Oregon
Kate Brown, Governor

Public Utility Commission
201 High St SE Suite 100
Salem, OR 97301
Mailing Address: PO Box 1088
Salem, OR 97308-1088
Consumer Services
1-800-522-2404
Local: 503-378-6600
Administrative Services
503-373-7394

June 20, 2018

Via Electronic Filing

OREGON PUBLIC UTILITY COMMISSION
ATTENTION: FILING CENTER
PO BOX: 1088
SALEM OR 97308-1088

RE: Docket No. UG 344 – In the Matter of
NORTHWEST NATURAL GAS COMPANY, dba NW NATURAL,
Request for a General Rate Revision.

Attached are the documents for Rebuttal and Cross-Answering Testimony from Staff:

Exhibit 1400 – 1403 Gardner
Exhibit 1402 is in electronic format
Exhibit 1500 Fox

/s/ Kay Barnes

Kay Barnes
PUC- Utility Program
(503) 378-5763
kay.barnes@state.or.us

CASE: UG 344
WITNESS: MARIANNE GARDNER

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 1400

Rebuttal and Cross-Answering Testimony

June 20, 2018

Q. Please state your name, occupation, and business address.

A. My name is Marianne Gardner. I am a senior revenue requirement analyst employed in the Energy Rates, Finance and Audit Division of the Public Utility Commission of Oregon (OPUC). My business address is 201 High Street SE., Suite 100, Salem, Oregon 97301.

Q. Have you previously provided testimony in this case?

A. Yes, please see Staff Exhibit 100.

Q. What is the purpose of your testimony?

A. To report that Staff and other parties to the docket have reached an agreement in principle resolving all but three of the issues raised by Northwest Natural Company's (NWN, NW Natural, or Company)'s general rate case. The first remaining issue is whether the Commission should change the sharing of net revenues between ratepayers and shareholders produced by optimization of NWN's Mist underground gas storage facility and non-Mist assets.[1] The second and third issues were carved out from the other settled issues because NWN and the parties agreed that these issues are complex and require additional discussion. These two issues involve NWN's pension balancing account and the impact of the Tax Cuts and Jobs Act (TCJA).

I present testimony regarding the impact of the Tax Cuts and Jobs Act (TCJA) on this rate case. Staff witness Deborah Glosser will present rebuttal testimony regarding the sharing of net revenues from system optimization.

---

[1] Staff/1300, Glosser.

Witness Glosser's testimony will be filed June 22, 2018.[2] Witness John Fox presents testimony on the pension balancing account in Staff Exhibit No. 1500 filed contemporaneously with my rebuttal testimony.

Q. Did you prepare an exhibit for this docket?

A. Yes. I prepared the following exhibits:

Exhibit 1401	"Comments of the Edison Electric Institute"
Exhibit 1402	Excess ADIT Timing Example.xlsx
Exhibit 1403	Proposed Amortization of Excess Deferred Income Taxes

Q. How is your testimony organized?

A. My testimony is organized as follows:

[2] See revised procedural schedule, issued March 26, 2018.

ISSUE 1. TAX CUTS AND JOBS ACT - FEDERAL INCOME TAX RATE, ACCUMULATED DEFERRED INCOME TAX, AND EXCESS DEFERRED INCOME TAX

Q. Did Staff's previous testimony in Staff Exhibit 100 address the tax components related to the Tax Cuts and Jobs Act (TCJA) and provide any background regarding the impact on the Company's filed test year?

A. Yes. Staff provided an overview of the TCJA and its impact on regulated energy utilities in general. Staff testified that the major impact of the TCJA on energy utilities was a decrease in the marginal federal income tax (FIT) rate from 35 percent to 21 percent, the recalculation of accumulated deferred income tax (ADIT), and the elimination of bonus depreciation.[3] Staff also summarized NWN's supplemental testimony that updated its initial filing for certain components related to the TCJA.[4] Finally, Staff discussed the applications for deferred accounting filed by the Commission Staff and each utility for the purpose of deferring the over-collection of revenues by the utilities due to the passage of TCJA.[5]

Q. What components related to the TCJA did NWN include in its supplemental filing?

A. NWN corrected the marginal (FIT) tax rate from 35 percent to 21 percent. It also corrected two permanent deductions; meals and entertainment and

[3] Staff/100, Gardner/46 at 5-22 and /47 at 1-2.
[4] Staff/100, Gardner/47 at 3-16.
[5] Staff/100, Gardner/48 at 3-10.

transportation deductions and adjusted ADIT to reflect the elimination of the bonus depreciation deduction for energy utilities. However, the Company did not recalculate ADIT to reflect the excess collected in customer rates for taxes based on the 35 percent marginal FIT rate or provide testimony explaining why this component was omitted.[6]

Q. Did the Company address the excess ADIT in its reply testimony?

A. Yes, in part. Mr. McVay explains how the change in the marginal FIT rate created excess ADIT. He also explains the Company has not yet completed analyses that would accurately quantify the excess ADIT and the total amounts that should be returned to customers. On a system basis, the Company has estimated $200 million in excess ADIT.[7]

Q. In its testimony did the Company explain the two types of excess ADIT and provide a breakdown of the estimated $200 million into the two categories?

A. No. The Company did not define the two categories even though the distinction is critical for ratemaking purposes.

Q. Would you please define the two types of excess ADIT?

A. In its review of comments related to the FERC's request for comments in Docket No. RM18-12-000, Staff uncovered "Comments of the Edison Electric Institute."[8] Although the comments are focused specifically at the FERC regarding potential actions or rulings the FERC may make for those entities

[6] Staff/100, Gardner/49 at 5-13.
[7] NW Natural/1500, McVay/17 at 3-8.
[8] Staff/1401.

under the FERC's jurisdiction, and, even though Edison Electric Institute's (EEI)'s point of view may be biased in favor of utilities rather than customers, Staff found its discussion to be informative and includes them as an exhibit to this testimony.

