Tax Cuts and Jobs Act of 2017 (TCJA)

The Effect of Federal Income Tax Changes on Regulatory and Financial Reporting

Unitil Implementation Plan - 2018

Date: July 06, 2018

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EXECUTIVE SUMMARY:

On December 22, 2017 the legislation commonly known as the Tax Cuts and Jobs Act ("TCJA") was signed into law, resulting in the most sweeping changes in US federal income tax rules since 1986. The new law will significantly affect Unitil Corporation’s (the “Company”) tax returns for 2017 and future years. In addition, many of the Regulatory accounting and Financial Reporting aspects of the new law must be recognized in the Company's GAAP financial statements, beginning in 2017. Most significantly; the new tax law reduces the top marginal corporate tax rate from 35 % to 21 %.

Specifically for regulated public utilities, interest expense continues to be deductible, while bonus depreciation was discontinued. Also, while limiting various deductions, the new law eliminates the corporate alternative minimum tax.

Other changes include:

- Limitations on certain executive compensation deductions
- Limitations on certain deductions for NOLs arising after December 31, 2017 (limited to 80% of taxable income)
- Reduced deductions for meals and entertainment as well as state and local lobbying

The most significant consequence to the Company's December 31, 2017 financial statements was the recognition of a net Regulatory Liability of $48.9MM related to the estimated revaluation/reduction in amount of Accumulated Deferred Income Taxes (“ADIT”), recognized at 34% in previous years, at the new 21% federal corporate tax rate.

From a Regulatory standpoint, and in each of our Federal and State jurisdictions, the immediate issues voiced by our regulators were; 1) when will Unitil reduce its customers’ rates for the benefit of the new, lower 21% tax rate, and 2) how and when will Unitil “flow-back” the benefit of the excess ADIT (“EDIT”), which had been recognized previously in customers’ rates, to customers.

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Immediately in Q1, the Company undertook an extensive review and analysis of the EDIT, now a $48.9MM net Regulatory Liability, on its balance sheet in order to complete its 2018 regulatory financial reporting compliance entries and to inform the execution of the Company's Regulatory ratemaking plan.

SUMMARY ANALYSIS:

There are two potential benefits (reductions in customers' rates) which will arise from the implementation of the TCJA: 1) a reduction, as soon as practicable, in customers' rates due to the change in the tax rate to 21% from 34% on the Company's current book/taxable income in 2018 and forward, and 2) a reduction, as soon as practicable, in customers' rates when the Company "flows-back" the benefit of the EDIT which had been recognized previously in customers' rates. The Company distinguishes these EDIT classifications as 'Rate Base EDIT' and 'Non-Rate Base EDIT'. The first reduction is being accomplished rather quickly, in 2018, as new ratemaking calculations are processed in each of the Company's regulatory jurisdictions. According to current law and regulatory accounting guidance; the second reduction, related to ADIT historically included in the Company's rate base for ratemaking calculations, is proposed to flow-back to customers in rates, per FERC NOPR *RM18-11-000*, over a period determined by the Average Rate Assumption Method ("ARAM"), per TCJA Sec. *13001, 131 Stat. at 2096*, projected to be approximately 15-20 years, to be in compliance with the normalization method of accounting described in the Sec. 203(e) of the Tax Reform Act of 1986. [Please refer to APPENDIX A: ASC-740 TCJA IMPLEMENTATION MATRIX].

The Company undertook a detailed analysis of each of the components of EDIT, specifically 25 categories of ADIT in 6 regulatory divisions, which comprise the $48.9MM net Regulatory Liability at December 31, 2017 for the purposes of determining how and when to flow-back EDIT to customers. The return of EDIT to customers was evaluated based on historical ratemaking treatment for the underlying deferred tax items in each jurisdiction. EDIT which had been previously included in customers' rates is identified as "Rate Base EDIT" and all other EDIT is identified as "Non-Rate Base EDIT" for regulatory accounting purposes.

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Under the normalization method, there is also a classification of “protected” vs “non-protected” ADIT amounts which is consistent with the Company’s distinction of “Rate Base” ADIT which contains protected and non-protected ADIT. The Company’s “Non-Rate Base” ADIT contains only “non-protected” ADIT.

Normalization: is the method of accounting of recording the correct expenses in the periods that they belong to rather than the period in which they occur. An Example is using deferred tax expense on book/tax timing items to keep the ETR near the statutory tax rate over the life of the underlying depreciable asset vs only recording current expense and having the tax expense vary widely year over year according to the MACRS schedule. Protected EDIT (and ADIT): is protected by IRS Normalization rules via Normalization violation penalties. These are mostly related to depreciable assets eligible for accelerated depreciation rates as established with IRC 167 and IRC 168. Unprotected EDIT (and ADIT): is not protected by IRS Normalization rules via Normalization violation penalties. Unprotected EDIT can be either rate base or non-rate base in its treatment.

While the Company will process the reduction to customers’ rates due to the adjustment for Rate Base EDIT in the next divisional rate case proceedings, the Company’s has determined that Non-Rate Base EDIT was generated outside of the ratemaking process and should be treated in accordance with ASC 740-10-55-23. As a result, the Company concludes there is $47.1MM of Rate Base EDIT and $1.8MM of Non-Rate Base EDIT in the total EDIT balance of $48.9MM recognized at December 31, 2017. [Please refer to APPENDIX B: ADIT Tax Rate Revaluation Summary by Division – Rate Base EDIT and Non-Rate base EDIT].

ANALYSIS:

- **RATE BASE EDIT:**

  Rate Base EDIT includes EDIT related to normal Property, Plant and Equipment book/tax temporary differences, plant EDIT, as well as all other non-plant EDIT items with book/tax temporary differences which have been historically included in the utility subsidiaries rate base ratemaking calculations. For the non-plant EDIT amounts, classifying the appropriate amounts as Rate Base EDIT was determined by validating that the various types of non-plant ADIT had been previously included in ratemaking for each regulated jurisdiction. The Company's Tax Manager verified with the Regulatory Department the proper inclusion of the specific EDIT components as Rate Base EDIT.

- <u>Plant Accumulated Deferred Income Tax (ADIT)</u>

Federal ADIT for property, plant and equipment (plant ADIT) relates primarily to tax methods of depreciation (bonus depreciation, MACRS and fixed asset repairs tax deductions) that are accelerated relative to GAAP straight-line depreciation. Immediately prior to the enactment of the TCJA, the deferred tax liability for accelerated tax depreciation methods was calculated based on a 34% federal tax rate. ASC 740 Income Taxes provides guidance requiring that "excess ADIT" be derecognized upon a reduction in tax rates so that ADIT is appropriately measured at the tax rates expected to be in effect when the temporary differences reverse (21%), with an offset to income tax expense from continuing operations. However, given the nature of most of the Company's plant assets as public utility property; the offsetting entry is made to a regulatory liability, in compliance with IRS normalization rules which require that the revaluation adjustment be used to lower customers' utility bills over the remaining lives of property, plant and equipment. The excess ADIT will be flowed back to customers using the Average Rate Assumption Method (ARAM), as discussed further in this memo.

Additionally, the Company revalued its Net Operating Loss Carryforwards (NOLC). Historically the Company has included NOLCs in rate base for its respective utility subsidiaries as a component of utility plant ADIT; therefore, the NOLC was included in the revaluation of recoverable plant ADIT.
Approximately $163MM of plant related ADIT was revalued to arrive at a $48.2MM plant related EDIT adjustment ($66.4 million grossed-up for tax).

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The effects to plant ADIT and regulatory liabilities at Dec. 31, 2017 were as follows:

TABLE 1: Plant ADIT Revaluation Effect (Including NOLC)

Debit/(Credit)	**Estimated Balance Sheet ADJ @ 12.31.17**		
Utility Subsidiary	Long-Term Deferred Income Taxes	Regulatory Gross-Up	Long-Term Regulatory Liabilities
UES	$ 16,614,471	$ 6,220,465	$ (22,834,936)
NUNH	6,639,969	2,486,007	(9,125,976)
NUME	8,898,999	3,470,119	(12,369,118)
FGE_E	7,236,950	2,720,328	(9,957,278)
FGE_G	7,583,498	2,850,594	(10,434,092)
GSGT	1,208,479	452,455	(1,660,934)
Total Plant EDIT Adjustment	**$ 48,182,366**	**$ 18,199,968**	**$ (66,382,334)**

- *Non-Plant ADIT included in Rate Base*

Similar to excess plant ADIT, an adjustment was required in the Q4 2017 period of enactment to derecognize excess non-plant ADIT such that ADIT is appropriately measured at the tax rates expected to be in effect when the temporary differences reverse (21%). For the non-plant ADIT revaluations, determining the appropriate amounts of net ADIT assets/liabilities to adjust to regulatory assets/liabilities was determined based on whether the various types of non-plant ADIT had been previously included in ratemaking for each regulated jurisdiction. See further

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discussion below. Approximately $2.2MM of Non-Plant ADIT in Rate Base were revalued to arrive at a $1.0MM Non-Plant plant related EDIT adjustment ($1.4 million grossed-up for tax). The regulatory asset balance was primarily driven by the revaluation of employee benefits.

The effects to recoverable non-plant ADIT and regulatory liabilities at Dec. 31, 2017 were as follows:

Table 2: Non-Plant Recoverable ADIT Revaluation Effect

Debit/(Credit)	**Estimated Balance Sheet ADJ @ 12.31.17**		
Utility Subsidiary	Rate Base Deferred Income Taxes	Regulatory Gross-Up	Long-Term Regulatory Asset/(Liability)
UES	$ (343,638)	$ (128,658)	$ 472,296
NUNH	(246,628)	(92,338)	338,966
NUME	(283,332)	(110,484)	393,816
FGE_E	(100,722)	(37,861)	138,583
FGE_G	(80,015)	(30,077)	110,092
GSGT	12,803	4,793	(17,596)
TOTAL EDIT ADJUSTMENT	**$ (1,041,532)**	**$ (394,625)**	**$ 1,436,157**

As a result, the Company concludes there is $48.2MM of Plant related Rate Base EDIT and ($1.1MM) of Non-Plant related EDIT in the total Rate Base EDIT balance of $47.1MM, before gross-up, recognized at December 31, 2017. [Please refer to APPENDIX B: ADIT Tax Rate Revaluation Summary by Division – Rate Base EDIT and Non-Rate base EDIT].

- **NON-RATE BASE EDIT:**

  Non-Rate Base EDIT relates to other book/tax temporary differences that never were previously recovered in utility rates. These include EDIT related to accrued revenue and storm reserve book/tax temporary differences as well as all other non-plant EDIT items with book/tax temporary differences which were historically excluded in that division's base rate ratemaking calculations. For the non-rate base EDIT amounts, classifying the appropriate amounts as Non-Rate Base EDIT was determined by validating that the various types of non-rate base ADIT had been previously excluded in ratemaking for each utility subsidiary. The Company's Tax Manager verified with the Regulatory Department the proper exclusion of the specific EDIT components as Non-Rate Base EDIT.

- *Non-Rate Base ADIT*

  While the Company will process the reduction to customers' rates due to the adjustment for Rate Base EDIT in the next rate case proceeding for each utility subsidiary, the Company's has determined that Non-Rate Base EDIT was generated outside of the ratemaking process and should be treated in accordance with ASC 740-10-55-23. As a result, the Company concludes there is $1.8MM of Non-Rate Base EDIT in the total EDIT balance of $48.9MM recognized at December 31, 2017. [Please refer to APPENDIX B: ADIT Tax Rate Revaluation Summary by Division – Rate Base EDIT and Non-Rate base EDIT and APPENDIX B-1: Non-Rate Base EDIT Schedule]. The Company will record the revaluation in its Statement of Earnings for the twelve months ended December 31, 2018; recognized ratably over the 2018 quarterly reporting periods. See below SAB 118 discussion and the Company's 2018 FIN 18 Memo for further discussion.

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Non-Rate Base ADIT revaluation that will be recorded as of December 31, 2018 is comprised as follows:

Non-Rate Base Revaluation Effect

Debit/(Credit)	Balance Sheet	Income Statement
	Non-Recoverable Income Taxes	**Deferred Tax Provision**
UES	$ 839,574	$ (839,574)
NUNH	(178,638)	178,638
NUME	114,653	(114,653)
FGE_E	943,366	(943,366)
FGE_G	60,086	(60,086)
GSGT	353	(353)
TOTAL	**$ 1,779,394**	**$ (1,779,394)**

Key Non-Rate Base components are as follows:

- *Accrued Revenue:* The Company has many regulatory tracker mechanisms; the largest include purchases of gas and electric supply for customers in its regulated jurisdictions. These energy supply costs are charged without markup to customers throughout the year. The accrued revenue position on the Company's balance sheet changes seasonally during the year according to the heating/cooling season. Because the accrued revenue on the Company's balance sheet turns multiple times in a year the regulatory precedent has been to keep the tax effect out of the regulatory ratemaking process.

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At December 31, 2017 the Company had an accrued revenue receivable related to the upcoming heating season which created 2017 current tax deductions which were recognized at 34%. However, the associated revenue receivables collected in 2018 will be paid in 2018 and taxed at 21%.

- *Contributions In Aid of Construction (CIAC):* Utility plant assets funded by contributions from sources outside of regulated ratemaking have always had $0 capital value and are excluded from the regulatory process. However, the funds received are included in taxable income and create ADIT which will reverse in future periods as the Company refunds or depreciates CIAC. This ADIT is funded by the Company outside of regulatory ratemaking.

- *Storm Restoration:* The Company recovers qualifying storm costs from ratepayers. While the carrying charge calculation includes certain tax attributes, the associated ADIT from storm expenditures and collections has been historically excluded from regulated ratemaking and funded by the Company.

- *Acquisition Costs*: Acquisition costs and the associated deferred tax assets/liabilities are borne by the Company. Ratepayer cost neutrality is always achieved in rate regulated utility mergers/acquisitions. Therefore, the Company classifies the ADIT associated with acquisition costs as Non-Rate base.

- *Remediation*: Certain activities engaged in by the Company require environmental remediation. While these costs are funded through the ratemaking process the associated ADIT is funded by the Company and all tax benefits are retained by the Company under the respective utility subsidiary cost recover agreements.

- *Other Book/Tax Differences*: The Company has various other miscellaneous deferred tax assets and liabilities that are funded by the Company outside of the regulatory ratemaking process and include: prepaid property taxes, bad debts, rate case costs, insurance settlements, and integrity management programs.

As a result, the Company concludes there is a net $47.1MM, before gross-up, of Rate Base EDIT and $1.8MM of Non-Rate Base EDIT in the total EDIT balance of $48.9MM recognized at December 31, 2017. [Please refer to APPENDIX B: ADIT Tax Rate Revaluation Summary by Division – Rate Base EDIT and Non-Rate base EDIT and APPENDIX B-1: Non-Rate Base EDIT Schedule]. The Company will record the revaluation in its Statement of Earnings for the twelve months ended December 31, 2018. See below SAB 118 discussion and the Company's 2018 FIN 18 Memo for further discussion.

- **<u>Other Effects & Evaluations</u>**

  - **<u>Securities and Exchange Commission Staff Accounting Bulletin 118 ("SAB 118")</u>**

    On Dec. 22, 2017, the SEC staff issued SAB 118 to address the application of US GAAP in situations in which the necessary information is not available, prepared, or analyzed (including computations) in reasonable detail to complete the book accounting for the TCJA.

    The Company has determined reasonable estimates of the effects of the TCJA, and recognized the estimates in its financial statements for the year ended Dec. 31, 2017, but notes that given expected changes to U.S. Treasury regulations, interpretations of the TCJA by the U.S. Treasury or IRS, interpretations of the application of ASC 740, and developing regulatory guidance and orders these estimates are subject to change.

    Specifically, the Company made an estimate at year-end 2017 to the Balance Sheet and P&L effects of the ADIT revaluation. However, in the first quarter of 2018 the Company participated in conference calls with other New England utilities, reviewed all regulatory mechanisms, began preparing regulatory filings, and started regulatory discussions with certain regulatory jurisdictions. The result of this process was the identification of certain ADIT for which estimates were adjusted to conform to general regulatory ratemaking principles.

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- **Expected 2018-Forward Effects**

  Overall, since income tax expense is a significant rate-recovered cost for regulated utilities, many state public utility commissions and other stakeholders are expecting significant reductions in cost based rates as a result of the new tax law. The specific effects of the TCJA on retail customer rates are subject to regulatory approval. The Company is in the process of quantifying the rate effects of the TCJA and addressing these effects in its open and recently concluded proceedings focused on retail base rate effects for its utility subsidiaries. In addition, several states have opened dockets on the effect of tax reform, with the expectation that currently effective rates in those jurisdictions will be adjusted. The Company expects to "true-up" the initial estimates made at December 31, 2017 at the end of the first quarter in 2018 and forward as the utility subsidiary regulatory processes play out.

PURPOSE:

The purpose of this memo is to document Unitil's TCJA Implementation Plan accounting considerations for the significant elements of the TCJA that were recognized as a component of financial reporting for income taxes (book accounting) in the year ended December 31, 2017 and will be recognized in the year ended December 31, 2018.

ACCOUNTING GUIDANCE:

ASC 740 *Income Taxes*
PWC *Guide to Income Taxes*
FERC *NOPR RM18-11-000*

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UNITIL CORPORATION'S 2018 TCJA IMPLEMENTATION PLAN:

[Please refer to APPENDIX C: UNITIL CORPORATION'S TCJA IMPLEMENTATION PLAN].

DISCUSSION:

ASC 740 Guidance: Applying New Tax Rates to ADIT as of the Enactment Date

While the reduction in the corporate tax rate from 34% to 21% will result in an overall reduction in income tax expense going forward, a discrete adjustment must also be made in the period of enactment to adjust ADIT to reflect the lower income tax rate that will apply when the temporary differences reverse. The enactment date in the U.S. federal jurisdiction is the date the President of the United States signs a tax bill into law. The TCJA was signed into law by President Trump on December 22, 2017.

ASC 740-10-55-23 states:

> The tax rate or rates that are used to measure deferred tax liabilities and deferred tax assets are the enacted tax rates expected to apply to taxable income in the years that the liability is expected to be settled or the asset recovered.

For Non-Regulated Companies for example, a reduction in an ADIT liability would be recorded by measuring temporary differences at the new statutory income tax rate (i.e., 21%), and comparing this result to the ADIT balance existing prior to the effective date of the income tax reduction, resulting in the following journal entry:

Dr. Deferred Tax Liabilities B/S

Cr. Deferred income tax expense P&L

To re-measure a Non-Regulated Company's ADIT for a change in tax rate upon the enactment date.

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For regulated companies however, the rate base ADIT is funded by ratepayers through base rates and any adjustments should be flowed back to ratepayers. Therefore, instead of adjusting ADIT through an adjustment to deferred income tax expense, the accounting for effects of the tax rate reduction expected to be collected or shared with ratepayers would follow ratemaking, resulting in recognition of regulatory assets and regulatory liabilities.

The entry to record a reduction in an ADIT liability for a rate regulated utility is as follows:

Dr. Deferred Tax Liabilities B/S
Cr. Regulatory Liabilities B/S

To re-measure ADIT for a change in tax rate upon the enactment date.

Determination of the discrete effect of the rate change using year-end (i.e., December. 31, 2017) temporary differences is an acceptable practice as the temporary differences are expected to approximate the deferred tax balances as of the enactment date. Material unusual or infrequent transactions occurring between the enactment date and year-end will need to be taken into consideration. However, common practice allows the discrete effect to be calculated on year-end balances which will be calculated in the Company's tax accrual at the old rate.

Regulatory Accounting Journalizing techniques for UNITIL'S 2018 TCJA IMPLEMENTATION PLAN:

There are five sets, see below, of journal entries related to Unitil's implementation of the TCJA for regulatory accounting purposes to recognize the following three events:

A. Recognize the revenue and tax provision reductions in current utility rates to reflect the benefit to customers of the Federal income tax rate change from 34% to 21% either into current billing or on a deferral basis as indicated by the Regulators. Recognize gross up entries as appropriate.

B. Recognize the amount and timing of the revenue reduction in future utility rates to reflect the amortization of the flow-back of excess ADIT at December 31, 2017 as a benefit to customers due to the Federal income tax rate change from 34% to 21% on the valuation of net deferred tax liabilities which were previously collected in rates. Recognize gross up entries as appropriate.

C. Recognize the amount of the reduction in the Company's current 2018 tax provision to reflect the revaluation of excess ADIT at December 31, 2017 as a one-time benefit to the Company due to the effect of the Federal income tax rate change from 34% to 21% on the valuation of net deferred tax liabilities which were never previously collected in rates, and thus ineligible for deferral as discussed below.

A portion of the 2017 effect of the TCJA relates to revaluation of Non-Rate Base ADIT at the reduced corporate federal income tax rate. ASC 740 requires that adjustments to ADIT upon a tax rate change be recorded to income tax expense/benefit from continuing operations, however, it was necessary for the Company's regulated utility subsidiaries to consider whether each of the Non-Rate Base ADIT revaluation adjustments should be collected from or refunded to customers, similar to refunds due customers for the revaluation of plant ADIT, and therefore deferred to regulatory assets and liabilities.

For the Non-Rate Base ADIT revaluations, determining the appropriate amounts of income tax expense/benefit to defer to regulatory assets/liabilities was performed in a two-step process. First, the Company considered whether the various types of Non-Rate Base ADIT had been previously included in ratemaking for each regulated jurisdiction. If an element of Non-Rate Base ADIT had been included in ratemaking for that utility subsidiary jurisdiction, the valuation adjustment was deemed eligible for deferral as a regulatory asset or liability, reflective of an expectation to share the adjustment with ratepayers in future rates. If the element of Non-Rate Base ADIT had not historically been included in ratemaking for the applicable utility subsidiary jurisdiction, the resulting income tax expense/benefit was not eligible for deferral and will be recorded to income tax expense/benefit from continuing operations in 2018.

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Rate regulated utilities additionally need to take into consideration the provisions of ASC 980 and the rate treatment of tax rates as outlined in ASC 980-740-25-1 and 2:

> For regulated entities that meet the criteria for application of paragraph 980-10-15-2, this Subtopic specifically:
>
> a. Prohibits net-of-tax accounting and reporting
> b. Requires recognition of a deferred tax liability for tax benefits that are flowed through to customers when temporary differences originate and for the equity component of the allowance for funds used during construction
> c. Requires adjustment of a deferred tax liability or asset for an enacted change in tax laws or rates
>
> If, as a result of an action by a regulator, it is probable that the future increase or decrease in taxes payable for items (b) and (c) in the preceding paragraph will be recovered from or returned to customers through future rates, an asset or liability shall be recognized for that probable future revenue or reduction in future revenue pursuant to paragraphs 980-340-25-1 and 980-404-25-1. That asset or liability also shall be a temporary difference for which a deferred tax liability or asset shall be recognized.
>
> ***Therefore and also initially, a gross-up amount will be calculated on the Regulatory Liability and recognized in deferred tax assets so that this gross-up amount will be available to turn against the deferred tax provision entry recognized in future periods as the Regulatory Liability is amortized into pre-tax book income and scheduled in that period's tax provision calculations as a temporary difference.***

There are five sets, itemized below, of journal entries related to the Company's implementation of the TCJA for regulatory accounting purposes to recognize the three events noted above:

A. Recognize the revenue and tax provision reductions in current utility rates to reflect the benefit to customers of the Federal income tax rate change from 34% to 21% either into current billing or on a deferral basis as indicated by the Regulators. Recognize gross up entries as appropriate.

    1. When the effect of the TCJA tax rate change is reflected in customer rates, then revenue will be reduced for the Company and its tax provision will also be reduced and no further entries are required for this item. As of March 31, 2018 this is the case for NUME, and it is expected to be the case for GSGT in August 2018.

    2. Until item #1 above occurs, and if the regulator has indicated an expectation of the tax rate change effect on current utility rates to be effective January 1, 2018: then the Company will make the following accrual, in addition to reducing its current tax provision, until the new rates are effective. As of March 31, 2018 this is the case for all the Company's utility subsidiaries except NUME and GSGT.

DR. Accrued Revenue P&L
DR. Deferred Tax Asset (gross-up on regulatory liability) B/S
CR. Regulatory Liability B/S

To recognize a Regulatory Liability for the customer's benefit of the change in TCJA tax rate, effective January 1, 2018, and including a gross-up factor, which will be included in customer rates in an agreed upon future rate proceeding.

B. Recognize the amount and timing of the revenue reduction in future utility rates to reflect the amortization of the flow-back of excess ADIT at December 31, 2017 as a benefit to customers due to the Federal income tax rate change from 34% to 21% on the valuation of net deferred tax liabilities which were previously collected in rates. Recognize gross up entries as appropriate.

3. First, set up the entry to correct the Company's Rate Base ADIT for the revaluation of these liabilities at the new lower TCJA tax rate which will be amortized and flowed-back to customers, over the ARAM period, incompliance with the IRS normalization rules and the jurisdictions regulatory ratemaking process:

   DR. ADIT B/S
   DR. Deferred tax asset (gross-up on regulatory liability) B/S
   CR. Regulatory Liability B/S

   To recognize a Regulatory Liability for the effect the change in TCJA tax rate on ADIT previous collected in utility rates, including a gross-up factor, which will be a reduction in customer rates in an agreed upon future rate proceeding.

4. Second, in future periods this Regulatory Liability for EDIT will be amortized and flowed-back to customers, over the ARAM period, in compliance with the IRS normalization rules and the utility subsidiary regulatory ratemaking process. In those periods the entry will be:

   DR. Regulatory Liability B/S
   DR. Deferred Tax Provision P&L
   CR. Deferred Tax Asset (gross-up on regulatory liability) B/S
   CR. Regulatory Liability Amortization P&L

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To recognize the Amortization of the Regulatory Liability set up for the effect the change in TCJA tax rate on ADIT previously collected in utility rates, including a gross-up factor, which will be a reduction in customer rates in this future period as determined in a future rate proceeding.

C. Recognize the amount of the reduction in the Company's current 2018 tax provision to reflect the revaluation of excess ADIT at December 31, 2017 as a one-time benefit to the Company due to the effect of the Federal income tax rate change from 34% to 21% on the valuation of net deferred tax liabilities which were never previously collected in rates, and thus ineligible for deferral as discussed below.

5. In current quarterly periods, this entry will be recognized due to the effect of the Federal income tax rate change from 34% to 21% on the valuation of No-Rate Base net deferred tax liabilities which were never previously collected in rates:

DR. ADIT B/S
CR. Deferred Tax Provision P&L

To recognize the effect of the Federal income tax rate change from 34% to 21% on the valuation of Non-Rate Base net deferred tax liabilities which were never previously collected in rates.

ASC 740 Guidance: Use of a Gross-Up Factor in Reversing Excess ADIT

Rate regulated utilities do not use ASC 740 for determining deferred income tax expense, rather deferred income tax expense is calculated on a 'with and without' basis. Income tax expense is compared 'with' book/tax timing differences to what the expense would be 'without'. Under rate regulation, a revenue requirement is computed applying a test period reflective of costs expected to be incurred when rates are effective. A rate case includes the costs to provide the utility service, including rate base (net property, plant and equipment, working capital and a reduction for ADIT). The rate base is multiplied by a rate of return,

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resulting in an operating income requirement, which is combined with the operating costs necessary to provide service to customers. Operating expenses include operating and maintenance costs, depreciation, income taxes and taxes other than income taxes. The operating income requirement plus operating expenses equals the revenue requirement.

The entry to reflect a reduction in tax rates for rate regulated entries is computed at the revenue requirement (gross-up) level and reflects the probability that a reduction in ADIT will reduce customer rates and that the regulatory liability itself is a temporary difference. Thus, the re-measurement of a deferred tax liability results in the following entry:

DR. ADIT B/S
DR. Deferred tax asset (gross-up on regulatory liability) B/S
CR. Regulatory liability B/S

To re-measure regulated Deferred Tax Liabilities upon a change in tax rate including a gross-up factor for reversing excess ADIT

When the Company flows back EDIT to rate payers, the Company will reduce the regulatory liability by recording pre-tax regulatory amortization for the grossed up ARAM amount [see below ARAM discussion]. The regulatory amortization will be treated as a timing difference in the Company's tax provision and normalized by the deferred tax asset (gross-up on regulatory liability). See Appendix D for ARAM normalization gross-up example.

Plant ADIT & ARAM

The application of accelerated depreciation provisions (i.e., bonus depreciation and MACRS accelerated depreciation) provided for within the internal revenue code (IRC) prior to the enactment of the TCJA, created a significant timing difference between book and tax depreciation of property, plant and equipment. Accelerated depreciation results in the reduction of income tax expense in the periods in which accelerated depreciation exceeds book depreciation and conversely results in the increase of income tax expense in the periods in which book depreciation exceeds tax depreciation. Bonus depreciation serves as

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an incentive to tax payers who can use the deduction to reduce the cost of construction/investment.

To ensure that deferred income tax expense is not excluded as a cost in the ratemaking process, the IRC contains 'normalization provisions' for 'public utility property,' preventing regulators from assigning the benefits of accelerated depreciation to ratepayers [Please refer to APPENDIX H: IRS PLR]. Normalization rules do require that the resulting ADIT be used to reduce rate base or be treated as zero cost capital in the rate of return calculation, providing ratepayers the time value benefit. A normalization violation can result in a regulated entity being prohibited from claiming accelerated depreciation. The normalization provisions apply to accelerated depreciation, certain excess ADIT due to reductions in income tax rate and to the investment tax credit. This method was recently confirmed in FERC Docket RM18-11-00. The Company has determined that this treatment applies to all of its utility plant excess ADIT.

According to recently published FERC guidance [Please refer to APPENDIX I: FERC NOPR pp 4, paragraph 7 (emphasis added)],

> *7. The tax rate reduction will also result in a reduction in accumulated deferred income taxes (ADIT) on the books of rate-regulated companies. The amount of the reduction to ADIT that was collected from customers but is no longer payable to the IRS is excess ADIT and* ***should be flowed back*** *to ratepayers under* ***general ratemaking principles****. The Tax Cuts and Jobs Act does not prevent such flow back, although it does include rules on how quickly companies may reduce their excess ADIT. Specifically, the Tax Cuts and Jobs Act indicates that rate-regulated companies generally should use the* ***average rate assumption method*** *when flowing excess ADIT back to customers. Rate-regulated companies must follow this requirement to be considered* ***in compliance with normalization.*** *Any flow back of ADIT faster than the requirement imposed by*

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the Tax Cuts and Jobs Act (e.g., a one-time large credit to ratepayers or a flow-back method that is over a relatively short period of time) would constitute a normalization violation and may result in unfavorable tax consequences.

Treatment of excess ADIT with respect to normalization pertaining to the difference caused by a reduction in the tax rate was first addressed within the 1986 tax act. Under the TCJA, if for any taxable year ending after the date of enactment, a normalization method of accounting is not applied, the tax for the taxable year shall be increased by the amount by which it reduces its excess tax reserve more rapidly than permitted under a normalization method of accounting.

Several Private Letter Rulings from the Internal Revenue Service (“IRS”) reference the proper application of the normalization rules. The Internal Revenue Code (“IRC”) contains 'normalization provisions' for 'public utility property,' preventing regulators from assigning the benefits of accelerated depreciation to ratepayers [Please refer to APPENDIX H: IRS PLR-155208-06, pp.4-5., issued July 20, 2007].

According to section 203(e)(1) of the Act, a normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of section 167 or 168 of the Code if the taxpayer , in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve more rapidly or to a greater extent that this reserve would be reduced under the average rate assumption method (ARAM)…

Section 203 (e) of the Act limits the rate at which the excess tax reserve may be reduced and flowed through to the utility's customers in setting rates. It does not require the utility to flow through the excess tax reserve to its customers, but permits the utility to do so provided the reduction to cost of service is not more rapidly than would be under the ARAM. Thus, section 203 (e) of the Act imposes a limitation on when the excess tax reserve may be returned to the utility's customers in the form of reduced rates.

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The required method [Please refer to APPENDIX J: TCJA ARAM] to reduce excess ADIT is referred to as the Average Rate Assumption Method (ARAM). The ARAM method reduces the excess tax reserve over the remaining regulatory lives of the property that gave rise to the reserve for deferred taxes during the years in which the deferred tax reserve related to such property is reversing.

Under this method, the excess tax reserve is reduced as the timing differences (i.e., differences between tax depreciation and regulatory depreciation with respect to the property) reverse over the remaining life of the asset. The reversal of timing differences generally occurs when the amount of the tax depreciation taken with respect to an asset is less than the amount of the regulatory depreciation taken with respect to the asset. To ensure that the deferred tax reserve, including the excess tax reserve, is reduced to zero at the end of the regulatory life of the asset that generated the reserve, the amount of the timing difference which reverses during a taxable year is multiplied by the ratio of (1) the aggregate deferred taxes as of the beginning of the period in question to (2) the aggregate timing differences for the property as of the beginning of the period in question.

In the event a utility did not recognize depreciation on a group basis or if it did not have the historical records to support the reversal of book/tax differences, an alternative method is allowed, a common method being the Reverse South Georgia Method (RSGM). The difference between ARAM and RSGM is the timing of reversal, in that as the utility is unable to determine the depreciation turnaround, excess ADIT is spread ratably over the estimated book life. Both methods result in the application of excess ADIT to reduce customer rates; the reduction begins immediately under application of the RSGM on a straight-lined basis versus the reduction in rates not occurring until reversal of the book/tax difference under the ARAM method. The Company maintains its book and tax asset databases in PowerPlant and PowerTax (PowerPlan software modules) and has the requisite historical information available to apply the ARAM method for the reversal of excess ADIT, and will process the flow back for plant ADIT on this basis.

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Rate Base and Non-Rate Base ADIT

An additional significant portion of the 2017 effect of the TCJA relates to revaluation of Non-Rate Base ADIT at the reduced corporate federal income tax rate. ASC 740 requires that adjustments to ADIT upon a tax rate change be recorded to income tax expense/benefit from continuing operations, however, it was necessary for the Company's regulated utility subsidiaries to consider whether each of the revaluation adjustments should be collected from or flowed back to customers, similar to flow back to due customers for the revaluation of plant ADIT, and therefore deferred to regulatory assets and liabilities.

For the Non-Rate Base ADIT revaluations, determining the appropriate amounts of income tax expense/benefit to defer to regulatory assets/liabilities was performed as follows: the Company considered whether the various types of Non-Rate Base ADIT had been previously included in ratemaking for each regulated utility subsidiary. If an element of non-plant ADIT had been included in ratemaking for that utility subsidiary (Rate Base ADIT), the valuation adjustment was deemed eligible for deferral as a regulatory asset or liability, reflective of an expectation to share the adjustment with ratepayers in future rates. If the element of Non-Rate Base ADIT had not historically been included in ratemaking for the applicable utility subsidiary (Non-Rate Base ADIT), the resulting income tax expense/benefit was not eligible for deferral.

While the Company asserts that this analysis achieves a base deferral amount properly grounded in historical ratemaking and the concepts set forth in ASC 740-980-25-2, the recognition of these regulatory assets and liabilities requires that the Company consider whether 100 % continued adherence to past ratemaking treatment of ADIT amounts is reasonably assured in all jurisdictions. Recognizing that the regulatory processes to adjust rates for the TCJA with each regulator (and intervenors) in each jurisdiction will provide parties the opportunity to scrutinize the recovery of costs and the sharing of benefits associated with the TCJA, as well as the types of ADIT included and excluded from rate base in general, the Company determined from conversations with other utilities in their regulatory jurisdictions and their analysis of rate recovery mechanisms that non-plant ADIT classified by the Company as Non-Rate Base ADIT were clearly excluded from the rate

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making process. Therefore, the Company will not record any associated reserves relating to the recognition of Non-Rate Base ADIT in the Company's 2018 Consolidated Statement of Earnings.

2018 Effects

The Company has calculated its effective tax rate for the period ended December 31, 2018 according to financial accounting standards FIN 18 at 23.34%. This analysis considered the effect of Non-Rate Base EDIT of $1.8MM and changes in the deductibility of certain items discussed below.

[Please refer to Appendix G for the Company's 2018 FIN 18 analysis including all 2018 P&L effects of the TCJA]

Regulated Rates

In January 2018 the Company received notice from its three regulatory jurisdictions to file information related to rate decreases reflective of the lower corporate tax rate. Due to current rate cases and regulatory orders the Company's ratepayers will receive the benefit of lower rates as of January 1, 2018. However, two of the Company's subsidiaries (NUME and GSG) have varying effective dates for lower rates. [Please refer to APPENDIX A: ASC-740 TCJA IMPLEMENTATION MATRIX] NUME was currently in a rate case when the TCJA was signed into law with rates effective March 1, 2018. As a result, NUME will collect lower revenue beginning March 1, 2018; but not before. Additionally, GSG is FERC regulated without a retroactive rate provision. GSG's rates reflecting the lower corporate tax rate are projected to be effective August 1, 2018 and will collect rates reflecting a lower corporate rate beginning on that date; but not before. The Company expects to recognize an after tax benefit of $0.7 MM [Please refer to Appendix F] as a result of the delayed effective dates for NUME and GSG. In addition, the non-rate base EDIT benefit of $1.8MM will also be recognized in 2018 ratably over each quarter according to the Company's 2018 FIN 18 effective Tax Rate calculation.

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While the Company's subsidiaries (FGE_E, FGE_G, NUNH and UES) will reduce book billed revenue starting January 1, 2018, the required reduction to base rates are expected to begin at varying times throughout 2018. To account for the retro-active rate reduction, the Company will book a regulatory liability for the amount of the estimated billed revenue reduction recorded prior to the base rate reduction. This regulatory liability will be a book/tax timing difference when flowed back to ratepayers. The Company will record a regulatory gross up for the billed rate reduction to offset the tax effect of the rate reduction regulatory liability. The regulatory liability and gross up will result in the following entry:

DR. Accrued Revenue – TCJA Revenue Reduction P&L
DR. Regulatory Gross-Up – TCJA Revenue Reduction B/S
CR. Regulatory Liability – TCJA Revenue Reduction B/S

To record the regulatory liability and gross up for the required revenue reduction that is not in current base rates.

See Appendix E – Rev Reduction Normalization Gross-Up for an example on how the Company will use a regulatory gross-up to normalize income taxes for rate making purposes.

Treatment of NOLs

Deferred tax assets associated with NOLCs are required to be re-measured to reflect the lower income tax rate expected to be in effect when the temporary differences reverse, with the resulting adjustment of ADIT reflected in continuing operations as a discrete adjustment in the period of enactment.

As a result of the TCJA, NOLCs arising after December 31, 2017 may be used to offset up to 80% of taxable income, without any ability to carryback NOLCs to prior tax years. Unused NOLCs can be carried forward indefinitely. NOLCs generated in tax years beginning before January 1, 2018 are not subject to the taxable income limitation and continue to have a two year carryback and 20 year carryforward period.

Tax-planning strategies under ASC 740 (actions an entity would take to prevent an operating loss or tax credit carryforward from expiring unused), will be effected; NOLs generated after December 31, 2017 will not be subject to expiration. As deferred taxes are scheduled at the new rate, consideration will need to be given to the ability to realize of DTAs. The Company has determined that its NOLCs were generated by bonus depreciation deductions and will not continue to be generated under the TCJA disallowance of utility plant asset bonus depreciation. Therefore, the Company has not recorded valuation allowances for its NOLCs.

Meals and Entertainment

Under current law, up to 50% of expenses relating to meals and entertainment are deductible. Housing and meals provided for the convenience of the employer on the business premises of the employer are excluded from the employee's gross income. Various other fringe benefits provided by employers are also not included in an employee's gross income, such as qualified transportation fringe benefits.

Under the TCJA, deductions for entertainment expenses are disallowed for amounts incurred or paid after Dec. 31, 2017. The current 50% limit on the deductibility of business meals is expanded to meals provided through an in-house cafeteria or otherwise on the premises of the employer; and deductions for employee transportation fringe benefits (e.g., parking and mass transit) are denied, but the exclusion from income for such benefits received by an employee is retained. In addition, no deduction is allowed for transportation expenses that are the equivalent of commuting for employees (e.g., between the employee's home and the workplace), except as provided for the safety of the employee.

For tax years beginning after Dec. 31, 2025, the TCJA will disallow an employer's deduction for expenses associated with meals provided for the convenience of the employer on the employer's business premises, or provided on or near the employer's business premises through an employer-operated facility that meets certain requirements. The change in the deductibility of meals and entertainment is anticipated to result in an increase in tax expense to The Company of approximately $0.01 million.

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Lobbying

Under current law, ordinary and necessary expenses paid or incurred in connection with carrying on any trade or business are generally deductible. Under pre-Act law, an exception to the general rule, however, disallows deductions for lobbying and political expenditures with respect to legislation and candidates for office, except for lobbying expenses with respect to legislation before local government bodies. The TCJA eliminates the deduction for lobbying expense associated with legislation before local government bodies.

Executive Compensation (Section 162m)

While the TCJA retains the $1 million deductible compensation limitation to covered employees, it eliminates the current exception for performance-based compensation while expanding the covered employee definition. Covered persons will now include the principal executive officer, principal financial officer and three other highest paid officers. Additionally, once an individual becomes a covered person, they will remain a covered person in future years. The changes do not apply to compensation subject to a written binding contract which was in effect on Nov. 2, 2017 and was not modified in any material respect after that date.

As a result of the including performance-based compensation and expanding the covered employee definition, less compensation will be deductible, resulting in an increase in tax expense to The Company of approximately $0.2 million.

Additionally, the TCJA reduces the top individual tax rate to 37%, potentially effecting equity classification for share-based payment awards. In order to avoid liability classification of share-based payment awards currently classified as equity, withholdings will need to be adjusted so as not to exceed 37% in 2018. Based on discussion with the Human Resource Department, withholding on share-based awards settled in 2018 will occur at the 28% supplemental income rate.

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CIAC

Contributions in Aid of Construction (CIAC) represent contributions of cash by a developer that may or may not be subject to refund. Refundable CIAC (referred to as a customer advance) is treated as a liability until such time as the funds are no longer refundable. CIAC is typically related to distribution line extensions to a new subdivision, condominium, or rural customer for either electric or gas service. Once all opportunity for refund has been eliminated, the legal obligation is satisfied. When the contract is no longer refundable, the remaining construction payment is credited to plant in-service.

Contributions in aid of construction (CIACs) are generally taxable, but there were exceptions, such as generation interconnections and certain payments by government entities. Beginning in 2018, contributions by governmental entities or civic groups (other than a contribution made by a shareholder) shall be treated as taxable CIACs. However, contributions made by governmental entities pursuant to master development plans that were approved prior to December 22, 2017 continue to qualify for the exception.

Some payments from governmental entities that were previously excluded from taxable income will now be taxable. Examples include payments to replace overhead conductor with underground cable near a park. The overall effect of this provision is that gross-up payments for more CIACs may be required.

Significant Items Unchanged

Interest expense deductions are generally limited under the TCJA to 30% of adjusted taxable income (earnings before interest, taxes, depreciation and amortization), with any disallowed interest subject to an indefinite carryforward. The limitation on interest expense deductions does not apply to regulated utilities. Recent initial IRS interpretations of utility interest deductibility have been favorable to utility holding company interest. The Company expects to have minimal impact from proposed and final regulations.

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Production Tax Credits (PTCs) and Investment Tax Credits (ITCs) were not affected by the TCJA. The original House bill included provisions that would have eliminated the inflation adjustment for PTCs and removed the permanent 10% ITC for solar and geothermal projects after 2027. In the final enacted TCJA, no changes were made to the tax treatment of PTCs or ITCs, including the existing phase out schedules.

Please refer to Appendix G for the Company's 2018 FIN 18 analysis including all 2018 P&L effects of the TCJA.

Other Areas of Implementation

Staff Accounting Bulletin No. 118 (SAB 118)

On Dec. 22, 2017, the SEC staff issued SAB 118 to address the application of US GAAP in situations in which the necessary information is not available, prepared, or analyzed (including computations) in reasonable detail to complete the book accounting for the TCJA. SAB 118 provides guidance for SEC registrants under the following three scenarios: I) measurement of income tax effects is complete, 2) measurement of income tax effect can be reasonably estimated and 3) measurement of income tax effects cannot be reasonably estimated.

Measurement is complete	**Tax effects of the TCJA are reflected in the period of enactment.**
Measurement can be estimated	Provisional amounts must be recorded for items for which a reasonable estimate can be determined. Provisional amounts or subsequent adjustments to provisional amounts are to be included in continuing operations in the period amounts are determined
Measurement cannot be estimated	No amount is required to be recorded for items for which a reasonable estimate cannot be determined. Registrants would continue to apply ASC 740 based on the provisions of the tax laws in effect immediately prior to the enactment of the TCJA.

The accounting for some items may be completed earlier than others; as a result, all three scenarios will need to be considered. The measurement period ends when the information necessary for the entity to finalize its accounting has been obtained, prepared and analyzed, not to extend beyond one year.

DISCLOSURES:

Disclosures should include:

- Qualitative disclosures for which the accounting is incomplete
- Items reported as provisional amounts
- Existing current or deferred amounts for which measurement of the effect of the TCJA has not been completed
- Reason the initial accounting is incomplete
- Additional information required, prepared or analyzed to complete accounting measurement
- Nature and amount of measurement adjustment recognized during the reporting period
- Effect of measurement period adjustments on the effective tax rate
- When the accounting for the effect of the TCJA has been completed

SAB 118 additionally clarifies that re-measurement of a deferred tax asset to reflect a change in tax rate or tax laws is not an impairment under ASC 740, and disclosure under Item 2.06 of Form 8-K is therefore not required.

The Company has determined reasonable estimates of the effects of the TCJA, and recognized the estimates in its financial statements for the year ended Dec. 31, 2017, but notes that given expected changes to U.S. Treasury regulations, interpretations of the TCJA by the U.S. Treasury or IRS, interpretations of the application of ASC 740, and developing regulatory guidance and orders these estimates are subject to change.

INTERNAL CONTROL CONSIDERATIONS:

With the enactment of the TCJA, the Company assessed its control environment and identified required control activities specific to the calculation and implementation of the TCJA due to the broad reaching changes of the TCJA, the multiple departments impacted

(Tax, Accounting, Regulatory), the differing regulatory treatment across all the jurisdictions the Company operates in and the short period of time to review, interpret and implement the TCJA.

