

167 FERC ¶ 61,216  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Vermont Transco LLC

Docket No. ER19-1832-000

ORDER GRANTING REQUEST FOR WAIVER

(Issued June 12, 2019)

1. On May 13, 2019, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> Vermont Transco LLC (VTransco) submitted a limited, one-time request for waiver (Waiver Request) of certain provisions of Attachment F of Section II of the ISO New England Inc. Transmission, Markets and Services Tariff (ISO-NE Tariff).<sup>2</sup> VTransco seeks a waiver to ensure that it may reflect the reduction in the federal corporate income tax rate in its 2019 and 2020 projected transmission revenue requirement for the Regional Network Service (RNS) rate effective June 1, 2019.<sup>3</sup> For the reasons discussed below, we grant the Waiver Request.

**I. Background**

2. VTransco states that it is a Participating Transmission Owner (PTO) in New England and provides service under applicable tariffs to Vermont's electric distribution utilities, two small distribution utility loads in New Hampshire, and loads throughout New England through the ISO-NE Tariff.<sup>4</sup> VTransco explains that it uses a formula rate with defined inputs to calculate its transmission rates for service under the

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2018).

<sup>2</sup> ISO-NE, Transmission, Markets and Services Tariff, Section II, Attachment F (18.0.0).

<sup>3</sup> 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> VTransco Transmittal at 2.

ISO-NE Tariff. VTransco notes that Attachment F of the ISO-NE Tariff provides the calculations for the transmission revenue requirement that forms the basis for the rates for transmission service provided by ISO-NE over all PTOs' Pool Transmission Facilities.<sup>5</sup> VTransco adds that Attachment F uses the prior year's historical cost inputs to develop a projected revenue requirement.<sup>6</sup>

3. VTransco states that every year, on or before July 31, PTOs collectively submit to the Commission an informational filing that details the updated Attachment F revenue requirements and the resulting derivation of the RNS rates that will be in effect from June 1 of that year through May 31 of the following year.<sup>7</sup>

4. VTransco explains that, on May 31, 2018, in Docket No. ER18-1722-000, VTransco and certain other PTOs filed a limited, one-time request for waiver of the Attachment F requirement to enable them to use the Tax Cuts and Jobs Act's lower tax rate in calculating their 2018 revenue requirements.<sup>8</sup> On June 28, 2018, the Commission granted the waiver request.<sup>9</sup>

5. VTransco explains that the income tax component of the Attachment F formula rate is based on its taxable owners' equity. VTransco further explains that, because one of these owners, Green Mountain Power, is a fiscal year taxpayer whose fiscal year straddled the Tax Cuts and Jobs Act's January 1, 2018 effective date, the Internal Revenue Code requires VTransco to use a blended federal income tax rate based on the number of days before and after the tax rate change's effective date.<sup>10</sup> VTransco notes that, as a result, its 2018 federal income tax rate was a blended rate of 23.5 percent, which was reflected in VTransco's RNS rate effective June 1, 2018.<sup>11</sup>

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<sup>5</sup> VTransco notes that a settlement agreement regarding Regional and Local formula rates under the ISO-NE Tariff that was filed on August 17, 2018, in Docket Nos. EL16-19-000 and ER18-2235-000, is currently pending before the Commission. *Id.* at n.4.

<sup>6</sup> *Id.* at 3.

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

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Emera Maine*, 163 FERC ¶ 61,229 (2018).

<sup>10</sup> 26 U.S.C. § 15 (2012).

<sup>11</sup> VTransco Transmittal at 4-5.