According to the EEI, proper IRC terminology defines excess ADIT as either "protected" or "unprotected". Protected excess ADIT is subject to normalization requirements and "unprotected" ADIT is not subject to normalization requirements. Under the TCJA, excess ADIT that arises from book to tax timing differences due to accelerated depreciation methodologies such as "MACRS" or "ACRS" for tax purposes are subject to normalization rules.

There are two authorized methods for amortizing the protected excess ADIT. If a utility has the necessary vintage detail, it must use the Average Rate Assumption Method (ARAM). If it does not, the utility may use the "Reverse South Georgia Method" to satisfy the TCJA normalization requirements.

The second type or unprotected excess ADIT is not subject to the TCJA normalization rules. This excess ADIT arises from book to tax timing differences from deductions such as employee benefits, prepaid expenses, repairs and maintenance etc. The TCJA is silent regarding unprotected excess ADIT.[9]

---

[9] Exhibit 1401, Federal Energy Regulatory Commission Docket No. RM18-12-000, *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, Comments of the Edison Electric Institute, pp. 16-17.

Q. Have any of the utilities regulated by the OPUC suggested to Staff how the unprotected excess ADIT could be returned to customers?

A. Yes. Some have mentioned returning this portion to customers by amortizing it into rates over ten years, possibly in a separate tariff or in the annual Purchased Gas Adjustment (PGA) or annual mechanisms used by the electric utilities to recover their net variable power costs (NVPC). Some of the utilities advocate applying the unprotected excess ADIT against other regulatory balances, other tariffs, or to new capital projects.

In Docket No. UM 1928 opened for Idaho Power Company's application to defer excess revenues related to passage of TCJA, the Commission approved the parties' agreement to offset the increase in customers' rates for the accelerated depreciation of Valmy Unit 1 with excess tax collection revenue created by the enactment of the TCJA. As a part of that agreement, Idaho Power agreed to forego the application of an earnings test for deferred tax benefits related to the TCJA for the years 2018 and 2019.[10]

Q. Does NWN propose to use the rate case as a vehicle to return excess ADIT to customers?

A. NWN asserts that it would be difficult to include an estimate of excess ADIT in the test year because precise numbers are not known. NWN states that it anticipates that the treatment of the excess ADIT will be determined in the

---

[10] See Order No. 18-199, *In the Matter of Idaho Power Company, Requests approval of changes in rates related to accelerated depreciation of Valmy and approve to defer and amortize the 2018 ratepayer benefits associated with the income tax provisions of the U.S. Tax Cuts and Jobs Act*.

dockets opened to address the Company's and Staff's applications to defer.[11]

Q. Does Staff agree with NWN's assessment?

A. No. It may be true that a precise number may not be available. However, since the test year is a forecast, none of the numbers in the test year may be precise. Staff believes the Company has a reasonable estimate of the recalculated ADIT that can be used for the test year. NWN was required to recalculate ADIT at December 31, 2017 for its SEC 10K, and, since filing that report, it has reported to the SEC its first quarter financial performance, and is preparing to file its 10Q for its 2018 second quarter results.

Staff believes that recognizing customers' TCJA-related benefits in a rate case best reflects the policy change made by the federal government. Including ADIT in the forecasted test year eliminates the need for a deferral and addresses concerns with intergenerational inequity. If these amounts are not included in this rate case but continue to be deferred, customers today will be paying higher rates than is appropriate under the TCJA, with customers at a later date receiving today's benefit.

In its reply testimony, the Company appears more receptive to using this rate case to return excess ADIT to customers. NWN states that it is open to amortization through base rates if the Commission is explicit regarding the methodology that will accomplish this. NWN does include the caveat "that

[11] NW Natural/1500, McVay/17 at 9-20 and /18 at 1-7.

provisions be put in place to ensure that the appropriate and full amount benefits customers."[12]

NWN submits that if the Commission includes the amortization of excess ADIT in the rate case, the Commission could use the annual PGA and deferred accounting as a way to align the amount returned to customers in rates.[13] NWN points out though that as the excess ADIT is amortized, the excess ADIT in rate base will remain unaffected unless an alignment of the rate base also occurs.

Q. What is Staff's opinion of using the PGA as a vehicle for amortization of excess ADIT?

A. Staff would have to explore this idea more fully, but believes that the Company is capable of calculating excess ADIT and amortizing amounts in this general rate case. As such, the Company's proposal to address these issues through the PGA seems unnecessary. Further, Staff acknowledges that subsequent modifications to rate base for amortized ADIT will be necessary, but this is true of any rate base item.

Q. Since it is expected that protected excess ADIT will be returned to customers over a long time, what is the risk of including this in base rates?

A. Staff sees little, if any, risk to this approach. Returning excess ADIT to customers through base rates is standard ratemaking treatment. During discussions with the utilities, Staff has been led to believe that returning

[12] NW Natural/1500, McVay/20 at 15-16.
[13] NW Natural/1500, McVay/20 at 10-16.

protected excess ADIT through the ARAM method or the Reverse-South Georgia-Method could occur over as many as forty years, approximating the depreciable life of the assets that gave rise to the excess ADIT. Staff believes that this long period reduces the risk that customers or the utility would be short-changed because rate base can be adjusted in general rate case proceedings, as is standard practice. A company is able to file a general rate case if it feels that overall rates no longer are sufficient. Alternatively, the Commission can initiate a "show cause" proceeding if it appears a utility is overearning and adjust rates.

Q. Can Staff provide a simple example demonstrating the timing impacts that may occur by including excess ADIT in the test year rate base?

