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Date:
March 28, 2022

LEGEND:

- Taxpayer =
- Parent =
- State A =
- State B =
- County =
- Commission A =
- Commission B =
- Commission C =
- Program =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
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Dear :

This letter responds to a request for a private letter ruling dated September 27, 2021, submitted on behalf of Taxpayer for rulings under § 168(i)(9) of the Internal Revenue Code, section 13001(d) of Pub. L. 115-97 (131 Stat 2054) the Tax Cuts and Jobs Act (“TCJA”), and Rev. Proc. 2020-39, 2020-36 I.R.B. 546, regarding the scope of the deferred tax normalization requirements and computations required to comply with the average rate assumption method (the “ARAM”).

Taxpayer's representations are as follows:

Parent, a State A corporation, is a public utility holding company and the common parent of an affiliated group of corporations filing a consolidated return. Taxpayer is a wholly-owned subsidiary of Parent and is included in a consolidated income tax return for the affiliated group of which Parent is the common parent. Taxpayer is Parent's principal subsidiary.

Taxpayer is a regulated public utility within the meaning of § 7701(a)(33). It is in the business of generating, transmitting, distributing, and selling electric power to customers in State A and State B. In addition, Taxpayer sells and transmits electricity at wholesale prices to rural electric cooperatives, municipalities, and into wholesale electricity markets. It is subject to regulation by Commission A, Commission B, and Commission C with respect to terms and conditions of services, including the rates it may charge for its services. All three Commissions establish Taxpayer's rates based on Taxpayer's costs, including a provision for a return on the capital employed by Taxpayer in its regulated business. Taxpayer maintains its records in accordance with the Uniform System of Accounts prescribed by Commission C. The commissions treat accumulated deferred federal income tax liabilities (“ADFIT”) and excess deferred federal income tax liabilities (“EDFIT”) as a reduction to rate base in setting the allowed return for the utilities that they regulate.

Commission A sets rates that Taxpayer may charge for the furnishing or sale of electrical energy through a combination of periodic general rate case proceedings (resulting in what are commonly referred to as “base rates”) and various stand-alone rate adjustment clauses (“Rider”) added to or subtracted from customers' base rates. A primary purpose of a Rider is to reduce regulatory lag (that is, to allow rate recovery for certain expenditures to begin after a regulatory process that is less time-consuming and more frequent than a full rate case.)

State A legislation provides for the recovery of costs, subject to approval by Commission A, for electric utilities to relocate (that is, move underground) overhead electric distribution lines. Rider U is a rate adjustment clause associated with the recovery of costs of new underground distribution facilities that was created to provide a return on and recovery of the costs incurred by Taxpayer to move approximately a miles of electric distribution lines underground. Program is designed to reduce restoration outage time by moving Taxpayer's most outage-prone overhead distribution lines underground, has an annual investment cap of approximately \$b and is expected to be completed by Year 1. To date, Commission A has approved five phases of the program encompassing approximately c miles of converted lines and \$d in capital spending (with \$e recoverable through Rider U.) The rate recovery for the \$e of capital expenditures is expected to exclusively occur as part of Rider U proceedings. Rate recovery for these costs is not expected to "migrate" to base rate proceedings at subsequent dates.

Rider U includes costs depreciable under § 168 as well as certain costs deductible under § 162. The depreciable assets are "public utility property" as defined in § 168(i)(10). In addition, Taxpayer and Commission A employ other Riders to recover costs of public utility property depreciable under § 168 not related to undergrounding of distribution facilities. Further, other Taxpayer Riders are designed to recover costs not depreciable under § 168.

A petition must be filed with Commission A for review and approval before an adjustment can be made to rates and before charges to provide for the recovery of costs in a Rider become effective. Rider U rates are set on an annual basis based on actual and estimated costs for specific projects during a period ending prior to the effective date of Rider U rates. Rider U rates are subject to subsequent annual true-ups when actual cost information is available. Taxpayer computes a Rider U revenue requirement, subject to Commission A approval, based on (1) recovery of a debt- and equity-based return on investment in rate base, including the cost of plant assets less accumulated book depreciation and ADFIT, and (2) a recovery of operating expenses, including depreciation expense, property tax expense, and income tax expense. Rates charged under Rider U are computed on a rate of return and cost of service basis consistent with § 1.46-3(g)(2) and § 1.167(l)-1(h)(6)(i).

