EDISON ELECTRIC INSTITUTE

1. INTRODUCTION

The Edison Electric Institute (EEI) appreciates the opportunity to provide comments in response to the Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates issued by the Federal Energy Regulatory Commissions (FERC or Commission) on March 15, 2018.1 As requested by the Commission, these comments focus on the effects of the Tax Cuts and Jobs Act (TCJA) on accumulated deferred income taxes (ADIT) and bonus depreciation.

EEI is the trade association that represents all U.S. investor-owned electric companies. Our members provide electricity to 220 million Americans and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports more than 7 million jobs in communities across the United States. EEI’s members are committed to providing affordable, reliable electricity to customers now and in the future. EEI’s members include public utilities that provide Commission-jurisdictional services at cost-of-service rates, which allow for the recovery of expenses incurred, including income taxes, plus a reasonable rate of return on

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1 Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates, 162 FERC ¶ 61,223 (Mar. 15, 2018) (Notice of Inquiry” or “NOI”). These comments were due on May 21, 2018, but, due to issues with FERC’s online systems, the Commission noted that it would accept as timely filings made on the next business day the systems were operational.
Accordingly, EEI members will be directly affected by any action the Commission may take with respect to ADIT and bonus depreciation.

II. COMMENTS

A. Accelerated Depreciation and Normalization Benefit Public Utilities and Customers.

In this NOI, the Commission seeks input on a range of issues related to the effects of the TCJA on ADIT and bonus appreciation. Before addressing those issues, it is useful to review accelerated depreciation and normalization, why these have been authorized for public utilities by Congress for decades and how providing accelerated depreciation to public utilities also benefits customers.

To ensure the provision of critical services, like electricity, at reasonable rates for customers, regulated public utilities are allowed to recover their operating expenses and earn a fair rate of return on rate base, which represents their investment. Income taxes and depreciation charges are among those operating expenses that are permitted to be recovered in rates charged to customers.

Public utilities use the straight-line method to determine the depreciation charges that are included in operating expenses. The straight-line method distributes depreciation charges evenly over the expected life of an asset in equal annual amounts. Since 1954, Congress has authorized accelerated depreciation for determining the taxes payable to the federal government on certain assets in any given year. When accelerated depreciation is authorized for tax purposes, a public utility’s income taxes payable in a period are different from the income tax expense that it records for ratemaking purposes: a public utility pays to the government less income tax in the property’s early years and more in the later years. However, in total, the same income tax
expense is recovered from customers and is payable to the government, meaning that the actual tax rate is unaffected by accelerated depreciation (assuming no change in the tax rate during the regulatory depreciation period).

The larger tax deductions in early years that result from accelerated depreciation provide a public utility with what amounts to an interest-free loan from the government in the amount of the deferred taxes. Congress provides accelerated depreciation in order to encourage public utilities to use this interest-free capital to invest. Public utilities, such as electric companies, use this capital to invest in critical and smart energy infrastructure, like generation, transmission and distribution, that provide customers with continued reliable service, new services, and access to more customer solutions. In 2017, electric companies invested more than $120 billion in energy infrastructure, including generation, transmission and distribution facilities.2

In addition to reducing the need for outside debt and equity for investment, deferred taxes arising from accelerated tax depreciation stabilize public utility earnings by providing a source of financing and reducing a public utility’s cost of capital. This further reduces the costs incurred by the utility and ultimately borne by customers.

To ensure that customers do not pay a rate of return on this interest-free loan from the government, deferred taxes are deducted from rate base, reducing the rates paid by customers. If these deferred taxes instead were required to be returned to customers immediately, public utilities would not have the intended access to zero-interest capital to invest because customer rates would be reduced in an amount equal to the deferred taxes, contrary to the policy rationale that underpinned Congress’ enactment of accelerated depreciation. Moreover, if immediate

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flow-through of the full amount of tax savings provided by accelerated depreciation were required, customers who paid rates in the earlier years of an asset would see a reduction in rates, but those in the later years would be more likely to see an increase in rates as the deferred taxes became payable. This could create intergenerational equity issues, especially given the long lives of many public utility assets, and potential rate shocks.

