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Comment Date: 5:00 p.m. Eastern Time on October 16, 2018.

Dated: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19998 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2390–000.

Applicants: Chubu TT Energy Management Inc.

Description: Tariff Cancellation: Chubu TT MBRA Cancellation to be effective 9/30/2018.

Filed Date: 9/7/18.

Accession Number: 20180907–5001.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2391–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No. 3688; Queue No. Y2–117 to be effective 10/1/2018.

Filed Date: 9/7/18.

Accession Number: 20180907–5031.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2392–000.

Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP Ohio submits revised ILDSA, Service Agreement No. 1420 and City of Clyde FA to be effective 8/14/2018.

Filed Date: 9/7/18.

Accession Number: 20180907–5037.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2393–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits four ECSAs, Service Agreement Nos. 4991, 5017, 5018, and 5026 to be effective 11/7/2018.

Filed Date: 9/7/18.

Accession Number: 20180907–5056.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2394–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: Compliance filing: Revisions to ISO–NE Tariff in Compliance with FERC Order No. 844 to be effective 1/1/2019.

Filed Date: 9/7/18.

Accession Number: 20180907–5067.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2395–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA SA No. 5159, Queue No. AB2–040 to be effective 8/8/2018.

Filed Date: 9/7/18.

Accession Number: 20180907–5080.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2396–000.

Applicants: Nevada Power Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 162 NPC/DesertLink Agr. to be effective 9/8/2018.

Filed Date: 9/7/18.

Accession Number: 20180907–5083.

Comments Due: 5 p.m. ET 9/28/18.

Docket Numbers: ER18–2397–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2018–09–07_Order 844 Compliance Uplift Cost Allocation and Transparency to be effective 1/1/2019.

Filed Date: 9/7/18.

Accession Number: 20180907–5085.

Comments Due: 5 p.m. ET 9/28/18.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD18–8–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard VAR–001–5.

Filed Date: 9/6/18.

Accession Number: 20180906–5137.

Comments Due: 5 p.m. ET 9/27/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19995 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order Rejecting Proposed Tariff Revisions, Providing Guidance and Providing Limited Compliance Period

Before Commissioners: Kevin J. McIntyre, Chairman; Cheryl A. LaFleur, Neil Chatterjee, and Richard Glick.

	Docket Nos.
Commonwealth Edison Company.	ER18–899–000.
	ER18–899–001.
Delmarva Power & Light Company.	ER18–903–000.
	ER18–903–001.
Atlantic City Electric Company.	ER18–904–000.
	ER18–904–001.
Potomac Electric Power Company.	ER18–905–000.
	ER18–905–001.
PJM Interconnection, L.L.C	(Not Consolidated).

1. On February 23, 2018, as amended on July 9, 2018, Commonwealth Edison Company (ComEd), Delmarva Power & Light Company (Delmarva), Atlantic City Electric Company (ACE) and Potomac Electric Power Company (PEPCO) (together, Exelon Companies), submitted separate but nearly identical filings pursuant to section 205 of the Federal Power Act (FPA).[1] Exelon Companies propose revisions to their formula transmission rates (Formula Rates), contained in Attachments H–13A, H–3D, H–1A and H–9A of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT),[2] to

[1] 16 U.S.C. 824d (2012).

[2] PJM Interconnection, L.L.C., Intra-PJM Tariffs, OATT ATT H–13A, OATT Attachment H–13A—Commonwealth Edison Company, 13.0.0, OATT ATT H–3D, OATT Attachment H–3D—Delmarva Power & Light Company, 5.0.0, OATT ATT H–1A,

Continued

provide a mechanism to refund or recover, as appropriate, certain deferred income tax excesses and deficiencies that they previously recorded on their books and that they will record on an ongoing basis. In particular, Exelon Companies propose to recover or refund in their Formula Rates: (1) Excess or deficient Accumulated Deferred Income Taxes (ADIT) related to tax rate changes (Excess/Deficient Deferred Taxes); (2) the tax effect of the Allowance for Funds Used During Construction (AFUDC) equity portion of depreciation expense (AFUDC Equity); and (3) amounts related to Exelon Companies' switch years ago from the flow-through method for income tax treatment in ratemaking to the tax normalization method (Flow-Through Items).

2. In this order, we find that Exelon Companies have not shown that their proposed Formula Rate provisions allowing for the recovery of previously incurred income tax amounts are just and reasonable. Therefore, as discussed below, we reject Exelon Companies' filings, but we provide guidance that Exelon Companies may submit new filings with a mechanism to refund or recover, as appropriate, deferred income tax excesses and deficiencies related to the recent Tax Cuts and Jobs Act [3] and any future income tax changes, any new originations of past income tax changes, and taxes on AFUDC Equity associated with current and future years' depreciation expense. As described below, we also announce a limited compliance period under Order No. 144 during which other utilities may make FPA section 205 filings to recover past ADIT under certain conditions.

I. Background

3. Under a tax normalization policy, tax savings and increases that result from different treatment for ratemaking and income tax purposes are not immediately flowed through to customers, but are instead recognized in rates over time. In 1981, the Commission amended its regulations to require companies to determine the income tax allowance included in jurisdictional rates on a fully normalized basis.[4] The Commission in Order No. 144 recognized that the adoption of full normalization, as well as tax rate changes, might result in excesses or deficiencies in the deferred tax accounts and required rate applicants to make provision in the income tax component of their cost of service for any such excess or deficiency. Order No. 144 stated that rate applicants must ''begin the process of making up deficiencies in or eliminating excesses in their deferred tax account reserves so that, within a reasonable period of time to be determined on a case-by-case basis, they will be operating under a full normalization policy.'' [5] Order No. 144 further specified that a rate applicant must make adjustments pertaining to reversals from prior flow-through or tax rate changes in ''the applicant's next rate case following the applicability of [Order No. 144].'' [6]

4. In 1992, the Financial Accounting Standards Board issued Financial Accounting Standards Board Statement No. 109 (FAS 109), which required public utilities to make certain changes to their balance sheets. Among other things, FAS 109 required: (1) Recognition in the deferred tax accounts for changes in tax laws or tax rates in the period that the change is enacted; (2) recognition of a deferred tax liability for the equity component of AFUDC depreciation expense; and (3) recognition of a deferred tax liability for timing differences under normalization even if the deferred tax liability was previously flowed through to ratepayers prior to adopting normalization. Addressing the implementation of FAS 109, the Commission's Chief Accountant explained that if as a result of action by a regulator, it was probable that a tax deficiency would be recovered from customers or any tax excess would be returned to customers in rates, an asset or liability must be recognized in the appropriate account. The Chief Accountant also explained that the asset or liability is a temporary difference for which a deferred tax asset or liability must be recognized in the appropriate deferred tax account.[7] The Chief Accountant further stated that if an entity's billing determinations would be affected by adoption of FAS 109, the entity shall make a filing with the proper rate regulatory authorities prior to implementing the change for tariff billing purposes.[8]

II. Related Proceedings

A. BGE Proceeding

5. On November 16, 2017, the Commission rejected Baltimore Gas and Electric Company's (BGE) proposed revisions to its formula transmission rate to provide a mechanism to refund or recover, as appropriate, certain deferred income tax excesses and deficiencies previously recorded and on an ongoing basis.[9] In the instant proceedings, Exelon Companies state that their proposed revisions to their Formula Rates are ''essentially identical'' to those proposed by BGE, which is also a subsidiary of Exelon.[10]

6. In the November 16 Order, the Commission found that BGE failed to demonstrate that its proposed mechanisms for the recovery of previously incurred tax amounts were just and reasonable.[11] In particular, the Commission found that BGE should have captured the accumulated amounts associated with AFUDC Equity that has already been depreciated and prior period tax balances associated with Flow-Through Items in its formula rate since its implementation in 2005, consistent with the directive in Order No. 144 that utilities make such adjustments in their next rate case, or at least ''within a reasonable period of time.'' [12] The Commission further found BGE's proposal to be inconsistent with the principle of matching (*i.e.,* the recognition in rates of the tax effects of expenses and revenues with the expenses and revenues themselves) because the Flow-Through Items related to certain pre-1976 plant that could be either fully depreciated or retired by 2016, and because the additional taxes associated with AFUDC Equity are applicable only to the relevant year's depreciation expense.[13] Finding that BGE failed to explain why it did not make provision for recovery of the deferred amounts for nearly 12 years after implementing its formula rate and that the proceedings cited by BGE in support of its proposal do not establish binding precedent, the Commission rejected BGE's proposed formula rate revisions.[14]

7. On December 18, 2017, BGE requested rehearing of the November 16 Order regarding recovery of past deferred tax liabilities and assets. It also requested clarification that it could

OATT Attachment H–1A—Atlantic City Electric Company, 4.0.0, and OATT ATT H–9A, OATT Attachment H–9A—Potomac Electric Power Company, 6.0.0.

[3] Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017).

[4] *See* 18 CFR 35.24 (2017); *see also Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes,* Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981), *order on reh'g,* Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 (1982).

[5] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[6] *Id.* at 31,519.

[7] *See* Accounting for Income Taxes, Docket No. AI93–5–000 (April 23, 1993).

[8] *Id.* at 11.

[9] *PJM Interconnection, L.L.C.,* 161 FERC ¶ 61,163 (2017) (November 16 Order).

[10] *See, e.g.,* ComEd Transmittal at 33.

[11] November 16 Order, 161 FERC ¶ 61,163 at P 18.

[12] *Id.* PP 18–19 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519, 31,560).

[13] *Id.* P 20.

[14] *Id.* PP 21–22.

recover: (1) Amounts for new tax liabilities and assets that were originated on or after the February 11, 2017 effective date that BGE originally proposed; and (2) amounts for past deferred tax liabilities and assets that would not have been collected until after February 11, 2017, even if its formula rate had been amended in 2005 to include such recovery. In support of its rehearing request, BGE raised similar arguments to those now advanced in Exelon Companies' filings regarding the timing of recovering deferred amounts, matching, and prior Commission precedent. The Commission denies all rehearing requests,[15] but grants clarification in part, of the November 16 Order in an order being issued concurrently with this one in Docket No. ER17–528–002.[16]

B. Notice of Inquiry

8. On March 15, 2018, the Commission sought industry-wide comment on the effect of the Tax Cuts and Jobs Act on Commission-jurisdictional rates.[17] In particular, the Commission sought comment whether, and if so how, the Commission should address changes related to ADIT and bonus depreciation in Commission-jurisdictional rates. That proceeding remains pending.

III. Exelon Companies' Filings

A. Original Filings

9. Exelon Companies propose to implement three tax-related changes (Excess/Deficient Deferred Taxes, AFUDC Equity and Flow-Through Items) to their Formula Rates to more accurately track expenses arising from tax liabilities and to clarify the timing for recovery of various accrued tax liabilities. Exelon Companies assert that the proposed changes do not alter the amount of taxes to be recovered, but instead provide clarity to ratepayers as to when various tax liabilities and assets will be recovered or refunded, and ensure that the proper amounts will be recovered or refunded over a timeframe that is consistent with Commission policies. Exelon Companies request that the Commission accept the revised tariff sheets with an effective date of April 24, 2018, although these proposed tax changes would be reflected for the first time in the rate levels charged to customers in Exelon Companies' June 1, 2019 Annual Update of their Formula Rates (2019 Annual Update) (with the resulting rate levels charged for service on and after June 1, 2019).

