

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Emera Maine**

)  
) **Docket No. ER19-1400-000**  
)

**NOTICE OF INTERVENTION AND PROTEST  
OF THE MAINE PUBLIC UTILITIES COMMISSION**

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission<sup>1</sup> (“Commission”), and the Commission’s March 21, 2019 Combined Notice of Filings #1, the Maine Public Utilities Commission (“MPUC”) hereby files this Notice of Intervention and Protest. On March 21, 2019, Emera Maine filed proposed changes to its Maine Public District (“MPD”) Open Access Transmission Tariff (“OATT”). Emera Maine states that the proposed changes “are needed to ensure that Excess ADITs are properly reflected in the calculations of charges under the MPD OATT (and thus inure to the benefit of customers).”<sup>2</sup> The Emera Maine filing provides no support for its proposed changes. Further, the proposed changes reduce transparency. Accordingly, the Commission should reject the proposed changes.

**I. PRELIMINARY STATEMENT**

The MPUC’s Notice of Intervention is filed pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214(a)(2) (2018), and the Commission’s March 21, 2019 Combined Notice of

---

<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.214 (2019).

<sup>2</sup> Emera Maine, Changes to Maine Public District Open Access Transmission Tariff, March 21, 2019 (“Transmittal”) at 3.

Filings #1 in which the Commission established April 11, 2019, as the date by which interventions and comments were to be filed in the instant proceeding.

The person to whom correspondence, pleadings, and other papers in relation to this proceeding should be addressed and the person whose name is to be placed on the Commission's official service list is designated as follows pursuant to Rule 203, 18 C.F.R. § 385.203 (2018):

Lisa Fink, Esq.,  
Counsel for the State of Maine  
Public Utilities Commission  
101 Second Street  
Hallowell, ME 04347  
Mailing Address: 18 State House Station  
Augusta, ME 04333-0018  
(207) 287-1389 (telephone)  
[lisa.fink@maine.gov](mailto:lisa.fink@maine.gov)

## **II. NOTICE OF INTERVENTION**

Under Maine law, the MPUC is the state commission designated by statute with jurisdiction over rates and service of electric utilities in the state. 35-A M.R.S. § 101 *et seq.* It is, therefore, a “state commission” under the Commission’s regulations, 18 C.F.R. § 1.101(k) (2019). Accordingly, the MPUC hereby gives notice of its intervention pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Commission, 18 C.F.R. § 385.214(a)(2) (2019) and respectfully requests that the Commission recognize the MPUC as an intervenor in this proceeding, with all rights attendant thereto.

## **III. BACKGROUND**

The Tax Cuts and Jobs Act, signed into law on December 22, 2017, reduces the marginal federal corporate income tax rate from 35 percent to 21 percent. In an Offer of Settlement, filed in Docket No. ER18-960-000, Emera Maine agreed, among other things, to address in its annual update of charges for the June 1, 2018 to May 31, 2019 rate year, the impact of the Act’s reduction in the marginal federal corporate income tax rate and to make a tariff filing by March

31, 2018 to reflect the Act's reduction in the marginal corporate income tax rate. Emera Maine filed changes to its MPD OATT to address its commitment in the Offer of Settlement. The Commission approved those tariff provisions on November 9, 2018.

On March 15, 2018, the Commission issued a Notice of Inquiry, seeking comment on the effect of the Tax Cut and Jobs Act of 2017 on Commission-jurisdictional rates,<sup>3</sup> and on November 15, 2018, the Commission issued a Notice of Proposed Rulemaking ("NOPR") proposing to require that public utilities deduct excess accumulated deferred income taxes ("ADIT") from or add deficient ADIT to their rate bases.<sup>4</sup>

#### **IV. PROTEST**

##### **A. Emera Maine's Proposed Tariff Provisions Lack Transparency**

Emera Maine proposes to determine the amount of Excess ADIT that should be allocated to MPD by simply making a direct allocation and posting the result of that direct allocation in its FERC Form 1 Filing. This proposal provides less transparency than the use of an allocator and support for the use of that allocator in the formula rate and supporting workpapers. The lack of any methodology in the formula for allocating the excess ADIT between Emera Maine's two divisions, gives too much discretion to Emera to determine the allocation methodology and reduces the ability of the MPUC, other interested parties and the Commission to question whether Emera's method of allocation is just and reasonable.

