

155 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ISO New England Inc.
Emera Maine

Docket No. ER16-1301-000

ORDER ACCEPTING TARIFF REVISIONS, SUBJECT TO CONDITION, AND
DIRECTING COMPLIANCE FILING

(Issued May 31, 2016)

1. On March 31, 2016, Emera Maine submitted, pursuant to section 205 of the Federal Power (FPA)¹ and section 35.13 of the Commission's Rules of Practice and Procedure,² a revision to Schedule 21-EM of the ISO New England Inc. Transmission, Markets and Services Tariff (ISO-NE Tariff) that would allow it to adjust load, revenue, and sales data to account for known and measurable anticipated changes.³ The Commission accepts this filing subject to condition, as discussed below. We further direct Emera Maine to submit a compliance filing within 45 days of the date of this order to provide for the application of a true-up to the adjusted values.

Emera Maine's Filing

2. According to Emera Maine, Schedule 21-EM of the ISO-NE Tariff contains a formula rate which provides for the calculation of the transmission revenue requirements for service over the Bangor Hydro District (BHD) Pool Transmission Facilities (PTF) and non-PTF assets. Each year, Emera Maine updates the charges to be collected under the Schedule 21-EM Formula Rate, based in part on inputs from Emera Maine's FERC

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. § 35.13 (2015).

³ Emera Maine Transmittal Letter at 4.

Form 1 for the immediately preceding calendar year.⁴ Emera Maine explains that Schedule 21-EM uses historical data for all inputs except transmission plant and ISO-NE regional network service (RNS) charges and revenues, which are based on current year forecasts and then trued-up to reflect actual values during the next annual update. The Schedule 21-EM Formula Rate provides for the calculation of the specific dollar-per-unit (\$/MWh) charges for service over the BHD non-PTF assets for both wholesale and retail customers.⁵

3. Emera Maine states that historical load values are used to determine the allocation of costs between Emera Maine's two transmission districts, BHD and Maine Public District (MPD),⁶ the allocation of the Schedule 21-EM revenue requirement between customer classes (e.g., between wholesale and retail customers), and the specific charges to be paid by wholesale point-to-point or retail customers.⁷ Emera Maine states that the use of historical load data has, for the most part, permitted Emera Maine to recover the full amount of its permitted expenses and regulated rate of return. Emera Maine adds that use of historical load data can and will result in Emera Maine under-recovering its revenue requirement if and when there is a significant loss of load on its system from year to year.⁸

4. Emera Maine states that unlike the adjustment mechanism for transmission plant, which ensures that Emera Maine recovers the full costs of transmission plant, there currently is no adjustment mechanism in the Schedule 21-EM Formula Rate to address when actual load falls short of historical load.⁹ If this occurs, Emera Maine states that it will fail to recover the full amount of its revenue requirement and transmission customers will end up paying rates that do not reflect their actual share of system use in the current year. Emera Maine states that, in late 2015, it experienced a significant decrease in its

⁴ Emera Maine Transmittal Letter at 2.

⁵ *Id.*

⁶ Open access to Emera Maine's transmission facilities in northern Maine, Maine Public District, is provided pursuant to the Emera Maine Open Access Transmission Tariff for Maine Public District (MPD). BHD and MPD are not directly interconnected. MPD is interconnected to the U.S. Transmission Grid over transmission facilities in New Brunswick, Canada.

⁷ Emera Maine Transmittal Letter at 2-3.

⁸ *Id.* at 3.