10. First, Exelon Companies propose an adjustment to their Formula Rates for Excess/Deficient Deferred Taxes that are the result of enacted changes in tax laws or rates. Exelon Companies explain that, due to changes in state and federal tax rates that occur from time to time, such as the Tax Cuts and Jobs Act, Exelon Companies' deferred income tax balances do not match their actual tax liabilities. Rather than allowing such mismatches to accumulate over time, Exelon Companies propose to correct the mismatches by including a mechanism in their Formula Rates that will automatically return any future excess deferred income taxes to customers, as well as recover any future deficiencies in deferred income taxes from customers. Exelon Companies state that the automatic adjustments would reflect the tax rate changes from the Tax Cuts and Jobs Act and past federal and state income tax rate changes that are not yet fully accounted for, and would also provide an automatic mechanism to capture the impact of any future tax rate changes that may be enacted at the state or federal level. Exelon Companies state that, consistent with the ''*South Georgia* method'' [18] and Commission precedent, Exelon Companies propose to amortize the relevant balances over the remaining useful life of the assets impacted by the tax rate change.[19]

11. Second, Exelon Companies propose an adjustment to their Formula Rates for the tax effect of AFUDC Equity, which would automatically amortize in rates the accumulated tax balances for past AFUDC Equity originations that have not flowed through rates and future AFUDC Equity originations. Exelon Companies explain that federal income tax rules do not permit the deduction of AFUDC Equity on the income tax return, but that AFUDC Equity is included in depreciation expense for financial reporting purposes. Under FAS 109, this difference between the cost basis calculated for income tax and financial statement reporting purposes is recorded as a deferred regulatory asset and associated tax liability. Thus, Exelon Companies propose to modify their Formula Rates to recover this tax difference on an ongoing basis, as well as to use a *South Georgia* catch-up provision to recover all previously unrecovered FAS 109 amounts associated with AFUDC Equity over the remaining life of the transmission assets. Exelon Companies assert that the Commission has recognized that AFUDC Equity requires adjustment in the income tax calculation [20] and that this modification is consistent with the tax recovery mechanisms that the Commission has allowed in other transmission rate filings.[21]

12. Third, Exelon Companies propose an adjustment to their Formula Rates for tax benefits flowed through to customers at the time that they originated (Flow-Through Items). Exelon Companies explain that, in the past, they recovered substantially all of their transmission revenue requirements through bundled retail rates. Exelon Companies state that they sold their generating facilities and now recover their transmission revenue requirements through the Formula Rates regulated by this Commission. Exelon Companies explain that, while their Formula Rates now employ the tax normalization methodology (*i.e.,* Exelon Companies use comprehensive tax normalization for ratemaking purposes), Exelon Companies previously employed flow-through ratemaking for property placed in service (*i.e.,* Exelon Companies immediately reflected the tax benefits of accelerated depreciation and cost of removal in their bundled retail rates).[22]

[15] The Maryland Public Service Commission and the Edison Electric Institute also filed requests for rehearing.

[16] *PJM Interconnection L.L.C.,* 164 FERC ¶ 61,173.

[17] *Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates,* FERC Stats. & Regs. ¶ 35,582 (2018) (Notice of Inquiry).

[18] *See South Georgia Natural Gas Co.,* Docket No. RP77–32 (May 5, 1978) (delegated order). Under the *South Georgia* method, a calculation is taken of the difference between the amount actually in the deferred account and the amount that would have been in the account had normalization continuously been followed. This difference is collected from ratepayers over the remaining depreciable life of the plant that caused the difference. When the deferred account is fully funded at the end of this transition period, the annual increment ceases. *Memphis Light, Gas & Water Div.* v. *FERC,* 707 F.2d 565, 569 (D.C. Cir. 1983).

[19] *See, e.g.,* ComEd Transmittal Letter at 24–28 (citing *Virginia Elec. Power Co.,* Docket No. ER16–2116–000 (August 2, 2016) (delegated order) (*VEPCO*); *Midcontinent Indep. Sys. Operator, Inc.,* 153 FERC ¶ 61,374 (2015) (*ITC*); *DATC Midwest Holdings, LLC,* 144 FERC ¶ 61,015 (2013) (*DATC*); *American Transmission Co., LLC,* 93 FERC ¶ 61,335 (2000) (*ATC*); *Michigan Gas Storage Co.,* 83 FERC ¶ 63,001 (1998), *order on initial decision,* 87 FERC ¶ 61,038 (1999)).

[20] *Id.* at 29 (citing Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 at 30,136).

[21] *Id.* at 28–30 (citing *Indianapolis Power & Light,* 162 FERC ¶ 61,134 (2018) (*IPL*), *Wisconsin Power & Light Co.,* Docket No. ER18–216–000 (Feb. 13, 2018) (delegated order) (*WPL*), *VEPCO,* Docket No. ER16–2116–000 (Aug. 2, 2016) (delegated order); *ITC,* 153 FERC ¶ 61,374; *ATC,* 93 FERC ¶ 61,335; *DATC,* 144 FERC ¶ 61,015).

[22] ComEd states that small excesses remain to be passed through in ComEd's accounting resulting from the pre-2007 use of the flow-through method. ComEd Transmittal at 8. Delmarva, ACE, and PEPCO state that shortfalls remain to be passed through in their accounting resulting from the pre-2005 use of the flow-through method. Delmarva Transmittal at 8; ACE Transmittal at 7; and PEPCO Transmittal at 8.

Exelon Companies state that both the flow-through and normalization methodologies will recover the proper amount of taxes from ratepayers over time. However, the switch from one methodology to another creates timing differences that lead to a difference between a utility's deferred tax account balance and its future tax liability. Thus, Exelon Companies propose to modify their Formula Rates using the *South Georgia* methodology to amortize the tax balances associated with flow-through ratemaking over the remaining life of the transmission assets in place at the time they implemented their Formula Rates.[23]

13. Exelon Companies state that the timing of their filings was influenced by a number of factors, in particular the desire to unlock as soon as possible customer benefits from the Tax Cuts and Jobs Act. Exelon Companies explain that they assume that recovery occurred for of an amortized portion of the FAS 109 amounts each year until their Formula Rate settlements in either 2005 or 2007, depending on the individual company. They further assert that per the Formula Rate settlements, recovery of the FAS 109 amounts were expressly excluded. Therefore, they now seek authorization for recovery of the unamortized portion of amounts from the dates the Formula Rates became effective and any new originations since the Formula Rates were effective.

14. Exelon Companies state that the rate impact from the Formula Rate revisions on the annual transmission revenue requirements for the Formula Rates will vary from year to year. Exelon Companies estimated the one-year impact of the Formula Rate revisions using 2017 data,[24] as shown in the following table:

Company	ADIT-related rate decrease from Tax Cuts and Jobs Act[25] ($ million)	Net rate increase from prior period ADIT amounts[26] ($ million)	Overall net rate reduction ($ million)	Annual revenue requirement ($ million)
ComEd	18	1	17	709
Delmarva	4.1	0.7	3.4	127.9
ACE	4.2	0.6	3.6	132.7
PEPCO	5.3	0.9	4.4	161.7

15. Exelon Companies assert that their filings are timely and should be accepted. Exelon Companies assert that the primary basis for the Commission's rejection of BGE's filing in the November 16 Order was that the BGE filing was untimely.[27] They point out that one issue raised in the November 16 Order was the suggestion that BGE was seeking recovery of ''decades'' old amounts that should have been recovered prior to the adoption of BGE's formula rates in 2005.[28] They state that BGE's rehearing request explained that BGE was not seeking recovery of these out-dated amounts and they likewise are not seeking recovery of out-dated amounts. In particular, Exelon Companies explain that they assumed that an amortized portion of the FAS 109 amounts were recovered each year until 2005 (for Delmarva, ACE and PEPCO) or 2007 (for ComEd) when the Formula Rates took effect, and they do not seek recovery of those amounts prior to 2005 or 2007, respectively. Exelon Companies state that they assumed that their black-box stated rates in place prior to the Formula Rates included recovery of FAS 109 amounts. Exelon Companies assert that this treatment is consistent with *Stingray,*[29] cited in the November 16 Order, in which the Commission held that it would assume that FAS 109 amounts were being amortized during the pendency of a settled stated rate that did not address the FAS 109 issue.

16. Exelon Companies argue that their Formula Rates were settled rates, and thus did not violate the ''next rate case'' rule in Order No. 144. Exelon Companies explain that the November 16 Order found that BGE should have addressed FAS 109 recovery in its 2005 formula rate because it was the ''next rate case'' concerning FAS 109 amounts.[30] Just as with BGE, Exelon Companies argue that the ''next rate case'' rule cannot be applied to Exelon Companies because their Formula Rates filings resulted in settlements that expressly excluded FAS 109 amounts from current rates, thus leaving the issue to be decided in some later proceeding. Exelon Companies argue that no provision in the settlement requires them to eliminate or reduce FAS 109 recovery, and it would be unlawful to read such a provision into the settlement.[31]

17. Exelon Companies also argue that Order No. 144 permits resolution of the FAS 109 issue by settlement, and recognizes that parties may reach a settlement that would defer litigation of the timing of tax recoveries. In support of this position, they point out that after Order No. 144 states that the applicants should address ratemaking treatment in the ''next rate case,'' it states that: ''The rule, of course, leaves undisturbed the ability of the parties to reach a settlement on any of the issues covered by the rule.'' [32] They also assert that the Commission explained in Order No. 144 that it wanted to ensure that ''agreement by the parties not to litigate the issue in future cases is preserved and

[23] *See, e.g.,* ComEd Transmittal Letter at 32 (citing *Duquesne Light Co.,* Docket No. ER13–1220–000 (April 26, 2013) (delegated order) (*Duquesne*); *PPL Elec. Util. Corp.,* Docket No. ER12–1397–000 (May 23, 2012) (delegated order) (*PPL*); *San Diego Gas & Elec. Co.,* 105 FERC ¶ 61,301 (2003)).

[24] *See* ComEd Transmittal at 47; Delmarva Transmittal at 42; ACE Transmittal at 40; and PEPCO Transmittal at 42.

[25] This column represents Exelon Companies' estimates of the benefits that customers will receive, beginning June 1, 2019, from excess ADIT from the Tax Cuts and Jobs Act. The methods for recovery of these excess ADIT amounts are being explored through the Commission's Notice of Inquiry.

[26] This column represents a one year example of the net rate increases resulting from the Exelon Companies' proposals. The net rate increases would occur each year over the remaining lives of the assets at issue.

[27] Exelon Companies state that because their amendments to their Formula Rates are essentially identical to BGE's, which the Commission rejected in the November 16 Order, Exelon Companies arguments in support of their amendments are similar to those which BGE submitted in its rehearing request of the November 16 Order. *See, e.g.,* ComEd Transmittal at 33.

[28] *Id.* at 34 (citing November 16 Order, 161 FERC ¶ 61,163 at P 19).

[29] *Id.* at 34 (citing November 16 Order, 161 FERC ¶ 61,163 at P 19 & n.25 (citing *Stingray Pipeline, Co.,* 50 FERC ¶ 61,159, at 61,469 (1990) (*Stingray*)).

[30] *Id.* at 35 (citing November 16 Order, 161 FERC ¶ 61,163 at PP 18–19). Order No. 144 specified that a rate applicant must make adjustments pertaining to reversals from prior flow-through or tax rate changes in ''the applicant's next rate case following the applicability of [Order No. 144].'' Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519.

[31] ComEd Transmittal at 35–36.

[32] *Id.* at 36 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519).

encouraged.'' [33] They assert that because this is the first rate case after settlement of the Formula Rates, Exelon Companies have not violated the ''next rate case'' rule.

18. Exelon Companies assert that the ''reasonable period of time'' standard in Order No. 144 applies to the period of time for normalization, and not the period of time in which the utility must make its rate filing to implement normalization. They assert that, in the November 16 Order, the Commission partially quoted and misconstrued a sentence in Order No. 144 when it stated that: ''In Order No. 144, the Commission specifically directed utilities 'to begin the process of making up deficiencies or eliminating excesses in their deferred tax reserves . . . within a reasonable period of time to be determined on a case-by-case basis.' '' [34] They state that the full sentence in Order No. 144 reads:

As revised, the final rule requires rate applicants to begin the process of making up deficiencies in or eliminating excesses in their deferred tax reserves so that, within a reasonable period of time to be determined on a case-by-case basis, they will be operating under a full normalization policy.[35]

19. Exelon Companies argue that this Order No. 144 language does not direct when utilities must make a rate case filing, as the Commission asserts in the November 16 Order, but instead it explains the standards for evaluation of ''rate applicants'' when their next rate case filing is made.[36] Exelon Companies assert that their proposal to normalize the recovery of deficient or excess amounts over the remaining life of the assets meets Order No. 144's requirement for seeking full normalization over a reasonable period of time. Exelon Companies also point out that the definition of ''rate applicant'' and other portions of Order No. 144 do not specify when the next rate case must be filed.[37] Exelon Companies also explain that subsequent cases clarify that recovery ''in a reasonable period of time'' meant recovery over the remaining life of the assets.[38] Exelon Companies therefore assert that, consistent with Order No. 144, this is the first rate case after their settlement of the Formula Rates in which the issue could be addressed, and their filings provide for recovery over the remaining life of the assets, which is a reasonable period of time for recovery.

