

168 FERC ¶ 61,077  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Emera Maine

Docket No. ER19-1400-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued August 6, 2019)

1. On March 21, 2019, as amended on June 7, 2019,<sup>1</sup> pursuant to section 205 of the Federal Power Act (FPA)<sup>2</sup> and section 35.13 of the Commission's regulations,<sup>3</sup> Emera Maine submitted revisions to the formula rate in Attachment J of its Open Access Transmission Tariff for the Maine Public District (MPD Tariff).<sup>4</sup> Emera Maine states that the proposed revisions provide for the return to customers of excess accumulated deferred income taxes (ADIT) recorded on Emera Maine's books as a consequence of the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act).<sup>5</sup> In this order, we accept the proposed formula rate revisions, effective June 1, 2019, as requested.

**I. Background**

2. Emera Maine is engaged in the transmission and distribution of electric energy and related services to approximately 158,000 retail customers in portions of northern, eastern, and coastal Maine. Emera Maine provides open access to its transmission

---

<sup>1</sup> See Emera Maine's June 7, 2019 Deficiency Response.

<sup>2</sup> 16 U.S.C. § 824d (2012).

<sup>3</sup> 18 C.F.R. § 35.13 (2018).

<sup>4</sup> Emera Maine, Open Access Transmission Tariffs, [Attachment J, Formula Rates, 9.0.0](#).

<sup>5</sup> Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

facilities in northern Maine (Maine Public District or MPD) pursuant to the MPD Tariff. The formula rate for this transmission service is located in Attachment J of the MPD Tariff (MPD Formula Rate).

3. On December 22, 2017, the Tax Cuts and Jobs Act 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. On March 15, 2018, the Commission issued a Notice of Inquiry seeking comment on whether and, if so, how, the Commission should address the effects of the Tax Cuts and Jobs Act on ADIT and bonus depreciation in Commission-jurisdictional rates.<sup>6</sup> On November 15, 2018, the Commission issued a Notice of Proposed Rulemaking,<sup>7</sup> which proposes to require that public utilities deduct excess ADIT from, or add deficient ADIT to, their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT.

4. Subsequent to the enactment of the Tax Cuts and Jobs Act, Emera Maine entered into an Offer of Settlement with the Maine Public Utilities Commission (Maine Commission) and other interested parties pertaining to the MPD Formula Rate.<sup>8</sup> The March 2018 Settlement contained a stipulation requiring Emera Maine to, among other things, “make a...section 205 filing by March 31, 2018, with such changes to [each formula rate], effective June 1, 2018, as necessary to reflect the [Tax Cuts and Jobs Act’s] reduction to the marginal corporate income tax rate.”<sup>9</sup> On March 30, 2018, Emera Maine filed revisions to the MPD Formula Rate in accordance with that commitment, which the Commission accepted.<sup>10</sup>

---

<sup>6</sup> *See Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, Notice of Inquiry, 162 FERC ¶ 61,223 (2018).

<sup>7</sup> *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Notice of Proposed Rulemaking, 165 FERC ¶ 61,117 (2018) (ADIT NOPR).

<sup>8</sup> Offer of Settlement, Emera Maine, Docket No. ER18-960-000 (Mar. 5, 2018) (March 2018 Settlement).

<sup>9</sup> *See* March 2018 Settlement at § 4.3.2.

<sup>10</sup> *Emera Maine*, 165 FERC ¶ 61,086 (2018) (November 2018 Order).

## II. Summary of Emera Maine's Proposal

5. Emera Maine states that, after its March 30, 2018 filing, it analyzed its ADIT balances, including detailed calculations of excess ADIT, and reviewed how its excess ADIT will flow through the MPD Formula Rate. Emera Maine has concluded that certain additional changes to the MPD Formula Rate are needed to ensure that excess ADIT is properly reflected in the calculations of charges under the MPD Tariff.<sup>11</sup>

6. First, Emera Maine has determined that the FERC Form No. 1 at page 278 provides it with the flexibility to report a regulatory liability for excess ADIT specific to MPD, separated by function (i.e., MPD transmission, MPD distribution, and MPD common), rather than an Emera Maine-wide value. Emera Maine therefore proposes to amend Exhibit 4, Line 26.1, of the MPD Formula Rate to show the 13-month balances of this regulatory liability, including the beginning-of-year and end-of-year balances, which will be taken directly from FERC Form No. 1 at page 278.<sup>12</sup> Emera Maine also proposes to delete Workpaper Excess ADIT, contending that the workpaper is no longer needed because the workpaper assumed that FERC Form No. 1 at page 278 would contain only Emera Maine-wide data, as opposed to the MPD-specific data that will be reported under Emera Maine's proposal.<sup>13</sup>

