

169 FERC ¶ 61,191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Emera Maine

Docket No. ER15-1429-011

ORDER ON COMPLIANCE

(Issued December 6, 2019)

1. On May 16, 2019, Emera Maine submitted a compliance filing that revises its 2018-2019 formula rate (MPD formula rate) pursuant to the Commission's order issued in this proceeding on April 30, 2019.¹ In this order, we accept Emera Maine's compliance filing.

I. Background

2. On May 15, 2018, Emera Maine² submitted an Annual Transmission Rate Informational Filing, detailing the transmission charges to take effect June 1, 2018 for transmission service under its OATT for the Maine Public District (2018 Annual Update). On December 31, 2018, the Maine Public Utilities Commission (Maine Commission) and Maine Customer Group filed a formal challenge to the 2018 Annual Update, alleging that the rate for the 2018-2019 rate year (i.e., June 1, 2018, to May 31, 2019) was unjust and unreasonable with regard to eight matters. In the April 30, 2019 Order, the Commission set four of the matters for hearing and settlement judge procedures and summarily decided the remaining four matters, requiring: (1) the correction of certain acknowledged errors in the 2018 Annual Update; (2) the exclusion of certain costs for land associated with a project not in

¹ *Emera Maine*, 167 FERC ¶ 61,090 (2019) (April 30, 2019 Order).

² Emera Maine is the successor in interest to Maine Public Service Company (Maine Public), which merged into Bangor Hydro Electric Company (Bangor Hydro) on January 1, 2014, and was renamed Emera Maine. Emera Maine provides service to two areas, the Bangor Hydro District and the Maine Public District (MPD), under two separate Open Access Transmission Tariffs (OATTs).

service; (3) exclusion of certain costs for distribution equipment from transmission rates, and; (4) the flowback of excess accumulated deferred income taxes (ADIT).

3. With particular regard to excess ADIT, the Commission found in the April 30, 2019 Order that Emera Maine must correct its MPD formula rate for the current 2018-2019 rate year with regard to excess ADIT that resulted from the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act). The Commission found that it previously addressed Emera Maine's excess ADIT, stating in the April 30, 2019 Order, that, "with regard to protestors' concerns regarding when flow-back of excess ADIT would begin, irrespective of when Emera Maine determines the appropriate method, the June 1, 2018 effective date, which we grant herein, entitles customers to flow-back of these amounts as of that date."³

II. Compliance Filing

4. In its compliance filing, Emera Maine revises its 2018-2019 MPD formula rate charges to correct certain acknowledged errors in the 2018 Annual Update, the exclusion of certain costs for land associated with a project not in service, and the exclusion of certain costs for distribution equipment from transmission rates. Emera Maine states that, with regard to retail customers, its compliance filing will reduce its retail Annual Transmission Revenue Requirement for 2019-2020 by \$46,095 plus interest.⁴ Emera Maine states that, concurrent with its compliance filing, it is submitting revised populated versions of the MPD formula rate for the 2019-2020 rate year, reflecting these corrections and refunds.⁵

5. With regard to excess ADIT, Emera Maine states that "[i]t is not clear what precisely the Commission contemplates that Emera Maine should do at this time as a practical matter, if anything."⁶ Emera Maine states that, as explained in prior filings in

³ April 30, 2019 Order, 167 FERC ¶ 61,090 at P 22 (citing *ISO New England Inc.*, 165 FERC ¶ 61,086, at P 46 (2018) (November 9, 2018 Order)).

⁴ Emera Maine Compliance Filing at 2.