Accordingly, beginning in 1969 and implemented more fully since 1981, Congress required the use of a “normalization method of accounting” as an eligibility requirement to claim accelerated tax depreciation with respect to public utility property. Normalization requires that the benefits from accelerated tax depreciation provided to public utilities be passed on to customers over the life of the asset and no faster.3 Since 1981, public utilities that do not use normalization cannot use most forms of accelerated depreciation.4 The Commission has required normalization for accounting and ratemaking for most transactions in which there is a difference between depreciation for ratemaking purposes and depreciation for tax purposes.5 In adopting normalization, the Commission specifically found that it benefits both customers and public utilities and balances their interests.6

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3 See Tax Reform Act of 1969 at section 441(a) and Economic Recovery Tax Act of 1981 at sections 201(a) and 209(d); see also IRC sections 167(l) (as in effect on the day before the date of the Revenue Reconciliation Act of 1990), 168(e)(3) (as in effect on the day before the date of enactment of the Tax Reform Act of 1986) and 168(i)(9) (as currently in effect).

4 See id. at sections 201(a) and 209(d); see also IRC section 168.


6 See id.
As a result of normalization, public utilities accumulate deferred taxes resulting from accelerated depreciation deductions and record them on their books. These deferred tax accounts represent a claim on assets needed to satisfy future tax liabilities. As noted, these amounts are used for investment and, therefore, are not escrowed or accumulated in a savings account. Said another way, they represent an obligation to pay tax liabilities in the future. Given the TCJA’s reduction in the federal corporate income tax rate, the amounts in these ADIT accounts (established based on higher historical tax rates in effect until January 1, 2018) may now be in excess of what a public utility may owe in taxes in the future at the new, lower tax rates. The existence of this “excess” ADIT does not negate the benefits of accelerated depreciation and normalization for public utilities and their customers or the policy rationales that underpin Congress’s goal of encouraging infrastructure investment through accelerated depreciation.

B. The Commission Should Provide Guidance on How to Address ADIT in Ratemaking and Need Not Address Bonus Depreciation.

Before addressing the specific matters raised by the Commission in the Notice of Inquiry, EEI members have identified several key issues for the Commission to keep in mind as it contemplates possible action to address the effects of the TCJA on ADIT and bonus depreciation. First, the Commission should take this opportunity to state that all jurisdictional rates are not per se unjust or unreasonable simply as a result of the change in the federal corporate income tax rate. Second, the Commission should limit the focus of this proceeding, as it has to date, on wholesale transmission rates and should not open up other types of rates as part of this NOI. Addressing the effects of the TCJA on other types of rates, particularly negotiated rates, cannot be done in a generic way. Parties to these types of rates may seek review under Federal Power Act (“FPA”) section 206. Third, while the effects of the TCJA will be specific to the facts and circumstances of each company with wholesale transmission rates, the Commission
can and should provide guidance that will facilitate the return of any excess ADIT to customers.

Fourth, the Commission should confirm that any changes to wholesale transmission rates that may be necessary to address ADIT can be done via single-issue FPA section 205 filings.

1. The TCJA Does Not Render All Rates Unjust or Unreasonable.

As noted in the NOI, several stakeholders have asked the Commission to “investigate the continued justness and reasonableness of applicable Commission-jurisdictional rates and explore ways to adjust transmission revenue requirements of Commission-jurisdictional entities to prevent customers from overpaying for service.”\(^7\) The Commission already has begun the process of adjusting the tax allowance included in transmission rates to reflect the decrease in the federal corporate income tax rate that became effective January 1, 2018, by issuing show cause orders under section 206 to a range of entities.\(^8\)

While customers should not overpay for services, all current jurisdictional rates are not per se unjust or unreasonable merely because of the changes in the federal corporate income tax rate. Whether and how rates should be adjusted to address the effects of the TCJA will be dependent on a company’s particular facts and circumstances. Accordingly, the Commission should not take generic action to modify all jurisdictional rates and should not determine that all rates are no longer just and reasonable as a result of the TCJA. However, the Commission can and should provide generic guidance, as discussed in these comments, which will help public utilities address ADIT balances and ensure that any excess ADIT balances can be returned to

\(^7\) NOI at P 3.

customers consistent with the requirements of the Internal Revenue Code ("IRC") and the TCJA.\(^9\)

As discussed above, ADIT balances that are recorded on the books of public utilities do not represent cash that has been escrowed or placed in a savings account. As Congress intended, they have been invested in energy infrastructure assets to the benefit of customers. Therefore, some public utilities may have to finance some or all of the return of excess ADIT to customers. In addition, this return will be added to rate base (as ADIT offsets are reduced). Accordingly, ensuring that the benefits of tax reform inure to customers—that they do not “overpay” for jurisdictional services—is more involved than simply requiring the return of excess ADIT balances to customers.\(^{10}\)

2. Rates Other than Transmission Rates Should Be Addressed Separately; Negotiated Rates Are Not Per Se Unjust and Unreasonable Because of Changes in the Federal Corporate Income Tax Rate.

