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(2) You must use this service information as applicable to determine parts that are affected by this AD, unless the AD specifies otherwise.

(i) Air Cruisers Service Bulletin 737 103–25–50, dated August 27, 2010.

(ii) Air Cruisers Service Bulletin 757 105–25–80, dated August 27, 2010.

(iii) Air Cruisers Service Bulletin 757 105–25–81, dated August 27, 2010.

(iv) Air Cruisers Service Bulletin 767 106–25–10, Rev. No. 1, dated October 15, 2010.

(v) Air Cruisers Service Bulletin 777 107–25–29, Rev. No. 1, dated July 8, 2011.

(vi) Air Cruisers Service Bulletin A300/A310 001–25–19, dated August 27, 2010.

(vii) Air Cruisers Service Bulletin A300/A310 003–25–33, dated August 27, 2010.

(viii) Air Cruisers Service Bulletin A310 002–25–08, dated August 27, 2010.

(ix) Air Cruisers Service Bulletin A320 004–25–87, Rev. No. 2, dated January 7, 2011.

(x) Air Cruisers Service Bulletin A321 005–25–21, dated August 27, 2010.

(xi) Air Cruisers Service Bulletin BAe 146 201–25–23, dated December 10, 2010.

(xii) Air Cruisers Service Bulletin F28 352–25–02, dated December 10, 2010.

(xiii) Air Cruisers Service Bulletin F100 351–25–07, dated December 10, 2010.

(xiv) Air Cruisers Service Bulletin Liferaft 35–25–79, dated August 27, 2010.

(xv) Air Cruisers Service Bulletin MD11 305–25–35, dated August 27, 2010.

(xvi) Air Cruisers Service Bulletin MD80/90/717 304–25–45, dated August 27, 2010.

(3) For service information identified in this AD, contact Air Cruisers, 1747 State Route 34, Wall Township, NJ 07727–3935; phone 732–681–3527; email *technical_publications@zodiac aerospace.com*.

(4) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, 154, 201, and 352

[Docket No. PL19–2–000]

Accounting and Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Policy statement.

SUMMARY: In this Policy Statement, the Federal Energy Regulatory Commission (Commission) states its policy regarding the treatment of Accumulated Deferred Income Taxes for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017. In addition, the Commission addresses the accounting and ratemaking treatment of Accumulated Deferred Income Taxes following the sale or retirement of an asset.

DATES: This Policy Statement will become applicable November 23, 2018.

FOR FURTHER INFORMATION CONTACT:

Sharli Silva (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8719, Sharli.Silva@ferc.gov.

Bryan Wheeler (Technical Information), Office of Energy Markets Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8497, Bryan.Wheeler@ferc.gov.

Monil Patel (Technical Information), Office of Energy Markets Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8296, Monil.Patel@ferc.gov.

Kimberly Horner (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8623, Kimberly.Horner@ferc.gov.

SUPPLEMENTARY INFORMATION:

1. In this Policy Statement, the Federal Energy Regulatory Commission (Commission) states its policy regarding the treatment of Accumulated Deferred Income Taxes (ADIT) for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines, and oil pipelines, in light of the Tax Cuts and

Jobs Act of 2017.¹ The Commission also addresses the accounting and ratemaking treatment of ADIT following the sale or retirement of an asset.

I. Background

A. Tax Cuts and Jobs Act

2. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018.² This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the Internal Revenue Service (IRS) based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.

3. Importantly, the tax rate reduction will also result in a reduction in ADIT liabilities and ADIT assets on the books of rate-regulated companies. ADIT balances are accumulated on the regulated books and records of such regulated companies based on the requirements of the Uniform System of Accounts (USoA).³ ADIT arises from timing differences between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes.⁴ As a result of the Tax Cuts and Jobs Act reducing the federal corporate income tax rate from 35 percent to 21 percent, a portion of an ADIT liability that was collected from customers will no longer be due from public utilities, natural gas pipelines and oil pipelines to the IRS and is considered excess ADIT.

B. Order No. 144

4. The purpose of tax normalization is to match the tax effects of costs and revenues with the recovery in rates of those same costs and revenues.⁵ As

¹ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115–97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

² *Id.* Sec. 13001, 131 Stat. at 2096.

³ See Definition of Accounts 182.3 and Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; see Definition of Accounts 182.3 and Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act*; see General Instructions 1–12, Accounting for Income Taxes, 18 CFR part 352, *Uniform Systems of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act*.

⁴ See 18 CFR 35.24(d)(2) (2018).

⁵ *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax*

noted above, timing differences may exist between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting and ratemaking purposes. The tax effects of these differences are placed in a deferred tax account to be used in later periods when the differences reverse.⁶

5. The Commission established this policy of tax normalization in Order No. 144 where it required use of “the provision for deferred taxes [(i.e., ADIT)] as a mechanism for setting the tax allowance at the level of current tax cost.”⁷ In keeping with this normalization policy, and as relevant to the Tax Cuts and Jobs Act’s reduction of the federal corporate income tax rate, the Commission in Order No. 144 also required adjustments in the ADIT of public utilities’ cost of service when excessive or deficient ADIT has been created as a result of changes in tax rates.⁸ Furthermore, the Commission required “a rate applicant to compute the income tax component in its cost of service by making provision for any excess or deficiency in its deferred tax reserves resulting . . . from tax rate changes.”⁹ The Commission required that such provision be consistent with a Commission-approved ratemaking method made specifically applicable to the rate applicant.¹⁰ Where no ratemaking method has been made specifically applicable, the Commission required the rate applicant to advance some method in its next rate case.¹¹ The Commission stated that it would determine the appropriateness of any proposed method on a case-by-case basis, but as the issue is resolved in a number of cases, a method with wide applicability may be adopted.¹² The Commission codified the requirements of Order No. 144 in its regulations in 18 CFR 35.24.¹³

⁶ Purposes, Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522, 31,530 (1981), *order on reh’g*, Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 (1982).

⁷ Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,554.

⁸ *Id.* at 31,530.

⁹ *Id.* at 31,519.

¹⁰ Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(1)(ii); 18 CFR 35.24(c)(2).

¹¹ Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560. *See also* 18 CFR 35.24(c)(3).

¹² Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

¹³ *Id.* *See also* 18 CFR 35.24(c)(3).