⁹ *Id.*

industrial load due to two customers, Expera Speciality Solutions, LLC (Expera) and Lincoln Paper and Tissue LLC (Lincoln), ceasing or curtailing operations. The combined peak load for Expera and Lincoln for the 2014-2015 rate year was 26 MW and the average peak monthly load was 19 MW. For the 2015-2016 rate year, Emera Maine forecasts that Expera and Lincoln will have an average peak monthly load of only 8.2 MW, and for the 2016-2017 rate year, Emera Maine forecasts that these parties will have an average peak monthly load of only 2.4 MW.¹⁰

5. Emera Maine states that, because the Schedule 21-EM Formula Rate currently requires it to calculate charges for the 2016-2017 rate year based on actual, unadjusted load data from 2015, the load data inputs will be significantly greater than actual loads for 2016-2017. Emera Maine believes it will under-recover its revenue requirement for 2016-2017 by approximately \$2.1 million. According to Emera Maine, this difference will result in per unit charges for retail customers that do not reflect their fair share of system costs during the year in which the rates are charged. Emera Maine believes this outcome is not just or reasonable, asserting that formula rates are designed to permit utilities a reasonable opportunity to collect their actual costs and a fair return and are generally designed to avoid the potential under or over collection that can result from stated rates.¹¹

6. Emera Maine proposes to revise the Schedule 21-EM Formula Rate to permit it to adjust historical load, revenue, and sales data used as inputs to the formula rate to reflect “known and measurable” anticipated changes.¹² Emera Maine states that the amended tariff language, if accepted, would not permit it to adjust load, revenue, and sales data based on speculative changes.¹³ According to Emera Maine, the proposed changes would only permit it to adjust the values based on circumstances, similar to that presented by Expera and Lincoln, where the impact of the events is truly known and measurable based on historical data and concrete demonstrated intervening events.¹⁴ Emera Maine

¹⁰ *Id.*

¹¹ *Id.* at 3-4.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.* at 4-5.

maintains that any adjustments would be fully documented in its annual charges update¹⁵ filed each year with the Commission and be subject to review and challenge by interested parties.¹⁶

7. Emera Maine contends that its request is similar to that of Idaho Power Company (Idaho Power).¹⁷ Idaho Power had forecasted a material loss of transmission load in the next rate year and sought Commission approval for a one-time adjustment to its load inputs, without changing the formula rate itself, to reflect the anticipated loss of load. The Commission denied the request, finding Idaho Power's request was "inconsistent with its Formula Rate," but stated that [i]f Idaho Power wishes to calculate its rate divisor based on something other than actual data from a previous year as reflected in FERC Form 1, it may file an FPA section 205 filing to change its Formula Rate."¹⁸

8. Emera Maine asserts that its present filing to change one input to its formula rate is consistent with the Commission's finding in *Idaho Power* in that it filed a section 205 petition to implement the change.¹⁹ Further, according to Emera Maine, concerns raised by the Commission in *Idaho Power* are not present in this matter. Specifically, Emera Maine asserts that the "Schedule 21-EM Formula Rate is not the product of a settlement, and thus, will not upset any comprehensive agreement reached with customers." Emera Maine notes that its current Schedule 21-EM Formula Rate was accepted by Commission without any protest. Moreover, Emera Maine maintains that its remaining customers would not be subject to a sudden increase in rates that customers of Idaho Power would have experienced.²⁰

9. Emera Maine notes that, because it had not filed its FERC Form 1 for 2015 at the time it submitted the instant filing, it is unable to provide complete cost of service

¹⁵ *Id.* at 5. See Attachment P, Section 1. Emera Maine's proposed language provides that reported year load, revenue and sales data may be adjusted as appropriate to reflect known and measurable anticipated changes for the subject rate year.

¹⁶ *Id.*

¹⁷ *Idaho Power Co.*, 153 FERC ¶ 61,212 (2015) (*Idaho Power*).

¹⁸ Emera Maine Transmittal Letter at 5-6.

¹⁹ *Id.* at 6.

²⁰ *Id.*

information.²¹ Instead, Emera Maine notes that Exhibit No. EM-5 and Mr. Chahley's²² workpapers provide *pro forma* forecast cost of service information based on "best estimates" of the 2015 data that will be used to calculate 2016-2017 charges, as adjusted for the anticipated loss of Expera and Lincoln loads.²³

10. Emera Maine requests that the Commission accept its filing without condition, suspension, or trial type hearing, effective as of June 1, 2016.