With respect to public utilities, the focus of the Notice of Inquiry and of these comments in response is cost-based Commission-jurisdictional transmission rates. However, the

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\(^9\) The Commission has recognized that the impacts of federal corporate tax rate changes on ADIT must be addressed on a case-by-case basis. In \textit{Order No. 144}, the Commission provided general rules addressing normalization, but noted that actual implementation would be specific to each company and would take place in the context of each company’s next rate case. \textit{See Order No. 144-A}. \textit{See also Midcontinent Indep. Sys. Operator, Inc.}, 153 FERC ¶ 61,374 at P 41 (2015) (finding that, in the context of proposed modifications to the MISO Tariff to address ADIT recovery, other aspects of the formula rate were “beyond the scope of issues raised in this proceeding” and dismissing protests raising unrelated issues); \textit{Indicated RTO Transmission Owners}, 161 FERC ¶ 61,018 (2017).

\(^{10}\) As discussed in Section II, B, \textit{infra}, and as recognized in the NOI, the IRC requires that some excess ADIT balances be flowed back to customers over the remaining life of the asset that gave rise to the deferred taxes, consistent with normalization requirements; immediate flow-through is not an option that complies with the TCJA and IRC requirements. Other excess ADIT could be returned on a different schedule.
Commission seeks comment on whether other jurisdictional rates should be revised to address the changes in the federal income tax rate.\textsuperscript{11}

In EEI’s letter to the Commission dated February 26, 2018, we noted that electric companies may have entered into negotiated agreements (e.g., settlement rates, executed agreements) that include a Commission-jurisdictional rate for a range of services. In a recent data request to a natural gas pipeline, the Commission recognized that negotiated rates for services may not be impacted by the changes to the federal corporate income tax rate.\textsuperscript{12} The same is true for negotiated and other agreements between public utilities and their customers for jurisdictional services. The specifics of these agreements likely will govern how they may be affected by the TCJA and may or may not explicitly detail taxes, ADIT, or other accounts as individual components. As negotiated agreements, which could have been entered into many years ago, they could contain significant under-recoveries of other costs that more than offset the downward pressure on rates otherwise resulting from the TCJA. Accordingly, these agreements are not per se unjust and unreasonable merely because of a change in the federal corporate income tax rate.

The Commission should not mandate uniform action for such negotiated rates but instead should allow electric utilities and their respective customers to determine whether future rate-related actions may be appropriate. Indeed, as negotiated rates, the Commission should reaffirm that many such arrangements presumably only can be deemed to be unjust and unreasonable if the overall rate produced by the agreement is unjust and unreasonable and that a filing noting

\textsuperscript{11} See NOI at P 29.

\textsuperscript{12} See Gulf South Pipeline Co., L.P., Data Request, Docket No. CP17-476-000, at 3, n.1 (Jan. 25, 2018).
that a single component of a rate has been changed is insufficient, on its own, to meet the burden under FPA section 206. Accordingly, the Commission should not take generic action to address other jurisdictional rates, particularly negotiated rates. And, the Commission should reiterate that those customers who choose to seek revisions to those rates bear the burden of proof in demonstrating that the TCJA has rendered those rates unjust, unreasonable or unduly discriminatory.13

3. The Commission Should Permit Single-Issue Ratemaking to Address the Effect of the TCJA on ADIT, If Tariff Revisions Are Needed.