Due to the far reaching and complex nature of the TCJA, the Company developed a strategic plan which was implemented according to the following controls present in the Company's control environment:

Control #	Control Description
TAX CYCLE #3	The General Accountants prepare the monthly tax provision journal entry(s), which is reviewed and approved by the Tax Manager, as evidenced by electronic sign-off in PowerTax.
CORP ACCOUNTING CYCLE #9	All journal entries (manual, recurring, non-recurring) are reviewed and approved (initials) by a General Accountant, Sr. General Accountant, and / or the Manager Corporate Accounting. The Assistant Controller and / or Controller approves non-recurring journal entries if the earnings impact exceeds $0.01 earnings per share.
TAX CYCLE #5	Each quarter, the Tax Manager prepares the current tax account balance sheet reconciliations and any resulting adjusting journal entries. Balance sheet reconciliations are reviewed and approved by the Manager, SEC Reporting and the Controller within 30 days of quarter end. For the third and fourth quarters, the Tax Manager prepares the SFAS 109 balance sheet reconciliations and any adjusting journal entries. Balance sheet reconciliations are reviewed and approved by the Manager, SEC Reporting and the Controller within 30 days of quarter end.
TAX CYCLE #6	Each quarter, the Tax Manager prepares the Effective Tax Rate Reconciliation, which is reviewed and approved by the Manager, SEC Reporting and the Controller.
TAX CYCLE #8	The Tax Manager compiles the Tax Footnote. The Tax Footnote, and supporting documentation, is forwarded to the Controller for review and approval as evidenced by initials and date on the supporting documentation. The approved Tax Footnote and supporting documentation is provided to the Manager, SEC Reporting.

TAX CYCLE #9	Each quarter, the Tax Manager and Controller attest to the FIN 48 Checklist / Memorandum detailing tasks performed to: i) identify new transactions and tax positions, and ii) identify changes to existing tax positions as required by FIN 48.

After review the above mentioned internal controls the Company determined that it could rely on the current controls to implement the Tax, GAAP, and Regulatory effect of the TCJA.

Please see Appendix C for a detailed listing of the Company's Implementation activities.

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ADDENDUM 1 [Q2 2018 UPDATE]:

Please see *Unitil Annual Effective Tax Rate in Interim Reporting Memo Q2* 2018 for documentation of management's considerations and procedures used to produce this update.

Net Operating Loss Carryforward Offset

During the second quarter of 2018 the Company forecasted Net Operating Loss Carryforward (NOLC) utilization. Forecasted amounts included expected changes due to the TCJA of 2017 and other expected business variables such as changes in accrued revenue, PNGTS refunds, and pension contributions. While the Company was forecasting NOLC utilization, it reviewed the TCJA revaluation and associated accounting of the NOLC at yearend 2017.

The Company considers various factors when performing the NOLC consolidated accounting. Three primary factors are: (1) regulated subsidiary "stand-alone" basis, (2) non-regulated subsidiary intercompany tax payments to parent, and (3) non-regulated parent contra-NOLC consolidated credit offset accounting.

(1) ***Regulated Subsidiary Stand-Alone Basis:*** Regulated accounting requires regulated subsidiaries that participate in a tax sharing agreement (combined group) to account for income taxes on a "stand-alone" basis. Income taxes are an integral component of base ratemaking with significant jurisdiction importance. Therefore, current year income tax and all other tax attributes (i.e. NOLCs and other tax credit carryforwards) must be accounted for on the regulated subsidiaries general ledgers without consideration of the other subsidiaries in the combined tax filing group (i.e. "stand-alone" basis). Regulated subsidiaries will always settle taxes payable with the parent. Taxes refundable will be settled with the parent unless the combined group has (or generates) an NOLC. If the combined group has an NOLC the regulated subsidiary will account for the NOLC (on a "stand-alone" basis) in its rate base calculation.

(2) ***Non-regulated Subsidiary Intercompany Tax Payments to Parent:*** Non-regulated subsidiaries that belong to a combined group with regulated subsidiaries have their tax liability settled by the parent of the combined group. Intercompany tax payments or refunds to the parent generally occur on an

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annual/quarter basis to enable the parent of the combined group to remit required estimated tax payments. Non-regulated subsidiaries always settle taxes payable/receivable with the parent combined filer. Additionally, all non-regulated tax attributes are accounted on the parent combined filer's general ledger.

(3) ***Non-regulated Parent Contra-NOLC Consolidated Credit Offset Accounting:*** In the event that the combined group has an NOLC, the parent company will shelter taxes payable of non-regulated subsidiaries and record a balancing credit (payable) to account for regulated NOLCs on a consolidated and "stand-along" basis.

> ***Example:*** *Combined group has a $15MM NOLC and regulated subsidiaries have a $20MM NOLC (stand-alone basis). Non-regulated Parent Contra-NOLC Consolidated Credit Offset will be recorded as follows:*

Regulated Subsidiary NOLC	*$20MM*
Parent Contra-NOLC Credit Offset	*($ 5MM)*
Combined Group NOLC	*$15MM*

The Parent Contra-NOLC Credit Offset is created by non-regulated subsidiary taxes payable which are temporarily sheltered by the parent of the combined group up to the amount of NOLC generated by regulated subsidiaries. Once the parent has sheltered non-regulated taxes payable against all available combined group NOLCs, the parent will begin remitting taxes to the required taxing authority.

Regulated subsidiaries will continue to account for income taxes and NOLCs on the "stand-alone" basis after the combined NOLC has been completely utilized and will include its "stand-alone" basis NOLC when calculating intercompany tax payments due to the parent combined filer. When the combined group no longer has an NOLC, the use of regulated subsidiary "stand-alone" basis NOLC will cause an equal amount of the Parent Contra-NOLC Credit Offset to be due to the respective taxing authority. Therefore, the Parent Contra-NOLC Credit Offset represents future taxes payable of the combined group.

The TCJA revaluation of the Company's NOLC was performed in two parts. First, the Company revalued regulated subsidiary NOLCs and reduced the TCJA Regulatory Liability to be flowed back to ratepayers. Second, the Company revalued the Parent Contra-NOLC Credit Offset so that the consolidated NOLC would equal the available combined group NOLC.

After the Parent Contra-NOLC Credit Offset was revalued, intercompany payments were generated by the regulated subsidiaries to transfer the revalued amount to the TCJA Regulatory Liability increasing the amount flowed back to ratepayers. The transfer was completed with the following journal entry:

DR. Parent ADIT – NOLC B/S
CR. Intercompany Payable to Subs B/S

DR. Intercompany Receivable from Parent B/S
CR. Subsidiary TCJA Regulatory Liability B/S

The Company evaluated this intercompany transfer with respect to the 2018 regulatory developments and determined that the Parent Contra-NOLC Credit Offset represents non-regulated taxes payable due by the consolidated group which are no longer payable. As such, they should not be considered by the regulated subsidiaries on a “stand-alone” basis and the Company subsequently transferred the revalued amount back to the parent through intercompany tax payments with the following entry:

DR. Subsidiary TCJA Regulatory Liability B/S
CR. Intercompany Payable to Parent B/S

DR. Intercompany Receivable from Subs B/S
CR. Parent ADIT – NOLC B/S

[Please refer to APPENDIX K: PARENT CONTRA-NOLC CREDIT OFFSET for the revaluation technique used by the Company on its regulated NOLC and Parent Contra-NOLC Credit Offset]

Net Operating Loss Carryforward Offset Amortization

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The revalued Parent Contra-NOLC Credit Offset is a non-regulated liability which is no longer deemed payable. It represents excess taxes sheltered at the 34% federal rate which will be payable at the new 21% federal rate. As a result, the Company determined a method to write off the impaired liability. Consistent with the method utilized to write off non-rate base EDIT, the Company will amortize the Parent Contra-NOLC Credit Offset as the underlying liability reverses (combined group NOL). The Company's forecasted 2018 NOL Utilization Ratio is 37.15% which creates $1.5MM Parent Contra-NOLC Credit Offset Amortization [Please refer to APPENDIX L: UNITIL 2018 TAXABLE INCOME FORECAST; Please refer to APPENDIX M: 2018 NOL UTILIZATION RATIO].

CHARITABLE CONTRIBUTIONS CREDIT CARRYFORWARD

The Company revalued its charitable contributions carryforward at December 31, 2017 in the amount of $190,013. This amount was transferred to the regulated entities through intercompany tax payments at December 31, 2017 and subsequently transferred back to the parent's general ledger with the Parent Contra-NOLC Credit Offset. Consistent with the recognition of other excess tax revaluations, the Company will amortize additional tax expense as the underlying asset reverses. The Company does not expect to recognize any related amortization in 2018 due to the forecast of NOLCs at the end of 2018.

ADDENDUM 1 [Q2 2018 UPDATE]:

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The Company considers various factors when performing the NOLC consolidated accounting. Three primary factors are: (1) regulated subsidiary "stand-alone" basis, (2) non-regulated subsidiary intercompany tax payments to parent, and (3) non-regulated parent contra-NOLC consolidated credit offset accounting.

(1) ***Regulated Subsidiary Stand-Alone Basis:*** Regulated accounting requires regulated subsidiaries that participate in a tax sharing agreement (combined group) to account for income taxes on a "stand-alone" basis. Income taxes are an integral component of base ratemaking with significant jurisdiction importance. Therefore, current year income tax and all other tax attributes (i.e. NOLCs and other tax credit carryforwards) must be accounted for on the regulated subsidiaries general ledgers without consideration of the other subsidiaries in the combined tax filing group (i.e. "stand-alone" basis). Regulated subsidiaries will always settle taxes payable with the parent. Taxes refundable will be settled with the parent unless the combined group has (or generates) an NOLC. If the combined group has an NOLC the regulated subsidiary will account for the NOLC (on a "stand-alone" basis) in its rate base calculation.

(2) ***Non-regulated Subsidiary Intercompany Tax Payments to Parent:*** Non-regulated subsidiaries that belong to a combined group with regulated subsidiaries have their tax liability settled by the parent of the combined group. Intercompany tax payments or refunds to the parent generally occur on an

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annual/quarter basis to enable the parent of the combined group to remit required estimated tax payments. Non-regulated subsidiaries always settle taxes payable/receivable with the parent combined filer. Additionally, all non-regulated tax attributes are accounted on the parent combined filer's general ledger.

(3) ***Non-regulated Parent Contra-NOLC Consolidated Credit Offset Accounting:*** In the event that the combined group has an NOLC, the parent company will shelter taxes payable of non-regulated subsidiaries and record a balancing credit (payable) to account for regulated NOLCs on a consolidated and "stand-along" basis.

Example: *Combined group has a $15MM NOLC and regulated subsidiaries have a $20MM NOLC (stand-alone basis). Non-regulated Parent Contra-NOLC Consolidated Credit Offset will be recorded as follows:*

Regulated Subsidiary NOLC	*$20MM*
Parent Contra-NOLC Credit Offset	*($ 5MM)*
Combined Group NOLC	*$15MM*

The Parent Contra-NOLC Credit Offset is created by non-regulated subsidiary taxes payable which are temporarily sheltered by the parent of the combined group up to the amount of NOLC generated by regulated subsidiaries. Once the parent has sheltered non-regulated taxes payable against all available combined group NOLCs, the parent will begin remitting taxes to the required taxing authority.

Regulated subsidiaries will continue to account for income taxes and NOLCs on the "stand-alone" basis after the combined NOLC has been completely utilized and will include its "stand-alone" basis NOLC when calculating intercompany tax payments due to the parent combined filer. When the combined group no longer has an NOLC, the use of regulated subsidiary "stand-alone" basis NOLC will cause an equal amount of the Parent Contra-NOLC Credit Offset to be due to the respective taxing authority. Therefore, the Parent Contra-NOLC Credit Offset represents future taxes payable of the combined group.

The TCJA revaluation of the Company's NOLC was performed in two parts. First, the Company revalued regulated subsidiary NOLCs and reduced the TCJA Regulatory Liability to be flowed back to ratepayers. Second, the Company revalued the Parent Contra-NOLC Credit Offset so that the consolidated NOLC would equal the available combined group NOLC.

After the Parent Contra-NOLC Credit Offset was revalued, intercompany payments were generated by the regulated subsidiaries to transfer the revalued amount to the TCJA Regulatory Liability increasing the amount flowed back to ratepayers. The transfer was completed with the following journal entry:

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CR. Intercompany Payable to Subs B/S

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CR. Subsidiary TCJA Regulatory Liability B/S

The Company evaluated this intercompany transfer with respect to the 2018 regulatory developments and determined that the Parent Contra-NOLC Credit Offset represents non-regulated taxes payable due by the consolidated group which are no longer payable. As such, they should not be considered by the regulated subsidiaries on a “stand-alone” basis and the Company subsequently transferred the revalued amount back to the parent through intercompany tax payments with the following entry:

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CR. Intercompany Payable to Parent B/S

DR. Intercompany Receivable from Subs B/S
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[Please refer to APPENDIX K: PARENT CONTRA-NOLC CREDIT OFFSET for the revaluation technique used by the Company on its regulated NOLC and Parent Contra-NOLC Credit Offset]

Net Operating Loss Carryforward Offset Amortization

The revalued Parent Contra-NOLC Credit Offset is a non-regulated liability which is no longer deemed payable. It represents excess taxes sheltered at the 34% federal rate which will be payable at the new 21% federal rate. As a result, the Company determined a method to write off the impaired liability. Consistent with the method utilized to write off non-rate base EDIT, the Company will amortize the Parent Contra-NOLC Credit Offset as the underlying liability reverses (combined group NOL). The Company's forecasted 2018 NOL Utilization Ratio is 37.15% which creates $1.5MM Parent Contra-NOLC Credit Offset Amortization [Please refer to APPENDIX L: UNITIL 2018 TAXABLE INCOME FORECAST; Please refer to APPENDIX M: 2018 NOL UTILIZATION RATIO].

CHARITABLE CONTRIBUTIONS CREDIT CARRYFORWARD

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Unitil Corporation
TCJA Implementation Memo
Appendix C - TCJA Implementation Plan

Planning and Analysis

Date	Focus	Description
		2017
11/9/2017	All	Grant Thornton Tax Webinar
12/9/2017	Regulatory & GAAP	Internal Discussion - Finance (Regulatory & External Outlook) Discussion of aplicable law changes.
12/14/2017	Regulatory	Power & Utilities Tax Reform Update
12/19/2017	Regulatory & Tax	Webinar - How will Tax Reform impact your PowerPlan System
12/29-12/31	GAAP	Prepared ASC 740 Reconciliations to calculate Tax Rate Change Revaluation
		2018
1/3/2018	Tax & GAAP	Dicussed tax changes including Bonus Depreciation for Q4 2017 with external tax advisors
1/3/2018	All	Internal Unitil Financial Mangement planning meeting RE: Tax Reform
1/9/2018	Regulatory & GAAP	Meeting with Regulatory, General Accounting, and Tax to discuss ADIT in rate mechanisms.
1/29/2018	Tax & GAAP	Discussion with External Tax Consultants RE: Executive Comp (Section 162m).

System Configuration

Date	Focus	Description
		2018
1/11/2018	Regulatory & Tax	Conference Call with PowerPlan: PowerTax ARAM Setup | Rate Changes
1/16/2018	Regulatory & Tax	Updated tax rates in PowerPlan PowerTax Module (ARAM)
01/17-01/26	Regulatory & Tax	Processed ARAM calculation in PowerTax
2/6/2018	Tax & GAAP	Updated tax rates in PowerPlan Provision Module
2/7/2018	Tax & GAAP	Processed Rate Change in PowerPlan Provision Module
2/7/2018	Tax & GAAP	Updated PowerPlan Provision Module for new tax code changes

Internal Controls

Date	Focus	Description
		2018
01/02-01/05	ICFR	Tax Manager reviewed Internal Controls Document (404 Business Cycle) and Assessed Current Control Environment - See Internal Control Discussion in TCJA Implementation Memo.
1/19/2018	ICFR	Tax Manager reveiwed tax provision, all tax balance sheet reconciliations, All tax rollforward schedules, tax footnotes, and ETR reconciliation with the Chief Accounting Officer, Assistant Controller, Accounting Manager, and Manager of SEC Reporting

Unitil Corporation
TCJA Implementation Memo
Appendix C - TCJA Implementation Plan

Accounting for Income Taxes - Events and Implementation Steps

Date	Focus	Description
		2017
12/22/2017	ALL	TCJA Signed into Law
		2018
1/2/2018	ALL	NH Office of Consumer Advocate filed Complaint with the NHPUC "Regarding Unjust and unreasonable Rates" due to the tax rate reduction of the TCJA.
1/3/2018	ALL	NHPUC opened IR 18-001 "Investiation to Determine Rate Effects of Federal and State Corporate Tax Reductinos" to examine the effect of the tax rate reduction of the TCJA.
1/5/2018	GAAP & TAX	Finalized Tax Depreciation with Bonus Depreciation stopping September 27th.
1/8/2018	GAAP	Prepared ASC 740 Recon's for non-regulated entities, calculated EDIT, and posted the adjustment to the Tax Provision.
1/9/2018	ALL	State Offices of Consumer Advocates filed joint petition at FERC regarding the Justness and Reasonableness of Jurisdictional Utility Rates due to the tax rate reduciton of the TCJA.
1/11/2018	ALL	ME PUC Opened an "Investigation on of the impats of the TCJA on Maine Natural Gas Corporations".
1/15-1/17	GAAP	Prepared ASC 740 Recon's using 2017 Tax Rate for regulated entities, calculated EDIT, Calculated Gross Up Entry, and Posted the adjustment to Regulatory Liability.
1/18/2018	Regulatory	The Company held an internal meeting to discuss upcoming technical conference with the MEPUC RE: Impacts of the TCJA and its currently filed base rate case proceeding.
1/18/2018	Regulatory	The Company had a technical telephonic conference with the ME PUC "Regarding Tax Legislation Impact on Rate Case" discussing Cost of Service Reductions for decreased tax rates.
1/18-1/19	GAAP	Prepared ASC 740 Recon's using 2018 Tax Rate to ensure the re-valuation entries were correct.
1/26/2018	Regulatory & GAAP	The Company filed its ARAM forecast for subsidiary Northern Maine Division with the ME PUC.
1/29/2018	GAAP & TAX	Rolled PowerPlan - Provision Module to 2018. Updated all provisional accrual items to reflect changes in the TCJA.
1/29/2018	GAAP	Calculated FIN 18 wth new TCJA rates.
1/30/2018	Regulatory	The Company had a techinical telephonic conference with the ME PUC regarding the ARAM forecast submitted by the Company for subsidiary Northern - Maine Division.
2/5/2018	Regulatory & GAAP	Analyzed EDIT for Rate Base vs Non-Rate Base Attributes.
2/2/2018	ALL	MA DPU issued DPU 17-181 opening an investigation "Into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charged by Electric, Gas, and Water Companies."
2/12/2018	GAAP	Based on further regulatory developments, re-calculated FIN 18 tax rate including identified non-rate base EDIT.
2/28/2018	Regulatory	ME PUC Issued final order regarding Northern Maine's base rate case proceedings. The ME PUC accepted the Company's calculation to adjust the Cost of Service for the tax rate reduction and accepted the Company's ARAM forcast to defer recovering EDIT until the next base rate case.

Unitil Corporation
TCJA Implementation Memo
Appendix C - TCJA Implementation Plan

Accounting for Income Taxes - Events and Implementation Steps (Continued…)

Date	Focus	Description
3/16/2018	Regulatory	UES Rate filing submitted to the NH PUC to reflect the impact of the TCJA
4/10/2018	GAAP & Regulatory	Review all TCJA balance sheet entries with Controller. Freeze balances until 2017 tax return RTA and/or further regulatory orders.
4/10/2018	GAAP	Review all Q1 TCJA tax provision adjustments and adjust according to any updated assumptions based on TCJA IRS regulations (if proposed).
7/3/2018	GAAP & TAX	Review all Q2 TCJA tax provision adjustments and adjust according to any updated assumptions based on TCJA IRS regulations (if proposed).
09/15-9/30	GAAP	Perform 2017 tax return RTA.
10/3/2018	GAAP & TAX	Review all Q3 TCJA tax provision adjustments and adjust according to any updated assumptions based on TCJA IRS regulations (if proposed).
12/26-12/31	GAAP & TAX	Review all Q4 TCJA tax provision adjustments and adjust according to any updated assumptions based on TCJA IRS regulations (if proposed).

Accounting for Income Taxes - Events and Implementation Steps | Q2 2018 Interim Reporting Update

Date	Focus	Description
4/30/2017	REGULATORY	NUPUC issued its final order approving rates for UES regarding the effect of the TCJA including the amount of ADIT to flowback to rate payers, the delay of the ADIT flow back, and the reduction of base rates due to the change in the federal tax rate.
5/1/2018	REGULATORY	FGE Rate filing submitted to the MDPU to reflect the impact of the TCJA
5/2/2018	REGULATORY	NUPUC approved settlement agreement between NU-NH, NHPUC Staff, and the OCA regarding the effect of the TCJA including the amount of ADIT to flowback to rate payers, the delay of the ADIT flow back, and the reduction of base rates due to the change in the federal tax rate.
5/2/2018	REGULATORY	Granite filed an uncontested rate settlement with FERC requesting no change in existing rates which accounted for the effects of the TCJA.
5/17/2018	GAAP & TAX	The Company met with its Actuary and discussed various funding scenarios based on the Actuary's cmpleted valuation of the Company's Pension assets. Based on discussions, the Company decided to make an additional $12M contribution on 8/31/2018 for Plan year 2017.
5/21/2018	GAAP & TAX	The Company estimated the additional $12M Pension tax deduction would contribute to the NOL in its 2017 tax return and assessed the impact of this transaction on the amounts accrued in the Company's 2017 income tax provision and balance sheet. It was determined the Company's NOLC balance at December 31, 2017 would increase when the Company recognizes, in 2018, the "return-to-accrual" adjustmetn for filing its 20174 tax return.
5/23 - 6/01	GAAP & TAX	The Company performed further analyses to assess the impact of the additional $12M pension contribution on its ADIT liabilities and to determine if an adjustment to those ADIT liabilities is appropriate in 2018. The adjustment to the non-utility entities of the Company for their portion of the additional pensiontax deduction in 2017 results in a non-regulated tax benefit of $546K to their tax provision in 2018.
6/1 - 6/22	GAAP & TAX	Company analyzed the forecasted 2018 utilization of its NOLC due to the acceleration of pension deductions, changes in accrued revenue, and other changes in book/tax timing items.

Unitil Corporation
TCJA Implementation Memo
Appendix C - TCJA Implementation Plan

Accounting for Income Taxes - Events and Implementation Steps | Q2 2018 Interim Reporting Update

Date	Focus	Description
6/25/2018	GAAP & TAX	The Company concluded that the NOLC has reached its peak at the end of 2017 and the NOLC will be utilized starting 2018 and the Company will begin to recognize a pro rata portion of the consolidating Parent Contra-NOLC Liability as the consolidated NOLC is recognized.
6/27/2018	REGULATORY	FERC approved Granite's filing from May 2, 2018 and stated it complies with the FERC Notice of Proposed Rulemaking concerning the justness and reasonableness of reates in light of the corporate income tax reduction under the TCJA.
6/29/2018	REGULATORY	MDPU issued an order accepting FGE's proposal to decrease the annual revenue requirement for both gas and electric divisions to account for the effect of the TCJA. The MDPU will address the refund of excess accumulated deferred income taxes in phase two of its investigation.
7/12/2018	GAAP & TAX	The Company met with Grant Thorton to discuss its updated 2017 pension contribution and NOLC utlization forecast. The Company concluded based on a pro-rata utilization of the total NOLC asset and will recognize a tax benefit of $1.5M in 2018
7/16/2018	GAAP & TAX	The Company's Management met with Senior/Executive Management to approve the new projected ETR of 19.26% for the remaining interim periods in 2018.

Unitil Corporation Consolidated
FIN 18 Analysis

For the Period Ended December 31, 2018

APPENDIX G

		Actuals	Actuals	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget
	UTL	**Jan**	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
Pretax Book Income	42,567,677	8,820,781	5,509,090	6,176,868	3,481,190	596,183	(9,592)	1,333,257	416,617	911,613	1,319,033	5,615,257	8,397,380
Permanent Items					-			-		-	-		
Lobbying	196,603	14,693	20,830	16,108	16,108	16,108	16,108	16,108	16,108	16,108	16,108	16,108	16,108
Membership Dues	4,758	-	2,408	2,350	-	-	-	-	-	-	-	-	-
Penalties	33,739	3,500	7,739	1,100	1,500	1,000	6,000	1,500	1,000	6,600	1,100	1,600	1,100
Section 162(m)	600,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
State Regulatory Asset Amortization	191,740	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978
Unallowable Meals	43,501	499	1,956	4,005	3,740	3,841	4,956	3,666	3,686	4,456	3,834	4,146	4,720
Total Permanent Items	**1,070,342**	**84,670**	**98,911**	**89,541**	**87,326**	**86,927**	**93,042**	**87,252**	**86,772**	**93,142**	**87,020**	**87,832**	**87,906**
ITC Amortization													
Unamortized ITC	-	-	-	-	-	-	-	-	-	-	-	-	-
Total ITC Amortization	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
State Taxable Base	**43,638,018**	**8,905,451**	**5,608,001**	**6,266,409**	**3,568,516**	**683,110**	**83,450**	**1,420,509**	**503,389**	**1,004,755**	**1,406,053**	**5,703,089**	**8,485,286**
State Tax Expense													
State Tax Expense	3,588,958	734,387	466,305	519,787	297,518	54,132	319	107,608	36,136	79,128	112,790	481,026	699,822
Total State Tax Expense	**3,588,958**	**734,387**	**466,305**	**519,787**	**297,518**	**54,132**	**319**	**107,608**	**36,136**	**79,128**	**112,790**	**481,026**	**699,822**
Federal Taxable Base	**40,049,060**	**8,171,064**	**5,141,697**	**5,746,622**	**3,270,998**	**628,978**	**83,131**	**1,312,901**	**467,253**	**925,627**	**1,293,263**	**5,222,063**	**7,785,464**
Federal Tax Expense													
Federal Tax Expense	8,410,303	1,715,923	1,079,756	1,206,791	686,910	132,085	17,457	275,709	98,123	194,382	271,585	1,096,633	1,634,947
Federal Tax Credits	(14,801)	(2,080)	(2,080)	(1,615)	(916)	(930)	(1,247)	(882)	(882)	(1,090)	(916)	(991)	(1,172)
Total Federal Tax Expense	**8,395,502**	**1,713,843**	**1,077,676**	**1,205,176**	**685,994**	**131,155**	**16,210**	**274,827**	**97,241**	**193,292**	**270,669**	**1,095,642**	**1,633,775**
Other Tax Items													
Excess ADIT	(1,688,435)	-	(375,000)	(550,000)	(59,041)	(5,000)	25,000	(36,000)	10,000	(20,000)	(42,000)	(255,000)	(381,394)
Charitable Contributions Carryforward Revalue	190,013	-	-	-	-	-	190,013	-	-	-	-	-	-
NOLC Offset Amortization	(1,470,383)	-	(326,571)	(478,971)	(51,416)	(4,354)	21,771	(31,351)	8,709	(17,417)	(36,576)	(222,068)	(332,139)
RTA - Pension Payments	(545,563)	-	(121,169)	(177,715)	(19,077)	(1,616)	8,078	(11,632)	3,231	(6,462)	(13,571)	(82,395)	(123,235)
RTA	1,514	-	-	-	-	-	-	-	-	1,514	-	-	-
FGE ITC AMORT	(41,923)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)
Regulatory Amortization	(216,765)	(21,107)	(20,027)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)
Total Other Tax Items	**(3,785,161)**	**(24,601)**	**(859,880)**	**(1,227,742)**	**(150,591)**	**(32,027)**	**223,806**	**(100,040)**	**883**	**(63,422)**	**(113,203)**	**(580,520)**	**(857,825)**
Net Income After Tax	**34,368,378**	**6,397,151**	**4,824,990**	**5,679,647**	**2,648,269**	**442,922**	**(249,927)**	**1,050,862**	**282,357**	**702,615**	**1,048,777**	**4,619,108**	**6,921,607**
2018 ETR	**19.26%**												
2018 YTD ETR			**21.69%**	**17.58%**	**18.50%**	**18.68%**	**19.66%**	**19.74%**	**19.94%**	**20.04%**	**20.06%**	**19.68%**	**19.26%**

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APPENDIX K: PARENT CONTRA-NOLC CREDIT OFFSET

Step I - Consolidated NOLC | $20.1M Consolidated [$30.5M NOLC at Regulated Sub: $10.4M Payable at Corp]

	Consolidated	Ucorp	FGE	UES	NUNH	NUME	GSGT
NOLC @ 34%	20,119,577	(10,350,955)	2,695,091	1,228,316	6,527,475	16,760,120	3,259,530

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	30,470,532	-	-	-
Ucorp NOLC Offset	(10,350,955)			-
Consolidated NOLC	20,119,577	-	-	-

1. Regulated subs have $30.4MM NOL to offset future taxable income
2. Ucorp has sheltered $10.3 Million of unregulated subs' taxable income with consolidated NOL

Step II(a) - Taxable Income results in $30.5M tax liability (before NOLC deduction) in current year taxed at 34%

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	30,470,532	(30,470,532)	-	-
Ucorp NOLC Offset	(10,350,955)			10,350,955
Consolidated NOLC	20,119,577	(30,470,532)	-	10,350,955

1. Regulated subs utilize 100% of "stand alone" NOLC
2. Ucorp's $10.3M unregulated subs' sheltered tax liability becomes due

Step II(b) - Taxable Income results in $40.5M tax liability (before NOLC deduction) in current year taxed at 34%

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	30,470,532	40,470,532	-	10,000,000
Ucorp NOLC Offset	(10,350,955)			10,350,955
Consolidated NOLC	20,119,577	40,470,532	-	20,350,955

1. Regulated subs utilize 100% of "stand alone" NOLC and owe an additional $10M in current taxes payable
2. Ucorp's $10.3M unregulated subs' sheltered tax liability becomes due

Step II(c) - Taxable Income results in $25.5M tax liability (before NOLC deduction) in current year taxed at 34%

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	30,470,532	25,470,532	5,000,000	-
Ucorp NOLC Offset	(10,350,955)		(5,000,000)	5,350,955
Consolidated NOLC	20,119,577	25,470,532	-	5,350,955

1. Regulated subs utilize $25.5M of "stand alone" NOLC and carryforward $5M "stand alone" NOLC
2. The amount of Ucorp's unregulated subs' sheltered tax liability becomes due: equal to the amount of current year tax liability over consolidated NOLC

APPENDIX K: PARENT CONTRA-NOLC CREDIT OFFSET

Step III - Federal tax rate change from 34% to 21% | $12.4M Consolidated [$18.8M NOLC at Regulated Sub: $6.4M Payable at Corp]

	Consolidated	Ucorp	FGE	UES	NUNH	NUME	GSGT
NOLC @ 34%	20,119,577	(10,350,955)	2,695,091	1,228,316	6,527,475	16,760,120	3,259,530
NOLC @ 21%	12,426,798	(6,393,237)	1,664,615	758,666	4,031,676	10,351,839	2,013,239
NOLC Excess	7,692,779	(3,957,718)	1,030,476	469,650	2,495,799	6,408,281	1,246,291

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	18,820,034	-	-	-
Ucorp NOLC Offset	(6,393,237)			-
Consolidated NOLC	12,426,798	-	-	-

NOLC Excess JE

		DR.	CR.	
1	ADIT NOLC (B/S)		11,650,498	NOLC Excess Regualted Subs
2	Reg Liability - TCJA ARAM FlowBack (B/S)	11,650,498		NOLC Excess Regualted Subs
3	ADIT NOLC (B/S)	3,957,718		NOLC Excess Unregualted Subs
4	Deferred Tax Provision (P&L)		3,957,718	NOLC Excess Unregualted Subs
	Control Total	**15,608,216**	**15,608,216**	

Net NOLC Reduction Line 1 (CR) + Line 3 (DR)	**(7,692,779)**
Net Regulatory Liability Line 2 (DR)	**11,650,498**
Net Deferred Tax Provision Line 4 (CR)	**(3,957,718)**

Step IV(a) - Taxable Income results in $18.8M tax liability (before NOLC deduction) in current year taxed at 21%

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	18,820,034	(18,820,034)	-	-
Ucorp NOLC Offset	(6,393,237)			6,393,237
Consolidated NOLC	12,426,798	(18,820,034)	-	6,393,237

1. Regulated subs utilize 100% of "stand alone" NOLC
2. Ucorp's $6.4M unregulated subs' sheltered tax liability becomes due

Step IV(b) - Taxable Income results in $28.8M tax liability (before NOLC deduction) in current year taxed at 21%

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	18,820,034	28,820,034	-	10,000,000
Ucorp NOLC Offset	(6,393,237)			6,393,237
Consolidated NOLC	12,426,798	28,820,034	-	16,393,237

1. Regulated subs utilize 100% of "stand alone" NOLC and owe an additional $10M in current taxes payable
2. Ucorp's $6.4M unregulated subs' sheltered tax liability becomes due

Step IV(c) - Taxable Income results in $13.8M tax liability (before NOLC deduction) in current year taxed at 21%

	NOLC Available	Taxable Income	Remaining NOLC	Cash Paid
Regulated Subs	18,820,034	13,820,034	5,000,000	-
Ucorp NOLC Offset	(6,393,237)		(5,000,000)	1,393,236
Consolidated NOLC	12,426,798	13,820,034	-	1,393,236

1. Regulated subs utilize $13.8M of "stand alone" NOLC and carryforward $5M "stand alone" NOLC
2. The amount of Ucorp's unregulated subs' sheltered tax liability becomes due: equal to the amount of current year tax liability over consolidated NOLC.

APPENDIX L: UNITIL 2018 TAXABLE INCOME FORECAST

	12/31/2018 2018 Estimated YTD	12/31/2017 2017 Actual YTD	2018-2017 Change YTD
Pretax Book Income	40,039,310	46,542,558	(6,503,248)
Permanent Items			
Amort of Organization Rules	-	-	-
Lobbying	193,087	190,350	
MAOP Testing	-	-	-
Membership Dues	5,198	5,198	-
Penalties	16,100	12,348	3,752
State Regulatory Asset Amortization	191,741	191,740	1
Officer Compensation SEC. 162(m)	600,000	-	600,000
Unallowable Meals	37,489	36,896	593
Total Permanent Items	**1,043,615**	**436,532**	**607,083**
Temporary Items			
Accrued Revenue	8,703,752	(4,196,611)	12,900,364
Bad Debt	763,166	399,393	363,773
Bad Debt Reg Asset	84,809	(33,659)	118,468
Debt Discount Expense	1,920	1,920	-
Deferred Rate Case	646,152	987,570	(341,418)
DER Investment Amortization	11,021	11,020	1
FAS 109 Amortization	-	-	-
Gas Refund	-	-	-
Insurance Claim Reserve	10,318	(118,436)	128,755
Indenture Costs	28,704	28,704	-
Integrity Management Program	(91,154)	(14,076)	(77,078)
Merger Costs	-	-	-
Legal Fees	-	-	-
Pension FAS 87	(4,140,216)	(11,784,986)	7,644,770
Pension FAS87 Reg Asset	(59,315)	(59,315)	-
PNGTS Refund	(2,258,386)	(4,507,047)	2,248,661
Prepaid Property Tax	286,800	(255,450)	542,250
R&D Deduction	-	(10,711,716)	10,711,716
Remediation	1,859,011	1,753,997	105,014
Restricted Stock	607,550	607,550	(0)
SERP	1,332,098	1,305,054	27,044
SFAS 106 OPEB	5,042,116	5,037,116	5,000
SFAS 106 OPEB Reg Asset	(332,637)	(332,637)	-
State Regulatory Asset Amortization	257,948	257,948	-
Storm Restoration	502,643	2,452,179	(1,949,536)
Transaction Costs	724,848	783,750	(58,902)
Transition Costs	694,379	748,606	(54,227)
Total Temporary Items	**17,940,438**	**(17,639,127)**	**35,579,565**
Temporary Plant			
Amort of Purchase Discount	(2,237,328)	(2,477,009)	239,681
Book Amort of Software	2,239,518	1,209,936	1,029,582
Book Depreciation	37,877,220	39,420,973	(1,543,753)
CIAC	418,376	61,807	356,569
CIAC Non-Refundable	3,769,616	4,462,389	(692,774)
Repairs Expense	(32,438,774)	(28,512,890)	(3,925,884)
Tax Depreciation	(38,488,010)	(52,855,914)	14,367,904
Total Temporary Plant	**(28,859,382)**	**(38,690,708)**	**9,831,326**
ITC Amortization			
Unamortized ITC	-	(1,113)	1,113
Total ITC Amortization	**-**	**(1,113)**	**1,113**
State Tax Expense	**(4,781,735)**	**(45,509)**	**(4,736,226)**
Federal Taxable Income	**25,382,247**	**(9,144,242)**	**34,526,488**

APPENDIX M: 2018 NOL UTILZATION RATIO

LN/COL	(a)	(b)
1	NOL Available	68,319,471
2	2018 Taxable Income (See APPENDIX L)	25,382,247
3	2018 NOL Utilization ratio (Line 2 / line 1)	37.15%
4	Parent Contra-NOLC Credit Offset Amortization (Line 5 * Line 3)	1,470,383
5	Parent Contra-NOLC Credit Offset (See APPENDIX K)	3,957,718
6	Remaining Parent Contra-NOLC Credit Offset (Line 5 - Line 4)	2,487,335

Unitil

Date: October 17, 2018
To: Mark Collin, Chief Financial Officer; Laurence Brock, Chief Accounting Officer;
From: Jonathan Giegerich, Tax Manager
Re: Annual Effective Tax Rate in Interim Reporting Update – Q3

EXECUTIVE SUMMARY:

The Company filed its tax returns for the year ended December 31, 2017 with the Internal Revenue Service in September 2018 and generated additional federal net operating loss (NOL) carryforward assets principally due to current pension deductions, tax repair deductions, tax depreciation and research and development deductions. As of September 30, 2018, the Company had recorded cumulative federal and state NOL carryforward assets of $18.2 million to offset against taxes payable in future periods. If unused, the Company's NOL carryforward assets will begin to expire in 2029. In addition, at September 30, 2018, the Company had $3.4 million of cumulative alternative minimum tax credits, general business tax credit and other state tax credit carryforwards to offset future income taxes payable.

As a result of filing its 2017 tax returns and conducting a Return to Accrual (RTA) analysis with Grant Thornton, the Company's tax preparers during the third quarter, the Company re-evaluated the effective tax rate to be used in interim period reporting to reflect the 2017 RTA analysis and other current events and changes in the regulatory and tax environments. The purpose of this memo is to document management's process in analyzing the impact of these developments on the Company's 2018 Effective Tax Rate ("ETR") and to document management's findings and analysis as described below.

MANAGEMENT'S FINDINGS AND ANALYSIS:

During the second quarter of 2018 management updated the accounting estimate for the Annual Effective Tax Rate in Interim Reporting with the following steps:

Unitil

1. **IDENTIFICATION OF KEY FACTORS:**

   a. The Company filed its 2017 federal and state tax returns in September 2018. The Company included in the filing the $12MM additional tax deduction for pension payments made on September 7, 2018 as discussed in the 2018 Q2 Update Memo. [Please see Q2 ANNUAL EFFECTIVE TAX RATE IN INTERIM REPORTING UPDATE memo for details]. Additionally, the Company included certain changes related to utility plant differences after the final tax repairs, tax depreciation, gain/loss, cost of removal, and salvage was reconciled in the PowerTax database. The Company also had other immaterial adjustments related to other book/tax timing differences.
   b. Management estimated the additional tax deductions over the 2017 year end provision estimate would impact rate base and non rate base EDIT and would affect the 2018 ETR. Management reviewed all Return to Accrual (RTA) adjustments per the 2017 tax return filing with the Company's tax specialists on September 26, 2018.
   c. Management updated its estimated 2018 taxable income based on 2018 actuals through September 2018 and estimated that the projected 2018 ETR would be 18% down 1.3% from the Company's Q2 analysis. [PLEASE SEE APPENDIX G, APPENDIX M, AND APPENDIX L OF THE TCJA MEMO FOR UPDATED ANALYSIS]
   d. **Regulatory Factors:** (1) On July 9, 2018 the MDPU announced Phase II of their TCJA investigation relative to the flow back of EDIT to ratepayers. (2). The Company has responded to various requests and the discovery period is still ongoing. Management concluded that no changes to previous regulatory EDIT estimates were needed due to continuing regulatory developments.

2. **MANAGEMENT'S COMMUNICATION OF REQUIRED NEW ESTIMATES:**

   a. **Communication of the need of a new estimate:** The previous conclusion about the Company's return to accrual adjustments effecting non rate base EDIT and the update to the 2018 taxable income prompted Management to analyze the

Unitil

forecasted 2018 ETR. Therefore, management met with the Company's tax specialists to discuss key factors previously identified and communicate criteria to develop a reasonable estimate of NOL utilization based on 2018 estimated taxable income.

b. **Accumulation of sufficient data:** Management and the Company's tax specialists met on October 1, 2018 and discussed historical year-over-year trends of book/tax timing differences, entity changes, and industry factors that affect the Company's 2018 estimate of book/tax timing differences and RTA adjustments which will be used in the new 2018 tax provision accounting estimate.

3. PREPARATION OF ACCOUNTING ESTIMATE BY QUALIFIED PERSONNEL:

a. The Company's tax specialists prepared a new forecast of 2018 NOLC utilization based on significant factors and historic assumptions from 2017 events to determine the tax return accrual items which occurred in 2017 and contributed to increasing the NOLC but would not recur in 2018 and, thus, the expected result is a significant utilization (decrease) to the NOLC is forecasted. See Appendix L: Unitil 2018 Taxable Income Forecast.

b. The Company's RTA analysis decreased the overall rate base EDIT (net of NOLC's) that will be flowed back to ratepayers by $65K. The Company's non-rate base EDIT increased by $4K due to immaterial other adjustments to non-rate base book/tax timing differences.

4. MANAGEMENT'S REVIEW OF ACCOUNTING ESTIMATE WITH SPECIALISTS:

a. The Company met with Grant Thornton, the Company's tax return preparer, to discuss its final tax return draft for approval and signature on September 20, 2018. The Company also discussed and confirmed the increase to NOLC in the 2017 period as well as to analyze the Company's updated 2018 Taxable Income Forecast to evaluate the utilization of NOLC in 2018 and to confirm the Company's estimated tax payments to federal and state jurisdictions for the 2018 tax period were adequate.

5. MANAGEMENT'S ANALYSIS OF THE 2018 TAX PROVISION ACCOUNTING ESTIMATE:

a. Based on the key factors, historical data, industry trends, and other assumptions developed by the Company's internal and external tax specialists; management concluded the NOLC has reached a peak at the end of 2017, and that the Company will utilize 47% of the NOLC in 2018; an increase from the 37% used in the second quarter analysis.

b. Additionally Management determined that increases to non-rate base EDIT would not materially impact the forecasted 2018 ETR.

6. MANAGEMENT'S SIGNOFF OF UPDATED ACCOUNTING ESTIMATE :

a. Based on the above analyses, discussions and input from its outside professionals; the Company updated its estimate of Unitil's expected ETR for 2018. Management determined it is appropriate to adjust its estimated ETR for 2018 to 18%, from the 19.26% it estimated at the end of the second quarter of 2018 based on filing the Company's 2017 tax returns in September, and the other factors listed above which arose in the third quarter of 2018. See Appendix G: Unitil Corporation Consolidated FIN 18 Analysis.

