

163 FERC ¶ 61,228
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.

Central Maine Power Company

Docket No. ER18-1719-000

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 Central Maine Power Company (CMP) submitted a request for waiver (Waiver Request) of applicable provisions of Schedule 21-CMP to the ISO New England Inc. Open Access Transmission Tariff (ISO-NE Tariff) by which CMP calculates and trues-up its Annual Transmission Revenue Requirement (ATRR) for local transmission service.² CMP seeks waiver of these provisions of Schedule 21-CMP to ensure that CMP is able to properly incorporate the federal corporate income tax rate reduction from 35 percent to 21 percent in CMP's June 1, 2018 informational filing update.³ For the reasons discussed below, we grant the Waiver Request.

I. Background

2. CMP is a Participating Transmission Owner (PTO) in ISO-NE and owns facilities used in the provision of transmission and interconnection services under the ISO-NE Tariff.⁴

¹ 18 C.F.R. § 385.207(a)(5) (2017).

² ISO-NE, Transmission, Markets and Services Tariff, Section II, Schedule 21 Local Service, Schedule 21-CMP (6.0.0), Attachments G-R, G-W, and K.

³ See 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.

⁴ Waiver Request at 2. A group of PTOs, including CMP, have also requested a waiver of applicable tariff provisions to reflect the reduction in the federal corporate income tax rate in the Regional Network Service formula rate charged to customers

3. CMP calculates (and trues-up) the ATRR for local transmission service, which is furnished over its Non-Pool Transmission Facilities, pursuant to the terms and conditions of Schedule 21-CMP's Attachments G-R, G-W, and K.⁵

4. By June 30 of each year, CMP must submit to the Commission an informational filing which identifies: (a) the data used to update any formula rates that year, with specific references to CMP's FERC Form 1 when applicable; (b) the calculations performed using that data; (c) the results of such calculations; and (d) the basis for any adjustment to the Control Center Services Charge described in Schedule No. 1.⁶ The rates included in the informational filing become effective as of June 1 of a given year.

5. CMP asserts that the June 1, 2018 informational filing update will include 2017 FERC Form 1 data, which reflect federal income taxes using the 35 percent corporate income tax rate in effect during 2017.⁷ CMP believes that the Waiver Request is necessary to allow CMP to apply the new federal corporate income tax rate to its ATRR beginning June 1, 2018.⁸ CMP asserts that, absent the Commission's approval of this Waiver Request, customers will not realize a benefit from the Tax Cuts and Jobs Act in CMP's local transmission service rates until June 1, 2019.

II. Waiver Request

6. CMP requests a waiver of the relevant provisions of Attachments G-R, G-W, and K of Schedule 21-CMP of the ISO-NE Tariff to apply the 21 percent federal corporate income tax rate to the ATRR for local transmission service so that the reduced tax rate is

pursuant to Attachment F to the ISO-NE Tariff. *See* Participating Transmission Owners, Petition for Waiver, Docket No. ER18-1722-000, at 1 (filed May 31, 2018).

⁵ Waiver Request at 2. Specifically, CMP's local transmission service ATRR is divided into two separate annual revenue requirements: (i) an ATRR calculated pursuant to Attachment G-R, which sets forth the formula for rates to retail customers taking unbundled transmission service over CMP's Non-Pool Transmission Facilities; and (ii) an ATRR calculated pursuant to Attachment G-W, which sets forth the formula rate for wholesale customers taking transmission service over CMP's Non-Pool Transmission Facilities. *Id.* at 3.

⁶ ISO-NE, Transmission, Markets and Services Tariff, Section II, Schedule 21 Local Service, Schedule 21-CMP, § 10.2 (6.0.0).

⁷ Waiver Request at 3.

⁸ *Id.* at 4.

appropriately reflected in CMP's local transmission service rates on and after June 1, 2018. CMP states 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.

7. First, CMP contends that it has acted in good faith because it seeks to pass through savings realized from the reduced federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act to Schedule 21-CMP customers effective June 1, 2018. CMP adds that it has worked diligently to ascertain all of the resulting impacts relevant to the calculation of CMP's transmission rates, and thus submitted the Waiver Request in advance of the June 1, 2018 update to the ATRR, to address those impacts.⁹

8. Second, CMP asserts that the Waiver Request is limited in scope because its sole purpose is to apply the new 21 percent federal corporate income tax rate in the calculation of its ATRR for local transmission service pursuant to Schedule 21-CMP. CMP further contends that the Waiver Request will not have any other effect on, or otherwise implicate, the transmission rates charged under Schedule 21-CMP beyond what it specifically requested in its Waiver Request.

9. Third, CMP states that the Waiver Request will address and remedy a concrete problem by authorizing CMP to apply the 21 percent federal corporate income tax to Schedule 21-CMP's transmission rates commencing June 1, 2018. CMP contends that the requested waiver would provide immediate rate relief for CMP's Schedule 21-CMP customers and would also alleviate regulatory uncertainty with respect to CMP's Schedule 21-CMP rates and the Tax Cuts and Jobs Act's effect thereon.

10. Fourth, CMP states that the Commission's acceptance of this waiver would not: (1) lead to undesirable consequences; (2) harm customers; nor (3) harm the interests of third parties, because it will only provide CMP with the necessary authority to reflect the reduced federal corporate income tax rate in Schedule 21-CMP. CMP adds that a failure to grant the Waiver Request would cause an incongruity between the federal corporate income tax rate and the transmission rates calculated and charged under Schedule 21-CMP and unjustifiably withhold significant savings from customers during that period.¹⁰

III. Notice and Responsive Pleadings

11. Notice of CMP's 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,

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

2018. Maine Public Utilities Commission (Maine Commission) filed a notice of intervention.

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, the notice of intervention serves to make Maine Commission a party to this proceeding.

B. Substantive Matters

13. We grant the Waiver Request to ensure that CMP may reflect the 21 percent federal corporate income tax rate into the projected 2018 ATRR. 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.¹¹ We find that the Waiver Request satisfies these waiver criteria.

14. First, we find that CMP acted in good faith because, by submitting the Waiver Request, CMP ensures that its local transmission service customers will receive the benefit of the reduction in the federal corporate income tax implemented by the Tax Cuts and Jobs Act effective June 1, 2018.

15. 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 CMP may reflect the new 21 percent federal corporate income tax rate implemented by the Tax Cuts and Jobs Act in its local transmission service rates calculated pursuant to Schedule 21-CMP.

16. Third, we find that the Waiver Request addresses a concrete problem by ensuring that CMP may apply the 21 percent federal corporate income tax rate to CMP's local transmission service rates commencing June 1, 2018. Thus, it ensures that CMP's local transmission service customers obtain relief from the reduced federal corporate income tax rate in a timely manner.

17. Fourth, we find that the Waiver Request will not have undesirable consequences, such as harming third parties; instead it will ensure that CMP may lower rates to its

¹¹ 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).

customers more quickly. We also note that no party has opposed the request. For these reasons, we grant the Waiver Request.

The Commission orders:

CMP's 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.