The Commission should permit public utilities to make single-issue rate filings under FPA section 205 to address the effects of the TCJA on ADIT, if needed. In the past, the Commission has demonstrated a willingness to allow single-issue filings to address tax-related changes to rates14 and has indicated a willingness to address necessary changes to the tax allowance portion of jurisdictional transmission rates via single-issue filings.15

Circumscribing filings such that they only address tax issues will be cost-effective and administratively efficient, allowing new rates to take effect to the benefit of customers without protracted litigation on issues unrelated to the TCJA. To the extent customers want to challenge other components of rates, FPA section 206 is the appropriate vehicle. Accordingly, the Commission should provide guidance that single-issue rate making is permitted and that protests

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15 See n.8, supra. In these show cause orders, the Commission noted that it will consider proposals to review proposed rate revisions on a single-issue basis. The Commission specifically allowed single-issue Natural Gas Act section 4 rate filings to address the potential effects of the TCJA. See Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate, Docket No. RM18-11-000 (Mar. 15, 2018).
will be limited to the changes filed.

C. Responses to Commission Inquiries

In the NOI, the Commission raises several issues for comment. In particular, the Commission seeks comment on the effect of the TCJA on rate base; the return or recovery of plant-based and non-plant-based ADIT; assets sold or retired after December 31, 2017; amortization of excess and deficient ADIT; supporting worksheets; and bonus depreciation. Each of these is addressed in turn below.

1. The Effect of the TCJA on Rate Base Depends on the Form of the Rates; Some Changes May be Needed to Some Formula Rates to Preserve Rate Base Neutrality.

The Commission notes that public utilities’ stated and formula rates “may not include comparable provisions allowing rate base to be reduced for regulatory liabilities and increased for regulatory assets…Therefore, the Commission seeks comment on how to ensure that rate base continues to be treated in a manner similar to that prior to the [TCJA] (i.e., how to preserve rate base neutrality).”

As a preliminary matter, consistent with generally accepted accounting principles (“GAAP”) and Commission-authorized accounting practices, EEI member companies already have remeasured ADIT balances and, to the extent that excess ADIT balances were created by the change in the corporate income tax rate, new regulatory assets and liabilities were created to reflect this as of the end of 2017.

In general, the potential effects of the TCJA on rate base depend on the form of the rates. In any future action intended to address rate base neutrality, the Commission should differentiate

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16 NOI at P 14.
between stated rates and formula rates. As noted above, preserving rate base neutrality is necessary to ensure that rates are just and reasonable as required by the FPA. While the TCJA has changed the federal corporate income tax rate, rate base need only be adjusted to the extent necessary to reflect the impact of the changed tax rate. The calculation of other elements of rate base that are independent of the tax allowance should not be affected.

a. Accounting Conventions Preserve Rate Base Neutrality for Stated Rates.

   In the calculation of stated wholesale transmission rates, ADIT balances and regulatory liability balances are deducted from rate base, pursuant to accounting conventions. Accordingly, changes in the tax rate leading utilities to record excess ADIT in regulatory asset and liability accounts should have no impact on the actual calculation of stated rates so long as any newly-created regulatory assets and liabilities also are included in the computation of rate base. Accordingly, appropriate accounting treatment addresses concerns about rate base neutrality.

   While accounting addresses rate base neutrality in the calculation of stated rates, this does not address when these stated rates are recalculated and new rates reflecting the changes to regulatory assets and liability are charged to customers. That timing question is separate and distinct from the Commission’s inquiry as to whether stated and formula rates include “comparable provisions allowing rate base to be reduced for regulatory liabilities and increased for regulatory assets”\(^\text{17}\) and should be addressed on a case-by-case basis.

\(^{17}\) Id.
b. Some Formula Rates May Need to Adjust Current Templates to Preserve Rate Base Neutrality; the Commission Should Take Action to Permit These Adjustments During a Public Utility’s Next Annual True-Up.

In the case of formula rates, it is likely that current rate templates for some companies do not capture the newly created regulatory assets and liabilities. Not all formula rates would need to be revised, however. For example, public utilities, like those that use the MISO Attachment O, pursuant to Note F, will record changes in deferred income taxes resulting from the TCJA in Accounts 190, 281, 282, and 283. To ensure that customers receive the time value of money, these public utilities will adjust the amounts in these accounts by any amounts in contra accounts identified as regulatory assets or liabilities related to FASB 106 or 109, as appropriate. This accounting preserves rate base neutrality.18 Thus, the Commission should not require generic action to modify all formula rates as this may be unnecessary in some cases.

In cases where revisions are needed, however, Commission approval would be needed to adjust the rate templates to include excess ADIT regulatory assets and liabilities recorded in Account 182.3 (Other Regulatory Assets) and Account 254 (Other Regulatory Liabilities) as reported on pages 232 and 278 of the Form No. 1. These adjustments would preserve rate base neutrality.