Unitil Corporation - Consolidating
12/31/2017
ADIT Tax Rate Revaluation - Rate Base v. Non Rate Base

APPENDIX B

	Consolidated	UES	NU_NH	NU_ME	FGE-G	FGE-E	GSGT
ADIT Rate Base Items							
Rate Base EDIT: Plant							
Utility Plant Differences	$ (47,476,178)	$ (16,553,252)	$ (6,664,456)	$ (9,041,438)	$ (7,696,326)	$ (6,317,717)	$ (1,202,988)
Rate Base EDIT: Non-Plant							
Contributions In Aid of Construction(CIAC)	$ 68,899	$ 68,899	$ -	$ -	$ -	$ -	$ -
SFAS 106 - PBOP	$ 3,243,230	$ 1,095,406	$ 353,227	$ 360,386	$ 660,451	$ 742,366	$ 31,394
FAS 87 - Pensions	$ (2,285,368)	$ (576,883)	$ (27,002)	$ (32,867)	$ (631,437)	$ (638,513)	$ (33,354)
Debt Discount Expense	$ (1,530)	$ (1,530)	$ -	$ -	$ -	$ -	$ -
Bad Debts	$ (16,432)	$ 33,522	$ 13,068	$ 25,939	$ (84,460)	$ (4,501)	$ -
Prepaid Property Tax	$ (309,201)	$ (204,989)	$ (93,408)	$ 39	$ -	$ -	$ (10,843)
Deferred Rate Case & Restructuring	$ (298,634)	$ (67,915)	$ (18,035)	$ (71,467)	$ -	$ (141,217)	$ -
DER INVESTMENT/IMP/MERGER	$ (15,531)	$ (15,531)	$ -	$ -	$ -	$ -	$ -
Indenture Costs	$ (45,614)	$ (45,614)	$ -	$ -	$ -	$ -	$ -
FAS109 Reg Asset	$ 58,273	$ 58,273	$ -	$ -	$ -	$ -	$ -
Insurance Settlement	$ 2,045	$ -	$ 743	$ 1,302	$ -	$ -	$ -
Total Rate Base EDIT: NON-PLANT	$ 400,137	$ 343,638	$ 228,593	$ 283,332	$ (55,446)	$ (41,865)	$ (12,803)
Total Rate Base EDIT	$ (47,076,041)	$ (16,209,614)	$ (6,435,863)	$ (8,758,106)	$ (7,751,772)	$ (6,359,582)	$ (1,215,791)
Non-Rate Base EDIT							
Accrued Revenue	$ (2,143,637)	$ (69,256)	$ (257,504)	$ (716,227)	$ (230,774)	$ (870,241)	$ -
Contributions In Aid of Construction(CIAC)	$ 26,817	$ -	$ -	$ -	$ 2,575	$ 24,242	$ -
Prepaid Property Tax	$ 35,058	$ -	$ -	$ -	$ 15,611	$ 19,447	$ -
Bad Debts	$ (5,505)	$ -	$ -	$ -	$ (2,354)	$ (3,151)	$ -
Storm Restoration	$ (883,981)	$ (770,318)	$ -	$ -	$ -	$ (113,663)	$ -
Transition Costs	$ (82,387)	$ -	$ (30,051)	$ (41,415)	$ -	$ -	$ (10,921)
Transaction Costs	$ 852,737	$ -	$ 350,620	$ 417,071	$ -	$ -	$ 85,046
Remediation	$ 520,547	$ -	$ 70,908	$ 270,218	$ 179,421	$ -	$ -
Rate Case	$ (432)	$ -	$ -	$ -	$ -	$ -	$ (432)
Insurance Settlement	$ (28,380)	$ -	$ -	$ -	$ (28,380)	$ -	$ -
IMP	$ (74,046)	$ -	$ -	$ -	$ -	$ -	$ (74,046)
Total NON Rate Base EDIT	$ (1,783,209)	$ (839,574)	$ 133,973	$ (70,353)	$ (63,901)	$ (943,366)	$ (353)
Grand Total EDIT	$ (48,859,250)	$ (17,049,188)	$ (6,301,890)	$ (8,828,459)	$ (7,815,673)	$ (7,302,948)	$ (1,216,144)

Unitil Corporation - Consolidated
APPENDIX B-1: Non-Ratebase EDIT Schedule
12/31/2018

APPENDIX B-1: Non-Rate Base EDIT Schedule

	Total	2018	2019	2020	2021	2022	2023	2024
Accrued Revenue	$ (2,144,002)	$ (2,140,536)	$ (694)	$ (694)	$ (694)	$ (692)	$ (692)	$ -
Contributions In Aid of Construction(CIAC)	$ 26,817	$ 26,817						
Prepaid Property Tax	$ 35,058	$ 35,058						
Bad Debts	$ (5,505)	$ (5,505)						
Storm Restoration	$ (883,981)	$ (367,868)	$ (97,934)	$ (97,934)	$ (97,934)	$ (97,934)	$ (97,934)	$ (26,442)
Transition Costs	$ (82,387)	$ (82,387)						
Transaction Costs	$ 852,737	$ 852,737						
Remediation	$ 520,547	$ 93,857	$ 93,857	$ 93,857	$ 93,857	$ 93,857	$ 25,632	$ 25,632
Rate Case	$ (432)	$ (432)						
Insurance Settlement	$ (28,380)	$ (28,380)						
IMP	$ (74,046)	$ (74,046)						
Subtotal	$ (1,783,574)	$ (1,690,685)	$ (4,771)	$ (4,771)	$ (4,771)	$ (4,769)	$ (72,995)	$ (811)
Ucorp Charitable Contributions Carryforward	$ 190,013	$ 190,013						
Ucorp NOL Revaluation	$ (3,957,718)	$ (1,864,320)	$ (2,093,398)					
Total NON Rate Base EDIT Before 2017 RTA	$ (5,551,279)	$ (3,364,992)	$ (2,098,169)	$ (4,771)	$ (4,771)	$ (4,769)	$ (72,995)	$ (811)
RTA USC Pension Funding	$ (640,386)	$ (640,386)						
Total NON Rate Base EDIT	$ (6,191,665)	$ (4,005,378)	$ (2,098,169)	$ (4,771)	$ (4,771)	$ (4,769)	$ (72,995)	$ (811)

Unitil Corporation Consolidated
FIN 18 Analysis

For the Period Ended December 31, 2018

APPENDIX G

		Actuals	Actuals	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget	Budget
	UTL	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Pretax Book Income	42,567,677	8,820,781	5,509,090	6,176,868	3,481,190	596,183	(9,592)	1,333,257	416,617	911,613	1,319,033	5,615,257	8,397,380
Permanent Items					-			-		-	-		
Lobbying	196,603	14,693	20,830	16,108	16,108	16,108	16,108	16,108	16,108	16,108	16,108	16,108	16,108
Membership Dues	4,758	-	2,408	2,350	-	-	-	-	-	-	-	-	-
Penalties	33,739	3,500	7,739	1,100	1,500	1,000	6,000	1,500	1,000	6,600	1,100	1,600	1,100
Section 162(m)	600,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000	50,000
State Regulatory Asset Amortization	191,740	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978	15,978
Unallowable Meals	43,501	499	1,956	4,005	3,740	3,841	4,956	3,666	3,686	4,456	3,834	4,146	4,720
Total Permanent Items	**1,070,342**	**84,670**	**98,911**	**89,541**	**87,326**	**86,927**	**93,042**	**87,252**	**86,772**	**93,142**	**87,020**	**87,832**	**87,906**
ITC Amortization													
Unamortized ITC	-	-	-	-	-	-	-	-	-	-	-	-	-
Total ITC Amortization	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
State Taxable Base	**43,638,018**	**8,905,451**	**5,608,001**	**6,266,409**	**3,568,516**	**683,110**	**83,450**	**1,420,509**	**503,389**	**1,004,755**	**1,406,053**	**5,703,089**	**8,485,286**
State Tax Expense													
State Tax Expense	3,588,958	734,387	466,305	519,787	297,518	54,132	319	107,608	36,136	79,128	112,790	481,026	699,822
Total State Tax Expense	**3,588,958**	**734,387**	**466,305**	**519,787**	**297,518**	**54,132**	**319**	**107,608**	**36,136**	**79,128**	**112,790**	**481,026**	**699,822**
Federal Taxable Base	**40,049,060**	**8,171,064**	**5,141,697**	**5,746,622**	**3,270,998**	**628,978**	**83,131**	**1,312,901**	**467,253**	**925,627**	**1,293,263**	**5,222,063**	**7,785,464**
Federal Tax Expense													
Federal Tax Expense	8,410,303	1,715,923	1,079,756	1,206,791	686,910	132,085	17,457	275,709	98,123	194,382	271,585	1,096,633	1,634,947
Federal Tax Credits	(42,126)	-	-	-	-	-	-	-	(42,126)	-	-	-	-
Total Federal Tax Expense	**8,368,177**	**1,715,923**	**1,079,756**	**1,206,791**	**686,910**	**132,085**	**17,457**	**275,709**	**55,997**	**194,382**	**271,585**	**1,096,633**	**1,634,947**
Other Tax Items													
Excess ADIT	(1,690,685)	-	(375,000)	(550,000)	(59,041)	(5,000)	25,000	(36,000)	10,000	(20,000)	(42,000)	(255,000)	(383,644)
Charitable Contributions Carryforward Revalue	190,013	-	-	-	-	-	190,013	-	-	-	-	-	-
NOLC Offset Amortization	(1,864,321)	-	(326,571)	(478,971)	(51,416)	(4,354)	(78,229)	(156,351)	(141,291)	(367,417)	73,778	(111,714)	(221,785)
USC - Pension Payments	(640,386)	-									(213,462)	(213,462)	(213,462)
RTA	-	-	-	-	-	-	-	-	-	-	-	-	-
FGE ITC AMORT	(41,923)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)	(3,494)
Regulatory Amortization	(216,765)	(21,107)	(20,027)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)	(17,563)
Total Other Tax Items	**(4,264,067)**	**(24,601)**	**(725,091)**	**(1,050,027)**	**(131,514)**	**(30,411)**	**115,728**	**(213,407)**	**(152,348)**	**(408,474)**	**(202,741)**	**(601,233)**	**(839,948)**
Net Income After Tax	**34,874,608**	**6,395,071**	**4,688,121**	**5,500,318**	**2,628,276**	**440,377**	**(143,097)**	**1,163,347**	**476,832**	**1,046,577**	**1,137,398**	**4,638,830**	**6,902,558**
2018 ETR	**18.07%**												
2018 YTD ETR			**22.66%**	**19.13%**	**19.91%**	**20.06%**	**20.61%**	**20.21%**	**19.66%**	**18.51%**	**18.29%**	**18.14%**	**18.07%**

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APPENDIX L: UNITIL 2018 TAXABLE INCOME FORECAST

	12/31/2018	12/31/2017	
	2018 Estimated YTD	**2017 Actual YTD**	**2018-2017 Change YTD**
Pretax Book Income	41,652,000	46,542,558	(4,890,558)
Permanent Items			
Amort of Organization Rules	-	-	-
Lobbying	193,087	190,350	
MAOP Testing	-	-	-
Membership Dues	5,198	5,198	-
Penalties	16,100	12,348	3,752
State Regulatory Asset Amortization	191,741	191,740	1
Officer Compensation SEC. 162(m)	450,000	-	450,000
Unallowable Meals	37,489	36,896	593
Total Permanent Items	**1,043,615**	**436,532**	**607,083**
Temporary Items			
Accrued Revenue	6,447,990	(4,189,345)	10,637,335
Bad Debt	663,166	409,392	253,774
Bad Debt Reg Asset	84,809	(33,659)	118,468
Debt Discount Expense	1,920	1,920	-
Deferred Rate Case	546,152	839,388	(293,236)
DER Investment Amortization	11,021	11,020	1
FAS 109 Amortization	-	512,231	(512,231)
Gas Refund	-	-	-
Insurance Claim Reserve	10,318	(131,510)	141,828
Indenture Costs	28,704	28,701	3
Integrity Management Program	(91,154)	(14,076)	(77,078)
Merger Costs	-	-	-
Legal Fees	-	-	-
Pension FAS 87	6,595,954	(11,988,936)	18,584,890
Pension FAS87 Reg Asset	(59,315)	(59,315)	-
PNGTS Refund	(2,258,386)	(4,507,047)	2,248,661
Prepaid Property Tax	171,800	(255,450)	427,250
R&D Deduction	(2,500,000)	(10,372,908)	7,872,908
Remediation	1,459,011	1,735,173	(276,162)
Restricted Stock	607,550	607,550	(0)
SERP	1,332,098	1,305,054	27,044
SFAS 106 OPEB	5,042,116	5,037,116	5,000
SFAS 106 OPEB Reg Asset	(332,637)	(332,637)	-
State Regulatory Asset Amortization	257,948	257,948	-
Storm Restoration	402,643	2,452,179	(2,049,536)
Transaction Costs	654,331	783,750	(129,418)
Transition Costs	686,222	748,607	(62,385)
Total Temporary Items	**19,762,262**	**(17,154,855)**	**36,917,117**
Temporary Plant			
Amort of Purchase Discount	(2,270,592)	(2,477,009)	206,417
Book Amort of Software	2,711,243	1,271,135	1,440,108
Book Depreciation	46,609,668	39,420,973	7,188,695
CIAC	418,376	61,807	356,569
CIAC Non-Refundable	3,269,616	4,462,389	(1,192,774)
Repairs Expense	(31,830,386)	(26,525,322)	(5,305,064)
Tax Depreciation	(40,082,531)	(63,460,225)	23,377,694
Total Temporary Plant	**(21,174,607)**	**(47,246,251)**	**26,071,645**
ITC Amortization			
Unamortized ITC	-	**(1,113)**	1,113
Total ITC Amortization			
State Tax Expense	**(4,102,662)**	**(869,768)**	**(3,232,894)**
Federal Taxable Income	**37,180,609**	**(18,292,898)**	**55,473,507**

APPENDIX M: 2018 NOL UTILIZATION RATIO

LN/COL	(a)	(b)
1	NOL Available	78,929,764
2	2018 Taxable Income (See APPENDIX L)	37,180,609
3	2018 NOL Utilization ratio (Line 2 / line 1)	47.11%
4	Parent Contra-NOLC Credit Offset Amortization (Line 5 * Line 3)	1,864,320
5	Parent Contra-NOLC Credit Offset (See APPENDIX K and/or B-1)	3,957,718
6	Remaining Parent Contra-NOLC Credit Offset (Line 5 - Line 4)	2,093,398

Unitil

Date: January 16, 2019

To: Mark Collin, Chief Financial Officer; Laurence Brock, Chief Accounting Officer; Christine Vaughan, SVP Financial & Regulatory Services

From: Jonathan Giegerich, Tax Manager

Re: Annual Effective Tax Rate in Interim Reporting Update – Q4

EXECUTIVE SUMMARY:

During the fourth quarter, the Company completed its analysis of the annual effective tax rate ("ETR") used for period ending December 31, 2018 based on fiscal year 2018 actual results and changes in the regulatory and tax environments. The purpose of this memo is to document Management's process in analyzing the impact of these developments on the Company's 2018 ETR and to document management's findings and analysis as described below.

MANAGEMENT'S FINDINGS AND ANALYSIS:

During the fourth quarter of 2018 management finalized the accounting for the Annual Effective Tax Rate for period ending December 31, 2018 with the following steps:

1. **IDENTIFICATION OF KEY FACTORS:**

    a. **Regulatory Factors:** On November 15, 2018 the Federal Energy Regulatory Commission ("FERC") issued additional Notirce of Proposed Rulemaking ("NOPR") and a Policy Statement for accounting for Excess Deferred Income Tax ("EDIT") in formula and stated rates. Please see the Company's "2018 Q4 FERC Orders" memo for the Company's analysis of FERC's issued NOPRs.

Unitil

On December 21, 2018 the MDPU issued Order DPU 18-15-E as a result of their Phase II investigation and ordered Fitchburg Gas and Electric Light Company ("FGE") to begin flow back of EDIT to ratepayers effective February 1, 2019. Included in the amount to be flowed back was EDIT previously identified by the Company as unprotected "Non Rate Base" EDIT. This EDIT was not ordered to be flowed back through distribution rates but to be reconciled through the flow through mechanisms which created the EDIT.

b. **Internal Revenue Service Factors:** In the fourth quarter of 2018 the IRS issued proposed Treasury Regulations for IRC §163(j) clarifying limitations imposed on interest expense deductions. These Treasury Regulations clarified the definition of exempt entities and provided a Di Minimis provision for combined tax filing groups.
c. Management finalized its 2018 provision for taxable income estimate based on 2018 general ledger actuals through December 2018 and changes in the Company's regulatory environment and calculated the 2018 ETR would be 20.25% an increase of 2.25% from the Company's Q3 analysis. [PLEASE SEE APPENDIX G, APPENDIX M, AND APPENDIX L OF THE TCJA MEMO FOR UPDATED ANALYSIS]

2. **MANAGEMENT'S COMMUNICATION OF REQUIRED NEW ESTIMATES:**

a. **Communication of the need of a new estimate:** The previous conclusion about the Company's treatment of non rate base EDIT and the update to the 2018 taxable income prompted Management to analyze the 2018 ETR. Therefore, management met with the Company's tax specialists to discuss key factors previously identified and communicate criteria to develop a reasonable estimate of NOL utilization based on 2018 estimated taxable income. [PLEASE SEE APPENDIX N OF THE TCJA MEMO FOR REGULATORY TREATMENT OF EDIT IN THE COMPANY'S REGULATORY JURISDICTIONS]
b. **Accumulation of sufficient data:** Management and the Company's tax specialists met on January 4th, 9th, and 10th of 2019 and discussed the final accounting results of book/tax timing differences and regulatory changes that affect the Company's 2018 year-end tax provision accounting estimate.

c. Analysis of compiled regulatory data: Management, the Company's tax specialist, and the Company's regulatory specialists met on January 2, 2018 to discuss implementation of DPU 18-15-E relative to base distribution rates and distribution flow through mechanisms. Management identified all previously identified unprotected "Non Rate Base" EDIT generated from distribution flow through mechanisms. The Company will follow the DPU's Order 18-15-E in future regulatory reconciliation filings to reconcile unprotected "Non Rate Base" EDIT which was never collected from ratepayers. Please see memo "2018 Q4 DPU Orders" for the Company's analysis of the order.

d. Analysis of compiled IRS data: The Company's tax specialists reviewed Edison Electric Institute ("EEI") guidance issued at the end of November 2018 with the Company's tax advisor, Grant Thornton (See Attached EEI Communication). Additionally, the Company's tax specialists attended an EEI Member webcast on December 18, 2018 which discussed the proposed Treasury Regulations on Business Interest Limitations (See attached slides). The Company determined that non regulated entities in a combined tax filing group which exist to support the operations of regulated entities are defined as exempt entities under the proposed Treasury Regulations. With the exception of Usource Inc. (Usource LLC is considered under Usource Inc. for federal tax purposes as it is deemed a disregarded entity by the IRS), the Company identified all other non-regulated entities in its combined group as supporting the operations of its regulated entities and are therefore classified as exempt entities under IRC §163(j). Additionally, when applying the 10% Di Minimis provision, Usource Inc.'s asset tax basis is covered by the safe harbor provision and no adjustment is necessary for IRS §163(j).

3. PREPARATION OF ACCOUNTING ESTIMATE BY QUALIFIED PERSONNEL:

a. The Company's tax specialists prepared a year-end calculation of the 2018 NOLC utilization based on the Company's year-end pre-tax book accounting and determined the result is an utilization (decrease) of 46.90% to the NOLC. See Appendix L: Unitil 2018 Taxable Income Forecast and Appendix M: 2018 NOL Utilization Ratio.

b. Based on the DPU Order 18-15-E, the Company froze the unprotected "Non Rate Base" Edit for FGE as of 12/31/2017 and will recognize the benefit when the Company reconciles these amounts through future regulatory filings.

4. MANAGEMENT'S REVIEW OF ACCOUNTING ESTIMATE WITH SPECIALISTS:

a. The Company met with Grant Thornton, the Company's tax return preparer, to discuss its analysis of the proposed Treasury Regulations of IRC §163(j) on January 9, 2019. The Company also discussed and confirmed the use of the NOLC in the 2018 period and confirmed that the Company's estimated tax payments to federal and state jurisdictions for the 2018 tax period were adequate.

5. MANAGEMENT'S ANALYSIS OF THE 2018 TAX PROVISION ACCOUNTING ESTIMATE:

a. Based on the key factors, regulatory data, IRS data, and other assumptions developed by the Company's internal and external tax specialists; management concluded that the Company will utilize 46.90% of the NOLC in 2018.
b. Additionally, Management determined that adjusting FGE non-rate base EDIT will impact the 2018 ETR and increase it by approximately 2%.

6. MANAGEMENT'S SIGNOFF OF UPDATED ACCOUNTING ESTIMATE :

a. Based on the above analyses, discussions and input from its outside professionals; the Company finalized the ETR for 2018. Management determined it is appropriate to increase its estimated ETR for 2018 to 20.28%, from the 18.00% it estimated at the end of the third quarter of 2018 based on the IRS proposed Treasury Regulations for IRC §163(j), and the other regulatory factors listed above which arose in the fourth quarter of 2018. See Appendix G: Unitil Corporation Consolidated FIN 18 Analyses.

From: Tom Kuhn [mailto:tkuhn@eei.org]
Sent: Tuesday, November 27, 2018 10:15 PM
To: Unitil
Subject: Follow Up - Treasury's Proposed Regulations for the Business Interest Limitation

As you know, the Department of Treasury yesterday released the proposed regulations for the limitation on business interest. EEI's technical tax teams have been breaking down the proposed regulations, focusing on the key issues that were a part of our May 25th letter (attached) to the Treasury and the Internal Revenue Service. Based on the initial analysis, the proposed regulations contain a number of provisions important to our industry.

Proposed Regulations on the Business Interest Limitation - Sec. 163(j) of the Tax Cuts & Jobs Act:

- While it will take some time to understand more fully the implications to the industry, our initial view of the proposed regulations is positive because Treasury favorably addressed several important requests made in our industry letter.

- Most important, Treasury adopted the position that our exclusion from the interest limitation is determined at the consolidated group level. For purposes of this allocation between excluded regulated assets and non-regulated assets, Treasury proposed the use of the alternative depreciation system ("ADS") to determine asset basis, which was one of the methods of allocation proposed by the industry.

- Treasury strongly supported EEI's position regarding allocation on the basis that funds are fungible within a group. This notion is repeated several times within the proposed regulation.

- In response to our concern over the complexity of making allocations between excepted regulated businesses and non-excepted businesses, Treasury did include de minimis rules at EEI's request, proposing a mandatory application of a 10 percent de minimis standard. In our May letter, we suggested that these rules be elective and that 20 percent or less be considered de minimis. Thus, any group with 90 percent or more of its assets in its regulated utility business will be treated as a regulated utility taxpayer eligible for the full interest deduction.

- The proposed regulations did address the rules surrounding partnerships. They provide "look-through" rules to determine whether a partnership interest is allocable to an excepted or non-excepted business based on the nature of the partnership's business. While this rule and the general partnership rules in the proposed regulations require further study, it appears to be consistent with the industry's proposal in our May letter.

- There are some early concerns regarding the computation of adjusted taxable income (ATI), which is used as a basis for determining the limitation on deductible interest. As defined, ATI is taxable income with a number of adjustments, including the add back of depreciation. In the proposed regulations, Treasury has taken the position that depreciation capitalized to inventory (including electricity) and recovered through cost of goods sold is not depreciation that is added back to taxable income in computing ATI. This may substantially reduce the amount of the potential interest deduction for non-excepted (unregulated) businesses. This is another item that will require further analysis and one that will impact several industries, not just ours.

- Treasury has provided a 60-day comment period on the proposed regulations and has scheduled a public hearing on them for February 25, 2019. EEI will consider filing comments and appearing at the public hearing as it reviews their implications to the industry.

Again, from a high level, we believe the proposed regulations are positive for the industry. EEI's Interest Deductibility subgroup, which consists of member company CFOs, tax professionals, and Washington Representatives, will continue to analyze the proposed regulations and will begin to work through potential impacts the regulations may have on the industry.

Please remember that what was released is a proposed regulation. If issues arise or additional clarifications are needed, we do have time for further discussions with Treasury and IRS officials before they finalize the rules. We will continue to keep you updated.

I want to thank you and your Finance/Tax teams for all the input they provided throughout the year on this critical issue. As always, please let me know if you have any questions or ask your staff to contact Eric Grey (egrey@eei.org; 202-508-5471).

Cc: Washington Reps

- Treasury____IRS_Letter___Public_Utilities_Industry_Comments_on_163j_ 168k___05_25_18___FINAL.pdf
-
- **From:** Tom Kuhn [mailto:tkuhn@eei.org]
  Sent: Monday, November 26, 2018 5:15 PM
  To: Unitil
  Subject: Treasury Releases Proposed Regulations for the Business Interest Limitation
-
- The Department of Treasury and the Internal Revenue Service (IRS) this afternoon released the proposed regulations for the limitation on business interest – Section 163(j) of the Tax Cuts & Jobs Act (TCJA). This is the regulation that contains our industry's exemption from the interest limitation and addresses the issue of holding company debt.
-
- The proposed regulation (https://www.irs.gov/pub/irs-drop/REG-106089-18-NPRM.pdf) is 439 pages and is very complex. In addition, it has been split into two separate parts, with the rules regarding partnerships coming separately in early December. We are expecting the proposed regulation to be published in the Federal Register soon, which then will start the 60-day period to comment.

-
- EEI's Interest Deductibility subgroup, which consists of member company CFOs, tax professionals, and Washington Representatives, has begun to analyze the proposed regulation and will develop a high-level summary that we will send you. After that summary is complete, the subgroup then will do an even deeper analysis and begin working through potential impacts the regulations may have on the industry.
-
- Please remember that what was released today is a proposed regulation. If issues arise or additional clarifications are needed, we do have time to have further discussions with Treasury and IRS officials before they finalize the rule. We will continue to keep you updated.
-
- As always, please let me know if you have any questions or ask your staff to contact Eric Grey (egrey@eei.org; 202-508-5471).
-
-
- Cc: Washington Reps
-

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Treasury's Proposed Regulations for the Business Interest Limitation - Sec.163ij)ofthelRC

Mark Agnew, Edison Electric Institute
Gaylord Gagnon, Arizona Public Service
Eric Grey, Edison Electric Institute
Alex Zakupowsky, Miller & Chevalier

December 18, 2018

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Key Issues Addressed in the Reg's

Requested by EEi/industry

Proposed by Treasury

Industry exclusion determined at consolidated group

Principle that debt is "fungible"

Asset-based allocation methodology

MACRS or ADS

De Minimis threshold for "regulated % calculation"

Partnership - excepted vs. non-excepted treatment applies

EEi Subgroups Working on Sec 163{j)

- Interest Deductibility Subgroup (24 co's)
  - CFOs, Tax Leaders, Washington Reps
  - Builds off the Tax Reform Subcommittee
    - Primary group during the legislative effort
- Tax Analysis & Research Subcommittee (TARS) - steering group
- Taxation Committee - all EEi Members

EEi 163(j} Subgroup Process

- In reaction to the proposed regulations (439 pages), EEi's Interest Deductibility Subgroup & TARS developed a new issues list and related issue groups
- Five Issue Groups have been established
  - Trade or Business, Major Substantive Policy Issues, Definitions/Scope, Look Through, Administrative Issues
- Members drawn from Interest Deductibility Subgroup
- Group leads drawn from TARS
- Anticipated Outcome - Findings & Recommendations for EEi Comments

Interest Allocation 101

- Identify Assets as "Excepted" and "Non-Excepted"
  - Excepted or not excepted from the limitation - excepted a good thing
- More than 90% Excepted? ➔ De Minimis Rule Applies ➔ 100% Interest Deduction
- Less than 90%? Excepted? ➔ Partial Interest Deduction
- Determination of the Partial Deduction
  - "Trade or Business" allocation of interest based on "Alternative Taxable Income" (ATI)
  - Deduct excepted + non-excepted interest up to 30% of ATI

Trade or Business

- Identified Issues for Review:
  - What is a Trade or Business for the Calculations?
    - Entire group? OR individual members of the consolidated group?
    - Relevant as to *where* the split between Excepted (interest deductible) and Non-Excepted (interest non-deductible) is determined
  - Regulated versus Non-Regulated Sales
    - Facility in cost of service – excepted?
  - De Minimis Rule
    - Not elective. Should it be?
  - Allocation of Assets is Based on kWh Production
    - Should it be? (difficult to administer)

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Substantive Policy Issues

- Identified Issues for Review
  - Depreciation and the 30% ATI Limitation
    - Not "added back" to the limitation in the Proposed Regulations
    - Should it be added back to increase the limitation?
    - Higher the limitation, the more interest that is deductible
  - "Tracing"
    - Not allowed by the Proposed Regulations

Definitions/Scope

- Identified Issues for Review
  - Is "Interest" Properly Defined?
  - Depreciation System
    - ADS provided, but do we want an option for MACRS?
  - Bonus Depreciation for Non-excepted When the De Minimis Rule Applies?

Look Through & Administrative

- Look Through Identified Issues for Review
  - Does the "Look Through" to Assets in a Partnership work?
    - Adequate allocation of partner debt to "excepted"?
  - Does the Deemed Asset Sale Rule work?

- Administrative
  - Customer impacts
  - Need for Quarterly Computations

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Timeline – Interest Deductibility

Date	Event
Dec '17	TCJA includes exception for utility industry
Mar '18	EEi meets with Treasury
May '18	EEi submits Treasury Comment Letter
Nov '18	Treasury Releases Proposed Regulations
Early Jan '19	Potential meeting with Treasury
Feb??, '19	Comments due to Treasury
Feb 25, '19	Treasury's Public Hearing
	Potential for a final regulation in 2019

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Questions?

APPENDIX G

Unitil Consolidated
ETR Forecast
FIN 18 Calculation

	2018
PTBI	41,433,615
PERMS	782,375
ADJ PTBI	42,215,990
Statutory Rate	27.32%
Tax Expense	11,533,408
Other Tax Items:	
Excess ADIT	(532,730)
Charitable Contributions Carryfoward	190,013
NOLC Offset Amortization	(1,856,026)
RTA USC Pension Payments	(631,331)
RTA - Other	1,514
R&D Credit - NH	(42,126)
FGE ITC AMORT	(41,923)
Regulatory Amortization	(216,765)
Total Other Tax Items	(3,129,374)
Total Tax Expense	8,404,035
Net Income	33,029,580
ETR	20.28%

APPENDIX L: UNITIL 2018 TAXABLE INCOME FORECAST

	12/31/2018	12/31/2017	
	2018 Actual YTD	2017 Actual YTD	2018-2017 Change YTD
Pretax Book Income	41,433,615	46,542,558	(5,108,943)
Permanent Items			
Amort of Organization Rules	-	-	-
Lobbying	197,467	190,350	
MAOP Testing	-	-	-
Membership Dues	2,558	5,198	(2,640)
Penalties	54,338	12,348	41,990
State Regulatory Asset Amortization	191,741	191,740	1
Officer Compensation SEC. 162(m)	300,000	-	300,000
Unallowable Meals	36,271	36,896	(625)
Total Permanent Items	**782,375**	**436,532**	**345,843**
Temporary Items			
Accrued Revenue	7,833,084	(4,189,345)	12,022,429
Bad Debt	(309,978)	409,392	(719,370)
Bad Debt Reg Asset	123,428	(33,659)	157,087
Debt Discount Expense	1,920	1,920	-
Deferred Rate Case	705,145	839,388	(134,243)
DER Investment Amortization	11,020	11,020	(0)
FAS 109 Amortization	1,024,462	512,231	512,231
Insurance Claim Reserve	226,952	(131,510)	358,462
Indenture Costs	28,704	28,701	3
Integrity Management Program	8,450	(14,076)	22,527
Pension FAS 87	7,595,954	(11,988,936)	19,584,890
Pension FAS87 Reg Asset	(142,592)	(59,315)	(83,277)
PNGTS Refund	(2,258,386)	(4,507,047)	2,248,661
Prepaid Property Tax	23,116	(255,450)	278,566
R&D Deduction	-	(10,372,908)	10,372,908
Remediation	1,418,435	1,735,173	(316,738)
Restricted Stock	658,809	607,550	51,259
SERP	1,128,458	1,305,054	(176,596)
SFAS 106 OPEB	3,393,770	5,037,116	(1,643,346)
SFAS 106 OPEB Reg Asset	48,906	(332,637)	381,543
State Regulatory Asset Amortization	(109,812)	257,948	(367,760)
Storm Restoration	999,353	2,452,179	(1,452,826)
TCJA REV REQ	568,573	-	568,573
Transaction Costs	718,438	783,750	(65,312)
Transition Costs	686,452	748,607	(62,155)
Total Temporary Items	**24,382,660**	**(17,154,855)**	**41,537,515**
Temporary Plant			
Amort of Purchase Discount	(2,270,592)	(2,477,009)	206,417
Book Amort of Software	2,523,604	1,271,135	1,252,469
Book Depreciation	42,232,161	39,420,973	2,811,187
CIAC	861,491	61,807	799,684
CIAC Non-Refundable	2,443,770	4,462,389	(2,018,619)
Repairs Expense	(22,877,045)	(26,525,322)	3,648,277
Tax Depreciation	(50,451,988)	(63,460,225)	13,008,237
Total Temporary Plant	**(27,538,599)**	**(47,246,252)**	**19,707,653**
ITC Amortization			
Unamortized ITC	-	**(1,113)**	1,113
Total ITC Amortization			
State Tax Expense	**(2,044,857)**	**(869,768)**	**(1,175,089)**
Federal Taxable Income	**37,015,194**	**(18,292,898)**	**55,308,092**

APPENDIX M: 2018 NOL UTILIZATION RATIO

LN/COL	(a)	(b)
1	NOL Available	78,929,764
2	2018 Taxable Income (See APPENDIX L)	37,015,194
3	2018 NOL Utilization ratio (Line 2 / line 1)	46.90%
4	Parent Contra-NOLC Credit Offset Amortization (Line 5 * Line 3)	1,856,026
5	Parent Contra-NOLC Credit Offset (See APPENDIX K)	3,957,718
6	Remaining Parent Contra-NOLC Credit Offset (Line 5 - Line 4)	2,101,692

APPENDIX N: UNITIL TCJA REGULATORY MATRIX

	UES		FGE		NUNH		NUME		GSGT	
	PROTECTED	UNPROTECTED	PROTECTED	UNPROTECTED	PROTECTED	UNPROTECTED	PROTECTED	UNPROTECTED	PROTECTED	UNPROTECTED
TREATMENT PRE-RATE CASE APPROVAL	ALL DTA'S AND DTL'S REVALUED ON DECEMBER 31, 2017 AT LOWER RATE WITH OFFSET TO REGULATORY LIABILITY X0-X0-00-00-254-05-01. UNPROTECTED NON RATE BASE EDIT RECORDED IN 15-30-00-00-282-01-30		ALL DTA'S AND DTL'S REVALUED ON DECEMBER 31, 2017 AT LOWER RATE WITH OFFSET TO REGULATORY LIABILITY X0-X0-00-00-254-05-01. UNPROTECTED NON RATE BASE EDIT RECORDED IN 15-30-00-00-282-01-30		ALL DTA'S AND DTL'S REVALUED ON DECEMBER 31, 2017 AT LOWER RATE WITH OFFSET TO REGULATORY LIABILITY X0-X0-00-00-254-05-01. UNPROTECTED NON RATE BASE EDIT RECORDED IN 15-30-00-00-282-01-30		ALL DTA'S AND DTL'S REVALUED ON DECEMBER 31, 2017 AT LOWER RATE WITH OFFSET TO REGULATORY LIABILITY X0-X0-00-00-254-05-01. UNPROTECTED NON RATE BASE EDIT RECORDED IN 15-30-00-00-282-01-30		ALL DTA'S AND DTL'S REVALUED ON DECEMBER 31, 2017 AT LOWER RATE WITH OFFSET TO REGULATORY LIABILITY X0-X0-00-00-254-05-01. UNPROTECTED NON RATE BASE EDIT RECORDED IN 15-30-00-00-282-01-30	
COMMISSION APPROVAL DATE	4/30/2018		6/29/2018 & 12/21/2018		5/2/2018		2/28/2018		6/27/2018	
APPROVED AMORTIZATINO METHOD/LIFE	ARAM - APPLIED FOR	ARAM - APPLIED FOR	ARAM - APPROVED	ARAM - APPROVED	ARAM - APPLIED FOR	ARAM - APPLIED FOR	ARAM - APPLIED FOR	ARAM - APPLIED FOR	ARAM - APPLIED FOR	ARAM - APPLIED FOR
REVERSAL OF OVERCOLLECTION PRIOR TO RATE DECREASE	DEFERAL FOR PERIOD JAN 1 - APRIL 30 IS INCORPORATED IN BASE RATES FROM STEP FILING		DEFERAL FOR PERIOD JAN 1 - JUNE 30 IS AMORTIZED OVER 12 MONTHS		DEFERAL FOR PERIOD JAN 1 - APRIL 30 AMORTIZED OVER 12 MONTHS IN RECOUPMENT		NO REVERSAL - COMPANY KEEPS OVERCOLLECTION		NO REVERSAL - COMPANY KEEPS OVERCOLLECTION	
JE'S FOR REVERSAL OF DEFERRAL ACCUMULATED PRIOR TO RATE	NO JE		DR. REGULATORY LIABILITY CR. ACCRUED REVENUE		DR. REGULATORY LIABILTIY CR. RECOUPMENT REVENUE		NO JE		NO JE	

001089

Unitil

Date: November 19, 2018
To: File
From: Jonathan Giegerich, Tax Manager
Re: 2018 Q4 FERC Orders:

EXECUTIVE SUMMARY:

The Federal Energy Regulatory Commission ("FERC") issued a news release on November 15, 2018. Included in the news release was a Notice of Proposed Rulemaking ("NOPR") (RM19-5-000) and a Policy Statement (PL19-2-000) to address the Tax Cuts and Jobs Act's ("TCJA") effects on the Accumulated Deferred Income Taxes ("ADIT") on transmission rates. More specifically in the Policy Statement and the NOPRs, the FERC defines excess ADIT to be flowed back to rate payers as *"…a portion of an ADIT liability that was collected from customer will no longer be due from public utilities, natural gas pipelines and oil pipelines to the IRS and is considered excess ADIT" (PL19-2-000 Page 2, Paragraph 3).*

Under the proposed rules all public utilities with transmission formula rates would:

- Include mechanisms to deduct any excess ADIT from or add any deficient ADIT to their rate bases;
- Include mechanisms in those rates that would raise or lower their income tax allowances by any amortized excess or deficient ADIT; and
- Incorporate a new permanent worksheet into their rates that will annually track information related to excess or deficient ADIT.

Under the proposed rules, all public utilities with transmission stated rates would determine the amount of excess and deferred income tax caused by the reduced federal corporate income tax rate, and return or recover this amount to or from customers.

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MANAGEMENT'S FINDINGS AND ANALYSIS:

NOPR-RM19-5-000: The FERC addressed three topics in the NOPR: (1) preservation of rate base neutrality through the removal of excess ADIT from or addition of deficient ADIT to rate base; and (2) the return of excess ADIT to or recovery of deficient ADIT from ratepayers, and (3) support for excess and deficient ADIT calculation and amortization. Additionally these three topics were discussed relative to two rate categories—formula rates and stated rates. Unitil (the "Company") has two subsidiaries subject to FERC regulation Fitchburg Gas and Electric Light Company ("FGE") and Granite State Gas Transmission Company ("GSGT") with each being subject to one of the two rate categories formula and stated rates, respectively.

1. **PRESERVATION OF RATE BASE NEUTRALITY THROUGH THE REMOVAL OF EXCESS ADIT FROM OR ADDITION OF DEFICIENT ADIT TO RATE BASE.**

When tax rates change companies are required to revalue their ADIT in the enactment period for the new effective tax rate. Consequently the ADIT reduction to rate base will either increase (tax rate increase) which decreases rate base or the ADIT reduction to rate base will decrease (tax rate decrease) which increases rate base. Public utility companies record ADIT revaluations in Account 182.3 (Other Regulatory Assets) and Account 254 (Other Regulatory Liabilities) to be collected or flowed back in rates. These unamortized balances must continue to be considered in the rate base calculation. Therefore, to achieve rate base neutrality the corresponding (revalued) amounts recorded in Accounts 254 and 182.3 should be deducted from or added to rate base just as the ADIT balances which were appropriately deducted from or added to rate base (prior to the revaluation).

Formula rates: Historically, Account 254 is not considered in formula rates. However, as stated above, the revaluation amount recorded in Account 254 must be considered to achieve rate base neutrality. FERC proposes that public utilities include a "mechanism" to adjust rate base for any excess or deficient ADIT. Additionally, no guidance has been given on the required "mechanism" as FERC recognizes that a one-size-fits-all approach is not appropriate policy and will instead let public utilities propose any necessary changes to their formula rates on an individual basis.

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FERC responded to comments suggesting to record the Excess Accumulated Deferred Income Taxes ("EDIT") in Accounts 281, 282, 283 stating that it had already addressed this topic in Docket No. AI93-5-000, at 8 (1993). EDIT should be recorded in Accounts 182.3 and 254 and no additional guidance is needed.

Management's Observation: This proposed ruling requires continued monitoring as the newly settled Section 206 NETO Formula Rate Settlement (effective 1/1/2020) requires public utilities to exclude Accounts 182.3 and 254 and the exclusion of these accounts were a prominent item of discussion in the settlement deliberations.

Stated rates: No new proposed rulings were issued regarding stated rates. FERC recognized the importance of adjusting rate base exclusively in base rate cases by stating:

> *"…while ADIT balances may have changed as a result of the Tax Cuts and Jobs Act, so too will many other aspects of the cost of service and calculations that underlie the stated rate, making it difficult to re-evaluate ADIT and its effect on rate base following a change in tax rates **without fully evaluating a public entity's entire cost of service and rates**"*

Management's Observation: The Company's regulatory position for EDIT treatment in distribution base rates is supported by this statement (Order No. 475, FERC Stats. & Regs. ¶ 30,752 at 30,736).

2. RETURN OF EXCESS ADIT TO OR RECOVERY OF DEFICIENT ADIT FROM RATEPAYERS.

Throughout the issued NOPRs and Policy Statement, the FERC was clear that the excess ADIT to be flowed back to rate payers was the portion of *"…an ADIT liability that was collected from customers…" (PL19-2-000 Page 2 Paragraph 3)* and that the following methods were to be followed in flowing the excess ADIT back to ratepayers so

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that *"…ratepayers whho contributed to excess ADIT balances will receive the benefit of the TCJA" (NOPR Docket No. RM19-5-000 Page 3 Paragraph 3).*

The two acceptable normalization methods for public utilities to use to flow back EDIT to ratepayers are: Average Rate Assumption Method ("ARAM") and Reverse South Georgia Method ("RSGM"). The TCJA requires public utilities to use the ARAM method if possible on protected ADIT but does not specify which method should be used on unprotected ADIT. The basis of both methods is to flow back EDIT to ratepayers according to the underlying book/tax timing difference remaining life. The FERC noted that the TCJA states that public utilities are to flow back protected EDIT no more rapidly than ARAM requires.

Management's Observation: *ARAM amortization is the fastest EDIT can be flowed back to ratepayers. If beneficial, proposing slower ARAM amortization for EDIT flow back is not a normalization or regulatory violation and can be considered in future base rate cases.*

Concerns were raised by the Office of Consumer Advocate ("OCA") that situations exist in formula and stated rates where a portion of the EDIT is flowed back through a public utility's earnings prior to the amortization being approved in base rates. As a result this amount that is flowed back prior to approved base rates would orphan the EDIT and ratepayers would never realize the resulting benefit. FERC recognized this possibility and explicitly stated that while EDIT might be allowed to be flowed back under ARAM it does not remove a public utility's obligation to return the EDIT. Stating:

> "*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 refunded to customers".*

Management's Observation: *This is consistent with the Company's regulatory and accounting policy to record ARAM amortization only when it is approved in base rates.*

Formula rates: FERC proposes a requirement to include a "mechanism" which decreases or increases their income tax allowances by any amortized excess or deficient

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ADIT, respectively. This amortization will reduce income tax allowances in formula rates no more rapidly than what is allowed by ARAM or RSGM.

<u>Management's Observation:</u> FGE's ARAM schedule has started and is therefore eligible to start including ARAM amortization in its next Internal Transmission Formula Rate filing.

<u>Stated rates:</u> FERC proposes to require public utilities to (1) determine the excess and deficient income tax caused by the TCJA, and (2) return this amount to or recover this amount from ratepayers. Additionally, the FERC proposes the use of the ADIT approved in the last base rate case to calculate EDIT to be flowed back to ratepayers. This method is believed to satisfy concerns to preserve costs of service as accepted in the last rate case.

<u>Management's Observation:</u> This is a departure from the Company's current regulatory position for stated transmission and distribution base rates. The Company has proposed delaying EDIT amortization until the next base rate case after the ARAM schedule starts.

3. SUPPORT FOR EXCESS AND DEFICIENT ADIT CALCULATION AND AMORTIZATION.

<u>Formula rates:</u> FERC proposes to require public utilities to incorporate a new permanent worksheet in their transmission formula rates that will annually track information related to excess or deficient ADIT to promote transparency. This worksheet will be required to be provided on an annual basis. This worksheet will contain at a minimum: (1) how many ADIT accounts were re-measured and the EDIT associated with them, (2) the accounting of any excess or deficient amounts in Accounts 182.3 and 254, (3) Whether the EDIT is protected or unprotected, (4) the accounts to which the EDIT are amortized, and (5) the amortization period of the EDIT being flowed back through rates.

<u>Stated rates:</u> No additional rules were proposed for stated rates. FERC believes that existing regulations are sufficient in supporting all EDIT flow back effects on public utilities cost of service calculations.

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PL19-2-000: The FERC issued accounting guidance in the Policy Statement relative to recording EDIT on the balance sheet and income statement and ADIT associated with any sold or retired assets.

Accounting Recordation Guidance: As stated in NOPR-RM19-5-000 FERC has previously issued guidance on the accounting for EDIT in Docket No. AI93-5-000. FERC affirmed this guidance and stated that Accounts 182.3 and 254 are appropriate to record EDIT in for accounting and regulatory purposes. Additionally, FERC clarified that the amortization of EDIT should be recorded in a public utilities statement of earnings in Account 410.1 (debits) and 411.1 (credits) as appropriate. The FERC acknowledge that Account 407.3 and 407.4 is available to use for the offsetting amortization of Accounts 182.3 and 254 when specific identification of the particular source of the regulatory assets and liabilities cannot be made. However, the in this situation, the regulatory assets and liabilities recorded in Account 182.3 and 254 are a result of a change in tax law and tax rates making specific identification of the source of these amounts possible. As a result, it is deemed appropriate to record the offsetting amortization to Accounts 410.1 and 411.1 which are specifically designated for the recordation of ADIT.

Management's Observation: The Company is currently recording EDIT in compliance with AI93-5-000 and will record the associated EDIT amortization in Accounts 410.1 and 411.1 as appropriate.

ADIT associated with any sold or retired assets: Certain commenters to the FERC's initial NOI argued that ADIT associated with assets that are retired or sold no longer exists and therefore the public utility no longer needs to flow the EDIT associated with assets back either. This argument is made with a 2006 IRS Private Letter Ruling No. PLR-168537-02 which prohibits the flow back of ADIT to ratepayers of ADIT associated with retired or sold assets. The IRS stated that ADIT ceases to exist as of the date of the sale and subsequently there is nothing to flow back to ratepayers. FERC again referenced previously issued Docket No. AI93-5-000 and stated:

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> *"…because these deficient ADIT and excess ADIT balances can no longer be characterized as deferred tax amounts to be settled with the IRS, the sale or retirement of any assets as of January 1, 2018 would not automatically reverse these balances as tax timing differences."*

For these assets there are two associated balances: (1) the ADIT balance based on the 21% tax rate that will be owed to the IRS and (2) EDIT balances resulting from the revalued ADIT that will not be payable to the IRS upon the sale of the asset. While the ADIT balance that needs to be settled with the IRS upon the sale or retirement of an asset, the EDIT balance is more reflective of a regulatory asset or liability.

FERC further clarified that EDIT recorded in Accounts 182.3 and 254 continue to exist as regulatory assets and liabilities, respectively, after an assets has been retired or sold and do not transfer to the purchaser of the utility plant asset. Therefore, the EDIT associated with the retirements or sale of an asset should continue to be recorded in Accounts 182.3 and 254 and be considered in the calculation of rate base.

<u>Management's Observation:</u> *This Company's regulatory policy regarding EDIT associated with the retirement and sale of utility assets comply with this Policy Statement.*

<u>MANAGEMENT'S CONCLUSION:</u>

Management met in December of 2018 to review the proposed NOPRs and Policy Statement with members from the Company's regulatory, accounting, finance and tax departments. The following action items were discussed and agreed upon:

1. Journalize FGE's Electric distribution and internal transmission EDIT for yearend report purposes - Tax
2. Research and prepare compliance filing due 90 days after final NOPRs for formula rates (FGE) – Tax & Regulatory

3. Research and prepare compliance filing due 90 days after final NOPRs for stated rates (GSGT) – Tax & Regulatory
4. Prepare additional back up required to be submitted with formula rates (FGE) – Tax & Regulatory

Management concludes that the Company will be ready to meet all compliance requirements after the final NOPRs are issued.

165 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35.24

[Docket No. RM19-5-000]

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes

(Issued November 15, 2018)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act). Specifically, for transmission formula rates, the Commission is proposing to require that public utilities deduct excess accumulated deferred income taxes (ADIT) from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT. The Commission is also proposing to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information. Additionally, the Commission is proposing to require all public utilities with transmission stated rates to determine the amount of excess and deferred income tax

caused by the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate and return or recover this amount to or from customers.

DATES: Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: Comments, identified by docket number, may be filed electronically at http://www.ferc.gov in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes — Docket No. RM19-5-000

NOTICE OF PROPOSED RULEMAKING

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165 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes — Docket No. RM19-5-000

NOTICE OF PROPOSED RULEMAKING

(Issued November 15, 2018)

1. In this Notice of Proposed Rulemaking (Proposed Rule), we are proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act).[1] These proposed reforms are designed to address the effects of the Tax Cuts and Jobs Act on the Accumulated Deferred Income Taxes (ADIT) reflected in all transmission rates under an OATT, a transmission owner tariff, or a rate schedule of public utility transmission providers. The proposed reforms are intended to ensure that

[1] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act). In proposing this new requirement, the Commission relies on existing Commission regulations relating to tax normalization for public utilities as those regulations apply to public utilities with transmission formula or stated rates. *See* 18 CFR 35.24. In this Proposed Rule, the Commission does not propose any generic reforms as to non-public utilities or the non-transmission rates of public utilities. While any conclusions that the Commission makes in this proceeding may be relevant to such rates, they will be addressed on a case-by-case basis. Furthermore, to the extent any entity believes that the Tax Cuts and Jobs Act renders any existing Commission-jurisdictional rate unjust and unreasonable, that entity may submit a complaint to the Commission.

ratepayers receive the benefits of the Tax Cuts and Jobs Act, and that the public utility transmission formula and stated rates are just and reasonable and not unduly discriminatory or preferential following the enactment of the Tax Cuts and Jobs Act. The proposed reforms are also intended to ensure that transmission formula and stated rates meet the Commission's tax normalization requirements such that the income tax component of those rates is calculated as though the taxable income were recognized in the same period and amount by the Internal Revenue Service (IRS) and the Commission.[2]

2. The proposed reforms generally fall into three categories and apply to public utilities with transmission formula rates and stated rates in different ways. First, we propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates to deduct any excess ADIT from or add any deficient ADIT to their rate bases. This will ensure that rate base continues to be treated in a manner similar to that prior to the Tax Cuts and Jobs Act (i.e., that rate base neutrality is preserved). As for public utilities with transmission stated rates, we do not propose any new requirements regarding rate base neutrality.

