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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM19-5-000]

Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes

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, NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

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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 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

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.

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 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.

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.

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 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

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

⁴ See 18 CFR 35.24(d)(2).

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 (continued ...)

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 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

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).

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 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

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.

¹⁰ *Id.* at 31,554.

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 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

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).

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

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 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

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.

²⁰ *Id.* PP 14-15.

²¹ *Id.* P 21.

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 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

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.

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 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

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.

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 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

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

²⁶ See generally *Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018, at PP 13-14 (2017); see also *Rates Changes Relating to the Federal Corporate Income Tax (continued ...)*

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 entirety to customers.²⁸ These commenters generally note that, following the passage of

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.

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) (*continued ...*)

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

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

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

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 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

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.

³⁵ APPA and AMP NOI Comments at 7-8.

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 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

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.

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

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 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

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

⁴¹ Avangrid NOI Comments at 5-6.

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

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 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

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).

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 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

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

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

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

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 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).

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

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

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.

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

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 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

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.

⁵⁷ Indicated Transmission Owners NOI Comments at 11-12.

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 deficient ADIT, commenters agree that the Commission should adopt a case-by-case

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; 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.

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 adjustment requirements, these proposed income tax allowance adjustment requirements are intended to satisfy Order No. 144's requirement that the income tax allowance match

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.

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

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

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).

to return excess protected ADIT⁶³ 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 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.

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.

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 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

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).

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 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

⁶⁶ 18 CFR 35.13; 18 CFR 35.24.

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

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

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

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.

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 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

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.

⁷² EEI NOI Comments at 21, n. 36.

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 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

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.

⁷⁵ Consumer Advocates NOI Comments at 10-11.

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 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

⁷⁶ National Grid NOI Comments at 16.

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, 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.

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 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).

b. Stated Rates

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. Proposed Compliance Procedures

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 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 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

⁷⁹ 44 U.S.C. 3507(d).

⁸⁰ 5 CFR 1320.11.

⁸¹ See discussion *infra* Section II.E.

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 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

⁸² 44 U.S.C. 3507(d).

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.

	Number of Respondents (1)	Annual Number of Responses per Respondent (2)	Total Number of Responses (1)*(2)=(3)	Average Burden & Cost Per Response⁸³ (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: $(\$94.28/\text{hour} + \$61.55/\text{hour} + \$66.90/\text{hour} + \$143.68/\text{hour}) \div 4 = \$91.60/\text{hour}$. 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, NE, Room 2A, Washington DC 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.

Issued: November 15, 2018

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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

Appendix A – List of Commenters to NOI

<u>Short Name</u>	<u>Commenter</u>
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.