7. Second, Emera Maine proposes to modify the input for amortization of its excess ADIT regulatory liability on Exhibit 5 of the MPD Formula Rate to calculate this value directly from the beginning-of-year and end-of-year balances for the regulatory liability on Exhibit 4. Emera Maine notes that this amortization amount is equal to the beginning-of-year balance minus the end-of-year balance of the excess ADIT regulatory liability, as grossed up by the blended federal and state statutory tax rate. Emera Maine explains that this gross up is necessary because the underlying basis for the regulatory liability is an "after-tax" liability that will need to be returned to customers on a pre-tax basis as a component of the revenue requirement.<sup>14</sup>

## III. Notice of Filings and Responsive Pleadings

8. Notice of Emera Maine's filing was published in the *Federal Register*, 84 Fed. Reg. 11,758 (2019), with interventions and protests due on or before April 11, 2019. On

---

<sup>11</sup> Transmittal at 3.

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

<sup>13</sup> *Id.* at 3 n.9.

<sup>14</sup> *Id.* at 3-4.

April 11, 2019, the Maine Commission filed a notice of intervention and protest, and the Maine Customer Group<sup>15</sup> filed a timely motion to intervene and protest. On April 26, 2019, Emera Maine filed an answer to the protests.

9. On May 10, 2019, Commission staff issued a deficiency letter, requesting additional information from Emera Maine regarding the methodology it proposes to use to directly assign and/or allocate excess ADIT balances to MPD by function. On June 7, 2019, Emera Maine submitted its response. Notice of the deficiency response was published in the *Federal Register*, 84 Fed. Reg. 27,775 (2019), with interventions and protests due on or before June 28, 2019. None was filed.

**A. Protests to Emera Maine's Filing**

10. The Maine Commission and the Maine Customer Group both request that the Commission reject Emera Maine's filing, citing several alleged deficiencies in its filing.

11. The Maine Commission asserts that Emera Maine's proposal provides less transparency than the MPD Formula Rate currently on file, because direct assignment (as opposed to allocation of company-wide data) gives too much discretion to Emera Maine to determine the methodology for directly assigning these amounts and reduces the ability of interested parties to question whether this methodology is just and reasonable.<sup>16</sup> The Maine Commission also argues that Emera Maine's proposal to eliminate Workpaper Excess ADIT is inconsistent with the ADIT NOPR, which the Maine Commission states requires greater transparency than "simply lifting a pre-determined number from FERC Form No. 1."<sup>17</sup>

12. The Maine Commission also argues that Emera Maine has failed to explain or support its proposed methodology for determining the amortization of excess ADIT, noting three specific concerns. First, the Maine Commission asserts that Emera Maine must provide support for, or explanation of, its proposed methodology—wherein it subtracts the end-of-year balance from the beginning-of-year balance of the excess ADIT regulatory liability, and grosses up this amortized amount for income taxes—without

---

<sup>15</sup> The Maine Customer Group consists of Maine's Office of the Public Advocate, Houlton Water Company, Van Buren Light and Power District, and Eastern Maine Electric Cooperative, Inc. Maine Customer Group Protest at 1 n.1.

<sup>16</sup> Maine Commission Protest at 3.

<sup>17</sup> *Id.* at 4 (citing ADIT NOPR, 165 FERC ¶ 61,117 at P 46).

which there is no basis for determining that it is a just and reasonable methodology.<sup>18</sup> Second, the Maine Commission states that Emera Maine's filing lacks workpapers to show that the tax gross-up of amortized excess ADIT does not result in double-counting.<sup>19</sup> Third, the Maine Commission states that it is unclear how the instant filing relates to the current MPD Formula Rate, and in particular whether the proposed amortization methodology replaces the ten-year amortization period approved by the Commission in the November 2018 Order.<sup>20</sup>