3. Second, we propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates that decreases or increases their income tax

[2] In this Proposed Rule, the Commission refers to comments filed in response to the Notice of Inquiry issued March 15, 2018. *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, FERC Stats. & Regs. ¶ 35,582 (2018) (NOI). A list of commenters in that proceeding and the abbreviated names used in this Proposed Rule appears in Appendix A. Any comments to this Proposed Rule should be filed in this proceeding, Docket No. RM19-5-000.

allowances by any amortized excess or deficient ADIT, respectively. This reform will help to ensure that public utilities with transmission formula rates return excess ADIT to or recover deficient ADIT from ratepayers. As a result, ratepayers who contributed to excess ADIT balances will receive the benefit of the Tax Cuts and Jobs Act.

4. With regard to public utility transmission providers with stated rates, we are proposing to require these entities to determine the excess and deficient ADIT caused by the Tax Cuts and Jobs Act based on the ADIT amounts approved in their last rate case and then to return this amount to or recover this amount from customers. This reform is intended to increase the likelihood that those customers who contributed to the related ADIT accounts receive the benefits of the Tax Cuts and Jobs Act.

5. Third, we propose to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rate that will annually track information related to excess or deficient ADIT. We believe that this reform will increase the transparency surrounding the adjustment of rate bases and income tax allowances to account for excess or deficient ADIT by public utilities with transmission formula rates. We do not propose any additional worksheets for public utilities with transmission stated rates because we believe that existing regulations require sufficient transparency.

6. We seek comments on these proposed reforms and areas for further comment within 30 days after publication of this Proposed Rule in the *Federal Register*.

I. Background

A. Tax Cuts and Jobs Act

7. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the IRS based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.[3]

8. Importantly, the tax rate reduction will also result in a reduction in ADIT liabilities and ADIT assets on the books of rate-regulated companies. ADIT balances are accumulated on the regulated books and records of public utilities based on the requirements of the Uniform System of Accounts. ADIT arises from timing differences between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes.[4] As a result of the Tax Cuts and Jobs Act reducing the federal corporate income tax rate from 35 percent to 21 percent, a portion of an ADIT liability that was collected from customers will no longer be due from public utilities to the IRS and is considered excess ADIT, which must be returned to customers in a cost of service ratemaking context. Additionally, for public utilities that have an ADIT asset, the Tax Cuts and Jobs Act will

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[3] *See* Tax Cuts and Jobs Act, Sec. 13001, 131 Stat. at 2096.

[4] *See* 18 CFR 35.24(d)(2).

result in a reduction to that ADIT asset, and public utilities may seek to reflect in rates a portion of such reductions. Public utilities are required to adjust their ADIT assets and ADIT liabilities for the effect of the change in tax rates in the period that the change is enacted.[5]

B. Overview of Public Utility Transmission Rates

9. The Commission is responsible for ensuring that the rates, terms and conditions of service for wholesale sales and transmission of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential. With respect to the transmission of electric energy in interstate commerce, most jurisdictional entities are subject to cost of service regulation. Cost of service regulation seeks to allow public utilities the opportunity to (1) recover operating costs, including income taxes, (2) recover the cost of capital investments, and (3) earn a just and reasonable return on investments.[6] Public utilities have calculated their cost of service-based transmission rates predominately by using formula rates or stated rates. These rates are contained in numerous agreements, including a public utility's OATT, a regional transmission operator's or independent system operator's OATT, coordination agreements, and wholesale distribution agreements. In this Proposed Rule, we focus on all public utilities

[5] *See* 18 CFR 35.24 and 18 CFR 154.305; *see also Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982).

[6] *See Pub. Sys. v. FERC*, 709 F.2d 73, 75 (D.C. Cir. 1983).

with transmission formula or stated rates that are contained in an OATT, a transmission owner tariff, or a rate schedule.

10. When a public utility uses stated rates, if the public utility seeks to change its rate, it files a rate case at the Commission to establish the cost of service revenue requirement, allocate costs to various customer groups, and calculate rates. As an alternative, the Commission permits public utilities to establish rates through formulas, in which the Commission accepts the public utility's cost of service calculation methodologies and input sources and allows the public utility to update those inputs every year.

11. Public utilities must seek changes to their transmission stated rates or formula rates through filings with the Commission under section 205 of the Federal Power Act (FPA),[7] while the Commission and third parties can challenge a rate in a proceeding initiated under section 206 of the FPA.[8]

C. Order No. 144 and 18 CFR 35.24

12. The purpose of tax normalization is to match the tax effects of costs and revenues with the recovery in rates of those same costs and revenues.[9] As noted above, timing differences may exist between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking

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[7] *See* 16 U.S.C. 824d.

[8] *See* 16 U.S.C. 824e(a).

[9] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522, 31,530.

purposes. The tax effects of these differences are placed in a deferred tax account to be used in later periods when the differences reverse.[10]

13. The Commission established this policy of tax normalization in Order No. 144 where it required use of "the provision for deferred taxes [(i.e., ADIT)] as a mechanism for setting the tax allowance at the level of current tax cost."[11] In keeping with this normalization policy, and as relevant to the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate, the Commission in Order No. 144 also required adjustments in the ADIT of public utilities' cost of service when excessive or deficient ADIT has been created as a result of changes in tax rates.[12] Furthermore, the Commission required "a rate applicant to compute the income tax component in its cost of service by making provision for any excess or deficiency in its deferred tax reserves resulting . . . from tax rate changes."[13] The Commission required that such provision be consistent with a Commission-approved ratemaking method made specifically applicable to the rate applicant.[14] Where no ratemaking method has been made specifically

[10] *Id.* at 31,554.

[11] *Id.* at 31,530.

[12] *Id.* at 31,519.

[13] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(1)(ii); 18 CFR 35.24(c)(2).

[14] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(3).

applicable, the Commission required the rate applicant to advance some method in its next rate case.[15] The Commission stated that it would determine the appropriateness of any proposed method on a case-by-case basis, but as the issue is resolved in a number of cases, a method with wide applicability may be adopted.[16] The Commission codified the requirements of Order No. 144 in its regulations in 18 CFR 35.24.[17]

D. Notice of Inquiry

14. Following the enactment of the Tax Cuts and Jobs Act, the Commission issued the NOI seeking comments on, among other things, whether, and if so, how, the Commission should address the effects of the Tax Cuts and Jobs Act on ADIT.[18] The Commission noted that the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate would potentially create excess or deficient ADIT on the books of public utilities.[19] As relevant to the reforms proposed in this Proposed Rule, the Commission sought comments on the preservation of rate base neutrality and how public utilities should make

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[15] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[16] *Id*. *See also* 18 CFR 35.24(c)(3).

[17] Originally promulgated as part of Order 144, the regulatory text was redesignated as 18 CFR 35.25 in Order No. 144-A. *See* Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 at 30,140. In Order No. 545, the Commission again redesignated the regulatory text to its present designation as 18 CFR 35.24. *See Streamlining Electric Power Regulation,* Order No. 545, FERC Stats. & Regs. ¶ 30,955, at 30,713 (1992) (cross-referenced at 61 FERC ¶ 61,207).

[18] NOI, FERC Stats. & Regs. ¶ 35,582.

[19] *Id.* P 13.

related adjustments to their rate bases for excess and deficient ADIT.[20] The Commission also sought comment on how public utilities should adjust their income allowances to return or recover excess or deficient ADIT, respectively,[21] as well as the method used to return or recover excess or deficient protected and unprotected ADIT.[22] Finally, the Commission sought comment on whether it should require public utilities to provide to the Commission, on a one-time basis, additional information to show the computation of excess or deficient ADIT and the corresponding return of excess ADIT to customers or recovery of deficient ADIT from customers. If so, the Commission also sought comments on what types of information public utilities should provide.[23]

II. Discussion

15. Since the issuance of Order No. 144, the landscape of public utility transmission rates has changed dramatically; that is, the vast majority of public utilities now use formula rates rather than stated rates. As described above, unlike stated rates, which are updated only through a rate case initiated by a FPA section 205 application by the public

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[20] *Id.* PP 14-15.

[21] *Id.* P 21.

[22] *Id.* PP 17, 19. In the NOI, the Commission referred to "plant-based" and "non-plant based" ADIT. We agree with commenters' recommendation to follow the IRS terminology of "protected" and "unprotected" ADIT instead of "plant-based" and "non-plant based" presented in the NOI. The IRS terms for "protected" and "unprotected" are directly associated with the IRS' normalization protections to ensure a tax payer maintains the benefit of accelerated depreciation over the life of the related asset. Accordingly, we have changed the terms used in this Proposed Rule to better mirror IRS terminology.

[23] *Id.* P 23.

utility or an FPA section 206 action by the Commission or a complaining third party, inputs to formula rates are updated annually to derive a charge assessed to customers. Thus, a rate case no longer remains the appropriate vehicle for formula rates to reflect excess or deficient ADIT in a public utility's cost of transmission service, as contemplated by Order No. 144. The public utility's transmission formula rate should include provisions that accurately reflect excess or deficient ADIT in a public utility's cost of transmission service during the annual updates of the rest of the revenue requirement.

16. Following the NOI, we have determined that this near-industry-wide transition from stated to formula rates has caused a gap in the transmission formula rates of public utilities such that many, if not most, of those rates do not contain provisions to fully reflect any excess or deficient ADIT following a change in tax rates, as required by Order No. 144 and the Commission's regulations in 18 CFR 35.24. Two components are necessary to maintain an accurate cost of service following a change in income tax rates, such as that caused by the Tax Cuts and Jobs Act: (1) preservation of rate base neutrality through the removal of excess ADIT from or addition of deficient ADIT to rate base; and **(2)** the return of excess ADIT to or recovery of deficient ADIT from ratepayers.[24]

17. A review of public utility transmission formula rates suggests that only some transmission formula rates contain the first component, while even fewer contain the

[24] *Id.* P 13. While the Tax Cuts and Jobs Act decreased the federal corporate income tax rate, the reforms proposed in this Proposed Rule are also meant to ensure that transmission formula rates reflect the effects of tax increases, as well.

second. Consequently, as discussed in greater detail below, we propose to require public utilities with transmission formula rates to revise those rates to include these two components. Additionally, to provide greater transparency, 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 ADIT information related to these two components.

18. Regarding public utilities with transmission stated rates, we propose maintaining Order No. 144's requirement that such public utilities reflect any adjustments made to their ADIT balances as a result of the Tax Cuts and Jobs Act (and any future tax changes) in their next rate case. However, to increase the likelihood that those customers who contributed to the related ADIT accounts receive the benefit of the Tax Cuts and Jobs Act, we propose to require public utilities with transmission stated rates to (1) determine any excess or deficient ADIT caused by the Tax Cuts and Jobs Act and (2) return or recover this amount to or from customers. We believe that the Commission's existing regulations already require all of the information necessary to support the changes proposed herein to reflect the effects of the Tax Cuts and Jobs Act on a transmission stated rate. Therefore, we propose not to require any additional worksheets.

19. The Commission generally does not permit single-issue ratemaking. However, similar to the Commission's actions following the Tax Cuts and Jobs Act,[25] given the

[25] *See AEP Appalachian Transmission Company, Inc.*, 162 FERC ¶ 61,225 (2018); *Alcoa Power Generating Inc.—Long Sault Division*, 162 FERC ¶ 61,224 (2018).

limited scope of the reforms proposed here, we propose that compliance filings made in response to this Proposed Rule's final requirements may be considered on a single-issue basis.[26]

A. <u>Ensuring Rate Base Neutrality</u>

1. <u>NOI</u>

20. In the NOI, the Commission sought comment on how to ensure that rate base continues to be treated in a manner similar to that prior to the Tax Cuts and Jobs Act (i.e., how to preserve rate base neutrality), until excess and deficient ADIT have been fully returned or recovered in a just and reasonable manner. The Commission also sought comment on whether, and if so how, public utilities should make adjustments to rate base to reflect excess and deficient ADIT. The Commission asked that commenters address both formula rates and stated rates.[27]

2. <u>Comments</u>

21. Numerous public utilities and other commenters assert that, in order to preserve rate base neutrality, unamortized balances of excess ADIT must continue to be treated as an offset to (i.e., a deduction from) rate base until those balances are flowed back in their

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[26] *See generally Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at PP 13-14 (2017); s*ee also Rates Changes Relating to the Federal Corporate Income Tax Rate for Public Utilities*, Order No. 475, FERC Stats. & Regs. ¶ 30,752, *order on reh'g*, 41 FERC ¶ 61,029 (1987) (allowing public utilities to use a voluntary, abbreviated rate filing procedure to reduce their rates to reflect a reduction in the federal corporate income tax rate on a single-issue basis).

[27] NOI, FERC Stats. & Regs. ¶ 35,582 at PP 14-15.

entirety to customers.[28] These commenters generally note that, following the passage of the Tax Cuts and Jobs Act, public utilities transferred excess ADIT to Account 254 (Other Regulatory Liabilities) or Account 182.3 (Other Regulatory Assets), as appropriate.[29] Accordingly, these commenters state that, just as the ADIT balances were deducted from or added to rate base, as appropriate, the corresponding amounts recorded in Accounts 254 and 182.3 should be deducted from or added to rate base. While generally agreeing that rate base adjustments are necessary, several commenters assert that there is no "one-size fits all" solution.[30]

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[28] APPA and AMP, Comments to NOI, Docket No. RM18-12-000, at 4-7 (filed on May 22, 2018) (APPA and AMP NOI Comments); Avangrid, Comments to NOI, Docket No. RM18-12-000, at 5 (May 22, 2018) (Avangrid NOI Comments); Consumer Advocates, Comments to NOI, Docket No. RM18-12-000, at 4-5 (filed May 21, 2018) (Consumer Advocates NOI Comments); DEMEC, Comments to NOI, Docket No. RM18-12-000, at 8 (filed May 21, 2018) (DEMEC NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18-12-000, at 3-6 (filed May 21, 2018) (Indicated Customers NOI Comments); National Grid, Comments to NOI, Docket No. RM18-12-000, at 6-7 (filed May 21, 2018) (National Grid NOI Comments); New York Transco, Comments to NOI, Docket No. RM18-12-000, at 5 (filed May 22, 2018) (New York Transco NOI Comments); Oklahoma Attorney General, Comments to NOI, Docket No. RM18-12-000, at 4 (filed May 22, 2018) (Oklahoma Attorney General NOI Comments); PSEG, Comments to NOI, Docket No. RM18-12-000, at 4 (filed May 22, 2018) (PSEG NOI Comments).

[29] Avangrid NOI Comments at 5; EEI, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018) (EEI NOI Comments).

[30] Kentucky Municipals, Comments to NOI, Docket No. RM18-12-000, at 3-5 (filed May 21, 2018) (Kentucky Municipals NOI Comments); Exelon, Comments to NOI, Docket No. RM18-12-000, at 11-12 (filed May 22, 2018) (Exelon NOI Comments); TAPS, Comments to NOI, Docket No. RM18-12-000, at 3 (filed May 21, 2018) (TAPS NOI Comments); Indicated Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 7 (filed May 21, 2018) (Indicated Transmission Owners NOI Comments) (("[t]here may be no uniform way to achieve the Commission's rate base

22. Regarding public utilities with formula rates, several commenters support the addition of a line item to formula rates for rate base adjustments reflecting excess or deficient ADIT recorded in Accounts 254 and 182.3.[31] Many of these commenters suggest that the Commission permit public utilities to make single-issue FPA section 205 filings to make the appropriate changes to their formula rates.[32] EEI suggests that the Commission should permit utilities with formula rates requiring adjustments to address these during their next true-up annual informational filing.[33]

23. Alternatively, APPA and AMP, and Indicated Customers suggest that any excess or deficient ADIT resulting from the implementation of the Tax Cuts and Jobs Act be recorded to the same ADIT accounts (e.g., Accounts 190, 281, 282, and 283) where the original entries for the regulatory assets and regulatory liabilities were established.[34] APPA and AMP state that by keeping the excess or deficient ADIT in sub-accounts

neutrality objective given differences between companies in accounting methods and rate structures.") (citation omitted)).

[31] Oklahoma Attorney General NOI Comments at 4-5; PSEG NOI Comments at 4; Avangrid NOI Comments at 5-9; Eversource, Comments to NOI, Docket No. RM18-12-000, at 4 (filed May 22, 2018) (Eversource NOI Comments); National Grid NOI Comments at 7-8; TAPS NOI Comments at 4.

[32] Eversource NOI Comments at 4-5; Indicated Transmission Owners NOI Comments at 6; PSEG NOI Comments at 4-5; National Grid NOI Comments at 7-8.

[33] EEI NOI Comments at 11.

[34] APPA and AMP NOI Comments at 7-8; Indicated Customers NOI Comments at 6-7.

within the original ADIT accounts, it will be more transparent and easier to track as the balances are flowed back.[35] As another alternative, the Oklahoma Attorney General asserts that the Commission should consider requiring that the line item currently used to offset rate base with ADIT include both ADIT balances in traditional ADIT-related accounts and those excess ADIT balances in other accounts identified by the Commission.[36]

24. Other commenters note that such a line item adjustment may not be necessary in all cases.[37] Specifically, these commenters assert that certain formula rates (e.g., certain MISO Attachment O, AEP, Exelon, and Eversource formula rates) already provide for the inclusion of excess ADIT in rate base and that the balances in Accounts 254 and 182.3 will naturally flow into rate base without any modification.[38]

25. Regarding public utilities with stated rates, commenters generally agree that adjustments are not necessary to preserve rate base neutrality with respect to stated

[35] APPA and AMP NOI Comments at 7-8.

[36] Oklahoma Attorney General NOI Comments at 4-5.

[37] Ameren, Comments to NOI, Docket No. RM18-12-000, at 7-8 (filed May 21, 2018) (Ameren NOI Comments); MISO Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 7 (filed May 21, 2018) (MISO Transmission Owners NOI Comments); EEI NOI Comments at 11; Exelon NOI Comments at 11-12.

[38] AEP, Comments to NOI, Docket No. RM18-12-000, at 3-4 (filed May 22, 2018) (AEP NOI Comments); Ameren NOI Comments at 7-8; MISO Transmission Owners NOI Comments at 7; Eversource NOI Comments at 3-4; Exelon NOI Comments at 11-12.

rates.[39] National Grid and Avangrid state that, under cost-of-service, both ADIT balances and regulatory liability balances should be deducted from rate base in calculating the stated rate.[40] Avangrid asserts that rate base neutrality issues are not raised with transmission stated rates because these rates assume the same amount of ADIT deduction to rate base without regard to how the companies adjusted their books and records.[41]

3. Proposed Requirements

a. Formula Rates

26. We propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates which deducts any excess ADIT from or adds any deficient ADIT to their rate bases under 18 CFR 35.24. As described above, the Commission's regulations in 18 CFR 35.24 require public utilities to reflect any excess or deficient ADIT as a result of any changes in tax rates in their next rate case. As a result of the Tax Cuts and Jobs Act's reduction of the federal corporate income tax from 35 percent to 21 percent, public utilities have collected excess funds for their ADIT liabilities and have not collected sufficient funds for any ADIT assets. To preserve rate base neutrality by accurately matching the tax allowance with the current tax cost as required by Commission regulations, public utilities with transmission formula rates must

[39] National Grid NOI Comments at 7-8; Avangrid NOI Comments at 5-6; EEI NOI Comments at 11.

[40] National Grid NOI Comments at 7-8; Avangrid NOI Comments at 5-6.

[41] Avangrid NOI Comments at 5-6.

include provisions in their formula rates to adjust their ADIT for excess or deficient ADIT.[42] We believe our proposal will ensure that public utilities with transmission formula rates will adjust their ADIT for any excess or deficient ADIT caused by the Tax Cuts and Jobs Act or any future changes to tax rates which may give rise to excess or deficient ADIT.

27. While we are proposing to require public utilities with transmission formula rates to include a mechanism to adjust rate base for any excess or deficient ADIT, we are not proposing to prescribe a specific adjustment mechanism which applies to all public utilities with transmission formula rates. We agree with commenters to the NOI that prescribing a one-size-fits-all approach, such as adding a line item, is not appropriate and that the Commission should instead allow public utilities to propose any necessary changes to their formula rates on an individual basis. Recent filings and comments submitted in the NOI suggest that multiple approaches to modify rate base may be just and reasonable. For example, as noted by MISO Transmission Owners,[43] the Commission accepted proposals by ITC Companies and Ameren in which those companies did not revise their formula rates to modify their adjustments to rate base by adding a new line item for rate base.[44] Instead, those companies demonstrated that, while

[42] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,530, 31,519.

[43] MISO Transmission Owners NOI Comments at 7.

[44] *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163 (2018).

not visible in their formula rates, their adjustments to rate base were modified by any excess or deficient ADIT prior to their input to the formula rates. Accordingly, we also propose that public utilities with transmission formula rates may demonstrate that their formula rates already meet the proposed ADIT adjustment requirements described in this Proposed Rule.

28. We are not persuaded by commenters to the NOI who suggest that excess or deficient ADIT amounts should be recorded to the same ADIT accounts where the original entries for the regulatory assets and regulatory liabilities were established. The Commission previously issued guidance on this topic, finding that public utilities are required to record a regulatory asset (Account 182.3) associated with deficient ADIT or regulatory liability (Account 254) associated with excess ADIT.[45] As a result, we do not propose any changes to that specific accounting guidance.

b. Stated Rates

29. We do not propose any new requirements regarding rate base neutrality for public utilities with transmission stated rates. As noted by commenters to the NOI, stated rates are calculated based in large part on company data submitted, and projections made, at the time of the last rate case. Thus, while ADIT balances may have changed as a result of the Tax Cuts and Jobs Act, so too will many other aspects of the cost of service and calculations that underlie the stated rate, making it difficult to re-evaluate ADIT and its

[45] *See* Accounting for Income Taxes, Docket No. AI93-5-000, at 8 (1993).

effect on rate base following a change in tax rates without fully evaluating a public utility's entire cost of service and rates.[46] We believe that the revisions we are proposing below, related to the return or recovery of excess or deficient ADIT, will adequately address the effects of the Tax Cuts and Jobs Act on ADIT and will avoid such complications. Therefore, we do not propose to require adjustments to the rate bases of public utilities with transmission stated rates prior to their next rate case on a generic basis.

B. Return or Recovery of Excess or Deficient ADIT

1. NOI

30. In the NOI, the Commission asked commenters to address how public utilities with stated or formula rates should adjust their income tax allowance such that the allowance would be decreased or increased by the amortization of excess or deficient ADIT, respectively.[47] Additionally, the Commission asked commenters how the Average Rate Assumption Method, and alternatively, the Reverse South Georgia Method or South Georgia Method, as appropriate, will be implemented in the amortization of protected excess or deficient ADIT and how quickly to amortize unprotected excess or deficient ADIT.[48]

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[46] The Commission previously acknowledged this difficulty in Order No. 475. Order No. 475, FERC Stats. & Regs. ¶ 30,752 at 30,736.

[47] NOI, FERC Stats. & Regs. ¶ 35,582 at P 21.

[48] *Id.* PP 17, 19. Under the South Georgia method, a calculation is taken of the difference between the amount actually in the deferred account and the amount that would have been in the account had normalization continuously been followed. Any

2. Comments

31. Commenters generally support adjusting public utilities' income tax allowances by the amortization of excess or deficient ADIT. Many commenters suggest adding a line item or several line items to public utility transmission formula rates to make this adjustment,[49] with some transmission owners noting that they have already submitted or now propose to submit such revisions.[50] MISO Transmission Owners note that the Commission accepted such a proposal by ITC Great Plains.[51] National Grid suggests that adjustments to income tax allowances could also be made through the weighted cost of capital.[52]

deficiency is collected from ratepayers (i.e., South Georgia Method), and any excess is returned to ratepayers (i.e., Reverse South Georgia Method), over the remaining depreciable life of the plant that caused the difference. *Memphis Light, Gas and Water Div. v. FERC*, 707 F.2d 565, 569 (D.C. Cir. 1983).

[49] Ameren NOI Comments at 15-16; Avangrid NOI Comments at 11-12; MISO Transmission Owners NOI Comments at 14-17; National Grid NOI Comments at 15; New York Transco NOI Comments at 10; Oklahoma Attorney General NOI Comments at 6; PSEG NOI Comments at 10.

[50] Ameren NOI Comments at 15-16; Avangrid NOI Comments at 11-12; MISO Transmission Owners NOI Comments at 16-17; New York Transco NOI Comments at 10.

[51] MISO Transmission Owners NOI Comments at 15 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374). *See also Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163.

[52] National Grid NOI Comments at 15.

32. Commenters also support revisions to transmission stated rates to reflect income tax allowance adjustments for the amortization of excess or deficient ADIT.[53] TAPS states that, to address these adjustments, it supports an approach similar to utility-specific investigations the Commission opened with respect to the change in the federal corporate income tax rate.[54] However, TAPS expresses concern that stated rate customers will find it challenging to verify their utilities' calculation and asserts that, thus, the Commission should encourage utilities to work with customers toward a mutually acceptable solution and require those utilities to file the return mechanism, including detailed documentation and worksheets so that the calculation of excess ADIT can be validated.[55]

33. Some commenters caution the Commission against mandating that public utilities adopt a single method to adjust their formula rates' income tax allowances. Instead, these commenters suggest that the Commission recognize public utilities' specific circumstances by evaluating proposed modifications on a case-by-case basis or recognizing that some formula rates already adjust the income tax allowance by the amortization of excess or deficient ADIT and, therefore, would not require revision.[56]

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[53] Avangrid NOI Comments at 9, National Grid NOI Comments at 15, TAPS NOI Comments at 6.

[54] TAPS NOI Comments at 6 (citing *Alcoa Power Generating Inc.—Long Sault Div.*, 162 FERC ¶ 61,224).

[55] TAPS NOI Comments at 5-7.

[56] Exelon NOI Comments at 14-15; Indicated Customers NOI Comments at 12-13; MISO Transmission Owners NOI Comments at 17.

Indicated Transmission Owners argue that the Commission should make any evaluations on a single-issue basis.[57] The Oklahoma Attorney General suggests that the Commission could use ongoing proceedings, such as the show cause proceedings initiated against public utilities whose formula rates would not automatically adjust to reflect the lower federal corporate income tax rate of 21 percent, to revise formula rates such that the income tax allowance is adjusted by the amortization of excess or deficient ADIT.[58]

34. Consumer Advocates are concerned that absent Commission intervention, jurisdictional entities may begin to amortize their excess ADIT, thereby denying customers the full benefit of the Tax Cuts and Jobs Act. Consumer Advocates argue that to the extent any protected ADIT balances have been amortized to date, the Commission should require such excess protected ADIT amortization credits to be reversed and the liability balance restored to that of the implementation date of the Tax Cuts and Jobs Act.[59]

35. Regarding protected excess or deficient ADIT, commenters agree that the Commission has no need to change its existing regulations or precedent or depart from the Tax Cuts and Jobs Act's normalization provisions.[60] Regarding unprotected excess or

[57] Indicated Transmission Owners NOI Comments at 11-12.

[58] Oklahoma Attorney General NOI Comments at 6.

[59] Consumer Advocates NOI Comments at 4.

[60] AEP NOI Comments at 4-5; Ameren NOI Comments at 11; APPA and AMP NOI Comments at 5-6, 10; Avangrid NOI Comments at 8-9; Consumer Advocates NOI Comments at 6-7; DEMEC NOI Comments at 9; EEI NOI Comments at 14, 16-17;

deficient ADIT, commenters agree that the Commission should adopt a case-by-case approach for determining how quickly excess or deficient unprotected ADIT should be flowed back to or recovered from customers.[61]

3. Proposed Requirements

a. Formula Rates

36. We propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates which decreases or increases their income tax allowances by any amortized excess or deficient ADIT, respectively, under 18 CFR 35.24. Such a mechanism is necessary because, as described above, the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate from 35 percent to 21 percent means public utilities have collected from customers funds in excess of what is due to the IRS for ADIT liabilities and, conversely for ADIT assets, funds from customers insufficient to satisfy IRS tax obligations. Similar to the proposed rate base

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Eversource NOI Comments at 7; Exelon NOI Comments at 13; Indicated Customers NOI Comments at 8-9; Indicated Transmission Owners NOI Comments at 8-9; Kentucky Municipals NOI Comments at 6; MISO Transmission Owners NOI Comments at 8-11; National Grid NOI Comments at 10-11; New York Transco NOI Comments at 7-8; Oklahoma Attorney General NOI Comments at 6-7; PSEG NOI Comments at 7-8.

[61] AEP NOI Comments at 6-7 ("However, in the event the Commission develops a broadly applicable amortization period, AEP recommends that period be 25 years or longer"); Avangrid NOI Comments at 9-11; Dominion, Comments to NOI, Docket No. RM18-12-000, at 12 (filed on May 21, 2018); EEI NOI Comments at 17-18; Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 36-37 (filed on May 21, 2018); Enbridge and Spectra, Comments to NOI, Docket No. RM18-12-000, at 26 (filed May 21, 2018); EQT Midstream, Comments to NOI, Docket No. RM18-12-000, at 13-14 (filed May 21, 2018); Eversource NOI Comments at 8-9; Exelon NOI Comments at 13-14; Indicated Transmission Owners NOI Comments at 9-10; National Grid NOI Comments at 11-13; New York Transco NOI Comments at 9.

adjustment requirements, these proposed income tax allowance adjustment requirements are intended to satisfy Order No. 144's requirement that the income tax allowance match the current tax cost and reflect the effects of any future changes to tax rates that may give rise to excess or deficient ADIT.

37. Similar to comments regarding adjustments to rate base, we agree with commenters to the NOI that prescribing a one-size-fits-all approach is not appropriate and that the public utilities with transmission formula rates should instead be allowed to propose any necessary changes to their rates on an individual basis. Accordingly, we do not propose that all public utilities with transmission formula rates must use a single method to adjust their income tax allowances for any amortized excess or deficient ADIT. Many public utilities with transmission formula rates use different formats of rate templates or formulas, and a single, prescriptive method, such as the requirement of a single line item, may not fully capture or transparently convey the amortization of excess or deficient ADIT. Additionally, recent filings by public utilities that proposed revisions to their formula rate templates to reflect changes in income tax rates by, among other things, incorporating mechanisms to return excess ADIT demonstrate that company-specific variations are necessary.[62]

[62] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374; *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163; *Midcontinent Indep. Sys. Operator, Inc.,* 164 FERC ¶ 61,113 (2018); *Emera Maine*, 165 FERC ¶ 61,086 (2018).

38. Regarding the period over which the amortization of excess or deficient ADIT must occur, we believe that public utilities should follow the guidance provided in the Tax Cuts and Jobs Act, where available. As noted by commenters to the NOI, the Tax Cuts and Jobs Act provides a method of general applicability and requires public utilities to return excess protected ADIT[63] no more rapidly than over the life of the underlying asset using the Average Rate Assumption Method, or, where a public utility's books and underlying records do not contain the vintage account data necessary, it must use an alternative method.[64] In contrast, the Tax Cuts and Jobs Act does not specify what method public utilities must use for excess or deficient unprotected ADIT. We agree with commenters to the NOI that, because such a determination depends on the specific facts and circumstances for each public utility, a case-by-case approach to amortizing excess or deficient unprotected ADIT remains appropriate.

39. Consumer Advocates are concerned that a portion of the amounts allowable to be returned to customers under the Average Rate Assumption Method schedule would not be refunded due to the fact that any proposed tariff provisions to return excess ADIT as a result of this Proposed Rule will not be effective until after January 1, 2018. We

[63] While the Tax Cuts and Jobs Act does not mention deficient protected ADIT specifically, we expect that public utilities will recover such deficient ADIT in the same manner prescribed for excess protected ADIT.

[64] Tax Cuts and Jobs Act, Sec. 13001(b)(6)(A), 131 Stat. at 2099. If a public utility must use an alternative method, Commission precedent provides that the public utility should use the Reverse South Georgia Method for excess ADIT or the South Georgia Method for deficient ADIT. *See Memphis Light, Gas and Water Div. v. FERC*, 707 F.2d at 569.

acknowledge that in applying a tax normalization method (e.g., the Average Rate Assumption Method), public utilities are required to develop a schedule removing ADIT from rate base and returning it to customers, effective January 1, 2018, using the fastest allowable method to return the excess ADIT under the IRS' normalization requirements. However, these requirements represent only the fastest allowable return schedule and do not remove a public utility's obligation to return the excess ADIT. 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 refunded to customers. In other words, the full regulatory liability for excess ADIT should be captured in rates, beginning on the effective date of any proposed tariff provision. We do not believe that any specific reforms are necessary to accomplish this because public utilities should not amortize an excess ADIT regulatory liability for accounting purposes until it is included in ratemaking.[65]

b. Stated Rates

40. We propose to require all public utilities with transmission stated rates to (1) determine the excess and deficient income tax caused by the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate and (2) return this amount to or recover this amount from customers under 18 CFR 35.24. We also propose for public utilities

[65] The description of Account 182.3 (Other regulatory assets) states, "The amounts recorded in this account are generally to be charged, *concurrently with the recovery of the amounts in rates…*" (emphasis added). 18 CFR part 101, Account 182.3 (Other Regulatory Assets).

with transmission stated rates to calculate this excess or deficient ADIT using the ADIT approved in their last rate cases. We believe calculating excess or deficient ADIT in this manner will allow public utilities with transmission stated rates to preserve their costs of service as accepted in their last rate case. We are not seeking to propose a specific way for public utilities with transmission stated rates to return or recover the excess or deficient income taxes to ratepayers; rather, we will evaluate each proposal on an individual basis. We believe the proposed reforms will increase the likelihood that those customers who contributed to the related ADIT accounts receive the benefit of the Tax Cuts and Jobs Act.

41. TAPS expresses concern that the customers of public utilities with transmission stated rates will lack sufficient information to evaluate any proposals to return or recover excess or deficient ADIT, respectively. We note that the Commission's regulations require public utilities filing changes to transmission rates to identify the effect of tax changes on those rates.[66] Accordingly, we expect that public utilities with stated rates would include in their compliance filings resulting from this Proposed Rule supporting information necessary to identify, at minimum, the following: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting of any excess or deficient amounts in Accounts 182.3 and 254; (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the

[66] 18 CFR 35.13; 18 CFR 35.24.

excess or deficient ADIT will be amortized; and (5) the amortization period of the excess or deficient ADIT to be returned or recovered through the rates.

42. Finally, as noted above, public utilities with transmission stated rates must conform to the Tax Cuts and Jobs Act's requirements regarding the period over which the amortization of protected excess or deficient ADIT must occur. We will continue to analyze the appropriate amortization period for unprotected ADIT on a case-by-case basis.

C. <u>Support for Excess and Deficient ADIT Calculation and Amortization</u>

1. <u>NOI</u>

43. In the NOI, the Commission sought comment on whether it should require public utilities to provide to the Commission, on a one-time basis, additional information, such as supporting worksheets, to show the computation of excess or deficient ADIT and the corresponding flow-back of excess ADIT to customers or recovery of deficient ADIT from customers. The Commission asked commenters to address what types of information public utilities already record for ADIT-related accounting and whether balances and amortization of regulatory liability and asset accounts, computation of excess and deficient ADIT, delineation between protected and non-protected ADIT, and a description of the allocation method used to determine the transmission-related portion of excess or deficient ADIT would be appropriate to include in a supporting worksheet.[67]

[67] NOI, FERC Stats. & Regs. ¶ 35,582 at P 23.

2. Comments

44. Commenters were split regarding the requirement to provide additional worksheets. Some commenters assert that the Commission should not require any additional worksheets at this time.[68] These commenters generally assert that the implementation of general worksheet requirements would be burdensome on the industry.[69] They assert that any data should only be required to be submitted on a company by company basis, as necessary, rather than require a one-time proceeding for the purpose of all public utilities providing the data showing whether and how ADIT balances were re-measured.[70] Certain commenters assert that the Commission should not require additional worksheets as transmission formula rates and associated protocols already include mechanisms to provide details to customers.[71] Avangrid similarly states that the formula rate processes should be used to provide the level of transparency to verify the flowback of excess ADIT ultimately prescribed by the Commission. EEI states that if the Commission does require additional supporting information as part of EEI's

[68] *See* AEP NOI Comments at 8; Ameren NOI Comments at 16-18; Avangrid NOI Comments at 13-14; EEI NOI Comments at 20-22; Exelon NOI Comments at 15; Indicated Transmission Owners NOI Comments at 12; MISO Transmission Owners NOI Comments at 18-19; and PSEG NOI Comments at 11-12.

[69] *See* EEI NOI Comments at 20-21; Exelon NOI Comments at 15.

[70] EEI NOI Comments at 20.

[71] *See* AEP NOI Comments at 8; Ameren NOI Comments at 16-17; Avangrid NOI Comments at 13-14; Exelon NOI Comments at 15, Indicated Transmission Owners NOI Comments at 12; and MISO Transmission Owners NOI Comments at 18-19.

proposed show cause orders, the Commission should first provide its proposed financial template, in a rulemaking, to allow for review by public utilities and stakeholders. EEI adds that this would reduce the burden on individual public utilities and the Commission and would be similar to the approach leading up to the Gas Tax Final Rule.[72]

45. Other commenters, however, assert that the Commission should require electric public utilities to provide a one-time filing of additional information to provide transparency regarding excess and deficient ADIT, and how rates will be impacted by any changes.[73] APPA and AMP urge the Commission to require that supporting information be filed regarding excess or deficient ADIT, but not be limited to only ADIT-related material. They assert that public utilities should also describe, with supporting schedules, any current or projected effects on their books associated with the Tax Cuts and Jobs Act's changes to bonus depreciation, or any other potential rate-related impacts.[74] APPA and AMP further state that for public utilities with transmission formula rates, the utilities should provide as part of their annual updates, calculations showing excess ADIT amortization amounts that should be flowed back to customers in the applicable rate period. Consumer Advocates state that in addition to requiring a

[72] EEI NOI Comments at 21, n. 36.

[73] *See* APPA and AMP NOI Comments at 17-18; Consumer Advocates NOI Comments at 10-11; DEMEC NOI Comments at 11-12; Eversource NOI Comments at 11; Indicated Customers NOI Comments at 15; National Grid NOI Comments at 15-16; and New York Transco NOI Comments at 11.

[74] APPA and AMP NOI Comments at 17-18.

detailed worksheet identifying all book tax timing differences that comprise deferred tax liability balances, the Commission should evaluate the build-up of net operating losses as deferred tax assets. They assert that such balances should not automatically be inserted as an addition to regulated rate base.[75] New York Transco states that each public utility should be permitted to compile and present this additional information in the manner it deems most efficient and useful for stakeholders. New York Transco states that if stakeholders desire additional information, any interested party can seek that information consistent with the formula rate implementation protocols that address information sharing. While not objecting to the provision of additional information, National Grid states that the Commission should not impose this requirement until after December 2018 as the additional information will not be meaningful until after companies have set the final rate change balance after the filing of their fiscal year 2018 federal corporate income tax returns.[76]

3. Proposed Requirements

a. Formula Rates

46. 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

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[75] Consumer Advocates NOI Comments at 10-11.

[76] National Grid NOI Comments at 16.

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. Consequently, we do not propose that any worksheet be populated when submitted to the Commission for compliance, only that the function of the worksheet be clear.

47. Similar to other reforms proposed in this Proposed Rule, we do not propose a pro forma worksheet that must be adopted by all public utilities with transmission formula rates; rather, we propose requiring general categories of information that each excess or deficient ADIT tracking worksheet must contain. We propose that each excess or deficient ADIT worksheet must, at minimum, include the following: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting of any excess or deficient amounts in Accounts 182.3 and 254; (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the excess or deficient ADIT are amortized; and (5) the amortization period of the excess or deficient ADIT being returned or recovered through the rates. Because we do not propose to define the form any worksheet or worksheets must take, only the

information it must contain, we propose evaluating such worksheet or worksheets on an individual basis. We also request comments on whether we should consider additional guiding principles to those described above.

48. We disagree with commenters to the NOI that argue that providing such information is overly burdensome for the industry. Public utilities with transmission formula rates will already have gathered the information we propose to require in the worksheets to re-measure their ADIT balances and develop amortization schedules following the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate. Further, the Commission has already accepted worksheets that convey information similar to the proposed requirements outlined above.[77]

49. We also disagree with commenters to the NOI that public utilities' existing formula rate protocols should preclude the Commission from proposing an excess or deficient ADIT worksheet. While the Commission established that formula rate protocols should allow for the provision of any information necessary to understand the inputs to the rate in order to provide sufficient transparency to interested parties, the Commission has since required public utilities to revise their formula rates to include greater detail where it has deemed that certain inputs to the rate are complex enough to warrant prior understanding of their effect.[78] As related to excess and deficient ADIT,

[77] *See, e.g., Arizona Public Service Company*, Docket No. ER18-975-001 (May 22, 2018) (delegated order).

[78] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374 at P 14 (directing certain transmission companies to revise their transmission formula rates to

we believe the proposed worksheet will allow interested parties to ensure they are receiving the benefits of the Tax Cuts and Jobs Act, as well as to track over time any changes in the rate effects of the tax change as, for example, assets are sold or retired.

b. <u>Stated Rates</u>

50. As described above in the proposal for return of excess ADIT or recovery of deficient ADIT, we believe that the Commission's existing regulations require public utilities with transmission stated rates to provide sufficient support for any proposed tax-related changes. As a result, we do not propose any additional information requirements for public utilities with transmission stated rates.

III. <u>Proposed Compliance Procedures</u>

51. We propose to require each public utility with transmission stated or formula rates to submit a compliance filing within 90 days of the effective date of any subsequent final rule in this proceeding to revise its transmission formula or stated rates, as necessary, to demonstrate that it meets the requirements set forth in any subsequent final rule.

52. Some public utilities with transmission formula rates may already have mechanisms in place in their rates that address the issues and concerns addressed by any subsequent final rule. Where these provisions would be modified by any subsequent final rule, the public utility must either comply with any subsequent final rule or demonstrate

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include worksheets to ensure appropriate transparency). The Commission has also regularly required certain revisions to new formula rates to provide greater transparency. *See, e.g., Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014); *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014); *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180 (2014); *Transource Kansas, LLC,* 151 FERC ¶ 61,010 (2015).

that these previously approved variations continue to be consistent with or superior to the requirements of any subsequent final rule.

53. The Commission will assess whether each compliance filing satisfies the proposed requirements stated above and issue additional orders as necessary to ensure that each public utility with transmission stated or formula rates meets the requirements of the subsequent final rule.

IV. Information Collection Statement

54. The collection of information contained in this Proposed Rule is subject to review by the Office of Management and Budget (OMB) regulations under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[79] OMB's regulations require approval of certain informational collection requirements imposed by an agency.[80] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

55. The reforms proposed in this Proposed Rule address public utilities that have transmission formula rates and transmission stated rates. The reforms related to transmission formula rates represent new requirements for these entities under the

[79] 44 U.S.C. 3507(d).

[80] 5 CFR 1320.11.

Commission's regulations in 18 CFR 35.24, which we believe are necessary because of the dramatic changes in the rate structure of the electric transmission industry since this provision was originally promulgated in 1981.[81] These new requirements would require each public utility with a transmission formula rate to revise its rate so that any excess or deficient ADIT is properly reflected in its revenue requirement following a change in tax rates, such as those established by the Tax Cuts and Jobs Act. Additionally, each public utility with a transmission formula rate would be required to incorporate a new permanent worksheet into its transmission formula rate to increase transparency.

56. The reforms required by this Proposed Rule will require each public utility with stated rates to calculate the excess and deficient ADIT caused by the Tax Cuts and Jobs Act and to return to or recover from customers those amounts. This reform is intended to increase the likelihood that customers who contributed to the excess ADIT balance timely receive the benefits of the Tax Cuts and Jobs Act.

57. The reforms proposed in this Proposed Rule would require compliance filings with the Commission by each public utility with transmission stated or formula rates to allow the Commission the opportunity to determine whether each such public utility met the requirements detailed in this Proposed Rule.

58. We anticipate the reforms proposed in this Proposed Rule, once implemented, would not significantly change currently existing burdens on an ongoing basis. With regard to those public utilities with transmission stated or formula rates that believe that

[81] *See* discussion *infra* Section II.E.

they already comply with the reforms proposed in this Proposed Rule, they could demonstrate their compliance in the filing required 90 days after the effective date of the final revision in this proceeding. We will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[82]

59. While we expect the adoption of the reforms proposed in this Proposed Rule to provide significant benefits, the Commission understands that implementation can be a complex and costly endeavor. We solicit comments on the accuracy of provided burden and cost estimates and any suggested methods for minimizing the respondents' burdens.

60. Burden Estimate and Information Collection Costs: We believe that the burden estimates below are representative of the average burden on respondents. The estimated burden and cost for the requirements contained in this Proposed Rule follow.

[82] 44 U.S.C. 3507(d).

RM19-5-000 NOPR (Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes)						
	Number of Respondents (1)	**Annual Number of Responses per Respondent (2)**	**Total Number of Responses (1)*(2)=(3)**	**Average Burden & Cost Per Response[83] (4)**	**Total Annual Burden Hours & Total Annual Cost (3)*(4)=(5)**	**Cost per Respondent ($) (5)÷(1)**
Revising formula rates so that excess ADIT is deducted and/or deficient ADIT is added to rate base (one-time)[84]	106	1	106	8 hours; $736	848 hours; $78,016	$736
Revising formula rates so that any excess and/or deficient ADIT is amortized (one-time)	106	1	106	8 hours; $736	848 hours; $78,016	$736

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[83] The loaded hourly wage figure (includes benefits) is based on the average of the occupational categories for 2017 found on the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm):

Accountant (Occupation Code: 13-2011): $56.59

Management (Occupation Code: 11-0000): $94.28

Legal (Occupation Code: 23-0000): $143.68

Office and Administrative Support (Occupation Code: 43-0000): $41.34

These various occupational categories' wage figures are averaged and weighted equally as follows: ($94.28/hour + $61.55/hour + $66.90/hour + $143.68/hour) ÷ 4 = $91.60/hour. The resulting wage figure is rounded to $92.00/hour for use in calculating wage figures in the NOPR in Docket No. RM19-5-000.

