

162 FERC ¶ 61,225
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

AEP Appalachian Transmission Company, Inc.	Docket Nos. EL18-62-000
AEP Indiana Michigan Transmission Company, Inc.	
AEP Kentucky Transmission Company, Inc.	
AEP Ohio Transmission Company, Inc.	
AEP West Virginia Transmission Company, Inc.	
AEP Oklahoma Transmission Company, Inc.	EL18-63-000
AEP Southwestern Transmission Company, Inc.	
Baltimore Gas and Electric Company	EL18-64-000
Black Hills Power, Inc.	EL18-65-000
Citizens Sunrise Transmission LLC	EL18-66-000
San Diego Gas & Electric Company	EL18-67-000
Transource Maryland, LLC	EL18-68-000
Transource Pennsylvania, LLC	EL18-69-000
Transource West Virginia, LLC	EL18-70-000
UNS Electric, Inc.	EL18-71-000 (not consolidated)

ORDER TO SHOW CAUSE

(Issued March 13, 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 transmission formula rates under its open access transmission tariff or transmission owner tariff to reflect the recent change in the federal corporate income tax rate, or (2) to show cause why it should not be required to do so.

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.209(a) (2017).

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, formulas. Regarding formula rates, the Commission has stated that "the formula itself is the rate, not the particular components of the formula."⁶ Thus, periodic adjustments, which are typically performed on an annual basis, "made in accordance with the Commission-approved formula do not constitute changes to the rate itself and accordingly do not require section 205 [of the FPA]⁷ filings."⁸

4. Formula rates include the federal income tax rate as either a fixed line item or an input that is adjusted annually. For formula rates with inputs that are adjusted annually, the current 21 percent federal corporate income tax rate will be reflected in a transmission revenue requirement without requiring a revision to the formula rate. However, for those formula rates where the federal corporate income tax rate is a fixed line item, absent a

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).

⁶ *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,544 (1994) (*Ocean State Power*).

⁷ 16 U.S.C. § 824d (2012).

⁸ *Ocean State Power*, 69 FERC ¶ 61,146 at 61,545 (citing 16 U.S.C. § 824d (2012)); *see also Ala. Power Co. v. FERC*, 993 F.2d 1557, 1567-68 (D.C. Cir. 1993)).

revision to the formula 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

5. Given the reduction in the federal corporate income tax rate, we have undertaken a review of Commission-jurisdictional formula rates under open access transmission tariffs or transmission owner tariffs, to identify those entities that currently appear to have a fixed line item in their formula rates for the federal corporate income tax rate, and we have identified Respondents as having such arrangements in effect. Specifically, Respondents' formula rates appear to include a fixed line item of 35 percent for the federal corporate income tax rate, which was the effective tax rate at the time the formula rates were accepted by the Commission.⁹ Because the federal corporate income tax rate has been reduced to 21 percent, absent a change to the formula rates, Respondents' formula rates will not accurately reflect their cost of service. Accordingly, we find that Respondents' formula 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 transmission formula rates to reflect the change in the federal corporate income tax rate,¹⁰ or (2) to show cause why it should not be required to do so.¹¹

6. 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

⁹ We recognize that some of the Respondents' formula rates include language stating that the Respondents will apply the currently effective federal corporate income tax rate. However, notwithstanding this language, the Respondents' formula rates appear to include a fixed line item of 35 percent for the federal corporate income tax rate.

¹⁰ 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).

¹¹ For example, Respondents may explain how the reduced tax rate is being addressed in another proceeding pending before the Commission.

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.¹² Consistent with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest 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*.¹³

7. 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.¹⁴ Assuming that Respondents file revisions to their transmission formula rates,¹⁵ we estimate that we would be able to issue our decision within approximately three months of the filing of the tariff revisions.

8. 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.

¹² 16 U.S.C. § 824e(b) (2012).

¹³ *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).

¹⁴ 16 U.S.C. § 824e(b) (2012).

¹⁵ 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.

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 transmission formula rates to reflect the change in the federal corporate income tax rate, or (2) show cause why it should not be required to do so, as discussed in the body of this order.

(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. EL18-62-000, EL18-63-000, EL18-64-000, EL18-65-000, EL18-66-000, EL18-67-000, EL18-68-000, EL18-69-000, EL18-70-000, and EL18-71-000.

(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. Chairman McIntyre is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

EL18-62-000.DOCX.....1-5