A. Yes. Staff has provided an Excel worksheet as Exhibit 1402. It is very simple and intended to demonstrate the timing concept. It does not attempt to capture all the intricacies involved in properly amortizing the excess ADIT nor does it represent amounts proposed in NWN's test year.

Q. Does Staff have a proposal for the amount of excess ADIT that should be refunded to customers in base rates?

A. Yes. Staff has estimated this amount and provides the calculation and source documents in Exhibit 1403. Based on Staff's calculation, the total amount due to be refunded to customers is approximately $213.306 million. Staff proposes this portion of ADIT be segregated in rate base as a regulatory liability for excess deferred income taxes. Staff recommends amortizing this regulatory liability as shown in Staff's Exhibit 1403. Based on this recommendation, a customer refund of $10.009 million should be included in base rates. This amount could be adjusted in the next rate case, as is standard practice for any rate base item to align the rate base for the amortization of the unprotected portion of the excess ADIT.

Q. Does NWN define the appropriate benefit amount that should be returned to customers?

A. NWN advocates that the appropriate amount would be net of the revenue requirement.[14] Staff interprets this to be net of revenue sensitive items like income taxes, uncollectible expense, etc.

Q. Does Staff agree that the appropriate benefit amount should be net of the revenue requirement?

A. No. Staff believes it is appropriate that the refund should be dollar for dollar.

Q. Does NWN propose to return the excess taxes collected from customers during the interim period, which is defined as the period from January 1, 2018 through October 1, 2018?

A. NWN does not propose a treatment in the rate case. Rather it states these amounts are being captured and will be subject to the determination in Docket No. UM 1919 (NWN-filed deferral application) and Docket No. UM 1924 (Staff-filed deferral application).[15]

Q. Does Staff believe it may be appropriate to capture this interim period in the deferral dockets?

---

[14] NW Natural/1500, McVay/21 at 13-21.
[15] NW Natural/1500, McVay/25 at 5-10.

A. This may be an appropriate course of action.

Q. Does Staff have a recommendation regarding the excess ADIT and interim period over-collection?

A. Yes. Staff recommends an adjustment of ($10.009) million for the excess ADIT be included in the final revenue requirement for this case. Also, Staff recommends that the associated regulatory liability of $213.306 be separately stated in the final rate base. Staff recommends the Company and parties have a technical workshop with NWN's tax experts to discuss the excess deferred taxes related to the interim tax year in more detail to determine a workable solution.

Q. Does this conclude your testimony?

A. Yes.

CASE: UG 344
WITNESS: MARIANNE GARDNER

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 1401

Exhibits in Support Of
Rebuttal and Cross-Answering
Testimony

June 20, 2018

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Inquiry Regarding the Effect of the Tax Cuts and	)	
Jobs Act on Commission-Jurisdictional Rates	)	Docket No. RM18-12-000

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

I. 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

[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.

capital. 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 deprecation 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

---

[2] *See* EEI, Delivering America's Energy Future: Electric Power Industry Outlook at 10 (Feb. 7, 2018), http://www.eei.org/issuesandpolicy/finance/wsb/Documents/EEI_WSB_Remarks.pdf.

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]

---

[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.

[5] *See* 18 C.F.R. § 35.24; *see also 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), *order on reh'g*, Order No. 144-A, FERC Stats. & Regs. ¶ 30,340 (1982) ("Order No. 144").

[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.

[8] *See AEP Appalachian Transmission Co., Inc., et al.*, 162 FERC ¶ 61, 225 (2018); *Alcoa Power Generating Inc.—Long Sault Division, et al.,* 162 FERC ¶ 61, 226 (2018).

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

[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 *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. *See Order No. 144-A*. *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); *Indicated RTO Transmission Owners*, 161 FERC ¶ 61,018 (2017).

[10] As discussed in Section II, B*, 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.[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.[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

---

[11] *See* NOI at P 29.

[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 rates[14] 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

---

[13] *See Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017).

[14] *See, e.g., Virginia Elec. Power Co. d/b/a Dominion Virginia Power*, Docket No. ER16-2116-000 (Letter Order issued Aug. 2, 2016).

[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.)"[16]

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

[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"[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

---

[18] *See Midwest Indep. Sys. Transmission Op., Inc.*, 138 FERC ¶ 61,234 (2012).

[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.[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.[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

---

information, companies also would make section 205 filings to change the relevant portions of their formula rate templates.

[20] *See* n.5, *supra*.

[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 theses 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

---

[22] *See e.g.*, *Wisconsin Power and Light*, Docket No. ER18-216-000 (Feb. 13, 2018 Letter Order; *Virginia Elec. and Power Co.*, n.14, *supra*; *Midcontinent Indep. Sys. Operator*, n.9, *supra*.

[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."[25] 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.[26]

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."[27]

To date, while the Commission has permitted the use of both methods in the past, the Commission has done so in company-specific orders.[28] 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.[29] 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.

[28] *See, e.g.*, *South Georgia Natural Gas Co*., Docket No. RP77-32 (Letter Order May 5, 1978).

[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.[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.

3. The Commission Should Ensure that Action on ADIT Associated with Assets Sold or Retired After December 31, 2017, Does Not Violate Normalization Requirements.

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.[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

[30] The Commission hypothetically suggests a five-year return period for "non-plant"-based ADIT. *See* NOI at P 19.

[31] *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.[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.[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)."[34]

---

[32] *See* IRS Reg § 1.168(i)-3, Treatment of Excess Deferred Income Tax Reserve Upon Disposition of Deregulated Public Utility Property.

[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.

[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.

5. The Commission Does Not Need Supporting Worksheets from 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."[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

[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.[37] 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.[38] 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.[39] 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."[40]

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.[41]

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.

