

169 FERC ¶ 61,139  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Part 35.24

[Docket No. RM19-5-000; Order No. 864]

Public Utility Transmission Rate Changes to Address Accumulated Deferred  
Income Taxes

(Issued November 21, 2019)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is requiring public utility transmission providers with transmission formula rates under an Open Access Transmission Tariff, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for changes caused by the Tax Cuts and Jobs Act of 2017. The Commission is requiring public utilities with transmission formula rates to include a mechanism in those transmission formula rates to deduct any excess accumulated deferred income taxes (ADIT) from or add any deficient ADIT to their rate bases. Public utilities with transmission formula rates are also required to incorporate a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT, respectively. Finally, the Commission is requiring 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. The Commission does not adopt the proposals in the

notice of proposed rulemaking that were applicable to public utilities with transmission stated rates.

EFFECTIVE DATE: This rule will become effective [**Insert\_Date 60 days after date of publication in the FEDERAL REGISTER**].

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SUPPLEMENTARY INFORMATION:

169 FERC ¶ 61,139  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

ORDER NO. 864

FINAL RULE

(Issued November 21, 2019)

TABLE OF CONTENTS

	<u>Paragraph Numbers</u>
I. Introduction .....	<a href="#">1.</a>
II. Background .....	<a href="#">7.</a>
A. Overview of Public Utility Transmission Rates .....	<a href="#">9.</a>
B. Order No. 144 and 18 CFR 35.24 .....	<a href="#">12.</a>
C. Notice of Inquiry .....	<a href="#">14.</a>
D. Notice of Proposed Rulemaking .....	<a href="#">15.</a>
III. Discussion.....	<a href="#">20.</a>
A. Formula Rates .....	<a href="#">20.</a>
1. Ensuring Rate Base Neutrality .....	<a href="#">20.</a>
2. Return or Recovery of Excess or Deficient ADIT .....	<a href="#">32.</a>
3. Support for Excess and Deficient ADIT Calculation and Amortization.....	<a href="#">52.</a>
B. Stated Rates .....	<a href="#">75.</a>
1. NOPR.....	<a href="#">75.</a>
2. Comments .....	<a href="#">76.</a>
3. Commission Determination.....	<a href="#">86.</a>
C. Compliance Filings.....	<a href="#">96.</a>
1. NOPR.....	<a href="#">96.</a>
2. Comments .....	<a href="#">98.</a>
3. Commission Determination.....	<a href="#">100.</a>

D. Other Comments Relating to Issues Not Addressed in the NOPR ..... [105.](#)  
 1. Comments ..... [105.](#)  
 2. Commission Determination ..... [112.](#)  
 IV. Information Collection Statement ..... [116.](#)  
 V. Environmental Analysis ..... [122.](#)  
 VI. Regulatory Flexibility Act..... [123.](#)  
 VII. Document Availability..... [127.](#)  
 VIII. Effective Date and Congressional Notification ..... [130.](#)

**I. Introduction**

1. In this final rule, we require, pursuant to section 206 of the Federal Power Act<sup>1</sup> (FPA), all public utility transmission providers with transmission formula rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for changes caused by the Tax Cuts and Jobs Act of 2017.<sup>2</sup> The requirements set forth in this final rule are designed to address the effects of the Tax Cuts and Jobs Act on the accumulated deferred income taxes (ADIT) reflected in transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule of public utilities.

2. The requirements adopted in this final rule for public utilities with transmission formula rates track the proposals set forth in the notice of proposed rulemaking (NOPR)

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<sup>1</sup> See 16 U.S.C. 824e (2018).

<sup>2</sup> 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).

issued in this proceeding on November 15, 2018,<sup>3</sup> with certain modifications. However, as discussed below, we decline to adopt the requirements proposed in the NOPR that were applicable to public utilities with transmission stated rates. For transmission stated rates, we instead find that a public utility's next rate proceeding is the most appropriate place to address excess or deficient ADIT resulting from the Tax Cuts and Jobs Act.

3. We are adopting the requirements in the NOPR for 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 (Rate Base Adjustment Mechanism). This requirement will ensure that a public utility's 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).

4. We also adopt the NOPR proposal 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 (Income Tax Allowance Adjustment Mechanism). This requirement will ensure that public utilities with transmission formula rates return excess ADIT to or recover deficient ADIT from ratepayers.

5. Finally, we adopt the NOPR proposal 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 (ADIT

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<sup>3</sup> *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, 83 FR 59,331 (Nov. 23, 2018), 165 FERC ¶ 61,117 (2018).

Worksheet). This requirement 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. However, we modify the NOPR proposal that public utilities with transmission formula rates submit an unpopulated worksheet in their compliance filings and instead require the worksheet to be populated. The populated worksheet will assist the Commission in analyzing the worksheet's function and help the Commission to assess whether the worksheet provides adequate transparency.

6. We require each public utility with transmission formula rates to submit a filing to demonstrate compliance with the final rule, including revisions to its transmission formula rates, as necessary, within the later of (1) 30 days of the effective date of this final rule or (2) the public utility's next annual informational filing following the issuance of this final rule.

## **II. Background**

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 compute income taxes owed to the IRS based on a 21 percent tax rate. The tax rate reduction will result in less federal corporate income tax expense going forward.<sup>4</sup>

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<sup>4</sup> See Tax Cuts and Jobs Act, Sec. 13001, 131 Stat. at 2096.

8. Importantly, the tax rate reduction will also result in a reduction in ADIT liabilities and ADIT assets on the books of public utilities. ADIT balances are accumulated on the regulated books and records of public utilities based on the requirements of the Uniform System of Accounts (USofA). 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.<sup>5</sup> 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.<sup>6</sup> Public utilities are required to adjust their ADIT assets and ADIT liabilities to reflect the effect of the change in tax rates in the period that the change is enacted.<sup>7</sup>

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<sup>5</sup> See 18 CFR 35.24(d)(2) (2019) (“Timing differences means differences between the amounts of expenses or revenues recognized for income tax purposes and amounts of expenses or revenues recognized for ratemaking purposes, which differences arise in one time period and reverse in one or more other time periods so that the total amounts of expenses or revenues recognized for income tax purposes and for ratemaking purposes are equal.”).

<sup>6</sup> The converse is true for public utilities that have ADIT assets.

<sup>7</sup> See 18 CFR 35.24 and 18 CFR 154.305 (2019); 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) (cross-referenced at 18 FERC ¶ 61,163), *order on reh’g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982) (cross-referenced at 15 FERC ¶ 61,142).

**A. 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.<sup>8</sup> Public utilities calculate their cost of service-based transmission rates predominately by using formula rates or stated rates. These transmission 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.

10. When a public utility seeks to change its transmission stated rate, it files a rate case at the Commission to establish the cost of service revenue requirement, allocate costs to various customer groups, and set its rates. As an alternative, the Commission permits a public utility to establish its rates through a formula, 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.

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<sup>8</sup> See *Pub. Sys. v. FERC*, 709 F.2d 73, 75 (D.C. Cir. 1983).



11. Public utilities must seek changes to their transmission stated rates or formula rates through filings with the Commission under section 205 of the FPA,<sup>9</sup> while the Commission and third parties can challenge a rate in a proceeding initiated under section 206 of the FPA.

**B. 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.<sup>10</sup> 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.<sup>11</sup>

13. The Commission established its 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.”<sup>12</sup> 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

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<sup>9</sup> See 16 U.S.C. 824d.

<sup>10</sup> Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522, 31,530.

<sup>11</sup> *Id.* at 31,554.

<sup>12</sup> *Id.* at 31,530.

ADIT has been created as a result of changes in tax rates.<sup>13</sup> 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.”<sup>14</sup> The Commission required that such mechanism be consistent with a Commission-approved ratemaking method made specifically applicable to the rate applicant.<sup>15</sup> Where no ratemaking method has been made specifically applicable, the Commission required the rate applicant to advance some method in its next rate case.<sup>16</sup> The Commission stated that it would determine the appropriateness of any proposed method on a case-by-case basis, but as the Commission resolved the issue in a number of cases, a method with wide applicability may be adopted.<sup>17</sup> The Commission codified the requirements of Order No. 144 in its regulations in 18 CFR 35.24.<sup>18</sup>

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<sup>13</sup> *Id.* at 31,519.

<sup>14</sup> *Id.* at 31,560. *See also* 18 CFR 35.24(c)(1)(ii); 18 CFR 35.24(c)(2).

<sup>15</sup> Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(3).

<sup>16</sup> Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

<sup>17</sup> *Id.* *See also* 18 CFR 35.24(c)(3).

<sup>18</sup> 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).

**C. Notice of Inquiry**

14. 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 of the Tax Cuts and Jobs Act on ADIT. The Commission noted that the Tax Cuts and Jobs Act's reduction of the federal corporate income tax rate would potentially create excess or deficient ADIT on the books of public utilities and sought comment on the appropriate treatment of excess and deficient ADIT in the transmission rates of public utilities.<sup>19</sup>

**D. Notice of Proposed Rulemaking**

15. In response to the Tax Cuts and Jobs Act, on November 15, 2018, the Commission issued the NOPR to address the fact that many, if not most, transmission formula rates of public utilities do not 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. The Commission explained that, because the vast majority of public utilities have transitioned from stated rates to formula rates, 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 Commission further explained that a public utility's transmission formula rate should include mechanisms that accurately reflect excess or deficient ADIT in a public utility's

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<sup>19</sup> *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 (2018) (NOI).

cost of transmission service during the annual updates of the rest of the revenue requirement.<sup>20</sup>

16. As a result, the Commission proposed two requirements for public utilities with transmission formula rates 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) the Rate Base Adjustment Mechanism, which preserves rate base neutrality through the removal of excess ADIT from or addition of deficient ADIT to rate base; and (2) the Income Tax Allowance Adjustment Mechanism, which returns excess ADIT to or recovery of deficient ADIT from ratepayers. Additionally, to provide greater transparency, the Commission proposed to require all public utilities with transmission formula rates to incorporate into their transmission formula rates the ADIT Worksheet, which is a new permanent worksheet that will annually track information related to excess or deficient ADIT. The Commission also proposed that the changes to transmission formula rates made in response to these requirements must be applicable to any future changes to tax rates that give rise to excess or deficient ADIT.<sup>21</sup>

17. Regarding public utilities with transmission stated rates, the Commission proposed 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

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<sup>20</sup> NOPR, 165 FERC ¶ 61,117 at PP 15-16.

<sup>21</sup> *Id.* PP 17, 26.

who contributed to the related ADIT accounts receive the benefit of the Tax Cuts and Jobs Act, the Commission proposed 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.<sup>22</sup>

18. Finally, the Commission proposed that, similar to the Commission's actions following the Tax Cuts and Jobs Act,<sup>23</sup> compliance filings made in response to this final rule's requirements may be considered on a single-issue basis given the limited scope of the proposed requirements.<sup>24</sup>

19. The Commission received comments from 14 entities in response to the NOPR.<sup>25</sup> In general, commenters supported the proposals in the NOPR relating to public utilities with transmission formula rates. However, commenters generally disagreed with the NOPR proposals relating to public utilities with transmission stated rates.

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<sup>22</sup> *Id.* P 18.

<sup>23</sup> See *AEP Appalachian Transmission Co., Inc.*, 162 FERC ¶ 61,225 (2018); *Alcoa Power Generating Inc.—Long Sault Division*, 162 FERC ¶ 61,224 (2018) (Tax Rate Related Orders to Show Cause).