20. Exelon Companies argue that, in the November 16 Order, the Commission ''suggested'' that BGE's filing violated the Commission's matching policy because it sought recovery of amounts long after the underlying assets have been retired or have stopped being depreciated.[39] They contend that, like BGE, they meet the matching test because the filings are tied to recovery over the remaining life of appropriately chosen assets.[40] They conclude there is no basis for concern that ''matching'' of costs and asset lives has somehow been violated.[41] Moreover, Exelon Companies argue that their use of the industry standard PowerTax software verifies that the Flow-Through Items regulatory asset is linked to assets that are still in service.[42]

21. Exelon Companies next argue that recovery of the amounts from 2005 (for Delmarva, ACE and PEPCO) or 2007 (for ComEd) and going forward is consistent with Order No. 144, with FAS 109 and the 1993 FAS 109 Guidance Letter, with the 2014 Staff Guidance on Formula Rate Updates, and with the orders in *PPL, Duquesne, VEPCO,* and *ITC.* In this regard, they briefly discuss each of these cases. They state that, in *PPL,* four years had elapsed since PPL had implemented its formula rate, and the entire regulatory asset amount, as of the date the formula rate was implemented, was authorized for recovery. In *Duquesne,* seven years had elapsed since its formula rate was filed, and the utility was similarly authorized to recover the amount as of the date of its formula rate. Regarding *ITC* and *VEPCO,* Exelon Companies state that these cases similarly involved a formulaic mechanism for recovery of an amortized amount, each year, of transmission-related FAS 109 amounts up through the date in which each year's rates are calculated. Unlike *PPL* and *Duquesne,* the adjustments in *ITC* and *VEPCO* also included new originating FAS 109 amounts that had been recorded after their formula rates were put in place. Taken together, Exelon Companies argue that these proceedings make it clear that formulaic recovery of FAS 109 amounts from prior to, and after, implementation of the formula rate is appropriate, which Exelon Companies argue is exactly what they propose here.

22. While conceding that the *PPL, Duquesne,* and *VEPCO* orders were delegated letter orders, Exelon Companies point out that the *ITC* order was not a delegated letter order and argue that the delegated orders should be given weight as they are consistent with *ITC.*[43]

23. Finally, Exelon Companies argue that recovery of the past expenses would not present a problem of retroactive ratemaking because on appeal of Order No. 144, the court held that a provision for recovery of deficient deferred taxes relating to prior years is not retroactive.[44] Exelon Companies assert that because customers' rates in past years did not reflect these expenses, if the FAS 109 amounts flow through rates, Exelon Companies' proposals will place customers in exactly the same position as if they had included a formulaic rate recovery of FAS 109 amounts in past rates.[45]

B. Deficiency Letter

24. On April 24, 2018, Commission staff issued a deficiency letter advising Exelon Companies that their February 23, 2018 filings were deficient and requiring additional information to evaluate their Formula Rate revisions.[46] Commission staff sought additional information from the Exelon Companies about when they changed to full tax normalization, whether the AFUDC Equity relates to current year's depreciation expense, the method used to allocate FAS 109 amounts to transmission-related components, past FAS 109 amortization collection in rate base, the Tax Reform Act of 1986, and an explanation for why the Exelon Companies decided to exclude FAS 109 recovery in their Formula Rates and why they delayed in seeking recovery.

25. On May 3, 2018, Exelon Companies filed motions for additional time to respond to the Deficiency Letter, so that their responses would be due on July 9, 2018.[47] On May 14, 2018, the

[33] *Id.* (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,561).

[34] *Id.* at 37 (citing November 16 Order, 161 FERC ¶ 61,163 at P 19 (quoting Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560)).

[35] *Id.* at 37 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560).

[36] *Id.* at 38.

[37] *Id.*

[38] *Id.* at 39 (citing *Northern States Power Co.* (*Wisconsin*), Opinion No. 345, 50 FERC ¶ 61,377, at 62,148 (1990) (''Opinion No. 345''), and *Nat. Gas Pipeline of America,* Opinion No. 108, 13 FERC ¶ 61,266 (1980)).

[39] *See* ComEd Transmittal at 40 & n.85 (citing November 16 Order, 161 FERC ¶ 61,163 at P 20); Delmarva Transmittal at 35 & n.83; Atlantic City Transmittal at 33 & n.83; and PEPCO Transmittal at 35 & n.83.

[40] *See, e.g.,* ComEd Transmittal at 40.

[41] *Id.* at 41.

[42] *Id.*

[43] *Id.* at 42–43.

[44] *Id.* at 44 & n.98 (citing *Public Systems* v. *FERC,* 709 F.2d 73, 85 (D.C. Cir. 1983) (*Public Systems*)).

[45] *Id.* at 44.

[46] *PJM Interconnection, L.L.C.,* Deficiency Letter, Docket Nos. ER18–899–000, *et al.* (Apr. 24, 2018) (Deficiency Letter).

[47] ComEd Motion for Additional Time, Docket No. ER18–899–00 (filed May 3, 2018); Delmarva Motion for Additional Time, Docket No. ER18–903–

Continued

Commission granted Exelon Companies' motions.[48]

C. Deficiency Letter Responses

26. On July 9, 2018, Exelon Companies filed responses to the Commission staff's Deficiency Letter, which amended their filings.

27. In their response to the Deficiency Letter, the Exelon Companies largely reiterated arguments and pointed to data in their filed cases. In response to staff's question as to when full tax normalization had occurred at the retail level, the Exelon Companies explain that, prior to their Formula Rate filings, the Exelon Companies' rate filings historically resulted from black box settlements. According to the Exelon Companies, these black box settlements, prior to the implementation of Formula Rates, made it impossible to determine whether the [stated] [49] rates incorporated full tax normalization. Exelon Companies contend that only after the adoption of the subject Formula Rates were they effectively approved to implement full tax normalization.

28. With respect to staff's question as to whether the AFUDC Equity includes prior years' depreciation expense, Exelon Companies explain that they propose to include *South Georgia* catchup provisions to recover all unrecovered FAS 109 amounts associated with AFUDC Equity. The Exelon Companies explain that they intend to track the relevant assets and their relevant lives and retirements using their PowerTax and PowerPlant software, which track each plant item and associated tax expense, and thus will allow a FAS 109 amortization that properly adjusts each year based on the remaining lives of the relevant assets.

29. In response to staff's request on the net plant allocation method used to determine the transmission-related component of FAS 109 regulatory asset, Exelon Companies explain that they generally use composite transmission depreciation rates or group rates by account. Exelon Companies explain that the ADIT reversal is calculated by multiplying the AFUDC Debt and Equity components in depreciation expense by the applicable composite income tax rate.

30. In response to staff's request as to whether there was any accumulated FAS 109 collections associated with prior flow-through items, the Exelon Companies cite to their Formula Rate settlements which specifically exclude FAS 109 amounts from rate base, and state that their proposed Formula Rates continue to exclude FAS 109 amounts, and thus FAS 109 does not impact rate base.

31. In response to staff's request about the Tax Reform Act of 1986, Exelon Companies explain that they assume that they have been refunding or recovering such amounts from their customers through stated rates (either retail or Commission rates). However, due to the fact that the stated rates prior to the effectiveness of their Formula Rates were black box settlements, there is no rate order that expressly spells out that such recovery is occurring.

32. With respect to why the Exelon Companies decided to exclude FAS 109 recovery from their Formula Rates, they explain that exclusion of FAS 109 amounts was the product of settlement. Nevertheless, they suggest that it was reasonable given that the Commission's accounting policies provide that recovery of FAS 109 amounts could only happen pursuant to a FERC rate filing addressing those amounts. Further, they explain that while it is clear today that recovery of such amounts can occur formulaicly, it was not clear at the time that such automatic flow through would be acceptable.

IV. Notices of Filings and Responsive Pleadings

A. Original Filings

33. Notice of ComEd's filing in Docket No. ER18–899–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by FirstEnergy Service Company, Old Dominion Electric Cooperative, PPL Electric Utilities Corporation and Public Service Electric and Gas Company. The Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and comments. On March 29, 2018, ComEd filed an answer.

34. Notice of Delmarva's filing in Docket No. ER18–903–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by Delaware Municipal Electric Corporation, Inc. (DEMEC), Delaware Division of the Public Advocate, Maryland Office of People's Counsel (Md People's Counsel), FirstEnergy Service Company, Old Dominion Electric Cooperative, PPL Electric Utilities Corporation and Public Service Electric and Gas Company. DEMEC filed a timely protest. MD People's Counsel filed timely comments. On March 29, 2018, Delmarva filed an answer. On April 13, 2018, DEMEC filed an answer to the answer.

35. Notice of ACE's filing in Docket No. ER18–904–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by FirstEnergy Service Company, the New Jersey Division of Rate Counsel (Rate Counsel), PPL Electric Utilities Corporation, Public Service Electric and Gas Company, and Vineland Municipal Electric Utility (Vineland). Rate Counsel and Vineland filed timely protests. On March 29, 2018, ACE filed an answer. On April 10, 2018, Rate Counsel filed an answer to the answer.

36. Notice of PEPCO's filing in Docket No. ER18–905–000 was published in the **Federal Register**, 83 FR 8986 (2018), with interventions and protests due on or before March 16, 2018. Timely motions to intervene were filed by FirstEnergy Service Company, MD People's Counsel, Office of the People's Counsel for the District of Columbia (DC People's Counsel), Old Dominion Electric Cooperative, PPL Electric Utilities Corporation Public Service Electric and Gas Company, and Southern Maryland Electric Cooperative, Inc. (SMECO). DC People's Counsel and MD People's Counsel filed timely comments. SMECO filed a timely protest. On March 29, 2018, PEPCO filed an answer. On April 13, 2018, SMECO filed an answer to the answer.

B. Deficiency Letter Responses

37. Notice of ComEd's Deficiency Letter response in Docket No. ER18–899–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions and protests due on or before July 30, 2018. None were filed.

38. Notice of Delmarva's Deficiency Letter response in Docket No. ER18–903–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions and protests due on or before July 30, 2018. DEMEC filed a timely protest. On August 13, 2018, Delmarva filed an answer.

39. Notice of ACE's Deficiency Letter response in Docket No. ER18–904–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions

00 (filed May 3, 2018); ACE Motion for Additional Time, Docket No. ER18–904–00 (filed May 3, 2018); and PEPCO Motion for Additional Time, Docket No. ER18–905–00 (filed May 3, 2018).

[48] Notice of Extension of Time, Docket No. ER18–899–000 (May 14, 2018); Notice of Extension of Time, Docket No. ER18–903–000 (May 14, 2018); Notice of Extension of Time, Docket No. ER18–904–000 (May 14, 2018); and Notice of Extension of Time, Docket No. ER18–905–000 (May 14, 2018).

[49] Under stated rates, utilities are assumed to be recovering all of their fixed costs, including any excess or deficiency in the deferred income tax accounts.

and protests due on or before July 30, 2018. None were filed.

40. Notice of PEPCO's Deficiency Letter response in Docket No. ER18–905–001 was published in the **Federal Register**, 83 FR 32,662 (2018), with interventions and protests due on or before July 30, 2018. DC People's Counsel filed timely comments. On August 13, 2018, PEPCO filed an answer.

V. Responsive Pleadings

A. ComEd Proceeding, Docket Nos. ER18–899–000 and ER18–899–001

41. The Illinois Commission filed comments in support of ComEd's filing and noted ComEd's assertion that the filing represents an overall rate reduction that will directly benefit customers. It urges the Commission to allow ComEd's Formula Rate to include any necessary adjustments so that ComEd's customers fully realize these savings in a timely manner.[50] In response, ComEd argues that the Commission should approve its filing without delay.

B. Delmarva Proceeding, Docket Nos. ER18–903–000 and ER18–903–001

1. Protest of DEMEC

42. DEMEC argues that Delmarva's proposal to recover FAS 109 amounts for prior periods (2005–2017) is contrary to the 2006 settlement of Delmarva's Formula Rate (2006 Settlement) and Commission precedent. DEMEC argues that contrary to Delmarva's claim that the 2006 Settlement left the issue of FAS 109 amount recovery to some later proceeding, there is no provision in the 2006 Settlement that expressly provides for addressing these amounts at some future date, and thus, Delmarva unlawfully seeks to read into the 2006 Settlement a provision that was not expressly contained in that 2006 Settlement.[51] DEMEC points out that the 2006 Settlement expressly proposed to remove FAS 109 amounts, and does not include any notice or agreement to retroactively refund to Delmarva deferred tax liabilities recorded as of December 31, 2004 or any other date. Further, DEMEC asserts that Delmarva's 2005 formula rate filing was the next rate case after Order No. 144 and FAS 109 was issued, since Delmarva did make a section 205 filing with its formula rate on January 31, 2005.[52] DEMEC argues that Order No. 144 did not permit utilities to forego explaining in their settlement agreements their intentions regarding implementation of Order No. 144.