The Commission could take generic action that would allow public utilities with formula rates that require these adjustments to address these during their next true-up annual informational filing. This would obviate the need for each company to file a separate FPA section 205 filing to address this issue.19 Company-specific issues could be addressed at the

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19 The filing of an annual true-up presents a convenient opportunity to address the potential effects of the TCJA on some public utilities’ formula rates. In addition to providing annual
same time as the true-up, but it would not be necessary to litigate the revisions to rate templates in each such filing. This is the approach the Commission took when requiring normalization for all timing difference transactions in Order No. 144: the Commission approved normalization in Order No. 144, but then addressed the application of normalization to each company’s timing difference transactions in separate proceedings.\textsuperscript{20} In these proceedings, stakeholders were barred from raising issues about whether normalization was appropriate, as the Commission order already addressed this. Such an approach in this instance would minimize filing burdens on both the Commission and transmission owners.

c. Interest Does Not Need to Be Imposed on Excess ADIT.

The Commission also seeks comment on whether interest on excess or deferred ADIT, from the period January 1, 2018, to whenever rates may be adjusted to reflect the impact of the TCJA on these balances, would be appropriate.\textsuperscript{21} If rate base neutrality is preserved, either through existing rate structures or via changes to address new regulatory assets and liability, no interest needs to be imposed because the normal operation of rate calculations would ensure that customers receive the benefit of excess ADIT.

d. Some Rates Require Mechanisms in Order to Return Excess ADIT or Collect Deficient ADIT; the Commission Should Take Action to Provide Guidance on the Creation of These Mechanisms.

In addition to creating new line items in some formula rate templates to address newly-created regulatory assets and liabilities, companies with formula rates also may need to create

\textsuperscript{20} See n.5, supra.

\textsuperscript{21} See NOI at P 16.
mechanisms in their rates to provide for the return of excess ADIT or the collection of deficient ADIT. The Commission has approved the creation of such mechanisms in the past on a case-by-case basis.22

The Commission could consider taking generic action that would permit all companies to add these mechanisms to their formula rates, which would allow return of any excess ADIT balances, at the same time as their next true-up filing.23 It is not necessary to litigate in every such filing made whether such mechanisms should be included in rates—particularly as customers cannot realize the potential rate benefits of the reduction in needed ADIT—unless these mechanisms are created.24

2. The Commission Should Take Action to Affirm the Existing Methods for Amortization of Plant-Based ADIT Consistent with the Requirements of the IRC; Public Utilities Should Be Allowed to Propose Their Own Schedules for the Amortization of Non-Plant-Based ADIT.

The Commission notes that, under the TCJA, public utilities may flow back excess ADIT associated with “utility plant assets (excess plant-based ADIT)” no more rapidly than over the


23 Such mechanisms should not be limited to the return of excess ADIT. At times, it may be necessary to collect deficient ADIT. Rates that do not permit companies to collect tax liabilities are not just and reasonable. See e.g., FPC v. United Gas Pipe Line Co., 386 U.S. 237, 243-45 (1967); Pub. Sys v. FERC, 709 F.2d 73 (D.C. Cir. 1983) (“The rates [of public utilities under the FPA] are based on cost of service, which comprises ‘all expenses incurred, including income taxes, plus a reasonable return on capital.’”) (quoting Pub. Serv. Co. v. FERC, 653 F.2d 681, 683 (D.C. Cir. 1981)). See also Chicago v. FPC, 458 F.2d 731, 756 (D.C. Cir. 1971) (“for ratemaking purposes, taxes are considered nothing more and nothing less than a cost of doing business”).

24 In the alternative, the Commission generically could act on the petitions to create these mechanisms that currently are pending before it. If acted on in a timely fashion, this could provide guidance to other public utilities that may need to make similar filings. List pending requests. See, e.g., Midcontinent Indep. Sys. Operator, Docket No. ER17-2323 (Aug. 17, 2017).
life of the underlying asset. The Commission seeks comment on the methodology used to adjust
the tax allowance or expense included in cost-of-service rates to reflect the amortization of
excess or deficient “plant-based ADIT.” The Commission also seeks comment on the flow-
back or recovery of non-plant based ADIT. In particular, the Commission requests comment on
the amortization period for these “non-plant” based ADIT.