⁵ *Id.*

⁶ *Id.*

this proceeding and in the MPD formula rate protocols,⁷ the MPD formula rate calculates charges for a given June 1 to May 31 rate year based on actual costs from the prior year calendar year. Emera Maine explains that, in this regard, the charges under the MPD OATT currently paid by customers (rate year) are based on calendar year 2017 costs.⁸

6. Emera Maine explains that the liability for excess ADIT resulting from the Tax Cuts and Jobs Act was recorded in Emera Maine's books as of December 31, 2017. Emera Maine contends that, therefore, no amortization of this liability was recorded on Emera Maine's books in calendar year 2017.⁹ Emera Maine claims that, based on the MPD formula rate, the charges levied under the MPD OATT for the June 1, 2018, to May 31, 2019, rate year are based on actual 2017 costs. Emera Maine explains that, insofar as Emera Maine recorded in 2017 no amortization of its excess ADIT liability, no such amortization can be reflected in the charges levied during the 2018-2019 rate year. Emera Maine asserts that including any amortization of the excess ADIT liability recorded in 2018 in charges during the June 1, 2018 to May 31, 2019 rate year would result in using a mix of 2017 and 2018 costs to calculate such charges.¹⁰ Additionally, Emera Maine explains that there is no provision in the MPD formula rate that permits inclusion of 2018 expenses or cost in the June 1, 2018 to May 31, 2019 charges.

7. Emera Maine contends that no changes or adjustments are needed to the charges levied under the MPD OATT for the June 1, 2018, to May 31, 2019, rate year with respect to excess ADIT issues. Emera Maine asserts that any such changes could occur only if Emera Maine acted contrary to the express terms of the MPD formula rate.

III. Notice of Filing

8. Notice of Emera Maine's compliance filing was published in the *Federal Register*, 84 Fed. Reg. 23,559 (2019) with interventions and protests due on or before June 6, 2019. On May 22, 2019, Maine Customer Group filed a protest. On June 7, 2019, Emera Maine filed an answer. On June 14, 2019, Maine Customer filed an answer to Emera

⁷ *Id.* (citing Emera Maine, Annual Transmission Rate Informational Filing, Docket No. ER15-1429-000, at 2-3, n.5 (filed May 15, 2018); MPD OATT, Protocols for Implementing and Reviewing Charges Established by the Attachment J Rate Formulas § IV).

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 3.

Maine's June 7 answer. On June 24, 2019, Emera Maine filed an answer to Maine Customer Group's June 14 answer.

9. Maine Customer Group contends that Emera Maine defies the Commission's directive in the April 30, 2019 Order by stating, with regard to excess ADIT, that it is not clear what precisely the Commission contemplates that Emera Maine should do at this time, if anything. Maine Customer Group argues that there is no excuse for Emera Maine to decline to make the revisions ordered by the Commission. Maine Customer Group contends that, in Attachments 1 and 2 to its protest is a revision to Emera Maine's compliance filing to reflect adjustments to 2018-2019 rates for excess ADIT.¹¹ Maine Customer Group explains that Attachment 1 would (1) insert the amount -\$196,619 for amortization of excess ADIT at Exhibit 2, line 26.1 and (2) include in Exhibit 4, line 26.1, the monthly amounts of excess ADIT to develop the monthly rate effects of ADIT on the June 1, 2018 through May 31, 2019 rates. Maine Customer Group also explains that Attachment 2 is a revised refund report which reflects the effects of excess ADIT.¹² Maine Customer Group asks the Commission to direct Emera Maine to make Maine Customer Group's proposed revisions in Attachments 1 and 2 of its compliance filing and refile it to comply with the Commission's directive that flowback of excess ADIT should be made effective June 1, 2018.¹³

10. Emera Maine asserts that Maine Customer Group misunderstands the operation of the MPD formula rate in the MPD OATT. Emera Maine contends that the Maine Customer Group appears to demand that Emera Maine return to its customers in the June 1, 2018 to May 31, 2019 charges (or other refunds), the amortization taken by Emera Maine in 2018 of the excess ADIT liability that it recorded as a result of the Tax Cuts and Jobs Act. Emera Maine argues, however, that including the 2018 amortization in the June 1, 2018 through May 31, 2019 charges would be contrary to the terms of the filed MPD formula rate in the MPD OATT and could result in a double-return of such amortization to customers.¹⁴ Emera Maine explains that the MPD formula rate provides that the June 1, 2018 to May 31, 2019 charges be based on actual 2017 values. Emera Maine states that there is no provision in the MPD formula rate that permits inclusion of 2018 expenses or costs in the June 1, 2018 to May 31, 2019 charges. Emera Maine

¹¹ Maine Customer Group Protest at 4.