43. DEMEC argues that Delmarva's filing inappropriately attempts to tie the reductions due to transmission customers as a result of the Tax Cuts and Jobs Act to an unjust and unreasonable request for retroactive recovery of deferred tax amounts that it did not preserve to recover in subsequent periods. DEMEC asserts that the Commission should summarily reject any aspect of Delmarva's filing that would permit recovery of deferred tax adjustments for prior periods, including any proposal for inclusion of the amortization of regulatory assets and amortization of prior flow-through amounts which were incurred in the past. DEMEC argues that Delmarva's proposal pertaining to Flow-Through Items violates the matching principle, as the Commission found in the November 16 Order.[53]

44. DEMEC asserts that even if Delmarva's filing is considered on a forward-looking basis, it is not consistent with Commission precedent, is lacking in adequate cost support, and contains various other errors that render it unjust and unreasonable. For these reasons, DEMEC asserts that Delmarva's filing should be set for hearing and settlement procedures and an FPA section 206 investigation should be opened to determine if further rate decreases would be appropriate.[54]

45. Specifically, DEMEC argues that the Commission's policy and guidance reflects the need to differentiate between unfunded versus funded ADIT balances and to exclude FAS 109 amounts absent a demonstrated impact on billing determinations and express Commission approval, noting the 2014 Staff Guidance on Formula Rate Updates.[55] DEMEC also asserts that Delmarva's proposal lacks cost support for its amortization periods and fails to pass back tax benefits to ratepayers in a reasonable amount of time.[56] For example, DEMEC suggests a five-year amortization period for Non-Protected Excess ADIT amounts, as the Commission proposed in its Notice of Inquiry.[57] Additionally, DEMEC asserts that Delmarva's filing fails to adjust the Account 190 ADIT amount to reflect the tax rate change from 35 percent to 21 percent, fails to exclude ADIT amounts related to the Net Operating Loss Carryforward, and fails to justify the removal of certain components from Attachment 5 of its Formula Rate.

46. DEMEC argues that Delmarva's request for including the AFUDC Equity amount in its income tax calculation will result in double recovery of costs. DEMEC explains that Delmarva's proposal would result in not only permitting Delmarva to recover the depreciation expense in rates which exceed depreciation expenses allowed by the Internal Revenue Service (IRS), but to also recover the income taxes associated with this over-recovery of depreciation expenses. Further, DEMEC argues the Commission should ensure that even on a prospective basis, Delmarva is not permitted to double recover costs associated with depreciation expense related income taxes.[58] DEMEC also argues that AFUDC Equity is a permanent tax difference, rather than a temporary tax difference, and that the Commission has required support to demonstrate that recovery of permanent tax differences is just and reasonable.[59]

47. DEMEC argues Delmarva's filing does not include a number of Tax Cuts and Jobs Act provisions that would further reduce Delmarva's transmission rates, including the following: (1) The Federal corporate rate reduction from 35 percent to 21 percent; (2) employee-related deductions; and (3) various other reductions. Additionally, DEMEC asserts that the Commission should require Delmarva to reflect the refunds caused by all the rate reductions resulting from the Tax Cuts and Jobs Act as of the effective date of the Tax Cuts and Jobs Act, which is January 1, 2018.[60]

2. Comments of MD People's Counsel

48. MD People's Counsel argues that the Commission should consider requiring Delmarva to include an interest provision for refunds from the Tax Cuts and Jobs Act. MD People's Counsel also argues that Delmarva's filing lacks sufficient details and supporting workpapers for MD People's Counsel to understand the impact and accuracy of Delmarva's ADIT calculations providing for flow-back of excess ADIT to customers or recovery of deficient ADIT from customers. MD People's Counsel notes that these were both issues raised in the Commission's Notice of Inquiry.

[50] Illinois Commission March 16, 2018 Comments at 1.

[51] DEMEC March 16, 2018 Protest at 8.

[52] *Id.* at 9–10.

[53] *Id.* at 12–13 (citing November 16 Order, 161 FERC ¶ 61,163 at P 20 & n.30 (citing Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522)).

[54] *Id.* at 10–11.

[55] *Id.* at 11–12 (citing 2014 Staff Guidance on Formula Rate Updates (July 17, 2014) at 1–2).

[56] *Id.* at 15–16.

[57] *Id.* at 17 (citing Notice of Inquiry, FERC Stats. & Regs. ¶ 35,582 at P 17).

[58] *Id.* at 18.

[59] *Id.* at 19.

[60] *Id.* at 15.

49. MD People's Counsel disagrees with Delmarva that the FAS 109 mechanism for deferred tax assets qualifies for single-issue rate treatment.[61] MD People's Counsel explains that the Commission has limited the use of single-issue rate treatment to ''ADIT treatment in formula rates when such revisions are only considered mere differences in timing.'' [62] MD People's Counsel asserts that Delmarva's revisions to the treatment of FAS 109 deferred tax assets are more than differences in timing and represent a significant departure from previous Commission-approved accounting methods. MD People's Counsel also explains that Delmarva's Formula Rate protocols only allow single-issue rate treatment for certain issues, which does not include the proposed FAS 109 mechanism, and therefore Delmarva's next section 205 general rate cases are the appropriate venue to consider this change.

3. Answer of Delmarva

50. Delmarva responds that its request is permitted under the Commission's single-issue ratemaking policy, which allows ''limited revisions addressing [ADIT] treatment in formula rates when such revisions are only considered mere differences in timing.'' [63] Further, Delmarva asserts that severing the formula rate adjustments pertaining to the Tax Cuts and Jobs Act from other portions of Delmarva's proposal, as requested by the MD People's Counsel, would transform its filing into a new rate scheme and violate the FPA.[64] Delmarva asserts that DEMEC and MD People's Counsel have failed to demonstrate any problem with the Formula Rates, aside from issues raised in Delmarva's filing, and therefore the Commission should follow its single-issue ratemaking policy and grant Delmarva's request.[65]

51. Delmarva also disagrees with DEMEC's allegation that recovery of FAS 109 amounts would violate the 2006 Settlement Agreement and would result in retroactive ratemaking. Delmarva states that if the 2006 Settlement Agreement precluded future recovery of FAS 109 amounts as DEMEC asserts, then DEMEC's request—to recognize in rates excess/deficient deferred taxes arising from the Tax Cuts and Jobs Act effective January 1, 2018—would also be precluded.[66] Delmarva reiterates its previously stated positions on Order No. 144, FAS 109 and the 1993 FAS 109 Guidance Letter, the 2014 Staff Guidance on Formula Rate Updates, and the November 16 Order. In particular, Delmarva explains that since the issuance of Order No. 144, the Commission has recognized that deferred taxes are not like other rate elements that can only be recovered during the applicable test period rate year, but that the Commission allows accrual of deferred tax excesses and shortfalls until later rate years, with the recovery to be determined in later rate cases on a ''case by case basis.'' [67] Delmarva also points out that an appellate court has explicitly rejected the argument that later recovery of deferred taxes is retroactive ratemaking.[68]

52. Delmarva argues that its filing does not remove any components of Attachment 5 of Delmarva's Formula Rate and that DEMEC's assertions that it has deleted these components is erroneous.

53. Delmarva also argues that DEMEC's claim that rate recovery of FAS 109 amounts associated with the equity component of the AFUDC somehow amount to double recovery are incorrect. Delmarva states that DEMEC's claim seems to be premised on the fact that AFUDC Equity is a ''permanent tax difference'' rather than a ''temporary timing difference.'' Delmarva argues the Commission has repeatedly recognized that formula recovery of FAS 109 amounts associated with AFUDC Equity is appropriate and DEMEC has not addressed this precedent or provided a reason for the Commission to rule differently.[69]

54. Delmarva argues that DEMEC's challenges to the specifics of Delmarva's FAS 109 calculations [70] and to non-FAS issues [71] should be addressed as part of the Annual Update process.

4. DEMEC's Answer to the Answer

55. DEMEC reiterates that Delmarva has failed to provide cost support, workpapers or justification for its proposed amount and timing of its Excess/Deficient Deferred Taxes adjustment and associated amortization periods, AFUDC Equity permanent tax difference adjustment, and Flow-Through Items adjustment. DEMEC states that it cannot rely on the Annual Update process for this information, as the Annual Update process does not allow DEMEC to challenge the Formula Rate itself.

56. DEMEC asserts that Delmarva misstates the terms of the 2006 Settlement. DEMEC points out that Attachment H–3D of the Formula Rate only includes the instruction to exclude FAS 109 amounts from the Formula Rate.[72] DEMEC also argues that section 6.11 of the 2006 Settlement provides that the settling parties are not to rely on any term not expressly set forth in the 2006 Settlement. DEMEC argues that there is nothing in the 2006 Settlement that permits Delmarva to recover excluded FAS 109 amounts in future years. DEMEC therefore argues that Delmarva unravels the 2006 Settlement by now seeking recovery of FAS 109 amounts back to 2005. Further, DEMEC states that the Formula Rate protocols provide that the Annual Updates are final and no longer subject to change or challenge on the later of the passage of the challenge period or a final Commission order on the Annual Update, subject to judicial review.[73]

57. DEMEC reiterates that Delmarva's 2005 Formula Rate filing was the ''next rate case'' after Order No. 144 to obtain FAS 109 recovery, and Delmarva's current proposal, filed 13 years after its Formula Rate was implemented, was not filed within ''a reasonable period of time'' required by Order No. 144 to obtain FAS 109 recovery.[74] DEMEC argues that *Public Systems* does not support Delmarva's case, because Delmarva's filing is seeking to recover shortfalls in prior rates going back over 13 years and therefore Delmarva is engaged in retroactive ratemaking.[75] DEMEC therefore requests that the Commission reject Delmarva's proposal to recover deferred tax amounts back to 2005.

[61] MD People's Counsel March 16, 2018 Comments to Delmarva at 5–7.

[62] *Id.* at 5 (citing *Indicated RTO Owners,* 161 FERC ¶ 61,018, at P 14 (2017)).

[63] Delmarva March 29, 2018 Answer at 4 (citing *Indicated RTO Owners,* 161 FERC ¶ 61,018 at P 14).

[64] *Id.* at 12 & n.39 (citing *NRG Power Mktg., LLC* v. *FERC,* 862 F.3d 108 (D.C. Cir. 2017) (*NRG*) (rejecting Commission orders transforming a rate scheme in a section 205 filing into an entirely new rate scheme of the Commission's making)).

[65] *Id.* at 4–6.

[66] *Id.* at 6–7.

[67] *Id.* at 8.

[68] *Id.* at 8 & n.28 (citing *Public Systems,* 709 F.2d at 85).

[69] *Id.* at 14.

[70] Delmarva notes that, for example, DEMEC raises questions about whether Delmarva's FAS 109 accounting factors in the distinctions between ''funded'' and ''unfunded'' assets and liabilities. *Id.* at 14 & n.46 (citing DEMEC March 16, 2018 Protest at 11–12).

[71] Delmarva notes that DEMEC raises various questions about whether Delmarva will properly calculate its Formula Rate, such as whether Delmarva's rate base calculations will properly reflect Account 190 and whether its rates will include various tax deductions from the Tax Cuts and Jobs Act. *Id.* at 15–16 & n.48 (citing DEMEC March 16, 2018 Protest at 14, 19–20).

[72] DEMEC April 13, 2018 Answer to the Answer at 4. In particular, Attachment 1 of Attachment H–3D of Delmarva's Formula Rate states: ''Less FASB 109 Above if not separately removed.''

[73] *Id.* at 6.

[74] *Id.* at 5–6.

[75] *Id.* at 7–8.

