

**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
AMERICAN PUBLIC GAS ASSOCIATION**

The American Public Gas Association (“APGA”) submits these comments in response to the Notice of Inquiry issued by the Federal Energy Regulatory Commission (Commission) in this proceeding on March 15, 2018.¹ APGA limits its comment to interstate natural gas pipelines.

I. INTRODUCTION

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 730 members in 36 states. Overall, there are approximately 1,000 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities.

APGA members purchase interstate natural gas transportation and storage services from interstate natural gas companies at rates that are regulated by Commission. Nearly all of its members purchase under regulated cost-based rates for firm services. APGA therefore has in interest in how the Commission addresses the effect of the Tax Cuts and Jobs Act of 2017 (TCJA) on these rates.

¹ *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, 162 FERC ¶ 61,223 [83 Fed. Reg. 12371] (2018).

II. EXECUTIVE SUMMARY: APGA SUPPORTS THE RETURN OF EXCESS ADIT

APGA supports the Commission's initiative here to act promptly to provide certainty to the natural gas industry on the impacts of the TCJA. APGA has supported in comments the effort to have interstate pipelines report back their positions in Form 501-G (Docket No. RM18-11). APGA has taken the position that Accumulate Deferred Income Taxes (ADIT) may be scrutinized in the pipeline's Form 501-G because the accounting issue pertains to whether the pipeline employed "the correct information" in producing its report. Proposed §154.404(e)(ii).

Basic regulatory principles should guide the Commission. Interstate natural gas pipelines are regulated under the Natural Gas Act to ensure that rates are just and reasonable. The monies that have been collected in ADIT accounts originated from ratepayers. Commission policy has allowed interstate natural gas pipelines to retain and not flow through the tax benefits of normalization. It is only equitable that when those funds are no longer needed, they should be returned to ratepayers for their rates to remain just and reasonable.

III. COMMENTS

A. ADIT

As the Commission well explained,² ADIT is the accumulation of amounts collected through rates for income taxes but not yet needed to pay income taxes. In pipeline ratemaking, ADIT associated with depreciation expense is the main component of total ADIT. ADIT associated with depreciation expense results because of differences between book straight-line depreciation and the accelerated depreciation allowed for federal income tax purposes. Ratepayers are prepaying the income taxes and the pipeline will have use of these extra dollars until it must pay more income taxes in subsequent years as its taxable deduction for depreciation decreases. As a result, ADIT is a deduct from rate base under Commission

² 83 Fed. Reg 12373.

regulations.³ The effect of this credit is to reduce the cost of providing service to ratepayers by an amount equal to the deferred income taxes multiplied by the overall rate of return.

As a result of the TCJA reducing the federal corporate income tax rate, a portion of an ADIT liability that was collected from ratepayers will no longer be due from interstate natural gas pipelines and is considered “excess ADIT, which must be returned to ratepayers in a cost-of-service ratemaking context.”⁴ *This is a substantial amount of money in the range of 40% of tens of billions of dollars in interstate pipeline ADIT accounts.* Pipelines must now re-measure their ADIT liabilities and assets, and establish regulatory liabilities and assets, and the Commission seeks comment on several elements of this transition.

1. *Regulatory Liabilities And Regulatory Assets*

The Commission requested commenters to address whether, and if so how, interstate natural gas pipelines could make adjustments to ensure that regulatory liabilities and regulatory assets are treated comparably to the ADIT liability and asset accounts.⁵ The Commission further seeks comment on how to ensure that rate base continues to be treated in a manner similar to that prior to the TCJA—how to preserve rate base neutrality—until excess ADIT has been fully settled in a just and reasonable manner. This will be achieved, as it has previously, with the creation of a Regulatory Liability.

³ 18 CFR § 154.305(c).

⁴ *Id.* P13 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981), *order on reh’g*, Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 (1982)). Other types of transactions can result in deferred income taxes, such as costs deferred and recovered in subsequent periods because of pension costs, post-retirement benefits other than pensions, and regulatory decisions.

⁵ The Commission proposed in its 1992 NOPR to provide accounting for regulatory assets and liabilities, *i.e.*, assets and liabilities created through the ratemaking actions of regulatory agencies and not specifically provided for in other accounts. The NOPR proposed to create four new accounts for regulatory assets and liabilities: Account 182.3, Other Regulatory Assets; Account 244, Other Regulatory Liabilities; Account 407.3, Regulatory Debits; and Account 407.4, Regulatory Credits. The first two are balance sheet accounts; the latter two are income accounts. Order No. 552, Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A, Docket No. RM92-1, 62 FERC ¶ 61,299.

The excess ADIT that is reclassified from ADIT Account 282 to the regulatory liability account Excess ADIT Account 254, should be treated for ratemaking purposes as if the amounts were still ADIT, *i.e.*, Account 254 will be deducted from rate base. Rate base will not increase or decrease simply because there has been a change in the tax rate. Because ratepayers are the originators of this cost-free source of capital for the pipeline, the Excess ADIT Regulatory Liability will ensure the ratepayers receive the benefit for providing this cost-free source of capital to pipelines until the Excess ADIT has been returned to ratepayers.