¹⁴ Originally promulgated as part of Order No. 144, the regulatory text was redesignated as 18 CFR 35.25 in Order No. 144–A. *See* Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 at 30,140. In Order No. 545, the Commission again redesignated the regulatory text to its present designation as 18 CFR 35.24. *See Streamlining Electric Power Regulation*,

1. Public Utilities—18 CFR 35.24

6. Originally promulgated in Order No. 144, the Commission’s regulations in 18 CFR 35.24 provide requirements for the proper ratemaking treatment of the tax effects of all transactions for which there are timing differences.¹⁴ Under this section, a public utility must account for excess or deficient ADIT when computing the income tax component of its cost of service.¹⁵ Additionally, in accounting for this excess or deficient ADIT, a public utility is required to apply the ratemaking method that has been specifically approved by the Commission for that public utility.¹⁶ Where no such ratemaking method exists, a public utility may choose which ratemaking method to apply and the reasonableness of that ratemaking method will be determined on a case-by-case basis by the Commission.¹⁷

2. Natural Gas Pipelines—18 CFR 154.305

7. Order No. 144 also promulgated the Commission’s regulations regarding tax normalization for natural gas pipelines which were originally located in part 2 of the regulations as section 2.202.¹⁸ Order No. 144–A redesignated the tax normalization regulations for natural gas pipelines by removing them from part 2 of the Commission’s regulations and placing them in part 154.¹⁹ Subsequently, Order No. 582 redesignated the regulatory text in that part with respect to natural gas pipelines to its current designation in section 154.305, and made various revisions in that section.²⁰ The section requires a natural gas pipeline making a rate filing under the Natural Gas Act to compute the income tax component of its cost of service by using tax normalization for all transactions.²¹

Order No. 545, FERC Stats. & Regs. ¶ 30,955, at 30,713 (1992) (cross-referenced at 61 FERC ¶61,207).

¹⁴ *See id.*

¹⁵ *See* 18 CFR 35.24(c)(1)(ii). (c)(2).

¹⁶ *See* 18 CFR 35.24(c)(3).

¹⁷ *See id.*

¹⁸ Order No. 144, FERC Stats. & Regs. ¶ 30,254.

¹⁹ Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 at 30,140. The Commission deemed part 154 a more appropriate location because tax normalization is required to be used by natural gas pipelines in filing their rate applications and the regulations that govern the filing of such rate applications are located in part 154. *Id.*

²⁰ 18 CFR 154.305 (2018). *See* Order No. 582, *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, FERC Stats. & Regs. ¶ 31,025 (1995), *order on reh’g*, Order No. 582–A, FERC Stats. & Regs. ¶ 31,043 (1996), *order on clarification*, FERC Stats. & Regs. ¶ 31,037 (1996). The tax normalization regulations were moved from 18 CFR 154.63a to 154.305.

²¹ 18 CFR 154.305.

More specifically, the section requires natural gas pipelines to reduce rate base by the balances that are properly recordable in USofA Account 281 (Accumulated deferred income taxes—accelerated amortization property), Account 282 (Accumulated deferred income taxes—other property), and Account 283 (Accumulated deferred income taxes—other).²² Conversely, rate base must be increased by balances that are properly recordable in Account 190 (Accumulated deferred income taxes).²³ The section also requires natural gas pipelines to compute the income tax component in its cost of service by including a provision for amortizing excess or deficiency in deferred taxes. This is done by applying a Commission-approved ratemaking method made specifically applicable to the natural gas pipeline for determining the cost-of-service provision: (1) If the natural gas pipeline has not provided deferred taxes in the same amount that would have accrued had tax normalization always been applied or (2) if, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in, or in excess of, amounts necessary to meet future tax liabilities.²⁴ Similar to the tax normalization regulations for public utilities, if the Commission has not approved a specific ratemaking method specifically applicable to the natural gas pipeline, then the natural gas pipeline must use a previously approved ratemaking method.²⁵ The Commission will determine whether such method is appropriate on a case-by-case basis.²⁶

3. Oil Pipelines

8. Unlike the Commission’s regulations applicable to public utilities and natural gas pipelines, there is no tax normalization section under the Commission’s regulations for oil pipelines. Instead, the Commission’s regulations for oil pipelines under the USofA General Instructions, 1–12 *Accounting for Income Taxes*, require that when income tax rates are changed, oil pipelines reduce or increase their ADIT balances immediately by the full amount of the excess or deficient tax reserve.²⁷ Specifically, section (b) requires oil pipelines to apply the

²² 18 CFR 154.305(c)(1).

²³ *Id.*

²⁴ 18 CFR 154.305(d). Such amounts must be included as an addition or reduction to rate base until the deficiency or excess is fully amortized using the Commission approved ratemaking method. *Id.*

²⁵ 18 CFR 154.305(d)(3).

²⁶ *Id.*

²⁷ 18 CFR part 352, General Instructions 1–12, *Accounting for Income Taxes*.

enacted tax rate in determining the amount of deferred taxes and adjust their deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.²⁸ The section further requires the adjustment to be recorded in the appropriate deferred tax balance sheet accounts based on the nature of the temporary difference and the related classification requirements of the account.²⁹

4. Prior Accounting Guidance for Public Utilities and Natural Gas Pipelines

9. In Docket No. AI93–5–000, the Chief Accountant issued accounting guidance on the proper accounting for income taxes.³⁰ Among other matters, the accounting guidance directed public utilities and natural gas companies to adjust their deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.³¹ The guidance stated that adjustments should be recorded in the appropriate deferred tax balance sheet accounts (Accounts 190, 281, 282 and 283) based on the nature of the temporary difference and the related classification requirements of the accounts.³² Further, if as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability should be recognized in Account 182.3 (Other Regulatory Assets), or Account 254 (Other Regulatory Liabilities), as appropriate, for that probable future revenue or reduction in future revenue.³³

C. Notice of Inquiry

10. Following the enactment of the Tax Cuts and Jobs Act, the Commission issued a Notice of Inquiry seeking comments on, among other things, whether, and if so, how, the Commission should address the effects on ADIT of the Tax Cuts and Jobs Act.³⁴ The Commission noted that the Tax Cuts and Jobs Act's reduction to the federal corporate income tax rate would potentially create excess or deficient

ADIT on the books of public utilities.³⁵ As relevant to the guidance provided in this Policy Statement, the Commission sought comments on the treatment of ADIT for assets sold or retired after December 31, 2017, and the amortization of excess and deficient ADIT.³⁶

II. Discussion

11. This Policy Statement states our requirements regarding the treatment of ADIT in light of the tax rate reduction implemented in the Tax Cuts and Jobs Act. Specifically, we provide guidance regarding: (1) The accounts in which public utilities, natural gas pipelines, and oil companies should record the amortization of excess and/or deficient ADIT for accounting purposes and ratemaking purposes and (2) whether, and if so how, such entities should address excess and/or deficient ADIT that is recorded on the books of public utilities, natural gas pipelines, and oil companies after December 31, 2017, as a result of assets being sold or retired for both accounting and ratemaking purposes.