[84] One-time burdens apply in Year One only. There will be no subsequent burden in Years 2 and beyond.

Revising transmission stated rates to return or recover excess or deficient ADIT (one-time)	31	1	31	15 hours; $1,380	465 hours; $42,780	$1,380
Requiring public utilities with transmission formula rates to incorporate a new permanent worksheet that will annually track ADIT information (one-time)	106	1	106	40 hours; $3,680	4,240 hours; $390,080	$3,680
Total (Stated Rates)[85]			**31**		**465 hours; $42,780**	
Total (Formula Rates)[86]			**318**		**5,936 hours; $546,112**	
TOTAL			**349**		**6,532 hours; $588,892**	

Cost to Comply: We have projected the total cost of compliance as follows:[87]

[85] Total for Public Utilities with Transmission Stated Rates

[86] Total for Public Utilities with Transmission Formula Rates

[87] For a public utility transmission provider with transmission formula rates, the costs for Year 1 would consist of filing proposed changes to its transmission formula rates, including the addition of a new permanent worksheet, with the Commission within 90 days of the effective date of the final revision plus initial implementation. The Commission does not expect any ongoing costs beyond the initial compliance in Year 1. For a public utility transmission provider with transmission stated rates, the costs for Year 1 would consist of filing proposed changes to its transmission stated rates that allow it to return to or recover from customers any excess or deficient ADIT caused by the Tax Cuts and Jobs Act with the Commission within 90 days of the effective date of the final revision plus initial implementation.

- Year 1: $546,112 ($5,152/utility) for public utilities with transmission formula rates; $42,780 ($1,380/utility) for public utilities with transmission stated rates.
- Year 2: $0

After Year 1, the reforms proposed in this Proposed Rule, once implemented, would not significantly change existing burdens on an ongoing basis.

Title: FERC-516, Electric Rate Schedules and Tariff Filings.

Action: Proposed revisions to an information collection.

OMB Control No.: 1902-0096

Respondents for this Proposal: Businesses or other for profit and/or not-for-profit institutions.

Frequency of Information: One-time during year one.

Necessity of Information: The Federal Energy Regulatory Commission makes this Proposed Rule to ensure that (1) rate base neutrality is preserved following enactment of the Tax Cuts and Jobs Act; (2) the reduction in ADIT on the books of rate-regulated companies that was collected from customers but is no longer payable to the IRS due to the Tax Cuts and Jobs Act is returned to or recovered from ratepayers consistent with general ratemaking principles; and (3) there is increased transparency for the process of excess and deficient ADIT calculation and amortization.

Internal Review: We have reviewed the proposed changes and have determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. We have specific, objective support for the burden estimates associated with the information collection requirements.

61. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], e-mail: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873. Comments concerning the collection of information and the associated burden estimate(s), may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-0710, fax: (202) 395-7285]. Due to security concerns, comments should be sent electronically to the following e-mail address: oira_submission@omb.eop.gov. Comments submitted to OMB should include FERC-516 and OMB Control No. 1902-0096.

V. Environmental Analysis

62. We are required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[88] The actions proposed to be taken in this Proposed Rule fall within the categorical exclusion under section 380.4(a)(15) of the Commission's regulations. This

[88] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

section provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classification, and services.[89] The revisions proposed in this Proposed Rule fall within the categorical exemptions provided in the Commission's regulations, and as a result neither an Environmental Impact Statement nor an Environmental Assessment is required.

VI. Regulatory Flexibility Act Certification

63. The Regulatory Flexibility Act of 1980 (RFA)[90] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

64. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and

[89] 18 CFR 380.4(a)(15).

[90] 5 U.S.C. 601-612.

associated size threshold: electric bulk power transmission and control, at 500 employees.[91]

65. We estimate that the total number of public utility transmission providers with formula rates that would have to develop revisions to their formula rates, including the addition of a new permanent worksheet, and make compliance filings in response to this Proposed Rule is 106. Of these, we estimate that approximately 43 percent are small entities (approximately 46 entities). We estimate the average total cost to each of these entities will be $5,152 in Year 1 and $0 in subsequent years. In addition, we estimate that the total number of public utility transmission providers with stated rates that will have to calculate the excess and deficient income tax to return to or recover from customers is 31. Of these, we estimate that approximately 43 percent are small entities (approximately 13 entities). We estimate the average total cost to each of these entities will be between $1,380 in Year One and $0 in subsequent years. According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors."[92] We do not consider the estimated burden to be a significant economic

[91] 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

[92] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act*, at 18 (May 2012), https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.

impact. As a result, we certify that the revisions proposed in this Proposed Rule will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

66. We invite interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Comments must refer to Docket No. RM19-5-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

67. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at http://www.ferc.gov. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

68. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street N.E., Washington, DC, 20426.

69. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

70. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

71. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

72. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By direction of the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Note: Appendix A will not be published in the Federal Register.

Appendix A – List of Commenters to NOI

Short Name	Commenter
AEP	American Electric Power Service Corporation
Ameren	Ameren Services Company on behalf of Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois
AOPL	Association of Oil Pipe Lines
APGA	American Public Gas Association
APPA and AMP	American Public Power Association and American Municipal Power, Inc.
Avangrid	Avangrid Networks, Inc.
Berkshire	Berkshire Hathaway Energy Pipeline Group
Boardwalk	Boardwalk Pipeline Partners LP
CAPP	Canadian Association of Petroleum Producers
Consumer Advocates	Office of the Attorney General of the Commonwealth of Massachusetts; the Ohio Consumers' Counsel; the Maryland Office of People's Counsel; the Nevada Bureau of Consumer Protection; the Delaware Division of the Public Advocate; the Pennsylvania Office of Consumer Advocate; the Citizens Utility Board of Wisconsin; and the Indiana Office of Utility Consumer Counselor
DEMEC	Delaware Municipal Electric Corporation, Inc.
Dominion Energy Gas Pipelines	Dominion Energy Transmission, Inc.; Dominion Energy Carolina Gas Transmission, LLC; Dominion Energy Quester Pipeline, LLC; Dominion Energy Overthrust Pipeline, LLC; and Questar Southern Trails Pipeline Company

EEI	Edison Electric Institute
Enable Interstate Pipelines	Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC
Enbridge and Spectra	Enbridge Energy Partners, L.P. and Spectra Energy Partners, LP
EQT Midstream	EQT Midstream Partners, LP
Eversource	Eversource Energy Service Company
Exelon	Exelon Corporation
Indicated Customers	Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Southern Maryland Electric Cooperative, Inc., and the New Jersey Division of Rate Counsel
Indicated Local Distribution Companies	Atmos Energy Corporation; the City of Charlottesville, Virginia; the City of Richmond, Virginia; the Easton Utilities Commission; Exelon Corporation; and Washington Gas Light Company
Indicated Transmission Owners	American Electric Power Service Corporation; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; Exelon Corporation; FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Mid-Atlantic Interstate Transmission, LLC; West Penn Power Company; The Potomac Edison Company; Monongahela Power Company; and PPL Electric Utilities Corp.
INGAA	Interstate Natural Gas Association of America
ITC Great Plains	ITC Great Plains, LLC
Kentucky Municipals	Frankfort Plant Board of Frankfort, Kentucky; Barbourville Utility Commission of the City of Barbourville, City; Utilities Commission of the City of Corbin; and the Cities of Bardwell, Berea, Falmouth, Madisonville, and Providence, Kentucky

Kinder Morgan Entities	Natural Gas Pipeline Company of America LLC; Tennessee Gas Pipeline Company, L.L.C.; Southern Natural Gas Company, L.L.C.; Colorado Interstate Gas Company, L.L.C.; Wyoming Interstate Company, L.L.C.; El Paso Natural Gas Company, L.L.C.; Mojave Pipeline Company, L.L.C.; Bear Creek Storage Company, L.L.C.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Elba Express Company, L.L.C.; Kinder Morgan Louisiana Pipeline LLC; Southern LNG Company, L.L.C.; and TransColorado Gas Transmission Company LLC
Kinder Morgan Subsidiaries	SFPP, L.P.; Calnev Pipe Line, LLC; and Kinder Morgan Cochin, LLC
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

National Grid	National Grid USA
Natural Gas Indicated Shippers	Aera Energy, LLC; Anadarko Energy Services Company; Apache Corporation; BP Energy Company; ConocoPhillips Company; Hess Corporation; Occidental Energy Marketing, Inc.; Petrohawk Energy Corporation; and XTO Energy, Inc.
New York Transco	New York Transco LLC
Oklahoma Attorney General	Mike Hunter, Oklahoma Attorney General
PJM	PJM Interconnection, L.L.C.
Plains	Plains Pipeline, L.P.
Process Gas and American Forest and Paper	Process Gas Consumers Group and American Forest and Paper Association
PSEG	Public Service Electric and Gas Company
Tallgrass Pipelines	Trailblazer Pipeline Company LLC; Tallgrass Interstate Gas Transmission, LLC; and Rockies Express Pipeline LLC
TAPS	Transmission Access Policy Study Group
TransCanada	TransCanada Corporation
United Airlines Petitioners	United Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Southwest Airlines, Co.; BP West Coast Products LLC; ExxonMobil Oil Corporation; Chevron Products Company; HollyFrontier Refining & Marketing LLC; Valero Marketing and Supply Company; Airlines for America; and the National Propane Gas Association
Williams	Williams Companies, Inc.

165 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. PL19-2-000

Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset

(Issued November 15, 2018)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: In this Policy Statement, the Federal Energy Regulatory Commission (Commission) states its policy regarding the treatment of Accumulated Deferred Income Taxes for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017. In addition, the Commission addresses the accounting and ratemaking treatment of Accumulated Deferred Income Taxes following the sale or retirement of an asset.

EFFECTIVE DATE: This Policy Statement will become effective **[date of publication in the *Federal Register*].**

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SUPPLEMENTARY INFORMATION:

165 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset — Docket No. PL19-2-000

POLICY STATEMENT

(Issued November 15, 2018)

1. In this Policy Statement, the Federal Energy Regulatory Commission (Commission) states its policy regarding the treatment of Accumulated Deferred Income Taxes (ADIT) for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines, and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017.[1] The Commission also addresses the accounting and ratemaking treatment of ADIT following the sale or retirement of an asset.

I. Background

A. Tax Cuts and Jobs Act

2. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax

[1] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

rate from 35 percent to 21 percent, effective January 1, 2018.[2] This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the Internal Revenue Service (IRS) based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.

3. Importantly, the tax rate reduction will also result in a reduction in ADIT liabilities and ADIT assets on the books of rate-regulated companies. ADIT balances are accumulated on the regulated books and records of such regulated companies based on the requirements of the Uniform System of Accounts (USofA).[3] ADIT arises from timing differences between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes.[4] As a result of the Tax Cuts and Jobs Act reducing the federal corporate income tax rate from 35 percent to 21 percent, a portion of an ADIT liability that was collected from customers will no longer be due from public utilities, natural gas pipelines and oil pipelines to the IRS and is considered excess ADIT.

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[2] *Id.* Sec. 13001, 131 Stat. at 2096.

[3] *See* Definition of Accounts 182.3 and Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; *see* Definition of Accounts 182.3 and Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act; see* General Instructions 1-12, Accounting for Income Taxes, 18 CFR part 352, *Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act*.

[4] *See* 18 CFR 35.24(d)(2) (2018).

B. <u>Order No. 144</u>

4. The purpose of tax normalization is to match the tax effects of costs and revenues with the recovery in rates of those same costs and revenues.[5] As noted above, timing differences may exist between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes. The tax effects of these differences are placed in a deferred tax account to be used in later periods when the differences reverse.[6]

5. The Commission established this policy of tax normalization in Order No. 144 where it required use of "the provision for deferred taxes [(i.e., ADIT)] as a mechanism for setting the tax allowance at the level of current tax cost."[7] In keeping with this normalization policy, and as relevant to the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate, the Commission in Order No. 144 also required adjustments in the ADIT of public utilities' cost of service when excessive or deficient ADIT has been created as a result of changes in tax rates.[8] Furthermore, the Commission required "a rate applicant to compute the income tax component in its cost of service by making provision for any excess

[5] *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522, 31,530 (1981), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982).

[6] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,554.

[7] *Id.* at 31,530.

[8] *Id.* at 31,519.

or deficiency in its deferred tax reserves resulting . . . from tax rate changes."[9] The Commission required that such provision be consistent with a Commission-approved ratemaking method made specifically applicable to the rate applicant.[10] Where no ratemaking method has been made specifically applicable, the Commission required the rate applicant to advance some method in its next rate case.[11] The Commission stated that it would determine the appropriateness of any proposed method on a case-by-case basis, but as the issue is resolved in a number of cases, a method with wide applicability may be adopted.[12] The Commission codified the requirements of Order No. 144 in its regulations in 18 CFR 35.24.[13]

1. <u>Public Utilities – 18 CFR 35.24</u>

6. Originally promulgated in Order No. 144, the Commission's regulations in 18 CFR 35.24 provide requirements for the proper ratemaking treatment of the tax effects of all

[9] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(1)(ii); 18 CFR 35.24(c)(2).

[10] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(3).

[11] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[12] *Id*. *See also* 18 CFR 35.24(c)(3).

[13] Originally promulgated as part of Order No. 144, the regulatory text was redesignated as 18 CFR 35.25 in Order No. 144-A. *See* Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 at 30,140. In Order No. 545, the Commission again redesignated the regulatory text to its present designation as 18 CFR 35.24. *See Streamlining Electric Power Regulation,* Order No. 545, FERC Stats. & Regs. ¶ 30,955, at 30,713 (1992) (cross-referenced at 61 FERC ¶ 61,207).

transactions for which there are timing differences.[14] Under this section, a public utility must account for excess or deficient ADIT when computing the income tax component of its cost of service.[15] Additionally, in accounting for this excess or deficient ADIT, a public utility is required to apply the ratemaking method that has been specifically approved by the Commission for that public utility.[16] Where no such ratemaking method exists, a public utility may choose which ratemaking method to apply and the reasonableness of that ratemaking method will be determined on a case-by-case basis by the Commission.[17]

2. Natural Gas Pipelines – 18 CFR 154.305

7. Order No. 144 also promulgated the Commission's regulations regarding tax normalization for natural gas pipelines which were originally located in part 2 of the regulations as section 2.202.[18] Order No. 144-A redesignated the tax normalization regulations for natural gas pipelines by removing them from part 2 of the Commission's regulations and placing them in part 154.[19] Subsequently, Order No. 582 redesignated the regulatory text in that part with respect to natural gas pipelines to its current designation in

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[14] *See id.*

[15] *See* 18 CFR 35.24(c)(1)(ii), (c)(2).

[16] *See* 18 CFR 35.24(c)(3).

[17] *See id.*

[18] Order No. 144, FERC Stats. & Regs. ¶ 30,254.

[19] Order No. 144-A, FERC Stats. & Regs.¶ 30,340 at 30,140. The Commission deemed part 154 a more appropriate location because tax normalization is required to be used by natural gas pipelines in filing their rate applications and the regulations that govern the filing of such rate applications are located in part 154. *Id.*

section 154.305, and made various revisions in that section.[20] The section requires a natural gas pipeline making a rate filing under the Natural Gas Act to compute the income tax component of its cost of service by using tax normalization for all transactions.[21] More specifically, the section requires natural gas pipelines to reduce rate base by the balances that are properly recordable in USofA Account 281 (Accumulated deferred income taxes-accelerated amortization property), Account 282 (Accumulated deferred income taxes—other property), and Account 283 (Accumulated deferred income taxes—other).[22] Conversely, rate base must be increased by balances that are properly recordable in Account 190 (Accumulated deferred income taxes).[23] The section also requires natural gas pipelines to compute the income tax component in its cost of service by including a provision for amortizing excess or deficiency in deferred taxes. This is done by applying a Commission-approved ratemaking method made specifically applicable to the natural gas pipeline for determining the cost-of-service provision: (1) if the natural gas pipeline has not provided deferred taxes in the same amount that would have accrued had tax normalization always been applied or (2) if, as a result of changes in tax rates, the accumulated provision for

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[20] 18 CFR 154.305 (2018). *See* Order No. 582, *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs,* FERC Stats. & Regs. ¶ 31,025 (1995), *order on reh'g,* Order No. 582-A, FERC Stats. & Regs. ¶ 31,043 (1996), *order on clarification*, FERC Stats. & Regs. ¶ 31,037 (1996). The tax normalization regulations were moved from 18 CFR 154.63a to 154.305.

[21] 18 CFR 154.305.

[22] 18 CFR 154.305(c)(1).

[23] *Id.*

deferred taxes becomes deficient in, or in excess of, amounts necessary to meet future tax liabilities.[24] Similar to the tax normalization regulations for public utilities, if the Commission has not approved a specific ratemaking method specifically applicable to the natural gas pipeline, then the natural gas pipeline must use a previously approved ratemaking method.[25] The Commission will determine whether such method is appropriate on a case-by-case basis.[26]

3. Oil Pipelines

8. Unlike the Commission's regulations applicable to public utilities and natural gas pipelines, there is no tax normalization section under the Commission's regulations for oil pipelines. Instead, the Commission's regulations for oil pipelines under the USofA General Instructions, 1-12 *Accounting for Income Taxes*, require that when income tax rates are changed, oil pipelines reduce or increase their ADIT balances immediately by the full amount of the excess or deficient tax reserve.[27] Specifically, section (b) requires oil pipelines to apply the enacted tax rate in determining the amount of deferred taxes and adjust their deferred tax liabilities and assets for the effect of the change in tax law or rates

[24] 18 CFR 154.305(d). Such amounts must be included as an addition or reduction to rate base until the deficiency or excess is fully amortized using the Commission approved ratemaking method. *Id.*

[25] 18 CFR 154.305(d)(3).

[26] *Id.*

[27] 18 CFR part 352, General Instructions 1-12, Accounting for Income Taxes.

in the period that the change is enacted.[28] The section further requires the adjustment to be recorded in the appropriate deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.[29]

4. <u>Prior Accounting Guidance for Public Utilities and Natural Gas Pipelines</u>

9. In Docket No. AI93-5-000, the Chief Accountant issued accounting guidance on the proper accounting for income taxes.[30] Among other matters, the accounting guidance directed public utilities and natural gas companies to adjust their deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.[31] The guidance stated that adjustments should be recorded in the appropriate deferred tax balance sheet accounts (Accounts 190, 281, 282 and 283) based on the nature of the temporary difference and the related classification requirements of the accounts.[32] Further, if as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability should be recognized in

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[28] *Id.*

[29] *Id.*

[30] *See Accounting for Income Taxes,* Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

[31] *Id.*

[32] *Id.*

Account 182.3 (Other Regulatory Assets), or Account 254 (Other Regulatory Liabilities), as appropriate, for that probable future revenue or reduction in future revenue.[33]

C. Notice of Inquiry

10. Following the enactment of the Tax Cuts and Jobs Act, the Commission issued a Notice of Inquiry seeking comments on, among other things, whether, and if so, how, the Commission should address the effects on ADIT of the Tax Cuts and Jobs Act.[34] The Commission noted that the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate would potentially create excess or deficient ADIT on the books of public utilities.[35] As relevant to the guidance provided in this Policy Statement, the Commission sought comments on the treatment of ADIT for assets sold or retired after December 31, 2017, and the amortization of excess and deficient ADIT.[36]

II. Discussion

11. This Policy Statement states our requirements regarding the treatment of ADIT in light of the tax rate reduction implemented in the Tax Cuts and Jobs Act. Specifically, we provide guidance regarding: (1) the accounts in which public utilities, natural gas pipelines, and oil companies should record the amortization of excess and/or deficient ADIT for

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[33] *Id.*

[34] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, FERC Stats. & Regs. ¶ 35,582 (2018) (NOI). In this Policy Statement, we refer to the comments filed in response to the NOI. A list of commenters in that proceeding and the abbreviated names used in this Policy Statement appears in Appendix A.

[35] NOI, FERC Stats. & Regs. ¶ 35,582 at P 13.

[36] *Id.* PP 20-22.

accounting purposes and ratemaking purposes and (2) whether, and if so how, such entities should address excess and/or deficient ADIT that is recorded on the books of public utilities, natural gas pipelines, and oil companies after December 31, 2017, as a result of assets being sold or retired for both accounting and ratemaking purposes.

12. First, we clarify that for both accounting purposes and ratemaking purposes, public utilities and natural gas companies should record the amortization of the excess and/or deficient ADIT recorded in Account 254 (Other Regulatory Liabilities) and/or Account 182.3 (Other Regulatory Assets) by recording the offsetting entries to Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income) or Account 411.1 (Provision for Deferred Income Taxes – Credit, Utility Operating Income), as required by the USofA. We further clarify that for accounting purposes oil pipelines should adjust their ADIT balances to reflect the change in federal income tax rates with offsetting entries to the appropriate income statement account, as required by the USofA. Accordingly, oil pipeline companies will not record excess or deficient ADIT for accounting purposes. As detailed below, we also clarify that oil pipelines should provide additional disclosures in the Notes that accompany their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6).

13. Second, for accounting purposes, we reiterate that public utilities and natural gas pipelines must continue to follow the accounting guidance issued by the Chief Accountant in Docket No. AI93-5-000 with respect to changes in tax law or rates. To ensure transparency in the accounting adjustments to the deferred tax accounts, we clarify that

entities should provide additional disclosures in their 2018 FERC annual financial filing within the Notes to the Financial Statements as detailed below.

14. With respect to ratemaking, for a public utility or natural gas pipeline that continues to have an income tax allowance, any excess or deficient ADIT associated with an asset must continue to be amortized in rates even after the sale or retirement of that asset. This excess or deficient ADIT will continue to be refunded to or recovered from ratepayers based on the schedule that was initially established. Similarly, for ratemaking purposes oil pipelines should keep records of excess and deficient ADIT.

A. In Which Accounts Should Companies Record Amortization of Excess and Deficient ADIT.

15. In the NOI, the Commission sought comment on whether a public utility or natural gas pipeline should record the amortization by recording a reduction to the regulatory asset or regulatory liability account and recording an offsetting entry to Account 407.3 (Regulatory Debits) or Account 407.4 (Regulatory Credits).[37] For oil pipelines, the Commission sought comment on whether this information should be recorded in Account 665 (Unusual or Infrequent Items (Debit)) or Account 645 (Unusual or Infrequent Items (Credit)).[38]

[37] NOI, FERC Stats. & Regs. ¶ 35,582 at P 22.

[38] *Id.*

1. **Comment Summary**

16. Ameren takes issue with the premise of the Commission's question that a separate regulatory liability or asset account is necessary to record excess or deficient ADIT, respectively, arguing that the excess or deficient ADIT should remain in the accounts where they were originally recorded.[39] APPA and AMP, along with Indicated Customers, argue that it would be both appropriate and transparent to record the excess ADIT in the same ADIT accounts (*e.g.,* Accounts 190, 282 and 283) where the original entries for the ADIT assets and ADIT liabilities were established, but believe separate regulatory liability and/or asset accounts would also be appropriate.[40]

17. When separate regulatory liability or assets are used, commenters' viewpoints diverge on the appropriate account to record the offsetting entry. Certain commenters agree with the Commission's initial suggestion.[41] PSEG states that Accounts 407.3 and 407.4 correspond to the appropriate balance sheet account where the excess deferred taxes

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[39] Ameren, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 21, 2018) (Ameren NOI Comments).

[40] APPA and AMP, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 22, 2018) (APPA and AMP NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018) (Indicated Customers NOI Comments).

[41] Berkshire, Comments to NOI, Docket No. RM18-12-000, at 5-6 (filed May 22, 2018) (Berkshire NOI Comments); Consumer Advocates, Comments to NOI, Docket No. RM18-12-000, at 8-10 (filed May 21, 2018) (Consumer Advocates NOI Comments); DEMEC, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 21, 2018) (DEMEC NOI Comments); PSEG, Comments to NOI, Docket No. RM18-12-000, at 10-11 (filed May 22, 2018) (PSEG NOI Comments); TransCanada, Comments to NOI, Docket No. RM18-12-000, at 25 (filed May 21, 2018) (TransCanada NOI Comments).

reside.[42] Regarding natural gas pipelines, Berkshire asserts that recording the amounts in Account 407.3 or 407.4 will be easier for FERC Form No. 2 users to understand because it will result in similar treatment to other IRS schedule M items and above the line accounting while avoiding the requirement to spread the total year's amortization over each month using the FASB Interpretation No. 18 method.[43]

18. Other commenters believe that either Accounts 407.3 and 407.4 or 410.1 (Provision for deferred income taxes, utility operating income) and 411.1 (Provision for deferred income taxes) are appropriate. Avangrid asserts that Account 407 is consistent with the fact that the excess deferred tax obligation ceased upon tax reform enactment and that the utilities will prospectively amortize a regulatory deferral, rather than a deferred tax liability; however, use of Account 411 is consistent with USofA requirements.[44] EEI and INGAA state that their members' opinions are split between the two accounting options and request that the Commission recognize that both approaches may be appropriate.[45]

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[42] PSEG NOI Comments at 10-11.

[43] Berkshire NOI Comments at 5-6.

[44] Avangrid, Comments to NOI, Docket No. RM18-12-000, at 12-13 (May 22, 2018) (Avangrid NOI Comments).

[45] EEI, Comments to NOI, Docket No. RM18-12-000, at 19-20 (filed May 22, 2018) (EEI NOI Comments); INGAA, Comments to NOI, Docket No. RM18-12-000, at 12 (filed June 5, 2018) (INGAA NOI Comments).

19. Many other commenters believe that only Accounts 410.1 and 411.1 are appropriate.[46] New York Transco notes that those accounts were originally used when the regulatory asset or regulatory liability was established.[47]

20. Regarding oil pipelines, AOPL states with respect to regulatory accounting under the USofA, any excess ADIT is eliminated when tax rates change consistent with generally accepted accounting principles, rather than being reduced over time through amortization. AOPL states there is no reason to change either the Commission's accounting rules or current oil pipeline accounting practices; the Commission’s ratemaking precedent controls rather than accounting rules for purposes of setting cost-of-service rates.[48]

2. Determination

a. Accounting Guidance

21. We clarify that public utilities and natural gas pipelines should record the amortization of the excess and/or deficient ADIT recorded in Account 254 (Other

[46] Ameren NOI Comments at 16; APPA and AMP NOI Comments at 16; Dominion Energy Gas Pipelines, Comments to NOI, Docket No. RM18-12-000, at 14-15 (filed May 21, 2018) (Dominion Energy Gas Pipelines NOI Comments); Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 39-40 (filed May 21, 2018) (Enable Interstate Pipelines NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 21, 2018) (Indicated Customers NOI Comments); Indicated Local Distribution Companies, Comments to NOI, Docket No. RM18-12-000, at 11 (filed May 22, 2018) (Indicated Local Distribution Companies NOI Comments); New York Transco, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018) (New York Transco NOI Comments).

[47] New York Transco NOI Comments at 10.

[48] AOPL, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 22, 2018) (AOPL NOI Comments).

Regulatory Assets) and/or Account 182.3 (Other Regulatory Assets) by recording the offsetting entries to Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income) or Account 411.1 (Provision for Deferred Income Taxes – Credit, Utility Operating Income), as appropriate. As explained below, recording the amortization in Account 410.1 and Account 411.1 is consistent with the instructions for those accounts as detailed in the Commission's regulations and provides more transparency as compared with recording the amounts in Account 407.3 and Account 407.4 because the specific source of the regulatory asset or regulatory liability will be known.

22. The Commission's instructions for Account 182.3 provide in part "[w]hen specific identification of the particular source of a regulatory asset cannot be made . . . account 407.4, regulatory credits, shall be credited."[49] Similarly, the Commission's instructions for Account 254 state in part "[w]hen specific identification of the particular source of the regulatory liability cannot be made . . . account 407.3, regulatory debits, shall be debited."[50]

23. In contrast, Account 410.1 and Account 411.1 are specifically designated for the recordation of ADIT.[51] In this situation where, as a result of a change in tax law or rates,

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[49] *See* Definition of Account 182.3, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 182.3, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

[50] *See* Definition of Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

[51] *See* Definition of Account 410.1 and 411.1, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the*

excess and/or deficient ADIT have been reclassified to Account 254 and/or Account 182.3, in accordance with the Commission's prior guidance,[52] specific identification of the source of the regulatory liability and/or regulatory asset can be made. Accordingly, the Commission's existing regulations support amortizing the excess and/or deficient ADIT recorded in Account 254 and/or Account 182.3 to Account 410.1 or Account 411.1, as appropriate and consistent with the manner such amounts are reflected in rates.

24. With respect to oil pipelines, deferred tax balances should be adjusted for the effect of changes in tax law or rates in the period the change is enacted in accordance with the USofA for oil pipelines.[53] Specifically, upon the enactment of the Tax Cuts and Jobs Act, oil pipelines should have reduced their ADIT balances to reflect the 21 percent federal income tax rate with offsetting entries to the appropriate income statement account.[54] We believe the current guidance set forth in the USofA is appropriate and will not require oil pipelines to account for excess or deficient ADIT or record the amortization of such amounts. However, to ensure transparency with respect to these ADIT adjustments, oil

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Federal Power Act; Definition of Account 410.1 and 411.1, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

[52] *See Accounting for Income Taxes,* Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

[53] *See* 18 CFR 352, General Instructions 1-12(b), Accounting for Income Taxes. *See also*, 18 CFR 352, Instructions for Balance Sheet Accounts, 19-5 Current Deferred Income Tax Assets, 45 Accumulated Deferred Income Tax Assets, 59 Deferred Income Tax Liabilities, and 64 Accumulated Deferred Income Tax Liabilities.

[54] *Id*.

pipelines should disclose in the Notes to their Form No. 6 financial statements, the amounts of their ADIT adjustments resulting from the change in the federal corporate income tax rate, supported by a schedule that illustrates the calculation of the revised balances. Because the accounting for the excess and/or deficient ADIT may create differences between oil pipelines' accounting and ratemaking, such differences should also be disclosed in the Notes to their Form No. 6 financial statements, Form No. 6 Page 230, Analysis of Federal Income and Other Taxes Deferred, and Page 700, Annual Cost of Service Based Analysis Schedule.

b. Ratemaking Guidance

25. With respect to public utilities, the appropriate ratemaking treatment will be addressed in the Notice of Proposed Rulemaking (NOPR) we are issuing concurrent with this Policy Statement. In the NOPR, we are proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act. Natural gas pipelines should continue to file for changes in rates consistent with sections 154.305, 154.312, and 154.313 of the Commission's regulations.[55]

26. For oil pipelines, the current regulatory treatment of excess and/or deficient ADIT amounts is to maintain such amounts separately for rate making purposes only and to amortize them by removing the annual amortization amount from the cost of service in the process of determining an income tax allowance. We will continue the practice of

[55] 18 CFR 154.305, 154.312, 154.313 (2018). Section 154.313 should be used if the filing requests a minor rate change.

amortizing and removing the excess and or deficiency by reducing the allowed return before it is grossed up for income taxes.

B. Whether, and if so how, to address excess ADIT that is removed from the books of public utilities, natural gas pipelines, and oil pipelines after December 31, 2017, as a result of assets being sold or retired.

27. In the NOI, the Commission sought comment on whether, and if so how, it should address excess ADIT that is removed from the books of public utilities, natural gas pipelines, and oil pipelines after December 31, 2017, as a result of assets being sold or retired.[56]

1. Comment Summary

28. Both public utility and natural gas pipeline commenters note that, to date and in response to the last time Congress changed the federal corporate income tax rate, the IRS only has issued guidance on the disposition of excess ADIT in the context of extraordinary retirements.[57] They suggest that the Commission defer addressing excess ADIT that is removed from the books as a result of assets being sold or retired unless and until the IRS has had an opportunity to weigh in on this issue.[58]

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[56] NOI, FERC Stats. & Regs. ¶ 35,582 at P 20.

[57] *See* Treas. Reg. 26 CFR § 1.168(i)-3, Treatment of Excess Deferred Income Tax Reserve Upon Disposition of Deregulated Public Utility Property.

[58] Avangrid NOI Comments at 11; EEI NOI Comments at 19; Ameren NOI Comments at 15; EQT Midstream, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018) (EQT Midstream NOI Comments); Indicated Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018); Dominion Energy Gas Pipelines NOI Comments at 13.

29. Certain public utilities argue that, for companies that properly reflect Average Rate Assumption or the Reverse South Georgia Method and have formula rates that reflect ADIT balances and adjustments thereto, there is no need for the Commission to address excess ADIT that is removed from the books after December 2017 as a result of assets being sold or retired.[59]

30. Similarly, several natural gas pipelines contend that Commission precedent is clear that when assets are sold or transferred as part of a taxable event, the ADIT balance associated with those assets is extinguished; similarly, deferred liabilities resulting from excess ADIT are also extinguished following the retirement of an asset. These pipelines believe that the Commission has provided no basis for departing from these clear rules.[60] These pipelines note that the Commission has stated that "ADIT balances consist of deferred taxes that are intended to be paid at a future time - when the taxes become due. When a taxable event occurs such as the sale of assets . . . taxes are due and the ADIT balances are reduced to zero;" thus, the "ADIT balances that existed prior to the sale no longer exist and are no longer an offset against rate base."[61] These pipelines state the NOI explained that any ADIT associated with assets that are sold are removed from the regulated

[59] Ameren NOI Comments at 14, MISO Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018).

[60] EQT Midstream NOI Comments at 14; INGAA NOI Comments at 11-12; Tallgrass, Comments to NOI, Docket No. RM18-12-000, at 12-13 (filed May 21, 2018); AOPL NOI Comments at 14-15; Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 40 (filed on May 21, 2018).

[61] *Id.* (citing *Enbridge Pipeline (KPC),* 102 FERC ¶ 61,310, at PP 5, 68 (2003)).

entity's "books because any previously deferred tax effects related to the assets are now triggered as part of the computation of gains or losses associated with the sale (i.e., the deferred taxes are now payable to the IRS)."[62]

31. Eversource and Exelon submit that treatment of ADIT balances is best addressed on a company-specific basis and that companies should be able to either remove the ADIT associated with assets removed from their books or continue to amortize those balances over the remaining amortization period.[63] Indicated Local Distribution Companies suggest that any future sale or retirement event should be decided as part of a pipeline's general rate proceeding.[64]

32. Other commenters urge the Commission to require regulated entities to return any excess ADIT associated with any sold or retired assets. They argue that the Commission should be guided by the principle that all excess ADIT balances were provided by customers and thus customers should be credited with such balances through the combination of a credit to amortization expense and the continued offset to rate base. In support, they assert that when a public utility sells a jurisdictional asset, it will remove from its books the entire ADIT associated with a sold asset, which does not transfer with the asset to the new owner, and retain the entire ADIT for investors. Thus, customers are never credited with the excess

[62] *Id.* (citing NOI, FERC Stats. & Regs. ¶ 35,582 at P 20).

[63] Eversource, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018); Exelon, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 22, 2018).

[64] Indicated Local Distribution Companies NOI Comments at 9.

or any other part of the ADIT that they have been paying during the useful life of the asset prior to its sale.[65]

33. Indicated Customers note that with regard to the sale of public utility assets for which there is an excess ADIT balance remaining on the books, the 2006 IRS Private Letter Ruling No. PLR-168537-02 prohibits the return to ratepayers of that ADIT and excess ADIT related to the asset that is being sold, because any ADIT and excess ADIT amounts that are on the books for that asset cease to exist as of the date of sale.[66] Notwithstanding, Indicated Customers, and APPA and AMP argue that the impact of not returning both the ADIT and excess ADIT, prior to the sale, and the consequent appropriation of customer-provided capital, should be given consideration in the Commission's evaluation of the application seeking approval of the asset transfer. If the ADIT and excess ADIT are not considered in the transfer transaction, they contend that the selling entity would receive a windfall to the detriment of ratepayers. Further, the acquiring utility could have no offsetting ADIT in its

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[65] Consumer Advocates NOI Comments at 8; Indicated Customers NOI Comments at 10-11; DEMEC NOI Comments, Kumar Test. at P 14.

[66] I.R.S. P.L.R., 168537-02 at 9 (May 25, 2006) ("Because [t]axpayer has sold the assets that generated the [accumulated deferred investment tax credit] ADITC, the asset for which regulated depreciation expense is computed is no longer available. Consequently, no portion of the related unamortized ADITC remaining at the date of sale may be returned to ratepayers by amortizing those ADITC amounts over the period [t]axpayer recovers stranded costs from its ratepayers or by decreasing the net loss from the sale of the nuclear generating assets by those ADITC amounts. Additionally, the unamortized [accumulated deferred investment tax credit] and [excess deferred federal income taxes] associated with the sold generating assets ceases to exist at the date of sale."). APPA and AMP argue that this Private Letter Ruling can be read to have no bearing on the flowback of unprotected ADIT balances. APPA and AMP NOI Comments at n. 8.

rate base related to the purchased assets, thereby causing an increase in rates to customers, in addition to the customers' loss of capital advanced to the selling utility.[67]

34. Commenters that believe that the Commission should require ADIT balances be returned to the customers offer several suggestions. APPA and AMP suggest that in the case of a sale or early retirement of public utility assets, the flowback should occur immediately in the formula rate update after the event; otherwise, the flowback should be in the form of a lump-sum payment or credit.[68] Indicated Customers suggest that the Commission should consider deploying remedies it has used in proceedings under FPA section 203, such as establishing an open season for customers to terminate their contracts, a commitment by applicants to protect customers from any adverse rate impacts, rate moratorium or rate reduction.[69] Natural Gas Indicated Shippers suggest that the excess ADIT associated with sold or retired assets should be amortized and returned to the customers in the same manner a pipeline proposes to return excess ADIT due to tax cost changes.[70]

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[67] Indicated Customers NOI Comments at 10-11; APPA and AMP NOI Comments at 13-14.

[68] APPA and AMP NOI Comments at 13-14.

[69] Indicated Customers NOI Comments at 11-12 (citing *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *order on reconsideration*, 79 FERC ¶ 61,321 (1997)).

[70] Tallgrass Pipelines, Comments to NOI, Docket No. RM18-12-000, at 18 (filed May 22, 2018).

2. Determination

a. Accounting Guidance

35. As discussed above, in 1993, the Chief Accountant issued guidance on how entities must account for the effect of a change in tax law or rates by adjusting its deferred tax liabilities and assets.[71] This guidance remains unchanged, and requires an entity to adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.[72] If as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to a change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3 (Other Regulatory Assets) for deficient ADIT, or Account 254 (Other Regulatory Liabilities) for excess ADIT, as appropriate.[73] Because these deficient ADIT and excess ADIT balances can no longer be characterized as deferred tax amounts to be settled with the IRS, the sale or retirement of any assets as of January 1, 2018 would not automatically reverse these balances as tax timing differences.

36. Accordingly, for public utilities and natural gas pipelines, the excess and/or deficient ADIT recorded in Account 254 and/or Account 182.3 should continue to be recorded in those accounts and amortized to Accounts 410.1 and/or Account 411.1, if those balances are

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[71] *See Accounting for Income Taxes,* Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

[72] *Id.*

[73] *Id.*

still deemed to be either refundable to or recoverable from ratepayers. If the rate treatment of those balances is instead disallowed, then those amounts shall be written off to Account 421 (Miscellaneous Non-Operating Income) or Account 426.5 (Other Deductions), as appropriate, in the year of the disallowance.[74]

37. We clarify that, for public utilities and natural gas pipelines, the balances of excess and deficient ADIT recorded in Account 254 and Account 182.3, respectively, continue to exist as regulatory liabilities and assets after an asset sale, in cases for which the excess and deficient ADIT do not transfer to the purchaser of the plant asset. Similarly, we clarify that public utilities and natural gas companies should continue to account for excess and deficient ADIT related to retirements as regulatory liabilities and assets.

38. We acknowledge that numerous current and deferred tax accounts as well as other accounts may be affected by reversals of ADIT account balances recorded on the books of public utilities and natural gas companies subject to the Commission's jurisdiction. Thus, in order to provide transparency regarding the accounting and rate treatment of amounts removed from the ADIT accounts, we clarify that public utilities and natural gas pipelines should disclose in their FERC annual financial filings within the Notes to the Financial Statements: (1) the FERC accounts affected; (2) how any ADIT accounts were re-measured in the determination of the excess or deficient ADIT amounts in Accounts 182.3

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[74] *See* Definitions of Account 182.3 and Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definitions of Account 182.3 and Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

and 254; (3) the related amounts associated with the reversal and elimination of ADIT balances in those accounts; (4) the amount of excess and deficient ADIT that is protected and unprotected; (5) the accounts to which the excess or deficient ADIT will be amortized; and (6) the amortization period of the excess and deficient ADIT to be returned or recovered through rates for both protected and unprotected ADIT.[75] Disclosures should also summarize the manner by which excess and deficient will be included in rates by rate jurisdiction.

39. As for oil pipelines, as discussed above, ADIT balances will be reduced immediately by the full amount of the excess or deficient tax reserve in line with the USofA for oil pipelines outlined in General Instruction 1-12.[76]

b. <u>Ratemaking Guidance</u>

40. The Commission has previously found that the sale or retirement of an asset with an ADIT balance is usually deemed a taxable event under IRS rules, and, as such, the ADIT balance is extinguished as the deferred taxes then become payable to the appropriate government authorities, and there is no longer an ADIT balance to "return" to customers.[77]

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[75] Public utilities should include this information in FERC Form No. 1 or 1-A and natural gas pipelines should include this information in FERC Form No. 2 or 2-A.

[76] General Instructions 1-12, *Accounting for Income Taxes*, 18 CFR part 352.

[77] The Commission has found that master limited partnerships that were no longer entitled to an income tax allowance were not required to return any remaining ADIT balances. *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018) (Revised Income Tax Policy Statement Order on Rehearing). However, as relevant here, the Commission found that "[t]here is a critical distinction between adjustments to amortize excess or deficient ADIT to be included in future rates to account for changes in income tax rates, as opposed

However, we believe that excess or deficient ADIT associated with post-December 31, 2017, asset dispositions and retirements should be treated differently for ratemaking purposes. For these assets, there are two associated balances: (1) the ADIT balance based on the 21 percent tax rate that will be owed to the IRS and (2) deficient ADIT or excess ADIT balances resulting from the reduced tax liability that will not be payable to the IRS upon the sale or retirement of the asset. While the ADIT balance that needs to be settled with the IRS would be extinguished following a sale, the deficient ADIT or excess ADIT balances is more reflective of a regulatory liability or asset, and no longer reflects deferred taxes that are still to be settled with the IRS and need not be extinguished.

41. Additionally, we note that the rationale for continuing to amortize deficient ADIT or excess ADIT balances in rates upon sales or retirements of assets is substantively similar to the rationale for amortizing excess ADIT in rates for assets that have not been sold or retired. The difference is that for a sale or retirement, ADIT based on a 21 percent tax rate will be settled with the IRS immediately, while for an asset that is not sold or retired, the ADIT will be settled with the IRS over the remaining life of the asset as it depreciates. In other words, the difference between the ADIT for assets that are sold or retired and ADIT for assets that are not sold or retired is the timing of when companies will settle the 21

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to a complete elimination of the income tax allowance. When income tax rates are merely reduced and an income tax allowance remains in *future* cost of service, it is appropriate to credit any excess in ADIT in the *future* cost of service." Revised Income Tax Policy Statement Order on Rehearing, 164 FERC ¶ 61,030 at P 20. Thus, in the case of retired or sold assets of regulated entities that continue to have an income tax allowance (and in the case of all regulated entities with excess and deficient ADIT), it is appropriate to credit any excess in ADIT in the future cost of service.

percent of ADIT with the IRS. In both scenarios, there is excess ADIT based on the 14 percent previously collected from the customers that will no longer be payable to the IRS.

42. While some commenters suggest that continuing to amortize excess or deficient ADIT following a sale or retirement would constitute a normalization violation based on certain IRS private letter rulings, the Commission notes that the IRS established a rulemaking proceeding and reversed its positions made in the PLR referenced by the commenters.[78] Current IRS regulations speak specifically to the normalization requirements for sales and retirements as a result of the Tax Reform Act of 1986.[79] These regulations permit the amortization of protected excess and/or deficient ADIT even in the event that the underlying asset associated with the ADIT has been sold or retired.[80] That is, the selling jurisdictional entity can continue to amortize excess ADIT in rates after the sale without violating the IRS' normalization requirements. The only limitation imposed by the IRS is

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[78] *See Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property*, 73 FR 14,934 (Mar. 20, 2008); *Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease to Be Public Utility Property*, 70 FR 75,762 (Dec. 21, 2005) (notice of proposed rulemaking, notice of public hearing, and withdrawal of previous proposed regulations).

[79] 26 CFR 1.168(i)-3 (2018). This section of the IRS code does not apply to ordinary retirements within the meaning of 26 CFR 1.167(a) –11(d)(3)(ii) of the internal revenue regulations, and such retirements are excluded from this policy statement.

[80] *Id.*

that the timing of the amortization must be similar to protected excess and/or deficient ADIT for which the underlying asset has not been sold or retired.[81]

43. Consistent with the above discussion, oil pipelines should continue maintaining excess and/or deficient ADIT within the appropriate ADIT accounts for ratemaking purposes. When jurisdictional assets are retired or sold the oil pipeline should continue to amortize any excess and/or deficient amounts associated with those assets as part of the process of determining an income tax allowance within the rate making process, or seek prior Commission approval to do otherwise.

C. <u>Conclusion</u>

44. We adopt the policies set forth herein regarding the treatment of ADIT for public utilities, natural gas pipelines and oil pipelines. Above, we state our policy regarding the treatment of ADIT for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017 and also address the accounting and ratemaking treatment of ADIT following the sale or retirement of an asset. We expect such regulated entities to follow these policies absent prior Commission approval to use a different treatment. We further note that if a regulated entity determines that its unique circumstances merit a different treatment of ADIT, such an entity is free to request such treatment at any time.

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[81] *Id.*

III. Document Availability

48. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.gov) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

49. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

50. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

IV. Effective Date

51. This Policy Statement will become effective **[date of publication in the *Federal Register*]**.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: Appendix A will not be published in the Federal Register.

