

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility Transmission Rate Changes
to Address Accumulated Deferred
Income Taxes

Docket No. RM19-5-000

COMMENTS OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL, AMERICAN
FOREST & PAPER ASSOCIATION, AND AMERICAN CHEMISTRY COUNCIL
("INDUSTRIAL CUSTOMERS")

The Electricity Consumers Resource Council ("ELCON"), the American Forest & Paper Association ("AF&PA"), and the American Chemistry Council ("ACC") (collectively, "Industrial Customers") appreciate the opportunity to submit comments on the Commission's Notice of Proposed Rulemaking (the "NOPR") in the above-captioned docket, which is an essential and time-critical response to give ratepayers the full benefits of the corporate income tax rate reduction from 35% to 21%, which became effective on January 1, 2018, of the Tax Cuts and Jobs Act of 2017 (the "tax cut").

ELCON is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of products from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities and are consumers of electricity in the footprints of all

organized markets and other regions throughout the United States. Reliable electricity supply at just and reasonable rates is essential to our members' operations.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – Better Practices, Better Planet 2020. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures nearly \$300 billion in products annually, and employs approximately 950,000 men and women. The industry meets a payroll of approximately \$55 billion annually and is among the top 10 manufacturing sector employers in 45 states. AF&PA member companies own and operate facilities that consume electricity transmitted across Commission-jurisdictional electric transmission facilities and they pay electric transmission charges.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®; common sense advocacy designed to address major public policy issues; and health and environmental research and product testing. The business of chemistry is a \$526 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for ten percent of all U.S. goods exports. Chemistry companies

are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

I. INDUSTRIAL CUSTOMERS SUPPORT THE NOPR¹

As noted in the NOPR, Accumulated Deferred Income Taxes ("ADIT") arises from timing differences between the method of computing taxable income for reporting to the IRS, in which public utilities generally are able to take advantage of accelerated depreciation, and the method of computing income for regulatory accounting and ratemaking purposes, in which, under Commission policies, the accumulated depreciation offset to rate base is calculated using straight-line depreciation. Thus, ADIT accrues because a portion of the rates of utility customers represents payment for taxes that the utility will not pay until future years. As a consequence of the tax cut, however, a portion of the ADIT liability that has been collected from ratepayers will no longer be due to the IRS.

Under the NOPR, to ensure that ratepayers receive the full benefit of the tax cut, utilities with transmission formula rates would be required to:

- include mechanisms to deduct any excess ADIT from or add any deficient ADIT to their rate bases;

¹ AF&PA and ACC reviewed the Comments being submitted by the National Rural Electric Cooperative Association ("NRECA") and support those Comments. ELCON does not take a position on the NRECA Comments as it did not have sufficient time to review them prior to the filing date.

- include adjustment mechanisms in those rates that would raise or lower their income tax allowances by any amortized excess or deficient ADIT; and
- incorporate a new permanent worksheet into their rates that will annually track information related to excess or deficient ADIT.

The NOPR emphasizes “that prescribing a one-size-fits-all approach is not appropriate and that the public utilities with transmission formula rates should instead be allowed to propose any necessary changes to their rates on an individual basis.” Those utilities that still have transmission stated rates would be required to determine the amount of excess and deferred income tax caused by the reduced federal corporate income tax rate based on the ADIT amounts approved in their most recent rate case, and to return or recover this amount to or from customers.

Industrial Customers fully support the Commission’s recognition that, because the tax cut had reduced the ADIT liability and ADIT asset balances on the books of utilities, a portion of an ADIT liability that was collected from customers is excess ADIT that “must be returned to customers in a cost-of-service ratemaking context.” Ensuring that ratepayers receive the full benefits of the tax cut is essential in order for the public utility transmission formula and stated rates to be just and reasonable and not unduly discriminatory or preferential.

The Commission correctly observes that, in view of the “near-industry-wide transition from stated to formula rates,” there are insufficient mechanisms to reflect excess ADIT – both preservation of rate base neutrality through the removal of excess ADIT from rate base and the return of excess ADIT to ratepayers – following a

reduction in tax rates. The Commission needs to adapt the requirements of Order No. 144 and its regulations in 18 CFR § 35.24 to the current market circumstances. The underlying principle of tax normalization – matching the tax effects of costs and revenues with the recovery in rates of those same costs and revenues – continues to be fully applicable and provides ample support for the NOPR.

Industrial Customers also support the proposal to require public utilities with transmission formula rates to incorporate a new permanent worksheet that will annually track information related to ADIT. Industrial Customers agree that it is important for interested parties to be able to track a utility's rate base adjustments and income tax allowances to account for ADIT, and that requiring annual updates will usefully enable input source and calculation methodologies to be followed over time.

II. THE COMMISSION SHOULD PROMPTLY ISSUE THE FINAL RULE

Industrial Customers seek the Commission's prompt issuance of a final rule, which already is delayed, and further Commission actions as are necessary for full and timely return of ratepayer monies to utility customers, including interest charges to account for the delays that already have occurred and to establish an incentive against further delays.

These proceedings have already been underway for some time. Following the January 1, 2018 effective date of the tax cut, the Commission issued a Notice of Inquiry on March 15, 2018. Eight months later, the Commission issued this NOPR. Under the NOPR, compliance filings to revise transmission stated or formula rates, as necessary,

would be required within 90 days after the effective date of a final rule, and those filings will then be subject to public comment and then assessment by the Commission. At the current pace, it could be more than two years after the effective date of the tax cut for the necessary reforms to be in place.

Industrial Customers appreciate the Commission's clarification (NOPR at ¶39) that any excess ADIT is still to be returned to customers even though any proposed tariff revisions under the NOPR will be effective after January 1, 2018. To expedite the refunds, and in view of the limited scope of the NOPR, Industrial Customers also support the NOPR's proposal that compliance filings may be considered on a single-issue basis. However, Industrial Customers urge the Commission to take further steps to expedite the necessary actions, including prompt issuance of a final rule, a shortened compliance filing period, and in appropriate cases where the formula rate adjustments to preserve rate base neutrality are necessary or excess ADIT balances must be returned to ratepayers, a requirement for interest payments by public utilities, for the time period from January 1, 2018, on the excess ADIT until the necessary adjustments take effect or the payment is made. In the context of formula rates, for example, the interest rate charge would compensate ratepayers for the loss of benefit of the partial rate base reduction for the period until the adjustment is implemented.

III. CONCLUSION

As discussed in these comments, Industrial Customers support prompt action by the Commission to institute the reforms spelled out in the NOPR.

NOTICES AND COMMUNICATIONS

Notices and communications with regard to these proceedings should be addressed to:

For Electricity Consumers Resource Council:

Devin C. Hartman
President & CEO
ELECTRICITY CONSUMERS RESOURCE
COUNCIL
1101 K Street, NW, Suite 700
Washington, DC 20005
Phone: (202) 682-1390
Email: dhartman@elcon.org

W. Richard Bidstrup
CLEARY GOTTLIEB STEEN &
HAMILTON LLP
2112 Pennsylvania Avenue, NW
Washington, DC 20037
Phone: (202) 974-1500
Email: rbidstrup@cgsh.com

For American Forest & Paper Association:

Jerry Schwartz
AMERICAN FOREST & PAPER
ASSOCIATION
1101 K Street, NW, Suite 700
Washington, DC 20005
Phone: 202-463-2700
Email: jerry_schwartz@afandpa.org

Robert A. Weishaar, Jr.
MCNEES WALLACE & NURICK LLC
1200 G Street NW, Suite 800
Washington, D.C. 20005
Phone: (202) 898-5700
Fax: (717) 260-1765
Email: bweishaar@mcneeslaw.com

For American Chemistry Council:

Owen A. Kean
Senior Director of Energy Policy
AMERICAN CHEMISTRY COUNCIL
700 2nd Street, NE
Washington, DC 20002
Phone : 202-249-7000
Email:Owen_Kean@americanchemistry.com

Respectfully submitted,

/s/ W. RICHARD BIDSTRUP

W. Richard Bidstrup
CLEARY GOTTLIEB STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20006
Counsel for ELCON

Dated: January 22, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated at Washington, D.C.: January 22, 2019

/s/ W. RICHARD BIDSTRUP
W. Richard Bidstrup