12. First, we clarify that for both accounting purposes and ratemaking purposes, public utilities and natural gas companies should record the amortization of the excess and/or deficient ADIT recorded in Account 254 (Other Regulatory Liabilities) and/or Account 182.3 (Other Regulatory Assets) by recording the offsetting entries to Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income) or Account 411.1 (Provision for Deferred Income Taxes—Credit, Utility Operating Income), as required by the USofA. We further clarify that for accounting purposes oil pipelines should adjust their ADIT balances to reflect the change in federal income tax rates with offsetting entries to the appropriate income statement account, as required by the USofA. Accordingly, oil pipeline companies will not record excess or deficient ADIT for accounting purposes. As detailed below, we also clarify that oil pipelines should provide additional disclosures in the Notes that accompany their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6).

13. Second, for accounting purposes, we reiterate that public utilities and natural gas pipelines must continue to follow the accounting guidance issued by the Chief Accountant in Docket No. AI93–5–000 with respect to changes in tax law or rates. To ensure transparency in the accounting adjustments to the

deferred tax accounts, we clarify that entities should provide additional disclosures in their 2018 FERC annual financial filing within the Notes to the Financial Statements as detailed below.

14. With respect to ratemaking, for a public utility or natural gas pipeline that continues to have an income tax allowance, any excess or deficient ADIT associated with an asset must continue to be amortized in rates even after the sale or retirement of that asset. This excess or deficient ADIT will continue to be refunded to or recovered from ratepayers based on the schedule that was initially established. Similarly, for ratemaking purposes oil pipelines should keep records of excess and deficient ADIT.

A. In Which Accounts Should Companies Record Amortization of Excess and Deficient ADIT

15. In the NOI, the Commission sought comment on whether a public utility or natural gas pipeline 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).³⁷ For oil pipelines, the Commission sought comment on whether this information should be recorded in Account 665 (Unusual or Infrequent Items (Debit)) or Account 645 (Unusual or Infrequent Items (Credit)).³⁸

1. Comment Summary

16. Ameren takes issue with the premise of the Commission's question that a separate regulatory liability or asset account is necessary to record excess or deficient ADIT, respectively, arguing that the excess or deficient ADIT should remain in the accounts where they were originally recorded.³⁹ APPA and AMP, along with Indicated Customers, argue that it would be both appropriate and transparent to record the excess ADIT in the same ADIT accounts (e.g., Accounts 190, 282 and 283) where the original entries for the ADIT assets and ADIT liabilities were established, but believe separate regulatory liability and/or asset accounts would also be appropriate.⁴⁰

³⁷ NOI, FERC Stats. & Regs. ¶ 35,582 at P 22.

³⁸ *Id.*

³⁹ Ameren, Comments to NOI, Docket No. RM18–12–000, at 16 (filed May 21, 2018) (Ameren NOI Comments).

⁴⁰ APPA and AMP, Comments to NOI, Docket No. RM18–12–000, at 16 (filed May 22, 2018) (APPA and AMP NOI Comments); Indicated Customers, Comments to NOI, Docket No. RM18–12–000, at 14 (filed May 21, 2018) (Indicated Customers NOI Comments).

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *Accounting for Income Taxes*, Docket No. AI93–5–000, at Item 8 (Apr. 23, 1993).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates*, FERC Stats. & Regs. ¶ 35,582 (2018) (NOI). In this Policy Statement, we refer to the comments filed in response to the NOI. A list of commenters in that proceeding and the abbreviated names used in this Policy Statement appears in Appendix A.

³⁵ NOI, FERC Stats. & Regs. ¶ 35,582 at P 13.

³⁶ *Id.* PP 20–22.

17. When separate regulatory liability or assets are used, commenters' viewpoints diverge on the appropriate account to record the offsetting entry. Certain commenters agree with the Commission's initial suggestion.⁴¹ PSEG states that Accounts 407.3 and 407.4 correspond to the appropriate balance sheet account where the excess deferred taxes reside.⁴² Regarding natural gas pipelines, Berkshire asserts that recording the amounts in Account 407.3 or 407.4 will be easier for FERC Form No. 2 users to understand because it will result in similar treatment to other IRS schedule M items and above the line accounting while avoiding the requirement to spread the total year's amortization over each month using the FASB Interpretation No. 18 method.⁴³

18. Other commenters believe that either Accounts 407.3 and 407.4 or 410.1 (Provision for deferred income taxes, utility operating income) and 411.1 (Provision for deferred income taxes) are appropriate. Avangrid asserts that Account 407 is consistent with the fact that the excess deferred tax obligation ceased upon tax reform enactment and that the utilities will prospectively amortize a regulatory deferral, rather than a deferred tax liability; however, use of Account 411 is consistent with USofA requirements.⁴⁴ EEI and INGAA state that their members' opinions are split between the two accounting options and request that the Commission recognize that both approaches may be appropriate.⁴⁵

19. Many other commenters believe that only Accounts 410.1 and 411.1 are appropriate.⁴⁶ New York Transco notes

that those accounts were originally used when the regulatory asset or regulatory liability was established.⁴⁷

20. Regarding oil pipelines, AOPL states with respect to regulatory accounting under the USofA, any excess ADIT is eliminated when tax rates change consistent with generally accepted accounting principles, rather than being reduced over time through amortization. AOPL states there is no reason to change either the Commission's accounting rules or current oil pipeline accounting practices; the Commission's ratemaking precedent controls rather than accounting rules for purposes of setting cost-of-service rates.⁴⁸

2. Determination

a. Accounting Guidance

21. We clarify that public utilities and natural gas pipelines should record the amortization of the excess and/or deficient ADIT recorded in Account 254 (Other Regulatory Assets) and/or Account 182.3 (Other Regulatory Assets) by recording the offsetting entries to Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income) or Account 411.1 (Provision for Deferred Income Taxes—Credit, Utility Operating Income), as appropriate. As explained below, recording the amortization in Account 410.1 and Account 411.1 is consistent with the instructions for those accounts as detailed in the Commission's regulations and provides more transparency as compared with recording the amounts in Account 407.3 and Account 407.4 because the specific source of the regulatory asset or regulatory liability will be known.