13. Additionally, the Maine Commission cites the Commission's proposal in the ADIT NOPR, that "any amounts allowed to be returned under the Average Rate Assumption Method schedule prior to the effective date of proposed tariff provisions made in compliance with the Proposed Rule should still be returned to customers."<sup>21</sup> On this basis, the Maine Commission argues that Emera Maine has failed to explain whether it will return the full amount of the excess ADIT regulatory liability back to January 1, 2018, and this commitment should have been included in Emera Maine's filing.<sup>22</sup>

14. The Maine Customer Group argues that Emera Maine's filing violates the terms of the March 2018 Settlement. Regarding additional formula rate revisions pertaining to implementation of the Tax Cuts and Jobs Act, the Maine Customer Group argues that Emera Maine may only amend the MPD Formula Rate "in order to reflect any guidance or orders that the Commission may provide subsequent to March 15, 2018."<sup>23</sup> Because Emera Maine's instant filing is not in response to a rulemaking or other Commission order, the Maine Customer Group argues that the instant filing violates the March 2018 Settlement and must be rejected by the Commission.<sup>24</sup>

15. The Maine Customer Group also argues that Emera Maine failed to support its proposal and, therefore, its filing does not meet the requirements under FPA

---

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 5.

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

<sup>21</sup> *Id.* (citing ADIT NOPR, 165 FERC ¶ 61,117 at P 39).

<sup>22</sup> *Id.*

<sup>23</sup> Maine Customer Group Protest at 4 (citing March 2018 Settlement at § 4.3.2).

<sup>24</sup> *Id.*

section 205.<sup>25</sup> First, the Maine Customer Group challenges the veracity of Emera Maine’s claim that its proposal transitions from a company-wide allocation of excess ADIT to a direct assignment of these amounts, arguing that the current tariff already involves MPD-only data. Second, the Maine Customer Group expresses concern that Emera Maine did not provide the “detailed review” of its excess ADIT regulatory liabilities that it cites as the basis for the instant filing.<sup>26</sup> Third, the Maine Customer Group asserts that Emera Maine must provide cost-of-service information, testimony, and exhibits, pursuant to the Commission’s regulations, at 18 C.F.R. § 35.13(d)-(e) (2018).<sup>27</sup> The Maine Customer Group concludes that these deficiencies collectively prevent both the Commission and Emera Maine’s customers from determining whether the proposed revisions are just and reasonable.<sup>28</sup>

16. Finally, the Maine Customer Group asserts that the Commission should reject Emera Maine’s filing because it represents “a ‘pancaked’ rate filing—i.e., a rate change filing made while another similar rate change filing is still pending before the Commission—[which is] frowned upon by the Commission.”<sup>29</sup> The Maine Customer Group states that the transparency of the MPD Formula Rate (and particularly the need for permanent workpapers explaining the calculation of excess ADIT) is already at issue in the formal challenge of Emera Maine’s 2018 annual update of the MPD Formula Rate, which is currently pending before the Commission.<sup>30</sup> The Maine Customer Group argues that page 278 of FERC Form No. 1 reflects only the beginning-of-year and end-of-year balances of excess ADIT regulatory liabilities, but does not reveal how those numbers were derived and does not address any of the requirements specified in the ADIT NOPR.<sup>31</sup> The Maine Customer Group also states that the company records (which are the basis for values reported on page 278 of FERC Form No. 1) are not verified.<sup>32</sup>

---

<sup>25</sup> *Id.* at 4-5.

<sup>26</sup> *Id.* at 5.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.* at 5.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.* at 6-7.

<sup>31</sup> *Id.* at 7 (citing ADIT NOPR, 165 FERC ¶ 61,117 at P 47).

<sup>32</sup> *Id.*

**B. Emera Maine's Answer to Protests**

17. Emera Maine responds that the proposed revisions to the MPD Formula Rate provide additional accuracy and transparency. Emera Maine explains that its review of ADIT balances, undertaken with its consultant, PricewaterhouseCoopers (PwC), allowed Emera Maine and PwC to determine that it would be possible to establish separate regulatory liabilities to reflect Emera Maine's excess ADIT balances—by function (transmission versus distribution) and company (MPD versus its affiliate, Bangor Hydro District, BHD)—as follows: (1) MPD transmission, (2) MPD distribution, (3) BHD transmission, (4) BHD distribution, and (5) a regulatory liability associated with Emera Maine's common costs, which would be allocated in part to MPD transmission.<sup>33</sup> Emera Maine elaborates that PwC determined the balances as of December 31, 2017 for each of these five regulatory liabilities, and accompanying amortization schedules for each. To arrive at these amortization schedules, Emera Maine states that PwC first established an amortization schedule for Emera Maine's total excess ADIT regulatory liability, and then calculated fixed amounts by which the amortization of this total regulatory liability would be allocated among MPD transmission, MPD distribution, BHD transmission, and BHD distribution. Emera Maine explains that these allocation rates are based on the relative contribution of the four functionalized excess ADIT regulatory liabilities to the total Emera Maine excess ADIT regulatory liability, as of December 31, 2017.<sup>34</sup>