<sup>24</sup> 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 Rate for Public Utilities*, Order No. 475, FERC Stats. & Regs. ¶ 30,752 (cross-referenced at 39 FERC ¶ 61,357), *order on reh'g*, 41 FERC ¶ 61,029 (1987) (cross-referenced at 41 FERC ¶ 61,029) (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).

<sup>25</sup> A list of commenters to the NOPR and the abbreviated names used in this final rule appears in Appendix A.

### **III. Discussion**

#### **A. Formula Rates**

##### **1. Ensuring Rate Base Neutrality**

###### **a. NOPR**

20. In the NOPR, the Commission proposed to require all public utilities with transmission formula rates to include the Rate Base Adjustment Mechanism, which is a mechanism in their formula rates that deducts any excess ADIT from or adds any deficient ADIT to their rate bases, in order to preserve rate base neutrality. The Commission did not propose to prescribe a specific adjustment mechanism that would apply to all public utilities with transmission formula rates; rather, the Commission proposed to adopt a case-by-case approach that would allow public utilities to propose any necessary changes to their formula rates on an individual basis. The proposed case-by-case approach also included the ability for a public utility with transmission formula rates to demonstrate that its formula rate already meets the Rate Base Adjustment Mechanism requirements described in the NOPR.<sup>26</sup>

21. Additionally, the Commission did not propose new accounts for recording excess or deficient ADIT. Instead, the Commission noted that it had previously issued guidance on this accounting topic, finding that public utilities are required to record a regulatory asset

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<sup>26</sup> NOPR, 165 FERC ¶ 61,117 at PP 15-16.

(Account 182.3) associated with deficient ADIT or a regulatory liability (Account 254) associated with excess ADIT.<sup>27</sup>

**b. Comments**

22. Commenters generally supported the NOPR requirement to include mechanisms in the transmission formula rates of public utilities that adjust ADIT balances for any excess or deficient ADIT amounts in order to preserve rate base neutrality.<sup>28</sup> Similarly, commenters generally support the NOPR requirement that the Commission review the adjustments on a case-by-case basis and allow public utilities to demonstrate that their existing formula rates maintain rate base neutrality.<sup>29</sup> Industrial Customers assert that the underlying principle of tax normalization continues to be fully applicable and, given the insufficient mechanisms to reflect excess ADIT, provides ample support for the NOPR.<sup>30</sup> NRECA notes that its support is not intended to imply that additional Commission actions will not be needed for some public utilities in compliance filings and subsequent

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<sup>27</sup> See *Accounting For Income Taxes*, Docket No. AI93-5-000 (April 23, 1993), <http://www.ferc.gov/enforcement/acct-matts/docs/AI93-5-000.asp> (Accounting for Income Taxes Guidance).

<sup>28</sup> See Eversource Comments at 7; AMP Comments at 2-3; EEI Comments at 4; Industrial Customers Comments at 4-5; NRECA Comments at 3-4.

<sup>29</sup> AMP Comments at 2-3; EEI Comments at 4; Eversource Comments at 9; MISO Transmission Owners Comments at 6-7.

<sup>30</sup> Industrial Customers Comments at 5.

rate proceedings because the final rule may not address all details required to ensure just and reasonable rates.<sup>31</sup>

23. AMP states that the Commission should provide further guidance in, or use caution in reviewing compliance filings to, the final rule regarding transparency in excess and deficient ADIT adjustment mechanisms. AMP argues that the Commission-accepted method proposed by ITC Companies and Ameren Services Company erodes transparency because it requires manipulation of excess and deficient ADIT inputs prior to their inclusion in the formula rate.<sup>32</sup> AMP argues this also creates risk of error. AMP asserts that accounting for excess and deficient ADIT within the same ADIT accounts where the ADIT would have been recorded but for the change in tax rate, as described in its comments to the NOI, provides greater transparency.<sup>33</sup>

24. In contrast, MISO Transmission Owners contend that the Commission should rely on existing formula rate mechanisms to preserve rate base neutrality, such as the ones found in the formula rates of the MISO Transmission Owners that exclude excess ADIT from inputs to the formula rates and require that rate base be adjusted as excess and deficient ADIT are amortized.<sup>34</sup>

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<sup>31</sup> NRECA Comments at 3-4.

<sup>32</sup> AMP Comments at 3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,374 (2015); *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163 (2018)).

<sup>33</sup> AMP Comments at 2-4.

<sup>34</sup> MISO Transmission Owners Comments at 6-7.



25. Eversource asserts that, where possible, any adjustments to preserve rate base neutrality should be done through existing mechanisms so long as they allow for the inclusion of Financial Accounting Standards Board Accounting Standards Codification (ASC) No. 740 (ASC 740) income tax regulatory deferral in rate base. To this end, Eversource agrees with the Commission that public utilities should record excess ADIT in Account 254 (Other Regulatory Liabilities) and deficient ADIT in Account 182.3 (Other Regulatory Assets) and notes that this requirement is consistent with USofA instructions.<sup>35</sup>

26. DEMEC requests that the Commission clarify that this final rule is intended to be consistent with the USofA, which only permits booking of regulatory assets and liabilities to Accounts 182.3 and 254 when those amounts cannot be booked to other accounts. DEMEC asserts that this will ensure that public utilities do not recover assets booked to Account 182.3 that are unrelated to excess or deficient ADIT that have been authorized for recovery by the Commission. DEMEC asserts that sufficient transparency could also be achieved by booking excess and deficient ADIT to new accounts, subaccounts of 182.3 and 254, or as subaccounts of Accounts 190, 281, and 283.<sup>36</sup>

27. DEMEC asserts that the final rule should incorporate the proper method for calculating any excess or deficient amounts of ADIT, which is to multiply ADIT balances

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<sup>35</sup> Eversource Comments at 8-9.

<sup>36</sup> DEMEC Comments at 7-10.

as of December 31, 2017 by the ratio of the new tax rate, 21 percent, to the tax rate used to calculate the ADIT balance.<sup>37</sup>

**c. Commission Determination**

28. We adopt the proposal to require all public utilities with transmission formula rates to include the Rate Base Adjustment Mechanism in their transmission formula rates. The Rate Base Adjustment Mechanism is a mechanism by which public utilities deduct any excess ADIT from or add any deficient ADIT to their rate bases. Without such a mechanism, public utilities with transmission formula rates would violate the Commission's normalization requirements by overstating or understating their rate bases by the amount of any excess or deficient ADIT, respectively, generated as a result of a change to tax rates. Adopting this requirement will ensure that all public utilities with transmission formula rates offset their rate bases by any unamortized excess and deficient ADIT, thus maintaining rate base neutrality.

29. We affirm our statement in the NOPR that any Rate Base Adjustment Mechanism proposed in compliance with this rule must apply to any future changes to tax rates that give rise to excess or deficient ADIT.<sup>38</sup> We also find that any such mechanism should apply to state and local tax rate changes that give rise to excess and deficient ADIT. This general applicability will reduce the burden on public utilities with transmission formula

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<sup>37</sup> *Id.* at 10.

<sup>38</sup> NOPR, 165 FERC ¶ 61,117 at P 26.

rates in the long-term by avoiding the need for such public utilities to propose a new mechanism after every income tax rate change.

30. As proposed in the NOPR, we do not require that public utilities with transmission formula rates adopt a specific mechanism. Rather, we will allow public utilities to propose changes to their formula rates on a case-by-case basis. Similarly, public utilities may also demonstrate that their formula rates already meet the Rate Base Adjustment Mechanism requirements described in this final rule. Thus, because compliance filings will be evaluated on a case-by-case basis, we will not pre-approve or reject any specific adjustment method at this time as certain commenters suggest. However, in response to AMP's concern regarding transparency, we clarify that public utilities must clearly demonstrate in their compliance filings how their proposed mechanisms adjust rate base for excess and deficient ADIT through their transmission formula rates.<sup>39</sup>

31. We also find that, as noted in the NOPR, the Commission's previous accounting guidance interpreting the USofA regarding accounting for excess and deficient ADIT remains applicable.<sup>40</sup> In that guidance, the Commission stated that public utilities are required to record a regulatory asset (Account 182.3) associated with deficient ADIT or

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<sup>39</sup> We note that the ADIT Worksheet required in this final rule will also address transparency concerns regarding how public utilities with transmission formula rates adjust their rate bases for excess and deficient ADIT.

<sup>40</sup> NOPR, 165 FERC ¶ 61,117 at P 28.

regulatory liability (Account 254) associated with excess ADIT.<sup>41</sup> As a result, we do not propose any changes to that accounting guidance.

## **2. Return or Recovery of Excess or Deficient ADIT**

### **a. NOPR**

32. The Commission proposed to require all public utilities with transmission formula rates to include the Income Tax Allowance Adjustment Mechanism in their formula rates. The Income Tax Allowance Adjustment Mechanism is a mechanism by which public utilities decrease or increase the income tax components of their formula rates by any amortized excess or deficient ADIT, respectively. Consistent with other aspects of the NOPR, the Commission proposed to review any such mechanisms on a case-by-case basis rather than proposing a single method for public utilities with transmission formula rates to adjust their income tax allowances for any amortized excess or deficient ADIT.<sup>42</sup>

33. Regarding the period over which the amortization of excess or deficient ADIT must occur, the Commission stated that public utilities should follow the guidance provided in the Tax Cuts and Jobs Act, where available. For certain excess and deficient ADIT, the Commission noted that the Tax Cuts and Jobs Act provides a method of general applicability and requires public utilities to return this excess ADIT no more rapidly than over the life of the underlying asset using the Average Rate Assumption

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<sup>41</sup> Accounting for Income Taxes Guidance at 3, 8.

<sup>42</sup> NOPR, 165 FERC ¶ 61,117 at PP 36-37.

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.<sup>43</sup> This excess and deficient ADIT is considered "protected." In contrast, the Tax Cuts and Jobs Act does not specify what method public utilities must use for excess or deficient ADIT without such normalization requirements (i.e., "unprotected"), and therefore, the Commission proposed that it evaluate amortization periods for unprotected excess or deficient ADIT on a case-by-case basis.<sup>44</sup>

34. The Commission did not propose any specific requirements for transmission formula rates to ensure that customers receive the entire balance of excess ADIT caused by the Tax Cuts and Jobs Act (including the excess ADIT for the period beginning January 1, 2018 until the date a tariff revision to include the excess ADIT in the transmission formula rate becomes effective). Rather, the Commission explained that public utilities should not amortize an excess ADIT regulatory liability for accounting purposes until the Commission approves the ADIT regulatory liability for the public utility's transmission formula rate.<sup>45</sup> Accordingly, the Commission stated that excess ADIT scheduled to be returned to customers prior to the effective date of any tariff

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<sup>43</sup> 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 & Water Div. v. FERC*, 707 F.2d 565, 569 (D.C. Cir. 1983).

<sup>44</sup> NOPR, 165 FERC ¶ 61,117 at P 38.

<sup>45</sup> *Id.* P 39.

revisions made in compliance with the final rule should still be returned 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.<sup>46</sup>

**b. Comments**

35. Most commenters agree with the Commission's proposal to require a mechanism in transmission formula rates that increases or decreases income tax allowances for any excess or deficient ADIT, respectively, and that such a mechanism should be evaluated on a case-by-case basis.<sup>47</sup> While agreeing with the basis for such a mechanism, AMP argues that the Commission should narrow the parameters of acceptable approaches by requiring the amortization of excess or deficient ADIT to occur within existing income tax expense and tax gross up calculations. Provided that such mechanisms are incorporated in existing income tax calculations, AMP also asserts that these mechanisms could be used for excess and deficient ADIT caused by state and local tax rate changes and that this will avoid redundant revisions that will be necessary if the Commission accepts mechanisms narrowly tailored to federal tax rate changes.<sup>48</sup>

36. Regarding the amortization of any excess or deficient ADIT, commenters also generally agree with the Commission that public utilities should rely on the guidance in

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<sup>46</sup> *Id.*

<sup>47</sup> AMP Comments at 2-3; Eversource Comments at 10-11; NRECA Comments at 4; APPA Comments at 2; Industrial Customers Comments at 4-5.