Appendix A – List of Commenters to NOI

Short Name	**Commenter**
AEP	American Electric Power Service Corporation
Ameren	Ameren Services Company on behalf of Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois
AOPL	Association of Oil Pipe Lines
APGA	American Public Gas Association
APPA and AMP	American Public Power Association and American Municipal Power, Inc.
Avangrid	Avangrid Networks, Inc.
Berkshire	Berkshire Hathaway Energy Pipeline Group
Boardwalk	Boardwalk Pipeline Partners LP
CAPP	Canadian Association of Petroleum Producers
Consumer Advocates	Office of the Attorney General of the Commonwealth of Massachusetts; the Ohio Consumers' Counsel; the Maryland Office of People's Counsel; the Nevada Bureau of Consumer Protection; the Delaware Division of the Public Advocate; the Pennsylvania Office of Consumer Advocate; the Citizens Utility Board of Wisconsin; and the Indiana Office of Utility Consumer Counselor
DEMEC	Delaware Municipal Electric Corporation, Inc.
Dominion Energy Gas Pipelines	Dominion Energy Transmission, Inc.; Dominion Energy Carolina Gas Transmission, LLC; Dominion Energy Quester Pipeline, LLC; Dominion Energy Overthrust Pipeline, LLC; and Questar Southern Trails Pipeline Company

EEI	Edison Electric Institute
Enable Interstate Pipelines	Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC
Enbridge and Spectra	Enbridge Energy Partners, L.P. and Spectra Energy Partners, LP
EQT Midstream	EQT Midstream Partners, LP
Eversource	Eversource Energy Service Company
Exelon	Exelon Corporation
Indicated Customers	Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Southern Maryland Electric Cooperative, Inc., and the New Jersey Division of Rate Counsel
Indicated Local Distribution Companies	Atmos Energy Corporation; the City of Charlottesville, Virginia; the City of Richmond, Virginia; the Easton Utilities Commission; Exelon Corporation; and Washington Gas Light Company
Indicated Transmission Owners	American Electric Power Service Corporation; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; Exelon Corporation; FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Mid-Atlantic Interstate Transmission, LLC; West Penn Power Company; The Potomac Edison Company; Monongahela Power Company; and PPL Electric Utilities Corp.
INGAA	Interstate Natural Gas Association of America
ITC Great Plains	ITC Great Plains, LLC
Kentucky Municipals	Frankfort Plant Board of Frankfort, Kentucky; Barbourville Utility Commission of the City of Barbourville, City; Utilities Commission of the City of Corbin; and the Cities of Bardwell, Berea, Falmouth, Madisonville, and Providence, Kentucky

Kinder Morgan Entities	Natural Gas Pipeline Company of America LLC; Tennessee Gas Pipeline Company, L.L.C.; Southern Natural Gas Company, L.L.C.; Colorado Interstate Gas Company, L.L.C.; Wyoming Interstate Company, L.L.C.; El Paso Natural Gas Company, L.L.C.; Mojave Pipeline Company, L.L.C.; Bear Creek Storage Company, L.L.C.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Elba Express Company, L.L.C.; Kinder Morgan Louisiana Pipeline LLC; Southern LNG Company, L.L.C.; and TransColorado Gas Transmission Company LLC
Kinder Morgan Subsidiaries	SFPP, L.P.; Calnev Pipe Line, LLC; and Kinder Morgan Cochin, LLC
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

National Grid	National Grid USA
Natural Gas Indicated Shippers	Aera Energy, LLC; Anadarko Energy Services Company; Apache Corporation; BP Energy Company; ConocoPhillips Company; Hess Corporation; Occidental Energy Marketing, Inc.; Petrohawk Energy Corporation; and XTO Energy, Inc.
New York Transco	New York Transco LLC
Oklahoma Attorney General	Mike Hunter, Oklahoma Attorney General
PJM	PJM Interconnection, L.L.C.
Plains	Plains Pipeline, L.P.
Process Gas and American Forest and Paper	Process Gas Consumers Group and American Forest and Paper Association
PSEG	Public Service Electric and Gas Company
Tallgrass Pipelines	Trailblazer Pipeline Company LLC; Tallgrass Interstate Gas Transmission, LLC; and Rockies Express Pipeline LLC
TAPS	Transmission Access Policy Study Group
TransCanada	TransCanada Corporation
United Airlines Petitioners	United Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Southwest Airlines, Co.; BP West Coast Products LLC; ExxonMobil Oil Corporation; Chevron Products Company; HollyFrontier Refining & Marketing LLC; Valero Marketing and Supply Company; Airlines for America; and the National Propane Gas Association
Williams	Williams Companies, Inc.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON. D C 20426

In Reply Refer To:
AI935000

April 23, 1993

TO ALL JURISDICTIONAL PUBLIC UTILITIES, LICENCES,
AND NATURAL GAS COMPANIES

SUBJECT: ACCOUNTING FOR INCOME TAXES

INTRODUCTION

In February 1992, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes (SFAS 109). This Statement was the culmination of a process which the FASB began in 1982 to reexamine the accounting standards for income taxes. SFAS 109 superseded Accounting Principles Board

Opinion No. 11, Accounting for Income Taxes (APB 11).

Under SFAS 109, a current or deferred tax liability or asset is recognized for the current or deferred tax consequences of all events that have been recognized in the financial statements or tax returns, measured on the basis of enacted tax law. Under APB 11, deferred tax consequences were recognized based on the differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income. The change affects significantly the measurement and recognition of current and deferred income taxes reported in general purpose financial statements.

Public utilities, licensees, and natural gas companies are required to implement the provisions of SFAS 109 in general purpose financial statements issued to the public no later than the first quarter of 1993. The Statement however encouraged earlier application.

The FERC's Uniform Systems of Accounts generally provide that an entity follow comprehensive interperiod income tax allocation except that an entity is not required to adopt comprehensive interperiod income tax allocation until the deferred income taxes are included as an expense in its rate levels by regulatory authorities.

Since the issuance of Order No. 144 in 1981, the FERC's regulations have required companies to determine the income tax allowance included in jurisdictional rate levels on a fully normalized basis. Also, Order No. 144 requires an entity to compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes under the following circumstances: (1) if the entity has not provided deferred taxes in the same amount that would have accrued had tax normalization been applied for tax effects of timing difference transactions originating at any time prior to the test period; or (2) if, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in or in excess of amounts necessary to meet future tax liabilities as determined by application of the current tax rate to all timing difference transactions originating in the test period and prior to the test period. Therefore, the FERC's accounting and rate regulations, when read together, already require use of a liability method somewhat similar to SFAS 109 for the jurisdictional portion of an entity's business.

The primary conceptual difference between SFAS 109 and the FERC's method relates to how regulatory assets and liabilities are recognized. Under the FERC approach, regulatory assets and liabilities are effectively netted against the deferred tax asset and liability accounts or, in some cases, not reported until related revenues are recognized. Under SFAS 109 all tax related regulatory assets and liabilities are shown broad. Certain other differences between the FERC's Uniform Systems of Accounts and SFAS 109 are discussed in the guidance that follows.

It is axiomatic that accounting statements issued by the FASB for use in general purpose financial statements of business entities should not, in itself, have an economic rate effect on a regulated entity or its customers. SFAS 109, in the main, requires costbased regulated entities to account for and report deferred tax assets and liabilities separately from related regulatory assets and liabilities. In general, such increases in the level of detail for an entity's assets and liabilities enhance disclosure, making financial information more useful to its users. The enhanced disclosure required by SFAS 109 may also prove useful for regulatory purposes. Moreover, adoption of SFAS 109 for FERC accounting and reporting purposes would result in financial information reported to the FERC and the public using the same accounting standard an objective having considerable merit in its own right.

Therefore, public utilities, licensees, and natural gas companies shall adopt SFAS 109 for financial accounting and reporting to FERC. In order to insure that the FERC continues to have the financial information it needs for regulatory purposes however, entities shall conform their accounting and reporting to the guidance provided in this letter. Neither SFAS 109 nor the guidance contained in this letter for implementing the standard for FERC financial accounting and reporting purposes relieves entities from the requirements of Section

154.63a, Tax normalization for interstate pipelines, or Section 35.24, Tax normalization for public utilities, of the Commission's regulations.

The Commission delegated authority to the Chief Accountant under 18 C.F.R. 375.303 to issue interpretations of the Uniform System of Accounts for public utilities, licensees and natural gas companies and sign correspondence on behalf of the Commission relating to Annual Report Nos. 1, lF, 2, and 2F. The guidance provided herein constitutes final agency action pursuant to this authority. Within 30 days of the date of this letter, interested parties may file a request for rehearing by the Commission under 18 C.F.R. § 385.713.

1. EARLY ADOPTION

Question: SFAS 109 is effective for fiscal years beginning
after December 15, 1992, but the FASB encourages
earlier application. May an entity implement SFAS
109 for FERC accounting and reporting requirements
prior to January 1, 1993?

Response: An entity implementing SFAS 109 in its general purpose financial statements prior to the Statement's required effective date, may also adopt the Statement for FERC accounting and reporting purposes. An entity however shall not implement SFAS 109 for FERC accounting and reporting purposes before it implements the Statement in its general purpose financial statements. Entities shall implement SFAS 109 for FERC accounting and reporting purposes no later than fiscal years beginning after December 15, 1992.

2. METHOD OF ADOPTION

Question: In the first year applied, SFAS 109 permits an entity to either (1) include the cumulative effect of the accounting change in the determination of current year net income, as provided for in APB Opinion No. 20, Accounting Changes; or (2) restate financial statements for prior periods to conform to the provisions of the Statement. Are both of these procedures acceptable to the FERC?

Response: No. In reporting to the FERC, the effect of initially applying this statement shall be reported as the cumulative effect of a change in accounting principle in accordance with the provisions of APB 20. An entity will not be permitted to restate prior years financial statements.

3. FERC APPROVAL TO ADJUST THE DEFERRED TAX ACCOUNTS

Question: The instructions to the Uniform Systems of Accounts presently restrict the use of the deferred tax balance sheet accounts to the purposes set forth in the text of the accounts unless prior Commission approval is obtained. Do the adjustments to the deferred tax accounts for the implementation of SFAS 109 fall within this restriction?

Response: Yes. This letter however, will constitute the requisite authority for making adjustments to the deferred tax accounts when the application of SFAS 109 does not affect net income (i.e. the deferred tax adjustments are accompanied by the recordation of equal regulatory assets or liabilities). Entities shall request and obtain specific FERC approval for all other adjustments to the deferred tax accounts, including those related to nonjurisdictional activity. The filing shall include a complete explanation of and justification for an entity's proposed accounting.

4. REPORTING ANY NET INCOME EFFECT

Question: If the initial implementation of SFAS 109 affects net income and an entity obtains FERC approval to adjust its deferred tax accounts, where should the income effect be reported in FERC financial reports (i.e. FERC Form Nos. 1, 1-F, 2 and 2-A etc.)?

Response: The FERC report forms do not currently have a line for reporting the cumulative effect of a change in accounting principle.

Therefore, the effect on net income shall be reported on the income statement on the lines designated for extraordinary income or deductions, as appropriate, in FERC financial reports. To identify that the effects on net income resulting from the initial adoption of SFAS 109 are not an "extraordinary item" as that term is defined in the Uniform Systems of Accounts, entities shall also disclose in a footnote to the financial statements the full particulars of any amounts reports as the cumulative effect of a change in accounting principle.

5. DISCONTINUANCE OF NET-OF-TAX ACCOUNTING

Question: SFAS 109 prohibits net-of-tax accounting and reporting in general purpose financial statements. May entities continue to account and report to FERC on a net-of-tax basis?

Response: No. The present instructions to the Uniform Systems of Accounts require entities to record and report the deferred tax consequences of transactions, events, and circumstances in the appropriate deferred tax accounts. While the FERC has always preferred gross-of-tax financial accounting and reporting, it permitted an exception to this general requirement where a net-of-tax allowance for funds used during construction (AFUDC) rate was prescribed by a regulatory body in setting an entity's rate levels. The FERC granted this exception to avoid the burden of maintaining duplicate records for utility plant on a net-of-tax basis for one jurisdiction and a gross-of-tax basis for another.

Because SFAS 109 prohibits netoftax accounting and reporting in general purpose financial statements, the reasons for permitting the exception to the general requirement are no longer relevant. Therefore, entities shall discontinue the use of netoftax AFUDC rates.

6.EQUITY AFUDC

Question: SFAS 109 considers the equity component of AFUDC a temporary difference for which deferred income taxes must be provided. How should an entity record the deferred tax liability for the equity component of AFUDC and the related regulatory asset in its accounts?

Response: An entity shall record the deferred tax liability for the equity component of AFUDC in Account 282, Accumulated Deferred Income Taxes Other Property, and any corresponding regulatory asset in Account 182.3, Other Regulatory Assets. The regulatory asset is itself a temporary difference for which deferred incomes taxes shall be recognized and recorded in Account 283, Accumulated Deferred Income Taxes Other. This accounting shall be followed for the adjustments required upon initial application of the statement and for all amounts of equity AFUDC capitalized in subsequent periods.

7. ADJUSTING NETOFTAX COMPONENTS OF UTILITY PLANT

Question: Upon initial application of SFAS 109, an entity must adjust any netoftax components of construction workinprogress and plant in service. How should an entity account for these adjustments?

Response: Entities that previously accounted for certain components of plant cost on a netoftax basis, primarily the borrowed funds component of AFUDC, have effectively recorded the deferred income tax effects of those components directly in the plant accounts. The deferred income taxes were computed using the income tax rates in effect when the items were capitalized.

For constructionworkinprogress, an entity shall transfer the deferred income taxes actually included therein to Account 282, Accumulated Deferred Income Taxes Other Property. If the amount transferred to Account 282 is greater or less than the amount needed to meet the future tax liability related to those items based on current tax rates, additional adjustments to the deferred tax liability shall be made consistent with SFAS 109. If as a result of action by a regulator it is probable that such excess or deficiency will be returned to or recovered from customers in rates, an asset or liability shall be recognized for that probable future revenue or reduction in future revenue in Accounts 182.3, Other Regulatory Assets, or 254, Other Regulatory Liabilities, respectively. That asset or liability is also a temporary difference for which a deferred tax asset or liability shall be recognized in Account 190, Accumulated Deferred Income Taxes, or Account 283, Accumulated Deferred Income Taxes Other, as appropriate.

Similar accounting is to be followed for plantin-service items when the required information is available. However, in order to properly adjust the plantinservice account an entity will need to determine the specific amounts of borrowed funds and equity AFUDC capitalized in prior periods, the extent to which those amounts and other netoftax components have been depreciated, the specific property units to which the amounts have been assigned and the extent to which property retirements affect the accounts in which the income tax effects now reside. In virtually all instances that information will simply not be available or will be too costly to develop. In that situation, an entity shall not adjust the plantinservice accounts based on estimates or presumed relationships. Instead, an alternate method shall be used to determine the necessary adjustments.

Under the alternate method, any difference between the reported amount and the tax basis of plant is a temporary difference for which a deferred tax liability shall be recorded in Account 282. If as a result of action by a regulator, it is probable that amounts required for settlement of that deferred tax liability will be recovered from customers through future rates, a regulatory asset equal to that probable future revenue should be recorded in Account 182.3. That asset is also a temporary difference for which a deferred tax liability shall be recognized in Account 283, Accumulated Deferred Income Taxes Other.

8. CHANGES IN TAX LAW OR RATES

Question: How should an entity record the effect of a change in tax law or rates that occurs after the year of initial implementation of SFAS 109?

Response: The entity shall adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted. The adjustment shall be recorded in the proper deferred tax balance sheet accounts (Accounts 190, 281, 282 and 283) based on the nature of the temporary difference and the related classification requirements of the accounts. If as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3, Other Regulatory Assets, or Account 254, Other Regulatory Liabilities, as appropriate, for that probable future revenue or reduction in future revenue. That asset or liability is also a temporary difference for which a deferred tax asset or liability shall be recognized in Account 190, Accumulated Deferred Income Taxes or Account 283, Accumulated Deferred Income Taxes Other, as appropriate.

9. FLOWTHROUGH ITEMS

Question: An entity adopting SFAS 109 previously flowed through the tax benefits of certain temporary differences in rates when the differences originated. How should the Company recognize the deferred income taxes attributable to these temporary differences in its accounts?

Response: Deferred income taxes on all temporary differences, including differences where the related income tax effects have been or are presently flowed through in rates, should be recorded in Accounts 190, 281, 282 and 283 based on the nature of the temporary difference and the classification requirements of those accounts. If as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to flow through ratemaking practices will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3, Other Regulatory Assets, or Account 254, Other Regulatory Liabilities, as appropriate, for that probable future revenue or reduction in future revenue. That asset or liability is also a temporary difference for which a deferred tax asset or liability shall be recognized in Account 190, Accumulated Deferred Income Taxes or

Account 283, Accumulated Deferred Income Taxes Other, as appropriate.

10.NOL AND TAX CREDIT CARRYFORWARDS

Question: How should an entity account for the income tax effect of a net operating loss (NOL) carryforward or a tax credit carryforward?

Response: An entity shall record the income tax effects of a NOL carryforward and a tax credit carryforward in a separate subaccount of Account 190, Accumulated Deferred Income Taxes Debit. In the event that it is more likely than not (a likelihood of more than 50 percent) that some portion of its deferred tax assets will not be realized, an entity hall record a valuation allowance in a separate subaccount of Account 190. The entity shall disclose full particulars as to the nature and amount of each type of operating loss and tax credit carryforward in the notes to the financial statements.

11. ALTERNATIVE MINIMUM TAX CREDIT CARRYFORWARD

Question: How should an entity record an alternative minimum tax credit carryforward?

Response: SFAS 109 requires a deferred tax liability or asset to be recognized for the estimated future tax effects attributable to temporary differences and carryforwards. Under SFAS 109, the AMT is viewed as a tax credit carryforward. Therefore, an entity shall record an alternative minimum tax credit carryforward in a separate subaccount of Account 190, Accumulated Deferred Income Taxes.

12. REGULATORY ASSETS AND LIABILITIES

Question: Where an entity recognizes regulatory assets or liabilities in connection with a change in its deferred tax assets and liabilities, should an entity record the change in the required deferred income tax balances in the appropriate income tax expense accounts and separately recognize the creation of regulatory assets and liabilities in a different income statement account? If so, which income statement account should be used to record the creation of regulatory assets and liabilities?

Response: The FERC recently considered the proper accounting for regulatory assets and liabilities in a rulemaking proceeding, Docket No. RM921000. Under the final rule issued in that proceeding (Commission Order No. 552 issued March 31,1993), an entity is not required to use income statement accounts to recognize regulatory assets and liabilities related to changes in deferred tax assets or liabilities when an equal and corresponding deferred tax asset or liability is recorded.

13. COSTOFSERVICE TARIFFS

Question: An entity has a costofservice tariff under which monthly billings are based on recorded amounts under FERC's Uniform Systems of Accounts. Under the tariff, only the amounts recorded in certain specified accounts affect the monthly billings. For example, the tariff may specify that Account 282 must be included in the determination of rate base but is silent with respect to Account 254. If implementing SFAS 109 for FERC accounting and reporting results in a reduction in the balance in Account 282 but a corresponding and equal increase in Account 254 (to recognize a regulatory liability) may an entity adjust its monthly billings to give proper effect to the revised accounting for income taxes?

Response: Adoption of SFAS 109 for FERC accounting and reporting purposes should not affect the measurement of cost included in an entity's billing determinations. If an entity's billing determinations would be affected by adoption of SFAS 109, because of the provisions of its tariffs, the entity shall make a filing with the proper rate regulatory authorities prior to implementing the change for tariff billing purposes.

14. INVESTMENT TAX CREDITS

Question: Some entities accounted for investment tax credits using the deferral method. SFAS 109 views deferred investment tax credits as a temporary difference (i.e. as a reduction in the book basis of the property) for which deferred income taxes are required. How should the deferred income taxes be recorded?

Response: The deferred income taxes attributable to deferred investment tax credits shall be recorded in a separate subaccount of Account 190, Accumulated Deferred Income Taxes. If as a result of action by a regulator it is probable that the reduction in future taxes payable due to the tax deductibility of the higher tax basis of the property will be returned to customers in rates, a regulatory liability shall be recorded for the amount by which future rates will be reduced. The regulatory liability shall be recorded in Account 254, Other Regulatory Liabilities. The regulatory liability is itself a temporary difference for which deferred incomes taxes shall be recognized. Those deferred income taxes shall also be recorded in Account 190.

15. FINANCIAL STATEMENT DISCLOSURE

Question: SFAS 109 requires certain financial statement disclosures concerning income taxes. Should entities disclose the same information in financial statements filed with FERC?

Response: Yes. In addition to the disclosure requirements specified elsewhere in this letter, entities shall follow the disclosure requirements of SFAS 109 in any financial statements filed with the FERC. The required information shall be shown in the Notes To Financial Statements.

16. CLASSIFICATION OF CURRENT PORTION OF DEFERRED INCOME TAXES

Question: SFAS 109 requires entities that prepare classified statements of financial position to separate deferred tax liabilities and assets into current and noncurrent amounts. Should entities reclassify the current portion of deferred tax liabilities or assets to current accounts, such as Account 174, Miscellaneous Current and Accrued Assets, or Account 242, Miscellaneous

Current and Accrued Liabilities, for FERC accounting and financial reporting purposes?

Response: No. All deferred tax liabilities and assets shallbe recorded in Accounts 190, 281, 282, or 283, asappropriate, and the current portion of thoseamounts shall not be reclassified to otheraccounts for FERC reporting purposes.

17. CONSOLIDATED INCOME TAXES

Question: Prior to SFAS 96, the FASB (or its predecessor) had not issued any specific pronouncements related to how an entity that joins in the filing of a consolidated income tax return should determine income tax expense in its separately reported financial statements.

Footnote 12 of SFAS 96 provided that the consolidated amount is the amount of current and deferred taxes reported in the consolidated financial statements for the group, or the amount that would be reported if such financial statements were prepared. Under SFAS 96, the sum of the amounts allocated to members of the group (net of consolidation eliminations) would equal the consolidated amount.

SFAS 109 modified the requirements set forth in SFAS 96. SFAS 109 does not require one particular method to allocate the consolidated income tax liability between members of a group. Instead, SFAS 109 permits a number of methods, including methods in which the sum of the amounts allocated to individual members of the group may not equal the consolidated amount. SFAS 109 specifically states that a method that allocates current and deferred taxes to members of the group as if each member were a separate taxpayer (separate return method) is consistent with the statement's criteria.

Will the FERC permit an entity to use a separate return method for FERC financial accounting and reporting?

Response: No. The FERC has issued several decisions rejecting the use of the separate return method for determining income tax expense when an entity files as part of a consolidated group. Instead, the FERC relies on the standalone method of allocating income taxes between members of a consolidated group.

Under the standalone method the consolidated tax expense is allocated to individual members through recognition of the benefits/burdens contributed by each member of the consolidated group to the consolidated return. Under the standalone method, the sum of amounts allocated to individual members equal the consolidated amount.

Russell E. Faudree Jr.
Chief Accountant

165 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35.24

[Docket No. RM19-5-000]

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes

(Issued November 15, 2018)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act). Specifically, for transmission formula rates, the Commission is proposing to require that public utilities deduct excess accumulated deferred income taxes (ADIT) from or add deficient ADIT to their rate bases and adjust their income tax allowances by amortized excess or deficient ADIT. The Commission is also proposing to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rates that will annually track ADIT information. Additionally, the Commission is proposing to require all public utilities with transmission stated rates to determine the amount of excess and deferred income tax

caused by the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate and return or recover this amount to or from customers.

DATES: Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

ADDRESSES: Comments, identified by docket number, may be filed electronically at http://www.ferc.gov in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, N.E., Washington, D.C. 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

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SUPPLEMENTARY INFORMATION:

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes — Docket No. RM19-5-000

NOTICE OF PROPOSED RULEMAKING

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165 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes — Docket No. RM19-5-000

NOTICE OF PROPOSED RULEMAKING

(Issued November 15, 2018)

1. In this Notice of Proposed Rulemaking (Proposed Rule), we are proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act).[1] These proposed reforms are designed to address the effects of the Tax Cuts and Jobs Act on the Accumulated Deferred Income Taxes (ADIT) reflected in all transmission rates under an OATT, a transmission owner tariff, or a rate schedule of public utility transmission providers. The proposed reforms are intended to ensure that

[1] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act). In proposing this new requirement, the Commission relies on existing Commission regulations relating to tax normalization for public utilities as those regulations apply to public utilities with transmission formula or stated rates. *See* 18 CFR 35.24. In this Proposed Rule, the Commission does not propose any generic reforms as to non-public utilities or the non-transmission rates of public utilities. While any conclusions that the Commission makes in this proceeding may be relevant to such rates, they will be addressed on a case-by-case basis. Furthermore, to the extent any entity believes that the Tax Cuts and Jobs Act renders any existing Commission-jurisdictional rate unjust and unreasonable, that entity may submit a complaint to the Commission.

ratepayers receive the benefits of the Tax Cuts and Jobs Act, and that the public utility transmission formula and stated rates are just and reasonable and not unduly discriminatory or preferential following the enactment of the Tax Cuts and Jobs Act. The proposed reforms are also intended to ensure that transmission formula and stated rates meet the Commission's tax normalization requirements such that the income tax component of those rates is calculated as though the taxable income were recognized in the same period and amount by the Internal Revenue Service (IRS) and the Commission.[2]

2. The proposed reforms generally fall into three categories and apply to public utilities with transmission formula rates and stated rates in different ways. First, we propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates to deduct any excess ADIT from or add any deficient ADIT to their rate bases. This will ensure that rate base continues to be treated in a manner similar to that prior to the Tax Cuts and Jobs Act (i.e., that rate base neutrality is preserved). As for public utilities with transmission stated rates, we do not propose any new requirements regarding rate base neutrality.

3. Second, we propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates that decreases or increases their income tax

[2] In this Proposed Rule, the Commission refers to comments filed in response to the Notice of Inquiry issued March 15, 2018. *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, FERC Stats. & Regs. ¶ 35,582 (2018) (NOI). A list of commenters in that proceeding and the abbreviated names used in this Proposed Rule appears in Appendix A. Any comments to this Proposed Rule should be filed in this proceeding, Docket No. RM19-5-000.

allowances by any amortized excess or deficient ADIT, respectively. This reform will help to ensure that public utilities with transmission formula rates return excess ADIT to or recover deficient ADIT from ratepayers. As a result, ratepayers who contributed to excess ADIT balances will receive the benefit of the Tax Cuts and Jobs Act.

4. With regard to public utility transmission providers with stated rates, we are proposing to require these entities to determine the excess and deficient ADIT caused by the Tax Cuts and Jobs Act based on the ADIT amounts approved in their last rate case and then to return this amount to or recover this amount from customers. This reform is intended to increase the likelihood that those customers who contributed to the related ADIT accounts receive the benefits of the Tax Cuts and Jobs Act.

5. Third, we propose to require all public utilities with transmission formula rates to incorporate a new permanent worksheet into their transmission formula rate that will annually track information related to excess or deficient ADIT. We believe that this reform will increase the transparency surrounding the adjustment of rate bases and income tax allowances to account for excess or deficient ADIT by public utilities with transmission formula rates. We do not propose any additional worksheets for public utilities with transmission stated rates because we believe that existing regulations require sufficient transparency.

6. We seek comments on these proposed reforms and areas for further comment within 30 days after publication of this Proposed Rule in the *Federal Register*.

I. Background

A. Tax Cuts and Jobs Act

7. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the IRS based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.[3]

8. Importantly, the tax rate reduction will also result in a reduction in ADIT liabilities and ADIT assets on the books of rate-regulated companies. ADIT balances are accumulated on the regulated books and records of public utilities based on the requirements of the Uniform System of Accounts. ADIT arises from timing differences between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes.[4] As a result of the Tax Cuts and Jobs Act reducing the federal corporate income tax rate from 35 percent to 21 percent, a portion of an ADIT liability that was collected from customers will no longer be due from public utilities to the IRS and is considered excess ADIT, which must be returned to customers in a cost of service ratemaking context. Additionally, for public utilities that have an ADIT asset, the Tax Cuts and Jobs Act will

[3] *See* Tax Cuts and Jobs Act, Sec. 13001, 131 Stat. at 2096.

[4] *See* 18 CFR 35.24(d)(2).

result in a reduction to that ADIT asset, and public utilities may seek to reflect in rates a portion of such reductions. Public utilities are required to adjust their ADIT assets and ADIT liabilities for the effect of the change in tax rates in the period that the change is enacted.[5]

B. Overview of Public Utility Transmission Rates

9. The Commission is responsible for ensuring that the rates, terms and conditions of service for wholesale sales and transmission of electric energy in interstate commerce are just, reasonable, and not unduly discriminatory or preferential. With respect to the transmission of electric energy in interstate commerce, most jurisdictional entities are subject to cost of service regulation. Cost of service regulation seeks to allow public utilities the opportunity to (1) recover operating costs, including income taxes, (2) recover the cost of capital investments, and (3) earn a just and reasonable return on investments.[6] Public utilities have calculated their cost of service-based transmission rates predominately by using formula rates or stated rates. These rates are contained in numerous agreements, including a public utility's OATT, a regional transmission operator's or independent system operator's OATT, coordination agreements, and wholesale distribution agreements. In this Proposed Rule, we focus on all public utilities

[5] *See* 18 CFR 35.24 and 18 CFR 154.305; *see also Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982).

[6] *See Pub. Sys. v. FERC*, 709 F.2d 73, 75 (D.C. Cir. 1983).

with transmission formula or stated rates that are contained in an OATT, a transmission owner tariff, or a rate schedule.

10. When a public utility uses stated rates, if the public utility seeks to change its rate, it files a rate case at the Commission to establish the cost of service revenue requirement, allocate costs to various customer groups, and calculate rates. As an alternative, the Commission permits public utilities to establish rates through formulas, in which the Commission accepts the public utility's cost of service calculation methodologies and input sources and allows the public utility to update those inputs every year.

11. Public utilities must seek changes to their transmission stated rates or formula rates through filings with the Commission under section 205 of the Federal Power Act (FPA),[7] while the Commission and third parties can challenge a rate in a proceeding initiated under section 206 of the FPA.[8]

C. <u>Order No. 144 and 18 CFR 35.24</u>

12. The purpose of tax normalization is to match the tax effects of costs and revenues with the recovery in rates of those same costs and revenues.[9] As noted above, timing differences may exist between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking

[7] *See* 16 U.S.C. 824d.

[8] *See* 16 U.S.C. 824e(a).

[9] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522, 31,530.

purposes. The tax effects of these differences are placed in a deferred tax account to be used in later periods when the differences reverse.[10]

13. The Commission established this policy of tax normalization in Order No. 144 where it required use of "the provision for deferred taxes [(i.e., ADIT)] as a mechanism for setting the tax allowance at the level of current tax cost."[11] In keeping with this normalization policy, and as relevant to the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate, the Commission in Order No. 144 also required adjustments in the ADIT of public utilities' cost of service when excessive or deficient ADIT has been created as a result of changes in tax rates.[12] Furthermore, the Commission required "a rate applicant to compute the income tax component in its cost of service by making provision for any excess or deficiency in its deferred tax reserves resulting . . . from tax rate changes."[13] The Commission required that such provision be consistent with a Commission-approved ratemaking method made specifically applicable to the rate applicant.[14] Where no ratemaking method has been made specifically

[10] *Id.* at 31,554.

[11] *Id.* at 31,530.

[12] *Id.* at 31,519.

[13] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(1)(ii); 18 CFR 35.24(c)(2).

[14] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(3).

applicable, the Commission required the rate applicant to advance some method in its next rate case.[15] The Commission stated that it would determine the appropriateness of any proposed method on a case-by-case basis, but as the issue is resolved in a number of cases, a method with wide applicability may be adopted.[16] The Commission codified the requirements of Order No. 144 in its regulations in 18 CFR 35.24.[17]

D. <u>Notice of Inquiry</u>

14. Following the enactment of the Tax Cuts and Jobs Act, the Commission issued the NOI seeking comments on, among other things, whether, and if so, how, the Commission should address the effects of the Tax Cuts and Jobs Act on ADIT.[18] The Commission noted that the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate would potentially create excess or deficient ADIT on the books of public utilities.[19] As relevant to the reforms proposed in this Proposed Rule, the Commission sought comments on the preservation of rate base neutrality and how public utilities should make

[15] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[16] *Id*. *See also* 18 CFR 35.24(c)(3).

[17] Originally promulgated as part of Order 144, the regulatory text was redesignated as 18 CFR 35.25 in Order No. 144-A. *See* Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 at 30,140. In Order No. 545, the Commission again redesignated the regulatory text to its present designation as 18 CFR 35.24. *See Streamlining Electric Power Regulation,* Order No. 545, FERC Stats. & Regs. ¶ 30,955, at 30,713 (1992) (cross-referenced at 61 FERC ¶ 61,207).

[18] NOI, FERC Stats. & Regs. ¶ 35,582.

[19] *Id.* P 13.

related adjustments to their rate bases for excess and deficient ADIT.[20] The Commission also sought comment on how public utilities should adjust their income allowances to return or recover excess or deficient ADIT, respectively,[21] as well as the method used to return or recover excess or deficient protected and unprotected ADIT.[22] Finally, the Commission sought comment on whether it should require public utilities to provide to the Commission, on a one-time basis, additional information to show the computation of excess or deficient ADIT and the corresponding return of excess ADIT to customers or recovery of deficient ADIT from customers. If so, the Commission also sought comments on what types of information public utilities should provide.[23]

II. <u>Discussion</u>

15. Since the issuance of Order No. 144, the landscape of public utility transmission rates has changed dramatically; that is, the vast majority of public utilities now use formula rates rather than stated rates. As described above, unlike stated rates, which are updated only through a rate case initiated by a FPA section 205 application by the public

[20] *Id.* PP 14-15.

[21] *Id.* P 21.

[22] *Id.* PP 17, 19. In the NOI, the Commission referred to "plant-based" and "non-plant based" ADIT. We agree with commenters' recommendation to follow the IRS terminology of "protected" and "unprotected" ADIT instead of "plant-based" and "non-plant based" presented in the NOI. The IRS terms for "protected" and "unprotected" are directly associated with the IRS' normalization protections to ensure a tax payer maintains the benefit of accelerated depreciation over the life of the related asset. Accordingly, we have changed the terms used in this Proposed Rule to better mirror IRS terminology.

[23] *Id.* P 23.

utility or an FPA section 206 action by the Commission or a complaining third party, inputs to formula rates are updated annually to derive a charge assessed to customers. Thus, a rate case no longer remains the appropriate vehicle for formula rates to reflect excess or deficient ADIT in a public utility's cost of transmission service, as contemplated by Order No. 144. The public utility's transmission formula rate should include provisions that accurately reflect excess or deficient ADIT in a public utility's cost of transmission service during the annual updates of the rest of the revenue requirement.

16. Following the NOI, we have determined that this near-industry-wide transition from stated to formula rates has caused a gap in the transmission formula rates of public utilities such that many, if not most, of those rates do not contain provisions to fully reflect any excess or deficient ADIT following a change in tax rates, as required by Order No. 144 and the Commission's regulations in 18 CFR 35.24. Two components are necessary to maintain an accurate cost of service following a change in income tax rates, such as that caused by the Tax Cuts and Jobs Act: (1) preservation of rate base neutrality through the removal of excess ADIT from or addition of deficient ADIT to rate base; and (2) the return of excess ADIT to or recovery of deficient ADIT from ratepayers.[24]

17. A review of public utility transmission formula rates suggests that only some transmission formula rates contain the first component, while even fewer contain the

[24] *Id.* P 13. While the Tax Cuts and Jobs Act decreased the federal corporate income tax rate, the reforms proposed in this Proposed Rule are also meant to ensure that transmission formula rates reflect the effects of tax increases, as well.

second. Consequently, as discussed in greater detail below, we propose to require public utilities with transmission formula rates to revise those rates to include these two components. Additionally, to provide greater transparency, 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 ADIT information related to these two components.

18. Regarding public utilities with transmission stated rates, we propose maintaining Order No. 144's requirement that such public utilities reflect any adjustments made to their ADIT balances as a result of the Tax Cuts and Jobs Act (and any future tax changes) in their next rate case. However, to increase the likelihood that those customers who contributed to the related ADIT accounts receive the benefit of the Tax Cuts and Jobs Act, we propose to require public utilities with transmission stated rates to (1) determine any excess or deficient ADIT caused by the Tax Cuts and Jobs Act and (2) return or recover this amount to or from customers. We believe that the Commission's existing regulations already require all of the information necessary to support the changes proposed herein to reflect the effects of the Tax Cuts and Jobs Act on a transmission stated rate. Therefore, we propose not to require any additional worksheets.

19. The Commission generally does not permit single-issue ratemaking. However, similar to the Commission's actions following the Tax Cuts and Jobs Act,[25] given the

[25] *See AEP Appalachian Transmission Company, Inc.*, 162 FERC ¶ 61,225 (2018); *Alcoa Power Generating Inc.—Long Sault Division*, 162 FERC ¶ 61,224 (2018).

limited scope of the reforms proposed here, we propose that compliance filings made in response to this Proposed Rule's final requirements may be considered on a single-issue basis.[26]

A. **Ensuring Rate Base Neutrality**

1. **NOI**

20. In the NOI, the Commission sought comment on how to ensure that rate base continues to be treated in a manner similar to that prior to the Tax Cuts and Jobs Act (i.e., how to preserve rate base neutrality), until excess and deficient ADIT have been fully returned or recovered in a just and reasonable manner. The Commission also sought comment on whether, and if so how, public utilities should make adjustments to rate base to reflect excess and deficient ADIT. The Commission asked that commenters address both formula rates and stated rates.[27]

2. **Comments**

21. Numerous public utilities and other commenters assert that, in order to preserve rate base neutrality, unamortized balances of excess ADIT must continue to be treated as an offset to (i.e., a deduction from) rate base until those balances are flowed back in their

[26] *See generally Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at PP 13-14 (2017); s*ee also Rates Changes Relating to the Federal Corporate Income Tax Rate for Public Utilities*, Order No. 475, FERC Stats. & Regs. ¶ 30,752, *order on reh'g*, 41 FERC ¶ 61,029 (1987) (allowing public utilities to use a voluntary, abbreviated rate filing procedure to reduce their rates to reflect a reduction in the federal corporate income tax rate on a single-issue basis).

[27] NOI, FERC Stats. & Regs. ¶ 35,582 at PP 14-15.

entirety to customers.[28] These commenters generally note that, following the passage of the Tax Cuts and Jobs Act, public utilities transferred excess ADIT to Account 254 (Other Regulatory Liabilities) or Account 182.3 (Other Regulatory Assets), as appropriate.[29] Accordingly, these commenters state that, just as the ADIT balances were deducted from or added to rate base, as appropriate, the corresponding amounts recorded in Accounts 254 and 182.3 should be deducted from or added to rate base. While generally agreeing that rate base adjustments are necessary, several commenters assert that there is no "one-size fits all" solution.[30]

[28] APPA and AMP, Comments to NOI, Docket No. RM18-12-000, at 4-7 (filed on May 22, 2018) (APPA and AMP NOI Comments); Avangrid, Comments to NOI, Docket No. RM18-12-000, at 5 (May 22, 2018) (Avangrid NOI Comments); Consumer Advocates, Comments to NOI, Docket No. RM18-12-000, at 4-5 (filed May 21, 2018) (Consumer Advocates NOI Comments); DEMEC, Comments to NOI, Docket No. RM18-12-000, at 8 (filed May 21, 2018) (DEMEC NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18-12-000, at 3-6 (filed May 21, 2018) (Indicated Customers NOI Comments); National Grid, Comments to NOI, Docket No. RM18-12-000, at 6-7 (filed May 21, 2018) (National Grid NOI Comments); New York Transco, Comments to NOI, Docket No. RM18-12-000, at 5 (filed May 22, 2018) (New York Transco NOI Comments); Oklahoma Attorney General, Comments to NOI, Docket No. RM18-12-000, at 4 (filed May 22, 2018) (Oklahoma Attorney General NOI Comments); PSEG, Comments to NOI, Docket No. RM18-12-000, at 4 (filed May 22, 2018) (PSEG NOI Comments).

[29] Avangrid NOI Comments at 5; EEI, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018) (EEI NOI Comments).

[30] Kentucky Municipals, Comments to NOI, Docket No. RM18-12-000, at 3-5 (filed May 21, 2018) (Kentucky Municipals NOI Comments); Exelon, Comments to NOI, Docket No. RM18-12-000, at 11-12 (filed May 22, 2018) (Exelon NOI Comments); TAPS, Comments to NOI, Docket No. RM18-12-000, at 3 (filed May 21, 2018) (TAPS NOI Comments); Indicated Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 7 (filed May 21, 2018) (Indicated Transmission Owners NOI Comments) (("[t]here may be no uniform way to achieve the Commission's rate base

22. Regarding public utilities with formula rates, several commenters support the addition of a line item to formula rates for rate base adjustments reflecting excess or deficient ADIT recorded in Accounts 254 and 182.3.[31] Many of these commenters suggest that the Commission permit public utilities to make single-issue FPA section 205 filings to make the appropriate changes to their formula rates.[32] EEI suggests that the Commission should permit utilities with formula rates requiring adjustments to address these during their next true-up annual informational filing.[33]

23. Alternatively, APPA and AMP, and Indicated Customers suggest that any excess or deficient ADIT resulting from the implementation of the Tax Cuts and Jobs Act be recorded to the same ADIT accounts (e.g., Accounts 190, 281, 282, and 283) where the original entries for the regulatory assets and regulatory liabilities were established.[34] APPA and AMP state that by keeping the excess or deficient ADIT in sub-accounts

neutrality objective given differences between companies in accounting methods and rate structures.") (citation omitted)).

[31] Oklahoma Attorney General NOI Comments at 4-5; PSEG NOI Comments at 4; Avangrid NOI Comments at 5-9; Eversource, Comments to NOI, Docket No. RM18-12-000, at 4 (filed May 22, 2018) (Eversource NOI Comments); National Grid NOI Comments at 7-8; TAPS NOI Comments at 4.

[32] Eversource NOI Comments at 4-5; Indicated Transmission Owners NOI Comments at 6; PSEG NOI Comments at 4-5; National Grid NOI Comments at 7-8.

[33] EEI NOI Comments at 11.

[34] APPA and AMP NOI Comments at 7-8; Indicated Customers NOI Comments at 6-7.

within the original ADIT accounts, it will be more transparent and easier to track as the balances are flowed back.[35] As another alternative, the Oklahoma Attorney General asserts that the Commission should consider requiring that the line item currently used to offset rate base with ADIT include both ADIT balances in traditional ADIT-related accounts and those excess ADIT balances in other accounts identified by the Commission.[36]

24. Other commenters note that such a line item adjustment may not be necessary in all cases.[37] Specifically, these commenters assert that certain formula rates (e.g., certain MISO Attachment O, AEP, Exelon, and Eversource formula rates) already provide for the inclusion of excess ADIT in rate base and that the balances in Accounts 254 and 182.3 will naturally flow into rate base without any modification.[38]

25. Regarding public utilities with stated rates, commenters generally agree that adjustments are not necessary to preserve rate base neutrality with respect to stated

[35] APPA and AMP NOI Comments at 7-8.

[36] Oklahoma Attorney General NOI Comments at 4-5.

[37] Ameren, Comments to NOI, Docket No. RM18-12-000, at 7-8 (filed May 21, 2018) (Ameren NOI Comments); MISO Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 7 (filed May 21, 2018) (MISO Transmission Owners NOI Comments); EEI NOI Comments at 11; Exelon NOI Comments at 11-12.

[38] AEP, Comments to NOI, Docket No. RM18-12-000, at 3-4 (filed May 22, 2018) (AEP NOI Comments); Ameren NOI Comments at 7-8; MISO Transmission Owners NOI Comments at 7; Eversource NOI Comments at 3-4; Exelon NOI Comments at 11-12.

rates.[39] National Grid and Avangrid state that, under cost-of-service, both ADIT balances and regulatory liability balances should be deducted from rate base in calculating the stated rate.[40] Avangrid asserts that rate base neutrality issues are not raised with transmission stated rates because these rates assume the same amount of ADIT deduction to rate base without regard to how the companies adjusted their books and records.[41]

3. Proposed Requirements

a. Formula Rates

26. We propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates which deducts any excess ADIT from or adds any deficient ADIT to their rate bases under 18 CFR 35.24. As described above, the Commission's regulations in 18 CFR 35.24 require public utilities to reflect any excess or deficient ADIT as a result of any changes in tax rates in their next rate case. As a result of the Tax Cuts and Jobs Act's reduction of the federal corporate income tax from 35 percent to 21 percent, public utilities have collected excess funds for their ADIT liabilities and have not collected sufficient funds for any ADIT assets. To preserve rate base neutrality by accurately matching the tax allowance with the current tax cost as required by Commission regulations, public utilities with transmission formula rates must

[39] National Grid NOI Comments at 7-8; Avangrid NOI Comments at 5-6; EEI NOI Comments at 11.

[40] National Grid NOI Comments at 7-8; Avangrid NOI Comments at 5-6.

[41] Avangrid NOI Comments at 5-6.

include provisions in their formula rates to adjust their ADIT for excess or deficient ADIT.[42] We believe our proposal will ensure that public utilities with transmission formula rates will adjust their ADIT for any excess or deficient ADIT caused by the Tax Cuts and Jobs Act or any future changes to tax rates which may give rise to excess or deficient ADIT.

27. While we are proposing to require public utilities with transmission formula rates to include a mechanism to adjust rate base for any excess or deficient ADIT, we are not proposing to prescribe a specific adjustment mechanism which applies to all public utilities with transmission formula rates. We agree with commenters to the NOI that prescribing a one-size-fits-all approach, such as adding a line item, is not appropriate and that the Commission should instead allow public utilities to propose any necessary changes to their formula rates on an individual basis. Recent filings and comments submitted in the NOI suggest that multiple approaches to modify rate base may be just and reasonable. For example, as noted by MISO Transmission Owners,[43] the Commission accepted proposals by ITC Companies and Ameren in which those companies did not revise their formula rates to modify their adjustments to rate base by adding a new line item for rate base.[44] Instead, those companies demonstrated that, while

[42] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,530, 31,519.

[43] MISO Transmission Owners NOI Comments at 7.

[44] *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163 (2018).

not visible in their formula rates, their adjustments to rate base were modified by any excess or deficient ADIT prior to their input to the formula rates. Accordingly, we also propose that public utilities with transmission formula rates may demonstrate that their formula rates already meet the proposed ADIT adjustment requirements described in this Proposed Rule.

28. We are not persuaded by commenters to the NOI who suggest that excess or deficient ADIT amounts should be recorded to the same ADIT accounts where the original entries for the regulatory assets and regulatory liabilities were established. The Commission previously issued guidance on this topic, finding that public utilities are required to record a regulatory asset (Account 182.3) associated with deficient ADIT or regulatory liability (Account 254) associated with excess ADIT.[45] As a result, we do not propose any changes to that specific accounting guidance.

b. Stated Rates

29. We do not propose any new requirements regarding rate base neutrality for public utilities with transmission stated rates. As noted by commenters to the NOI, stated rates are calculated based in large part on company data submitted, and projections made, at the time of the last rate case. Thus, while ADIT balances may have changed as a result of the Tax Cuts and Jobs Act, so too will many other aspects of the cost of service and calculations that underlie the stated rate, making it difficult to re-evaluate ADIT and its

[45] *See* Accounting for Income Taxes, Docket No. AI93-5-000, at 8 (1993).

effect on rate base following a change in tax rates without fully evaluating a public utility's entire cost of service and rates.[46] We believe that the revisions we are proposing below, related to the return or recovery of excess or deficient ADIT, will adequately address the effects of the Tax Cuts and Jobs Act on ADIT and will avoid such complications. Therefore, we do not propose to require adjustments to the rate bases of public utilities with transmission stated rates prior to their next rate case on a generic basis.