22. The Commission's instructions for Account 182.3 provide in part “[w]hen specific identification of the particular source of a regulatory asset cannot be made . . . account 407.4, regulatory credits, shall be credited.”⁴⁹ Similarly, the Commission's instructions for Account 254 state in part “[w]hen

specific identification of the particular source of the regulatory liability cannot be made . . . account 407.3, regulatory debits, shall be debited.”⁵⁰

23. In contrast, Account 410.1 and Account 411.1 are specifically designated for the recordation of ADIT.⁵¹ In this situation where, as a result of a change in tax law or rates, excess and/or deficient ADIT have been reclassified to Account 254 and/or Account 182.3, in accordance with the Commission's prior guidance,⁵² specific identification of the source of the regulatory liability and/or regulatory asset can be made. Accordingly, the Commission's existing regulations support amortizing the excess and/or deficient ADIT recorded in Account 254 and/or Account 182.3 to Account 410.1 or Account 411.1, as appropriate and consistent with the manner such amounts are reflected in rates.

24. With respect to oil pipelines, deferred tax balances should be adjusted for the effect of changes in tax law or rates in the period the change is enacted in accordance with the USofA for oil pipelines.⁵³ Specifically, upon the enactment of the Tax Cuts and Jobs Act, oil pipelines should have reduced their ADIT balances to reflect the 21 percent federal income tax rate with offsetting entries to the appropriate income statement account.⁵⁴ We believe the current guidance set forth in the USofA is appropriate and will not require oil pipelines to account for excess or deficient ADIT or record the amortization of such amounts. However, to ensure transparency with respect to these ADIT adjustments, oil pipelines should disclose in the Notes to their Form No. 6 financial statements, the amounts of their ADIT adjustments resulting from the change in the federal corporate income tax rate, supported by

⁴¹ Berkshire, Comments to NOI, Docket No. RM18–12–000, at 5–6 (filed May 22, 2018) (Berkshire NOI Comments); Consumer Advocates, Comments to NOI, Docket No. RM18–12–000, at 8–10 (filed May 21, 2018) (Consumer Advocates NOI Comments); DEMEC, Comments to NOI, Docket No. RM18–12–000, at 16 (filed May 21, 2018) (DEMEC NOI Comments); PSEG, Comments to NOI, Docket No. RM18–12–000, at 10–11 (filed May 22, 2018) (PSEG NOI Comments); TransCanada, Comments to NOI, Docket No. RM18–12–000, at 25 (filed May 21, 2018) (TransCanada NOI Comments).

⁴² PSEG NOI Comments at 10–11.

⁴³ Berkshire NOI Comments at 5–6.

⁴⁴ Avangrid, Comments to NOI, Docket No. RM18–12–000, at 12–13 (May 22, 2018) (Avangrid NOI Comments).

⁴⁵ EEI, Comments to NOI, Docket No. RM18–12–000, at 19–20 (filed May 22, 2018) (EEI NOI Comments); INGAA, Comments to NOI, Docket No. RM18–12–000, at 12 (filed June 5, 2018) (INGAA NOI Comments).

⁴⁶ Ameren NOI Comments at 16; APPA and AMP NOI Comments at 16; Dominion Energy Gas Pipelines, Comments to NOI, Docket No. RM18–12–000, at 14–15 (filed May 21, 2018) (Dominion Energy Gas Pipelines NOI Comments); Enable Interstate Pipelines, Comments to NOI, Docket No. RM18–12–000, at 39–40 (filed May 21, 2018) (Enable Interstate Pipelines NOI Comments); Indicated Customers, Comments to NOI, Docket No.

RM18–12–000, at 10 (filed May 21, 2018) (Indicated Customers NOI Comments); Indicated Local Distribution Companies, Comments to NOI, Docket No. RM18–12–000, at 11 (filed May 22, 2018) (Indicated Local Distribution Companies NOI Comments); New York Transco, Comments to NOI, Docket No. RM18–12–000, at 10 (filed May 22, 2018) (New York Transco NOI Comments).

⁴⁷ New York Transco NOI Comments at 10.

⁴⁸ AOPL, Comments to NOI, Docket No. RM18–12–000, at 16 (filed May 22, 2018) (AOPL NOI Comments).

⁴⁹ See Definition of Account 182.3, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 182.3, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act*.

⁵⁰ See Definition of Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act*.

⁵¹ See Definition of Account 410.1 and 411.1, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definition of Account 410.1 and 411.1, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act*.

⁵² See *Accounting for Income Taxes*, Docket No. AI93–5–000, at Item 8 (Apr. 23, 1993).

⁵³ See 18 CFR part 352, General Instructions 1–12(b), Accounting for Income Taxes. See also, 18 CFR part 352, Instructions for Balance Sheet Accounts, 19–5 Current Deferred Income Tax Assets, 45 Accumulated Deferred Income Tax Assets, 59 Deferred Income Tax Liabilities, and 64 Accumulated Deferred Income Tax Liabilities.

⁵⁴ *Id.*

a schedule that illustrates the calculation of the revised balances. Because the accounting for the excess and/or deficient ADIT may create differences between oil pipelines' accounting and ratemaking, such differences should also be disclosed in the Notes to their Form No. 6 financial statements, Form No. 6 Page 230, Analysis of Federal Income and Other Taxes Deferred, and Page 700, Annual Cost of Service Based Analysis Schedule.

b. Ratemaking Guidance

25. With respect to public utilities, the appropriate ratemaking treatment will be addressed in the Notice of Proposed Rulemaking (NOPR) we are issuing concurrent with this Policy Statement. In the NOPR, we are proposing to require all public utility transmission providers with transmission rates under an Open Access Transmission Tariff (OATT), a transmission owner tariff, or a rate schedule to revise those rates to account for changes caused by the Tax Cuts and Jobs Act. Natural gas pipelines should continue to file for changes in rates consistent with sections 154.305, 154.312, and 154.313 of the Commission's regulations.⁵⁵

26. For oil pipelines, the current regulatory treatment of excess and/or deficient ADIT amounts is to maintain such amounts separately for rate making purposes only and to amortize them by removing the annual amortization amount from the cost of service in the process of determining an income tax allowance. We will continue the practice of amortizing and removing the excess and or deficiency by reducing the allowed return before it is grossed up for income taxes.