6. VTransco contends that there is no need for a blended tax rate in 2019 because its 2019 federal income tax rate is 21 percent. However, VTransco notes that Attachment F requires the use of historical cost inputs from the prior year (i.e., 2018). Thus, VTransco argues that it would be required to establish a projected revenue requirement for 2019 rates using the 23.5 percent federal income tax rate that was in effect during 2018.<sup>12</sup> VTransco asserts that there is a \$2 million difference between the 23.5 percent authorized federal income tax rate that would be used to derive the 2019 projected revenue requirement pursuant to Attachment F and the 21 percent actual tax rate which will eventually be returned to ratepayers using the true up mechanism. VTransco therefore seeks a waiver of Attachment F to use the 21 percent federal income tax rate in calculating its 2019 projected transmission revenue requirement, so ratepayers may benefit from the lower tax rate immediately, avoiding the unnecessary and inefficient over-collection and subsequent refund.<sup>13</sup>

## II. Waiver Request

7. VTransco seeks a limited, one-time waiver of the requirements in Attachment F related to the federal corporate income tax rate so that it may reflect the reduced 21 percent federal corporate income tax rate in the RNS rate effective June 1, 2019.<sup>14</sup> VTransco 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.<sup>15</sup>

8. First, VTransco asserts that it has acted in good faith. VTransco states that, although it expected that its joint prior waiver request with other PTOs would be a one-time waiver, VTransco did not realize at the time that the blended tax rate mandated by the Internal Revenue Code would impact its 2019 revenue requirement calculation.<sup>16</sup>

9. Second, VTransco contends that the waiver is of limited scope and will only be necessary to enable VTransco to calculate its 2019 and 2020 projected RNS revenue requirements. VTransco asserts that no further waivers of this type will be necessary,

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> *Id.*

absent a future change in federal income tax rates.<sup>17</sup> Third, VTransco argues that the waiver would remedy a concrete problem by permitting ratepayers to realize the benefit of the lower federal income tax rate immediately in compliance with Attachment F of the ISO-NE Tariff.<sup>18</sup> Fourth, VTransco claims that the waiver will not have undesirable consequences, such as harming third parties. Rather, VTransco notes that it will benefit ratepayers.<sup>19</sup>

10. VTransco explains that it must make an annual informational filing with the Commission on or before July 31 of each year that shows the RNS rate in effect for the period beginning June 1 of that year through May 31 of the subsequent year. For this reason, VTransco requests that the Commission act by June 12, 2019 to allow VTransco to determine its 2019 projected RNS revenue requirements in advance of the June 14, 2019 draft posting date required by the ISO-NE Tariff.<sup>20</sup>

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

11. Notice of VTransco's May 14, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 22,837 (2019), with interventions and protests due on or before May 20, 2019. No interventions or protests were filed.

### **IV. Discussion**

12. We grant the Waiver Request to ensure that VTransco may reflect the reduction in the federal corporate income tax rate in the 2019 and 2020 projected transmission revenue requirements for the RNS rate. 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>21</sup> We find that the Waiver Request satisfies these waiver criteria.

13. First, we find that VTransco acted in good faith because VTransco did not anticipate that the blended tax rate mandated by the Internal Revenue Code would affect

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<sup>17</sup> VTransco Transmittal at 6.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 7.

<sup>21</sup> See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

its 2019 revenue requirement. Furthermore, by submitting the Waiver Request, VTransco ensures that its RNS customers will continue to receive the benefit of Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate without delay.

14. Second, we find that the Waiver Request is of limited scope and will not impact other provisions of the ISO-NE Tariff, as it is necessary only to enable VTransco to more accurately calculate its 2019 and 2020 projected RNS revenue requirements.

15. Third, we find that the Waiver Request addresses a concrete problem by allowing VTransco's ratepayers to realize the benefit of the lower federal corporate income tax rate immediately, while ensuring VTransco complies with Attachment F of the ISO-NE Tariff.

16. Fourth, we find that the Waiver Request will not have undesirable consequences, such as harming third parties; instead, it will benefit ratepayers. We also note that no party has opposed the request. For these reasons, we grant the Waiver Request, to become effective on June 1, 2019, as requested.

The Commission orders:

VTransco's request for waiver is hereby granted, to become effective on June 1, 2019, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.