---

[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,

/s/ Emily Sanford Fisher

Emily Sanford Fisher
Vice President, Law
and Corporate Secretary
efisher@eei.org

Karen Onaran
Senior Manager, Federal Regulatory Affairs
konaran@eei.org

Randall Hartman
Director, Accounting
rhartman@eei.org

David Dougher
Manager, Accounting
ddougher@eei.org

CASE: UG 344
WITNESS: MARIANNE GARDNER

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 1402

Exhibits in Support Of
Rebuttal and Cross-Answering
Testimony

June 20, 2018

Staff/1402, Gardner.

Staff examples of timing differences

	Test Year	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	
Example A - Customers receive no benefit. Excess ADIT is not included in rate base and recovery is through the deferral but there is no refund due to the earnings test.	Rate Base without EADIT calc											
Plant	$ 1,000											
Accum. Depr.	$ (300)											
Net Plant	$ 700											
ADIT	$ (100)											
Excess ADIT (Regulatory Liabiltiy)												
Net Rate Base	$ 600											
Company ROR	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	
Cumulative Potential Company earnings		$ 43.80	$ 87.60	$ 131.40	$ 175.20	$ 219.00	$ 262.80	$ 306.60	$ 350.40	$ 394.20	$ 438.00	$ 438.00
EADIT to be returned to customers through deferral but application of earnings test results in no refund.		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Net to Company												$ 438.00

	Test Year	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	
Example B - Company under-earns Excess ADIT is included in rate base and amortization is set in the rate case but the Company does not come in for a rate case during the duration of the amortization.	Rate Base with EADIT calc											
Plant	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	
Accum. Depr.	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	
Net Plant	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	
ADIT	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	
Regulatory Liability	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	$ (14)	
Net Rate Base	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	$ 600	
Company ROR	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	
Cumulative Potential Company earnings		$ 43.80	$ 87.60	$ 131.40	$ 175.20	$ 219.00	$ 262.80	$ 306.60	$ 350.40	$ 394.20	$ 438.00	$ 438.00
Cumulative EADIT returned to customers through rates	2.80	$ 2.80	$ 5.60	$ 8.40	$ 11.20	$ 14.00	$ 16.80	$ 19.60	$ 22.40	$ 25.20	$ 28.00	$ (28.00)
Net to Company												$ 410.00

Example C- True-up every year.

	Actual Results of Operation Rate Base with EADIT calc & true up every year	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8	Yr 9	Yr 10	
Plant	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	
Accum. Depr.	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	$ (300)	
Net Plant	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	$ 700	
ADIT	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	$ (86)	
Regulatory Liability	$ (14)	$ (11.20)	$ (8.96)	$ (7.17)	$ (5.73)	$ (4.59)	$ (3.67)	$ (2.75)	$ (1.84)	$ (0.92)	$ (0.00)	
Net Rate Base	$ 600	$ 603	$ 605	$ 607	$ 608	$ 609	$ 610	$ 611	$ 612	$ 613	$ 614	
Company ROR	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	7.30%	
Cumulative Potential Company earnings		$ 44.00	$ 88.17	$ 132.47	$ 176.87	$ 221.36	$ 265.92	$ 310.54	$ 355.22	$ 399.98	$ 444.80	$ 444.80
Cumulative EADIT returned to customers through rates	-	$ 2.80	$ 5.04	$ 6.83	$ 8.27	$ 9.41	$ 10.33	$ 11.25	$ 12.16	$ 13.08	$ 14.00	$ (14.00)
Net to Company												$ 430.80

Asset Depreciation Information			
Asset Description	Regulatory liability		
Category			
Purchase Price (P)	14		
Salvage Value (Sn)	0		
Depreciation Period (n)	10		
Depreciation Method	DB-SL	DB Factor	200%

Depreciation Schedule

Year	Depreciation	umulative	Book Value
1	2.80	2.80	11.20
2	2.24	5.04	8.96
3	1.79	6.83	7.17
4	1.43	8.27	5.73
5	1.15	9.41	4.59
6	0.92	10.33	3.67
7	0.92	11.25	2.75
8	0.92	12.16	1.84
9	0.92	13.08	0.92
10	0.92	14.00	0.00

CASE: UG 344
WITNESS: MARIANNE GARDNER

PUBLIC UTILITY COMMISSION
OF
OREGON

STAFF EXHIBIT 1403

Exhibits in Support Of
Rebuttal and Cross-Answering
Testimony

June 20, 2018

Proposed Amortization of Excess Deferred Income Taxes

(a)	(b)	(c)	(d)	(e)	(f)
Line					
1	Amounts reported on 2017 10k (in thousands)	100% System	89% Oregon	Composite Life (years)	Straight Line Amortization
	Deferred Tax Liability - Plant and Property				
2	December 31, 2016	$ 428,642			
3	December 31, 2017	(296,114)			
4	Excess Deferred Income Taxes (normalized)	132,528	$ 117,950	38.9	$ 3,032
5	Excess Deferred Income Taxes (not subject to normalization)	24,308	$ 21,634	5.0	4,327
6	Subtotal	156,836			7,359
7	Regulatory Income Tax Liability (36% gross up)	56,470	$ 50,258	36%	2,650
8	Regulatory Liability for Deferred Income Taxes	$ 213,306			
9	**Staff Proposed Test Year Return to Ratepayers**				$ 10,009
10	Composite life for depreciable plant per UM 1808, Commission Order 18-007, page 13.				
11	Composite life for non normalized EDIT staff proposes 5 years				

In thousands	Regulatory Liabilities 2017	Regulatory Liabilities 2016
Current:		
Gas costs	$ 14,886	$ 8,054
Unrealized gain on derivatives[1]	1,674	16,624
Decoupling[3]	322	—
Other[4]	17,131	15,612
Total current	$ 34,013	$ 40,290
Non-current:		
Gas costs	$ 4,630	$ 1,021
Unrealized gain on derivatives[1]	1,306	3,265
Decoupling[3]	957	—
Income taxes	213,306	—
Accrued asset removal costs[6]	360,929	341,107
Other[4]	4,965	3,926
Total non-current	$ 586,093	$ 349,319

(1) Unrealized gains or losses on derivatives are non-cash items and, therefore, do not earn a rate of return or a carrying charge. These amounts are recoverable through utility rates as part of the annual Purchased Gas Adjustment (PGA) mechanism when realized at settlement.