B. Whether, and If So How, To Address Excess ADIT That Is Removed From the Books of Public Utilities, Natural Gas Pipelines, and Oil Pipelines After December 31, 2017, as a Result of Assets Being Sold or Retired

27. In the NOI, the Commission sought comment on whether, and if so how, it should address excess ADIT that is removed from the books of public utilities, natural gas pipelines, and oil pipelines after December 31, 2017, as a result of assets being sold or retired.⁵⁶

1. Comment Summary

28. Both public utility and natural gas pipeline commenters note that, 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.⁵⁷ They suggest that the Commission defer addressing excess ADIT that is removed from the books as a result of assets being sold or retired unless and until the IRS has had an opportunity to weigh in on this issue.⁵⁸

29. Certain public utilities argue that, for companies that properly reflect Average Rate Assumption or the Reverse South Georgia Method and have formula rates that reflect ADIT balances and adjustments thereto, there is no need for the Commission to address excess ADIT that is removed from the books after December 2017 as a result of assets being sold or retired.⁵⁹

30. Similarly, several natural gas pipelines contend that Commission precedent is clear that when assets are sold or transferred as part of a taxable event, the ADIT balance associated with those assets is extinguished; similarly, deferred liabilities resulting from excess ADIT are also extinguished following the retirement of an asset. These pipelines believe that the Commission has provided no basis for departing from these clear rules.⁶⁰ These pipelines note that the Commission has stated that "ADIT balances consist of deferred taxes that are intended to be paid at a future time—when the taxes become due. When a taxable event occurs such as the sale of assets . . . taxes are due and the ADIT balances are reduced to zero;" thus, the "ADIT balances that existed prior to the sale no longer exist and are no longer an offset against rate base."⁶¹ These pipelines state the NOI explained that any ADIT associated with assets that are sold are removed from the regulated entity's "books because any previously deferred tax effects related to the assets are now triggered as part of the computation of gains or losses associated with the sale (*i.e.*, the

deferred taxes are now payable to the IRS)."⁶²

31. Eversource and Exelon submit that treatment of ADIT balances is best addressed on a company-specific basis and that companies should be able to either remove the ADIT associated with assets removed from their books or continue to amortize those balances over the remaining amortization period.⁶³ Indicated Local Distribution Companies suggest that any future sale or retirement event should be decided as part of a pipeline's general rate proceeding.⁶⁴

32. Other commenters urge the Commission to require regulated entities to return any excess ADIT associated with any sold or retired assets. They argue that the Commission should be guided by the principle that all excess ADIT balances were provided by customers and thus customers should be credited with such balances through the combination of a credit to amortization expense and the continued offset to rate base. In support, they assert that when a public utility sells a jurisdictional asset, it will remove from its books the entire ADIT associated with a sold asset, which does not transfer with the asset to the new owner, and retain the entire ADIT for investors. Thus, customers are never credited with the excess or any other part of the ADIT that they have been paying during the useful life of the asset prior to its sale.⁶⁵

33. Indicated Customers note that with regard to the sale of public utility assets for which there is an excess ADIT balance remaining on the books, the 2006 IRS Private Letter Ruling No. PLR-168537-02 prohibits the return to ratepayers of that ADIT and excess ADIT related to the asset that is being sold, because any ADIT and excess ADIT amounts that are on the books for that asset cease to exist as of the date of sale.⁶⁶ Notwithstanding, Indicated

⁶² *Id.* (citing NOI, FERC Stats. & Regs. ¶ 35,582 at P 20).

⁶³ Eversource, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018); Exelon, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 22, 2018).

⁶⁴ Indicated Local Distribution Companies NOI Comments at 9.

⁶⁵ Consumer Advocates NOI Comments at 8; Indicated Customers NOI Comments at 10-11; DEMEC NOI Comments, Kumar Test. at P 14.

⁶⁶ I.R.S. P.L.R., 168537-02 at 9 (May 25, 2006) ("Because [t]axpayer has sold the assets that generated the [accumulated deferred investment tax credit] ADITC, the asset for which regulated depreciation expense is computed is no longer available. Consequently, no portion of the related unamortized ADITC remaining at the date of sale may be returned to ratepayers by amortizing those ADITC amounts over the period [t]axpayer recovers stranded costs from its ratepayers or by decreasing the net loss from the sale of the nuclear generating

⁵⁵ 18 CFR 154.305, 154.312, 154.313 (2018).

Section 154.313 should be used if the filing requests a minor rate change.

⁵⁶ NOI, FERC Stats. & Regs. ¶ 35,582 at P 20.

⁵⁷ See Treas. Reg. 26 CFR 1.168(i)-3, Treatment of Excess Deferred Income Tax Reserve Upon Disposition of Deregulated Public Utility Property.

⁵⁸ Avangrid NOI Comments at 11; EEI NOI Comments at 19; Ameren NOI Comments at 15; EQT Midstream, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018) (EQT Midstream NOI Comments); Indicated Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 10 (filed May 22, 2018); Dominion Energy Gas Pipelines NOI Comments at 13.

⁵⁹ Ameren NOI Comments at 14, MISO Transmission Owners, Comments to NOI, Docket No. RM18-12-000, at 14 (filed May 21, 2018).

⁶⁰ EQT Midstream NOI Comments at 14; INGAA NOI Comments at 11-12; Tallgrass, Comments to NOI, Docket No. RM18-12-000, at 12-13 (filed May 21, 2018); AOPL NOI Comments at 14-15; Enable Interstate Pipelines, Comments to NOI, Docket No. RM18-12-000, at 40 (filed on May 21, 2018).

⁶¹ *Id.* (citing *Enbridge Pipeline (KPC)*, 102 FERC ¶ 61,310, at PP 5, 68 (2003)).

Customers, and APPA and AMP argue that the impact of not returning both the ADIT and excess ADIT, prior to the sale, and the consequent appropriation of customer-provided capital, should be given consideration in the Commission's evaluation of the application seeking approval of the asset transfer. If the ADIT and excess ADIT are not considered in the transfer transaction, they contend that the selling entity would receive a windfall to the detriment of ratepayers. Further, the acquiring utility could have no offsetting ADIT in its rate base related to the purchased assets, thereby causing an increase in rates to customers, in addition to the customers' loss of capital advanced to the selling utility.⁶⁷

34. Commenters that believe that the Commission should require ADIT balances be returned to the customers offer several suggestions. APPA and AMP suggest that in the case of a sale or early retirement of public utility assets, the flowback should occur immediately in the formula rate update after the event; otherwise, the flowback should be in the form of a lump-sum payment or credit.⁶⁸ Indicated Customers suggest that the Commission should consider deploying remedies it has used in proceedings under FPA section 203, such as establishing an open season for customers to terminate their contracts, a commitment by applicants to protect customers from any adverse rate impacts, rate moratorium or rate reduction.⁶⁹ Natural Gas Indicated Shippers suggest that the excess ADIT associated with sold or retired assets should be amortized and returned to the customers in the same manner a pipeline proposes to return excess ADIT due to tax cost changes.⁷⁰

2. Determination

a. Accounting Guidance

35. As discussed above, in 1993, the Chief Accountant issued guidance on how entities must account for the effect of a change in tax law or rates by

assets by those ADITC amounts. Additionally, the unamortized [accumulated deferred investment tax credit] and [excess deferred federal income taxes] associated with the sold generating assets ceases to exist at the date of sale."'). APPA and AMP argue that this Private Letter Ruling can be read to have no bearing on the flowback of unprotected ADIT balances. APPA and AMP NOI Comments at n. 8.