To the extent there are differences in timing between when the costs would otherwise be recognized as an expense in the regulated books of account absent the Rider U rate adjustment mechanism versus when the costs are recovered from customers, the differences are recorded using a tracker mechanism. The tracker mechanism balances are reflected in the calculation of the rates established in the Rider U filing after the next annual Rider U filing. For example, if the rate recovery based on actual and projected costs for a given period is less than the rate recovery necessary to recover the actual revenue requirement for such period, the under-recovery is added to the Rider U rates charged during a subsequent period. The resulting regulatory reporting for an under-recovery involves recording a rider-specific regulatory asset account (as part of Other Regulatory Assets –Commission C account 182.3) for the

amount of the under-recovery and crediting income statement accounts Regulatory Credits (Commission C account 407.4 reported as a reduction of Utility Operating Expenses) for the under-collected operating costs and Miscellaneous Nonoperating Income (Commission C account 421, reported as part of Net Other Income and Deductions) for the under-recovered capital costs and carrying costs on regulatory assets until recovered in rates. The amounts of book depreciation (Depreciation Expense - Commission C account 403), Regulatory Debits (Commission C account – 407.3), and Regulatory Credits (Commission C account 407.4) are all included in the subtotal Total Utility Operating Expenses in Taxpayer's Commission C reporting and, thus, the income statement classification of amounts deferred or accrued when an under- or over-recovery occurs affects neither Total Utility Operating Expenses nor "bottom line" Net Utility Operating Income. The same is true when an under-recovery is recovered in a subsequent period or an over-recovery is refunded in a subsequent period. The timing of recognition of Total Utility Operating Expenses is matched with the timing of the actual rate recovery. The timing of tax deductions, including depreciation, is not affected by the timing of rate recovery, deferral or accrual of Total Utility Operating Expense, or associated regulatory reporting.

An under-recovery of Rider U costs may occur for one or more of several reasons. For example, the projected level of sales over which the projected Rider U costs are allocated to compute the per-unit surcharge may be higher than the actual level of sales during the rate year, the actual costs of the approved projects may exceed the estimated costs of these projects, the projected placed-in-service dates of the approved projects may be sooner than expected, and a situation may arise where a project completed during the test period was not included in the rate application for the current rate cycle and will instead be included in the rate application for the next rate cycle (in this case, the book depreciation may be viewed as "unrecovered" rather than "under-recovered.") For any given rate year, variances are likely to occur for all of these reasons and the net result may be an under-recovery or an over-recovery of Rider U costs.

Recognition of book depreciation for a particular asset begins in Commission C account 403 Depreciation Expense in accordance with U.S. generally acceptable accounting principles and Taxpayer financial reporting policies without regard to the timing of Rider U rate recovery, but by recording offsetting amounts in Commission C account 407.4 Regulatory Credits to the extent of an under-recovery of Rider U costs, recognition of Total Utility Operating Expenses is "matched" to the timing of rate recovery and revenue recognition.

There is not a direct tracing or matching of the specific underlying Rider U costs incurred with Rider U revenues billed for a given period, and, as described above, there is not separate accounting for the underlying operating expenses (for example, depreciation and property taxes) when an under-recovery or an over-recovery occurs. Until the EDFIT ratemaking issue described herein arose, there was not a regulatory or financial reporting reason to attribute an under- or over-recovery of Rider U costs to

particular underlying Rider U costs. For purposes of an ARAM computation, specifically, determining the amount of § 168(i)(9)(A)(ii) depreciation-related ADFIT at the time of TCJA remeasurement of ADFIT and computation of the TCJA section 13001(d)(3)(A) excess tax reserve, it is important to know how much book depreciation of public utility property had been recognized in the regulated books of account as of the day before the corporate rate reductions provided in the amendments made by TCJA section 13001(a) took effect.

In its ARAM computation, Taxpayer used a proportionate methodology to allocate total Rider U under-recoveries to the individual underlying costs based on the relative amounts of costs eligible for recovery pursuant to the associated Rider. For example, assume a revenue requirement of \$100 intended to recover \$100 of operating expenses (ignoring the return component (capital costs) for simplicity). In this example, the revenue requirement is designed to recover \$80 book depreciation and \$20 maintenance costs. If Taxpayer's actual revenues for the period were \$95, it would have under-recovered by \$5. That \$5 would be recorded as Other Regulatory Assets to be recovered from customers in a subsequent Rider filing and as Regulatory Credits. Under the proportionate methodology advocated by Taxpayer, the \$5 is deemed to represent \$4 of under-recovered book depreciation (that is, $\$80/\$100 \times \$5$) and \$1 of under-recovered maintenance costs (that is, $\$20/\$100 \times \$5$).

