Federal Energy Regulatory Commission
March 15, 2018
Open Commission Meeting
Staff Presentation
Items: E-1, E-2, E-3 & G-1

"Good morning Mr. Chairman and Commissioners,

"Items E-1, E-2, E-3, and G-1 are four items that relate to the effects of the Tax Cuts and Jobs Act, which was signed into law by President Trump on December 22, 2017. Notably, the Tax Cuts and Jobs Act reduces the federal corporate income tax rate from a maximum 35 percent rate to a flat 21 percent rate, effective January 1, 2018. This means that all public utilities, interstate natural gas pipelines, and oil pipelines subject to federal corporate income taxes will compute those taxes owed to the Internal Revenue Service based on a flat 21 percent tax rate. Some of the Commission-jurisdictional rates charged by public utilities, interstate natural gas pipelines, and oil pipelines are set using cost of service, which includes an income tax allowance. Thus, when the tax expense decreases, so does the cost of service.

"Turning first to public utilities—most public utilities use transmission formula rates to recover their cost of service, and most formula rates include an input for the utility's cost of paying the corporate income tax, which is adjusted annually. Under this common arrangement, the utility's cost of paying the reduced income tax rate would be reflected in a public utility's transmission revenue requirement without requiring a revision to the formula rate. Therefore, no filing would need to be made to change the corporate income tax rate.

"Some public utilities, though, use transmission formula rates that include a fixed line item for the federal corporate income tax rate or use stated rates. Absent a revision to those types of rates, the reduced tax rate would not be reflected in a public utility's transmission revenue requirement. Items E-2 and E-3 are orders to show cause that address such situations. In these orders, the Commission, pursuant to section 206 of the Federal Power Act, directs 48 individual public utilities with stated transmission rates or transmission formula rates with a fixed line item of 35 percent for the federal corporate income tax component either to propose revisions to the transmission rates under their open access transmission tariffs or transmission owner tariffs to reflect the change in the federal corporate income tax rate, or to show cause why they should not be required to do so. The public utilities named in the orders to show cause must submit their responses within 60 days. With that, my colleague Adam will now touch on interstate natural gas pipelines and oil pipelines.

"Interstate natural gas pipelines generally have stated rates for their services, which are approved in a rate proceeding under Natural Gas Act sections 4 or 5 and remain in effect until changed in a subsequent section 4 or 5 proceeding. Item G-1 is a Notice of Proposed Rulemaking that addresses the rates of interstate natural gas pipelines. In the proposed rulemaking, the Commission proposes to require interstate natural gas pipelines to make a one-time informational filing with the Commission, called the FERC Form No. 501-G, that is designed to collect financial information to evaluate the impact of the Tax Cuts and Jobs Act and also of the Revised Policy Statement on Treatment of Income Taxes, which is item G-2 and will be discussed in the next presentation. Under the proposed rule, each interstate natural gas pipeline would have the following four options to voluntarily make a filing to address the effect of the Tax Cuts and Jobs Act and the Revised Policy Statement, or explain why no action is needed: (1) file a limited Natural Gas Act section 4 filing to reduce the pipeline's rates; (2) make a commitment to file a general Natural Gas Act section 4 rate case in the near future; (3) file a statement explaining why an adjustment to its rates is not needed; or (4) take no action other than filing the informational filing. The Commission also proposes to provide separate procedures for intrastate natural gas pipelines performing interstate service pursuant to section 311 of the Natural Gas Policy Act of 1978 and Hinshaw pipelines performing interstate transportation pursuant to a limited jurisdiction certificate. Under the proposed rule, these pipelines would have to file a new rate election for interstate service if their rates for intrastate service are reduced to reflect the Tax Cuts and Jobs Act. Comments on the proposed rule are due 30 days after publication in the Federal Register.

"Unlike public utilities and interstate natural gas pipelines, the majority of oil pipelines set their rates using indexing, not cost-of-service ratemaking. Under indexing, oil pipelines may adjust their rates annually, so long as those rates remain at or below the applicable ceiling levels, which change every July 1 based on a Commission-approved index that tracks industry-wide cost changes. Under currently effective requirements governing the schedule for indexing changes, the Commission will re-assess the oil index again in 2020 based on cost changes between 2014 and 2019. Thus, because the cost data for the 2014-2019 period will reflect the effects of the Tax Cuts and Jobs Act and Revised Policy Statement, the Commission is not taking an industry-wide action regarding oil pipeline rates at this time. My colleague Kristen will now discuss the Commission's other action to address the effects of the Tax Cuts and Jobs Act.

"Although the Commission is adopting specific approaches for certain public utilities and interstate natural gas pipelines, item E-1 is a generic Notice of Inquiry that seeks comment on other effects of the Tax Cuts and Jobs Act on all Commission-jurisdictional rates. The Notice of Inquiry is a vehicle to help the Commission build a record to determine whether additional action is needed.

"Of particular interest, the Commission seeks comments on the topic of accumulated deferred income taxes, which are the dollar amounts of taxes that public utilities, interstate natural gas pipelines, and oil pipelines collected from customers in anticipation of paying the Internal Revenue Service. Due to the tax rate change, the current balance of accumulated deferred income taxes does not accurately reflect the current tax liability. As detailed in the Notice of Inquiry, commenters are invited to address a host of considerations related to this topic.

"Also of particular interest, the Commission seeks comments on the topic of bonus depreciation. Generally, bonus depreciation is a tax incentive given to companies to encourage certain types of investment. A company that purchases a qualified business property and places it into service within a taxable year can take a first year deduction in addition to any depreciation deduction available. The Tax Cuts and Jobs Act prohibits the use of bonus depreciation for assets acquired in the trade or business of the furnishing or sale of electrical energy, water, or sewage disposal services; gas or steam through a local distribution system; or transportation of gas or steam by pipeline. The Commission seeks comment on the effect of the bonus depreciation change under the Tax Cuts and Jobs Act, and whether, and if so how, it should take action to address bonus depreciation-related issues. Comments on the Notice of Inquiry are due 60 days after publication in the Federal Register.

"Finally, I would like to thank and recognize the members of the team that are not seated here at the table in helping to prepare these orders. Thank you. This concludes our presentation. We are happy to answer any questions that you may have."