⁶⁷ Indicated Customers NOI Comments at 10–11; APPA and AMP NOI Comments at 13–14.

⁶⁸ APPA and AMP NOI Comments at 13–14.

⁶⁹ Indicated Customers NOI Comments at 11–12 (citing *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *order on reconsideration*, 79 FERC ¶ 61,321 (1997)).

⁷⁰ Tallgrass Pipelines, Comments to NOI, Docket No. RM18–12–000, at 18 (filed May 22, 2018).

adjusting its deferred tax liabilities and assets.⁷¹ This guidance remains unchanged, and requires an entity to adjust its deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted.⁷² If as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to a change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3 (Other Regulatory Assets) for deficient ADIT, or Account 254 (Other Regulatory Liabilities) for excess ADIT, as appropriate.⁷³ Because these deficient ADIT and excess ADIT balances can no longer be characterized as deferred tax amounts to be settled with the IRS, the sale or retirement of any assets as of January 1, 2018 would not automatically reverse these balances as tax timing differences.

36. Accordingly, for public utilities and natural gas pipelines, the excess and/or deficient ADIT recorded in Account 254 and/or Account 182.3 should continue to be recorded in those accounts and amortized to Accounts 410.1 and/or Account 411.1, if those balances are still deemed to be either refundable to or recoverable from ratepayers. If the rate treatment of those balances is instead disallowed, then those amounts shall be written off to Account 421 (Miscellaneous Non-Operating Income) or Account 426.5 (Other Deductions), as appropriate, in the year of the disallowance.⁷⁴

37. We clarify that, for public utilities and natural gas pipelines, the balances of excess and deficient ADIT recorded in Account 254 and Account 182.3, respectively, continue to exist as regulatory liabilities and assets after an asset sale, in cases for which the excess and deficient ADIT do not transfer to the purchaser of the plant asset. Similarly, we clarify that public utilities and natural gas companies should continue to account for excess and deficient ADIT related to retirements as regulatory liabilities and assets.

38. We acknowledge that numerous current and deferred tax accounts as well as other accounts may be affected by reversals of ADIT account balances

⁷¹ See *Accounting for Income Taxes*, Docket No. AI93–5–000, at Item 8 (Apr. 23, 1993).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See Definitions of Account 182.3 and Account 254, 18 CFR part 101, *Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act*; Definitions of Account 182.3 and Account 254, 18 CFR part 201, *Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act*.

recorded on the books of public utilities and natural gas companies subject to the Commission's jurisdiction. Thus, in order to provide transparency regarding the accounting and rate treatment of amounts removed from the ADIT accounts, we clarify that public utilities and natural gas pipelines should disclose in their FERC annual financial filings within the Notes to the Financial Statements: (1) The FERC accounts affected; (2) how any ADIT accounts were re-measured in the determination of the excess or deficient ADIT amounts in Accounts 182.3 and 254; (3) the related amounts associated with the reversal and elimination of ADIT balances in those accounts; (4) the amount of excess and deficient ADIT that is protected and unprotected; (5) the accounts to which the excess or deficient ADIT will be amortized; and (6) the amortization period of the excess and deficient ADIT to be returned or recovered through rates for both protected and unprotected ADIT.⁷⁵ Disclosures should also summarize the manner by which excess and deficient will be included in rates by rate jurisdiction.

39. As for oil pipelines, as discussed above, ADIT balances will be reduced immediately by the full amount of the excess or deficient tax reserve in line with the USofA for oil pipelines outlined in General Instruction 1–12.⁷⁶

b. Ratemaking Guidance

40. The Commission has previously found that the sale or retirement of an asset with an ADIT balance is usually deemed a taxable event under IRS rules, and, as such, the ADIT balance is extinguished as the deferred taxes then become payable to the appropriate government authorities, and there is no longer an ADIT balance to "return" to customers.⁷⁷ However, we believe that

⁷⁵ Public utilities should include this information in FERC Form No. 1 or 1–A and natural gas pipelines should include this information in FERC Form No. 2 or 2–A.

⁷⁶ General Instructions 1–12, *Accounting for Income Taxes*, 18 CFR part 352.

⁷⁷ The Commission has found that master limited partnerships that were no longer entitled to an income tax allowance were not required to return any remaining ADIT balances. *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018) (Revised Income Tax Policy Statement Order on Rehearing). However, as relevant here, the Commission found that "[t]here is a critical distinction between adjustments to amortize excess or deficient ADIT to be included in future rates to account for changes in income tax rates, as opposed to a complete elimination of the income tax allowance. When income tax rates are merely reduced and an income tax allowance remains in future cost of service, it is appropriate to credit any excess in ADIT in the future cost of service." Revised Income Tax Policy Statement

excess or deficient ADIT associated with post-December 31, 2017, asset dispositions and retirements should be treated differently for ratemaking purposes. For these assets, there are two associated balances: (1) The ADIT balance based on the 21 percent tax rate that will be owed to the IRS and (2) deficient ADIT or excess ADIT balances resulting from the reduced tax liability that will not be payable to the IRS upon the sale or retirement of the asset. While the ADIT balance that needs to be settled with the IRS would be extinguished following a sale, the deficient ADIT or excess ADIT balances is more reflective of a regulatory liability or asset, and no longer reflects deferred taxes that are still to be settled with the IRS and need not be extinguished.

41. Additionally, we note that the rationale for continuing to amortize deficient ADIT or excess ADIT balances in rates upon sales or retirements of assets is substantively similar to the rationale for amortizing excess ADIT in rates for assets that have not been sold or retired. The difference is that for a sale or retirement, ADIT based on a 21 percent tax rate will be settled with the IRS immediately, while for an asset that is not sold or retired, the ADIT will be settled with the IRS over the remaining life of the asset as it depreciates. In other words, the difference between the ADIT for assets that are sold or retired and ADIT for assets that are not sold or retired is the timing of when companies will settle the 21 percent of ADIT with the IRS. In both scenarios, there is excess ADIT based on the 14 percent previously collected from the customers that will no longer be payable to the IRS.