As a preliminary matter, the period over which excess ADIT will be returned to
customers largely is dependent on the limitations imposed by the normalization requirements of
TCJA section 13001(d). Such limitations are nearly identical to those imposed by the
normalization requirements under section 203(e) of the Tax Reform Act of 1986; however, the
TCJA’s penalty for failure to adhere to the TCJA’s normalization requirements is steeper than
the penalty for violating the normalization requirements prescribed by the Tax Reform Act of
1986. In addition to losing eligibility to claim accelerated depreciation (i.e., the sole penalty for
violating the Tax Reform Act of 1986’s normalization requirements), a tax payer that violates the
TCJA normalization requirements also is required to increase its tax by the amount by which it
reduces its excess ADIT more rapidly than permitted.

The Commission’s use of “plant-based” and “non-plant” based ADIT does not
correspond to the IRC’s normalization requirements and may cause some confusion as to the
appropriate return period for certain accounts. Consistent with the terminology utilized by the
IRC for tax purposes, excess ADIT accounts are either “protected”—subject to the normalization
requirements—or “unprotected” and not subject to normalization requirements.

25 NOI at P 17.

26 See id. at P 19.
Protected accounts are those that are the result of book-tax depreciation timing differences. Specifically, protected ADIT result from the excess of tax depreciation deductions allowable under IRC section 168 (i.e., under the Modified Accelerated Cost Recovery System (“MACRS”) or the Accelerated Cost Recovery System (“ACRS”)) and the depreciation deductions that would be allowable under IRC section 167 using the method (including the period, first and last year convention, and salvage value) used to compute regulatory tax and depreciation expense (and using the same depreciable basis used to determine tax depreciation deductions allowable under IRC section 168), except to the extent that such excess results in a net operating loss. Unprotected ADIT, which include all ADIT other than protected ADIT (regardless of whether related to property), are not addressed in the TCJA or IRC. Examples of unprotected ADIT include book-tax timing differences related to state income taxes, repairs and employee benefits, among others.

Whatever terminology the Commission uses, any Commission action on ADIT should recognize which excess ADIT balances must be returned to customers via normalization and which could be returned over different periods.

a. The Commissions Should Affirm the Existing Methodologies for Amortizing the Flow-Back of Protected ADIT for Use by All Public Utilities.

In the NOI, the Commission notes that there are two methods for normalizing or amortizing excess ADIT over the remaining regulatory life of the property that gave rise to the ADIT. If public utilities have the requisite vintage data, the TCJA’s normalization rules require that they use the Average Rate Assumption Method (“ARAM”). If they do not have the vintage
data necessary to apply ARAM, the TCJA’s normalization requirements can be satisfied by using an alternative method commonly referred as the “Reverse South Georgia Method.”

To date, while the Commission has permitted the use of both methods in the past, the Commission has done so in company-specific orders. The Commission should take this opportunity presented by the TCJA to provide general guidance to all public utilities by finding that both methods are appropriate for use in determining how to amortize protected excess ADIT balances so long as they comply with the IRC’s normalization requirements. If the Commission takes action to formally adopt both methodologies, the only question to address in company-specific filings is whether the requisite data exists to use ARAM; if not, the public utility should use the Reverse South Georgia Method. There is no need to litigate the appropriateness of either methodology in a plethora of company-specific filings. This kind of guidance will reduce burdens on both the Commission and regulated companies and ensure a timely return to customers of eligible excess ADIT.

b. Public Utilities Should Propose Their Own Amortization Periods for the Return of Unprotected Excess ADIT.

With respect to unprotected ADIT balances, it is important to note that, like the reversal of ADIT, the return of excess ADIT has the effect of increasing rate base, which can result in an increase in rates. To the extent that public utilities require financing in order to return excess ADIT, these additional costs also can be passed on to customers. The Commission should keep this in mind when determining appropriate return periods for unprotected excess ADIT balances.

27 See id. at P 3.


29 Indeed, this is true for all return of excess ADIT, protected and unprotected.
In general, it may be more appropriate to let companies propose their own return periods for unprotected ADIT instead of mandating a time period that is applicable to all such balances, as the Commission suggests in the NOI.\textsuperscript{30} Some types of unprotected ADIT may be returned quickly, with little impact on customers or public utilities. Conversely, longer periods may be appropriate in other cases, particularly when there are unprotected, but property-related excess ADIT balances. The Commission can review such proposals to ensure that they are just, reasonable and not unduly discriminatory.