¹² *Id.*

¹³ *Id.*

¹⁴ Emera Maine June 7 Answer at 1.

asserts that, instead, 2018 expenses should be reflected in charges levied from June 1, 2019 to May 31, 2020.¹⁵

11. Maine Customer Group responds that its protest asks the Commission to enforce its orders requiring refunds effective June 1, 2018. Maine Customer Group contends that the operation of Emera Maine's MPD formula rate is beside the point.¹⁶ Maine Customer Group argues that, if Emera Maine must make adjustments to accommodate the effect of the required refunds on amortization rates, it can do so in the 2019-2020 Annual Update. Maine Customer Group explains that Emera Maine has made adjustments in the 2019-2020 Annual Update for post-retirement benefits other than pensions related to calendar year 2017.¹⁷

IV. Discussion

A. Procedural Matters

12. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept Maine Customer Group's and Emera Maine's answers because they have provided information that assisted us in our decision-making process.

B. Commission Determination

13. We find that Emera Maine's compliance filing satisfies the directives of the April 30, 2019 Order. In the April 30, 2019 Order, the Commission stated that Emera Maine must correct its MPD formula rate for the current rate year with respect to excess ADIT.¹⁸ The Commission noted that it had previously stated in the November 9, 2018 Order that "with regard to protestors' concerns regarding when flow-back of excess ADIT would begin, irrespective of the when Emera Maine determines the appropriate method, the June 1, 2018 effective date, which we grant herein, entitles customers to flow-back of these amounts as of that date."¹⁹ In the November 9, 2018 Order, in referring to "these

¹⁵ *Id.*

¹⁶ Maine Customer Group June 14 Answer at 1.

¹⁷ *Id.*

¹⁸ April 30, 2019 Order, 167 FERC ¶ 61,090 at P 22.

¹⁹ *Id.* (citing November 9, 2018 Order, 165 FERC ¶ 61,086 at P 46).

amounts,” the Commission was referring to the excess ADIT balance as a result of the Tax Cuts and Jobs Act, which is calculated as of January 1, 2018. Therefore, the Commission found that the MPD formula rate mechanism for amortizing excess ADIT would become effective as of June 1, 2018, and that this mechanism allows for the excess ADIT balance as calculated on January 1, 2018, to be flowed back to customers.

14. The Commission did not address the specific date on which excess ADIT would begin to flow back to customers because it was the Commission’s expectation that the flow back of excess ADIT would occur through the normal operation of the MPD formula rate. Therefore, to the extent that the April 30, 2019 Order was ambiguous, we clarify that Emera Maine must flow back the full amount of excess ADIT as calculated on January 1, 2018, consistent with the MPD formula rate. We further clarify that, because of the historical test year for inputs to the MPD formula rate, the first time that the amortization mechanism would be used is for the 2019-2020 rate year, which uses 2018 test year data (i.e., 2018 calendar year inputs are used as the basis for calculating charges for June 1, 2019, through May 31, 2020).

15. We disagree with Maine Customer Group’s contention that further corrections are required by Emera Maine. We agree with Emera Maine that beginning to flow back excess ADIT in the June 1, 2018 to May 31, 2019 charges would be contrary to the terms of the filed MPD formula rate. As mentioned above, the MPD formula rate provides for the flowback of excess ADIT resulting from the Tax Cuts and Jobs Act to be included in the June 1, 2019 to May 31 2019, charges. Accordingly, we find that Emera Maine’s compliance filing complies with the April 30, 2019 Order and is consistent with the filed formula rate and that the further revisions requested by Maine Customer Group are unnecessary.

The Commission orders:

Emera Maine’s compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.