(2) Refer to footnote (3) per the Deferred Regulatory Asset table in Note 15 for a description of environmental costs.

(3) This deferral represents the margin adjustment resulting from differences between actual and expected volumes.

(4) These balances primarily consist of deferrals and amortizations under approved regulatory mechanisms. The accounts being amortized typically earn a rate of return or carrying charge.

(5) Refer to footnote (1) of the Net Periodic Benefit Cost table per Note 8 for information regarding the deferral of pension expenses.

(6) Estimated costs of removal on certain regulated properties are collected through rates. See "Accounting Policies—*Plant, Property, and Accrued Asset Removal Costs*" below.

The amortization period for our regulatory assets and liabilities ranges from less than one year to an indeterminable period. Our regulatory deferrals for gas costs payable are generally amortized over 12 months beginning each November 1 following the gas contract year during which the deferred gas costs are recorded. Similarly, most of our other regulatory deferred accounts are amortized over 12 months. However, certain regulatory account balances, such as income taxes, environmental costs, pension liabilities, and accrued asset removal costs, are large and tend to be amortized over longer periods once we have agreed upon an amortization period with the respective regulatory agency.

We believe all costs incurred and deferred at December 31, 2017 are prudent. We annually review all regulatory assets and liabilities for recoverability and more often if circumstances warrant. If we should determine that all or a portion of these regulatory assets or liabilities no longer meet the criteria for continued application of regulatory accounting, we would be required to write-off the net unrecoverable balances in the period such determination is made.

Environmental Regulatory Accounting

See Note 15 for information about our SRRM and OPUC orders regarding implementation.

New Accounting Standards

We consider the applicability and impact of all accounting standards updates (ASUs) issued by the Financial Accounting Standards Board (FASB). Accounting standards updates not listed below were assessed and determined to be either not applicable or are expected to have minimal impact on our consolidated financial position or results of operations.

Recently Issued Accounting Pronouncements

DERIVATIVES AND HEDGING. On August 28, 2017, the FASB issued ASU 2017-12, "Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities." The purpose of the amendment is to more closely align hedge accounting with companies' risk management strategies. The ASU amends the accounting for risk component hedging, the hedged item in fair value hedges of interest rate risk, and amounts excluded from the assessment of hedge effectiveness. The guidance also amends the recognition and presentation of the effect of hedging instruments and includes other simplifications of hedge accounting. The amendments in this update are effective for us beginning January 1, 2019. Early adoption is permitted. The amended presentation and disclosure guidance is required prospectively. We are currently assessing the effect of this standard on our financial statements and disclosures.

STOCK COMPENSATION. On May 10, 2017, the FASB issued ASU 2017-09, "Stock Compensation - Scope of Modification Accounting." The purpose of the amendment is to provide clarity, reduce diversity in practice and reduce the cost and complexity when applying the guidance in ASC 718, related to a change to the terms or conditions of a share-based payment award. The ASU amends the scope of modification accounting for share-based payment arrangements and provides guidance on the types of changes to the terms or conditions of share-based payment awards to which an entity would be required to apply modification accounting under ASC 718. Specifically, an entity would not apply modification accounting if the fair value, vesting conditions, and classification of the awards are the same immediately before and after the modification. The amendments in this update are effective for us beginning January 1, 2018. The amendments in this update should be applied prospectively to an award modified on or after the adoption date. We do not expect this standard to materially affect our financial statements and disclosures.

RETIREMENT BENEFITS. On March 10, 2017, the FASB issued ASU 2017-07, "Improving the Presentation of Net Periodic Pension Cost and Net Periodic Post Retirement Benefit Cost." The ASU requires entities to disaggregate current service cost from the other components of net periodic benefit cost and present it with other current compensation costs for related employees in the income statement and to present the other components elsewhere in the income statement and outside of income from operations if that subtotal is presented. Only the service cost component of the net periodic benefit cost is eligible for

9. INCOME TAX

The following table provides a reconciliation between income taxes calculated at the statutory federal tax rate and the provision for income taxes reflected in the consolidated statements of comprehensive income or loss for December 31:

Dollars in thousands	2017	2016	2015
Income taxes (benefits) at federal statutory rate	$ (30,233)	$ 34,863	$ 31,310
Increase (decrease):			
State income tax, net of federal	(5,784)	4,582	4,195
Amortization of investment tax credits	(4)	(41)	(118)
Differences required to be flowed-through by regulatory commissions	2,357	2,357	2,357
Gains on company and trust-owned life insurance	(872)	(594)	(766)
Effect of TCJA	(21,429)	—	—
Deferred Tax Rate Differential Post-TCJA	26,947	—	—
Other, net	(1,739)	(453)	(1,225)
Total provision for income taxes (benefits)	$ (30,757)	$ 40,714	$ 35,753
Effective tax rate	35.6%	40.9%	40.0%

The effective income tax rate for 2017 compared to 2016 changed primarily as a result of the TCJA, the equity portion of AFUDC and excess tax benefits related to stock-based compensation. The effective income tax rate increase from 2016 compared to 2015 was primarily the result of lower depletion deductions from gas reserves activity in 2016.