18. Emera Maine states that it will provide workpapers detailing these calculations in its forthcoming annual update of the MPD Formula Rate on May 1, 2019, as well as in subsequent annual updates.<sup>35</sup> Emera Maine also asserts that the beginning-of-year and end-of-year balances for excess ADIT regulatory liabilities as populated on Exhibit 5 of the MPD Formula Rate will reflect the audited values reported on page 278 of the FERC Form No. 1, which provides greater transparency and the opportunity for intervenors to verify the accuracy of these values.<sup>36</sup>

19. Emera Maine argues that protesters' objections to the proposed tax gross-up of amortized excess ADIT are misplaced, because the amortized amount is a negative expense, which means that the tax gross-up inures to the benefit of customers. Emera

---

<sup>33</sup> Emera Maine Answer at 3 & 5.

<sup>34</sup> *Id.* at 5.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 6.

Maine notes that the proposed tax gross-up increases the amortization expense, and thus refunds to customers, by 39 percent as compared to without the tax gross-up.<sup>37</sup>

20. Emera Maine also rejects the Maine Commission's assertion that Emera Maine must provide additional support or explanation for its proposed formula rate revisions to render its filing just and reasonable.<sup>38</sup> Emera Maine maintains that it will provide supporting information for its calculations of excess ADIT regulatory liabilities in the 2019 annual update of the MPD Formula Rate on May 1, 2019, and that this approach is consistent with the Commission's requirement imposed in the November 2018 Order.<sup>39</sup> On this basis, Emera Maine asserts that the Maine Commission's request is premature and outside the scope of this proceeding. Emera Maine also notes that the MPD Formula Rate protocols expressly provide interested parties a full opportunity to seek discovery of additional information and, if necessary, to challenge how Emera Maine determined any inputs to the MPD Formula Rate.<sup>40</sup>

21. Emera Maine disagrees with the Maine Commission's assertion that Emera Maine's proposal must conform to the ADIT NOPR, and notes that the ADIT NOPR is only a proposal, not a final rule, and is subject to change.<sup>41</sup> Emera Maine also disagrees with the Maine Commission's assertion that Emera Maine should have committed in its filing to return excess ADIT in rates "back to January 1, 2018."<sup>42</sup> Emera Maine argues that the Maine Commission's protest is a collateral attack on the November 2018 Order, in which the Commission accepted Emera Maine's tariff revisions and held that "the June 1, 2018 effective date [of the proposed tariff revisions], which we grant herein, entitles customers to flow-back of these amounts as of that date," i.e., June 1, 2018.<sup>43</sup> Emera Maine clarifies that it will return to ratepayers—through charges under the MPD Formula Rate for the June 1, 2019 to May 31, 2020 rate year—the full (and grossed up)

---

<sup>37</sup> *Id.* at 6-7.

<sup>38</sup> *Id.* at 7.

<sup>39</sup> *Id.* at 7-8 n.11 (citing November 2018 Order, 165 FERC ¶ 61,086 at P 47).

<sup>40</sup> *Id.* at 8.

<sup>41</sup> *Id.* at 9.

<sup>42</sup> *Id.* (citing Maine Commission Protest at 5).

<sup>43</sup> *Id.* (citing November 2018 Order, 165 FERC ¶ 61,086 at P 46).

amortized amount of the excess ADIT regulatory liability for the period beginning January 1, 2018.<sup>44</sup>

22. Regarding the Maine Commission's argument that Emera Maine's filing fails to explain how the current proposal relates to the tariff provisions approved in the November 2018 Order, Emera Maine clarifies that its proposal would supplant those provisions pertaining to excess ADIT accepted by the Commission in the November 2018 Order, effective June 1, 2019. Emera Maine adds that its proposal will not impact Emera Maine's commitment to amortize unprotected excess ADIT over a period of 10 years (subject to the outcome of the ADIT NOPR).<sup>45</sup>