42. While some commenters suggest that continuing to amortize excess or deficient ADIT following a sale or retirement would constitute a normalization violation based on certain IRS private letter rulings, the Commission notes that the IRS established a rulemaking proceeding

and reversed its positions made in the PLR referenced by the commenters.⁷⁸ Current IRS regulations speak specifically to the normalization requirements for sales and retirements as a result of the Tax Reform Act of 1986.⁷⁹ These regulations permit the amortization of protected excess and/or deficient ADIT even in the event that the underlying asset associated with the ADIT has been sold or retired.⁸⁰ That is, the selling jurisdictional entity can continue to amortize excess ADIT in rates after the sale without violating the IRS' normalization requirements. The only limitation imposed by the IRS is that the timing of the amortization must be similar to protected excess and/or deficient ADIT for which the underlying asset has not been sold or retired.⁸¹

43. Consistent with the above discussion, oil pipelines should continue maintaining excess and/or deficient ADIT within the appropriate ADIT accounts for ratemaking purposes. When jurisdictional assets are retired or sold the oil pipeline should continue to amortize any excess and/or deficient amounts associated with those assets as part of the process of determining an income tax allowance within the rate making process, or seek prior Commission approval to do otherwise.

C. Conclusion

44. We adopt the policies set forth herein regarding the treatment of ADIT for public utilities, natural gas pipelines and oil pipelines. Above, we state our policy regarding the treatment of ADIT for both accounting and ratemaking purposes as to Commission-jurisdictional public utilities, natural gas pipelines and oil pipelines, in light of the Tax Cuts and Jobs Act of 2017 and also address the accounting and ratemaking treatment of ADIT following the sale or retirement of an asset. We expect such regulated entities to follow these policies absent prior Commission approval to use a different treatment. We further note that if a regulated entity determines that its unique

circumstances merit a different treatment of ADIT, such an entity is free to request such treatment at any time.

III. Document Availability

48. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

49. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

50. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

IV. Applicability Date

51. This Policy Statement will become applicable November 23, 2018.

By the Commission. Commissioner McIntyre is not voting on this order.

Issued: November 15, 2018.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Note: Appendix A will not be published in the Code of Federal Regulations.

Appendix

A—List of Commenters to NOI TABLE

Short name	Commenter
AEP	American Electric Power Service Corporation.
Ameren	Ameren Services Company on behalf of Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois.
AOPL	Association of Oil Pipe Lines.

Order on Rehearing, 164 FERC ¶ 61,030 at P 20. Thus, in the case of retired or sold assets of regulated entities that continue to have an income tax allowance (and in the case of all regulated entities with excess and deficient ADIT), it is appropriate to credit any excess in ADIT in the future cost of service.

⁷⁸ See *Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes*

and *Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property*, 73 FR 14,934 (Mar. 20, 2008); *Application of Normalization Accounting Rules to Balances of Excess Deferred Income Taxes and Accumulated Deferred Investment Tax Credits of Public Utilities Whose Assets Cease To Be Public Utility Property*, 70 FR 75,762 (Dec. 21, 2005) (notice of proposed rulemaking, notice of public

hearing, and withdrawal of previous proposed regulations).

⁷⁹ 26 CFR 1.168(i)-3 (2018). This section of the IRS code does not apply to ordinary retirements within the meaning of 26 CFR 1.167(a)-11(d)(3)(ii) of the internal revenue regulations, and such retirements are excluded from this policy statement.

⁸⁰ *Id.*

⁸¹ *Id.*

Short name	Commenter
APGA	American Public Gas Association.
APPA and AMP	American Public Power Association and American Municipal Power, Inc.
Avangrid	Avangrid Networks, Inc.
Berkshire	Berkshire Hathaway Energy Pipeline Group.
Boardwalk	Boardwalk Pipeline Partners LP.
CAPP	Canadian Association of Petroleum Producers.
Consumer Advocates	Office of the Attorney General of the Commonwealth of Massachusetts; the Ohio Consumers' Counsel; the Maryland Office of People's Counsel; the Nevada Bureau of Consumer Protection; the Delaware Division of the Public Advocate; the Pennsylvania Office of Consumer Advocate; the Citizens Utility Board of Wisconsin; and the Indiana Office of Utility Consumer Counselor.
DEMEC	Delaware Municipal Electric Corporation, Inc.
Dominion Energy Gas Pipelines	Dominion Energy Transmission, Inc.; Dominion Energy Carolina Gas Transmission, LLC; Dominion Energy Quester Pipeline, LLC; Dominion Energy Overthrust Pipeline, LLC; and Questar Southern Trails Pipeline Company.
EEI	Edison Electric Institute.
Enable Interstate Pipelines	Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC.
Enbridge and Spectra	Enbridge Energy Partners, L.P. and Spectra Energy Partners, LP.
EQT Midstream	EQT Midstream Partners, LP.
Eversource	Eversource Energy Service Company.
Exelon	Exelon Corporation.
Indicated Customers	Central Electric Power Cooperative, Inc., North Carolina Electric Membership Corporation, Southern Maryland Electric Cooperative, Inc., and the New Jersey Division of Rate Counsel.
Indicated Local Distribution Companies.	Atmos Energy Corporation; the City of Charlottesville, Virginia; the City of Richmond, Virginia; the Easton Utilities Commission; Exelon Corporation; and Washington Gas Light Company.
Indicated Transmission Owners	American Electric Power Service Corporation; Dominion Energy Services, Inc., on behalf of Virginia Electric and Power Company d/b/a Dominion Energy Virginia; Duquesne Light Company; Exelon Corporation; FirstEnergy Service Company, on behalf of American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Mid-Atlantic Interstate Transmission, LLC; West Penn Power Company; The Potomac Edison Company; Monongahela Power Company; and PPL Electric Utilities Corp.
INGAA	Interstate Natural Gas Association of America.
ITC Great Plains	ITC Great Plains, LLC.
Kentucky Municipals	Frankfort Plant Board of Frankfort, Kentucky; Barbourville Utility Commission of the City of Barbourville, City; Utilities Commission of the City of Corbin; and the Cities of Bardwell, Berea, Falmouth, Madisonville, and Providence, Kentucky.
Kinder Morgan Entities	Natural Gas Pipeline Company of America LLC; Tennessee Gas Pipeline Company, L.L.C.; Southern Natural Gas Company, L.L.C.; Colorado Interstate Gas Company, L.L.C.; Wyoming Interstate Company, L.L.C.; El Paso Natural Gas Company, L.L.C.; Mojave Pipeline Company, L.L.C.; Bear Creek Storage Company, L.L.C.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Elba Express Company, L.L.C.; Kinder Morgan Louisiana Pipeline LLC; Southern LNG Company, L.L.C.; and TransColorado Gas Transmission Company LLC.
Kinder Morgan Subsidiaries	SFPP, L.P.; Calnev Pipe Line, LLC; and Kinder Morgan Cochin, LLC.
MISO Transmission Owners	Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.
National Grid	National Grid USA.
Natural Gas Indicated Shippers	Aera Energy, LLC; Anadarko Energy Services Company; Apache Corporation; BP Energy Company; ConocoPhillips Company; Hess Corporation; Occidental Energy Marketing, Inc.; Petrohawk Energy Corporation; and XTO Energy, Inc.
New York Transco	New York Transco LLC.
Oklahoma Attorney General	Mike Hunter, Oklahoma Attorney General.
PJM	PJM Interconnection, L.L.C.
Plains	Plains Pipeline, L.P.
Process Gas and American Forest and Paper.	Process Gas Consumers Group and American Forest and Paper Association.
PSEG	Public Service Electric and Gas Company.
Tallgrass Pipelines	Trailblazer Pipeline Company LLC; Tallgrass Interstate Gas Transmission, LLC; and Rockies Express Pipeline LLC.
TAPS	Transmission Access Policy Study Group.
TransCanada	TransCanada Corporation.