The provision for current and deferred income taxes consists of the following at December 31:

In thousands	2017	2016	2015
Current			
Federal	$ 16,403	$ 7,402	$ 10,558
State	4,892	2,042	61
	21,295	9,444	10,619
Deferred			
Federal	(41,134)	26,219	18,729
State	(10,918)	5,051	6,405
	(52,052)	31,270	25,134
Total provision for income taxes (loss benefits)	$ (30,757)	$ 40,714	$ 35,753

At December 31, 2017 and 2016, regulatory income tax assets of $21.3 million and $43.0 million, respectively, were recorded, a portion of which is recorded in current assets. These regulatory income tax assets primarily represent future rate recovery of deferred tax liabilities, resulting from differences in utility plant financial statement and tax bases and utility plant removal costs, which were previously flowed through for rate making purposes and to take into account the additional future taxes, which will be generated by that recovery. These deferred tax liabilities, and the associated regulatory income tax assets, are currently being recovered through customer rates. At December 31, 2017, we had a regulatory income tax asset of $0.9 million representing probable future rate recovery of deferred tax liabilities resulting from the equity portion of AFUDC.

The following table summarizes the total provision (benefit) for income taxes for the utility and non-utility business segments for December 31:

In thousands	2017	2016	2015
Utility:			
Current	$ 21,453	$ 10,300	$ 15,890
Deferred	19,479	28,749	20,834
Deferred investment tax credits	(4)	(41)	(118)
	40,928	39,008	36,606
Non-utility business segments:			
Current	(158)	(856)	(5,271)
Deferred	(71,527)	2,562	4,418
	(71,685)	1,706	(853)
Total provision for income taxes	$ (30,757)	$ 40,714	$ 35,753

The following table summarizes the tax effect of significant items comprising our deferred income tax accounts at December 31:

In thousands	2017	2016
Deferred tax liabilities:		
Plant and property	$ 296,114	$ 428,642
Regulatory income tax assets	22,209	43,048
Regulatory liabilities	29,114	48,291
Non-regulated deferred tax liabilities	933	51,446
Total	$ 348,370	$ 571,427
Deferred tax assets:		
Regulatory income tax liabilities	$ 56,470	$ —
Non-regulated deferred tax assets	17,796	—
Pension and postretirement obligations	3,512	4,493
Alternative minimum tax credit carryforward	66	9,853
Total	$ 77,844	$ 14,346
Deferred income tax liabilities, net	$ 270,526	$ 557,081
Deferred investment tax credits	—	4
Deferred income taxes and investment tax credits	$ 270,526	$ 557,085

Management assesses the available positive and negative evidence to estimate if sufficient taxable income will be generated to utilize the existing deferred tax assets. Based upon this assessment, we have determined we are more likely than not to realize all deferred tax assets recorded as of December 31, 2017.

As a result of certain realization requirements prescribed in the accounting guidance for income taxes, the tax benefit of statutory depletion is recognized no earlier than the year in which the depletion is deductible on our federal income tax return. Income tax expense decreased by $0.9 million in 2015 as a result of realizing deferred depletion benefit from 2013 and 2014. This benefit is included in Other, net in the statutory rate reconciliation table.

Uncertain tax positions are accounted for in accordance with accounting standards that require management's assessment of the anticipated settlement outcome of material uncertain tax positions taken in a prior year, or planned to be taken in the current year. Until such positions are sustained, we would not recognize the uncertain tax benefits resulting from such positions. No reserves for uncertain tax positions were recorded as of December 31, 2017, 2016, or 2015.

Our federal income tax returns for tax years 2013 and earlier are closed by statute. The IRS Compliance Assurance Process (CAP) examination of the 2013, 2014, and 2015 tax years have been completed. There were no material changes to these returns as filed. The 2016 and 2017 tax years are currently under IRS CAP examination. Our 2018 CAP application has been accepted by the IRS. Under the CAP program, we work with the IRS to identify and resolve material tax matters before the tax return is filed each year. As of December 31, 2017, income tax years 2014 through 2016 remain open for state examination.

U.S. Federal TCJA Matters

On December 22, 2017, the TCJA was enacted and permanently lowers the U.S. federal corporate income tax rate to 21% from the existing maximum rate of 35%, effective for our tax year beginning January 1, 2018. The TCJA includes specific provisions related to regulated public utilities that provide for the continued deductibility of interest expense and the elimination of bonus depreciation for property acquired after September 27, 2017.

As a result of the reduction of the U.S. corporate income tax rate to 21%, U.S. GAAP requires deferred tax assets and liabilities be revalued as of the date of enactment, with resulting tax effects accounted for in the reporting period of enactment. We recorded a net revaluation of deferred tax asset and liability balances of $196.4 million as of December 31, 2017. This revaluation had no impact on our 2017 cash flows.

The net change in our utility deferred taxes, that were determined to have previously been included in ratemaking activities by the OPUC and WUTC, was recorded as a net regulatory liability that is expected to accrue to the future benefit of customers. It is possible that this estimated regulatory liability balance of $213.3 million, which includes a gross up for income taxes of $56.5 million, may increase or decrease as a result of future regulatory guidance by the OPUC and WUTC or as additional authoritative interpretation of the TCJA becomes available.

The change in our utility deferred taxes of $18.2 million, associated with tax benefits that have previously been flowed through to customers or for the equity portion of AFUDC, resulted in an identical reduction in the associated regulatory assets. This change had no impact on our income tax expense. The net change in our utility deferred taxes, that were determined to have been previously excluded from ratemaking activities by the OPUC and WUTC, and the change in deferred taxes associated with the gas storage segment and other non-regulated operations, was recorded as a net reduction of income tax expense of $21.4 million.

Under pre-TCJA law, business interest is generally deductible in the determination of taxable income. The TCJA imposes a new limitation on the deductibility of net business interest expense in excess of approximately 30% of adjusted taxable income. Taxpayers operating in the trade or business of public regulated utilities are excluded from these new interest expense limitations.