58. DEMEC states that, contrary to Delmarva's assumption, DEMEC's argument about double recovery of AFUDC Equity is not based on a claim that the request represents a permanent tax difference.[76] Rather, DEMEC explains that the AFUDC Equity adjustments results from the fact that the IRS does not allow depreciation expense associated with AFUDC Equity to be deducted on the tax return, while the Commission does permit recovery of this depreciation expense in transmission rates.[77] DEMEC states that Delmarva includes AFUDC Equity as a part of its rate base, and it recovers depreciation associated with the AFUDC Equity as well as a return on it with associated income taxes at the full statutory tax rate. DEMEC asserts that Delmarva's proposal would permit Delmarva to recover the depreciation expense in rates, which exceed depreciation expenses allowed by the IRS, and also recover the income taxes associated with this over-recovery of depreciation expenses.[78]

59. DEMEC also asserts that Delmarva is incorrect that single-issue rate making is applicable to its filing, because its filing is not limited to addressing ADIT timing differences in the current or future test years. DEMEC argues that any proposed change to this component of the Formula Rate retroactive to 2005 would require investigation of the justness and reasonableness of the provisions of the existing Formula Rate that Delmarva has not proposed to change.[79]

5. DEMEC Protest of Deficiency Letter Response

60. DEMEC reiterates its position that the 2006 Settlement contains no provision that supports Delmarva's proposed treatment of FAS 109 amounts, AFUDC equity, and excess/deficient deferrals amounts. DEMEC maintains that recovery of these amounts for prior periods would be contrary to the filed rate doctrine, and that Delmarva's claims pertaining to recovery in the ''next rate case'' are contrary to relevant Commission precedent and guidance.[80]

61. DEMEC also argues that Delmarva's Deficiency Response amplifies the unreasonableness of its AFUDC equity proposal, because the proposal implicates potential double-recovery or previously bargained-for compromises. DEMEC restates that Delmarva's proposal runs afoul of the rationales articulated by the court in *Public Systems,* and that *PPL, Duquesne,* and *VEPCO* are inapt. DEMEC notes that Delmarva failed to respond to Commission staff's question regarding the retail rate orders approving Delmarva's full tax normalization and any catchup provisions similar to the *South Georgia* catchup provision. DEMEC asserts that Delmarva's reliance on discovery protocols in the annual update process for post-2005 originations is insufficient as it is Delmarva's burden to prove the reasonableness of its section 205 application.[81]

62. Finally, DEMEC emphasizes that Delmarva did not clarify whether the ''weighted average expected service lives'' it references in its Deficiency Response are equal to the lives used by Delmarva for depreciating the assets and amortizing the Investment Tax Credits. DEMEC requests that the Commission require Delmarva to do so.[82]

6. Delmarva Answer to DEMEC Protest of Deficiency Response

63. Delmarva reiterates its arguments that the 2006 Settlement expressly recognizes the existence of the FAS 109 regulatory asset or liability.[83]

64. With respect to DEMEC's concern that the AFUDC equity component of Delmarva's filing amounts to double recovery or over recovery, Delmarva argues that as the Commission explained in *Ameren,* the Commission's guiding principle is that it limits the allowance charged to ratepayers to an amount equal to the costs the company incurs in serving them.[84] Delmarva argues there is no serious dispute that the AFUDC Equity amounts at issue here, even those that originated pre-2005, are real costs incurred by Delmarva in serving ratepayers and thus, Delmarva is entitled to recover those costs.[85]

65. In response to DEMEC's argument that there is something unclear about the amortization proposed in the filing, Delmarva argues its filing was clear.[86] Delmarva asserts that as explained in the response to Question 2(iii), Delmarva will amortize post-2005 amounts based on the remaining lives of the relevant assets. For pre-2005 assets, Delmarva argues it proposes an amortization based on the average remaining life of all of its transmission assets as of 2005–25 years, which it argues is consistent with the methodologies the Commission accepted in *PPL* and *Duquesne.*[87] Delmarva asserts that if questions arise about whether Delmarva has properly implemented the rates in any rate year, those questions can be raised as part of the annual rate update process.[88]

C. ACE Proceeding, Docket Nos. ER18–904–000 and ER18–904–001

1. Protests of Vineland and Rate Counsel

66. Vineland concurs with the ACE Formula Rate amendments to the extent that they provide a mechanism to refund to customers the excess ADIT created when the Tax Cuts and Jobs Act reduced the ACE corporate tax rate.[89]

67. However, Vineland objects to ACE's proposal to amend its Formula Rate to recover deficient ADIT predating the Tax Cuts and Jobs Act. Vineland argues that the proposals by ACE on: (1) Excess/Deficient Deferred Taxes; (2) AFUDC Equity; and (3) Flow-Through Items were specifically considered and rejected in the BGE case. Vineland argues the same logic that led the Commission to reject those proposals in BGE should prevail here.[90]

68. Vineland argues that ACE's proposed amortization period for refund of the excess ADIT related to the Tax Cuts and Jobs Act, set forth in Exhibit D–2 of ACE's Filing, is not well documented and Vineland seeks Commission review and approval of the amortization period proposed. Vineland notes that ACE proposes a 35-year amortization period which it states equates to the average remaining book life of the assets that were initially taxed. Vineland seeks Commission review and confirmation that the amortization period is properly related to the transmission plant giving rise to the refund of excess ADIT brought about by the Tax Cuts and Jobs Act.[91]

69. Rate Counsel argues that as the changes sought by ACE are substantively identical changes to those sought previously—and unsuccessfully—by BGE, the Comission should summarily reject them.[92] Rate Counsel disagrees that the precedent cited by ACE—*Duquesne, PPL, VEPCO* and *ITC*—is applicable. Rate Counsel

[76] *Id.* at 11 (citing Delmarva March 29, 2018 Answer at 14).

[77] *Id.;* DEMEC March 16, 2018 Protest at 18.

[78] DEMEC April 13, 2018 Answer to the Answer at 11.

[79] *Id.*

[80] DEMEC July 30, 2018 Protest of Deficiency Letter Response at 6.

[81] *Id.* at 10–11.

[82] *Id.* at 11.

[83] Delmarva August 13, 2018 Answer to DEMEC Protest of Deficiency Response at 5.

[84] *Id.* at 13 (citing *Midcontinent Indep. Syst. Operator,* 163 FERC ¶ 61,163, at P 63 (2018) (*Ameren*)).

[85] *Id.*

[86] *Id.* at 13–14.

[87] *Id.* at 14.

[88] *Id.*

[89] Vineland March 16, 2018 Protest at 1–2.

[90] *Id.* at 2.

[91] *Id.* at 5–6.

[92] Rate Counsel March 16, 2018 Protest at 4.

argues that the *ITC* proceeding related to a 2011 tax change that occurred four years prior to the filing in that case and the *VEPCO* proceeding related to a 2013 tax change that occurred three years prior to the filing in that case. Rate Counsel states that in contrast, while the identity of the events that have given rise to the changes ACE wishes to implement are not obvious from ACE's filing, it appears that ACE—much like its affiliate BGE, which the Commission condemned for seeking recoveries related to pre-1976 plant—is here seeking recoveries associated with items dating back to the 1970s. Similarly, Rate Counsel argues ACE's reliance on other Commission letter orders, such as the one issued in *Wisconsin Power & Light Co.,* do not justify approval here.[93]

70. Rate Counsel notes that FAS 109, established in 1992, required public utilities to make changes to their balance sheet to account for the proper recording of (i) changes in tax laws or tax rates in the period that the change is enacted and reflected in the utilities' deferred tax accounts, (ii) a deferred tax liability for the equity component of AFUDC depreciation expense, and (iii) a deferred tax liability for any unfunded tax benefits previously flowed through to ratepayers. Rate Counsel notes that in implementing FAS 109, the Chief Accountant advised that if a utility's billing determinations would be affected by adoption of FAS 109, then the utility must file with the proper rate regulatory authorities before implementing the change in tariff billings. Thus, Rate Counsel argues that contrary to ACE's request here, filings implementing FAS 109 changes for billing purposes were to be prospective—not retrospective.[94]

71. Rate Counsel next argues that ACE, like BGE, failed to comply with the requirement to make a filing within a reasonable period of time. Rate Counsel argues ACE has previously recorded all amortizations of the FAS 109 regulatory assets and liabilities on its books and records for the period 2005–2017. Rate Counsel argues ACE's claim that it is making this adjustment to reverse the prior accounting treatment of amortizing the FAS 109 assets and liabilities for 2005–2017 period to ''properly match the ratemaking'' is illogical.[95] Rate Counsel argues ACE's existing transmission formula rate template *already* appropriately reflects the removal (*i.e.,* exclusion) of FAS 109's current year balance from ADIT.[96] Rate Counsel argues ACE has already properly excluded FAS 109 balances for ratemaking purposes in prior year periods, and has also properly amortized the FAS 109 assets and liabilities each year for the 2005–2017 period.[97]

72. Rate Counsel argues the 2006 Settlement Agreement did not contemplate that ACE would defer these FAS 109 amounts and seek recovery in a subsequent rate case. Rather, in the 2006 Settlement Agreement, the settling parties agreed on a revenue formula that was accepted as just and reasonable, and which specifically excluded the recovery of FAS 109 ADIT and annual amortization amounts.[98] Rate Counsel asserts that ACE has offered no basis that would justify a unilateral amendment of the settled formula rate.[99]

73. Rate Counsel asserts ACE cannot leverage the tax law change into a basis for belated recovery of unrelated dollars. While Rate Counsel agrees that a mechanism should be added to the formula to account for the flow back of prospective Excess/Deficient Deferred Income Taxes associated with federal income tax and state income tax rate changes, especially in light of the recent significant reduction of the federal income tax rate, Rate Counsel argues that it is not appropriate to include amortization of Excess/Deficient Income Taxes from *prior* periods. Rate Counsel argues that in addition to dating back as much as *44 years,* many of these items appear to be temporary in nature and thereby create only temporary timing differences. Rate Counsel argues ACE has not provided a detailed description of each of the ''Other Flow Through Items,'' nor a detailed explanation supporting a special formula adjustment to accommodate them. Rate Counsel argues ACE has also not demonstrated that transmission customers benefited from the prior flow-through. Therefore, Rate Counsel argues ACE has not demonstrated that the transmission customers should now fund the ''deficiency'' in deferred income tax liabilities.[100]

74. Rate Counsel argues that ACE's claim that all FAS 109 items must flow through the formula is unfounded and asserts FAS 109 includes numerous items, each of which needs Commission approval. Rate Counsel argues that a new line item can be added in Account 283 to record the excess deferred taxes related to the federal income tax rate change.[101]

75. Rate Counsel argues ACE has not demonstrated that the ten-year amortization period is appropriate for transmission customers. Rate Counsel argues the use of such a lengthy amortization period may cause cross-generational cost allocation issues.[102]

2. Answer of ACE

76. ACE filed in its answer nearly identical responses to Delmarva's answer in response to protesters' arguments on the following three issues: (1) Single-issue rate treatment; (2) the allegation that recovery of FAS 109 amounts would violate the 2006 Settlement Agreement and would result in retroactive ratemaking; and (3) severing formula rate adjustments pertaining to the Tax Cuts and Jobs Act from other portions of ACE's proposal.

77. ACE argues that Vineland's suggestion—that ACE seek Commission approval for each and every FAS 109 amount as it arises—would be burdensome and extreme because FAS 109 amounts arise frequently, thus requiring multiple section 205 filings for every such expense. ACE states that the Commission has repeatedly recognized that formula recovery of FAS 109 amounts is just and reasonable.[103]

78. ACE asserts that Rate Counsel failed to cite precedent that precludes ACE from correcting accounting errors, such as ACE's reversal of amortizations of FAS 109 amounts. ACE instead argues that *Duquesne* and *PPL* support its proposal to correct these amortizations to align rate treatment of FAS 109 amounts, and therefore Rate Counsel's argument should be summarily rejected.[104]

79. Finally, ACE argues that various challenges raised by Rate Counsel regarding numerical values in the proposal are more appropriately raised within the annual formula rate update and challenge process. ACE states that the formula rate protocols provide a robust process for obtaining discovery on and challenging particular items included in the annual rate update, and therefore the Commission should reject Rate Counsel's arguments without prejudice to their right to raise those issues in that forum.[105]

3. Rate Counsel's Answer to the Answer

80. Rate Counsel argues that contrary to ACE's claims, the ACE accounting

[93] *Id.* at 4.
[94] *Id.* at 5.
[95] *Id.* at 6.
[96] *Id.* at 6–7.
[97] *Id.* at 7.
[98] *Id.*
[99] *Id.* at 9.
[100] *Id.* at 11–13.
[101] *Id.* at 13.
[102] *Id.* at 14.
[103] ACE March 29, 2018 Answer at 12–13.
[104] *Id.* at 13–14.
[105] *Id.* at 15.

department did not make an error, but instead correctly amortized the FAS 109 amounts in ACE's books and records from 2006 through 2016, consistent with Generally Accepted Accounting Principles (GAAP).[106] Further, Rate Counsel argues that if ACE's intention was to defer FAS 109 amortizations from 2006–2016, then ACE should have requested authorization from the Commission to implement such accounting treatment.[107]

81. Rate Counsel also argues that contrary to ACE's claims, it is not asking the Commission to make an impermissible retroactive change to ACE's rates. To this point, Rate Counsel argues that the FAS 109 current balances, after reflecting all prior period amortizations and those amortizations that should have been expensed annually, are the appropriate basis for any current or future amortizations and only after the Commission approves each FAS 109 component.[108]

D. PEPCO Proceeding, Docket Nos. ER18–905–000 and ER18–905–001

1. Protest of SMECO

82. SMECO asserts that PEPCO's proposal to recover FAS 109 amounts from prior periods is not just and reasonable for four reasons. First, SMECO argues that PEPCO's proposal violates the filed rate doctrine and the rule against retroactive ratemaking. SMECO reasons that the 2006 Settlement Agreement adopted a formula rate template that specifically excluded these amounts and that PEPCO did not expressly reserve a right to defer these amounts for future recovery.[109] SMECO also contends that, contrary to PEPCO's assertion, the 2006 Settlement Agreement constituted the ''next rate case'' following Order No. 144.[110] Alternatively SMECO argues that to the extent PEPCO wanted to attempt to recover these FAS 109 amounts, it should have done so immediately after the rate moratorium (which resulted from settlement) that ended on June 1, 2009. SMECO notes that accepting PEPCO's proposal now would also contradict precedent set in the November 16 Order involving BGE.[111]