<sup>48</sup> AMP Comments at 4-8.

the Tax Cuts and Jobs Act for protected excess ADIT.<sup>49</sup> Concerning unprotected excess ADIT, most commenters agree with the Commission that any amortization periods should be evaluated on a case-by-case basis.<sup>50</sup> DEMEC agrees with the Commission “that those customers who contributed to the related ADIT accounts [should] receive the benefit of the Tax Cuts and Jobs Act.”<sup>51</sup> As such, DEMEC argues that the Commission must reject any attempt to unduly delay return of unprotected excess ADIT to avoid any cross-generational cost allocation issues.<sup>52</sup>

37. However, certain commenters disagree with the Commission’s statement 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,” to the extent the Commission is limiting its proposed case-by-case approach and shortening the range of acceptable amortization periods for unprotected excess and deficient ADIT to the “fastest allowable method.”<sup>53</sup> Accordingly, EEI and MISO Transmission Owners seek clarification that the

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<sup>49</sup> EEI Comments at 4-5; Eversource Comments at 12; MISO Transmission Owners Comments at 10-12.

<sup>50</sup> EEI Comments at 5-6; Eversource Comments at 12-13; MISO Transmission Owners Comments at 12-13; APPA Comments at 8; TAPS Comments at 6; Xcel Comments at 11-13.

<sup>51</sup> DEMEC Comments at 10.

<sup>52</sup> *Id.* at 10-11.

<sup>53</sup> EEI Comments at 4-6; MISO Transmission Owners Comments at 15-16; Xcel

final rule will not require public utilities to use a shortened amortization period for unprotected excess or deficient ADIT and that the Commission will evaluate amortization periods on a case-by-case basis.<sup>54</sup> EEI asserts that the diversity of assets giving rise to unprotected ADIT supports a case-by-case approach, as well as many other factors, including the desire to avoid different return or recovery periods at the state level.<sup>55</sup> MISO Transmission Owners also argue that a shortened amortization period could cause cash flow issues.<sup>56</sup> Xcel argues that excess and deficient ADIT should be amortized consistently across a public utility's various rate jurisdictions if possible.<sup>57</sup>

38. Furthermore, EEI and MISO Transmission Owners request that the Commission find that an amortization period matching the life of the asset that gave rise to the unprotected excess or deficient ADIT is *per se* just and reasonable.<sup>58</sup> MISO Transmission Owners assert that such a finding would not prevent public utilities from using shorter amortization periods, would increase administrative efficiency by minimizing future disputes, and is consistent with Commission precedent and the

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Comments at 12-13.

<sup>54</sup> EEI Comments at 4-6; MISO Transmission Owners Comments at 15-16.

<sup>55</sup> EEI Comments at 5.

<sup>56</sup> MISO Transmission Owners Comments at 14.

<sup>57</sup> Xcel Comments at 12.

<sup>58</sup> EEI Comments at 5-6.



amortization approach established in Order Nos. 144 and 144-A.<sup>59</sup> Similarly, Eversource and Xcel argue that the amortization period for unprotected excess and deficient ADIT should be based on the approximate average life of the assets that gave rise to that excess or deficiency. Eversource argues that this is appropriate because the average remaining lives of assets are unique and distinct to each utility.<sup>60</sup> Xcel notes that the Commission accepted its operating company's, Southwestern Public Service Company (SPS), proposed five-year amortization period for unprotected excess and deficient ADIT and asserts that SPS's proposal takes into account the varying lives of its assets and intergenerational equity issues.<sup>61</sup>

39. Several commenters argue that the Commission should clarify that any such mechanism for transmission formula rates does not relieve a public utility of its obligation to submit an FPA section 205 filing to obtain Commission approval prior to reflecting regulatory assets or liabilities in rates. These commenters assert that Commission precedent supports a requirement for pre-approval.<sup>62</sup> DEMEC adds that

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<sup>59</sup> MISO Transmission Owners Comments at 13-14.

<sup>60</sup> Eversource Comments at 12.

<sup>61</sup> Xcel Comments at 12.

<sup>62</sup> AMP Comments at 8; APPA Comments at 8-9; DEMEC Comments at 5-6; TAPS Comments at 4-5.

such a requirement would be consistent with limits the Commission has placed on recovery of excess or deficient ADIT incurred prior to the Tax Cuts and Jobs Act.<sup>63</sup>

40. TAPS contends that, without a requirement for pre-approval, the NOPR could be read as providing public utilities unrestricted discretion to amortize a regulatory asset or liability over a period of their discretion.<sup>64</sup> Furthermore, TAPS argues, pre-approval of assets or liabilities holding excess or deficient ADIT will ensure rates are just and reasonable to accommodate the case-specific considerations of excess and deficient ADIT. TAPS additionally argues that a pre-approval requirement is similar to requirements for changes in depreciation rates.<sup>65</sup> TAPS contends that unlike other formula rate inputs that are verifiable and updated annually, the appropriate amortization period for excess and deficient ADIT is subjective. TAPS contends that the absence of a pre-approval requirement would violate the FPA by moving the burden to show the amortization of excess or deficient ADIT is just and reasonable from the public utility to the Commission or a customer to show that the proposed amortization is unjust and unreasonable.<sup>66</sup> APPA asserts that the Commission should require a footnote or other provision in transmission formula rates stating this obligation consistent with prior

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<sup>63</sup> DEMEC Comments at 6.

<sup>64</sup> TAPS Comments at 4.

<sup>65</sup> *Id.* at 7.

<sup>66</sup> *Id.*

Commission precedent.<sup>67</sup> APPA also recommends that the Commission clarify that the final rule does not allow recovery of past period deficient ADIT and does not modify or supersede the guidance the Commission provided in *Commonwealth Edison* regarding Order No. 144.<sup>68</sup>

41. In contrast, Eversource urges the Commission to allow public utilities to propose a return or recovery mechanism that adjusts the income tax allowance for any excess or deficient ADIT stemming from not only the Tax Cuts and Jobs Act but also future changes in federal and state income taxes without the need for future FPA section 205 filings.<sup>69</sup>

**c. Commission Determination**

42. We adopt the NOPR proposal to require all public utilities with transmission formula rates to include the Income Tax Allowance Adjustment Mechanism in their formula rates. Under this mechanism, public utilities decrease or increase the income tax components of their formula rates by any amortized excess or deficient ADIT,

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<sup>67</sup> APPA Comments at 8-9 (citing *So. Cal. Edison Co.*, 166 FERC ¶ 61,006, at P 24 (2019); *PJM Interconnection, L.L.C.*, 165 FERC ¶ 61,275, at P 28 (2018) (*PJM*)).

<sup>68</sup> APPA Comments at 7 (citing *Commonwealth Edison Co., et al.*, 164 FERC ¶ 61,172 (2018) (*Commonwealth Edison*)). In *Commonwealth Edison*, the Commission announced a limited, one-year compliance period in which public utilities could file to recover past ADIT if the public utility did not file a rate case subsequent to the Commission's issuance of Order No. 144 or if the public utility properly preserved its right to recover past ADIT through settlement terms. *Commonwealth Edison*, 164 FERC ¶ 61,172 at P 132.

<sup>69</sup> Eversource Comments at 8, 11.

respectively. This mechanism will enable a public utility with transmission formula rates to “compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes” following changes in income tax rates, in compliance with Commission regulations and Order No. 144.<sup>70</sup>

43. While the Commission has accepted revisions to certain public utilities’ transmission formula rates that adjust their income tax allowances as proposed by AMP (i.e., within the existing income tax allowance calculation), we decline to narrow the range of possible approaches here. Consistent with other requirements in this final rule, we adopt the NOPR proposal to evaluate all such mechanisms on a case-by-case basis. Public utilities may also demonstrate that their formula rates already meet the Income Tax Allowance Adjustment Mechanism requirements described in this final rule. Additionally, any proposed mechanism must remain applicable to any future changes to tax rates that give rise to excess or deficient ADIT, including changes to state and local tax rates. We agree with AMP that the general applicability of a mechanism will avoid redundant revisions to transmission formula rates that might otherwise follow every tax rate change.

44. Regarding the period over which excess and deficient ADIT are amortized, we affirm our statement in the NOPR that public utilities should follow the guidance provided in the Tax Cuts and Jobs Act for protected excess ADIT. The Tax Cuts and

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<sup>70</sup> 18 CFR 35.24(c)(2); Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

Jobs Act provides a method of general applicability and requires public utilities to return protected excess ADIT<sup>71</sup> 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.<sup>72</sup> We also adopt our proposal in the NOPR to evaluate any amortization periods for unprotected excess and deficient ADIT on a case-by-case basis. As noted in the NOPR, the Tax Cuts and Jobs Act does not specify a method to calculate amortization schedules for unprotected excess and deficient ADIT. Furthermore, a case-by-case evaluation will allow public utilities to propose amortization periods that better suit their and their customers' specific circumstances.

45. For both excess protected and unprotected ADIT, we affirm our statement in the NOPR that the full regulatory liability for excess ADIT should be captured in transmission formula rates, beginning on the effective date of any proposed tariff provision. In other words, the full amount of excess ADIT resulting from the Tax Cuts and Jobs Act must be returned to transmission formula rate customers.

46. We clarify that our statement that "public utilities are required to develop a schedule removing ADIT from rate base and returning it to customers, effective

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<sup>71</sup> While the Tax Cuts and Jobs Act does not mention protected deficient ADIT specifically, we expect that public utilities will recover such protected deficient ADIT in the same manner prescribed for protected excess ADIT.

<sup>72</sup> See *supra* n.43.

January 1, 2018, using the fastest allowable method to return the excess ADIT under the IRS' normalization requirements" was only in reference to the Tax Cuts and Jobs Act's requirement that *protected* excess ADIT may not be returned more rapidly than the life of the underlying asset. The Tax Cuts and Jobs Act places no restrictions on unprotected excess and deficient ADIT amortization schedules, and public utilities may propose amortization schedules that appropriately balance the respective circumstances of those public utilities and their customers, provided the full amount of excess ADIT resulting from the Tax Cuts and Jobs Act is returned to customers.

47. Additionally, we deny EEI's and MISO Transmission Owners' requests to find that an amortization period matching the life of the underlying asset for unprotected excess and deficient ADIT is *per se* just and reasonable. While certain public utilities have demonstrated that amortization periods matching the lives of their assets are just and reasonable, we find that a generally applicable determination that such amortization periods are *per se* just and reasonable runs counter to the case-by-case approach that the Commission will use to evaluate proposed amortization periods for excess and deficient ADIT. Moreover, the diverse sources of unprotected excess and deficient ADIT do not lend themselves to a general finding on an appropriate amortization period. We also note that, contrary to MISO Transmission Owners' assertion, Order No. 144 did not establish a generally applicable amortization method for excess and deficient ADIT.<sup>73</sup> Similarly,

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<sup>73</sup> Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560 ("Since the appropriateness of any method to accomplish the objective of full normalization at current tax rates has not been analyzed by the Commission on a generic basis, the

we will evaluate requests by public utilities to amortize excess and deficient ADIT using an amortization period approved in a state proceeding on a case-by-case basis.