An alternative view could consider all \$80 of book depreciation expense to have been recognized and recovered in rates during the period and the under-recovery and related expense deferral resulting in recognition of the regulatory asset to be associated with expenses other than depreciation. Another alternative view could consider none of the under-recovery to relate to any particular underlying expense and, again, the under-recovery and related expense deferral resulting in recognition of the regulatory asset to be associated with no particular expense. The position of Commission A Staff is that none of the ADFIT with respect to the Rider U under-recovery regulatory asset as of the end of Year 2 relates to book depreciation or affects § 168(i)(9)(A)(ii) depreciation-related ADFIT and, thus, such ADFIT does not result in a TCJA section 13001(d)(3)(A) excess tax reserve. Commission A Staff proposes that the EDFIT related to the full Rider U under-recovery regulatory asset is refundable over a very short period of time (that is, corresponding to the timing of the rate recovery of the regulatory asset and unrelated to the remaining depreciable lives of the associated plant assets) because it is not subject to the TCJA section 13001(d) normalization requirement.

Commission A Staff first asserted this position in a Rider W rate adjustment clause rate proceeding initiated in Year 3 for cost recovery associated with the County combined-cycle, natural gas-fired power station. In the final order issued on Date 1, Commission A issued a final order stating that “. . . out of an abundance of caution, Parent shall exclude the depreciation-related EDIT amortization included in the Rider W deferral in this proceeding and reflect a reduction in rate base to recognize the associated unamortized depreciation-related EDIT included in the Rider W deferral that will be amortized and returned to customers in a future proceeding.”

On Date 2, Taxpayer filed with Commission A its application to (1) revise its fourth annual update filing with respect to its Rider U rate adjustment clause for cost recovery associated with phase one, phase two, phase three, and phase four of Taxpayer's Program, (2) request Commission A approval to recover projected costs associated with phase five of the Program through Rider U, for the rate year commencing Date 3 through Date 4 (the "Year 4 Rate Year"), and (3) request Commission A approval to recover an actual cost true-up for a prior period (the "Application.") Phase five costs related to the conversion of approximately f miles of overhead tap lines to underground facilities at a cost of approximately \$g. Phase five actual expenditures through Date 5, are \$h, and projected expenditures for the period Date 6 through Date 7, are approximately \$i. The revenue requirement relates to projects that will be completed prior to Date 3.

On Date 8, Commission A issued a final order in the Rider U proceeding for the Year 4 Rate Year ("Final Order") and directed Taxpayer to seek a PLR from the Service on the appropriate amortization period for EDIT related to the depreciation portion of the under-recovered (deferred) Rider U costs as of the end of Year 2. The Rider U rates in this proceeding became effective on Date 3.

For purposes of this request, Taxpayer's focus is on the portion of the regulatory assets as of Date 9, representing unrecovered or under-recovered book depreciation and the associated EDFIT established in connection with the TCJA. The holding in this ruling request will be applied to other Riders involving depreciation of public utility property that have a similar tracking mechanism and under-recovered balance to Rider U. That is, to the extent there are unrecovered or under-recovered amounts associated with book depreciation in the regulatory asset for Taxpayer's other Riders, Taxpayer and Commission A Staff have agreed that the holdings of this PLR request will govern the regulatory treatment of those balances and the associated EDFIT. Until this matter is resolved, Commission A has ordered that (1) the EDFIT at issue (that is, associated with the portion of Taxpayer's Rider under-recoveries that it considers to be a component of depreciation expense) not be amortized or refunded and (2) that the regulatory liability continue to reduce rate base.

RULINGS REQUESTED

- (1) The ADFIT and associated EDFIT with respect to the portion of the regulatory assets for under-recovered depreciation expense in Rider U rate adjustment clause proceedings recorded as Regulatory Credits are subject to the § 168(i)(9) and TCJA section 13001(d) normalization requirements, respectively.
- (2) Under the circumstances described, Taxpayer's proportionate method to compute the portion of an under-recovery of Rider U costs as of Date 9, that constitutes deferral of recognition and rate recovery of depreciation expense

related to public utility property as of such date complies with the § 168(i)(9) and TCJA section 13001(d) normalization requirements.

