

163 FERC ¶ 61,229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Emera Maine
Central Maine Power Company
Maine Electric Power Company
New Hampshire Transmission, LLC
New England Power Company
The Connecticut Light and Power Company
NSTAR Electric Company
Public Service Company of New Hampshire
The United Illuminating Company
Unitil Energy Systems, Inc.
Fitchburg Gas and Electric Light Company
Vermont Transco, LLC

Docket No. ER18-1722-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 28, 2018)

1. On May 31, 2018, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ certain Participating Transmission Owners² (Identified PTOs) submitted a limited, one-time request for waiver (Waiver Request) of certain provisions

¹ 18 C.F.R. § 385.207(a)(5) (2017).

² Identified PTOs include the following: Emera Maine f/k/a Bangor Hydro Electric Company; Central Maine Power Company; Maine Electric Power Company; New Hampshire Transmission, LLC; New England Power Company d/b/a National Grid; The Connecticut Light and Power Company; NSTAR Electric Company; Public Service Company of New Hampshire; The United Illuminating Company; Unitil Energy Systems, Inc.; Fitchburg Gas and Electric Light Company; and Vermont Transco, LLC. Identified PTOs assert that other PTOs in New England include publicly-owned transmission owners that are not subject to the federal corporate income tax rate and therefore the instant waiver request is not needed for those entities.

of Attachment F of Section II of the ISO New England Inc. Transmission, Markets and Services Tariff (ISO-NE Tariff).³ The Identified PTOs seek to waive these provisions to ensure that they may reflect the recent reduction in the federal corporate income tax rate in the 2018 projected transmission revenue requirement for the Regional Network Service (RNS) rate effective on June 1, 2018.⁴ For the reasons discussed below, we grant the Waiver Request.

I. Background

2. Identified PTOs state that they use formula rates with defined inputs to calculate their transmission rates for service under the ISO-NE Tariff. Attachment F of the ISO-NE Tariff provides the calculations of the transmission revenue requirement that are the basis for the rates for transmission service provided by ISO-NE over the Pool Transmission Facilities owned by all PTOs.⁵

3. Identified PTOs state that, each year on or before July 31, the PTOs collectively submit to the Commission an informational filing that details the updated Attachment F revenue requirements and the resulting derivation of the RNS rate that will be in effect from June 1 of that year through May 31 of the following year.⁶

4. Identified PTOs explain that Attachment F's use of historical cost inputs from the prior year causes the resulting transmission revenue requirement to reflect the federal corporate income tax rate in effect during the prior year.⁷ Identified PTOs explain that, therefore, for RNS rates effective June 1, 2018, the 2018 projected transmission revenue

³ ISO-NE, Transmission, Markets and Services Tariff, Section II, Attachment F (18.0.0).

⁴ Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act). Section 13001 of the Tax Cuts and Jobs Act reduces the federal corporate income tax rate from a maximum of 35 percent to a flat 21 percent rate.

⁵ Waiver Request at 2.

⁶ *Id.* The PTOs recover their transmission costs not recovered under Attachment F through formulae in individual schedules to the ISO-NE Tariff addressing local transmission service (collectively, these are contained in Schedule 21). Certain Identified PTOs have also filed waiver requests in separate dockets to apply the reduced federal corporate income tax to their local transmission service rates.

⁷ *Id.* at 3.

requirements would use the 35 percent federal corporate income tax rate that was in effect prior to the January 1, 2018 effective date of the Tax Cuts and Jobs Act.

5. Identified PTOs contend that, absent waiver of the requested tariff provisions, the reduction in the federal corporate income tax rate to 21 percent would not be reflected in the RNS rates until the calculation of the 2018 true-up in June 2019.

II. Waiver Request

6. Identified PTOs seek a limited, one-time waiver of the requirements in Attachment F related to the federal corporate income tax rate so that they may reflect the reduced 21 percent federal corporate income tax rate in the RNS rate effective June 1, 2018.⁸ Identified PTOs state that the Commission has granted waiver of tariff provisions if the applicant acted in good faith and the waiver is of limited scope, addresses a concrete problem, and does not have undesirable consequences, such as harming third parties.⁹

7. First, Identified PTOs contend that they have acted in good faith because they seek to ensure that the reduced federal corporate income tax rate is reflected in the 2018 projected RNS rate component beginning June 1, 2018.