23. Emera Maine disagrees with the Maine Customer Group's claim that the terms of the March 2018 Settlement allow Emera Maine to amend its March 30, 2018 filing only if required to do so by the Commission. Emera Maine contends that nothing in the March 2018 Settlement restricts Emera Maine's FPA section 205 rights.<sup>46</sup>

24. Finally, Emera Maine disagrees with the Maine Customer Group's assertion that the instant proposal constitutes a "pancaked" rate filing that addresses issues currently pending before the Commission. Emera Maine explains that its 2018-2019 annual formula rate update applies solely to the period June 1, 2018 through May 31, 2019, whereas its proposal here amends the MPD Formula Rate effective June 1, 2019.<sup>47</sup>

### C. Deficiency Letter and Response

25. In the deficiency letter, Commission staff asked Emera Maine to elaborate on the methodology it used to directly assign and/or allocate excess ADIT balances to MPD. First, Commission staff asked Emera Maine to provide workpapers demonstrating its calculation of the "Emera Maine common" excess ADIT regulatory liability, a narrative explanation of the underlying costs associated with this regulatory liability, and confirmation of whether any of these costs were allocated from a service company or corporate parent company. Second, Commission staff asked Emera Maine to provide detailed support, including workpapers, for the methodology it used to assign a portion of the "Emera Maine common" excess ADIT regulatory liability to MPD transmission, MPD distribution, BHD transmission, and BHD distribution. Third, Commission staff

---

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 10.

<sup>46</sup> *Id.* at 11.

<sup>47</sup> *Id.*

asked Emera Maine to specify the dollar value of its total excess ADIT regulatory liability, and the dollar values of each of the following components of that total: “Emera Maine common,” BHD transmission, BHD distribution, MPD transmission, and MPD distribution.

26. In its deficiency response, Emera Maine clarifies that its original filing erroneously described an “Emera Maine common” excess ADIT regulatory liability, when it instead should have explained that Emera Maine calculated *separate* “common” excess ADIT regulatory liabilities for MPD and for BHD.<sup>48</sup> Emera Maine submitted workpapers that illustrated its calculations of all six excess ADIT regulatory liabilities: (1) MPD transmission, (2) MPD distribution, (3) MPD common, (4) BHD transmission, (5) BHD distribution, and (6) BHD common. Emera Maine also explains that the underlying costs associated with the MPD common and BHD common excess ADIT amounts pertained to items such as certain non-transmission, non-distribution plant assets (e.g., fleet, buildings, land improvements, etc.); pensions, post-retirement benefits other than pensions, and supplemental executive retirement plans; regulatory liabilities and assets; reserves; accrued expenses, including payroll; and prepaids, including property taxes. Finally, Emera Maine confirms that none of these associated costs were allocated from a service company or corporate parent company.<sup>49</sup>

27. For the purposes of allocating a portion of the “MPD common” excess ADIT regulatory liability to MPD transmission customers, Emera Maine explains that it uses the same allocator as it uses for general and intangible plant: the wages and salaries allocator. Emera Maine explains that the remainder of the “MPD common” excess ADIT regulatory liability is allocated to MPD distribution customers.<sup>50</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

28. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notice of intervention and timely, unopposed motion to intervene serve to make the Maine Commission and the Maine Customer Group parties to this proceeding.

---

<sup>48</sup> Deficiency Response at 1-2.

<sup>49</sup> *Id.* at 2-3.

<sup>50</sup> *Id.* at 4.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Emera Maine's answer because it has provided information that assisted us in our decision-making process.

### **B. Commission Determinations**

30. We find the proposed revisions to the MPD Formula Rate to be just and reasonable and accept them, to become effective June 1, 2019, as requested. As Emera Maine notes, these revisions stem from a detailed review of Emera Maine's excess ADIT balances.<sup>51</sup> As a result of this review, Emera Maine is able to directly assign an excess ADIT balance to MPD transmission customers. For the excess ADIT common balance pertaining to MPD transmission and distribution customers, Emera Maine will allocate the transmission portion of this balance consistent with the Commission-approved methodology for allocating general and intangible plant—namely, a salaries and wages allocator.<sup>52</sup> The proposed revisions collectively allow Emera Maine to return to MPD transmission customers an amount of excess ADIT that more closely aligns with the underlying transmission assets that gave rise to the initial ADIT balance and, as we discuss below, this is consistent with the Commission's cost-of-service ratemaking principles.