48. Because of the requirements adopted in this final rule, we will not require that public utilities make a filing pursuant to FPA section 205 to obtain Commission approval prior to including excess and deficient ADIT in their transmission formula rates following future changes to tax rates, as some commenters have requested. While those commenters are correct that the Commission has previously required that public utilities obtain such Commission approval, we find that with the ADIT Worksheet adopted as part of this final rule and discussed below, it is no longer necessary to require an FPA section 205 filing prior to including excess and deficient ADIT in transmission formula rates. Specifically, the ADIT Worksheet will provide transparency and allow for Commission and customer review of the public utility's calculation of excess and deficient ADIT, as well as the associated amortization schedule for returning or recovering excess and deficient ADIT, respectively.

49. We disagree with TAPS' assertion that not requiring public utilities with transmission formula rates to seek Commission approval prior to including excess and deficient ADIT in their transmission formula rates following future changes to tax rates will shift the burden of proof from the public utility to the Commission or customer. To be considered just and reasonable, the Commission-approved implementation protocols

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Commission is, at this time, requiring resolution of this problem on a case-by-case basis.”).

of public utilities with transmission formula rates must require that public utilities provide underlying data and calculations supporting all inputs that are not supported in the FERC Form No. 1 or in other tariff schedules in formula rate annual updates and, where applicable, true-ups.<sup>74</sup> As such, as with any other transmission formula rate input, customers can request information about and challenge the amortization period for excess or deficient ADIT.<sup>75</sup> Further, when a customer challenges the data that is flowed into the formula rate from worksheets like the ADIT Worksheet, the public utility continues to bear the burden to show “the justness and reasonableness of the rate resulting from its application of the formula.”<sup>76</sup>

50. We also disagree with TAPS’ assertion that public utilities could have unrestricted discretion to amortize a regulatory asset or liability over a period of their choice. First, a public utility must support its chosen amortization period for excess or deficient ADIT in its annual update following a change in tax rates as just and reasonable, as discussed above. Second, our determination here applies only to excess or deficient ADIT, which are types of regulatory liabilities and assets, respectively; it does not relieve public

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<sup>74</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 86 (2013) (*MISO*). See also *The Empire Dist. Elec. Co.*, 148 FERC ¶ 61,030 (2014); *Black Hills Power, Inc.*, 148 FERC ¶ 61,035 (2014); *Kan. City Power & Light Co. and KCP&L Greater Mo. Operations Co.*, 148 FERC ¶ 61,034 (2014); *UNS Elec., Inc.*, 148 FERC ¶ 61,032 (2014); *PJM Interconnection, LLC*, 152 FERC ¶ 61,180 (2015).

<sup>75</sup> *Id.* PP 91, 118-120.

<sup>76</sup> *Id.* P 120 (quoting *Va. Elec. & Power Co.*, 123 FERC ¶ 61,098, at P 47 (2008)).



utilities of their obligation to obtain Commission approval prior to including other regulatory assets and liabilities in their transmission formula rates.

51. Regarding APPA's comment, we clarify that the requirements adopted here apply only to excess and deficient ADIT caused by the Tax Cuts and Jobs Act and any future tax rate changes, not past period deficient ADIT, and, therefore, do not conflict with the Commission's determination in *Commonwealth Edison*.

**3. Support for Excess and Deficient ADIT Calculation and Amortization**

**a. NOPR**

52. The Commission proposed to require all public utilities with transmission formula rates to incorporate the ADIT Worksheet, which is a new permanent worksheet that will annually track information related to excess or deficient ADIT, into their transmission formula rates. The Commission did not propose to require this worksheet to be populated when submitted to the Commission on compliance with the final rule. Further, the Commission did not propose a *pro forma* worksheet and instead proposed broad categories of information that each worksheet should contain at a minimum, including: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting for any excess or deficient amounts in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities); (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. The Commission

specifically requested comments on whether it should consider additional guiding principles.<sup>77</sup>

**b. Comments**

53. In general, comments from transmission customers supported the proposal for the ADIT Worksheet,<sup>78</sup> while comments from transmission owners and groups representing transmission owners did not.<sup>79</sup>

54. Certain transmission customers supporting the Commission's proposal believe that additional requirements are necessary to ensure just and reasonable rates. AMP and Six Cities argue that the Commission should also require a standard template or *pro forma* worksheet. AMP asserts that, while a one-size-fits-all approach may not be appropriate for the other requirements proposed in the NOPR, a standard template could be provided akin to a FERC Form No. 1. AMP further asserts that such standardization will promote development of technical expertise and ratemaking efficiency, while benefiting customers by providing a better opportunity for meaningful review. AMP states that if the Commission does not adopt a standard template, it should, at a minimum, require public utilities to file an annual worksheet containing the minimum reporting

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<sup>77</sup> NOPR, 165 FERC ¶ 61,117 at PP 46-47.

<sup>78</sup> AMP Comments at 9-11; NRECA Comments at 4-5; APPA Comments at 10; DEMEC Comments at 11; Industrial Customers Comments at 5.

<sup>79</sup> EEI Comments at 6-7; Eversource Comments at 14-15; MISO Transmission Owners Comments at 21-22; PSEG Comments at 2.

requirements discussed by AMP.<sup>80</sup> Six Cities argue that a *pro forma* worksheet will reduce the need for information exchange and allow interested parties to better assess what was and was not included.<sup>81</sup>

55. AMP and Six Cities argue that the Commission should require public utilities to provide specific information in the proposed worksheet. AMP asserts that the Commission should require public utilities to provide item-by-item accounting to verify public utilities' classification of excess or deficient ADIT as protected or unprotected because the rate impact associated with this classification is generally significant and material. Six Cities argue that the worksheet should contain a breakdown of ADIT detailed enough to discern whether a public utility is seeking to recover ADIT items in contravention of USofA. AMP argues that public utilities should also provide line-by-line accounting for any excess or deficient ADIT or ADIT associated with other comprehensive income or that has been moved outside of regulated rate base or cost of service entirely. AMP argues that line-by-line accounting will enable customers to verify that they are made whole for all ADIT charged previously.<sup>82</sup>

56. AMP argues that the proposed worksheet should also include a public utility's proposed amortization period for protected and unprotected excess and deficient ADIT

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<sup>80</sup> APPA Comments at 10-11.

<sup>81</sup> Six Cities Comments at 7-8.

<sup>82</sup> AMP Comments at 6-11; Six Cities Comments at 7-10.

and all supporting documentation.<sup>83</sup> Six Cities contend that the proposed worksheet should also itemize protected and unprotected excess and deficient ADIT into more granular categories. In addition, Six Cities assert that public utilities should be required to specify items that are either below the line or inapplicable to customers to ensure deficient ADIT related to these items is not collected.<sup>84</sup> AMP and Six Cities argue that their proposed additions to the worksheet should be included regardless of whether the Commission adopts its suggestion to require a *pro forma* worksheet.<sup>85</sup>

57. APPA argues that the Commission should require public utilities with transmission formula rates to submit a populated version of the proposed worksheet, including actual ADIT cost or accounting information relating to the ADIT effects of the Tax Cuts and Jobs Act. APPA states that, without this information, interested parties would not have an opportunity to review a public utility's ADIT accounting information until the first annual update following when the revised formula rate provisions become effective. APPA argues that this information will assist the Commission in evaluating whether the proposed mechanism and amortization periods are just and reasonable and consistent with Commission precedent.<sup>86</sup> APPA recommends that a public utility's transmission formula rate protocols must allow interested parties to request information

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<sup>83</sup> AMP Comments at 8-10.

<sup>84</sup> Six Cities Comments at 8-10.

<sup>85</sup> AMP Comments at 11; Six Cities Comments at 10.

<sup>86</sup> APPA Comments at 9-10.

concerning the information in the annual worksheet and the ADIT effects of the Tax Cuts and Jobs Act. To the extent that a given transmission formula rate protocol does not allow for this, APPA argues that public utilities should be required to make the necessary tariff revisions in their compliance filings.<sup>87</sup>

58. Conversely, many transmission owners or affiliated groups argue that the Commission's proposed worksheet is burdensome and not necessary. Certain commenters assert that the information provided annually in the FERC Form No. 1 and documentation under the existing requirements of transmission formula rate protocols provide sufficient transparency.<sup>88</sup> EEI and PSEG note that, under the Commission's 2014 Staff Guidance, inputs to formula rates must be fully supported, and, to the extent an input is not a specific line item in the FERC Form No. 1, public utilities must provide detailed workpapers showing the origin of the input in relation to the FERC Form No. 1 data.<sup>89</sup> PSEG argues that requiring additional information regarding ADIT calculations when the current requirements provide sufficient transparency is unnecessary and burdensome.<sup>90</sup> MISO Transmission Owners note that they committed in comments to the NOI to providing a workpaper in each annual update with excess and deficient ADIT

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<sup>87</sup> *Id.* at 10.

<sup>88</sup> EEI Comments at 6-7; MISO Transmission Owner Comments at 20-22; PSEG Comments at 2-3.

<sup>89</sup> EEI Comments at 6-7; PSEG Comments at 2-3.

<sup>90</sup> PSEG Comments at 3.

information. MISO Transmission Owners argue that this workpaper, in combination with the required information exchange procedures that are part of the annual update filing, provides a just and reasonable process.<sup>91</sup> MISO Transmission Owners state that, to the extent any information required by the proposed worksheet is not provided in their FERC Forms No. 1, they could provide the additional information in footnotes.<sup>92</sup>

59. Certain transmission owners and associated groups also argue that the proposed worksheet is redundant because it seeks essentially identical information as the Commission's disclosure requirements in the Commission's ADIT Treatment Following Asset Sales and Retirements Policy Statement on the Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset (ADIT Treatment Following Asset Sales and Retirements Policy Statement).<sup>93</sup> Eversource argues that the language in the ADIT Treatment Following Asset Sales and Retirements Policy Statement suggests that the disclosure requirements are intended to apply generally beyond the sale or retirement of an asset and, thus, it would be duplicative and confusing to also require public utilities to submit this information in their formula rates.<sup>94</sup> While not taking a position on whether the ADIT

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<sup>91</sup> MISO Transmission Owners Comments at 19-20.

<sup>92</sup> *Id.* at 22.

<sup>93</sup> *Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset*, 83 FR 59,295 (Nov. 23, 2018), 165 FERC ¶ 61,115 (2018). See Eversource Comments at 13-15; EEI Comments at 6; PSEG Comments at 2.

<sup>94</sup> Eversource Comments at 13-15.

Worksheet would be duplicative, MISO Transmission Owners argue that no consensus or Commission guidance exists as to how public utilities should amortize excess and deficient ADIT following the ADIT Treatment Following Asset Sales and Retirements Policy Statement's guidance that public utilities should continue to amortize excess ADIT in rates even after the sale or retirement of an asset. MISO Transmission Owners contend that it is therefore unclear how public utilities would address this issue in the proposed worksheet.<sup>95</sup>

60. MISO Transmission Owners agree with the Commission that adequate transparency is necessary but contend that the calculations of excess and deficient ADIT balances will only occur once (i.e., as of December 31, 2017) and the vast majority of information in the proposed worksheet will remain unchanged going forward. MISO Transmission Owners argue that creating an appropriate worksheet will be a time-consuming and tedious process because of the Commission's assertion that the proposed worksheet should be tailored to each public utility's unique circumstances. MISO Transmission Owners contend that requiring a worksheet may also be burdensome for the Midcontinent Independent System Operator, Inc. (MISO) to implement because MISO is responsible for administering its tariff and MISO's staff would need to familiarize themselves with many versions of the worksheets that are housed within MISO's tariff.<sup>96</sup> MISO Transmission Owners assert that public utilities could also provide ADIT

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<sup>95</sup> MISO Transmission Owners Comments at 19.