83. Secondly, SMECO notes that, for accounting purposes, PEPCO has already been amortizing FAS 109 regulatory assets and liabilities for the 2005–2017 period. SMECO states that PEPCO's proposal to reverse all these amortizations ''to properly match the ratemaking'' is illogical because PEPCO's formula rate already appropriately reflects the exclusion of FAS 109 current year balances from ADIT.[112]

84. Thirdly, SMECO argues that for PEPCO to properly seek rate recovery of prior FAS 109 amounts for AFUDC Equity Origination/Depreciation, it would have needed to create a deferred regulatory asset on its books to record the annual AFUDC Equity depreciation amount, which it did not. SMECO contends that PEPCO is effectively attempting to revise its books to create these deferred regulatory assets retrospectively.[113]

85. Finally, SMECO agrees that a mechanism in the formula rate is necessary to flow back Excess/Deficient Deferred Taxes associated with federal and state income tax changes. However, SMECO claims that PEPCO has not adequately supported its proposed amortization and that it is inappropriate to include amortization of Excess/Deficient Income Taxes from prior periods.[114]

86. SMECO alleges that many of the ''Other Flow Through Items'' appear to be temporary in nature, and that PEPCO has failed to sufficiently support its basis for making a special adjustment to income taxes in the formula rate for these items. SMECO maintains that, as with the other prior-period FAS 109 amounts, it is inappropriate for PEPCO to recover these amounts from prior periods in its current and future formula rates, and that PEPCO could have dealt with these items in the 2006 Settlement Agreement.[115]

87. SMECO states that the entire FAS 109 amounts (including deferred tax amounts from prior periods) do not need to be included in rates in order to effectuate the Tax Cuts and Jobs Act. SMECO argues that PEPCO can instead create a new line item in Account 283 to implement the excess deferred taxes related to the adjustment of the federal income tax rate, or that the regulatory liability balance for the excess deferred tax reserve recorded in Account 254 can be included as an adjustment to rate base.[116]

88. SMECO also argues that PEPCO has not supported its claim that the Flow-Through Items regulatory asset is linked to assets that are still in service. SMECO further argues that the Commission should reject PEPCO's attempt to shift the burden of proof regarding the reasonableness of its proposal to transmission customers via the formula rate protocols.[117] SMECO also notes that PEPCO does not address the overall tax rate change from 35 percent to 21 percent in its filing.[118]

89. SMECO argues that PEPCO has not sufficiently supported the amortization periods it proposes to apply for Excess Deferred Taxes Decrease/(Increase) to deferred tax assets for Protected Property Rate Base, Non-Protected Property Rate Base, Non-Protected Non-Property Rate Base, and Non-Protected Non-Rate Base balances. SMECO also specifically disputes PEPCO's proposed 10-year amortization period for Non-Protected Non-Property and Non-Protected Non-Rate Base items, alleging that this may cause intergenerational cost allocation issues, wherein the customers that contributed to the excess deferred income taxes may not necessarily be the same customers that receive the flow back of excess deferred income taxes.[119]

2. Comments of MD People's Counsel and DC People's Counsel

90. MD People's Counsel filed comments in response to PEPCO's filing that were identical to the comments it filed in response to Delmarva's filing.[120]

91. DC People's Counsel agrees with PEPCO's proposal to apply the average rate assumption method in calculating excess ADIT on Protected Property Rate Base balances, but requests that the Commission utilize its discretion to institute a shorter amortization period for excess ADIT on Non-Protected Rate Base and Non-Rate Base balances. DC People's Counsel specifically requests a 10-year amortization period for excess ADIT on Non-Protected Property Rate Base balances, and a 5-year amortization period for excess ADIT on Non-Protected Non-Property Rate Base and Non-Protected Non-Rate Base balances.[121]

92. DC People's Counsel argues that amending the formula rate to recover historical FAS 109 amounts and provide for automatic pass through of ongoing FAS 109 amounts is unnecessary to return tax savings to ratepayers resulting from the Tax Cuts and Jobs Act. DC People's Counsel notes that although PEPCO argues the instant case is the

[106] Rate Counsel April 10, 2018 Answer to the Answer at 3.

[107] *Id.* at 3–4.

[108] *Id.* at 4.

[109] SMECO March 16, 2018 Protest at 3–4.

[110] *Id.* at 5.

[111] *Id.* at 6–7.

[112] *Id.* at 8.

[113] *Id.* at 9.

[114] *Id.* at 10–11.

[115] *Id.* at 11–12.

[116] *Id.* at 12–13.

[117] *Id.* at 13.

[118] *Id.* at 14.

[119] *Id.* at 14–15.

[120] MD People's Counsel March 16, 2018 Comments to PEPCO at 1, 3–7.

[121] DC People's Counsel March 16, 2018 Comments to PEPCO at 5–6.

''next rate case'' following the 2006 Settlement Agreement, the requested 60-day schedule is insufficient to thoroughly explore the ramifications of PEPCO's proposal.[122] DC People's Counsel also states that it would be unwise to approve PEPCO's proposal until the Commission completes its review of ADIT issues implicated by the Tax Cuts and Jobs Act under Docket No. RM18–12–000.[123]

93. DC People's Counsel argues that PEPCO's proposal does not meet the Commission's criteria for single-issue treatment of ratemaking. DC People's Counsel states that the Commission has limited the use of single-issue treatment to ''ADIT treatment in formula rates when such revisions are only considered mere differences in timing,'' and that PEPCO's proposal represents a significant departure from previous Commission-approved accounting methods. DC People's Counsel further argues that the proposed treatment of FAS 109 amounts will likely result in changes in other component costs that warrant the Commission's full understanding, which is not possible in a single-issue rate case.[124]

3. Answer of PEPCO

94. PEPCO filed in its answer nearly identical responses to Delmarva's responses to protesters' arguments on the following three issues: (1) Single-issue rate treatment; (2) the allegation that recovery of FAS 109 amounts would violate the 2006 Settlement Agreement and would result in retroactive ratemaking; and (3) severing formula rate adjustments pertaining to the Tax Cuts and Jobs Act from other portions of ACE's proposal.

95. PEPCO asserts that SMECO failed to cite precedent that precludes PEPCO from correcting accounting errors, such as PEPCO's reversal of amortizations of FAS 109 amounts. PEPCO instead argues that *Duquesne* and *PPL* support its proposal to correct these amortizations to align rate treatment of FAS 109 amounts, and therefore SMECO's argument should be summarily rejected.[125]

96. Finally, PEPCO argues that various challenges raised by SMECO regarding numerical values in the proposal are more appropriately raised within the annual formula rate update and challenge process. PEPCO states that the formula rate protocols provide a robust process for obtaining discovery on and challenging particular items included in the annual rate update, and therefore the Commission should reject SMECO's arguments without prejudice to their right to raise those issues in that forum.[126]

4. SMECO's Answer to the Answer

97. SMECO argues that there is no provision in Attachment 1 of Attachment H–9A or any other portion of the settlement agreement or Formula Rate established as part of the 2006 Settlement that preserves PEPCO's ability to collect FAS 109 deferred tax amounts at a future date. Further, SMECO argues that Section 6.11 of the 2006 Settlement makes clear that the Settling Parties are not to rely on any term not expressly set forth in the Settlement by stating, ''none of the Settling Parties has relied upon any representation, express or implied, not contained in this Settlement.'' [127] Additionally, SMECO argues that until PEPCO revised its formula rate protocols effective December 3, 2015, the formula rate protocols provided that PEPCO's annual updates would become final and no longer subject to change or challenge by any entity on the latter of the passage of the challenge period or final FERC order on the annual update, subject to judicial review.[128]

98. SMECO argues that PEPCO misstates the applicability of Order No. 144 and associated cases and Commission guidance to its filing in this proceeding. SMECO further argues that even if PEPCO's erroneous interpretation of the 2006 Settlement and the Order No. 144 precedent is considered in a light most favorable to PEPCO, recovering deferred tax liabilities thirteen years after they could have been captured in the Formula Rate since its implementation on 2005, is not a reasonable period.[129]

99. SMECO argues that it is not seeking to prevent PEPCO from recovering prior FAS 109 amounts due to ''erroneous accounting'' that has now been corrected. SMECO argues that while PEPCO describes it as an ''accounting error,'' PEPCO's amortization of FAS 109 amounts in fact reflects that PEPCO's accounting department recognized that PEPCO had not sought or received Commission approval for the deferral of FAS 109 amounts and must amortize the FAS 109 amounts as required under GAAP.[130]

100. SMECO argues PEPCO does not meet its FPA section 205 burden of proof in this proceeding when it argues that the issues SMECO has raised in its protest should be deferred to the annual update process. SMECO asserts that the issues it has raised are pertinent to the justness and reasonableness of PEPCO's Formula Rate revisions and should be addressed in the instant proceeding.[131]

5. DC People's Counsel Comments on Deficiency Letter Response

101. In its response to PEPCO's response to the Deficiency Letter, DC People's Counsel reiterates its opposition to PEPCO's proposal to recover FAS 109 deferred tax assets.[132]

102. DC People's Counsel states that PEPCO's current transmission Formula Rate plan does not include FAS 109 deferred tax assets. However, PEPCO's application proposes a modification to the Formula Rate plan that would include historical FAS 109 deferred tax assets in the Formula Rate plan dating back to December 31, 2004.[133] DC People's Counsel expresses concern regarding PEPCO's request to modify its Formula Rate plan to now include these historical FAS 109 deferred asset balances going back to December 31, 2004 and to provide for automatic pass through in formula-based transmission rates of similar deferred assets.[134]

103. DC People's Counsel concludes that the explanations provided in PEPCO's response are insufficient to justify inclusion of such FAS 109 deferred asset balances in PEPCO's revised Formula Rate plan at this time. Given PEPCO's history of ''black box'' settlements and the lengthy period (from mid-2005 through 2017) over which PEPCO has accumulated such balances, DC People's Counsel recommends excluding the FAS 109 deferred asset amortizations from the adjustment to PEPCO's transmission rates at this time, to allow for detailed scrutiny and analysis of those balances in a complete rate case.[135]

6. PEPCO Answer to DC People's Counsel Comments on Deficiency Response

104. PEPCO argues DC People's Counsel has not alleged, much less supported, an argument that formula elements outside of the proposed FAS 109 modifications are incorrect and that there is no basis for ordering a complete rate case that goes beyond the issues

[122] *Id.* at 7–8.

[123] *Id.* at 9.

[124] *Id.* at 9–10.

[125] PEPCO March 29, 2018 Answer at 13–14.

[126] *Id.* at 14.

[127] SMECO April 13, 2018 Answer to Answer at 3–4.

[128] *Id.* at 4.

[129] *Id.* at 6.

[130] *Id* at 7–8.

[131] *Id.* at 8.

[132] DC People's Counsel July 30, 2018 Comments on Deficiency Letter Response at 1–2.

[133] *Id.* at 5.

[134] *Id.* at 6.

[135] *Id.* at 7.

raised in PEPCO's filing.[136] PEPCO argues that the Commission accepted a single issue filing considering amendments to a formula rate to provide for rate recovery of FAS 109 amounts in May 2018 in *Ameren.*[137]

105. PEPCO argues the Commission's policy and precedent permitting rate flow through of FAS 109 amounts is clear and argues the Commission's recent ruling in its *Pipeline Tax Final Rule* describes and summarizes the Commission's relevant tax ratemaking policies, and makes clear that PEPCO's filing is well founded.[138] PEPCO argues the findings in the *Pipeline Tax Final Rule* concerning FAS 109 adjustments are directly applicable in this proceeding, because PEPCO's filing relies on the exact same policies and precedent. PEPCO argues that it is subject to the Commission's accounting rules that require accrual of FAS 109 amounts to a regulatory asset or liability, and the precedent providing for later rate pass through.[139]

106. With respect to DC People's Counsel's argument to accept certain aspects of PEPCO's filing, while rejecting others, PEPCO argues that neither the FPA nor Commission precedent permit the Commission to somehow sever the adjustments related to the Tax Cuts and Jobs Act from the other portion of the FAS 109 modifications in the filing. PEPCO argues that in doing so, it would transform the filing from a fair and evenhanded amendment intended to have taxes flowing through rates match actual tax liabilities over time into an entirely different rate scheme in which tax liabilities of the utility would not be adequately reflected in rates. Further, PEPCO argues there is no basis for rejecting, delaying, or otherwise preventing the effectiveness of the proposed FAS 109 amendments.[140]

VI. Discussion

A. Procedural Matters

107. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2018), the notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to the specific proceeding in which they intervened.

108. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (2018), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers to the protests and the answers to the answers in the specific proceeding in which they were filed because they have provided information that assisted us in the decision-making process.

B. Substantive Matters

109. We find that Exelon Companies have not shown that their proposed Formula Rates provisions allowing for the recovery of previously incurred income tax amounts are just and reasonable and therefore we reject their filings. While we do not find Exelon Companies' proposal to refund deferred amounts related to the recent Tax Cuts and Jobs Act or its proposal to recover or return deferred income tax amounts on an ongoing basis to be unjust and unreasonable, we reject Exelon Companies' proposal as a whole, in recognition of Exelon Companies' statements that accepting only certain aspects of its proposal would ''transform this filing into an entirely new rate scheme.'' [141]

110. As described below, our rejection of the Exelon Companies' filings is without prejudice to Exelon Companies submitting new filings with a mechanism to refund or recover, as appropriate, deferred income tax excesses and deficiencies related to the recent Tax Cuts and Jobs Act and any future income tax changes, any new originations of past income tax changes, and taxes on AFUDC Equity associated with current and future years' depreciation expense.[142] As described below, we also announce a limited compliance period under Order No. 144 for other utilities to make section 205 filings to recover past ADIT in certain circumstances.

1. Timing of Exelon Companies Filings

111. As the Commission found in the November 16 Order involving BGE, we find that the deferred amounts Exelon Companies seek to recover here should have been captured when Exelon Companies' Formula Rates were implemented in 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd).[143] While Order No. 144 put ratepayers on notice that companies may make adjustments for recovery of certain tax deficiencies, the Commission required such adjustments to be made for the purpose of transitioning to full normalization in ''the applicant's next rate case following the applicability of the rule.'' [144] Exelon Companies' initial Formula Rate filings included line items that expressly excluded recovery of these items in their Formula Rates.[145] Exelon Companies thus failed to comply with the requirement in Order No. 144 that recovery should be addressed in the ''next rate case'' at the time they initially filed their Formula Rates.

112. Exelon Companies insist that they did not run afoul of this guidance because their Formula Rate filings in 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd) resulted in settlements [146] that expressly excluded FAS 109 amounts from current rates,[147] and the settlement for Delmarva, ACE and PEPCO included a rate moratorium preventing them from filing a further rate case until 2009.[148] While it is true that the Formula Rate proceedings in 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd) were resolved via settlements that expressly excluded FAS 109 amounts, we disagree with Exelon Companies' characterization of this exclusion as ''leaving the issue to be

[136] PEPCO August 13, 2016 Answer to DC People's Counsel Comments on Deficiency Letter Response at 5.

[137] *Id.* at 5 (citing *Ameren,* 163 FERC ¶ 61,163).

[138] *Id.* at 5–6 (citing *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate,* Order No. 849, FERC Stats. & Regs. ¶ 31,404 2018)).

[139] *Id.* at 7.

[140] *Id.* at 8.

[141] *E.g.,* ComEd Transmittal at n.8.

[142] Further, our action here is not intended to prejudge future action by the Commission in the Notice of Inquiry concerning the Tax Cuts and Jobs Act.

[143] November 16 Order, 161 FERC ¶ 61,163 at P 18.

[144] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519. This requirement is reflected in the Commission's regulations regarding tax normalization, which state that, if the public utility has not provided deferred taxes in the same amount that would have accrued had tax normalization been applied for transactions occurring any time before the test period, or if tax rate changes cause the accumulated provision for deferred income to become deficient or in excess, the public utility is required to compute the income tax component in its cost of service by making provision for any excess or deficiency in deferred taxes. 18 CFR 35.24(c) (2018).

[145] For ComEd, see Formula Rate Filing, Docket No. ER07–583–000, Appendix A, Attachment H–13, at line 40 (filed Mar. 1, 2007) (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added). For ACE, Delmarva and PEPCO, see Formula Rate Filing, Docket No. ER05–515–000, Appendix A, Attachments H–1, H–3 and H–9, at line 40 (filed Jan. 31, 2005) (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added).

[146] Order No. 144 states that ''[t]he rule, of course, leaves undisturbed the ability of the parties to reach a settlement on any of the issues covered by the rule.'' Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519.

[147] For ComEd, see Offer of Settlement, Docket No. ER07–583–000, (filed October 5, 2007) (Attachment H–13, at line 40 (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added) and Attachment 1—ADIT Worksheet, which states: ''Less FASB 109 Above if not separately removed''). For ACE, Delmarva and PEPCO, see Offer of Settlement, Docket No. ER05–515–000, (filed March 20, 2006) (Attachments H–1, H–3 and H–9, at line 40 (line item for ''ADIT *net of FASB* 106 and *109*'') (emphasis added) and Attachment 1—ADIT Worksheets, which state: ''Less FASB 109 Above if not separately removed'').

[148] *E.g.,* Delmarva Transmittal at 19.

addressed in some later proceeding.'' [149] Exelon Companies argue that interpreting the settlements to require them to eliminate or reduce their FAS 109 regulatory assets, instead of deferring recovery for the future, reads extraneous provisions into the settlements.[150] However, the settlements did not expressly reserve deferred income tax issues, as Exelon Companies contend; rather, the settlements were silent on this point. The Exelon Companies' settlements were thus not analogous to the *Stingray* settlement, which expressly provided a compromise level of adjustment to deferred tax accounts.[151] Accordingly, in finding that the Exelon Companies' 2005 and 2007 Formula Rate cases constituted the ''next rate case'' for purposes of Order No. 144, we are not disregarding the settlement, but rather interpreting the references to line items being ''net of'' or ''less'' FAS 109 amounts to mean that the Exelon Companies did not intend to pursue recovery of these amounts, whether at the time of the settlement or 10 years later. Moreover, because Exelon Companies did not request recovery of FAS 109 amounts in their initial filings of their Formula Rate cases, Exelon Companies could not have deferred recovery of FAS 109 amounts for the next rate case unless they expressly addressed this issue in the settlements of their Formula Rates.

113. In addition, Exelon Companies failed to comply with the directive in Order No. 144 to begin the process of adjusting its deferred tax deficiencies and excesses ''so that, within a reasonable period of time to be determined on a case-by-case basis, [it would] be operating under a full normalization policy.'' [152] According to Exelon Companies, even after its 2005 and 2007 Formula Rate proceedings were resolved by settlement, and after the rate moratorium established in the settlements for Delmarva, ACE and PEPCO ended in 2009, this is the first rate case since to address these issues.[153] Exelon Companies still do not explain why they waited an additional nine and a half years to make their February 23, 2018 filings. And Exelon Companies' apparent conclusion that they could hold these amounts in reserve indefinitely conflicts with the language of Order No. 144. Order No. 144 also established that rate applicants must ''begin the process of making up deficiencies in or eliminating excesses in their deferred tax account reserves so that, *within a reasonable period of time to be determined on a case-by-case basis,* they will be operating under a full normalization policy.'' [154] We find that the ''reasonable period of time'' language was intended to work in conjunction with the ''next rate case'' requirement, not as an alternative. In other words, requiring applicants to begin the process of making up deficiencies or returning excesses so as to be operating under a full normalization policy ''within a reasonable period of time'' does not negate the requirement that applicants must seek recovery in their next rate case. As explained above, Exelon Companies failed to file for recovery in its next rate case as required by Order No. 144 or reserve the issue for future consideration through settlement. Having failed to meet that requirement, they cannot now claim that their filing would provide for recovery within a ''reasonable period of time.''

114. We further disagree with Exelon Companies' assertion that Order No. 144 did not impose any requirement on utilities to make a rate filing. Exelon Companies suggest that by using the term ''rate applicant,'' defined in the regulation text as a utility ''that makes a rate filing,'' the Commission was signaling in Order No. 144 that utilities need only begin the process of recovering deficiencies or refunding excesses *after* they filed a rate case, without imposing any requirements as to when that rate case must be filed.[155] Exelon Companies' reading is inconsistent with the intent of the quoted sentence, which requires rate applicants to begin the process ''so that, within a reasonable period of time to be determined on a case-by-case basis, they will be operating under a full normalization policy.'' [156] If, as the sentence suggests, the goal was for utilities to begin operating under a full normalization policy within a reasonable time, interpreting this ''reasonable period of time'' requirement to be triggered only after a rate case is filed with no parameters as to when the rate case must be filed defeats this purpose. Additionally, while Exelon Companies stress that Order No. 144 did not actually direct utilities to make a rate filing,[157] the Commission directed utilities to ''begin the process'' of making up deficiencies or eliminating excesses, and 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 both from the prior flow through treatment of timing differences and from tax rate changes, which would require a rate filing.[158] In sum, while the language in Order No. 144 recognizes that the reasonable timing for implementing tax normalization may vary and thus provides some flexibility, Exelon Companies' reading would render the timing purely discretionary.

115. Exelon Companies further assert that subsequent cases interpreting Order No. 144 have established that recovery in a ''reasonable period of time'' means that deferred tax amounts should be flowed back ''over the remaining life of the property that generated the deferred tax reserve.'' [159] However, we disagree with Exelon Companies' position that the Commission's use of a ''reasonable period of time'' referred solely to the time period to amortize the tax deficiencies.[160] Rather, the Commission expressed the intention in Order No. 144 that utilities take the necessary steps to ensure that they would be operating under a full normalization policy within a reasonable period of time, that to be operating under full normalization, the method to be used should be a Commission-approved method, and that provision for such differences be included in the income tax component of cost of service. While the choice of normalization method is

[149] *E.g.,* ComEd Transmittal at 35.

[150] *Id.* at 35–36.

[151] *Id.* at 34–35.

[152] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[153] ComEd Transmittal at 39; Delmarva Transmittal at 34–35; ACE Transmittal at 33; PEPCO Transmittal at 35.

[154] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560 (emphasis added).

[155] ComEd Transmittal at 38; Delmarva Transmittal at 33; ACE Transmittal at 32; PEPCO Transmittal at 33.

[156] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[157] ComEd Transmittal at 37–38; Delmarva Transmittal at 33; ACE Transmittal at 32; PEPCO Transmittal at 33.

[158] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560.

[159] ComEd Transmittal at 39; Delmarva Transmittal at 34; ACE Transmittal at 32–33; PEPCO Transmittal at 34 (citing Opinion No. 345, 50 FERC at 62,148, and *Nat. Gas Pipeline of America,* 13 FERC ¶ 61,266).

[160] In the proceedings underlying Opinion No. 345, intervenors used the term ''reasonable period of time'' to question whether the speed at which deficiencies would be flowed back to customers using the Average Rate Assumption Method (ARA Method) would comply with the policy expressed in Order No. 144. *See* Opinion No. 345, 50 FERC at 62,148. The Commission found that it was reasonable to flow back the two percent of deferred taxes related to timing differences using the ARA Method (required under the Tax Reform Act of 1986 for the other amounts), because the ARA Method provided a reasonable way to flow back deferred amounts ''over the remaining life of the assets that generated the deferred taxes'' and because the impact on customers would be so minor. *Id.* at 62,149. The Commission did not comment on intervenors' characterization of the term ''reasonable period of time'' nor apply Order No. 144 in reaching this result.

certainly relevant to this objective,[161] so is the timely proposal of provisions to recover deficiencies and excesses of deferred income tax (including the proposed choice of normalization method) to be adjudicated in the companies' next rate case. In other words, requiring applicants to select normalization methods that will ensure a timely transition to full normalization would be meaningless if the applicants can defer filing those proposed methods over the course of several rate cases.

116. In the November 16 Order, the Commission held that ''[c]ontrary to BGE's assertions, . . . utilities do not have unfettered discretion to defer these [deferred] tax amounts on their books for decades without timely seeking regulatory approval to collect them.'' [162] Exelon Companies take umbrage to the suggestion that they are seeking to recover decades-old amounts.[163] As Exelon Companies assert, deferred income taxes necessarily reflect a timing difference in the recognition of current income tax effects on the tax return and recognition on the books in future periods. However, as Exelon Companies accede, these items were amortized and recovery of these items was included in rates through black box settlements through 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd), then expressly excluded by Exelon Companies until their February 23, 2018 filings, more than a decade later. In other words, our concern is not that deferred income taxes are, by definition, collected over a period of time, but that the Exelon Companies are now seeking to recover amounts that should have been recovered between 2005 or 2007 and 2018.