- (3) Taxpayer would violate the TCJA section 13001(d) normalization requirements if it refunded EDFIT associated with its entire under-recovery of Rider U costs as of Date 9, in accordance with Commission A's methodology because this would result in the refund of TCJA section 13001(d)(3)(A) excess tax reserve associated with the depreciation portion of the under-recovery more rapidly or to a greater extent than such reserve would be reduced under the TCJA section 13001(d)(3)(B) ARAM.

LAW AND ANALYSIS

Normalization Rules in the Code and Regulations

Section 168(f)(2) of the Code provides that the depreciation deduction determined under § 168 shall not apply to any public utility property (within the meaning of § 168(i)(10)) if the taxpayer does not use a normalization method of accounting.

In order to use a normalization method of accounting, § 168(i)(9)(A)(i) of the Code requires the taxpayer, in computing its tax expense for establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, to use a method of depreciation with respect to public utility property that is the same as, and a depreciation period for such property that is not shorter than, the method and period used to compute its depreciation expense for such purposes. Under § 168(i)(9)(A)(ii), if the amount allowable as a deduction under § 168 differs from the amount that would be allowable as a deduction under § 167 using the method, period, first and last year convention, and salvage value used to compute regulated tax expense under § 168(i)(9)(A)(i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from such difference.

Section 168(i)(9)(B)(i) of the Code provides that one way the requirements of § 168(i)(9)(A) will not be satisfied is if the taxpayer, for ratemaking purposes, uses a procedure or adjustment which is inconsistent with such requirements. Under § 168(i)(9)(B)(ii), such inconsistent procedures and adjustments include the use of an estimate or projection of the taxpayer's tax expense, depreciation expense, or reserve for deferred taxes under § 168(i)(9)(A)(ii), unless such estimate or projection is also used, for ratemaking purposes, with respect to all three of these items and with respect to the rate base.

Former § 167(l) of the Code generally provided that public utilities were entitled to use accelerated methods for depreciation if they used a "normalization method of accounting." A normalization method of accounting was defined in former § 167(l)(3)(G) in a manner consistent with that found in § 168(i)(9)(A). Section 1.167(l)-1(a)(1) of the Regulations provides that the normalization requirements for public utility property

pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under § 167 and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account. These regulations do not pertain to other book-tax timing differences with respect to state income taxes, F.I.C.A. taxes, construction costs, or any other taxes and items.

Section 1.167(l)-1(h)(1)(i) provides that the reserve established for public utility property should reflect the total amount of the deferral of federal income tax liability resulting from the taxpayer's use of different depreciation methods for tax and ratemaking purposes.

Section 1.167(l)-1(h)(1)(iii) provides that the amount of federal income tax liability deferred as a result of the use of different depreciation methods for tax and ratemaking purposes is the excess (computed without regard to credits) of the amount the tax liability would have been had the depreciation method for ratemaking purposes been used over the amount of the actual tax liability. This amount shall be taken into account for the taxable year in which the different methods of depreciation are used. If, however, in respect of any taxable year the use of a method of depreciation other than a subsection (l) method for purposes of determining the taxpayer's reasonable allowance under § 167(a) results in a NOL carryover to a year succeeding such taxable year which would not have arisen (or an increase in such carryover which would not have arisen) had the taxpayer determined his reasonable allowance under § 167(a) using a subsection (l) method, then the amount and time of the deferral of tax liability shall be taken into account in such appropriate time and manner as is satisfactory to the district director.

Section 1.167(1)-1(h)(2)(i) provides that the taxpayer must credit this amount of deferred taxes to a reserve for deferred taxes, a depreciation reserve, or other reserve account. This regulation further provides that, with respect to any account, the aggregate amount allocable to deferred tax under § 167(l) shall not be reduced except to reflect the amount for any taxable year by which Federal income taxes are greater by reason of the prior use of different methods of depreciation. That section also notes that the aggregate amount allocable to deferred taxes may be reduced to reflect the amount for any taxable year by which federal income taxes are greater by reason of the prior use of different methods of depreciation under § 1.167(l)-1(h)(1)(i) or to reflect asset retirements or the expiration of the period for depreciation used for determining the allowance for depreciation under § 167(a).

Uncodified Normalization Requirements in the TCJA

The TCJA, enacted on December 22, 2017, generally reduced the corporate tax rate under § 11 of the Code from 35 percent to 21 percent for taxable years beginning after December 31, 2017. Section 13001(a) of the TCJA.

Section 13001(d) of the TCJA includes accompanying but uncodified normalization requirements related to the reduction of the corporate tax rate.