<sup>96</sup> *Id.* at 18-19.

workpapers to customers outside of a tariff-based procedure, such as an Open Access Same-Time Information System (OASIS) or website posting. MISO Transmission Owners argue that the Commission did not address in the NOPR why these alternatives are not just and reasonable.<sup>97</sup>

61. Xcel requests that, to the extent the final rule imposes administrative requirements such as a worksheet, the Commission should not require public utilities to revise settlements related to the specific contents for documenting the flow-back of excess and deficient ADIT.<sup>98</sup>

**c. Commission Determination**

62. We adopt the NOPR proposal to require all public utilities with transmission formula rates to include the ADIT Worksheet, which is a new permanent worksheet that will annually track information related to excess and deficient ADIT, in their transmission formula rates. We find that such a worksheet is necessary to provide interested parties and the Commission 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 find that making the worksheet a permanent part of transmission formula rates, as opposed to a one-time filing after the Tax Cuts and Jobs Act, will ensure that excess or deficient ADIT can be tracked as it is included in the annual revenue requirement. Additionally, the ADIT Worksheet will

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<sup>97</sup> *Id.* at 22.

<sup>98</sup> Xcel Comments at 11.



provide sufficient transparency for excess and deficient ADIT included in rates following future local, state, and federal tax rate changes. Finally, we find that the NOPR proposal to require five categories of information in the worksheet strikes an appropriate balance between transparency for interested parties and burden to the industry.

63. We agree with APPA's comments to require public utilities with transmission formula rates to submit worksheets populated with excess and deficient ADIT resulting from the Tax Cuts and Jobs Act. This represents a departure from the NOPR proposal that required the function of the worksheet to be clear when filed on compliance, but did not require the worksheet to be populated. We find that a populated worksheet will facilitate the review of the proposed worksheet's function by interested parties and the Commission prior to the first annual update. In addition, we believe that a populated worksheet will assist the Commission in determining whether the worksheet adequately addresses the transparency concerns that led the Commission in the NOPR to propose requiring the worksheet.

64. We also affirm the NOPR proposal to not require a *pro forma* or standard template worksheet despite comments requesting the adoption of such. We do not believe that the worksheet lends itself to a *pro forma* or standard template.<sup>99</sup> We find that any benefits flowing from adopting such a template are outweighed by the difficulty in developing

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<sup>99</sup> See, e.g., *Ariz. Pub. Serv. Co.*, Docket No. ER18-975-001 (May 22, 2018) (delegated order); *Pub. Serv. Co. of Colo.*, Docket Nos. ER19-2077-000 & ER19-2077-001 (Sep. 11, 2019) (delegated order).

such a template because excess and deficient ADIT depends on the circumstances of each public utility. This is especially true because of the diverse sources of unprotected excess and deficient ADIT.

65. We agree in part with AMP's and Six Cities' requests for public utilities to provide specific information in the proposed worksheet. We specifically find that the Commission's requirement for public utilities to include five categories of information in the proposed worksheet overlaps with AMP's and Six Cities' requests. For example, AMP's request for the worksheet to include the proposed amortization period for excess and deficient ADIT is covered by category five—the amortization period of the excess or deficient ADIT being returned or recovered through rates. Similarly, AMP's and Six Cities' request for an item-by-item accounting or itemization of excess or deficient ADIT in the worksheet is covered by category two—the accounting for any excess or deficient amounts in Accounts 182.3 and 254. We expect public utilities to identify each specific source of the excess or deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each classification or source in their proposed worksheets, which will provide sufficient detail to verify excess and deficient ADIT resulting from the Tax Cuts and Jobs Act and future tax rate changes. Because we will also review the compliance filings to determine whether the proposed amortization periods for any excess and deficient ADIT resulting from the Tax Cuts and Jobs Act are just and reasonable,<sup>100</sup> we also expect public utilities

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<sup>100</sup> See *infra* P 104.

to provide supporting documentation necessary to justify those proposed amortization periods. In addition, for future tax rate changes where excess and deficient ADIT will automatically be included in a public utility's formula rate without the need for an FPA section 205 filing, we expect public utilities to provide supporting documentation for the excess and deficient ADIT inputs to the ADIT Worksheet to customers as part of their annual update process. Further, public utilities should include the supporting documentation in their annual informational filings to the Commission following a tax rate change.

66. We acknowledge that, given the diverse sources of excess or deficient ADIT, a public utility or its transmission formula rate may have some unique attribute that requires additional categories of information to provide interested parties and the Commission with a complete understanding of that public utility's treatment of excess and deficient ADIT. As described elsewhere in this final rule, the Commission will consider public utilities' proposals to implement the ADIT Worksheet on a case-by-case basis.<sup>101</sup> We note that the five categories of information required to be included in the ADIT Worksheet represent the minimum information that the worksheet should contain.

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<sup>101</sup> We note that the public utility would need to demonstrate that its proposal is consistent with or superior to the requirements of the final rule. See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540, at 21619 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant*

67. We find that Commission precedent already requires a public utility's transmission formula rate protocols to allow interested parties to request the type of information contained in the ADIT Worksheet.<sup>102</sup> We therefore disagree with APPA's request and will not require revisions to a public utility's transmission formula rate protocols for purposes of this rulemaking proceeding.

68. We disagree with arguments that the worksheet is unnecessary or overly burdensome to administer, or will otherwise be overly time consuming to create. First, arguments that information in the ADIT Worksheet may overlap with information provided in FERC Form No. 1 are misplaced. The ADIT Worksheet will provide more detailed information than what is included in a public utility's FERC Form No. 1. Moreover, the level of detail and manner in which regulatory liabilities are disclosed in the FERC Form No. 1 vary across public utilities and may not uniformly support amounts used as inputs to the formula rate. Second, we affirm our position in the NOPR that public utilities already gathered the information required for the worksheet when they re-measured their ADIT balances as a result of the Tax Cuts and Jobs Act.

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*part sub nom. Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002). An interested party could also protest a public utility's proposed worksheet and argue that additional categories of information are necessary given that public utility's unique attributes.

<sup>102</sup> See *MISO*, 143 FERC ¶ 61,149 at P 86 (finding that public utilities must provide "sufficient detail and with sufficient explanation to demonstrate that each input to the formula rate is consistent with the requirements of the formula rate, without forcing interested parties to make extensive information requests to understand the transmission owner's implementation of the formula rate and to verify its correctness").

69. Third, while MISO Transmission Owners are correct that the calculation of excess and deficient ADIT will be performed once for the Tax Cuts and Jobs Act, the ADIT Worksheet will also reflect any excess or deficient ADIT resulting from future tax rate changes, including state and local tax changes. Furthermore, the worksheet will enable interested parties and the Commission to track the amortization of excess or deficient ADIT over time. Fourth, as discussed above, with the information provided in the ADIT Worksheet, we will no longer require public utilities to make an FPA section 205 filing to include excess and deficient ADIT in rates after tax rate changes that result in excess and deficient ADIT. Instead, we will rely on the worksheet to provide the requisite transparency for excess and deficient ADIT. We find that relying on the worksheet instead of requiring a public utility to make an FPA section 205 filing after every tax change will result in an overall reduction in the burden of a public utility with a transmission formula rate over the long run.

70. Additionally, some commenters argue against the worksheet because their transmission formula rate protocols already require them to provide information on excess and deficient ADIT. To the extent that a public utility already provides information on excess and deficient ADIT due to existing requirements in its transmission formula rate protocols, we find that the ADIT Worksheet should not create an undue ongoing burden for the public utility. The Commission has also required public utilities to revise their transmission formula rates to include greater detail where the

Commission deemed that certain inputs to the transmission formula rate are complex enough to warrant prior understanding of their effect.<sup>103</sup>

71. Similarly, we also disagree with comments that the worksheet is redundant because it seeks the same information that public utilities must disclose following the Commission's issuance of the ADIT Treatment Following Asset Sales and Retirements Policy Statement. The FERC Form No. 1 disclosures required under the ADIT Treatment Following Asset Sales and Retirements Policy Statement are not specific enough to identify the effect of excess and deficient ADIT for a particular transmission formula rate on file with the Commission. Therefore, we find that the worksheet will provide additional transparency to the Commission and interested parties on excess and deficient ADIT.

72. We disagree with MISO Transmission Owners' comments that it is unclear how public utilities should address the amortization of excess and deficient ADIT following the sale or retirement of an asset. The ADIT Treatment Following Asset Sales and Retirements Policy Statement states that, in cases for which the excess and deficient

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<sup>103</sup> See NOPR, 165 FERC ¶ 61,117 at P 49 (citing *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)); *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) (requiring revisions to new formula rates to provide greater transparency)).

ADIT do not transfer to the purchaser of the plant asset, public utilities' balances of excess and deficient ADIT recorded in Account 254 and Account 182.3 continue to exist as regulatory liabilities and assets after an asset sale or an extraordinary retirement.<sup>104</sup>

The ADIT Treatment Following Asset Sales and Retirements Policy Statement further states that public utilities should therefore continue to amortize excess or deficient ADIT balances upon such sales and retirements.<sup>105</sup> Because the Commission's guidance provides that public utilities should continue to record and amortize such liabilities and assets as any other excess ADIT liability or deficient ADIT asset, we reiterate that public utilities should treat these liabilities and assets as any other excess or deficient ADIT in their worksheets.

73. We decline to adopt MISO Transmission Owners' suggestion that public utilities could provide ADIT workpapers to customers through their OASIS or the Transmission Owner Rate Data section of the MISO website instead of including the worksheet as part of their transmission formula rates. We find that it is appropriate to require public utilities to include the worksheet as part of their transmission formula rates because these rates already provide a Commission-approved process that allows interested parties to request information about excess and deficient ADIT and provides a well understood framework to challenge information or data contained in the worksheet. Rather than

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<sup>104</sup> ADIT Treatment Following Asset Sales and Retirements Policy Statement, 165 FERC ¶ 61,115 at P 37, n.79.

<sup>105</sup> *Id.* P 36; *see also id.* PP 40-43.

creating an entirely new process, which could create additional burdens on industry, we believe that utilizing existing processes will help to ensure a fair and efficient process whenever tax rates change in the future.

74. We do not agree with Xcel that the Commission should exempt public utilities from revising settlement agreements to account for certain “administrative requirements,” such as the worksheet that documents the amortization of excess and deficient ADIT. Instead, in keeping with the Commission’s decision to evaluate any revisions made in compliance with this final rule on a case-by-case basis, a public utility may show that its existing ADIT-related mechanisms, including those established by a Commission-approved settlement, meet the requirements of this final rule.

**B. Stated Rates**

**1. NOPR**

75. The Commission proposed to require all public utilities with transmission stated rates to (1) determine the excess and deficient ADIT created as a result of the Tax Cuts and Jobs Act and (2) return this amount to or recover this amount from customers under 18 CFR 35.24. The Commission further proposed to require these public utilities to calculate their excess or deficient ADIT using the ADIT approved in their last rate cases.<sup>106</sup> The Commission did not propose a specific mechanism for public utilities with transmission stated rates to return or recover the excess or deficient ADIT to or from ratepayers. In keeping with the proposal for public utilities with transmission formula

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<sup>106</sup> NOPR, 165 FERC ¶ 61,117 at P 40.



rates, the Commission proposed to require public utilities with transmission stated rates to follow guidance in the Tax Cuts and Jobs Act for the appropriate amortization period for protected excess or deficient ADIT, while allowing amortization periods for unprotected excess or deficient ADIT to be determined on a case-by-case basis.<sup>107</sup>

## 2. Comments

76. EEI and Avista argue that any issues related to ADIT should be addressed in the rate cases of public utilities with transmission stated rates.<sup>108</sup> EEI and Avista assert that such a finding would be consistent with the Commission's decision in Order No. 144, issued at a time when all public utilities' transmission rates were stated.<sup>109</sup> EEI argues that the proposal in the NOPR would effectively order through the return of excess ADIT a reduction in existing transmission stated rates without claiming to act under FPA section 206 authority or first meeting the Commission's burden to demonstrate that those transmission stated rates are unjust and unreasonable. EEI contends that this stands in contrast to the Commission's actions in the Tax Rate-Related Orders to Show Cause. EEI agrees with the Commission's statement in the NOPR that, while ADIT balances may have changed as a result of the Tax Cuts and Jobs Act, many aspects other than

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<sup>107</sup> *Id.* P 42.

