

162 FERC ¶ 61,224
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.

Alcoa Power Generating Inc.—Long Sault Division	Docket Nos.	EL18-72-000
Alcoa Power Generating Inc.—Tapoco Division		EL18-73-000
Avista Corporation		EL18-75-000
Black Hills/Colorado Electric Utility Company, L.P.		EL18-76-000
Central Hudson Gas & Electric Corporation		EL18-77-000
Cheyenne Light, Fuel and Power Company		EL18-79-000
Consolidated Edison Company of New York, Inc.		EL18-89-000
Cube Yadkin Transmission LLC		EL18-90-000
DATC Path 15, LLC		EL18-91-000
Deseret Generation and Transmission Co-operative, Inc.		EL18-93-000
El Paso Electric Company		EL18-95-000
Electric Energy, Inc.		EL18-96-000
Essential Power Rock Springs, LLC		EL18-97-000
Florida Power & Light Company		EL18-98-000
Monongahela Power Company		EL18-101-000
Potomac Edison Company		
West Penn Power Company		
Nevada Power Company		EL18-102-000
Sierra Pacific Power Company		
New York State Electric & Gas Corporation		EL18-103-000
NorthWestern Corporation		EL18-104-000
Ohio Valley Electric Corporation		EL18-105-000
Orange & Rockland Utilities, Inc.		EL18-107-000
Pacific Gas and Electric Company		EL18-108-000
Portland General Electric Company		EL18-109-000
Rochester Gas and Electric Corporation		EL18-110-000
Rockland Electric Company		EL18-111-000
Sky River LLC		EL18-112-000
Smoky Mountain Transmission LLC		EL18-113-000
Startrans, IO, LLC		EL18-115-000
The Dayton Power & Light Company		EL18-117-000
Trans Bay Cable LLC		EL18-118-000
Tucson Electric Power Company		EL18-119-000
		(not consolidated)

ORDER TO SHOW CAUSE

(Issued March 15, 2018)

1. In this order, pursuant to section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission's Rules of Practice and Procedure,² we direct each of the above-captioned public utilities (collectively, Respondents) either (1) to propose revisions to its stated transmission rates under its open access transmission tariff or transmission owner tariff on file with the Commission to reflect the recent change in the federal corporate income tax rate and describe the methodology used for making those revisions, or (2) to show cause why it should not be required to do so.

I. Background

2. On December 22, 2017, the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act)³ was signed into law. The Tax Cuts and Jobs Act, among other things, lowered the federal corporate income tax rate from a maximum 35 percent to a flat 21 percent rate, effective January 1, 2018. This means that, beginning January 1, 2018, companies, including those subject to the Commission's jurisdiction, will compute income taxes owed to the Internal Revenue Service based on a 21 percent tax rate. This tax rate reduction will result in lower income tax expense going forward and a reduction in accumulated deferred income taxes on the books of rate-regulated companies.⁴

3. The recovery of federal corporate income taxes is reflected in transmission rates. When tax expense decreases, so does the cost of service. The Commission must ensure that the rates, terms, and conditions of jurisdictional services under the FPA are just, reasonable, and not unduly discriminatory or preferential.⁵ It has been the Commission's policy to allow transmission rates to be established through, among other things, stated rates, in which a rate case is filed at the Commission to establish a cost of service revenue requirement, to allocate costs to various customer groups, and to calculate rates. The

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.209(a) (2017).

³ Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

⁴ A Notice of Inquiry seeking comment on the effect of the Tax Cuts and Jobs Act on Commission-jurisdictional rates is being issued in Docket No. RM18-12-000 concurrently with this order.

⁵ 16 U.S.C. §§ 824d-e (2012).

federal corporate income tax rate is a component of the stated transmission rate, which is fixed. Absent a change to the stated rate, the current 21 percent federal corporate income tax rate would, to the detriment of customers, not be reflected in a transmission revenue requirement.

