

166 FERC ¶ 61,129
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 21, 2019

In Reply Refer To:
Sky River LLC
Docket Nos. ER18-1596-001
EL18-112-000

Mr. Joel D. Newton
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, NW
Suite 220
Washington, DC 20004

Attention: Joel D. Newton

Dear Mr. Newton:

1. On December 17, 2018, Sky River LLC (Sky River) submitted revisions to its open access transmission tariff (OATT) in Docket No. ER18-1596-001, in compliance with the Commission's November 15, 2018 order¹ regarding Sky River's response to the Commission's March 15, 2018 tax rate-related order to show cause.² In this order, we find that Sky River's proposed OATT revisions comply with the Commission's directives in the November 15 Order, and terminate the section 206 of the Federal Power Act (FPA)³ proceeding established in Docket No. EL18-112-000.

¹ *Sky River LLC*, 165 FERC ¶ 61,097 (2018) (November 15 Order).

² *Alcoa Power Generating Inc.—Long Sault Division*, 162 FERC ¶ 61,224 (2018) (Stated Rate Order to Show Cause).

³ 16 U.S.C. § 824e (2012).

2. On March 15, 2018, the Commission issued several orders to address the effects of the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act),⁴ which, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent.⁵ Of relevance here, pursuant to FPA section 206, the Commission issued the Stated Rate Order to Show Cause to public utilities that use stated transmission rates under an open access transmission tariff or transmission owner tariff.

3. The Commission stated that the reduced tax rate results in lower income tax expenses for public utilities going forward. The Commission explained that public utilities recover federal corporate income tax expenses in their transmission rates, and that when tax expenses decrease, so does the cost of service.⁶ The Commission continued that it has allowed transmission rates to be established through, among other things, stated rates, which include a fixed income tax component.⁷ The Commission identified Sky River as having such an arrangement in effect, and that absent a change to Sky River's stated transmission rates, Sky River's stated transmission rates may not accurately reflect its cost of service. Accordingly, the Commission found that Sky River's stated transmission rates appear to be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful, and directed Sky River to either (1) propose revisions to its stated transmission rate under its tariff, or (2) show cause why it should not be required to do so.⁸ The Commission also noted that, under the show cause option, Sky River may explain how the reduced tax rate is being addressed in another proceeding pending before the Commission.⁹

4. On May 14, 2018, Sky River submitted proposed revisions to the point-to-point transmission rates over the Wilderness Line under its OATT. Sky River included revised tariff records to implement the tax rate reduction. In the November 15 Order, the Commission found that Sky River's proposed reduction of its stated transmission rates on the Wilderness Line to implement the tax rate reduction would satisfy the Stated Rate Order to Show Cause and accepted them effective March 21, 2018. The Commission also directed Sky River to provide refunds, with interest calculated pursuant to 18 C.F.R.

⁴ Tax Cuts & Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

⁵ Stated Rate Order to Show Cause, 162 FERC ¶ 61,224.

⁶ *Id.* PP 2-4.

⁷ *Id.* P 3.

⁸ *Id.* P 4.

⁹ *Id.* P 4 n.7.

§ 35.19a (2018), within 30 days of the date of the order.¹⁰ However, the Commission also noted that Sky River neglected to submit a response for the Sky River Line under the same OATT. Therefore, the Commission directed Sky River to either (1) propose revisions to the Sky River Line's annual transmission revenue requirement 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.¹¹

5. On December 17, 2018, Sky River submitted its compliance filing in response to the Commission's November 15, 2018 Order with revised tariff records reflecting the stated transmission rate reductions in Schedules 7 and 8 of its OATT resulting from the tax rate reduction. Sky River further notes that no refunds are due for the Sky River Line as no customers have taken transmission service over that line.¹²

6. Notice of Sky River's filing was published in the *Federal Register*, 83 Fed. Reg. 66,699 (2018) with interventions and protests due on or before January 7, 2019. None was filed.

7. We find that Sky River's December 17, 2018 filing of revised stated transmission rates for the Sky River Line to reflect the new 21 percent federal corporate income tax rate complies with the Commission's directive in the November 15 Order and will result in a lower rate to customers. In addition, we agree that as there are no current customers on the Sky River Line, no refunds are necessary. We therefore accept Sky River's proposed revisions to its stated transmission rates for the Sky River Line under its OATT, effective March 21, 2018, and terminate the FPA section 206 proceeding initiated in Docket No. EL18-112-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ November 15 Order, 165 FERC ¶ 61,097 at P 10 & ordering para. (C).

¹¹ *Id.* P11 & ordering para. (B).

¹² Sky River Transmittal at 2.