.⁴¹ Consistent with Commission precedent,⁴² we establish a refund effective at the earliest date allowed, i.e., the date the notice of the initiation of the proceeding in Docket No. EL16-13-000 is published in the *Federal Register*. The Commission is also required by section 206 to indicate when it expects to issue a final order. The Commission expects to issue a final order in this proceeding by April 30, 2016.

C. Hearing and Settlement Judge Procedures

34. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁴³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁴¹ 16 U.S.C. § 824e(b) (2012).

⁴² See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

⁴³ 18 C.F.R. § 385.603 (2015).

otherwise, the Chief Judge will select a judge for this purpose.⁴⁴ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

35. The Commission notes that the Maine Customer Group has raised the issue of whether the proposed capital structure violates the Merger commitments in this proceeding and in Docket No. ER12-1650-000, the proceeding in which annual updates to the MPD OATT are filed. While the Commission will hold the hearing in abeyance and allow settlement procedures to commence in this proceeding, the Commission reserves to itself the issue of whether the proposed capital structure violates any merger commitments or conditions on the approval of the merger, as well as any merger-related issues and arguments raised by the Maine Customer Group. The Commission will make its determination regarding those issues in Docket No. ER15-1650-000. In addition, this proceeding is subject to the outcome of Docket No. ER12-1650-000 regarding those issues.

36. Emera Maine requests waiver of the requirements of sections 35.13(d) and (h) of the Commission's regulations, to provide full Period I and Period II data, and allow Emera Maine's Exhibits 1 through 18 to become the case in chief. We deny Emera Maine's request for waiver of filing an attestation that the data submitted is true, accurate, and a current representation of their books and records.⁴⁵ We also deny Emera Maine's request for waiver of section 35.13(a)(2)(iv) to provide revenue data to compute the proposed rate change for portions of formula rates that *do not* use Form 1 data, and we require this data to be submitted as part of the hearing proceedings ordered herein.⁴⁶ Emera Maine has presented Exhibits 1 through 18 as its case in chief and requests that the Commission accepts it as such. Section 35.13(d) and (h) of the Commission's

⁴⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁴⁵ *Trans Allegheny Interstate Line Co.*, 119 FERC 61,219, at P 57 (2007); *accord Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 79 (2007); *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.*, 119 FERC ¶ 61,238 (2007).

⁴⁶ *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 54 (2010).

regulations identify exhibits that may be necessary for a public utility to support its proposed changes. Emera Maine has chosen not to use these exhibits, but, in the alternative, submitted different exhibits as its case in chief. The Commission permits Emera Maine to do so pursuant to 18 C.F.R. § 35.13(a)(2)(i)(F) (2015) of the Commission's regulations. As such the judge need not afford Emera Maine an additional time period to file testimony, exhibits, and supplemental workpapers to complete its case-in-chief. This finding is without prejudice to the presiding judge providing for appropriate discovery of additional information.⁴⁷

37. We grant Emera Maine's request for waiver of the filing requirements set forth in section 35.7 of the Commission's regulations with regard to the PDF format requirement and blackline requirement for the tariff record reflecting the rate formula, as no party has opposed the request. We find Emera Maine's request for waiver of the annual update requirement set forth in the MPD OATT is moot now that Emera Maine has submitted its Annual Update.

38. We are accepting and setting for hearing the tariff records as filed in Emera Maine's amended filing of May 1, 2015. Thus, the April 1, 2015 tariff record is rejected as moot.⁴⁸

39. The Commission notes an inconsistency between the tariff language that Emera Maine filed in eLibrary and the electronic tariff language that Emera Maine submitted through the eTariff. Specifically, Emera Maine's May 1, 2015 filing contains revised sections of the MPD OATT in eLibrary that are not reflected in the Record Binary Data.⁴⁹ Therefore, we direct Emera Maine to review the entire eLibrary and eTariff

⁴⁷ *Allegheny Power System Operating Cos. et al.*, 111 FERC ¶ 61,308, at P 56 (2005); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 126 (2009).

⁴⁸ See *FERC Staff's Responses to Discussion Questions*, Tariff Record Related Codes, Questions 28 at 29 (for the need to provide a complete set of Associated tariff record information); *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* at 31 (for the definitions of the Associated record data elements). See generally *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,064 (2013).

⁴⁹ Record Binary Data is the Commission's Business Name for the Tariff Record data element that appears in the eLibrary in the FERC GENERATED TARIFF FILING.RTF and on the Public Viewer (available at www.ferc.gov). *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings*, (September 11, 2015), available at <http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf>.

Record Binary Data in this proceeding and, with respect to each inconsistency, to submit appropriate modifications within 30 days to either the eTariff version or the eLibrary version of the filing, or both, to ensure consistency.⁵⁰

The Commission orders:

(A) Emera Maine's proposed revisions to the Attachment J Formulas of the MPD OATT are hereby accepted, effective June 1, 2015, subject to condition and subject to the outcome of Docket No. ER12-1650-000.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL16-13-000 concerning the reasonableness of Attachment J of the MPD OATT. However, the hearing will be held in abeyance while the parties attempt to settle, as provided in paragraphs (C) and (D) below.

(C) Emera Maine's requests for waiver of the filing requirements set forth in section 35.13 of the Commission's regulations is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(D) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in Docket No. EL16-13-000 in the Federal Register. The refund effective date in Docket No. EL16-13-000, established pursuant to section 206 of the FPA, shall be the date of publication in the *Federal Register* of the notice, as discussed in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

⁵⁰ The Commission requires public utilities to file all tariffs, tariff revisions and rate change applications with the Commission. The Commission specified that no substantive differences should exist between the tariff provisions filed as part of the XML data (in eTariff) and the tariff provisions filed as attachments (in eLibrary). *See* Electronic Tariff Filings, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (s008) at P 114. Emera Maine is required to use Type of Filing Code (TOFC) 80 if a tariff record must be modified, or TOFC 150 if correcting an inaccurate supporting tariff text document.

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Docket Nos. ER15-1429-000, ER15-1429-001, and EL16-13-000 are hereby consolidated for purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.