Notice of Filing, Interventions and Protests

11. Notice of Emera Maine's filing was published in the *Federal Register*, 81 Fed. Reg. 20,629 (2016) with interventions and protests due on or before April 21, 2016.

12. On April 14, 2016, the Maine Public Utilities Commission (Maine Commission) filed a Notice of Intervention and Protest. Eversource Energy Service Company, Maine Public Advocate, and jointly, Central Maine Power Company and the United Illuminating Company, each filed timely motions to intervene.

13. On April 27, 2016, Emera Maine submitted an Answer to the protest of the Maine Commission. On May 12, 2016, and May 13, 2016, the Maine Commission and Emera Maine, respectively, submitted additional answers.

Protest

14. The Maine Commission asserts that Emera Maine's proposed change is not just and reasonable and should be rejected. First, the Maine Commission states that allowing an adjustment for known and measurable changes is inconsistent with the theory that formula rates are input driven and resolved through an abbreviated process, with limited discovery and hearing procedures.²⁴ In support of its contention, the Maine Commission cites to several Commission decisions²⁵ stating that the Commission's acceptance of "formula rates is predicated upon their fixed, predictable nature. That necessarily requires that the various components of the formula be predictable and that periodic

²¹ *Id.* at 9.

²² Exhibit No. EM-1, Direct Testimony of Kris Chahley, Vice President Finance and Treasurer, at 13.

²³ *Id.*

²⁴ Maine Commission Notice at 3.

²⁵ *Id.* at 3.

adjustments to the specific numerical values assigned to the components be made in essentially a mechanical fashion.”²⁶ The Maine Commission contends that Emera Maine’s proposal for a known and measurable anticipated changes provision lacks specificity and thus would be subject to interpretation rather than mechanically implemented. Further, the Maine Commission points out that the abbreviated process available for formula rate protocols is ill-suited to resolving an issue of interpretation such as whether a change is known and measurable.²⁷

15. Second, the Maine Commission explains that the use of historical data in formula rates means that for any given year there may be both costs and savings that do not get recognized until the next year. While formula rates result in less regulatory lag than do stated rates, there may be some amount of regulatory lag in recognizing both costs and savings.²⁸ The Maine Commission believes allowing Emera to pick and choose the items to get known and measurable treatment creates the risk that items that benefit Emera Maine will get such treatment but savings which may benefit consumers will not. The Maine Commission also contends that Emera Maine’s proposal is one-sided in that it allows for projections of changes but does not allow for any true-ups to prevent over or under recovery.²⁹

16. Further, the Maine Commission states that since Emera Maine is only proposing to change one aspect of its formula rate, its filing constitutes a single-issue rate proposal, which the Commission has consistently not accepted.³⁰ The Maine Commission, noting Commission precedent, asserts that allowing single-issue rate adjustments would enable a utility to increase the total rate charged by focusing solely on a single cost element, while avoiding scrutiny of all other determinants of the rate. It is the Maine Commission’s

²⁶ *Id.*, (citing *Ocean State Power II et. al.*, 69 FERC ¶ 61,146, at 61,552 (1994)); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 146 (2008), (citing *Midwest Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,235, at P 68 (2004)).

²⁷ *Id.* at 3.

²⁸ *Id.* at 4.

²⁹ *Id.*

³⁰ *Id.* at 5.

opinion that Emera Maine has not demonstrated any compelling reason for the Commission to deviate from this policy.³¹

Answers

17. In its answer, Emera Maine states that it is willing to amend Schedule 21-EM in the event its originally proposed tariff language is accepted, to provide for an annual true-up to the extent that actual load, revenue, or sales data differs from any adjusted data included in Emera Maine's rate calculations.³²

Discussion

18. 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.