II. Discussion

4. Given the reduction in the federal corporate income tax rate, we have undertaken a review of Commission-jurisdictional stated transmission rates under open access transmission tariffs or transmission owner tariffs, and we have identified Respondents as having such arrangements in effect. Because the federal corporate income tax rate has been reduced to 21 percent, absent a change to the stated rates, Respondents' stated rates may not accurately reflect their cost of service. Accordingly, we find that Respondents' stated rates on file with the Commission appear to be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Within 60 days of the date of this order, each Respondent is directed either (1) to propose revisions to its stated transmission rates to reflect the change in the federal corporate income tax rate and describe the methodology used for making those revisions,⁶ or (2) to show cause why it should not be required to do so.⁷

5. In cases where, as here, the Commission institutes a proceeding on its own motion under FPA section 206, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date.⁸ Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest

⁶ The Commission generally does not permit single-issue ratemaking. However, given the limited scope of the revisions needed to reflect the change in the federal corporate income tax rate, the Commission will consider proposals to review Respondents' proposed revisions on a single-issue basis. *See generally Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at PP 13-14 (2017). *See also Rates Changes Relating to the Federal Corporate Income Tax Rate for Public Utilities*, Order No. 475, FERC Stats. & Regs. ¶ 30,752, *order on reh'g*, 41 FERC ¶ 61,029 (1987) (allowing public utilities to use a voluntary, abbreviated rate filing procedure to reduce their rates to reflect a reduction in the federal corporate income tax rate on a single-issue basis).

⁷ For example, Respondents may explain how the reduced tax rate is being addressed in another proceeding pending before the Commission.

⁸ 16 U.S.C. § 824e(b) (2012).

date possible, i.e., the date of publication by the Commission of its notice of intention to initiate the above-captioned proceedings in the *Federal Register*.⁹

6. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reasons why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision.¹⁰ Assuming that Respondents file revisions to their stated transmission rates,¹¹ we estimate that we would be able to issue our decision within approximately three months of the filing of the tariff revisions.

7. Any entity desiring to participate in the proceeding for a particular Respondent must file a notice of intervention or a motion to intervene, as appropriate, in the docket number identified in the caption of this order in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding.

The Commission orders:

(A) Pursuant to section 206 of the Federal Power Act, within 60 days of the date of this order, each Respondent must either (1) submit proposed revisions to its stated transmission rates or stated transmission revenue requirements to reflect the change in the federal corporate income tax rate and describe the methodology used for making those revisions, or (2) show cause why it should not be required to do so, as discussed in the body of this order.

⁹ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989). We, however, note that FPA section 206 confers the Commission with discretion and does not require that the Commission order refunds in every instance. *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at P 154 (2009).

¹⁰ 16 U.S.C. § 824e(b) (2012).

¹¹ When making an eTariff filing, Respondents should use Type of Filing Code 1450, which is a new type of filing code established for responses to this proceeding. See FERC, *Type of Filing Rules Table* (2018), <http://www.ferc.gov/docs-filing/etariff.asp>. Additionally, Respondents' filings will receive new root docket numbers. See *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 12 (2010). In the event that a Respondent chooses to show cause why it should not be required to make such an eTariff filing, such response should be submitted in the applicable docket number, listed above.

(B) Any entity desiring to participate in the proceeding for a particular Respondent must file a notice of intervention or a motion to intervene, as appropriate, in the docket number identified in the caption of this order in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), within 21 days of publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding.

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the section 206 proceedings in Docket Nos. EL18-72-000, EL18-73-000, EL18-75-000, EL18-76-000, EL18-77-000, EL18-79-000, EL18-89-000, EL18-90-000, EL18-91-000, EL18-93-000, EL18-95-000, EL18-96-000, EL18-97-000, EL18-98-000, EL18-101-000, EL18-102-000, EL18-103-000, EL18-104-000, EL18-105-000, EL18-107-000, EL18-108-000, EL18-109-000, EL18-110-000, EL18-111-000, EL18-112-000, EL18-113-000, EL18-115-000, EL18-117-000, EL18-118-000, and EL18-119-000.

(D) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.