<sup>108</sup> EEI Comments at 8-11.

<sup>109</sup> *Id.*; Avista Comments at 2-3.

ADIT balances that underlie a transmission stated rate may have changed.<sup>110</sup> EEI and Avista argue that addressing the ADIT-related effects of the Tax Cuts and Jobs Act in the next rate case is more reasonable, efficient, and accurate than the Commission's proposal.<sup>111</sup> Similarly, FirstEnergy supports the assertions and conclusions in EEI's comments.<sup>112</sup>

77. Furthermore, EEI contends, it may be infeasible for public utilities with transmission stated rates resulting from a black box settlement to identify ADIT balances because they were not individually negotiated. EEI requests that, if the Commission adopts the proposed requirements for public utilities with transmission stated rates, the Commission should clarify how such public utilities with black box settlements should perform the necessary calculations or allow them to address ADIT in their next rate cases.<sup>113</sup>

78. EEI argues, and Avista agrees, that the Commission should clarify that, where it has found that a public utility with a transmission stated rate does not need to revise such rate to reflect the reduced federal income tax rate following the Tax Rate-Related Orders

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<sup>110</sup> EEI Comments at 8-11 (citing NOPR, 165 FERC ¶ 61,117 at P 29).

<sup>111</sup> *Id.*; Avista Comments at 2-3.

<sup>112</sup> FirstEnergy Comments at 2.

<sup>113</sup> EEI Comments at 8-11.

to Show Cause, those public utilities are not required to make a filing in compliance with the final rule.<sup>114</sup>

79. EEI argues that, if the Commission does require public utilities with transmission stated rates to make compliance filings, it should establish a threshold such that the final rule only applies to agreements with annual revenues/charges per agreement above \$100,000 to \$500,000 per year. EEI asserts that, below that threshold, the cost of preparing a compliance filing would exceed the amount returned to customers.<sup>115</sup>

80. EEI asserts that, its arguments regarding compliance filings and public utilities with transmission stated rates notwithstanding, addressing compliance with the final rule on a single-issue basis is appropriate and efficient. Industrial Customers agree that such a single-issue ratemaking approach is warranted.<sup>116</sup> EEI notes that the Commission has historically demonstrated a willingness to allow single-issue filings to address tax-related changes to rates.<sup>117</sup>

81. Separately, EEI argues that the five categories of information the NOPR proposes as necessary to support the compliance filings of public utilities with transmission stated

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<sup>114</sup> *Id.* at 11-12; Avista Comments at 3-4.

<sup>115</sup> EEI Comments at 13.

<sup>116</sup> Industrial Customers Comments at 6.

<sup>117</sup> EEI Comments at 14-15.

rates are duplicative of the additional disclosures required in their FERC Form No. 1 filings following issuance of the ADIT Treatment Following Asset Sales and Retirements Policy Statement. EEI asserts that the Commission should clarify that the ADIT Treatment Following Asset Sales and Retirements Policy Statement's required disclosures obviate the need for this information to be presented in compliance filings to the final rule. Alternatively, EEI requests that the Commission should confirm that a compliance filing is not necessary for public utilities with transmission stated rates that included the ADIT Treatment Following Asset Sales and Retirements Policy Statement's required information in their FERC Form No. 1s.<sup>118</sup>

82. On the other hand, AMP argues that the Commission should require public utilities with transmission stated rates to file the same worksheet proposed for public utilities with transmission formula rates. AMP states that such a worksheet, which would be filed annually, would be used to track and defer, for future return or recovery, changes in the annual amortization of excess and deficient ADIT. AMP states that, alternatively, transmission stated rates could be adjusted each year to reflect required changes to annual excess and deficient ADIT amortization.<sup>119</sup>

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<sup>118</sup> *Id.* at 12-13.

<sup>119</sup> AMP Comments at 13.

83. APPA requests that the Commission clarify that the full amount of any excess or deficient ADIT be returned to or collected from customers based on the actual level of excess or deficient ADIT on that public utility's books.<sup>120</sup> APPA asserts, and Six Cities agree, that the mechanism to return excess ADIT to or recover deficient ADIT from customers proposed in the NOPR should not prevent customers from receiving the full benefit of the Tax Cuts and Jobs Act and that the Commission should specify that any difference between the actual amounts on a public utility's books and the amount determined by ADIT values used in the last rate case must be reconciled in the next rate case.<sup>121</sup>

84. APPA contends, and Six Cities agree, that to the extent the Commission intends for a public utility to provide information on excess or deficient ADIT relative to the ADIT balance in its last rate case rather than its current ADIT balance, the final rule should require public utilities with transmission stated rates to provide the latter.<sup>122</sup>

85. Six Cities request that the Commission direct public utilities with transmission stated rates subject to a moratorium to delay amortization of excess or deficient ADIT until their next rate cases (i.e., the end of the moratorium period). Six Cities contend that

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<sup>120</sup> APPA Comments at 5-6.

<sup>121</sup> *Id.* at 6; Six Cities Comments at 2.

<sup>122</sup> APPA Comments at 6; Six Cities Comments at 2.

customers may otherwise lose the benefits of the Tax Cuts and Jobs Act because the required amortization schedule might begin or occur during the moratorium period.<sup>123</sup> Six Cities argue that this delay would be consistent with the Commission's statement that "public utilities should not amortize an excess ADIT regulatory liability for accounting purposes until it is included in ratemaking."<sup>124</sup> Six Cities contend that this requirement would not upset any moratorium as public utilities would only be placing excess ADIT in a deferred account. Six Cities request that, in conjunction with this deferral requirement, the Commission require that any affected public utilities submit a single-issue compliance filing coinciding with the end of the moratorium period.<sup>125</sup>

### 3. Commission Determination

86. We do not adopt the NOPR proposal to require 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. Instead, we maintain the status quo under Order No. 144, Order No. 475 and 18 CFR 35.24, under which public utilities with transmission stated rates should address any excess or deficient ADIT caused by the Tax

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<sup>123</sup> Six Cities Comments at 3-5.

<sup>124</sup> *Id.* at 5 (citing NOPR, 165 FERC ¶ 61,117 at P 39).

<sup>125</sup> *Id.* at 5-6.

Cuts and Jobs Act in their next rate case.<sup>126</sup> We also do not adopt any of the other proposals in the NOPR related to public utilities with transmission stated rates.<sup>127</sup>

87. In Order No. 144, the Commission stated that the cost of service adjustments for excess and deficient ADIT are required to be made in a public utility's next rate case.<sup>128</sup> Thus, Order No. 144 stands for the proposition that it is appropriate for a public utility with transmission stated rates to address excess and deficient ADIT in its next rate case, as opposed to on a generic basis. Order No. 475, which the Commission issued following the last reduction in the federal corporate income tax rate, also supports our decision to not adopt the requirements in the NOPR for public utilities with transmission stated rates. In Order No. 475, the Commission declined to act on excess and deficient ADIT for public utilities with transmission stated rates on a generic basis and instead stated that determination would be made in a public utility's next rate case. The Commission reasoned that the potentially complex questions involving the return of excess ADIT were best dealt with in individual FPA section 205 or 206 proceedings where all interested parties could weigh in.<sup>129</sup> We find that this rationale still applies. The question of how to properly handle excess and deficient ADIT for public utilities with transmission stated

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<sup>126</sup> See Order No. 144, FERC Stats. & Regs. ¶ 30,254, at 31,519, 31,560.

<sup>127</sup> NOPR, 165 FERC ¶ 61,117 at P 40.

<sup>128</sup> Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519.

<sup>129</sup> Order No. 475, FERC Stats. & Regs. ¶ 30,752 at 30,736.

rates following a tax rate change continues to raise complex questions that are more properly addressed in a rate case.

88. We agree with EEI's comments that addressing excess and deficient ADIT in the next rate case for a public utility with transmission stated rates is more reasonable, efficient, and accurate than the proposal in the NOPR. Although APPA supported requiring public utilities with transmission stated rates to address excess or deficient ADIT on a single-issue basis at a general level, it noted that the approach proposed in the NOPR to accomplish this goal would still require a reconciliation in a public utility's next rate proceeding.<sup>130</sup> APPA's comments highlight the inefficiency and inaccuracy of addressing excess and deficient ADIT on a single-issue basis because such an approach would offer only a temporary, imperfect solution that would need to be revisited in the public utility's next rate proceeding.

89. We therefore find that it is inappropriate to address excess and deficient ADIT resulting from the Tax Cuts and Jobs Act on a single-issue basis for public utilities with transmission stated rates. Like the Commission's finding in Order No. 475 following the tax rate changes in 1986, we determine that for the Tax Cuts and Jobs Act, a public utility's next rate proceeding is the appropriate time to address excess and deficient ADIT in the context of transmission stated rates.

90. We decline to adopt Six Cities' proposal for the Commission to direct public utilities with transmission stated rates subject to a moratorium to delay amortization of

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<sup>130</sup> APPA Comments at 6.



excess or deficient ADIT until the next rate case. As explained above, excess or deficient ADIT resulting from the Tax Cuts and Jobs Act for a public utility with transmission stated rates will be addressed in that public utility's next rate case. This outcome is consistent with Order No. 144, 18 CFR 35.24, and the approach adopted by the Commission in Order No. 475.<sup>131</sup>

91. Although we plan to address excess and deficient ADIT issues for public utilities with transmission stated rates to their future rate cases, we clarify our intentions. First, we emphasize that to the extent public utilities with transmission stated rates have a Commission-approved ratemaking method made specifically applicable to them for returning excess ADIT, they should have begun reducing excess ADIT pursuant to that previously approved method.<sup>132</sup>

92. In the absence of a prior Commission-approved methodology, the Commission's regulations require that public utilities "use some ratemaking method" for making a provision for returning excess ADIT. The regulations further state that "the appropriateness of such method will be subject to a case-by-case determination" by the Commission.<sup>133</sup>

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<sup>131</sup> Order No. 475, FERC Stats. & Regs. ¶ 30,752, at 30,736.

<sup>132</sup> 18 CFR 35.24(c)(3). The same regulations apply to interstate natural gas pipelines under 18 CFR 154.305.

<sup>133</sup> *Id.*

93. In applying this “case-by-case” analysis, we recognize there are differences between formula rates (as discussed elsewhere in this order) and stated rates. For stated rates, we will generally apply a policy that public utilities begin reducing excess ADIT immediately upon a tax rate change and not at a later date, such as at the time of a future rate case.<sup>134</sup> This guidance addresses when the amortization of excess ADIT should begin, rather than other issues related to the reasonableness of a public utility’s amortization methodology (e.g. ARAM or South Georgia). Moreover, this discussion regarding when amortization of excess ADIT begins for public utilities with stated transmission rates is merely intended to provide guidance regarding the general course of action the Commission intends to follow in future adjudications. The Commission will address issues related to a utility’s method for amortizing excess ADIT in stated rates (including timing) based on the specific facts and circumstances in each proceeding. For example, nothing here precludes a public utility with transmission stated rates from proposing to delay amortization of excess ADIT to its next rate case.