31. We are not persuaded by protesters' arguments regarding the transparency of Emera Maine's proposal. First, we disagree with the Maine Customer Group's assertion that the MPD Formula Rate does not currently allocate company-wide data. To the contrary, the Commission accepted the allocation of company-wide data in the November 2018 Order.<sup>53</sup> Second, the Commission generally prefers direct assignment of costs of service, where accounting records allow, because it more closely matches cost incurrence with cost responsibility.<sup>54</sup> Emera Maine has stated that its review of ADIT balances has allowed Emera Maine to directly assign excess ADIT balances to each of its

---

<sup>51</sup> Transmittal at 3; *see also* Deficiency Response at 1-3.

<sup>52</sup> Deficiency Response at 3-4.

<sup>53</sup> The MPD Formula Rate currently on file uses three different allocators to allocate company-wide excess ADIT balances to MPD, depending on the nature of the underlying deferred tax balance. *See* MPD Formula Rate (7.0.0), Workpaper Excess ADIT, Column O.

<sup>54</sup> *Transcontinental Gas PipeLine Corp.*, 106 FERC ¶ 61,299, at P 190 (2004), *reh'g*, 112 FERC ¶ 61,170, at P 148 (2005).

operating companies.<sup>55</sup> Third, we note that Emera Maine's proposal continues to rely on regulatory liability values reported annually on page 278 of the FERC Form No. 1; the sole distinction is that Emera Maine's proposal would rely on more granular, MPD-specific values reported on that page, as opposed to allocating an Emera Maine-wide value. Furthermore, MPD customers or other interested parties retain the right under the MPD Formula Rate protocols to review and challenge inputs to the MPD Formula Rate as part of the annual update process.<sup>56</sup> We therefore disagree with protesters that Emera Maine's proposal grants it too much discretion in implementing, or otherwise undermines transparency of, the MPD Formula Rate.

32. We also accept Emera Maine's proposal to eliminate Workpaper Excess ADIT. The Maine Commission argues that eliminating this workpaper is inconsistent with the Commission's views expressed in the ADIT NOPR.<sup>57</sup> However, the ADIT NOPR is a proposal, not a final rule. Accordingly, it would be inappropriate to prejudge the outcome of the ADIT NOPR by imposing proposed requirements on Emera Maine at this time.<sup>58</sup>

33. We disagree with protesters' claims that Emera Maine fails to provide support or explanation for the proposed revisions to the MPD Formula Rate. On the contrary, Emera Maine has provided a detailed explanation of its proposed methodologies for (1) calculating MPD's excess ADIT regulatory liabilities;<sup>59</sup> and (2) recovering those liabilities from MPD transmission customers.<sup>60</sup> We find that these explanations and supporting workpapers constitute adequate support, as required by the Commission's regulations. As for protesters, including the Maine Commission, who are concerned about the transparency of the calculations used to assign excess ADIT regulatory

---

<sup>55</sup> Transmittal at 3; *see also* Deficiency Response at 1-3.

<sup>56</sup> *See* MPD Formula Rate, Protocols (7.0.0), § V (Records and Annual Update Review Procedures).

<sup>57</sup> Maine Commission Protest at 4 (citing ADIT NOPR, 165 FERC ¶ 61,117 at P 46).

<sup>58</sup> Public utilities will be required to comply with any potential further action by the Commission that may apply to them to address the effects of the Tax Cuts and Jobs Act on ADIT, including any potential requirements that may arise from the ADIT NOPR proceeding.

<sup>59</sup> Transmittal at 3-4; *see also* Deficiency Response at 1-4, Exhibits A and B.

<sup>60</sup> Transmittal at 3-4.

liabilities to MPD transmission customers, we reiterate our expectation that Emera Maine must provide in its annual updates sufficient support and explanation for *all* inputs to the MPD Formula Rate, so interested parties can verify that each input is consistent with the requirements of the formula, without forcing those parties to make extensive information requests to verify its correctness.<sup>61</sup>