There is uncertainty whether the new interest expense limitation may apply to our non-regulated operations. The legislative history indicates that all members of a consolidated or affiliated group are treated as a single taxpayer with respect to applying business interest limitations. Future authoritative guidance may indicate that net interest expense must be allocated between regulated and non-regulated activities within the consolidated group. Until such time that additional guidance is available that eliminates this uncertainty, we are unable to estimate whether the new interest limitation rules will impact our future operating results. The new interest limitation rules are effective for taxable years beginning after December 31, 2017. There is no grandfathering for debt instruments outstanding prior to such date. Net business interest expense amounts disallowed may be carried forward indefinitely and treated as interest in succeeding taxable years.

The TCJA generally provides for immediate full expensing for qualified property acquired and placed in service after September 27, 2017 and before January 1, 2023. This would generally provide for accelerated cost recovery for capital investments. However, the definition of qualified property excludes property used in the trade or business of a public regulated utility. The definition of utility trade or business is the same as that used by the TCJA with respect to the imposition of the net interest expense limitation discussed above. As a result, a similar uncertainty exists with respect to whether the exclusion from full expensing will apply to our full consolidated group, which primarily operates as a regulated public utility, or whether full expensing will be available to our non-regulated activities.

An additional uncertainty exists with respect to whether 50% bonus depreciation, which was in effect prior to the TCJA, will apply to property for which a contract was entered into or significant construction had occurred prior to September 27, 2017, but that was not placed in service until after that date. We excluded all assets placed in service by the consolidated group after September 27, 2017 from bonus depreciation. If future authoritative guidance indicates that bonus depreciation is available to us for these capital expenditures, this would primarily result in a decrease to our current income taxes payable and an increase in regulatory liability.

The SEC staff issued Staff Accounting Bulletin 118, which provides guidance on accounting for the tax effects of the TCJA. SAB 118 provides a measurement period that should not extend beyond one year from the TCJA enactment date for companies to complete the accounting under ASC 740. To the extent that a company's accounting for certain income tax effects of the TCJA is incomplete but it is able to determine a reasonable estimate, it must record a provisional estimate in the financial statements. Consistent with SAB 118, the determination to exclude all assets placed in service after September 27, 2017 from bonus depreciation is provisional.

We primarily operate in the States of Oregon and Washington. The extent to which a particular state adopts the U.S. Internal Revenue Code directly affects the application of the enacted federal changes of the TCJA to its taxable income computation. To varying degrees, Oregon and Washington corporate business tax approaches rely on federal income tax law, including the Internal Revenue Code and the associated Treasury regulations. It is possible that the federal changes resulting from the TCJA will cause states to reassess their future conformity, however, we have evaluated the state impacts of the TCJA under current law.

Oregon automatically adopts changes to the U.S. Internal Revenue Code related to the calculation of consolidated corporate taxable income. By both State statute and administrative rule, Oregon corporation excise tax law, as related to the definition of taxable income, is tied to federal tax law as applicable to our tax year. Changes enacted to the definition of federal taxable income by the TCJA are effective for Oregon tax purposes in the same manner as for federal tax purposes. As a result, the net interest limitation and full expensing exclusions, discussed above, apply to Oregon as well.

Washington State does not have a corporate income tax, but rather imposes a tax on our gross receipts. The TCJA does not include a change to the definition of gross receipts, or the timing of their recognition, that is currently anticipated to impact us. As a result, no change to Washington State reporting is anticipated.

10. PROPERTY, PLANT, AND EQUIPMENT

The following table sets forth the major classifications of our property, plant, and equipment and accumulated depreciation at December 31:

In thousands	2017	2016
Utility plant in service	$ 2,975,217	$ 2,843,243
Utility construction work in progress	159,924	62,264
Less: Accumulated depreciation	942,879	903,096
Utility plant, net	2,192,262	2,002,411
Non-utility plant in service	75,639	299,378
Non-utility construction work in progress	4,671	3,931
Less: Accumulated depreciation	17,598	44,820
Non-utility plant, net	62,712	258,489
Total property, plant, and equipment	$ 2,254,974	$ 2,260,900
Capital expenditures in accrued liabilities	$ 34,976	$ 9,547

The weighted average depreciation rate for utility assets was 2.8% for utility assets during 2017, 2016, and 2015. The weighted average depreciation rate for non-utility assets was 1.9% in 2017, 2.0% in 2016, and 2.2% in 2015.

Accumulated depreciation does not include the accumulated provision for asset removal costs of $360.9 million and $341.1 million at December 31, 2017 and 2016, respectively. These accrued asset removal costs are reflected on the balance sheet as regulatory liabilities. See Note 2. During 2017 and 2016, we did not acquire any equipment under capital leases.

11. GAS RESERVES

We have invested $188 million through our gas reserves program in the Jonah Field located in Wyoming as of December 31, 2017. Gas reserves are stated at cost, net of regulatory amortization, with the associated deferred tax benefits recorded as liabilities on the consolidated balance sheets. Our investment in gas reserves provides long-term price protection for utility customers through the original agreement with Encana Oil & Gas (USA) Inc. under which we invested $178 million and the amended agreement with Jonah Energy LLC under which an additional $10 million was invested.

We entered into our original agreements with Encana in 2011 under which we hold working interests in certain sections of the Jonah Field. Gas produced in these sections is sold at prevailing market prices, and revenues from such sales, net of associated operating and production costs and amortization, are credited to the utility's cost of gas. The cost of gas, including a carrying cost for the rate base investment, is included in our annual Oregon PGA filing, which allows us to recover these costs through customer rates. Our investment under the original agreement, less accumulated amortization and deferred taxes, earns a rate of return.