B. Return or Recovery of Excess or Deficient ADIT

1. NOI

30. In the NOI, the Commission asked commenters to address how public utilities with stated or formula rates should adjust their income tax allowance such that the allowance would be decreased or increased by the amortization of excess or deficient ADIT, respectively.[47] Additionally, the Commission asked commenters how the Average Rate Assumption Method, and alternatively, the Reverse South Georgia Method or South Georgia Method, as appropriate, will be implemented in the amortization of protected excess or deficient ADIT and how quickly to amortize unprotected excess or deficient ADIT.[48]

[46] The Commission previously acknowledged this difficulty in Order No. 475. Order No. 475, FERC Stats. & Regs. ¶ 30,752 at 30,736.

[47] NOI, FERC Stats. & Regs. ¶ 35,582 at P 21.

[48] *Id.* PP 17, 19. Under the South Georgia method, a calculation is taken of the difference between the amount actually in the deferred account and the amount that would have been in the account had normalization continuously been followed. Any

2. **Comments**

31. Commenters generally support adjusting public utilities' income tax allowances by the amortization of excess or deficient ADIT. Many commenters suggest adding a line item or several line items to public utility transmission formula rates to make this adjustment,[49] with some transmission owners noting that they have already submitted or now propose to submit such revisions.[50] MISO Transmission Owners note that the Commission accepted such a proposal by ITC Great Plains.[51] National Grid suggests that adjustments to income tax allowances could also be made through the weighted cost of capital.[52]

deficiency is collected from ratepayers (i.e., South Georgia Method), and any excess is returned to ratepayers (i.e., Reverse South Georgia Method), over the remaining depreciable life of the plant that caused the difference. *Memphis Light, Gas and Water Div. v. FERC*, 707 F.2d 565, 569 (D.C. Cir. 1983).

[49] Ameren NOI Comments at 15-16; Avangrid NOI Comments at 11-12; MISO Transmission Owners NOI Comments at 14-17; National Grid NOI Comments at 15; New York Transco NOI Comments at 10; Oklahoma Attorney General NOI Comments at 6; PSEG NOI Comments at 10.

[50] Ameren NOI Comments at 15-16; Avangrid NOI Comments at 11-12; MISO Transmission Owners NOI Comments at 16-17; New York Transco NOI Comments at 10.

[51] MISO Transmission Owners NOI Comments at 15 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374). *See also Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163.

[52] National Grid NOI Comments at 15.

32. Commenters also support revisions to transmission stated rates to reflect income tax allowance adjustments for the amortization of excess or deficient ADIT.[53] TAPS states that, to address these adjustments, it supports an approach similar to utility-specific investigations the Commission opened with respect to the change in the federal corporate income tax rate.[54] However, TAPS expresses concern that stated rate customers will find it challenging to verify their utilities' calculation and asserts that, thus, the Commission should encourage utilities to work with customers toward a mutually acceptable solution and require those utilities to file the return mechanism, including detailed documentation and worksheets so that the calculation of excess ADIT can be validated.[55]

33. Some commenters caution the Commission against mandating that public utilities adopt a single method to adjust their formula rates' income tax allowances. Instead, these commenters suggest that the Commission recognize public utilities' specific circumstances by evaluating proposed modifications on a case-by-case basis or recognizing that some formula rates already adjust the income tax allowance by the amortization of excess or deficient ADIT and, therefore, would not require revision.[56]

[53] Avangrid NOI Comments at 9, National Grid NOI Comments at 15, TAPS NOI Comments at 6.

[54] TAPS NOI Comments at 6 (citing *Alcoa Power Generating Inc.—Long Sault Div.*, 162 FERC ¶ 61,224).

[55] TAPS NOI Comments at 5-7.

[56] Exelon NOI Comments at 14-15; Indicated Customers NOI Comments at 12-13; MISO Transmission Owners NOI Comments at 17.

Indicated Transmission Owners argue that the Commission should make any evaluations on a single-issue basis.[57] The Oklahoma Attorney General suggests that the Commission could use ongoing proceedings, such as the show cause proceedings initiated against public utilities whose formula rates would not automatically adjust to reflect the lower federal corporate income tax rate of 21 percent, to revise formula rates such that the income tax allowance is adjusted by the amortization of excess or deficient ADIT.[58]

34. Consumer Advocates are concerned that absent Commission intervention, jurisdictional entities may begin to amortize their excess ADIT, thereby denying customers the full benefit of the Tax Cuts and Jobs Act. Consumer Advocates argue that to the extent any protected ADIT balances have been amortized to date, the Commission should require such excess protected ADIT amortization credits to be reversed and the liability balance restored to that of the implementation date of the Tax Cuts and Jobs Act.[59]

35. Regarding protected excess or deficient ADIT, commenters agree that the Commission has no need to change its existing regulations or precedent or depart from the Tax Cuts and Jobs Act's normalization provisions.[60] Regarding unprotected excess or

[57] Indicated Transmission Owners NOI Comments at 11-12.

[58] Oklahoma Attorney General NOI Comments at 6.

[59] Consumer Advocates NOI Comments at 4.

[60] AEP NOI Comments at 4-5; Ameren NOI Comments at 11; APPA and AMP NOI Comments at 5-6, 10; Avangrid NOI Comments at 8-9; Consumer Advocates NOI Comments at 6-7; DEMEC NOI Comments at 9; EEI NOI Comments at 14, 16-17;

deficient ADIT, commenters agree that the Commission should adopt a case-by-case approach for determining how quickly excess or deficient unprotected ADIT should be flowed back to or recovered from customers.[61]

3. <u>Proposed Requirements</u>

a. <u>Formula Rates</u>

36. We propose to require all public utilities with transmission formula rates to include a mechanism in their formula rates which decreases or increases their income tax allowances by any amortized excess or deficient ADIT, respectively, under 18 CFR 35.24. Such a mechanism is necessary because, as described above, the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate from 35 percent to 21 percent means public utilities have collected from customers funds in excess of what is due to the IRS for ADIT liabilities and, conversely for ADIT assets, funds from customers insufficient to satisfy IRS tax obligations. Similar to the proposed rate base

Eversource NOI Comments at 7; Exelon NOI Comments at 13; Indicated Customers NOI Comments at 8-9; Indicated Transmission Owners NOI Comments at 8-9; Kentucky Municipals NOI Comments at 6; MISO Transmission Owners NOI Comments at 8-11; National Grid NOI Comments at 10-11; New York Transco NOI Comments at 7-8; Oklahoma Attorney General NOI Comments at 6-7; PSEG NOI Comments at 7-8.

[61] AEP NOI Comments at 6-7 ("However, in the event the Commission develops a broadly applicable amortization period, AEP recommends that period be 25 years or longer"); Avangrid NOI Comments at 9-11; Dominion, Comments to NOI, Docket No. RM18-12-000, at 12 (filed on May 21, 2018); EEI NOI Comments at 17-18; Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 36-37 (filed on May 21, 2018); Enbridge and Spectra, Comments to NOI, Docket No. RM18-12-000, at 26 (filed May 21, 2018); EQT Midstream, Comments to NOI, Docket No. RM18-12-000, at 13-14 (filed May 21, 2018); Eversource NOI Comments at 8-9; Exelon NOI Comments at 13-14; Indicated Transmission Owners NOI Comments at 9-10; National Grid NOI Comments at 11-13; New York Transco NOI Comments at 9.

adjustment requirements, these proposed income tax allowance adjustment requirements are intended to satisfy Order No. 144's requirement that the income tax allowance match the current tax cost and reflect the effects of any future changes to tax rates that may give rise to excess or deficient ADIT.

37. Similar to comments regarding adjustments to rate base, we agree with commenters to the NOI that prescribing a one-size-fits-all approach is not appropriate and that the public utilities with transmission formula rates should instead be allowed to propose any necessary changes to their rates on an individual basis. Accordingly, we do not propose that all public utilities with transmission formula rates must use a single method to adjust their income tax allowances for any amortized excess or deficient ADIT. Many public utilities with transmission formula rates use different formats of rate templates or formulas, and a single, prescriptive method, such as the requirement of a single line item, may not fully capture or transparently convey the amortization of excess or deficient ADIT. Additionally, recent filings by public utilities that proposed revisions to their formula rate templates to reflect changes in income tax rates by, among other things, incorporating mechanisms to return excess ADIT demonstrate that company-specific variations are necessary.[62]

[62] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374; *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163; *Midcontinent Indep. Sys. Operator, Inc.,* 164 FERC ¶ 61,113 (2018); *Emera Maine*, 165 FERC ¶ 61,086 (2018).

38. Regarding the period over which the amortization of excess or deficient ADIT must occur, we believe that public utilities should follow the guidance provided in the Tax Cuts and Jobs Act, where available. As noted by commenters to the NOI, the Tax Cuts and Jobs Act provides a method of general applicability and requires public utilities to return excess protected ADIT[63] no more rapidly than over the life of the underlying asset using the Average Rate Assumption Method, or, where a public utility's books and underlying records do not contain the vintage account data necessary, it must use an alternative method.[64] In contrast, the Tax Cuts and Jobs Act does not specify what method public utilities must use for excess or deficient unprotected ADIT. We agree with commenters to the NOI that, because such a determination depends on the specific facts and circumstances for each public utility, a case-by-case approach to amortizing excess or deficient unprotected ADIT remains appropriate.

39. Consumer Advocates are concerned that a portion of the amounts allowable to be returned to customers under the Average Rate Assumption Method schedule would not be refunded due to the fact that any proposed tariff provisions to return excess ADIT as a result of this Proposed Rule will not be effective until after January 1, 2018. We

[63] While the Tax Cuts and Jobs Act does not mention deficient protected ADIT specifically, we expect that public utilities will recover such deficient ADIT in the same manner prescribed for excess protected ADIT.

[64] Tax Cuts and Jobs Act, Sec. 13001(b)(6)(A), 131 Stat. at 2099. If a public utility must use an alternative method, Commission precedent provides that the public utility should use the Reverse South Georgia Method for excess ADIT or the South Georgia Method for deficient ADIT. *See Memphis Light, Gas and Water Div. v. FERC*, 707 F.2d at 569.

acknowledge that in applying a tax normalization method (e.g., the Average Rate Assumption Method), public utilities are required to develop a schedule removing ADIT from rate base and returning it to customers, effective January 1, 2018, using the fastest allowable method to return the excess ADIT under the IRS' normalization requirements. However, these requirements represent only the fastest allowable return schedule and do not remove a public utility's obligation to return the excess ADIT. 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 refunded to customers. In other words, the full regulatory liability for excess ADIT should be captured in rates, beginning on the effective date of any proposed tariff provision. We do not believe that any specific reforms are necessary to accomplish this because public utilities should not amortize an excess ADIT regulatory liability for accounting purposes until it is included in ratemaking.[65]

b. <u>Stated Rates</u>

40. We propose to require all public utilities with transmission stated rates to (1) determine the excess and deficient income tax caused by the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate and (2) return this amount to or recover this amount from customers under 18 CFR 35.24. We also propose for public utilities

[65] The description of Account 182.3 (Other regulatory assets) states, "The amounts recorded in this account are generally to be charged, *concurrently with the recovery of the amounts in rates…*" (emphasis added). 18 CFR part 101, Account 182.3 (Other Regulatory Assets).

with transmission stated rates to calculate this excess or deficient ADIT using the ADIT approved in their last rate cases. We believe calculating excess or deficient ADIT in this manner will allow public utilities with transmission stated rates to preserve their costs of service as accepted in their last rate case. We are not seeking to propose a specific way for public utilities with transmission stated rates to return or recover the excess or deficient income taxes to ratepayers; rather, we will evaluate each proposal on an individual basis. We believe the proposed reforms will increase the likelihood that those customers who contributed to the related ADIT accounts receive the benefit of the Tax Cuts and Jobs Act.

41. TAPS expresses concern that the customers of public utilities with transmission stated rates will lack sufficient information to evaluate any proposals to return or recover excess or deficient ADIT, respectively. We note that the Commission's regulations require public utilities filing changes to transmission rates to identify the effect of tax changes on those rates.[66] Accordingly, we expect that public utilities with stated rates would include in their compliance filings resulting from this Proposed Rule supporting information necessary to identify, at minimum, the following: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting of any excess or deficient amounts in Accounts 182.3 and 254; (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the

[66] 18 CFR 35.13; 18 CFR 35.24.

excess or deficient ADIT will be amortized; and (5) the amortization period of the excess or deficient ADIT to be returned or recovered through the rates.

42. Finally, as noted above, public utilities with transmission stated rates must conform to the Tax Cuts and Jobs Act's requirements regarding the period over which the amortization of protected excess or deficient ADIT must occur. We will continue to analyze the appropriate amortization period for unprotected ADIT on a case-by-case basis.

C. Support for Excess and Deficient ADIT Calculation and Amortization

1. NOI

43. In the NOI, the Commission sought comment on whether it should require public utilities to provide to the Commission, on a one-time basis, additional information, such as supporting worksheets, to show the computation of excess or deficient ADIT and the corresponding flow-back of excess ADIT to customers or recovery of deficient ADIT from customers. The Commission asked commenters to address what types of information public utilities already record for ADIT-related accounting and whether balances and amortization of regulatory liability and asset accounts, computation of excess and deficient ADIT, delineation between protected and non-protected ADIT, and a description of the allocation method used to determine the transmission-related portion of excess or deficient ADIT would be appropriate to include in a supporting worksheet.[67]

[67] NOI, FERC Stats. & Regs. ¶ 35,582 at P 23.

2. Comments

44. Commenters were split regarding the requirement to provide additional worksheets. Some commenters assert that the Commission should not require any additional worksheets at this time.[68] These commenters generally assert that the implementation of general worksheet requirements would be burdensome on the industry.[69] They assert that any data should only be required to be submitted on a company by company basis, as necessary, rather than require a one-time proceeding for the purpose of all public utilities providing the data showing whether and how ADIT balances were re-measured.[70] Certain commenters assert that the Commission should not require additional worksheets as transmission formula rates and associated protocols already include mechanisms to provide details to customers.[71] Avangrid similarly states that the formula rate processes should be used to provide the level of transparency to verify the flowback of excess ADIT ultimately prescribed by the Commission. EEI states that if the Commission does require additional supporting information as part of EEI's

[68] *See* AEP NOI Comments at 8; Ameren NOI Comments at 16-18; Avangrid NOI Comments at 13-14; EEI NOI Comments at 20-22; Exelon NOI Comments at 15; Indicated Transmission Owners NOI Comments at 12; MISO Transmission Owners NOI Comments at 18-19; and PSEG NOI Comments at 11-12.

[69] *See* EEI NOI Comments at 20-21; Exelon NOI Comments at 15.

[70] EEI NOI Comments at 20.

[71] *See* AEP NOI Comments at 8; Ameren NOI Comments at 16-17; Avangrid NOI Comments at 13-14; Exelon NOI Comments at 15, Indicated Transmission Owners NOI Comments at 12; and MISO Transmission Owners NOI Comments at 18-19.

proposed show cause orders, the Commission should first provide its proposed financial template, in a rulemaking, to allow for review by public utilities and stakeholders. EEI adds that this would reduce the burden on individual public utilities and the Commission and would be similar to the approach leading up to the Gas Tax Final Rule.[72]

45. Other commenters, however, assert that the Commission should require electric public utilities to provide a one-time filing of additional information to provide transparency regarding excess and deficient ADIT, and how rates will be impacted by any changes.[73] APPA and AMP urge the Commission to require that supporting information be filed regarding excess or deficient ADIT, but not be limited to only ADIT-related material. They assert that public utilities should also describe, with supporting schedules, any current or projected effects on their books associated with the Tax Cuts and Jobs Act's changes to bonus depreciation, or any other potential rate-related impacts.[74] APPA and AMP further state that for public utilities with transmission formula rates, the utilities should provide as part of their annual updates, calculations showing excess ADIT amortization amounts that should be flowed back to customers in the applicable rate period. Consumer Advocates state that in addition to requiring a

[72] EEI NOI Comments at 21, n. 36.

[73] *See* APPA and AMP NOI Comments at 17-18; Consumer Advocates NOI Comments at 10-11; DEMEC NOI Comments at 11-12; Eversource NOI Comments at 11; Indicated Customers NOI Comments at 15; National Grid NOI Comments at 15-16; and New York Transco NOI Comments at 11.

[74] APPA and AMP NOI Comments at 17-18.

detailed worksheet identifying all book tax timing differences that comprise deferred tax liability balances, the Commission should evaluate the build-up of net operating losses as deferred tax assets. They assert that such balances should not automatically be inserted as an addition to regulated rate base.[75] New York Transco states that each public utility should be permitted to compile and present this additional information in the manner it deems most efficient and useful for stakeholders. New York Transco states that if stakeholders desire additional information, any interested party can seek that information consistent with the formula rate implementation protocols that address information sharing. While not objecting to the provision of additional information, National Grid states that the Commission should not impose this requirement until after December 2018 as the additional information will not be meaningful until after companies have set the final rate change balance after the filing of their fiscal year 2018 federal corporate income tax returns.[76]

3. Proposed Requirements

a. Formula Rates

46. 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

[75] Consumer Advocates NOI Comments at 10-11.

[76] National Grid NOI Comments at 16.

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. Consequently, we do not propose that any worksheet be populated when submitted to the Commission for compliance, only that the function of the worksheet be clear.

47. Similar to other reforms proposed in this Proposed Rule, we do not propose a pro forma worksheet that must be adopted by all public utilities with transmission formula rates; rather, we propose requiring general categories of information that each excess or deficient ADIT tracking worksheet must contain. We propose that each excess or deficient ADIT worksheet must, at minimum, include the following: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting of any excess or deficient amounts in Accounts 182.3 and 254; (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the excess or deficient ADIT are amortized; and (5) the amortization period of the excess or deficient ADIT being returned or recovered through the rates. Because we do not propose to define the form any worksheet or worksheets must take, only the

information it must contain, we propose evaluating such worksheet or worksheets on an individual basis. We also request comments on whether we should consider additional guiding principles to those described above.

48. We disagree with commenters to the NOI that argue that providing such information is overly burdensome for the industry. Public utilities with transmission formula rates will already have gathered the information we propose to require in the worksheets to re-measure their ADIT balances and develop amortization schedules following the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate. Further, the Commission has already accepted worksheets that convey information similar to the proposed requirements outlined above.[77]

49. We also disagree with commenters to the NOI that public utilities' existing formula rate protocols should preclude the Commission from proposing an excess or deficient ADIT worksheet. While the Commission established that formula rate protocols should allow for the provision of any information necessary to understand the inputs to the rate in order to provide sufficient transparency to interested parties, the Commission has since required public utilities to revise their formula rates to include greater detail where it has deemed that certain inputs to the rate are complex enough to warrant prior understanding of their effect.[78] As related to excess and deficient ADIT,

[77] *See, e.g., Arizona Public Service Company*, Docket No. ER18-975-001 (May 22, 2018) (delegated order).

[78] *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374 at P 14 (directing certain transmission companies to revise their transmission formula rates to

we believe the proposed worksheet will allow interested parties to ensure they are receiving the benefits of the Tax Cuts and Jobs Act, as well as to track over time any changes in the rate effects of the tax change as, for example, assets are sold or retired.

b. <u>Stated Rates</u>

50. As described above in the proposal for return of excess ADIT or recovery of deficient ADIT, we believe that the Commission's existing regulations require public utilities with transmission stated rates to provide sufficient support for any proposed tax-related changes. As a result, we do not propose any additional information requirements for public utilities with transmission stated rates.

III. <u>Proposed Compliance Procedures</u>

51. We propose to require each public utility with transmission stated or formula rates to submit a compliance filing within 90 days of the effective date of any subsequent final rule in this proceeding to revise its transmission formula or stated rates, as necessary, to demonstrate that it meets the requirements set forth in any subsequent final rule.

52. Some public utilities with transmission formula rates may already have mechanisms in place in their rates that address the issues and concerns addressed by any subsequent final rule. Where these provisions would be modified by any subsequent final rule, the public utility must either comply with any subsequent final rule or demonstrate

include worksheets to ensure appropriate transparency). The Commission has also regularly required certain revisions to new formula rates to provide greater transparency. *See, e.g.*, *Xcel Energy Sw. Transmission Co., LLC*, 149 FERC ¶ 61,182 (2014); *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181 (2014); *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180 (2014); *Transource Kansas, LLC,* 151 FERC ¶ 61,010 (2015).

that these previously approved variations continue to be consistent with or superior to the requirements of any subsequent final rule.

53. The Commission will assess whether each compliance filing satisfies the proposed requirements stated above and issue additional orders as necessary to ensure that each public utility with transmission stated or formula rates meets the requirements of the subsequent final rule.

IV. <u>Information Collection Statement</u>

54. The collection of information contained in this Proposed Rule is subject to review by the Office of Management and Budget (OMB) regulations under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[79] OMB's regulations require approval of certain informational collection requirements imposed by an agency.[80] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

55. The reforms proposed in this Proposed Rule address public utilities that have transmission formula rates and transmission stated rates. The reforms related to transmission formula rates represent new requirements for these entities under the

[79] 44 U.S.C. 3507(d).

[80] 5 CFR 1320.11.

Commission's regulations in 18 CFR 35.24, which we believe are necessary because of the dramatic changes in the rate structure of the electric transmission industry since this provision was originally promulgated in 1981.[81] These new requirements would require each public utility with a transmission formula rate to revise its rate so that any excess or deficient ADIT is properly reflected in its revenue requirement following a change in tax rates, such as those established by the Tax Cuts and Jobs Act. Additionally, each public utility with a transmission formula rate would be required to incorporate a new permanent worksheet into its transmission formula rate to increase transparency.

56. The reforms required by this Proposed Rule will require each public utility with stated rates to calculate the excess and deficient ADIT caused by the Tax Cuts and Jobs Act and to return to or recover from customers those amounts. This reform is intended to increase the likelihood that customers who contributed to the excess ADIT balance timely receive the benefits of the Tax Cuts and Jobs Act.

57. The reforms proposed in this Proposed Rule would require compliance filings with the Commission by each public utility with transmission stated or formula rates to allow the Commission the opportunity to determine whether each such public utility met the requirements detailed in this Proposed Rule.

58. We anticipate the reforms proposed in this Proposed Rule, once implemented, would not significantly change currently existing burdens on an ongoing basis. With regard to those public utilities with transmission stated or formula rates that believe that

[81] *See* discussion *infra* Section II.E.

they already comply with the reforms proposed in this Proposed Rule, they could demonstrate their compliance in the filing required 90 days after the effective date of the final revision in this proceeding. We will submit the proposed reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act.[82]

59. While we expect the adoption of the reforms proposed in this Proposed Rule to provide significant benefits, the Commission understands that implementation can be a complex and costly endeavor. We solicit comments on the accuracy of provided burden and cost estimates and any suggested methods for minimizing the respondents' burdens.

60. Burden Estimate and Information Collection Costs: We believe that the burden estimates below are representative of the average burden on respondents. The estimated burden and cost for the requirements contained in this Proposed Rule follow.

[82] 44 U.S.C. 3507(d).

RM19-5-000 NOPR (Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes)						
	Number of Respondents (1)	**Annual Number of Responses per Respondent (2)**	**Total Number of Responses (1)*(2)=(3)**	**Average Burden & Cost Per Response[83] (4)**	**Total Annual Burden Hours & Total Annual Cost (3)*(4)=(5)**	**Cost per Respondent ($) (5)÷(1)**
Revising formula rates so that excess ADIT is deducted and/or deficient ADIT is added to rate base (one-time)[84]	106	1	106	8 hours; $736	848 hours; $78,016	$736
Revising formula rates so that any excess and/or deficient ADIT is amortized (one-time)	106	1	106	8 hours; $736	848 hours; $78,016	$736

[83] The loaded hourly wage figure (includes benefits) is based on the average of the occupational categories for 2017 found on the Bureau of Labor Statistics website (http://www.bls.gov/oes/current/naics2_22.htm):

Accountant (Occupation Code: 13-2011): $56.59

Management (Occupation Code: 11-0000): $94.28

Legal (Occupation Code: 23-0000): $143.68

Office and Administrative Support (Occupation Code: 43-0000): $41.34

These various occupational categories' wage figures are averaged and weighted equally as follows: ($94.28/hour + $61.55/hour + $66.90/hour + $143.68/hour) ÷ 4 = $91.60/hour. The resulting wage figure is rounded to $92.00/hour for use in calculating wage figures in the NOPR in Docket No. RM19-5-000.

[84] One-time burdens apply in Year One only. There will be no subsequent burden in Years 2 and beyond.

Revising transmission stated rates to return or recover excess or deficient ADIT (one-time)	31	1	31	15 hours; $1,380	465 hours; $42,780	$1,380
Requiring public utilities with transmission formula rates to incorporate a new permanent worksheet that will annually track ADIT information (one-time)	106	1	106	40 hours; $3,680	4,240 hours; $390,080	$3,680
Total (Stated Rates)[85]			**31**		**465 hours; $42,780**	
Total (Formula Rates)[86]			**318**		**5,936 hours; $546,112**	
TOTAL			**349**		**6,532 hours; $588,892**	

Cost to Comply: We have projected the total cost of compliance as follows:[87]

[85] Total for Public Utilities with Transmission Stated Rates

[86] Total for Public Utilities with Transmission Formula Rates

[87] For a public utility transmission provider with transmission formula rates, the costs for Year 1 would consist of filing proposed changes to its transmission formula rates, including the addition of a new permanent worksheet, with the Commission within 90 days of the effective date of the final revision plus initial implementation. The Commission does not expect any ongoing costs beyond the initial compliance in Year 1. For a public utility transmission provider with transmission stated rates, the costs for Year 1 would consist of filing proposed changes to its transmission stated rates that allow it to return to or recover from customers any excess or deficient ADIT caused by the Tax Cuts and Jobs Act with the Commission within 90 days of the effective date of the final revision plus initial implementation.

- Year 1: $546,112 ($5,152/utility) for public utilities with transmission formula rates; $42,780 ($1,380/utility) for public utilities with transmission stated rates.
- Year 2: $0

After Year 1, the reforms proposed in this Proposed Rule, once implemented, would not significantly change existing burdens on an ongoing basis.

Title: FERC-516, Electric Rate Schedules and Tariff Filings.

Action: Proposed revisions to an information collection.

OMB Control No.: 1902-0096

Respondents for this Proposal: Businesses or other for profit and/or not-for-profit institutions.

Frequency of Information: One-time during year one.

Necessity of Information: The Federal Energy Regulatory Commission makes this Proposed Rule to ensure that (1) rate base neutrality is preserved following enactment of the Tax Cuts and Jobs Act; (2) the reduction in ADIT on the books of rate-regulated companies that was collected from customers but is no longer payable to the IRS due to the Tax Cuts and Jobs Act is returned to or recovered from ratepayers consistent with general ratemaking principles; and (3) there is increased transparency for the process of excess and deficient ADIT calculation and amortization.

Internal Review: We have reviewed the proposed changes and have determined that such changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. We have specific, objective support for the burden estimates associated with the information collection requirements.

61. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], e-mail: DataClearance@ferc.gov, phone: (202) 502-8663, fax: (202) 273-0873. Comments concerning the collection of information and the associated burden estimate(s), may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395-0710, fax: (202) 395-7285]. Due to security concerns, comments should be sent electronically to the following e-mail address: oira_submission@omb.eop.gov. Comments submitted to OMB should include FERC-516 and OMB Control No. 1902-0096.

V. Environmental Analysis

62. We are required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[88] The actions proposed to be taken in this Proposed Rule fall within the categorical exclusion under section 380.4(a)(15) of the Commission's regulations. This

[88] *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

section provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classification, and services.[89] The revisions proposed in this Proposed Rule fall within the categorical exemptions provided in the Commission's regulations, and as a result neither an Environmental Impact Statement nor an Environmental Assessment is required.

VI. <u>Regulatory Flexibility Act Certification</u>

63. The Regulatory Flexibility Act of 1980 (RFA)[90] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

64. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and

[89] 18 CFR 380.4(a)(15).

[90] 5 U.S.C. 601-612.

associated size threshold: electric bulk power transmission and control, at 500 employees.[91]

65. We estimate that the total number of public utility transmission providers with formula rates that would have to develop revisions to their formula rates, including the addition of a new permanent worksheet, and make compliance filings in response to this Proposed Rule is 106. Of these, we estimate that approximately 43 percent are small entities (approximately 46 entities). We estimate the average total cost to each of these entities will be $5,152 in Year 1 and $0 in subsequent years. In addition, we estimate that the total number of public utility transmission providers with stated rates that will have to calculate the excess and deficient income tax to return to or recover from customers is 31. Of these, we estimate that approximately 43 percent are small entities (approximately 13 entities). We estimate the average total cost to each of these entities will be between $1,380 in Year One and $0 in subsequent years. According to SBA guidance, the determination of significance of impact "should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors."[92] We do not consider the estimated burden to be a significant economic

[91] 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

[92] U.S. Small Business Administration, *A Guide for Government Agencies How to Comply with the Regulatory Flexibility Act*, at 18 (May 2012), https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf.

impact. As a result, we certify that the revisions proposed in this Proposed Rule will not have a significant economic impact on a substantial number of small entities.

VII. Comment Procedures

66. We invite interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. Comments must refer to Docket No. RM19-5-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

67. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at http://www.ferc.gov. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

68. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street N.E., Washington, DC, 20426.

69. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. **Document Availability**

70. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington D.C. 20426.

71. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

72. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

By direction of the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Note: Appendix A will not be published in the Federal Register.

Appendix A – List of Commenters to NOI

Short Name	Commenter
AEP	American Electric Power Service Corporation
Ameren	Ameren Services Company on behalf of Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois
AOPL	Association of Oil Pipe Lines
APGA	American Public Gas Association
APPA and AMP	American Public Power Association and American Municipal Power, Inc.
Avangrid	Avangrid Networks, Inc.
Berkshire	Berkshire Hathaway Energy Pipeline Group
Boardwalk	Boardwalk Pipeline Partners LP
CAPP	Canadian Association of Petroleum Producers
Consumer Advocates	Office of the Attorney General of the Commonwealth of Massachusetts; the Ohio Consumers' Counsel; the Maryland Office of People's Counsel; the Nevada Bureau of Consumer Protection; the Delaware Division of the Public Advocate; the Pennsylvania Office of Consumer Advocate; the Citizens Utility Board of Wisconsin; and the Indiana Office of Utility Consumer Counselor
DEMEC	Delaware Municipal Electric Corporation, Inc.
Dominion Energy Gas Pipelines	Dominion Energy Transmission, Inc.; Dominion Energy Carolina Gas Transmission, LLC; Dominion Energy Quester Pipeline, LLC; Dominion Energy Overthrust Pipeline, LLC; and Questar Southern Trails Pipeline Company

EEI	Edison Electric Institute
Enable Interstate Pipelines	Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC
Enbridge and Spectra	Enbridge Energy Partners, L.P. and Spectra Energy Partners, LP
EQT Midstream	EQT Midstream Partners, LP
Eversource	Eversource Energy Service Company
Exelon	Exelon Corporation
Indicated Customers	Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Southern Maryland Electric Cooperative, Inc., and the New Jersey Division of Rate Counsel
Indicated Local Distribution Companies	Atmos Energy Corporation; the City of Charlottesville, Virginia; the City of Richmond, Virginia; the Easton Utilities Commission; Exelon Corporation; and Washington Gas Light Company
Indicated Transmission Owners	American Electric Power Service Corporation; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; Exelon Corporation; FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Mid-Atlantic Interstate Transmission, LLC; West Penn Power Company; The Potomac Edison Company; Monongahela Power Company; and PPL Electric Utilities Corp.
INGAA	Interstate Natural Gas Association of America
ITC Great Plains	ITC Great Plains, LLC
Kentucky Municipals	Frankfort Plant Board of Frankfort, Kentucky; Barbourville Utility Commission of the City of Barbourville, City; Utilities Commission of the City of Corbin; and the Cities of Bardwell, Berea, Falmouth, Madisonville, and Providence, Kentucky

Kinder Morgan Entities	Natural Gas Pipeline Company of America LLC; Tennessee Gas Pipeline Company, L.L.C.; Southern Natural Gas Company, L.L.C.; Colorado Interstate Gas Company, L.L.C.; Wyoming Interstate Company, L.L.C.; El Paso Natural Gas Company, L.L.C.; Mojave Pipeline Company, L.L.C.; Bear Creek Storage Company, L.L.C.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Elba Express Company, L.L.C.; Kinder Morgan Louisiana Pipeline LLC; Southern LNG Company, L.L.C.; and TransColorado Gas Transmission Company LLC
Kinder Morgan Subsidiaries	SFPP, L.P.; Calnev Pipe Line, LLC; and Kinder Morgan Cochin, LLC
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

National Grid	National Grid USA
Natural Gas Indicated Shippers	Aera Energy, LLC; Anadarko Energy Services Company; Apache Corporation; BP Energy Company; ConocoPhillips Company; Hess Corporation; Occidental Energy Marketing, Inc.; Petrohawk Energy Corporation; and XTO Energy, Inc.
New York Transco	New York Transco LLC
Oklahoma Attorney General	Mike Hunter, Oklahoma Attorney General
PJM	PJM Interconnection, L.L.C.
Plains	Plains Pipeline, L.P.
Process Gas and American Forest and Paper	Process Gas Consumers Group and American Forest and Paper Association
PSEG	Public Service Electric and Gas Company
Tallgrass Pipelines	Trailblazer Pipeline Company LLC; Tallgrass Interstate Gas Transmission, LLC; and Rockies Express Pipeline LLC
TAPS	Transmission Access Policy Study Group
TransCanada	TransCanada Corporation
United Airlines Petitioners	United Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Southwest Airlines, Co.; BP West Coast Products LLC; ExxonMobil Oil Corporation; Chevron Products Company; HollyFrontier Refining & Marketing LLC; Valero Marketing and Supply Company; Airlines for America; and the National Propane Gas Association
Williams	Williams Companies, Inc.

165 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Docket No. PL19-2-000

Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset

(Issued November 15, 2018)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: In this Policy Statement, the Federal Energy Regulatory Commission (Commission) states its policy regarding the treatment of Accumulated Deferred Income Taxes for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017. In addition, the Commission addresses the accounting and ratemaking treatment of Accumulated Deferred Income Taxes following the sale or retirement of an asset.

EFFECTIVE DATE: This Policy Statement will become effective **[date of publication in the *Federal Register*].**

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SUPPLEMENTARY INFORMATION:

165 FERC ¶ 61,115
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset — Docket No. PL19-2-000

POLICY STATEMENT

(Issued November 15, 2018)

1. In this Policy Statement, the Federal Energy Regulatory Commission (Commission) states its policy regarding the treatment of Accumulated Deferred Income Taxes (ADIT) for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines, and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017.[1] The Commission also addresses the accounting and ratemaking treatment of ADIT following the sale or retirement of an asset.

I. <u>Background</u>

A. <u>Tax Cuts and Jobs Act</u>

2. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax

[1] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

rate from 35 percent to 21 percent, effective January 1, 2018.[2] This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the Internal Revenue Service (IRS) based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.

3. Importantly, the tax rate reduction will also result in a reduction in ADIT liabilities and ADIT assets on the books of rate-regulated companies. ADIT balances are accumulated on the regulated books and records of such regulated companies based on the requirements of the Uniform System of Accounts (USofA).[3] ADIT arises from timing differences between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes.[4] As a result of the Tax Cuts and Jobs Act reducing the federal corporate income tax rate from 35 percent to 21 percent, a portion of an ADIT liability that was collected from customers will no longer be due from public utilities, natural gas pipelines and oil pipelines to the IRS and is considered excess ADIT.

[2] *Id.* Sec. 13001, 131 Stat. at 2096.

[3] *See* Definition of Accounts 182.3 and Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; *see* Definition of Accounts 182.3 and Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act; see* General Instructions 1-12, Accounting for Income Taxes, 18 CFR part 352, *Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act*.

[4] *See* 18 CFR 35.24(d)(2) (2018).

B. <u>Order No. 144</u>

4. The purpose of tax normalization is to match the tax effects of costs and revenues with the recovery in rates of those same costs and revenues.[5] As noted above, timing differences may exist between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes. The tax effects of these differences are placed in a deferred tax account to be used in later periods when the differences reverse.[6]

5. The Commission established this policy of tax normalization in Order No. 144 where it required use of "the provision for deferred taxes [(i.e., ADIT)] as a mechanism for setting the tax allowance at the level of current tax cost."[7] In keeping with this normalization policy, and as relevant to the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate, the Commission in Order No. 144 also required adjustments in the ADIT of public utilities' cost of service when excessive or deficient ADIT has been created as a result of changes in tax rates.[8] Furthermore, the Commission required "a rate applicant to compute the income tax component in its cost of service by making provision for any excess

[5] *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes*, Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522, 31,530 (1981), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982).

[6] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,554.

[7] *Id.* at 31,530.

[8] *Id.* at 31,519.

or deficiency in its deferred tax reserves resulting . . . from tax rate changes."[9] The Commission required that such provision be consistent with a Commission-approved ratemaking method made specifically applicable to the rate applicant.[10] Where no ratemaking method has been made specifically applicable, the Commission required the rate applicant to advance some method in its next rate case.[11] The Commission stated that it would determine the appropriateness of any proposed method on a case-by-case basis, but as the issue is resolved in a number of cases, a method with wide applicability may be adopted.[12] The Commission codified the requirements of Order No. 144 in its regulations in 18 CFR 35.24.[13]

1. <u>Public Utilities – 18 CFR 35.24</u>

6. Originally promulgated in Order No. 144, the Commission's regulations in 18 CFR 35.24 provide requirements for the proper ratemaking treatment of the tax effects of all

[9] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(1)(ii); 18 CFR 35.24(c)(2).

[10] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(3).

[11] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[12] *Id*. *See also* 18 CFR 35.24(c)(3).

[13] Originally promulgated as part of Order No. 144, the regulatory text was redesignated as 18 CFR 35.25 in Order No. 144-A. *See* Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 at 30,140. In Order No. 545, the Commission again redesignated the regulatory text to its present designation as 18 CFR 35.24. *See Streamlining Electric Power Regulation,* Order No. 545, FERC Stats. & Regs. ¶ 30,955, at 30,713 (1992) (cross-referenced at 61 FERC ¶ 61,207).

transactions for which there are timing differences.[14] Under this section, a public utility must account for excess or deficient ADIT when computing the income tax component of its cost of service.[15] Additionally, in accounting for this excess or deficient ADIT, a public utility is required to apply the ratemaking method that has been specifically approved by the Commission for that public utility.[16] Where no such ratemaking method exists, a public utility may choose which ratemaking method to apply and the reasonableness of that ratemaking method will be determined on a case-by-case basis by the Commission.[17]

2. Natural Gas Pipelines – 18 CFR 154.305

7. Order No. 144 also promulgated the Commission's regulations regarding tax normalization for natural gas pipelines which were originally located in part 2 of the regulations as section 2.202.[18] Order No. 144-A redesignated the tax normalization regulations for natural gas pipelines by removing them from part 2 of the Commission's regulations and placing them in part 154.[19] Subsequently, Order No. 582 redesignated the regulatory text in that part with respect to natural gas pipelines to its current designation in

[14] *See id.*

[15] *See* 18 CFR 35.24(c)(1)(ii), (c)(2).

[16] *See* 18 CFR 35.24(c)(3).

[17] *See id.*

[18] Order No. 144, FERC Stats. & Regs. ¶ 30,254.

[19] Order No. 144-A, FERC Stats. & Regs.¶ 30,340 at 30,140. The Commission deemed part 154 a more appropriate location because tax normalization is required to be used by natural gas pipelines in filing their rate applications and the regulations that govern the filing of such rate applications are located in part 154. *Id.*

section 154.305, and made various revisions in that section.[20] The section requires a natural gas pipeline making a rate filing under the Natural Gas Act to compute the income tax component of its cost of service by using tax normalization for all transactions.[21] More specifically, the section requires natural gas pipelines to reduce rate base by the balances that are properly recordable in USofA Account 281 (Accumulated deferred income taxes-accelerated amortization property), Account 282 (Accumulated deferred income taxes—other property), and Account 283 (Accumulated deferred income taxes—other).[22] Conversely, rate base must be increased by balances that are properly recordable in Account 190 (Accumulated deferred income taxes).[23] The section also requires natural gas pipelines to compute the income tax component in its cost of service by including a provision for amortizing excess or deficiency in deferred taxes. This is done by applying a Commission-approved ratemaking method made specifically applicable to the natural gas pipeline for determining the cost-of-service provision: (1) if the natural gas pipeline has not provided deferred taxes in the same amount that would have accrued had tax normalization always been applied or (2) if, as a result of changes in tax rates, the accumulated provision for

[20] 18 CFR 154.305 (2018). *See* Order No. 582, *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs,* FERC Stats. & Regs. ¶ 31,025 (1995), *order on reh'g,* Order No. 582-A, FERC Stats. & Regs. ¶ 31,043 (1996), *order on clarification*, FERC Stats. & Regs. ¶ 31,037 (1996). The tax normalization regulations were moved from 18 CFR 154.63a to 154.305.

[21] 18 CFR 154.305.

[22] 18 CFR 154.305(c)(1).

[23] *Id.*

deferred taxes becomes deficient in, or in excess of, amounts necessary to meet future tax liabilities.[24] Similar to the tax normalization regulations for public utilities, if the Commission has not approved a specific ratemaking method specifically applicable to the natural gas pipeline, then the natural gas pipeline must use a previously approved ratemaking method.[25] The Commission will determine whether such method is appropriate on a case-by-case basis.[26]

3. Oil Pipelines

8. Unlike the Commission's regulations applicable to public utilities and natural gas pipelines, there is no tax normalization section under the Commission's regulations for oil pipelines. Instead, the Commission's regulations for oil pipelines under the USofA General Instructions, 1-12 *Accounting for Income Taxes*, require that when income tax rates are changed, oil pipelines reduce or increase their ADIT balances immediately by the full amount of the excess or deficient tax reserve.[27] Specifically, section (b) requires oil pipelines to apply the enacted tax rate in determining the amount of deferred taxes and adjust their deferred tax liabilities and assets for the effect of the change in tax law or rates

[24] 18 CFR 154.305(d). Such amounts must be included as an addition or reduction to rate base until the deficiency or excess is fully amortized using the Commission approved ratemaking method. *Id.*

[25] 18 CFR 154.305(d)(3).

[26] *Id.*

[27] 18 CFR part 352, General Instructions 1-12, Accounting for Income Taxes.

in the period that the change is enacted.[28] The section further requires the adjustment to be recorded in the appropriate deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.[29]

4. Prior Accounting Guidance for Public Utilities and Natural Gas Pipelines

9. In Docket No. AI93-5-000, the Chief Accountant issued accounting guidance on the proper accounting for income taxes.[30] Among other matters, the accounting guidance directed public utilities and natural gas companies to adjust their deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.[31] The guidance stated that adjustments should be recorded in the appropriate deferred tax balance sheet accounts (Accounts 190, 281, 282 and 283) based on the nature of the temporary difference and the related classification requirements of the accounts.[32] Further, if as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability should be recognized in

[28] *Id.*

[29] *Id.*

[30] *See Accounting for Income Taxes,* Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

[31] *Id.*

[32] *Id.*

Account 182.3 (Other Regulatory Assets), or Account 254 (Other Regulatory Liabilities), as appropriate, for that probable future revenue or reduction in future revenue.[33]

C. Notice of Inquiry

10. Following the enactment of the Tax Cuts and Jobs Act, the Commission issued a Notice of Inquiry seeking comments on, among other things, whether, and if so, how, the Commission should address the effects on ADIT of the Tax Cuts and Jobs Act.[34] The Commission noted that the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate would potentially create excess or deficient ADIT on the books of public utilities.[35] As relevant to the guidance provided in this Policy Statement, the Commission sought comments on the treatment of ADIT for assets sold or retired after December 31, 2017, and the amortization of excess and deficient ADIT.[36]

II. Discussion

11. This Policy Statement states our requirements regarding the treatment of ADIT in light of the tax rate reduction implemented in the Tax Cuts and Jobs Act. Specifically, we provide guidance regarding: (1) the accounts in which public utilities, natural gas pipelines, and oil companies should record the amortization of excess and/or deficient ADIT for

[33] *Id.*

[34] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, FERC Stats. & Regs. ¶ 35,582 (2018) (NOI). In this Policy Statement, we refer to the comments filed in response to the NOI. A list of commenters in that proceeding and the abbreviated names used in this Policy Statement appears in Appendix A.

[35] NOI, FERC Stats. & Regs. ¶ 35,582 at P 13.

[36] *Id.* PP 20-22.

accounting purposes and ratemaking purposes and (2) whether, and if so how, such entities should address excess and/or deficient ADIT that is recorded on the books of public utilities, natural gas pipelines, and oil companies after December 31, 2017, as a result of assets being sold or retired for both accounting and ratemaking purposes.

12. First, we clarify that for both accounting purposes and ratemaking purposes, public utilities and natural gas companies should record the amortization of the excess and/or deficient ADIT recorded in Account 254 (Other Regulatory Liabilities) and/or Account 182.3 (Other Regulatory Assets) by recording the offsetting entries to Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income) or Account 411.1 (Provision for Deferred Income Taxes – Credit, Utility Operating Income), as required by the USofA. We further clarify that for accounting purposes oil pipelines should adjust their ADIT balances to reflect the change in federal income tax rates with offsetting entries to the appropriate income statement account, as required by the USofA. Accordingly, oil pipeline companies will not record excess or deficient ADIT for accounting purposes. As detailed below, we also clarify that oil pipelines should provide additional disclosures in the Notes that accompany their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6).

13. Second, for accounting purposes, we reiterate that public utilities and natural gas pipelines must continue to follow the accounting guidance issued by the Chief Accountant in Docket No. AI93-5-000 with respect to changes in tax law or rates. To ensure transparency in the accounting adjustments to the deferred tax accounts, we clarify that

entities should provide additional disclosures in their 2018 FERC annual financial filing within the Notes to the Financial Statements as detailed below.

14. With respect to ratemaking, for a public utility or natural gas pipeline that continues to have an income tax allowance, any excess or deficient ADIT associated with an asset must continue to be amortized in rates even after the sale or retirement of that asset. This excess or deficient ADIT will continue to be refunded to or recovered from ratepayers based on the schedule that was initially established. Similarly, for ratemaking purposes oil pipelines should keep records of excess and deficient ADIT.

A. <u>In Which Accounts Should Companies Record Amortization of Excess and Deficient ADIT.</u>

15. In the NOI, the Commission sought comment on whether a public utility or natural gas pipeline should record the amortization by recording a reduction to the regulatory asset or regulatory liability account and recording an offsetting entry to Account 407.3 (Regulatory Debits) or Account 407.4 (Regulatory Credits).[37] For oil pipelines, the Commission sought comment on whether this information should be recorded in Account 665 (Unusual or Infrequent Items (Debit)) or Account 645 (Unusual or Infrequent Items (Credit)).[38]

[37] NOI, FERC Stats. & Regs. ¶ 35,582 at P 22.