Amortization of the Excess ADIT will most likely be accounted for by a debit adjustment to Account 254, reduce the amount of Excess ADIT, with an offsetting credit transaction to 407.3, Regulatory Debits. Additionally, the Account 407.3, Regulatory Debits, will be captured as a dollar for dollar reduction in the Depreciation, Depletion and Amortization schedule (normally Statement H-2 in a FERC cost of service filing).⁶

2. Interest on Excess and Deficient ADIT

As to whether interstate natural gas pipelines should include interest on excess and deficient ADIT for the time period from January 1, 2018, interest on Excess ADIT may not be necessary. If the Account 254 balance of Excess ADIT is deducted from rate base, which has been done previously, ratepayers will be credited with an effective interest rate of the utilities' pre-tax overall weighted cost of capital. On the other hand, if the Commission does not require deduction of the Excess ADIT Account 254 Regulatory Liability balance from rate base, interest should apply to the Account 254 balance of Excess ADIT at the pre-tax overall weighted cost of capital.

The initial impact to rate base should be zero. Because of the amortization, rate base will increase. This is an important because pipelines have an incentive to begin amortization as

⁶ As the amortization period extends into the future, the realized value that is captured by ratepayers decreases if rate base increases over time.

quickly as possible to try to get the highest rate base possible to earn a return. The Commission should allow changes to rate base only in a full rate proceeding when all costs are examined.

3. Flow-Back or Recovery of Plant-Based ADIT

As the Commission observed, interstate natural gas pipelines are generally not permitted, in computing costs of service for ratemaking purposes and reflecting operating results in their regulated books of account, to flow-back excess plant-based ADIT more rapidly or greater than the reductions permitted by the Average Rate Assumption Method, or the *South Georgia* convention for gas pipelines, which requires amortization of the excess tax reserve over the remaining regulatory lives of the property that gave rise to the ADIT. Given this has been the historic practice of the Commission it makes sense that the protected balance of excess ADIT is tied to the associated vintage year assets, just as ADIT is, and will be flowed back to ratepayers over the remaining life of the asset.

4. Amortization of Excess ADIT

The Commission is inquiring whether interstate natural gas pipelines with stated rates should adjust their income tax allowance such that the allowance would be decreased or increased by the amortization of excess and deficient ADIT. As an initial matter, APGA see deficient ADIT as only theoretical; APGA focuses on excess ADIT. Further, APGA assumes that by “stated rate” the Commission means that the rate has been developed from a transparent cost of service analysis. If so, all such pipelines should be required to make the necessary adjustments to rates in order to return excess deferred taxes caused by the TCJA to ratepayers. It is important that the Commission establish this requirement with certainty.

If the Commission is referring to a negotiated rate as a “stated rate,” then there are a host of issues, most of which have been commented on in Docket No. RM18-11. As concerns

excess ADIT, the Commission should address allocation issues that arise when a significant portion of pipeline revenues are derived from negotiated rates. A pipeline specific review is probably necessary, but the Commission could issue some general principles to facilitate resolution if possible.

5. Supporting Worksheets

The Commission seeks comment on whether it should require interstate natural gas pipelines to provide to the Commission, on a one-time basis, additional information, such as supporting worksheets, to show the computation of excess or deficient ADIT and the corresponding flow-back of excess ADIT to ratepayers or recovery of deficient ADIT from ratepayers. APGA supports this proposal for two reasons.

First, this is a complex accounting area. The more information explicating a pipeline's practices, the better the regulatory outcome. In addition to a worksheet, APGA believes that the requirement should specify a narrative as well. Second, more data simply enhances transparency. In his confirmation hearing, Chairman McIntyre appropriately included in his goals making FERC's actions as transparent as possible.⁷ APGA heartily supports that goal.

As an alternative to this, the Commission could require new subaccounts to Account 254 to track and audit Excess ADIT generated by the TCJA. That too would provide appropriate transparency.

6. Treatment of ADIT for Partnerships

The Commission seeks comment on whether previously accumulated sums in ADIT should be eliminated altogether from cost of service or whether those previously accumulated sums should be placed in a regulatory liability account and returned to ratepayers. APGA

⁷ Prepared Statement of Chairman Kevin McIntyre, Before the House Committee on Energy and Commerce Subcommittee on Energy (April 17, 2018).

believes that because ratepayers contributed the ADIT sums, they should be returned because of the tax law change. The Commission should establish accounting procedures that can verify this result.

B. Bonus Depreciation

Regarding bonus depreciation and the change under the TCJA the Commission seeks comment on whether and if so how, the Commission should act to address associated issues. Bonus depreciation is no longer available under the new law for certain utility assets. It appears that the only issue before the Commission pertains to jurisdictional entities that had bonus depreciation prior to the TCJA. Accordingly, any previously accrued bonus depreciation is another source of excess ADIT and should be accounted for in the determination of the balance of excess ADIT.

**

APGA requests that the Commission consider these comments and urges the Commission to act promptly so that ratepayers may benefit from all aspects of the TCJA that became effective on January 1, 2018.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By /s/ John P. Gregg

John P. Gregg
General Counsel

McCarter & English, LLP
Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, DC 20005
202.753.3400
jgregg@mccarter.com

May 21, 2018