94. We believe it is reasonable to treat transmission formula rates differently than transmission stated rates given the unique circumstances surrounding formula rates at the

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<sup>134</sup> See, e.g., *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031, at PP 136-150 (2018) (providing guidance that natural gas pipelines should begin amortizing excess ADIT resulting from the Tax Cuts and Jobs Act immediately for purposes of the FERC Form No. 501-G informational filing, consistent with section 154.305 of the Commission’s regulations).

time the Tax Cuts and Jobs Act became law. First as discussed above and in the NOPR, most electric transmission formula rates lack a mechanism to make provision for excess ADIT in computing the income tax component of the cost of service.<sup>135</sup> It is inappropriate to treat excess ADIT as reducing immediately as of the Tax Cuts and Jobs Act when the formula itself lacks a mechanism to accomplish this task. We further emphasize that, upon enactment of the Tax Cuts and Jobs Act, the rates of public utilities with transmission formula rates (unlike those with stated rates) actually increased because the formula rates lacked an input for excess ADIT. Thus, the excess ADIT no longer served as a reduction from rate base as it did prior to the tax rate change when it was part of ADIT.<sup>136</sup> Because the transmission formula rate excluded excess ADIT from the calculation of the rate, it is appropriate to treat excess ADIT as being wholly preserved in Account 254 until it can be addressed and reinserted into the transmission formula rate as required by this final rule.<sup>137</sup>

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<sup>135</sup> ADIT NOPR, 165 FERC ¶ 61,117 at P 16.

<sup>136</sup> Previously, the excess ADIT had been included in regular ADIT (Accounts 190, 281, 282 and 283) and served as a reduction to rate base. While the excess ADIT in Account 254 should have also served as a reduction to rate base, the formula rates did not include the appropriate mechanism for this to occur.

<sup>137</sup> Further distinguishing transmission formula rates from stated rates, even where a public utility's formula rate included provisions for excess ADIT, the Commission's policy prior to this final rule required the public utility to seek Commission approval prior to returning excess ADIT. *See PJM*, 165 FERC ¶ 61,275 at P 28. Accordingly, public utilities with formula rates could not return excess ADIT under this prior policy. This provides another way to distinguish transmission formula rates from stated rates.

95. For these reasons, we believe the policy discussed above regarding transmission stated rates and their treatment of excess ADIT is reasonable. Therefore, we reject Six Cities' proposal for public utilities with transmission stated rates to delay amortization of excess or deficient ADIT until the next rate case.

**C. Compliance Filings**

**1. NOPR**

96. The Commission proposed to require each public utility with transmission stated or formula rates to submit a compliance filing within 90 days of the effective date of this final rule to revise its transmission stated or formula rates, as necessary, to demonstrate that it meets the requirements set forth in this final rule.<sup>138</sup>

97. The Commission noted that some public utilities with transmission formula rates already had mechanisms in place in their rates that address the requirements discussed in this final rule. Where existing mechanisms would be modified by this final rule, the Commission proposed that the public utility must either comply with the requirements of this final rule or demonstrate that these previously approved mechanisms continue to be consistent with or superior to the requirements of this final rule.<sup>139</sup>

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<sup>138</sup> NOPR, 165 FERC ¶ 61,117 at P 51.

<sup>139</sup> *Id.* P 52.

## 2. Comments

98. Some commenters support the Commission's 90-day compliance filing proposal.<sup>140</sup> EEI requests that the Commission modify the compliance timeline for public utilities with transmission formula rates so that those utilities must submit compliance filings within the later of (1) 90 days of issuance of a final rule or (2) the public utility's next informational or true-up filing. EEI contends that the complexity and time-consuming nature of the annual update and true-up processes support such flexibility.<sup>141</sup> Conversely, Industrial Customers argue that the compliance period should be shortened for the final rule.<sup>142</sup>

99. EEI also requests that the Commission provide guidance in the final rule as to the timing of compliance filings for public utilities transitioning from transmission stated to transmission formula rates. EEI argues that these public utilities should be allowed to address compliance with the final rule in the proceeding addressing this transition. EEI asserts this would reduce burden and increase efficiency for the Commission and all interested parties. EEI contends that, so long as these public utilities are not amortizing

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<sup>140</sup> See Eversource Comments at 15; AMP Comments at 13-14.

<sup>141</sup> EEI Comments at 7-8.

<sup>142</sup> Industrial Customers Comments at 5-6.

ADIT balances prior to the proceeding addressing this transition, customers will see the benefits in reduction of the federal income tax rate.<sup>143</sup>

### **3. Commission Determination**

100. We adopt a modified version of EEI's proposal in its comments to the NOPR and require each public utility with transmission formula rates to submit a filing to demonstrate compliance with the final rule including revisions to its transmission formula rates, as necessary, within the later of (1) 30 days of the effective date of this final rule<sup>144</sup> or (2) the public utility's next annual informational filing following the issuance of this final rule. We find that this schedule for compliance filings will reduce the burden on public utilities by allowing them flexibility to align the compliance requirement with their annual informational filing deadlines. However, we note that this compliance filing schedule represents the deadline to submit a compliance filing and that public utilities may choose to make their compliance filings earlier. Additionally, on compliance, we expect public utilities with transmission formula rates to make their proposed tariff sheets effective on the effective date of this final rule.

101. We adopt the proposal that, if a public utility believes that its existing transmission formula rate already meets the requirements of this final rule, the public utility must demonstrate that these previously approved mechanisms are consistent with or superior to

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<sup>143</sup> EEI Comments at 15-16.

<sup>144</sup> The final rule becomes effective 60 days after publication in the Federal Register. With the first set of compliance filings due 30 days after the effective date of the final rule, public utilities will have a minimum of 90 days from the date of publication in the Federal Register to make compliance filings.

the requirements of this final rule; otherwise, such a public utility must modify their transmission formula rate to comply with the requirements of this final rule.

102. Regarding Industrial Customers' request for a shortened compliance period, we find that the compliance period adopted by this final rule appropriately balances the time necessary for public utilities to develop and implement the changes required by this final rule, including the ADIT Worksheet, while still ensuring that compliance occurs in a timely manner.

103. As for a public utility transitioning from transmission stated rates to transmission formula rates, because we decline to adopt the NOPR requirements for public utilities with transmission stated rates, a public utility transitioning from stated rates to formula rates will not need to make a compliance filing. Accordingly, when the public utility makes a filing under section 205 to adopt transmission formula rates, the Commission at that time will consider whether the utility's proposal appropriately reflects the excess or deficient ADIT resulting from the Tax Cuts and Jobs Act.

104. As discussed above, this final rule requires that each public utility with a transmission formula rate populate the ADIT Worksheet submitted in compliance with the requirements of this final rule with excess and deficient ADIT resulting from the Tax Cuts and Jobs Act and any interested party will have an opportunity to comment on this information. Consistent with past practice, we will also determine whether the proposed amortization periods for any excess and deficient ADIT are just and reasonable.<sup>145</sup> To aid

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<sup>145</sup> See, e.g., *Emera Me.*, 165 FERC ¶ 61,086, at PP 44-45 (2018); *So. Cal. Edison Co.*, 166 FERC ¶ 61,006 at PP 23-24.

in our review and provide greater clarity to customers, we also require that public utilities clearly indicate the date such inputs were populated with excess and deficient ADIT data.

**D. Other Comments Relating to Issues Not Addressed in the NOPR**

**1. Comments**

105. EEI argues that the Commission should affirm in the final rule that the proposed requirements apply only to jurisdictional transmission rates and that ADIT-related issues in all other rates, particularly negotiated rates, will be addressed on a case-by-case basis.<sup>146</sup> EEI proposes that the Commission clarify that a “transmission rate” is a rate for transmission delivery service, and therefore does not include ancillary services that are provided under OATTs or other tariffs. MISO Transmission Owners request a similar clarification and state that they do not support the proposal to the extent it would apply to non-transmission rates in the Commission-jurisdictional OATTs of public utilities with transmission formula rates.<sup>147</sup> EEI requests that the Commission reiterate that customers who choose to challenge rates other than transmission rates continue to bear the burden of demonstrating that the Tax Cuts and Jobs Act has rendered such rates unjust, unreasonable, unduly discriminatory, or preferential.<sup>148</sup>

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<sup>146</sup> EEI Comments at 16-17.

<sup>147</sup> MISO Transmission Owners Comments at 16-17.

<sup>148</sup> EEI Comments at 17.



106. APPA argues that the Commission should reconsider its position and act affirmatively to ensure non-transmission, cost-based rates are adjusted to reflect the effects of the Tax Cuts and Jobs Act. APPA points to its previous comments submitted in response to the NOI, noting over-collection in revenues from the non-transmission rates. APPA argues that the ability to file a complaint under FPA section 206 does not provide adequate protections as customers are unlikely to have sufficient information to judge whether the Tax Cuts and Jobs Act has rendered an existing non-transmission rate unjust and unreasonable. APPA contends that the Commission should direct jurisdictional public utilities to file adjustments to their non-transmission cost-based rates to reflect Tax Cuts and Jobs Act-related changes or show cause why they should not be required to do so. APPA asserts that, at minimum, any public utilities with non-transmission cost-based rates not addressed in the NOPR or the Tax Rate-Related Orders to Show Cause should be required to file an informational filing describing the effect of the Tax Cuts and Jobs Act on their income tax costs and ADIT.<sup>149</sup>

107. NRECA supports the Commission's proposal to not address the rates of non-public utilities.<sup>150</sup>

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<sup>149</sup> APPA Comments at 11-13.

<sup>150</sup> NRECA Comments at 5.

108. DEMEC and Industrial Customers argue that refunds of excess ADIT resulting from the Tax Cuts and Jobs Act should include interest.<sup>151</sup> Industrial Customers argue that interest would compensate ratepayers for the loss of benefit of the partial rate base reduction for the period until the adjustment is implemented.<sup>152</sup>

109. EEI states that the Commission should consider accepting comments about the ADIT Treatment Following Asset Sales and Retirements Policy Statement in the context of this NOPR to allow for clarification. EEI contends that the Commission should clarify whether the ADIT Treatment Following Asset Sales and Retirements Policy Statement applies in the case of all ordinary retirements or excludes all ordinary retirements. EEI also argues that the Commission should clarify that the ADIT Treatment Following Asset Sales and Retirements Policy Statement does not apply to retirements and sales that are closed after November 23, 2018, the ADIT Treatment Following Asset Sales and Retirements Policy Statement's effective date, where transmission stated rate cases have addressed accounting and ratemaking treatment prior to the effective date as evidenced by a final state commission order.<sup>153</sup>

110. DEMEC notes that the ADIT Treatment Following Asset Sales and Retirements Policy Statement did not address transmission facilities transferred to other functions

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<sup>151</sup> DEMEC Comments at 11; Industrial Customers Comments at 5.

<sup>152</sup> Industrial Customers Comments at 6.

<sup>153</sup> EEI Comments at 17-18.