Section 13001(d)(1) provides that a normalization method of accounting shall not be treated as being used with respect to any public utility property for purposes of §§ 167 or 168 if the taxpayer, in computing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, reduces the excess tax reserve [EDIT] more rapidly or to a greater extent than such reserve would be reduced under the ARAM.

Section 13001(d)(3)(A) of the TCJA defines the term “excess tax reserve”¹ to mean the excess of (i) the reserve for deferred taxes (as described in § 168(i)(9)(A)(ii) of the Code as of the day before the corporate rate reductions provided in the amendments made by this section take effect, over (ii) the amount which would be the balance in such reserve if the amount of such reserve were determined by assuming that the corporate rate reductions provided in this Act were in effect for all prior periods.

Section 13001(d)(3)(B) of the TCJA provides that the ARAM is the method under which the excess in the reserve for deferred taxes is reduced over the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes. Under such method, during the time period in which the timing differences for the property reverse, the amount of the adjustment to the reserve for the deferred taxes is calculated by multiplying (i) the ratio of the aggregate deferred taxes for the property to the aggregate timing differences for the property as of the beginning of the period in question, by (ii) the amount of the timing differences which reverse during such period.

Rev. Proc. 2020-39 provides guidance with respect to the excess deferred tax normalization requirements of TCJA section 13001(d). Section 5 of Rev. Proc. 2020-39 states that the TCJA excess tax reserve normalization requirements are part of the overall pre-existing deferred tax normalization rules and that the revenue procedure is intended to be consistent with those rules. Section 5 of Rev. Proc. 2020-39 also states that it does not create an exception to how the overall pre-existing deferred tax normalization rules would apply, except as noted within the document.

The result of not treating the ADFIT attributable to the depreciation-related portion of the Rider U under-recovery regulatory asset as subject to § 168(i)(9) normalization rules is that the corresponding EDFIT would not be subject to the TCJA section 13001(d) normalization rules. For purposes of an ARAM computation, specifically, determining the amount of § 168(i)(9)(A)(ii) depreciation-related ADFIT at the time of TCJA remeasurement of ADFIT and computation of the TCJA section 13001(d)(3)(A) excess tax reserve, it is important to know how much book depreciation of public utility property had been recognized in the regulated books of account as of the

¹ While the TCJA refers to this excess amount as the excess tax reserve, the commonly used term and the term used throughout this ruling is EDIT or EDFIT.

day before the corporate rate reductions provided in the amendments made by TCJA section 13001(a) took effect.

Whether § 168(i)(9) and TCJA section 13001(d) normalization requirements apply to the depreciation portion of Rider U under-recoveries is based upon an analysis of whether this difference in expense recognition is a depreciation-related book/tax difference. Section 1.167(l)-1(a)(1) provides that the normalization requirements of former § 167(l) with respect to public utility property defined in former § 167(l)(3)(A) pertain only to the deferral of federal income tax liability resulting from the use of an accelerated method of depreciation for computing the allowance for depreciation under former § 167 and the use of straight-line depreciation for computing tax expense and depreciation expense for purposes of establishing cost of services and for reflecting operating results in regulated books of account. When the aggregate timing differences result from different regulatory and tax depreciation methods, these depreciation-related timing differences are subject to the normalization rules and must reflect the expense deferral (regardless of account classification in the regulated books of account.) Thus, TCJA section 13001(d) normalization requirements also apply to the depreciation portion of Rider U under-recoveries. The EDFIT cannot be reduced more rapidly or to a greater extent than such reserve would be reduced under the ARAM.

The method of computing depreciation expense for ratemaking purposes and reflecting it in regulated books of account under § 168(i)(9)(A)(i) with respect to public utility property in Rider U rate proceedings is inclusive of any expense deferral recorded as a regulatory asset with respect to depreciation expense for Rider U costs under-recovered, regardless of the specific regulatory reporting account classifications. The cumulative amount of depreciation expense computed for ratemaking purposes and reflected in the regulated books of account under § 168(i)(9)(A)(i) with respect to public utility property in Rider U proceedings as of Date 9, is the amount recorded and classified as depreciation expense reduced by the portion of the under-recovery of Rider U costs in prior periods attributable to depreciation expense, each computed through Date 9. Further, the depreciation amount computed under § 168(i)(9)(A)(ii) using the method used to compute regulated tax expense under § 168(i)(9)(A)(i) with respect to public utility property in Rider U proceedings must reflect the deferral of expense recognition attributable to depreciation expenses recorded due to under-recoveries of Rider U costs as of the date of the computation.