[38] *Id.*

1. **Comment Summary**

16. Ameren takes issue with the premise of the Commission's question that a separate regulatory liability or asset account is necessary to record excess or deficient ADIT, respectively, arguing that the excess or deficient ADIT should remain in the accounts where they were originally recorded.[39] APPA and AMP, along with Indicated Customers, argue that it would be both appropriate and transparent to record the excess ADIT in the same ADIT accounts (*e.g.,* Accounts 190, 282 and 283) where the original entries for the ADIT assets and ADIT liabilities were established, but believe separate regulatory liability and/or asset accounts would also be appropriate.[40]

17. When separate regulatory liability or assets are used, commenters' viewpoints diverge on the appropriate account to record the offsetting entry. Certain commenters agree with the Commission's initial suggestion.[41] PSEG states that Accounts 407.3 and 407.4 correspond to the appropriate balance sheet account where the excess deferred taxes

[39] Ameren, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 21, 2018) (Ameren NOI Comments).

[40] APPA and AMP, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 22, 2018) (APPA and AMP NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018) (Indicated Customers NOI Comments).

[41] Berkshire, Comments to NOI, Docket No. RM18-12-000, at 5-6 (filed May 22, 2018) (Berkshire NOI Comments); Consumer Advocates, Comments to NOI, Docket No. RM18-12-000, at 8-10 (filed May 21, 2018) (Consumer Advocates NOI Comments); DEMEC, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 21, 2018) (DEMEC NOI Comments); PSEG, Comments to NOI, Docket No. RM18-12-000, at 10-11 (filed May 22, 2018) (PSEG NOI Comments); TransCanada, Comments to NOI, Docket No. RM18-12-000, at 25 (filed May 21, 2018) (TransCanada NOI Comments).

reside.[42] Regarding natural gas pipelines, Berkshire asserts that recording the amounts in Account 407.3 or 407.4 will be easier for FERC Form No. 2 users to understand because it will result in similar treatment to other IRS schedule M items and above the line accounting while avoiding the requirement to spread the total year's amortization over each month using the FASB Interpretation No. 18 method.[43]

18. Other commenters believe that either Accounts 407.3 and 407.4 or 410.1 (Provision for deferred income taxes, utility operating income) and 411.1 (Provision for deferred income taxes) are appropriate. Avangrid asserts that Account 407 is consistent with the fact that the excess deferred tax obligation ceased upon tax reform enactment and that the utilities will prospectively amortize a regulatory deferral, rather than a deferred tax liability; however, use of Account 411 is consistent with USofA requirements.[44] EEI and INGAA state that their members' opinions are split between the two accounting options and request that the Commission recognize that both approaches may be appropriate.[45]

[42] PSEG NOI Comments at 10-11.

[43] Berkshire NOI Comments at 5-6.

[44] Avangrid, Comments to NOI, Docket No. RM18-12-000, at 12-13 (May 22, 2018) (Avangrid NOI Comments).

[45] EEI, Comments to NOI, Docket No. RM18-12-000, at 19-20 (filed May 22, 2018) (EEI NOI Comments); INGAA, Comments to NOI, Docket No. RM18-12-000, at 12 (filed June 5, 2018) (INGAA NOI Comments).

19. Many other commenters believe that only Accounts 410.1 and 411.1 are appropriate.[46] New York Transco notes that those accounts were originally used when the regulatory asset or regulatory liability was established.[47]

20. Regarding oil pipelines, AOPL states with respect to regulatory accounting under the USofA, any excess ADIT is eliminated when tax rates change consistent with generally accepted accounting principles, rather than being reduced over time through amortization. AOPL states there is no reason to change either the Commission's accounting rules or current oil pipeline accounting practices; the Commission's ratemaking precedent controls rather than accounting rules for purposes of setting cost-of-service rates.[48]

2. Determination

a. Accounting Guidance

21. We clarify that public utilities and natural gas pipelines should record the amortization of the excess and/or deficient ADIT recorded in Account 254 (Other

[46] Ameren NOI Comments at 16; APPA and AMP NOI Comments at 16; Dominion Energy Gas Pipelines, Comments to NOI, Docket No. RM18-12-000, at 14-15 (filed May 21, 2018) (Dominion Energy Gas Pipelines NOI Comments); Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 39-40 (filed May 21, 2018) (Enable Interstate Pipelines NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 21, 2018) (Indicated Customers NOI Comments); Indicated Local Distribution Companies, Comments to NOI, Docket No. RM18-12-000, at 11 (filed May 22, 2018) (Indicated Local Distribution Companies NOI Comments); New York Transco, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018) (New York Transco NOI Comments).

[47] New York Transco NOI Comments at 10.

[48] AOPL, Comments to NOI, Docket No. RM18-12-000, at 16 (filed May 22, 2018) (AOPL NOI Comments).

Regulatory Assets) and/or Account 182.3 (Other Regulatory Assets) by recording the offsetting entries to Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income) or Account 411.1 (Provision for Deferred Income Taxes – Credit, Utility Operating Income), as appropriate. As explained below, recording the amortization in Account 410.1 and Account 411.1 is consistent with the instructions for those accounts as detailed in the Commission's regulations and provides more transparency as compared with recording the amounts in Account 407.3 and Account 407.4 because the specific source of the regulatory asset or regulatory liability will be known.

22. The Commission's instructions for Account 182.3 provide in part "[w]hen specific identification of the particular source of a regulatory asset cannot be made . . . account 407.4, regulatory credits, shall be credited."[49] Similarly, the Commission's instructions for Account 254 state in part "[w]hen specific identification of the particular source of the regulatory liability cannot be made . . . account 407.3, regulatory debits, shall be debited."[50]

23. In contrast, Account 410.1 and Account 411.1 are specifically designated for the recordation of ADIT.[51] In this situation where, as a result of a change in tax law or rates,

[49] *See* Definition of Account 182.3, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 182.3, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

[50] *See* Definition of Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

[51] *See* Definition of Account 410.1 and 411.1, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the*

excess and/or deficient ADIT have been reclassified to Account 254 and/or Account 182.3, in accordance with the Commission's prior guidance,[52] specific identification of the source of the regulatory liability and/or regulatory asset can be made. Accordingly, the Commission's existing regulations support amortizing the excess and/or deficient ADIT recorded in Account 254 and/or Account 182.3 to Account 410.1 or Account 411.1, as appropriate and consistent with the manner such amounts are reflected in rates.

24. With respect to oil pipelines, deferred tax balances should be adjusted for the effect of changes in tax law or rates in the period the change is enacted in accordance with the USofA for oil pipelines.[53] Specifically, upon the enactment of the Tax Cuts and Jobs Act, oil pipelines should have reduced their ADIT balances to reflect the 21 percent federal income tax rate with offsetting entries to the appropriate income statement account.[54] We believe the current guidance set forth in the USofA is appropriate and will not require oil pipelines to account for excess or deficient ADIT or record the amortization of such amounts. However, to ensure transparency with respect to these ADIT adjustments, oil

Federal Power Act; Definition of Account 410.1 and 411.1, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

[52] *See Accounting for Income Taxes,* Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

[53] *See* 18 CFR 352, General Instructions 1-12(b), Accounting for Income Taxes. *See also*, 18 CFR 352, Instructions for Balance Sheet Accounts, 19-5 Current Deferred Income Tax Assets, 45 Accumulated Deferred Income Tax Assets, 59 Deferred Income Tax Liabilities, and 64 Accumulated Deferred Income Tax Liabilities.

[54] *Id*.

pipelines should disclose in the Notes to their Form No. 6 financial statements, the amounts of their ADIT adjustments resulting from the change in the federal corporate income tax rate, supported by a schedule that illustrates the calculation of the revised balances. Because the accounting for the excess and/or deficient ADIT may create differences between oil pipelines' accounting and ratemaking, such differences should also be disclosed in the Notes to their Form No. 6 financial statements, Form No. 6 Page 230, Analysis of Federal Income and Other Taxes Deferred, and Page 700, Annual Cost of Service Based Analysis Schedule.

b. <u>Ratemaking Guidance</u>

25. With respect to public utilities, the appropriate ratemaking treatment will be addressed in the Notice of Proposed Rulemaking (NOPR) we are issuing concurrent with this Policy Statement. In the NOPR, we are proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act. Natural gas pipelines should continue to file for changes in rates consistent with sections 154.305, 154.312, and 154.313 of the Commission's regulations.[55]

26. For oil pipelines, the current regulatory treatment of excess and/or deficient ADIT amounts is to maintain such amounts separately for rate making purposes only and to amortize them by removing the annual amortization amount from the cost of service in the process of determining an income tax allowance. We will continue the practice of

[55] 18 CFR 154.305, 154.312, 154.313 (2018). Section 154.313 should be used if the filing requests a minor rate change.

amortizing and removing the excess and or deficiency by reducing the allowed return before it is grossed up for income taxes.

B. Whether, and if so how, to address excess ADIT that is removed from the books of public utilities, natural gas pipelines, and oil pipelines after December 31, 2017, as a result of assets being sold or retired.

27. In the NOI, the Commission sought comment on whether, and if so how, it should address excess ADIT that is removed from the books of public utilities, natural gas pipelines, and oil pipelines after December 31, 2017, as a result of assets being sold or retired.[56]

1. Comment Summary

28. Both public utility and natural gas pipeline commenters note that, to date and in response to the last time Congress changed the federal corporate income tax rate, the IRS only has issued guidance on the disposition of excess ADIT in the context of extraordinary retirements.[57] They suggest that the Commission defer addressing excess ADIT that is removed from the books as a result of assets being sold or retired unless and until the IRS has had an opportunity to weigh in on this issue.[58]

[56] NOI, FERC Stats. & Regs. ¶ 35,582 at P 20.

[57] *See* Treas. Reg. 26 CFR § 1.168(i)-3, Treatment of Excess Deferred Income Tax Reserve Upon Disposition of Deregulated Public Utility Property.

[58] Avangrid NOI Comments at 11; EEI NOI Comments at 19; Ameren NOI Comments at 15; EQT Midstream, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018) (EQT Midstream NOI Comments); Indicated Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018); Dominion Energy Gas Pipelines NOI Comments at 13.

29. Certain public utilities argue that, for companies that properly reflect Average Rate Assumption or the Reverse South Georgia Method and have formula rates that reflect ADIT balances and adjustments thereto, there is no need for the Commission to address excess ADIT that is removed from the books after December 2017 as a result of assets being sold or retired.[59]

30. Similarly, several natural gas pipelines contend that Commission precedent is clear that when assets are sold or transferred as part of a taxable event, the ADIT balance associated with those assets is extinguished; similarly, deferred liabilities resulting from excess ADIT are also extinguished following the retirement of an asset. These pipelines believe that the Commission has provided no basis for departing from these clear rules.[60] These pipelines note that the Commission has stated that "ADIT balances consist of deferred taxes that are intended to be paid at a future time - when the taxes become due. When a taxable event occurs such as the sale of assets . . . taxes are due and the ADIT balances are reduced to zero;" thus, the "ADIT balances that existed prior to the sale no longer exist and are no longer an offset against rate base."[61] These pipelines state the NOI explained that any ADIT associated with assets that are sold are removed from the regulated

[59] Ameren NOI Comments at 14, MISO Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018).

[60] EQT Midstream NOI Comments at 14; INGAA NOI Comments at 11-12; Tallgrass, Comments to NOI, Docket No. RM18-12-000, at 12-13 (filed May 21, 2018); AOPL NOI Comments at 14-15; Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 40 (filed on May 21, 2018).

[61] *Id.* (citing *Enbridge Pipeline (KPC),* 102 FERC ¶ 61,310, at PP 5, 68 (2003)).

entity's "books because any previously deferred tax effects related to the assets are now triggered as part of the computation of gains or losses associated with the sale (i.e., the deferred taxes are now payable to the IRS)."[62]

31. Eversource and Exelon submit that treatment of ADIT balances is best addressed on a company-specific basis and that companies should be able to either remove the ADIT associated with assets removed from their books or continue to amortize those balances over the remaining amortization period.[63] Indicated Local Distribution Companies suggest that any future sale or retirement event should be decided as part of a pipeline's general rate proceeding.[64]

32. Other commenters urge the Commission to require regulated entities to return any excess ADIT associated with any sold or retired assets. They argue that the Commission should be guided by the principle that all excess ADIT balances were provided by customers and thus customers should be credited with such balances through the combination of a credit to amortization expense and the continued offset to rate base. In support, they assert that when a public utility sells a jurisdictional asset, it will remove from its books the entire ADIT associated with a sold asset, which does not transfer with the asset to the new owner, and retain the entire ADIT for investors. Thus, customers are never credited with the excess

[62] *Id.* (citing NOI, FERC Stats. & Regs. ¶ 35,582 at P 20).

[63] Eversource, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018); Exelon, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 22, 2018).

[64] Indicated Local Distribution Companies NOI Comments at 9.

or any other part of the ADIT that they have been paying during the useful life of the asset prior to its sale.[65]

33. Indicated Customers note that with regard to the sale of public utility assets for which there is an excess ADIT balance remaining on the books, the 2006 IRS Private Letter Ruling No. PLR-168537-02 prohibits the return to ratepayers of that ADIT and excess ADIT related to the asset that is being sold, because any ADIT and excess ADIT amounts that are on the books for that asset cease to exist as of the date of sale.[66] Notwithstanding, Indicated Customers, and APPA and AMP argue that the impact of not returning both the ADIT and excess ADIT, prior to the sale, and the consequent appropriation of customer-provided capital, should be given consideration in the Commission's evaluation of the application seeking approval of the asset transfer. If the ADIT and excess ADIT are not considered in the transfer transaction, they contend that the selling entity would receive a windfall to the detriment of ratepayers. Further, the acquiring utility could have no offsetting ADIT in its

[65] Consumer Advocates NOI Comments at 8; Indicated Customers NOI Comments at 10-11; DEMEC NOI Comments, Kumar Test. at P 14.

[66] I.R.S. P.L.R., 168537-02 at 9 (May 25, 2006) ("Because [t]axpayer has sold the assets that generated the [accumulated deferred investment tax credit] ADITC, the asset for which regulated depreciation expense is computed is no longer available. Consequently, no portion of the related unamortized ADITC remaining at the date of sale may be returned to ratepayers by amortizing those ADITC amounts over the period [t]axpayer recovers stranded costs from its ratepayers or by decreasing the net loss from the sale of the nuclear generating assets by those ADITC amounts. Additionally, the unamortized [accumulated deferred investment tax credit] and [excess deferred federal income taxes] associated with the sold generating assets ceases to exist at the date of sale."). APPA and AMP argue that this Private Letter Ruling can be read to have no bearing on the flowback of unprotected ADIT balances. APPA and AMP NOI Comments at n. 8.

rate base related to the purchased assets, thereby causing an increase in rates to customers, in addition to the customers' loss of capital advanced to the selling utility.[67]

34. Commenters that believe that the Commission should require ADIT balances be returned to the customers offer several suggestions. APPA and AMP suggest that in the case of a sale or early retirement of public utility assets, the flowback should occur immediately in the formula rate update after the event; otherwise, the flowback should be in the form of a lump-sum payment or credit.[68] Indicated Customers suggest that the Commission should consider deploying remedies it has used in proceedings under FPA section 203, such as establishing an open season for customers to terminate their contracts, a commitment by applicants to protect customers from any adverse rate impacts, rate moratorium or rate reduction.[69] Natural Gas Indicated Shippers suggest that the excess ADIT associated with sold or retired assets should be amortized and returned to the customers in the same manner a pipeline proposes to return excess ADIT due to tax cost changes.[70]

[67] Indicated Customers NOI Comments at 10-11; APPA and AMP NOI Comments at 13-14.

[68] APPA and AMP NOI Comments at 13-14.

[69] Indicated Customers NOI Comments at 11-12 (citing *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *order on reconsideration*, 79 FERC ¶ 61,321 (1997)).

[70] Tallgrass Pipelines, Comments to NOI, Docket No. RM18-12-000, at 18 (filed May 22, 2018).

2. Determination

a. Accounting Guidance

35. As discussed above, in 1993, the Chief Accountant issued guidance on how entities must account for the effect of a change in tax law or rates by adjusting its deferred tax liabilities and assets.[71] This guidance remains unchanged, and requires an entity to adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.[72] If as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to a change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3 (Other Regulatory Assets) for deficient ADIT, or Account 254 (Other Regulatory Liabilities) for excess ADIT, as appropriate.[73] Because these deficient ADIT and excess ADIT balances can no longer be characterized as deferred tax amounts to be settled with the IRS, the sale or retirement of any assets as of January 1, 2018 would not automatically reverse these balances as tax timing differences.

36. Accordingly, for public utilities and natural gas pipelines, the excess and/or deficient ADIT recorded in Account 254 and/or Account 182.3 should continue to be recorded in those accounts and amortized to Accounts 410.1 and/or Account 411.1, if those balances are

[71] *See Accounting for Income Taxes,* Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993).

[72] *Id.*

[73] *Id.*

still deemed to be either refundable to or recoverable from ratepayers. If the rate treatment of those balances is instead disallowed, then those amounts shall be written off to Account 421 (Miscellaneous Non-Operating Income) or Account 426.5 (Other Deductions), as appropriate, in the year of the disallowance.[74]

37. We clarify that, for public utilities and natural gas pipelines, the balances of excess and deficient ADIT recorded in Account 254 and Account 182.3, respectively, continue to exist as regulatory liabilities and assets after an asset sale, in cases for which the excess and deficient ADIT do not transfer to the purchaser of the plant asset. Similarly, we clarify that public utilities and natural gas companies should continue to account for excess and deficient ADIT related to retirements as regulatory liabilities and assets.

38. We acknowledge that numerous current and deferred tax accounts as well as other accounts may be affected by reversals of ADIT account balances recorded on the books of public utilities and natural gas companies subject to the Commission's jurisdiction. Thus, in order to provide transparency regarding the accounting and rate treatment of amounts removed from the ADIT accounts, we clarify that public utilities and natural gas pipelines should disclose in their FERC annual financial filings within the Notes to the Financial Statements: (1) the FERC accounts affected; (2) how any ADIT accounts were re-measured in the determination of the excess or deficient ADIT amounts in Accounts 182.3

[74] *See* Definitions of Account 182.3 and Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definitions of Account 182.3 and Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act.*

and 254; (3) the related amounts associated with the reversal and elimination of ADIT balances in those accounts; (4) the amount of excess and deficient ADIT that is protected and unprotected; (5) the accounts to which the excess or deficient ADIT will be amortized; and (6) the amortization period of the excess and deficient ADIT to be returned or recovered through rates for both protected and unprotected ADIT.[75] Disclosures should also summarize the manner by which excess and deficient will be included in rates by rate jurisdiction.

39. As for oil pipelines, as discussed above, ADIT balances will be reduced immediately by the full amount of the excess or deficient tax reserve in line with the USofA for oil pipelines outlined in General Instruction 1-12.[76]

b. <u>Ratemaking Guidance</u>

40. The Commission has previously found that the sale or retirement of an asset with an ADIT balance is usually deemed a taxable event under IRS rules, and, as such, the ADIT balance is extinguished as the deferred taxes then become payable to the appropriate government authorities, and there is no longer an ADIT balance to "return" to customers.[77]

[75] Public utilities should include this information in FERC Form No. 1 or 1-A and natural gas pipelines should include this information in FERC Form No. 2 or 2-A.

[76] General Instructions 1-12, *Accounting for Income Taxes*, 18 CFR part 352.

[77] The Commission has found that master limited partnerships that were no longer entitled to an income tax allowance were not required to return any remaining ADIT balances. *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018) (Revised Income Tax Policy Statement Order on Rehearing). However, as relevant here, the Commission found that "[t]here is a critical distinction between adjustments to amortize excess or deficient ADIT to be included in future rates to account for changes in income tax rates, as opposed

However, we believe that excess or deficient ADIT associated with post-December 31, 2017, asset dispositions and retirements should be treated differently for ratemaking purposes. For these assets, there are two associated balances: (1) the ADIT balance based on the 21 percent tax rate that will be owed to the IRS and (2) deficient ADIT or excess ADIT balances resulting from the reduced tax liability that will not be payable to the IRS upon the sale or retirement of the asset. While the ADIT balance that needs to be settled with the IRS would be extinguished following a sale, the deficient ADIT or excess ADIT balances is more reflective of a regulatory liability or asset, and no longer reflects deferred taxes that are still to be settled with the IRS and need not be extinguished.

41. Additionally, we note that the rationale for continuing to amortize deficient ADIT or excess ADIT balances in rates upon sales or retirements of assets is substantively similar to the rationale for amortizing excess ADIT in rates for assets that have not been sold or retired. The difference is that for a sale or retirement, ADIT based on a 21 percent tax rate will be settled with the IRS immediately, while for an asset that is not sold or retired, the ADIT will be settled with the IRS over the remaining life of the asset as it depreciates. In other words, the difference between the ADIT for assets that are sold or retired and ADIT for assets that are not sold or retired is the timing of when companies will settle the 21

to a complete elimination of the income tax allowance. When income tax rates are merely reduced and an income tax allowance remains in *future* cost of service, it is appropriate to credit any excess in ADIT in the *future* cost of service." Revised Income Tax Policy Statement Order on Rehearing, 164 FERC ¶ 61,030 at P 20. Thus, in the case of retired or sold assets of regulated entities that continue to have an income tax allowance (and in the case of all regulated entities with excess and deficient ADIT), it is appropriate to credit any excess in ADIT in the future cost of service.

percent of ADIT with the IRS. In both scenarios, there is excess ADIT based on the 14 percent previously collected from the customers that will no longer be payable to the IRS.

42. While some commenters suggest that continuing to amortize excess or deficient ADIT following a sale or retirement would constitute a normalization violation based on certain IRS private letter rulings, the Commission notes that the IRS established a rulemaking proceeding and reversed its positions made in the PLR referenced by the commenters.[78] Current IRS regulations speak specifically to the normalization requirements for sales and retirements as a result of the Tax Reform Act of 1986.[79] These regulations permit the amortization of protected excess and/or deficient ADIT even in the event that the underlying asset associated with the ADIT has been sold or retired.[80] That is, the selling jurisdictional entity can continue to amortize excess ADIT in rates after the sale without violating the IRS' normalization requirements. The only limitation imposed by the IRS is

[78] *See Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property*, 73 FR 14,934 (Mar. 20, 2008); *Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease to Be Public Utility Property*, 70 FR 75,762 (Dec. 21, 2005) (notice of proposed rulemaking, notice of public hearing, and withdrawal of previous proposed regulations).

[79] 26 CFR 1.168(i)-3 (2018). This section of the IRS code does not apply to ordinary retirements within the meaning of 26 CFR 1.167(a) –11(d)(3)(ii) of the internal revenue regulations, and such retirements are excluded from this policy statement.

[80] *Id.*

that the timing of the amortization must be similar to protected excess and/or deficient ADIT for which the underlying asset has not been sold or retired.[81]

43. Consistent with the above discussion, oil pipelines should continue maintaining excess and/or deficient ADIT within the appropriate ADIT accounts for ratemaking purposes. When jurisdictional assets are retired or sold the oil pipeline should continue to amortize any excess and/or deficient amounts associated with those assets as part of the process of determining an income tax allowance within the rate making process, or seek prior Commission approval to do otherwise.

C. Conclusion

44. We adopt the policies set forth herein regarding the treatment of ADIT for public utilities, natural gas pipelines and oil pipelines. Above, we state our policy regarding the treatment of ADIT for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017 and also address the accounting and ratemaking treatment of ADIT following the sale or retirement of an asset. We expect such regulated entities to follow these policies absent prior Commission approval to use a different treatment. We further note that if a regulated entity determines that its unique circumstances merit a different treatment of ADIT, such an entity is free to request such treatment at any time.

[81] *Id.*

III. Document Availability

48. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (http://www.ferc.gov) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

49. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

50. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

IV. Effective Date

51. This Policy Statement will become effective **[date of publication in the *Federal Register*]**.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: Appendix A will not be published in the Federal Register.

Appendix A – List of Commenters to NOI

Short Name	**Commenter**
AEP	American Electric Power Service Corporation
Ameren	Ameren Services Company on behalf of Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois
AOPL	Association of Oil Pipe Lines
APGA	American Public Gas Association
APPA and AMP	American Public Power Association and American Municipal Power, Inc.
Avangrid	Avangrid Networks, Inc.
Berkshire	Berkshire Hathaway Energy Pipeline Group
Boardwalk	Boardwalk Pipeline Partners LP
CAPP	Canadian Association of Petroleum Producers
Consumer Advocates	Office of the Attorney General of the Commonwealth of Massachusetts; the Ohio Consumers' Counsel; the Maryland Office of People's Counsel; the Nevada Bureau of Consumer Protection; the Delaware Division of the Public Advocate; the Pennsylvania Office of Consumer Advocate; the Citizens Utility Board of Wisconsin; and the Indiana Office of Utility Consumer Counselor
DEMEC	Delaware Municipal Electric Corporation, Inc.
Dominion Energy Gas Pipelines	Dominion Energy Transmission, Inc.; Dominion Energy Carolina Gas Transmission, LLC; Dominion Energy Quester Pipeline, LLC; Dominion Energy Overthrust Pipeline, LLC; and Questar Southern Trails Pipeline Company

EEI	Edison Electric Institute
Enable Interstate Pipelines	Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC
Enbridge and Spectra	Enbridge Energy Partners, L.P. and Spectra Energy Partners, LP
EQT Midstream	EQT Midstream Partners, LP
Eversource	Eversource Energy Service Company
Exelon	Exelon Corporation
Indicated Customers	Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Southern Maryland Electric Cooperative, Inc., and the New Jersey Division of Rate Counsel
Indicated Local Distribution Companies	Atmos Energy Corporation; the City of Charlottesville, Virginia; the City of Richmond, Virginia; the Easton Utilities Commission; Exelon Corporation; and Washington Gas Light Company
Indicated Transmission Owners	American Electric Power Service Corporation; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; Exelon Corporation; FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Mid-Atlantic Interstate Transmission, LLC; West Penn Power Company; The Potomac Edison Company; Monongahela Power Company; and PPL Electric Utilities Corp.
INGAA	Interstate Natural Gas Association of America
ITC Great Plains	ITC Great Plains, LLC
Kentucky Municipals	Frankfort Plant Board of Frankfort, Kentucky; Barbourville Utility Commission of the City of Barbourville, City; Utilities Commission of the City of Corbin; and the Cities of Bardwell, Berea, Falmouth, Madisonville, and Providence, Kentucky

Kinder Morgan Entities	Natural Gas Pipeline Company of America LLC; Tennessee Gas Pipeline Company, L.L.C.; Southern Natural Gas Company, L.L.C.; Colorado Interstate Gas Company, L.L.C.; Wyoming Interstate Company, L.L.C.; El Paso Natural Gas Company, L.L.C.; Mojave Pipeline Company, L.L.C.; Bear Creek Storage Company, L.L.C.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Elba Express Company, L.L.C.; Kinder Morgan Louisiana Pipeline LLC; Southern LNG Company, L.L.C.; and TransColorado Gas Transmission Company LLC
Kinder Morgan Subsidiaries	SFPP, L.P.; Calnev Pipe Line, LLC; and Kinder Morgan Cochin, LLC
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC*Transmission*; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

National Grid	National Grid USA
Natural Gas Indicated Shippers	Aera Energy, LLC; Anadarko Energy Services Company; Apache Corporation; BP Energy Company; ConocoPhillips Company; Hess Corporation; Occidental Energy Marketing, Inc.; Petrohawk Energy Corporation; and XTO Energy, Inc.
New York Transco	New York Transco LLC
Oklahoma Attorney General	Mike Hunter, Oklahoma Attorney General
PJM	PJM Interconnection, L.L.C.
Plains	Plains Pipeline, L.P.
Process Gas and American Forest and Paper	Process Gas Consumers Group and American Forest and Paper Association
PSEG	Public Service Electric and Gas Company
Tallgrass Pipelines	Trailblazer Pipeline Company LLC; Tallgrass Interstate Gas Transmission, LLC; and Rockies Express Pipeline LLC
TAPS	Transmission Access Policy Study Group
TransCanada	TransCanada Corporation
United Airlines Petitioners	United Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Southwest Airlines, Co.; BP West Coast Products LLC; ExxonMobil Oil Corporation; Chevron Products Company; HollyFrontier Refining & Marketing LLC; Valero Marketing and Supply Company; Airlines for America; and the National Propane Gas Association
Williams	Williams Companies, Inc.

TAX SHARING AGREEMENT

AGREEMENT made as of September 10, 1985, among Concord Electric Company a New Hampshire corporation, Exeter & Hampton Electric Company a New Hampshire corporation, UNITIL Service Corp., a New Hampshire corporation, and UNITIL Power Corp., a New Hampshire corporation and UNITIL Corporation ("UNITIL"), a New Hampshire corporation ("AFFILIATE" companies or, collectively, the "AFFILIATES"). Whenever it is intended to include UNITIL in the context of the affiliated group, the term "CONSOLIDATED AFFILIATE" or "CONSOLIDATED AFFILIATES" may be used, and when reference is to the affiliated group as a collective tax paying unit the term "Group" may be used.

WHEREAS, UNITIL owns at least 80 percent of the issued and outstanding shares of each class of voting common stock of each of the AFFILIATES: each of the CONSOLIDATED AFFILIATES is a member of an affiliated group within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended (the "Code"), of which UNITIL is the common parent corporation; and UNITIL proposes to include each of the AFFILIATES in filing a consolidated income tax return for the calendar year 1985;

NOW, THEREFORE, UNITIL and the AFFILIATES agree as follows:

1. <u>Consolidated Return Election</u>. If at any time and from time to time UNITIL so elects, each of the AFFILIATES will join in the filing of a consolidated Federal income tax return for the calendar year 1985 and for any subsequent period for which the Group is required or permitted to file such a return. UNITIL and its affiliates agree to file such consents, elections and other documents and to take such other action as may be necessary or appropriate to carry out the purposes of this Section 1. Any period for which any of the AFFILIATES is included in a consolidated Federal

income tax return filed by UNITIL is referred to in this Agreement as a "Consolidated Return Year".

2. <u>AFFILIATES' Liability to UNITIL for Consolidated Return Year</u>. Prior to the filing of each consolidated return by UNITIL each of the AFFILIATES included therein shall pay to UNITIL the amount, if any, of the Federal income tax for which the AFFILIATES would have been liable for that year, computed in accordance with Treasury Regulations, section 1.1552-1(a)(2)(ii) as though that AFFILIATE had filed a separate return for such year, giving effect to any net operating loss carryovers, capital loss carryovers, investment tax credit carryovers, foreign tax credit carryovers or other similar items, incurred by that AFFILIATE for any period ending on or before the date of this Agreement.

The foregoing allocation of Federal income tax liability is being made in accordance with Treasury Regulations, sections 1.1552-1(a)(2) and 1.1502-33 (d)(2)(ii), and no amount shall be allocated to any CONSOLIDATED AFFILIATE in excess of the amount permitted under Treasury Regulations, section 1.1502-33(d)(2)(ii). Accordingly, after taking into account the allocable portion of the Group's Federal income tax liability, no amount shall be allocated to any CONSOLIDATED AFFILIATE in excess of the amount permitted in accordance with Treasury Regulations, section 1.1502-33(d)(2)(ii).

3. UNITIL Liability to Each Affiliate for Consolidated Return Year. If for any Consolidated Return Year, any AFFILIATE included in the consolidated return filed by UNITIL for such year has available a net operating loss, capital loss, foreign tax credit, investment tax credit or similar items (computed by taking into account carryovers of such items from periods ending on or before the date of this Agreement) that reduces the consolidated tax liability of the Group below the amount that would have been payable if that AFFILIATE did not have such item available, UNITIL shall pay the amount of the reduction attributable to such AFFILIATE prior to the filing of the consolidated return for such year.

The amount of the reduction shall be equal to a portion of the excess of (i) the total of the separate return tax liabilities of each of the CONSOLIDATED AFFILIATES computed in accordance with Section 2 of this Agreement, over (ii) the Federal income tax liability of the Group for the year. The portion of such reduction attributable to an AFFILIATE shall be computed by multiplying the total reduction by a fraction, the numerator of which is the value of the tax benefits contributed by the AFFILIATE to the Group and the denominator of which is the value of the total value of such benefits contributed by all CONSOLIDATED AFFILIATES during the year.

For purposes of the foregoing paragraph a deduction or credit generated by a CONSOLIDATED AFFILIATE which is in excess of the amount required to eliminate its separate tax return liability but which is utilized in the computation of the Federal income tax liability of the Group shall be deemed to be a tax benefit contributed by the CONSOLIDATED AFFILIATE to the Group. The value of a deduction which constitutes such a benefit shall be determined by applying the current corporate income tax rate, presently 46 percent, to the amount for the deduction. The value of a credit that constitutes such a benefit shall be the tax savings, currently 100 percent thereof. The value of capital losses used to offset capital gains shall be computed at the then current rate appliable to capital gains for corporations.

4. Payment of Estimated Taxes. Prior to the paying and filing of estimated consolidated tax declaration by UNITIL, each of the AFFILIATES included in such estimated tax declaration shall pay to UNITIL the amount, if any, of the estimated Federal income tax for which the AFFILIATE would have been liable for that year, computed as though that AFFILIATE had filed a separate estimated tax declaration for such year.

5. Tax Adjustments. In the event of any adjustments to the consolidated tax return as filed (by reason of an amended return, a claim for refund or an audit by the Internal Revenue Service), the liability, if any, of each of the AFFILIATES under Sections 2, 3, and 4 shall be redetermined to give effect to any such adjustment as if it had been made as part of the original computation of tax liability, and payments between UNITIL and the appropriate AFFILIATES shall be made within 120 days after any such payments are made or refunds are received, or, in the case of contested proceedings, within 120 days after a final determination of the contest.

Interest and penalties, if any, attributable to such an adjustment shall be paid by each AFFILIATE to UNITIL in proportion to the increase in such AFFILIATE'S separate return tax liability that is required to be paid to UNITIL, as computed under Section 2.

6. Subsidiaries of Affiliates. If at any time, any of the AFFILIATES acquire or creates one or more subsidiary corporations that are includable corporations of the Group, they shall be subject to this Agreement and all references to the AFFILIATES herein shall be interpreted to include such subsidiaries as a group.

7. Successors. This Agreement shall be binding on and inure to the benefit of any successor, by merger, acquisition of assets or otherwise, to any of the parties hereto (including but not limited to any successor of UNITIL or any of the AFFILIATES succeeding to the tax attributes of such corporation under section 381 of the Code) to the same extent as if such successor had been an original party to this Agreement.

8. Affiliates' Liability for Separate Return Years. If any of the AFFILIATES leaves the Group and files separate Federal income tax returns, within 120 days of the end of each of the first fifteen taxable years for which it files such returns, it shall pay to UNITIL the excess, if any, of (A) Federal income tax that such AFFILIATE would have paid for such year (on a separate return basis giving effect to its net operating loss carryovers) if it never had been a

member of the Group, over (b) the amount of Federal income tax such AFFILIATE has actually paid or will actually pay for such years.

9. Examples of Calculations. Attached hereto and made part hereof, as "Appendix A To Tax Sharing Agreement By And Between UNITIL Corporation And Its Affiliated Companies", are illustrative examples of the matters contained herein.

IN WITNESS WHEREOF, the duly authorized repsesentatives of the parties hereto have set their hands this tenth day of September, 1985.

UNITIL CORPORATION

By ______
Its President

EXETER & HAMPTON ELECTRIC COMPANY

By ______
Its President

CONCORD ELECTRIC COMPANY

By ______
Its President

UNITIL POWER CORP.

By ______
Its President

UNITIL SERVICE CORP.

By ______
Its President

APPENDIX A TO TAX SHARING AGREEMENT
BY AND BETWEEN UNITIL CORPORATION AND ITS
AFFILIATED COMPANIES

The allocation agreement follows the Internal Revenue Service regulations for "basic" and "supplemental" allocation of consolidated return liability and benefits.

The "basic" method used to allocate UNITIL'S liability shown on the consolidated return is provided by Internal Revenue Code section 1552(a) and provides for allocation based on the amount of tax liability calculated on a separate return basis.

The "supplemental" method provides that the tax savings of credits and deductions in excess of the amount of an individual company can use, but which can be used in consolidations, is allocated among the members supplying the savings and the benefiting members reimburse them.

For example, assume that a three member group has consolidated taxable income and consolidated tax liability of $200,000 and $100,000 respectively. The individual members, A, B, and C have separate return taxable income (loss) of $150,000 $100,000 and $(50,000) and the individual members have separate return liabilities of $75,000, $50,000 and none, respectively. (Loss members are deemed to have a zero tax liability). Under the proposed method, the individual tax liability and benefit is allocated as follows:

Member	A	B	C
Taxable income (loss)	$150,000	$100,000	$(50,000)
Separate Tax Liability	75,000	50,000	none
Percent of Total ($125,000)	60%	40%	0%
Consolidated Tax Allocation	60,000	40,000	none
Separate Tax Liability	75,000	50,000	0
Less Conslidated Tax	60,000	40,000	0
	15,000	10,000	0
	100%	100%	
Supplemental Allocation	15,000	10,000	0
Benefits paid to C	$(15,000)	$(10,000)	$(25,000)

Regulation 1.1502-33(d) provides the "supplemental" method of allocating tax liability in order to permit members to receive reimbursement for contributing tax deductions or credits to the group. The method adopted by the Company and outlined at Regulation 1.1502-33(2)(ii) provides for immediate reimbursement for the tax year involved. The steps are as follows:

(1) Tax liability is allocated to the members by the basic method outlined above.

(2) Each member with a separate company tax will be allocated 100% of the excess of its separate return liability over its share of the consolidated liability under step (1).

(3) The amounts allocated to benefiting members under Step 2 are credited to the members supplying the capital losses, deductions, credits, or other items to which the savings are attributable. for this purpose, an amount generated by a member which is in excess of the amount required to eliminate its own separate return tax liability and which is utilized in the computation of the Federal income tax liability of the group shall be deemed to be a tax benefit contributed by the member to the group.

In some years the Step 2 savings to be credited may be less than the total tax savings items available for use. In such a case, the savings shall be attributed to tax savings items in the order that they are used on the consolidated return and in an amount equal to the savings actually realized.

Under this method, capital losses would normally be used first to the extent there are capital gains, since these items are netted in order to reach income, and are used before any deductions or credits are taken into account. The value of the capital loss would be the current rate of tax for capital gain income of the loss. The next item to be used would be deductions resulting in a current year operating loss, and these would be valued at the marginal rate of tax on the income they offset. This is normally 46 percent under current law, but would be less for income under $100,000, which falls in to the graduated tax brackets Under Reg. 1.1502-33(d)(2), the amount of each graduated rate bracket is apportioned equally by dividing that amount by the number of corporations that were members of the group. Additionally, an alternative is to allocate the amount of each graduated rate bracket based on a election made by each of the companies' and included with that year's tax return. Operating loss carryovers would be used next, and finally credits would be used. Credits will be valued at 100 percent, since they result in dollar for dollar savings. Where the total amount of an item is not used, the savings will be allocated to each member in proportion to his share of the total of that benefit available from all members of the consolidated group.

(4) Benefiting members will reimburse the other members prior to the filing of the consolidated tax return..

A more complicated situation is presented when there are several loss companies. Assume that the facts are the same as above except that there are three loss companies: C, D and E with the following tax savings items:

	C	D	E
Capital Loss	0	5,000	0
Current Operating Loss	5,000	0	3,000
Operating Loss Carryover	0	10,000	0
Credits	4,000	8,000	4,000

Allocation of the $25,000 benefit from Step (2) would proceed as follows:

	C	D	E	Remaining Benefit
Captial Gains @ 28%	0	1,400	0	23,600
Current Operating Loss Offsetting 46% Income	2,300	0	1,380	19,920
Operating Loss Carryover Offsetting 46% Income		4,600		15,320
Credits @ 100% (proportionate)	3,830	7,660	3,830	0
Total Allocated	6,130	13,660	5,210	0

Thus companies A and B would reimburse C, D and E for the above amounts. There will be credit carryovers for C, D, and E of $170, $340, and $170, respectively.

Separate Return Liability

The Allocations and reimbursements outlined above use the concept of a "separate return tax liability" as a starting point for allocations. This liability is the amount which a member of the affiliated group would pay if it filed a separate return. It is calculated in three basic steps.

(1) The rules for consolidated return deferred accounting, inventory ajustments, basis determination, basis adjustments, excess losses, earnings and profits, and obligations of members must be applied.

(2) Intercompany dividends are eliminated and no dividend received or paid deduction is allowed on intercompany

dividends.

(3) Adjustments are made for specific items used in the consolidated return which must be divided by some equitable method among the members.

The third step is the subject of this part of the Appendix. Two different approaches may be taken for the apportionment of the limits, deductions, and exemptions used to reach tax liability.

It is recognized that each company is a part of an affiliated group, and that all credits, deductions and limitations must be apportioned in some equitable manner.

Specific Apportionments

(1) Carryovers. On a consolidated basis, items such as operating losses, capital losses, and contributions will be used first from the current year and then carried forward from the oldest year forward until exhausted. It is the intention of the Tax Sharing Agreement, for allocation and reimbursement purposes, that a member shall use its own carryovers first before it is required to reimburse another member for use of its carryover in consolidation, without regard for the fact that the tax regulations for consolidated returns may require a different order.

(2) Contribution Deduction. The amount of the contribution deduction is limited to 10% of consolidated taxable income. Thus the amount allowable may exceed the actual contributions. In order to avoid having a consolidated contribution carryover which is not owned by a member, each member agrees that its deduction be limited to its proportionate share on a separate return basis of the consolidated contribution deduction in a given year, rather than 10% of its separate return income, and that any contribution in excess of such amount be treated as its own carryover.

If the consolidated deduction is greater than the separate deductions of the profitable members (thus permitting a deduction for contributions of a loss member) the excess allowable deduction will be allocated to the loss members in proportion to the excess allowable over their available contributions.

Contribution Illustration

Example A

	A	B	C	Consolidated
Income before contributions	12,000	100	(5,600)	6,500
Contributions-current	400	25	100	
-carryover	300	25		
-available	700	50	100	
10% limit				650
Allowable on SR basis	1,200	10		
Allowable by agreement	644	6		
Carryover by agreement				
-current	-0-	19	100	
-prior	56	25		
Taxable income	11,356	94	(5,600)	5,850

Example B

	A	B	C	Consolidated
Income before contributions	12,000	(100)	(5,400)	6,500
Contributions-current only	200	50	200	
10% limit				650
Available on SR basis	200			200
Excess deduction allowable				250
Allocation by agreement		50	200	
Carryover by agreement		50	200	
Taxable income	11,800	(150)	(5,600)	6,050

(3) Tax Brackets. The members agree that the brackets will first be applied equally to the members with ordinary income. If the allocated amount exceeds income, the excess can be reapplied equally to the other members with remaining income.

(4) I.T.C. Limitation. The limitation on 100% utilization of investment tax credit provided by Internal Revenue Code S46(a)(3), currently $25,000, will be allocated equally among the members with tax liability and available credits, with any excess to be allocated equally to those with remaining liability and credits.

(5) I.T.C. Limit For Used Property. The limitation on used property cost deemed eligible for investment credit, currently $125,000, will be allocated equally among the companies that have used property acquisitions with a ten year recovery life in any year. If a member is unable to utilize all of its allocated amount, the excess will be allocated proportionately to the members with used property acquisitions in excess of their allocated share. If there are insufficient ten year recovery life assets, the remainder will be allocated to five year recovery life assets in a similar manner. Likewise, if there are not enough ten and five year recovery life assets, the remainder of the $100,000 limitation will be allocated equally to members having three year recovery life used property additions.

(6) Future Developments. Any credits, deductions, or other items established by future legislation will be allocated in a manner consistent with the above methods.

The foregoing examples are for illustrative purposes and are not intended to cover all possible situations that may arise.

Unitil Energy Systems, Inc.
Excess Accumulated Deferred Income Tax (ADIT)
At December 31, 2020

COL/LN	(a) Description	(b) Excess ADIT at 12/31/2020
1	Utility Plant Differences	$ (16,742,983)
2	Contributions In Aid of Construction (CIAC)	68,713
3	SFAS 106 - PBOP	1,111,344
4	SFAS 87 - Pensions	(803,338)
5	Debt Discount Expense	(1,547)
6	Bad Debt	33,810
7	Prepaid Property Tax	(207,651)
8	Deferred Rate Case & Restructuring	(68,270)
9	DER Investment	(15,527)
10	Indenture Costs	(46,159)
11	FAS 109 Reg Asset	70,262
12	**Total Excess ADIT**	**$ (16,601,346)**

Unitil Energy Systems, Inc.
Excess Accumulated Deferred Income Tax ARAM Schedule

	(a)	(b)	(c)	(d)	(e)
COL/LN	YEAR	AMOUNT	GROSS-UP	REGULATORY LIABILITY	SOURCE
1	2018	(582,653)	(216,410)	(799,064)	PowerTax Report 257
2	2019	(652,910)	(242,505)	(895,415)	PowerTax Report 257
3	2020	(692,793)	(257,319)	(950,111)	PowerTax Report 257
4	2021	(729,021)	(270,774)	(999,795)	PowerTax Report 257
5	2022	(760,108)	(282,321)	(1,042,429)	PowerTax Report 257
6	2023	(758,595)	(281,759)	(1,040,353)	PowerTax Report 257
7	2024	(768,057)	(285,273)	(1,053,330)	PowerTax Report 257
8	2025	(791,099)	(293,832)	(1,084,930)	PowerTax Report 257
9	2026	(814,832)	(302,647)	(1,117,478)	PowerTax Report 257
10	2027	(839,276)	(311,726)	(1,151,002)	PowerTax Report 257
11	2028	(864,455)	(321,078)	(1,185,533)	PowerTax Report 257
12	2029	(890,388)	(330,710)	(1,221,099)	PowerTax Report 257
13	2030	(872,581)	(324,096)	(1,196,677)	PowerTax Report 257
14	2031	(855,129)	(317,614)	(1,172,743)	PowerTax Report 257
15	2032	(838,026)	(311,262)	(1,149,288)	PowerTax Report 257
16	2033	(821,266)	(305,036)	(1,126,302)	PowerTax Report 257
17	2034	(804,841)	(298,936)	(1,103,776)	PowerTax Report 257
18	2035	(788,744)	(292,957)	(1,081,701)	PowerTax Report 257
19	2036	(772,969)	(287,098)	(1,060,067)	PowerTax Report 257
20	2037	(757,510)	(281,356)	(1,038,865)	PowerTax Report 257
21	2038	(742,359)	(275,729)	(1,018,088)	PowerTax Report 257
22	2039	(203,737)	(75,672)	(279,409)	PowerTax Report 257
23	TOTAL	$ (16,601,346)	$ (6,166,110)	$ (22,767,457)	

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