The Commission notes that, when assets are sold or retired, the original cost and accumulated depreciation of those assets are removed from the public utility’s books. In addition, any associated ADIT is concurrently removed from the public utility’s books because any previously deferred tax effects related to these assets are now part of the computation of gains or losses associated with the sale or retirement. And, any excess ADIT resulting from the TCJA’s change in the federal corporate tax rate also should be removed from the books. The Commission seeks comment on whether, and if so how, it should address this excess ADIT for assets that are sold or retired after December 31, 2017.\textsuperscript{31}

As the Commission notes, and consistent with GAAP requirements, public utilities will account for any sale or retirement of assets by removing the original cost, any accumulated depreciation and any ADIT from their books. As with any other excess ADIT, excess ADIT

\textsuperscript{30} The Commission hypothetically suggests a five-year return period for “non-plant”-based ADIT. \textit{See} NOI at P 19.

\textsuperscript{31} \textit{See id.} at P 20.
arising from the TCJA’s change in the federal corporate income tax rate and associated with assets that are sold or retired after December 31, 2017, should be flowed back to customers. However, the Commission should not take any particular action on ADIT related to assets sold or retired after December 31, 2017, until such time that the IRS provides clear normalization rules for these assets. To date and in response to the last time Congress changed the federal corporate income tax rate, the IRS only has issued guidance on the disposition of excess ADIT in the context of extraordinary retirements.\textsuperscript{32} If the Commission acts before the IRS issues guidance, the Commission runs the risk of creating a potential normalization violation that could result in public utilities and their customers losing the benefits of accelerated depreciation and additional income taxes being charged to customers.\textsuperscript{33}

4. Amortization of Excess and Deficient ADIT May Be Accounted for In More than One Way.

The Commission seeks comments to “address how public utilities with stated or formula rates…should adjust their income tax allowance such that the allowance would be decreased or increased by the amortization of excess and deficient ADIT.” Specifically, the Commission also seeks comment on “whether a public utility…should record the amortization by recording a reduction to the regulatory asset or regulatory liability account and recording an offsetting entry to Account 407.3 (Regulatory Debits) or Account 407.4 (Regulatory Credits).”\textsuperscript{34}

\textsuperscript{32} See IRS Reg § 1.168(i)-3, Treatment of Excess Deferred Income Tax Reserve Upon Disposition of Deregulated Public Utility Property.

\textsuperscript{33} As the Commission is aware, without exception, public utility property placed in service after 1980 is not eligible for ACRS or MACRS unless the resulting tax deferral is normalized when setting rates. See Economic Recovery Tax Act of 1981, sections 201(a) and 209(d). This requirement is unchanged by the TCJA.

\textsuperscript{34} NOI at PP 21-22.
For some EEI members recording reductions to the regulatory asset or liability account and recording an offsetting entry to Account 407.3 (Regulatory Debits) or Account 407.4 (Regulatory Credits) is an appropriate accounting treatment for adjusting their income tax allowances to reflect decreases or increases caused by the amortization of excess or deficient ADIT. For other EEI members, the amortization of these amounts should be recorded in the same income statement account originally used when the regulatory asset or liability amount for ADIT was established, namely, the provision for deferred income taxes. Under this approach, the amortization of excess ADIT amounts would be recorded in Accounts 410.1 and 411.1, as necessary. The Commission, therefore, should recognize that both accounting approaches may be appropriate, depending on the facts and circumstances of individual public utilities.


The Commission seeks comment on “whether it should require public utilities…to provide additional information, on a one-time basis, such as supporting worksheets, to show the computation of excess or deficient ADIT and the corresponding flow back of excess ADIT to customers or recovery of deficient ADIT from customers.”\textsuperscript{35}

The Commission should not institute a separate proceeding (or proceedings) merely for the purpose of requiring that all public utilities provide supporting worksheets (or other materials) to show how ADIT balances were remeasured. It would be more appropriate for the Commission (or Commission staff) to make relevant and tailored data and/or information requests, which could be different from company to company, in the context of other, suitable proceedings, which could include annual rate true-ups for some companies or section 205 or 206

