

163 FERC ¶ 61,227  
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.

The United Illuminating Company

Docket No. ER18-1718-000

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,<sup>1</sup> The United Illuminating Company (UI) submitted a request for waiver (Waiver Request) of applicable provisions of Schedule 21-UI to the ISO New England Inc. Open Access Transmission Tariff (ISO-NE Tariff) by which UI calculates and trues-up its Annual Transmission Revenue Requirement (ATRR) for local transmission service.<sup>2</sup> UI seeks waiver of these provisions of Schedule 21-UI to ensure that UI is able to properly incorporate the federal corporate income tax rate reduction from 35 percent to 21 percent in UI's July 1, 2018, Mid-Year Rate Calculations.<sup>3</sup> For the reasons discussed below, we grant the Waiver Request.

**I. Background**

2. UI 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.<sup>4</sup>

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2017).

<sup>2</sup> ISO-NE, Transmission, Markets and Services Tariff, Section II, Schedule 21 Local Service, Schedule 21-UI (7.0.0), Attachments D, DE, and F.

<sup>3</sup> 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.

<sup>4</sup> Waiver Request at 2. A group of PTOs, including UI, 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. UI 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-UI's Attachments D, DE, and F.<sup>5</sup> This calculation is done as part of the Mid-Year Rate Calculation.<sup>6</sup> The rates calculated pursuant to the Mid-Year Rate Calculation become effective on July 1 of a given year.<sup>7</sup>

4. UI asserts that the July 1, 2018, Mid-Year Rate Calculation will include 2017 FERC Form 1 data.<sup>8</sup> UI states that its 2017 FERC Form 1 financials reflect federal income taxes at the 35 percent federal corporate income tax rate.<sup>9</sup> UI explains that, as a result of the passage of the Tax Cuts and Jobs Act, UI's federal corporate income tax rate was reduced from 35 percent to 21 percent, effective January 1, 2018.

5. UI believes that the Waiver Request is necessary to allow it to apply the new federal corporate income tax rate to its ATRR, as calculated in the Mid-Year Rate Calculation, beginning July 1, 2018. UI asserts that, absent the Commission's approval of this Waiver Request, customers will not realize a benefit from the Tax Cuts and Jobs Act until July 1, 2019.

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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).

<sup>5</sup> Waiver Request at 3.

<sup>6</sup> ISO-NE, Transmission, Markets and Services Tariff, Section II, Schedule 21 Local Service, Schedule 21-UI (7.0.0), Definitions, § 12.

<sup>7</sup> *Id.*

<sup>8</sup> UI asserts that, in accordance with Attachment F of Schedule 21-UI, UI's Estimated Annual Primary Transmission Revenue Requirement (EAPTRR) consists of an historic component and a forecasted component. UI states that the EAPTRR is a projection of the revenue requirement associated with UI's estimated transmission plant additions to be placed in service in the current year, which is developed by multiplying the estimated transmission plant by a revenue requirement ratio that approximates representative level of costs and return associated with the estimated transmission facilities.

<sup>9</sup> Waiver Request at 5.

## II. Waiver Request

6. UI requests a waiver of the relevant provisions of Attachments D, DE, and F of Schedule 21-UI of the ISO-NE Tariff to apply the 21 percent federal corporate income tax rate to the Mid-Year Rate Calculations so that the reduced tax rate may be reflected in rates for UI's local transmission service and rates charged to customers taking transmission service from localized facilities on or after July 1, 2018. UI 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, UI contends that it has acted in good faith because it seeks to pass through savings realized from the reduction in federal corporate income tax resulting from the Tax Cuts and Jobs Act to Schedule 21-UI customers effective July 1, 2018.<sup>10</sup> UI adds that it has worked diligently to ascertain all of the resulting impacts relevant to the calculation of UI's transmission rates and thus submits the Waiver Request in advance of the July 1, 2018 Mid-Year Rate Calculation to address those impacts.<sup>11</sup>

8. Second, UI asserts that the Waiver Request is limited in scope because its sole purpose is to reflect the 21 percent federal corporate income tax rate in the Schedule 21-UI Mid-Year Rate Calculation. UI further contends that the Waiver Request will not have any other effect on, or otherwise implicate, the transmission rates charged under Schedule 21-UI beyond what it specifically requested in the Waiver Request.

9. Third, UI states that the Waiver Request will address and remedy a concrete problem by authorizing UI to apply the 21 percent federal corporate income tax rate to Schedule 21-UI's transmission rates commencing July 1, 2018, thereby providing rate relief in a more timely manner than would otherwise occur. UI contends that the requested waiver would also (1) alleviate regulatory uncertainty with respect to UI's Schedule 21-UI rates and the Tax Cuts and Jobs Act's effect on those rates; and (2) align UI's Schedule 21-UI rates with those charged pursuant to Attachment F to the ISO-NE Tariff.<sup>12</sup>

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<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 6.

<sup>12</sup> UI notes the PTO's waiver request filed in Docket No. ER18-1722-000 relates to the Regional Network Service formula rate charged to customers pursuant to Attachment F to the ISO-NE Tariff. *See supra* note 4.

10. Fourth, UI states that FERC'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 UI with the necessary authority to reflect the reduced federal corporate income tax rate in Schedule 21-UI.<sup>13</sup> UI 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-UI and unjustifiably withhold significant savings from customers during that period.

### **III. Notice and Responsive Pleadings**

11. Notice of UI'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, 2018. None was filed.

### **IV. Commission Determination**

12. We grant the Waiver Request to ensure that UI 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.<sup>14</sup> We find that the Waiver Request satisfies these waiver criteria.

13. First, we find that UI acted in good faith because, by submitting the Waiver Request, UI ensures that its Schedule 21-UI customers will receive the benefit of the reduction in federal corporate income tax implemented by the Tax Cuts and Jobs Act effective July 1, 2018.

14. 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 UI 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-UI.

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

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<sup>13</sup> Waiver Request at 7.

<sup>14</sup> 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).

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

The Commission orders:

UI'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.