---

<sup>3</sup> *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (Mar.15, 2018) ("Notice of Inquiry").

<sup>4</sup> *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Notice of Proposed Rulemaking, 165 FERC ¶ 61,117 (2018) ("ADIT NOPR").

Further, Emera Maine seeks to eliminate its existing workpapers rather than provide more detailed workpapers. This proposal is inconsistent with the Commission's NOPR in Docket No. RM19-5-000 which states:

We propose to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rates that will annually track information related to excess or deficient ADIT under 18 CFR 35.24. We believe that this reform is necessary to provide interested parties adequate transparency regarding how public utilities with transmission formula rates adjust their rate bases and income tax allowances to account for excess or deficient ADIT. We also believe that requiring public utilities with transmission formula rates to provide this information on an annual basis rather than a one-time basis will better allow interested parties to follow excess or deficient ADIT as it is included in an annual revenue requirement and provide transparency as to any future changes in tax rates. We also believe that updating the proposed worksheet annually will better align with the nature of the vast majority of formula rates where calculation methodologies and input sources are accepted prior to those inputs being populated.<sup>5</sup>

The NOPR envisions greater transparency than simply lifting a pre-determined number from FERC Form 1.

**B. Emera Maine Has Failed to Explain or Support its Proposed Methodology for Determining the Amortization of Excess ADIT.**

Emera Maine proposes to determine the amortization of Excess ADIT liability by subtracting from the beginning-of-year balance the end-of year balance of the Excess ADIT regulatory liability, as grossed up by the blended federal and state statutory tax rate. It fails to provide any support or explanation for this proposed methodology or any indication of how the proposed methodology for calculating the amortization expense could impact the calculation of the excess ADIT liability rate base adjustment. Without any explanation of, or support for, this proposed methodology, there is no basis for determining that it is a just and

---

<sup>5</sup> ADIT NOPR P 46

reasonable methodology. Further, regarding the gross up, Emera's filing lacks workpapers to show that this gross up is not double counted.

**C. Emera Maine's Filing Fails to Explain the Relationship of the Proposed Changes to the Tariff Changes Recently Approved by the Commission.**

While the Emera Maine filing references its earlier-filed tariff provisions which purported to address the Tax Cuts and Jobs Act's effect on Emera's formula rate, its filing contains no discussion that informs interested persons and the Commission regarding the degree to which the current proposed change supplants the recently approved tariff provisions. For example, does the proposed amortization methodology replace the ten-year amortization period proposed in the earlier filing and approved by the Commission? Without any supporting material, it is impossible to determine why the proposed provisions are necessary in view of the recently proposed provisions which purported to address the same purpose.

**D. The Filing Should Specify that the Excess ADIT Should Go Back to January 1, 2018.**

The NOPR indicates the Commission's view 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>6</sup> Emera Maine has created a regulatory liability for excess ADIT; however, there is no mention in this filing that it will return all of the excess ADIT back to January 1, 2018. This commitment should have been included in Emera Maine's proposal.

**V. CONCLUSION**

For the reasons discussed above, the MPUC respectfully requests that the Commission reject Emera Maine's proposed tariff provisions.

---

<sup>6</sup> *Id.* P 39.

Dated: April 11, 2019

Respectfully submitted,

/s/ Lisa Fink \_\_\_\_\_

Lisa Fink, Esq.  
State of Maine Public Utilities Commission  
101 Second Street  
Hallowell, ME 04347  
Mailing Address: 18 State House Station  
Augusta, ME 04333-0018  
(207) 287-1389 (telephone)  
[lisa.fink@maine.gov](mailto:lisa.fink@maine.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing document either by first class mail or electronic service upon each party on the official service list compiled by the Secretary in this proceeding.

Dated at Hallowell, Maine, this 11<sup>th</sup> day of April, 2019.

/s/ Lisa Fink

---

Lisa Fink  
State of Maine Public Utilities Commission  
101 Second Street  
Hallowell, ME 04347  
Mailing Address: 18 State House Station  
Augusta, ME 04333-0018  
(207) 287-1389 (telephone)  
[lisa.fink@maine.gov](mailto:lisa.fink@maine.gov)