19. 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 April 27, 2016, answer submitted by Emera Maine because it has provided information that assisted us in our decision-making process. However, we will reject the subsequent answers submitted by Emera Maine and the Maine Commission.

20. As Emera Maine explains, it is facing an unusual and significant loss of load, representing approximately 4.7 percent of the BHD average system peak, and this loss of load could result in it under-recovering its revenue requirement by a substantial amount.³³ Based on the unique circumstances presented here, we find that Emera Maine's proposal to reflect a change in its Formula Rate because of the loss or reduction of load associated with two customers' changed operational usage ensures that Emera Maine will recover its full revenue requirement on a timely basis. We also find that, with the true-up mechanism Emera Maine agreed to implement in its answer and its proposal to fully document any adjustment in the annual charge update, Emera Maine's formula rate is

³¹ *Id.* (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 561, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

³² Emera Maine April 27 Answer at 3.

³³ Emera Maine Transmittal Letter at 4.

sufficiently transparent. For these reasons, we accept the filing subject to condition, as discussed below.³⁴ We direct Emera Maine to submit a compliance filing within 45 days to provide for the application of a true-up to any adjusted values.

21. As the Maine Commission notes, the Commission has previously held that “our acceptance of formula rates is predicated upon their fixed, predictable nature. That necessarily requires that the various components of the formula be predictable and that periodic adjustments to the specific numerical values assigned to the components be made in essentially a mechanical fashion.”³⁵

22. We disagree with the Maine Commission’s contention that Emera Maine’s proposal does not meet this standard. Although Emera Maine’s adjustments to historical load will result in a deviation from its FERC Form No. 1, Emera Maine has committed to fully document any adjustments in its annual formula rate update, ensuring transparency.³⁶ Additionally, Schedule 21-EM allows customers to question these adjustments, either through discussions with Emera Maine or by filing a complaint with the Commission.³⁷ Further, we are directing Emera Maine to submit a compliance filing within 45 days to establish a true-up mechanism, consistent with its commitment in its answer, which will correct rates should Emera Maine’s adjustments to load, revenue, and sales inputs differ from the actual values. The Commission has accepted proposed tariff revisions to a formula rate when at a subsequent time a customer or interested party will have an opportunity to review actual annual revenue requirements and have the opportunity to review the inputs to the formula rate and the annual true-up. In fact, Emera Maine’s formula rate already provides for two inputs, transmission plant and RNS charges and revenues, to be based on current year forecasts and true-up during the next annual update.³⁸

³⁴ The Commission can revise a proposal filed under section 205 of the Federal Power Act as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission’s conditions by withdrawing its filing.

We also note that Emera Maine’s formula rate is in hearing and settlement judge procedures. *See ISO New England Inc.*, 153 FERC ¶ 61,343 (2015). Our finding here does not pre-judge those procedures.

³⁵ *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,552 (1994).

³⁶ Emera Maine Transmittal Letter at 4-5.

³⁷ Schedule 21-EM, Attachment P, Section V.

³⁸ Emera Maine Transmittal Letter at 2.

23. Additionally, we disagree that Emera Maine's proposal favors its own interests over that of its customers. While Emera Maine anticipates a significant load reduction in 2016-2017, it is possible that load could increase significantly in the future. The tariff language proposed by Emera Maine does not differentiate between increases and decreases in load, or increases and decreases in revenue and sales data. Therefore, it is our understanding that Emera Maine will include an adjustment for any future "known and measurable" anticipated changes that will lower rates charged to customers, such as load increases.³⁹ Moreover, we note that prohibiting Emera Maine from recovering its revenue requirement could harm customers because Emera Maine may not have the necessary funds for operations.