Accordingly, the ADFIT amount computed under § 168(i)(9)(A)(ii) with respect to public utility property in Rider U proceedings as of Date 9, must reflect deferral of expense recognition attributable to depreciation expense recorded due to an under-recovery of total Rider U costs through Date 9. TCJA section 13001(d)(3)(A) excess tax reserve with respect to public utility property in Rider U proceedings as of Date 9, must reflect ADFIT computed in accordance with § 168(i)(9)(A)(ii) and, thus, reflect amounts recorded and classified as depreciation expense reduced by the portion of the under-recovery of Rider U costs attributable to depreciation expense, each computed through Date 9. Under TCJA sections 13001(d)(1) and (d)(3)(B) ARAM, the excess tax reserve

with respect to public utility property in Rider U proceedings, computed, for a given grouping of public utility property, as a single timing difference equal to the excess of (1) tax depreciation over (2) amounts recorded and classified as depreciation expense reduced by the portion of the under-recovery of Rider U costs attributable to depreciation expense, may not reverse more rapidly than over the remaining lives of the associated grouping of public utility property or to a greater extent than the reversal of the associated timing differences during such period.

Accordingly, the ADFIT and associated EDFIT with respect to the portion of the regulatory assets for under-recovered depreciation expense in Rider U rate adjustment clause proceedings recorded as Regulatory Credits are subject to § 168(i)(9) and TCJA section 13001(d) normalization requirements, respectively. The § 168(i)(9) and TCJA section 13001(d) normalization requirements should not be viewed as inapplicable simply because the Rider U revenue requirement, like a revenue requirement for a general rate case, recovers more than a single expense item, including costs associated with tax deductions not subject to § 168(i)(9) and TCJA section 13001(d) normalization requirements.

The detailed regulatory reporting classification of an expense deferral (that is, reducing the specific underlying expense account or increasing Regulatory Credits) should not affect the application of the normalization rules. The substance of the ratemaking economics with consideration of the broader consistency with the related regulatory reporting, not specific financial statement line items or trial balance accounts, should determine how the TCJA section 13001(d) normalization rules apply.

Because Taxpayer has access to this information on the depreciation portion of the cost deferral, it must use this information to determine the portion of an under-recovery of Rider U costs as of Date 9, that constitutes deferral of recognition and rate recovery of depreciation expense related to public utility property as of such date. Having the ability to determine these amounts, Taxpayer's failure to account for these amounts that constitute depreciation expense would be inconsistent with the normalization rules. Additionally, Taxpayer would violate the TCJA section 13001(d) normalization requirements if it refunded EDFIT associated with its entire under-recovery of Rider U costs as of Date 9, in accordance with Commission A's methodology because this would result in the refund of the TCJA section 13001(d)(3)(A) excess tax reserve associated with the depreciation portion of the under-recovery more rapidly or to a greater extent than such reserve would be reduced under the TCJA section 13001(d)(3)(B) ARAM.

The proportionate methodology proposed by Taxpayer is an objective way to determine the relevant depreciation because it is based on information approved by Commission A prior to the effective date of rates (and, by definition, before it is known whether an under- or over-recovery has occurred.) Commission A Staff have not proposed an alternative to Taxpayer's proportionate methodology.

CONCLUSION

Based on the foregoing, we conclude as follows

- (1) The ADFIT and associated EDFIT with respect to the portion of the regulatory assets for under-recovered depreciation expense in Rider U rate adjustment clause proceedings recorded as Regulatory Credits are subject to the § 168(i)(9) and TCJA section 13001(d) normalization requirements, respectively.
- (2) Under the circumstances described, Taxpayer's proportionate method to compute the portion of an under-recovery of Rider U costs as of Date 9, that constitutes deferral of recognition and rate recovery of depreciation expense related to public utility property as of such date complies with the § 168(i)(9) and TCJA section 13001(d) normalization requirements.
- (3) Taxpayer would violate the TCJA section 13001(d) normalization requirements if it refunded EDFIT associated with its entire under-recovery of Rider U costs as of Date 9, in accordance with Commission A's methodology because this would result in the refund of TCJA section 13001(d)(3)(A) excess tax reserve associated with the depreciation portion of the under-recovery more rapidly or to a greater extent than such reserve would be reduced under the TCJA section 13001(d)(3)(B) ARAM.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the above described facts under any other provision of the Code or regulations.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

This ruling is based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

Patrick S. Kirwan
Chief, Branch 6

PLR-119726-21

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Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:

Copy for § 6110 purposes

cc: