

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
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

In the notice of proposed rulemaking (NOPR) in this docket, 83 Fed. Reg. 59,331 (Nov. 23, 2018), the Commission proposes to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for the effect of the Tax Cut and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054 (2017), which reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018.

Specifically, the Commission proposes to require public utilities with formula transmission rates to include a mechanism in their formula rates to deduct excess accumulated deferred income taxes (ADIT) from or add deficient ADIT to their rate bases. These public utilities also would have to include a mechanism in their rates to increase or decrease their income tax allowances by amortized excess or deficient ADIT.

The Commission proposes to require public utilities with stated transmission rates to determine the amount of excess and deferred income tax caused by the reduced federal income tax rate and return this amount to or recover this amount from customers.

Finally, the Commission proposes to require public utilities with formula transmission rates to incorporate a new permanent worksheet into their formula rates that

will annually track ADIT information. For public utilities with stated transmission rates, the Commission intends to rely on its existing regulations to require transparency in adjusting rate bases and income tax allowances to account for excess or deficient ADIT.

The National Rural Electric Cooperative Association (NRECA) is the national service organization for America's electric cooperatives. NRECA welcomes the Commission's proposals because they will help ensure that public utility transmission rates are maintained at just and reasonable levels, do not allow the over-recovery of costs of service, and allow consumers to benefit from the reduced federal income tax rate.

INTEREST OF NRECA

NRECA represents the interests of the nation's more than 900 member-owned, not-for-profit rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. America's electric cooperatives serve 12 percent of the nation's electric customers, while accounting for approximately 11 percent of all electric energy sold in the United States. NRECA's member cooperatives include 63 generation and transmission (G&T) cooperatives and 834 distribution cooperatives. Distribution cooperatives provide power directly to their end-of-the-line member-consumers. The G&T cooperatives generate and transmit power to nearly 80 percent of the distribution cooperatives and are owned by the distribution cooperatives they serve. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. NRECA members account for about five percent of national generation and, on net, generate approximately 50 percent of the electric energy they sell and purchase the remaining 50 percent from non-NRECA members. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe,

reliable, and affordable electric service. NRECA supports Commission policies to ensure just and reasonable rates for jurisdictional wholesale sales and transmission service and to foster competitive wholesale electricity markets.

COMMENTS

1. *Ensuring Rate Base Neutrality.* The Commission proposes that public utilities with formula transmission rates be required to include a mechanism to deduct excess ADIT from or add deficient ADIT to their rate bases. NOPR, P 26. The Commission does not, however, prescribe the precise adjustment mechanism. *Id.*, P 27. For public utilities with stated transmission rates, the Commission proposes no new generic requirements for adjustment of their rate bases before their next rate cases. *Id.*, P 29. But the Commission notes that any entity can file a complaint if it believes the tax cut renders any existing public utility rate unjust and unreasonable. *Id.*, P 1 n.1.

NRECA supports these proposals because they will help ensure that public utilities pass through to their transmission customers the benefit of the lower tax rate and thus will help ensure that these companies do not over-recover their costs of service in unjust and unreasonable transmission rates. NRECA member cooperatives may raise additional, specific issues in this rulemaking or in individual public utility compliance filings, rate cases, or complaint proceedings. NRECA's support for the NOPR is not intended to imply that additional clarification will be unnecessary in the final rule or that additional, specific relief will be unnecessary in a particular compliance filing or rate proceeding. In other words, NRECA supports the NOPR as a floor on what public utilities must do, with the understanding that additional clarification may be appropriate

in the final rule and that the final rule may not address every specific measure that may be required to ensure just and reasonable transmission rates for a particular public utility.

2. *Return of Excess or Recovery of Deficient ADIT.* The Commission proposes that public utilities with formula transmission rates also be required to include a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT. *Id.*, P 36. Once again, the Commission does not prescribe the exact mechanism to accomplish this requirement. *Id.*, P 37. For public utilities with stated transmission rates, the Commission proposes that they be required to determine the excess and deficient income tax caused by the tax cut and return this amount to or recover this amount from customers under the Commission's tax normalization rules. The excess or deficient ADIT would be calculated using the ADIT approved in their last rate cases. The Commission does not propose the exact mechanism to return excess or recover deficient ADIT, leaving that for case-by-case determination. *Id.*, PP 40-42.

NRECA again supports these proposals with the understanding that additional clarification may be appropriate in the final rule and that specific, additional measures may be required in individual public utility compliance filings or rate cases to accomplish the NOPR's objectives of ensuring just and reasonable transmission rates.

3. *Support for Excess and Deficient ADIT Calculation and Amortization.* The Commission proposes that public utilities with formula transmission rates be required to add a new worksheet to their formula rates to track ADIT information. *Id.*, P 46. The Commission does not propose a pro forma worksheet but notes the elements that should be addressed. *Id.*, P 47. For public utilities with stated transmission rates, the Commission states that it expects them to support their ADIT recalculations in their compliance

filings, *id.*, P 41, but does not propose generic additional information requirements for tax-related changes in rates because it believes its existing regulations require transparency, *id.*, PP 5, 50.

NRECA again supports these proposals with the understanding that additional clarification may be appropriate in the final rule and that specific, additional measures may be required in individual public utility compliance filings or rate cases to accomplish the NOPR's objectives of ensuring just and reasonable transmission rates.

4. In footnote 1 of the NOPR, the Commission states that it does not propose any generic reforms as to non-public utilities' rates. NRECA appreciates and supports this approach to the rates of non-public utility electric cooperatives, which do not present the same tax and rate issues dealt with here.

CONCLUSION

The Commission should adopt the proposals in the NOPR and adopt further measures as appropriate in individual cases to ensure that public utility transmission rates are just and reasonable and their customers receive the benefit of the tax-rate reduction.

Respectfully submitted,

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