Short name	Commenter
United Airlines Petitioners	United Airlines, Inc.; American Airlines, Inc.; Delta Air Lines, Inc.; Southwest Airlines, Co.; BP West Coast Products LLC; ExxonMobil Oil Corporation; Chevron Products Company; HollyFrontier Refining & Marketing LLC; Valero Marketing and Supply Company; Airlines for America; and the National Propane Gas Association.
Williams	Williams Companies, Inc.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 221

[Docket ID: DOD–2015–OS–0054]

RIN 0790–AJ36

DoD Identity Management

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD(P&R)), DoD.

ACTION: Final rule.

SUMMARY: This rulemaking establishes implementation guidelines for DoD Self-Service (DS) Logon to provide a secure means of authentication to applications containing personally identifiable information (PII) and personal health information (PHI). This will allow beneficiaries and other individuals with a continuing affiliation with DoD to update pay or health-care information in a secure environment. This service can be accessed by active duty, National Guard and Reserve, and Commissioned Corps members of the uniformed services when separating from active duty or from the uniformed service.

DATES: This rule is effective on December 24, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eves, Defense Human Resources Activity, 571–372–1956.

SUPPLEMENTARY INFORMATION:

Public Comments and Responses

On Thursday, November 3, 2016 (81 FR 76325–76330), the Department of Defense (DoD) published a proposed rule titled, “DoD Identity Management” for a 60-day public comment period. When the comment period ended on January 3, 2017, no comments were received.

Discussion of Changes Made Based on Internal Review

While in final internal review, it was discovered, based on existing DoD instructions, that only certain retired DoD civilians should be included among the populations eligible for the

DS Logon credential as identified in DoD Instruction 1330.17, “DoD Commissary Program,” and DoD Instruction 1330.21, “Armed Services Exchange Regulations.” Only those retired DoD civilians who are eligible for DoD commissary and exchange benefits are eligible for the DS Logon credential. Compliance with existing DoD policy and current instructions required modification of § 221.6(b)(1)(ii) of the final rule, which was amended to read “Eligible retired DoD civilian employees in accordance with DoD Instruction 1330.17, “DoD Commissary Program” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133017p.pdf>) and DoD Instruction 1330.21, “Armed Services Exchange Regulations” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/133021p.pdf>).” This amendment was made to reflect current Department policy and clarifies that only certain retired DoD civilians (not all retired DoD civilians) are eligible for access to these programs.

Background

This final rule establishes implementation guidelines for DS Logon and describes procedures for obtaining a DS Logon credential. All active duty, National Guard and Reserve, and Commissioned Corps members of the uniformed services must obtain a DS Logon credential when separating from active duty or from the uniformed service. The DS Logon credential is also available to all beneficiaries that are eligible for DoD-related benefits or entitlements to facilitate secure authentication to critical websites, to include members of the uniformed services, veterans with a continuing affiliation to the DoD, spouses, dependent children aged 18 and over, certain retired DoD civilians, surrogates and other eligible individuals. It discusses how credential holders may maintain and update their credentials and manage their personal settings. Finally, it discusses the permissions credential holders have to access their information, who has access to view and edit their information, and who is eligible to act on their behalf.

DoD collects and maintains information on Service members, beneficiaries, DoD employees, and other

individuals affiliated with the DoD in order to issue DoD identification (ID) cards that facilitate access to DoD benefits, DoD installations, and DoD information systems. This action formally establishes DoD policy requirements for DS Logon credentials that are used to facilitate logical access to self-service websites. This regulatory action will update the CFR for DoD Manual (DoDM) 1341.02, Volume 1, “DoD Identity Management: DoD Self-Service (DS) Logon Program and Credential.”

Authorities

The DoD Personal Identity Protection (PIP) Program uses emerging technologies to support the protection of individual identity and to assist with safeguarding DoD physical assets, networks, and systems from unauthorized access based on fraudulent or fraudulently obtained credentials. DEERS is the authoritative data source for identity and verification of affiliation with the DoD in accordance with the DoD PIP Program. Specific authorities are listed below.

- Title 10 U.S.C. 1044a. This section establishes the authority for a Judge Advocate, other members of the armed forces designated by law and regulations, or other eligible persons to have the powers to act as a notary. The persons identified in Title 10 U.S.C. 1044a subsection (b) have the general power of a notary and may notarize a completed and signed DD Form 3005, “Application for Surrogate Association for DoD Self-Service (DS) Logon.”

- DoD Instruction 1000.25, “DoD Personnel Identity Protection (PIP) Program” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100025p.pdf>). This issuance establishes minimum acceptable criteria for the establishment and confirmation of personal identity and for the issuance of DoD personnel identity verification credentials.

- DoD Instruction 1341.2, “Defense Enrollment Eligibility Reporting System (DEERS) Procedures” (available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/134102p.pdf>). This issuance establishes DEERS as the authoritative data source for identity and verification of affiliation