(e.g., from transmission to distribution). DEMEC argues that the Commission should ensure the refund of excess ADIT associated with retired, sold, and transferred facilities to customers.<sup>154</sup>

111. AMP argues that the Commission should take immediate action to stop further charges based on pre-Tax Cuts and Jobs Act federal income tax rates by initiating “show cause” proceedings for each public utility that has transmission stated rates not yet reflecting post-Tax Cuts and Jobs Act income tax rates.<sup>155</sup> Similarly, AMP and Industrial Customers request that the Commission act immediately to issue the final rule to prevent those public utilities that still have transmission rates based on a 35 percent federal income tax rate from collecting excessive federal income tax revenue allowances until their next rate cases.<sup>156</sup> AMP further argues that the final rule should be expanded to require the return of any incremental charges collected after December 31, 2017 that relate to utilizing the pre-Tax Cuts and Jobs Act tax rate in jurisdictional ratemaking. AMP contends that these incremental charges will not necessarily be returned as a component of excess ADIT under the NOPR because the re-measurement of excess and deficient ADIT took place on December 31, 2017 and accounts only for incremental tax charges occurring until the date of re-measurement. AMP asserts that, absent

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<sup>154</sup> DEMEC Comments at 16.

<sup>155</sup> AMP Comments at 13.

<sup>156</sup> *Id.* at 13-14; Industrial Comments at 5-6.

Commission action, public utilities will have no obligation to return these charges collected after re-measurement.<sup>157</sup> AMP argues that the Commission should issue a directive requiring refunds for rates charged after December 31, 2017, to the extent those rates were based on the 35 percent federal income tax rate.<sup>158</sup>

## 2. Commission Determination

112. We affirm that this final rule applies only to public utilities with transmission formula rates that are contained in an OATT, a transmission owner tariff, or a rate schedule. This final rule does not address ancillary services or non-transmission rates for services provided under an OATT or other tariff. We find the arguments requesting that the Commission address non-transmission rates to be beyond the scope of this proceeding.

113. Additionally, we find that AMP's requests for the Commission to initiate "show cause" orders for public utilities not yet reflecting the Tax Cuts and Jobs Act's change in tax rates<sup>159</sup> and to issue a directive requiring refunds for rates charged after December 31, 2017, to the extent those rates were based on the 35 percent federal income tax rate, are beyond the scope of this proceeding. In this final rule, we focus only on ensuring that transmission formula rates properly address excess and deficient ADIT resulting from the

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<sup>157</sup> AMP Comments at 13.

<sup>158</sup> *Id.* at 14.

<sup>159</sup> *See supra* n.23.

Tax Cuts and Jobs Act and any future tax rate changes in a transparent manner and consistent with Order No. 144 and 18 CFR 35.24.

114. We are unpersuaded by DEMEC's and Industrial Customers' request for public utilities to include interest when returning excess ADIT. The Commission has chosen not to require interest in prior proceedings involving the return of excess ADIT, including proceedings addressing the return of excess ADIT following the Tax Cuts and Jobs Act.<sup>160</sup> Furthermore, the requirements in this final rule will ensure that the full regulatory liability for excess ADIT is returned to transmission formula rate customers and that rate base neutrality is preserved going forward. Accordingly, we find that transmission formula rate customers will receive the full benefit of the Tax Cuts and Jobs Act, and therefore, we do not find it appropriate to require public utilities to include interest when returning excess ADIT as a result of the Tax Cuts and Jobs Act to customers.

115. We find requests to clarify the ADIT Treatment Following Asset Sales and Retirements Policy Statement to be beyond the scope of this proceeding.

#### **IV. Information Collection Statement**

116. The Paperwork Reduction Act (PRA)<sup>161</sup> requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure

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<sup>160</sup> See, e.g., Order No. 475, FERC Stats. & Regs. ¶ 30,752, at 30,737; *Emera Me.*, 165 FERC ¶ 61,086; *So. Cal. Edison Co.*, 166 FERC ¶ 61,006.

<sup>161</sup> 44 U.S.C. 3501-21.

requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by rules (including deletion, revision, or implementation of new requirements).<sup>162</sup> Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

117. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

118. *Public Reporting Burden:* The Commission initially identified 106 public utilities with transmission formula rates that will each be required 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 will be required to incorporate the ADIT Worksheet into its transmission formula rate to increase

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<sup>162</sup> 5 CFR 1320.11.

transparency. Public utilities will be required to populate this worksheet in their compliance filings. We also note the Commission's reliance on the ADIT Worksheet in lieu of an FPA section 205 filing each time a local, state, or federal tax rate changes will result in an overall reduction in burden in the long run to public utilities with transmission formula rates.

119. The Commission also initially identified 31 public utilities with transmission stated rates that it proposed to require 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. However, the Commission decided not to adopt the proposed requirements for public utilities with transmission stated rates in this proceeding, and therefore public utilities with transmission stated rates will have no future burden or cost associated with this final rule.

120. Based on these assumptions, we estimate the burden and cost<sup>163</sup> for the information collection requirements as follows.

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<sup>163</sup> The loaded hourly wage figure (including benefits) is based on the average of the occupational categories for 2018 found on the Bureau of Labor Statistics website ([http://www.bls.gov/oes/current/naics2\\_22.htm](http://www.bls.gov/oes/current/naics2_22.htm) and <http://www.bls.gov/news.release/ecec.nr0.htm>):

-Accountant and Auditor (Occupation Code: 13-2011): \$56.09

-Management (Occupation Code: 11-0000): \$95.24

-Legal (Occupation Code: 23-0000): \$142.86

-Office and Administrative Support (Occupation Code: 43-0000): \$42.11

These various occupational categories' wage (and benefits) figures are averaged

<b>Changes Due to the Final Rule in Docket No. RM19-5-000</b>						
	<b>Number of Respondents (1)</b>	<b>Annual Number of Responses per Respondent (2)</b>	<b>Total Number of Responses (1)*(2)=(3)</b>	<b>Average Burden Hours &amp; Cost (\$) Per Response (4)</b>	<b>Total Annual Burden Hours &amp; Total Annual Cost (\$) (3)*(4)=(5)</b>	<b>Cost per Respondent (\$) (5)÷(1)</b>
Revising transmission formula rates so that excess ADIT is deducted and/or deficient ADIT is added to rate base (one-time) <sup>164</sup>	106	1	106	8 hours; \$672	848 hours; \$71,232	\$672
Revising transmission formula rates so that any excess and/or deficient ADIT is amortized (one-time)	106	1	106	8 hours; \$672	848 hours; \$71,232	\$672
Revising transmission stated rates to return or recover excess or deficient ADIT (one-time)	0	0	0	0; \$0	0 hours; \$0	\$0

and weighted equally, giving an average of \$84.08/hour. The resulting wage figure is rounded to \$84.00/hour for use in calculating wage figures in the final rule in Docket No. RM19-5-000.

<sup>164</sup> One-time burdens apply in Year 1 only. The ongoing annual burden starting in Year 2 covers the annual requirement to update the worksheet, mentioned below.



Requiring public utilities with transmission formula rates to incorporate a new permanent worksheet that will annually track ADIT information (one-time)	106	1	106	44 hours; \$3,696	4,664 hours; \$391,776	\$3,696
Requiring public utilities with transmission formula rates to update their ADIT worksheet (annual, starting in Year 2)	106	1	106	4 hours; \$336	424 hours; \$35,616	\$336
<b>Total (Stated Rates)<sup>165</sup></b>			<b>0</b>		<b>0 hours; \$0</b>	
<b>Total (Formula Rates), one-time in Year 1<sup>166</sup></b>			<b>318</b>		<b>6,360 hours; \$534,240</b>	
<b>Total (Formula Rates (annual, starting in Year 2))</b>			<b>106</b>		<b>424 hours; \$35,616</b>	

Cost to Comply: We have projected the total cost of compliance as follows:<sup>167</sup>

<sup>165</sup> Total for Public Utilities with Transmission Stated Rates.

<sup>166</sup> Total for Public Utilities with Transmission Formula Rates.

<sup>167</sup> For a public utility with a transmission formula rate, the costs for Year 1 would consist of filing proposed changes to its transmission formula rate, including the addition of the ADIT Worksheet, with the Commission based on the compliance schedule laid out in this final rule plus the initial implementation. The annual ongoing cost starting in Year 2 relates to updating the worksheet.

- Year 1: \$534,240 (\$5,040/utility) for public utilities with transmission formula rates.
- Year 2 and continuing annually: \$35,616 (\$336/utility) for public utilities with transmission formula rates.

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 implementation burden during Year 1, and ongoing annual burden starting in Year 2.

Necessity of Information: The Commission requires information in order to ensure for public utilities with transmission formula rates 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 public utilities with transmission formula rates 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 customers 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 electric

industry. We have specific, objective support for the burden estimates associated with the information collection requirements.

121. 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](mailto: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]. Due to security concerns, comments should be sent electronically to the following e-mail address: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Comments submitted to OMB should include FERC-516 and OMB Control No. 1902-0096.

## V. Environmental Analysis

122. The Commission is 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.<sup>168</sup> The actions taken here fall within categorical exclusions in the Commission's regulations 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

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<sup>168</sup> *Regulations Implementing the National Environmental Policy Act*, Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

classification, practices, contracts and regulations that affect rates, charges, classification, and services.<sup>169</sup> Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

## **VI. Regulatory Flexibility Act**

123. The Regulatory Flexibility Act of 1980 (RFA)<sup>170</sup> generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

124. 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 associated size threshold: electric bulk power transmission and control, at 500 employees.<sup>171</sup>

125. As noted in the above Information Collection Statement, we estimate that 106 public utilities with transmission formula rates, both large and small, are subject to the requirements adopted by this rule. Of these, we estimate that approximately

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<sup>169</sup> 18 CFR 380.4(a)(15).

<sup>170</sup> 5 U.S.C. 601-612.

<sup>171</sup> 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

43 percent are small entities (approximately 46 entities). We estimate the average total cost to each of these entities will be \$5,040 in Year 1 and \$336 in subsequent years.

126. 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.”<sup>172</sup> We do not consider the estimated burden to be a significant economic impact. As a result, we certify that the revisions proposed in this final rule will not have a significant economic impact on a substantial number of small entities.

## **VII. Document Availability**

127. 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, N.E., Room 2A, Washington D.C. 20426.

128. 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

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<sup>172</sup> 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](https://www.sba.gov/sites/default/files/advocacy/rfaguide_0512_0.pdf).

eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

129. 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](mailto: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](mailto:public.referenceroom@ferc.gov).

### **VIII. Effective Date and Congressional Notification**

130. These regulations are effective [insert date 60 days after date of publication in the Federal Register]. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission.

( 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**

<b>Short Name</b>	<b>Commenter</b>
<b>APPA</b>	American Public Power Association
<b>AMP</b>	American Municipal Power, Inc.
<b>Avista</b>	Avista Corporation
<b>DEMEC</b>	Delaware Municipal Electric Corporation, Inc.
<b>EEI</b>	Edison Electric Institute
<b>Eversource</b>	Eversource Energy Service Company
<b>FirstEnergy</b>	FirstEnergy Service Company filing on behalf of its affiliates 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 Trans-Allegheny Interstate Line Company
<b>Industrial Customers</b>	Electricity Consumers Resource Council, the American Forest & Paper Association, and the American Chemistry Council
<b>MISO Transmission Owners</b>	Ameren Services Company, as agent for Union Electric Company and Ameren Illinois Company; 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; 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; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
<b>NRECA</b>	National Rural Electric Cooperative Association
<b>PSEG</b>	Public Service Electric and Gas Company
<b>Six Cities</b>	The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, CA
<b>TAPS</b>	Transmission Access Policy Study Group
<b>Xcel</b>	Xcel Energy Services Inc., on behalf of the Xcel Energy Operating Companies including Northern States Power Company; Northern States Power Company; Public Service Company of Colorado; and Southwestern Public Service Company