In March 2014, we amended the original gas reserves agreement in order to facilitate Encana's proposed sale of its interest in the Jonah field to Jonah Energy. Under the amendment, we ended the drilling program with Encana, but increased our working interests in our assigned sections of the Jonah field. We also retained the right to invest in new wells with Jonah Energy. Under the amended agreement we still have the option to invest in additional wells on a well-by-well basis with drilling costs and resulting gas volumes shared at our amended proportionate working interest for each well in which we invest. We elected to participate in some of the additional wells drilled in 2014, but have not had the opportunity to participate in additional wells since 2014. However, we may have the opportunity to participate in more wells in the future.

Gas produced from the additional wells is included in our Oregon PGA at a fixed rate of $0.4725 per therm, which approximates the 10-year hedge rate plus financing costs at the inception of the investment.

Gas reserves acted to hedge the cost of gas
for approximately 6%, 8% and 11% of our utility's gas supplies for the years ended December 31, 2017, 2016, and 2015 respectively.

CASE: UG 344
WITNESS: JOHN L. FOX

PUBLIC UTILITY COMMISSION OF OREGON

STAFF EXHIBIT 1500

Rebuttal and Cross-Answering Testimony

June 20, 2018

Q. Please state your name, occupation, and business address.

A. My name is John L. Fox. I am a Senior Financial Analyst employed in the Energy Rates, Finance and Audit Division of the Public Utility Commission of Oregon (OPUC). My business address is 201 High Street S.E., Suite 100, Salem, Oregon 97301.

Q. Have you previously provided testimony in this case?

A. Yes. My opening testimony is Staff Exhibit 300.

Q. What is the purpose of your testimony?

A. To rebut portions of the testimony of Kevin McVay (NW Natural/1500) and Jorge Moncayo (NW Natural/1700).

Q. Did you prepare an exhibit for this docket?

A. No.

Q. How is your testimony organized?

A. My testimony is organized as follows:

ISSUE 1. PENSION BALANCING ACCOUNT

Q. Does Staff believe the balancing account mechanism is structurally unsound and not in the best interest of ratepayers?

A. Yes. We have significant concerns, which were presented in my opening testimony in this case.[1]

Q. What is your response to the Company's reply testimony that the balancing account did not perform as intended due to unforeseen increases in FAS 87 expense?

A. I believe this is true. Between 2011 and 2017 the funded status of the plan increased from 60 percent to 64 percent. Projections at the time the balancing account was established show the plan exceeding 100 percent funded status in 2016. During this time, FAS 87 expenses exceeded original projections by 255 percent.

Q. How are ratepayers being damaged?

A. As stated in my opening testimony, the balancing account is based on the assumption that over the life of the account, the difference between the assumed discount rate and the expected return on assets generates negative FAS 87 expense that can be applied to reduce the balancing account to zero. The flaw in this assumption, and indeed in the mechanism itself, is treating this difference as a series of incremental cash flows that will result in negative FAS 87 expenses that can then be used to pay the interest accruing on the balancing account. This is illusory. There is no cash generated to repay the

[1] Staff/300, Fox/28-32.

interest owed to the Company. Accordingly, ratepayers will ultimately be required to produce that cash. Since the balancing account accrues interest on interest, the ratepayers will ultimately, over time, pay much more than they otherwise would have.

Q. Do you agree with the Company's suggestion that the amount of pension expense in customer rates ought to be increased?

A. Yes. However, simply increasing the recovery and leaving the balancing account mechanism in place masks the portion of the increase that would be applied to interest.

Q. Why does that matter?

A. The sum of FAS 87 expenses over the life of the plan is the true cost to provide the pension benefit. If ratepayers are to be charged for interest above and beyond the FAS 87 cost, it is disingenuous to label it as pension expense.

Q. How would terminating or suspending the balancing account be more transparent?

A. It would isolate the accumulated amount pension cost deferred in past years and interest thereon from the current cost of service. Ratepayers would begin paying the current FAS 87 cost in current rates. The accumulated balancing account issue would be resolved separately.

Q. What are the potential options for offsetting the accumulated deferred pension cost and interest in the balancing account?

A. One option is to use a portion of the savings due to customers from revaluation of certain deferred tax assets and liabilities at the new lower federal tax rate.

The impact of federal tax reform, including prior year deferrals, is further discussed in the testimony of Marianne Gardner.

Q. Does Staff support using tax benefits as a balancing account offset?

A. Staff agrees with the Company that this is an available tool that could be used.[2] Staff's primary concern is to ensure the full benefits of tax reform are passed through to ratepayers. Offsetting a portion to reduce the balancing account is one of several methods available to distribute the benefits.

Q. Do you believe the interest rate accruing on the balancing account is appropriate?

A. At this time, yes. However, if the parties agree to modify the provisions of Order No. 11-051 and also agree to a timeline for amortizing the accumulated balance into rates, changing to the lower risk free rate would be appropriate.

[2] See NW Natural/1500, McVay/39-40.

ISSUE 2. CLARIFICATION OF GROSS PLANT ADJUSTMENTS

Q. What is your response to the Company's assertion that Staff's adjustment for excess distribution expenses includes an error of nearly $24 million and no work papers were provided to the Company documenting Staff's methodology?[3]

A. This is not an error. The negative adjustment was necessary to achieve Staff's proposal to align service growth with customer growth as shown in charts provided in my opening testimony.[4] The underlying work paper, showing full detail of all calculations, was uploaded to Huddle contemporaneously with Staff's opening testimony on April 20, 2018. The Company has subsequently indicated they "hadn't adequately circulated" the work paper internally.

Q. Does this conclude your testimony?

A. Yes.

[3] NW Natural/1700, Moncayo/39-40.
[4] Staff/300, Fox/21-22.