8. Second, Identified PTOs assert that the waiver is limited in scope because its sole purpose is to ensure that Identified PTOs can reflect the reduced federal corporate income tax rate in the 2018 projected RNS revenue requirement beginning June 1, 2018.¹⁰

9. Third, Identified PTOs state that the requested waiver will address and remedy a concrete problem by reflecting the reduced federal corporate income tax rate in the 2018 projected RNS revenue requirement in an expedited manner, while still complying with the requirements of Attachment F.

10. Fourth, Identified PTOs state that the Waiver Request will not have undesirable consequences and will not harm third parties because granting the Waiver Request will allow the Identified PTOs to more swiftly reflect the lower federal corporate income tax rate in the 2018 projected RNS revenue requirement. The Identified PTOs contend that a

⁸ Waiver Request at 4. Identified PTOs state that the Waiver Request would only be needed for the June 1, 2018 RNS rate because the operation of the Attachment F formula would reflect the updated federal corporate income tax rate in future years, without any need for a formal revision to the rates or further waivers. *Id.*

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

failure to grant the Waiver Request would delay implementation of the reduced tax rate until the 2018 revenue requirement is trued-up in June 2019.

III. Notice and Responsive Pleadings

11. Notice of Identified PTOs' May 31, 2018 filing was published in the *Federal Register*, 83 Fed. Reg. 26,455 (2018), with interventions and protests due on or before June 7, 2018. Maine Public Utilities Commission filed a notice of intervention. Massachusetts Attorney General Maura Healey and New England States Committee on Electricity filed timely motions to intervene. New England Power Pool Participants Committee (NEPOOL) filed a timely motion to intervene and protest.

12. On June 18, 2018, the Identified PTOs filed an answer to NEPOOL's protest.

13. While NEPOOL does not oppose the Waiver Request because the waiver will help to ensure that revenue requirements better reflect Identified PTOs' costs, NEPOOL does raise objections to the process that the Identified PTOs followed in seeking the waiver.¹¹ NEPOOL does not take a substantive position on the Waiver Request because Identified PTOs did not provide any notice to NEPOOL of their proposal before filing the Waiver Request. NEPOOL notes that the Transmission Operating Agreement (TOA), which governs the relationship between NEPOOL and the PTOs, requires written notice and a formal review and vote process at NEPOOL when the PTOs collectively file to change the regional revenue requirements. NEPOOL acknowledges, however, that the Waiver Request could be viewed as individual requests by each of the PTOs filed collectively, thereby avoiding the aforementioned TOA requirements.¹² Regardless, NEPOOL argues that all parties, including Identified PTOs, benefit from Identified PTOs' continued engagement of NEPOOL and stakeholders, even when it might not strictly be required by the TOA. Therefore, NEPOOL requests that the Commission encourage the PTOs to engage in the NEPOOL stakeholder process prior to filing proposed changes to the ISO-NE Tariff or its implementation in the future.

IV. Discussion

A. Procedural Matters

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

¹¹ NEPOOL June 7 Protest at 2.

¹² *Id.* at 3.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Identified PTOs' answer and will, therefore, reject it.

B. Substantive Matters

16. We grant the Waiver Request to ensure that Identified PTOs may reflect the recent reduction in the federal corporate income tax rate in the 2018 projected transmission revenue requirement for the RNS rate effective on June 1, 2018. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹³ We find that the Waiver Request satisfies these waiver criteria.

17. First, we find that Identified PTOs acted in good faith because, by submitting the Waiver Request, they ensure that their RNS customers will receive the benefit of the reduction in the federal corporate income tax rate implemented by the Tax Cuts and Jobs Act beginning June 1, 2018.

18. Second, we find that the Waiver Request is of limited scope and will not impact other provisions of the ISO-NE Tariff because its sole purpose is to ensure that Identified PTOs can reflect the reduction in the federal corporate income tax rate from the Tax Cuts and Jobs Act in the 2018 projected RNS revenue requirement beginning June 1, 2018.

19. Third, we find that the Waiver Request addresses a concrete problem by ensuring that Identified PTOs may reflect the reduced federal corporate income tax rate in the 2018 projected RNS revenue requirement in a timely manner, while complying with the requirements of Attachment F.

20. Fourth, we find that the Waiver Request will not have undesirable consequences such as harming third parties; instead it will ensure that Identified PTOs may lower rates to their customers more quickly. We also note that no party has opposed the request. For these reasons, we grant the Waiver Request.

¹³ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 14 (2016); *Calpine Energy Servs., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *New York Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015).

21. Regarding NEPOOL's protest, we encourage all market participants, including Identified PTOs, to follow the standard practices of the NEPOOL stakeholder process.

The Commission orders:

Identified PTOs' request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.