\textsuperscript{35} Id. at P 23.
filings. Moreover, the appropriate supporting materials or worksheets will vary depending on company-specific factors, such as whether the public utility has stated or formula rates, and depending on the context in which the rate calculations are performed. Generically requiring that all companies provide supporting worksheets to the Commission in a new and separate proceeding could be duplicative of the processes that already exist for such information to be provided and assessed. Such a duplicative process would be burdensome for the Commission and for companies.36

Moreover, the predicate for seeking such documentation appears to be an assumption that a greater level of support or higher burden of proof should be required for the remeasurement of ADIT balances and whether there are excess ADIT resulting from the TCJA that should be flowed to customers than is applied to any other costs included in jurisdictional rates. There is no basis for such assumption, as public utilities comply with GAAP requirements and are regularly audited, including their recordation of the regulatory assets and liabilities related to ADIT and excess/deficient ADIT.

In addition, all electric public utilities are required to file FERC Form 1, Electric Utility Annual Reports, which are submitted to the Commission and are made public. These forms require the disclosure of information about ADIT, among other detailed balance sheet and

36 If the Commission nonetheless determines to order all public utilities to provide supporting information, the Commission first should provide the financial template that it proposes to use via a Notice of Proposed Rulemaking to allow for review and comment by public utilities and other stakeholders. This would reduce burdens on individual public utilities and the Commission. And, this is the approach that the Commission has taken for natural gas pipelines. See n.15, supra. Any such proposed financial template should recognize the different types of information that would be required with respect to the different kinds of wholesale transmission rates.
income statement information and supporting details. These submissions are regularly audited and must be accompanied by a CPA Certification Statement that must attest that the information provided conforms in all material respects with the FERC’s accounting requirements and the applicable Uniform System of Accounts and published accounting releases. Public utilities also receive audit opinions covering their FERC Form 1 submissions. The Commission has not articulated any rationale as to why additional data is needed beyond that provided in these annual filings; and, as noted, if additional information is needed from a particular company, that information could be sought through appropriately-tailored data or information request in the filing or discovery process or the context of another relevant proceeding.

6. **Bonus Depreciation Should Be Treated Like Other Forms of Depreciation.**

As discussed above, bonus depreciation is an incentive that Congress has provided at various times to certain companies and industries to encourage investment. The Commission notes that the TCJA made changes to the availability and amount of bonus depreciation. However, as a result of the TCJA, this investment incentive is no longer available for assets used for the furnishing or sale of electrical energy if these assets were acquired or put into service after September 1, 2017. The Commission seeks comment on “whether, and if so how, [it] should take action to address bonus depreciation-related issues” and specifically seeks

37 See 18 C.F.R. § 141.1. FERC Form 1 is collected pursuant to the Commission’s authority under FPA sections 304 and 309. See 16 U.S.C. §§792-828c. FERC Form 1 was initially prescribed in 1937 and has been revised numerous times.

38 See NOI at P 27.

39 See TCJA section 13201.
suggestions as to what type of action the Commission should take and “whom the Commission should target with its action.”

The Commission need not take any special action to address the TCJA’s changes in the availability of bonus depreciation for public utilities. Bonus depreciation is treated no differently from other forms of accelerated tax depreciation under the normalization requirements and in the ratemaking context and, therefore, no special treatment or action is necessary to address the fact that there will be smaller differences between book and tax depreciation over the regulatory life of assets that do not qualify for bonus depreciation by reason of the changes made by the TCJA.

It is important to note that the changes in the availability of bonus depreciation are prospective. Such changes do not apply to property that is acquired and placed into service before September 27, 2017. Any ADIT balances that were the result of bonus depreciation claimed in the past under pre-TCJA rules have been remeasured to reflect the corporate income tax rate change by public utilities, along with all other federal ADIT balances, consistent with accounting requirements. To the extent that this remeasurement resulted in excess ADIT balances, these will be flowed to customers according to the operative timing schedule, as discussed above.

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40 See NOI at PP 27-28.

41 To the extent that any company projected the use/availability of bonus depreciation in their formula rates for 2018 for assets acquired or placed in service after September 27, 2017, any adjustments can be made during the normal annual true-up process.
III. CONCLUSION

EEI appreciates the opportunity to submit comments in response to the NOI and to provide information for the Commission to consider as it investigates how to address the effects of the TCJA on ADIT and bonus depreciation. EEI looks forward to continued dialog with the Commission on these issues, with the goal of ensuring that tax reform benefits electric companies and their customers.

Respectfully Submitted,

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