34. The Maine Commission also argues that Emera Maine has failed to explain (1) its proposal to calculate amortization of excess ADIT (on Exhibit 5) by subtracting the end-of-year balance from the beginning-of-year balance (as reported on Exhibit 4), grossed up for federal and state income taxes and, relatedly; and (2) how its proposal relates to the amortization periods approved by the Commission in the November 2018 Order. We are not persuaded by the Maine Commission's arguments, and instead find that Emera Maine's proposal is both sufficiently explained and logical. Emera Maine's proposal to calculate, for ratemaking purposes, the amortization of its excess ADIT regulatory liability as the difference between the beginning-of-year balance and the end-of-year balance is an accurate way to represent the amortization reflected on the FERC Form No. 1. Amounts reported on the FERC Form No. 1 must be consistent with the Commission's definition of amortization in the Uniform System of Accounts.<sup>62</sup> Emera Maine explains that it must gross up this amortization expense because "the underlying basis for the [r]egulatory [l]iability is an 'after-tax' liability that will need to be returned to customers on a pre-tax basis as a component of the revenue requirement."<sup>63</sup> This is consistent with the ratemaking treatment of income tax allowance, wherein amounts collected in rates to pay future tax liabilities are "grossed up" to ensure that rates recover the full cost of service on an after-tax basis.<sup>64</sup> As to the Maine Commission's concerns about how the instant filing relates to the MPD Formula Rate on file, we note that Emera Maine has not proposed to change the amortization periods that the Commission accepted

---

<sup>61</sup> See November 2018 Order, 165 FERC ¶ 61,086 at P 47; *see also Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163, at P 57 (2018).

<sup>62</sup> 18 C.F.R. pt. 101 (2018), Definitions, § 4 ("Amortization means the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.").

<sup>63</sup> Transmittal at 4.

<sup>64</sup> We also note that, because Emera Maine has a net regulatory liability balance, Emera Maine's proposal results in a larger refund to customers than without grossing up this excess ADIT amortization expense.

in the November 2018 Order<sup>65</sup> and we therefore fully expect any amortization expense to be calculated consistent with those accepted amortization schedules.

35. We dismiss the Maine Commission's request that Emera Maine be required to commit to "return all of the excess ADIT back to January 1, 2018," consistent with the ADIT NOPR.<sup>66</sup> Emera Maine has clarified that it will return to ratepayers through charges under the MPD Formula Rate for the June 1, 2019 to May 31, 2020 rate year, the full (and grossed up) amortized amount of the excess ADIT regulatory liability for the period beginning January 1, 2018.<sup>67</sup>

36. We disagree with the Maine Customer Group that the March 2018 Settlement restricts Emera Maine's right to make the instant filing. The March 2018 Settlement provides that Emera Maine "may amend such filing in order to reflect" subsequent Commission action; the settlement does not say that Emera Maine may amend such filing *only* in order to reflect subsequent Commission action.<sup>68</sup> The settlement's terms pertain solely to whether Emera Maine may amend the section 205 filing required by section 4.3.1 of the settlement—a filing that was made and accepted by the Commission in the November 2018 Order.<sup>69</sup> Furthermore, we agree with Emera Maine that nothing in that settlement limits Emera Maine's filing rights under FPA section 205.

37. Finally, we disagree with the Maine Customer Group's argument that Emera Maine's proposal constitutes a "pancaked" rate filing and is therefore barred by Commission policy. As Emera Maine notes,<sup>70</sup> the 2018-2019 annual formula rate update cited by the Maine Customer Group, which is a contested matter pending before the Commission,<sup>71</sup> pertains solely to the rate year from June 1, 2018 through May 31,

---

<sup>65</sup> For protected excess ADIT amounts, the Commission accepted an amortization period consistent with the Average Rate Assumption Method, and for unprotected excess ADIT amounts, approved a ten-year amortization period. November 2018 Order, 165 FERC ¶ 61,086 at PP 44-45.

<sup>66</sup> Maine Commission Protest at 5.

<sup>67</sup> Emera Maine Answer at 9.

<sup>68</sup> March 2018 Settlement §§ 4.3.1 & 4.3.2.

<sup>69</sup> *Id.*

<sup>70</sup> Emera Maine Answer at 11.

<sup>71</sup> See *Emera Maine*, 167 FERC ¶ 61,090 (2019) (order establishing hearing and settlement judge procedures).

2019—whereas Emera Maine’s proposal here pertains to subsequent rate years. Because there is no overlap between these two time periods, these rate filings are not considered to be “pancaked.”

The Commission orders:

Emera Maine’s proposed tariff revisions are hereby accepted for filing, effective June 1, 2019, as discussed in the body of this order.

By the Commission. Commissioner LaFleur is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.