24. The Maine Commission argues that the proposed revision should be rejected because it constitutes single-item ratemaking. We disagree. Emera Maine has proposed, pursuant to FPA section 205, to change its formula rate. Instead of an estimate based on historical data, Emera Maine contends that, at times, it is reasonable to adjust historical data in the face of a known and measurable anticipated change that renders such data imprecise. The issue before the Commission is whether Emera Maine's proposal is just and reasonable. We find that it is just and reasonable. The Maine Commission has not shown otherwise. It appears to argue that the use of historical data in some instances requires the use of historical data in all instances. Formula rates are intended to produce revenue requirements that, to the extent practicable, accurately reflect the cost of providing service. Therefore, it is reasonable to develop the best estimate possible.⁴⁰ We find that such treatment is appropriate in this instance, where Emera Maine is simply trying to reduce the impacts of regulatory lag.

³⁹ Proposed Schedule 21-EM, Attachment P, Section I, states, "Reported Year load, revenue, and sales data may be adjusted, as appropriate, to reflect known and measurable anticipated changes for the subject rate year."

⁴⁰ See, e.g., *International Transmission Co.*, 116 FERC ¶ 61,036, at P 19 (2006) (accepting a filing, pursuant to FPA section 205, changing a formula rate from a backward-looking to a forward-looking annual adjustment of estimated transmission costs) .

The Commission orders:

(A) Emera Maine's filing is hereby accepted subject to condition.

(B) Emera Maine is hereby directed to submit a compliance filing within 45 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Honorable is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.
Emera Maine

Docket No. ER16-1301-000

(Issued May 31, 2016)

HONORABLE, Commissioner, *dissenting*:

In today's order, the Commission granted Emera Maine's request that would allow it to adjust, for formula rate purposes, load, revenue, and sales data to account for "known and measurable" anticipated changes. This decision effectively allows Emera Maine to avoid one of the downsides of its formula rate – i.e., regulatory lag - while still receiving all of the benefits. In short, the Commission is allowing Emera Maine to have its cake and eat it too.

I agree with the Maine Commission's concerns that this proposal combines Emera Maine's estimates and historical data, which is at odds with the simplified ratemaking process that formula rates traditionally provide. This proposal also allows Emera Maine to make its own determinations on which adjustments to apply. To illustrate this point, consider two examples: one where load is decreasing and one where load is increasing. Emera Maine is currently proposing to adjust the load figure used in their formula because several industrial customers are either ceasing or significantly curtailing operations. The loss of an existing load can clearly be considered "known and measurable." Alternatively, in cases where load is expected to increase and a new industrial customer emerges, I would be concerned that this new industrial customer's lack of load history could be used to preclude a "known and measurable" adjustment, the type of adjustment that would benefit customers generally. These similar examples lead me to believe that Emera Maine's proposal is unbalanced.

The Commission's solution to Emera Maine's flawed request is to require a true-up mechanism. This mechanism does not absolve this unjust and unreasonable proposal nor does it benefit Emera Maine's customers. Indeed, there would be no true-up in cases when Emera Maine chooses not to apply an adjustment that would benefit consumers. The true-up mechanism also would not protect customers in times when load increased from year-to-year. Instead, the mechanism would only apply to the "known and measurable" adjustments themselves. Lastly, if a true-up mechanism is needed to fix errors to adjustments that are "known and measurable," I question whether those adjustments are indeed "known and measurable."

While I am sympathetic to Emera Maine's current situation – one that might have resulted in a \$2.1 million under-recovery of its revenue requirement for 2016-2017 absent

the Commission's action today – I do not believe the adjustment mechanism proposed by Emera Maine is just and reasonable. There are advantages and disadvantages to each rate structure and I would consider a proposal to calculate load using data other than actual data filed in FERC Form 1. Any departure, however, would need to be balanced to benefit both consumers and the utility when appropriate.

Accordingly, I respectfully dissent.

A handwritten signature in blue ink, reading "Colette D. Honorable". The signature is written in a cursive style with a horizontal line underneath the name.

Colette D. Honorable
Commissioner