117. In the November 16 Order, the Commission cited *Stingray* [164] for the proposition that recording a deferred tax liability does not guarantee that the utility will be able to recover this amount, as express approval is needed from the Commission.[165] Exelon Companies state that the Commission recognized in *Stingray* that there could be remaining unamortized amounts that were properly recoverable in rates on an ongoing basis in the years after the settlement.[166] Exelon Companies claim that they similarly assumed that an amortized portion of the FAS 109 regulatory asset was recovered in rates prior to 2005 (for Delmarva, ACE and PEPCO) and 2007 (for ComEd), and has limited their filings to seeking recovery of remaining balances and new accruals as of 2005 and 2007 respectively.[167] As we recognized in *Stingray,* recovery of remaining unamortized balances of regulatory deferrals is permissible on an ongoing basis, provided that the utility properly addresses the manner of recovery. Exelon Companies present no arguments in their applications that have persuaded us that deferred income tax amounts were reserved for future collection.

2. Matching

118. As the Commission explained in Order No. 144 [168] and in the November 16 Order,[169] the primary rationale for tax normalization is matching the costs of plant (*i.e.,* tax benefits from depreciation expense) to the periods to which they are allocated in rates. To operate properly, ''tax normalization allocates the tax benefits of an expense to the same time periods that the expense itself is allocated.'' [170] The Commission found in Order No. 144 that the properly applied tax normalization method was more equitable than the flow-through method, which, through its inequitable allocation of tax costs over time, distorted the Commission's pricing policies.[171]

119. In the cases before us, Exelon Companies argue that, in the November 16 Order, the Commission ''suggested'' that BGE's filing violated the Commission's matching policy because it sought recovery of amounts long after the underlying assets have been retired or have stopped being depreciated.[172] They contend that, like BGE, they meet the matching test because the filings are tied to recovery over the remaining life of appropriately chosen assets.[173] They conclude there is no basis for concern that ''matching'' of costs and asset lives has somehow been violated.[174]

120. In the November 16 Order, the Commission made a finding that ''[b]ecause BGE did not address the tax deficiency in a reasonable time, its proposal no longer has the requisite matching of the amortization period with the relevant transmission assets.'' Thus, the Commission found that it was ''not appropriate for BGE to propose, at this late date, a mechanism to recover years of accumulated deferred tax liability amounts.'' [175]

The Commission found it troublesome to allow recovery of these amounts for plant that was either fully depreciated or retired by the time BGE submitted its filing.[176]

121. Exelon Companies argue that their instant proposals, and BGE's proposal in Docket No. ER17–528, are all consistent with the Commission's matching policy. Exelon Companies' arguments, however, mischaracterize the Commission's matching policy. The Commission's matching policy does not, as suggested, hinge on whether the regulatory assets are ''linked to assets that are still in service.'' Exelon Companies' basis for contending that their proposals do not violate matching principles is that their use of the industry standard PowerTax software verifies that the Flow-Through Items regulatory asset is linked to assets that are still in service.[177] This ignores, however, that assets often can and do remain in service after the amortization period has expired and the assets are fully depreciated. This was an important factor in the Commission's findings in the November 16 Order that Exelon Companies' arguments ignore.

122. For example, Exelon Companies propose to recover the Flow-Through Items over the remaining life of the assets in place at the time they implemented their Formula Rates (*i.e.,* in 2005 or 2007). However, they have failed to show that these assets have not been fully depreciated and that they are still in service. The correct time period for recovery of the tax benefits from the depreciation expenses for these assets was over the remaining life of the assets in place at the time the switch to full normalization occurred (*i.e.,* in the 1970s). The Commission has never approved such a re-amortization period as proposed by the Exelon Companies for the regulatory assets at issue here, and nothing presented here convinces

[161] *See* Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,560 (''Since the appropriateness of any method to accomplish the objective of full normalization at current tax rates has not been analyzed by the Commission on a generic basis, the Commission is, at this time, requiring resolution of this problem on a case-by-case basis.'').

[162] November 16 Order, 161 FERC ¶ 61,163 at P 19.

[163] ComEd Transmittal at 34–35; Delmarva Transmittal at 30; ACE Transmittal at 28–29; PEPCO Transmittal at 30.

[164] *Stingray,* 50 FERC ¶ 61,159.

[165] November 16 Order, 161 FERC ¶ 61,163 at P 19.

[166] ComEd Transmittal at 34–35; Delmarva Transmittal at 30; ACE Transmittal at 29–30; and PEPCO Transmittal at 30.

[167] *Id.*

[168] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522.

[169] November 16 Order, 161 FERC ¶ 61,163 at n.30.

[170] Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522.

[171] *Id.*

[172] ComEd Transmittal at 40 & n.85 (citing November 16 Order, 161 FERC Stats. & Regs. ¶ 61,163 at P 20).

[173] *Id.* at 40.

[174] *Id.* at 41.

[175] November 16 Order, 161 FERC ¶ 61,163 at P 21.

[176] *Id.* P 20.

[177] *Id.*

us that this would be appropriate. Further, with regard to AFUDC Equity, the Exelon Companies propose to develop new *South Georgia* tax provisions for each year's new AFUDC Equity origination and adjust the amortization for any retirements or changes in depreciation rates. However, *South Georgia* catch-up provisions are not supposed to change unless the tax rates change.

123. Exelon Companies also propose to recover accumulated amounts associated with AFUDC Equity that has already been depreciated.[178] However, to ensure consistency with the matching principle, only the additional taxes associated with the relevant year's depreciation of AFUDC Equity are eligible for recovery.[179]

3. Prior Precedent

124. We find unpersuasive the arguments by Exelon Companies that recovery of the amounts from 2005 or 2007 and going forward is consistent with Order No. 144, FAS 109 and the 1993 FAS 109 Guidance Letter, the 2014 Staff Guidance on Formula Rate Updates, and the orders in *PPL, Duquesne, VEPCO,* and *ITC.*

125. In support of their argument, Exelon Companies briefly discuss each of these cases. They state that, in *PPL,* four years had elapsed since PPL had implemented its formula rate, and the entire regulatory asset amount, as of the date the formula rate was implemented, was authorized for recovery. In *Duquesne,* they state that seven years had elapsed since its formula rate was filed, and the utility was similarly authorized to recover the amount as of the date of its formula rate. Regarding *ITC* and *VEPCO,* Exelon Companies state that these cases similarly involved a formulaic mechanism for recovery of an amortized amount, each year, of transmission-related FAS 109 amounts up through the date in which each year's rates are calculated. Unlike *PPL* and *Duquesne,* Exelon Companies state that the adjustments in *ITC* and *VEPCO* also included new originating FAS 109 amounts that had been recorded after their formula rates were put in place. Taken together, Exelon Companies argue that these proceedings make it clear that formulaic recovery of FAS 109 amounts from prior to, and after, implementation of the formula rate is appropriate, which, Exelon Companies argue, is exactly what they propose here.

126. In addition, while conceding that the *PPL, Duquesne,* and *VEPCO* orders were delegated letter orders, Exelon Companies point out that *ITC* was not a delegated letter order and argues the delegated orders should be given weight as they are consistent with *ITC.*[180] These same arguments were also raised on rehearing in Docket No. ER17–528–002. Consistent with the November 16 Order and rehearing order being issued concurrently in that proceeding, we disagree with the Exelon Companies for the reasons stated in the November 16 Order, the rehearing order and reasons discussed below. As we stated in the November 16 Order, the records in the *ITC* and *VEPCO* proceedings ''do not reflect that either VEPCO or ITC requested a *South Georgia* catch-up provision to recover prior period accumulated amounts related to AFUDC Equity.'' [181]

127. First, we note that three of the orders relied on by Exelon Companies are delegated letter orders, which do not establish binding precedent on the Commission.[182] Nor are we convinced that the Commission's finding in *ITC* provides support for Exelon Companies' proposals. While *ITC* did involve a request to recover AFUDC Equity deficiencies, the record in this case does not support BGE's claim that the recovery granted in this proceeding included deferred amounts. *ITC* did not directly address this issue, merely finding that ''[t]he proposed Attachment O revisions and related depreciation rates provide for a more accurate annual revenue requirement for the ITC Companies.'' [183]

128. Exelon Companies also contend that, while *PPL, Duquesne, ITC* and *VEPCO* did not expressly address AFUDC Equity, the catchup provisions in these cases were calculated based on their entire FAS 109 balances and recovery provisions would have included the cumulative AFUDC Equity amounts among other things. The implementation of FAS 109 standards for regulatory purposes should be revenue neutral because the regulatory assets and regulatory liabilities are offsetting book keeping entries. In *Idaho Power Co.,*[184] the Commission summarily removed the FAS 109 amounts from rate base because the proposed amounts in rate base were not revenue neutral and did not result in equal and offsetting changes to total assets and liabilities. We also noted that accumulated FAS 109 amounts only relate to future cash flows, which are not appropriately included in rate base. However, to the extent that *PPL* and *Duquesne* did accept offsetting amounts of FAS 109 regulatory assets and liabilities in *South Georgia* calculations for transitions from the flow-through practices of the Pennsylvania Public Utility Commission, they should not have affected the calculation and would not have included amounts for prior AFUDC Equity amortization. In contrast, Exelon Companies' proposed *South Georgia* amendments—which are not revenue neutral—are amortized over the average remaining life of the plant in service, as calculated using their PowerTax and PowerPlant software, as of the effective date of their Formula Rate, and include in the catch-up provision amounts for AFUDC Equity amortization for prior period depreciation since the inception of their formula rates. By contrast, Commission accounting policies and precedents provide that FAS 109 amortizations are to be collected concurrently with the collection of the associated depreciation expense in rates.

129. Finally, Exelon Companies argue that recovery of the past expenses would not present a problem of retroactive ratemaking because, on appeal of Order No. 144, the court held that a provision for recovery of deficient deferred taxes relating to prior years is not retroactive.[185] In this regard Exelon Companies argue that, because customers' rates in past years did not reflect these expenses, if the FAS 109 amounts flow through rates, Exelon Companies proposals will place customers in exactly the same position as if they had included a formulaic rate recovery of FAS 109 amounts in past rates.[186] As discussed above, while we recognize that deficient deferred taxes, by their nature, will be recovered over a period of years, our concern is that the

[178] In response to the Deficiency Letter, Exelon Companies explain that the requisite formulaic data inputs to determine the taxes associated with the current year's depreciation expense (*i.e.,* gross accumulated AFUDC Equity in transmission plant, depreciation rates and applicable income tax rates) do exist, but the proposed tax adjustments for the tax effects associated with AFUDC Equity do not match their current year's depreciation expense.

[179] November 16 Order, 161 FERC ¶ 61,163 at P 20.

[180] *See, e.g.,* ComEd Transmittal at 42–43.

[181] November 16 Order, 161 FERC ¶ 61,163 at P 22.

[182] We will not repeat our discussion from our order on rehearing in BGE (being issued concurrently with this order) citing numerous cases upholding the long-standing principle that delegated letter orders do not establish binding Commission precedent. Nor will we repeat here the basis for our conclusion that, even if we assumed arguendo that *PPL, Duquesne,* and *VEPCO* constitute binding precedent, they would not require the Commission to accept BGE's proposal. However, that same logic applies equally here.

[183] *ITC,* 153 FERC ¶ 61,374.

[184] 115 FERC ¶ 61,281, at P 27 (2006) (*Idaho Power*).

[185] ComEd Transmittal at 44 & n.98 (citing *Public Systems,* 709 F.2d at 85).

[186] *Id.* at 44.

Exelon Companies are seeking to recover amounts that should have been recovered in prior periods.

4. Guidance

130. We note that our rejection of Exelon Companies' filings for the reasons stated herein does not prohibit them from recovering all prior period tax deficiencies and AFUDC Equity. To the extent that public utilities have undepreciated AFUDC Equity, even if the related assets were placed into service in prior years, they may file to recover the tax effect on an ongoing basis if properly supported under FPA section 205. In addition, we note that several of the Exelon Companies experienced recent tax increases at the state level (*e.g.,* increases in the Illinois state income tax rate occurred in 2011 and 2015, and increases in the Maryland state corporate income tax rate occurred in 2001 and 2008), and a portion of the deficient ADIT may still be eligible for recovery, given the lengthy amortization period associated with excess or deficient ADIT.[187] Should Exelon Companies seek recovery of such amounts, they should fully support these amounts by providing detailed workpapers, as well as provide for the reduction of the associated ADIT liabilities from rate base.

131. Exelon Companies may submit, for example, new FPA section 205 filings with a mechanism to refund or recover, as appropriate, deferred income tax excesses and deficiencies related to the recent Tax Cuts and Jobs Act and any future income tax changes, any new originations of past income tax changes, and taxes on AFUDC Equity associated with current and future years' depreciation expense. Should Exelon Companies seek recovery of ADIT amounts in new FPA section 205 filings, they may obtain such recovery or refund of excess or deficient ADIT to be calculated as of the effective date in the new filings.

5. Limited Compliance Period

132. We take this opportunity to provide guidance on what would constitute a ''reasonable period of time'' to file for recovery under Order No. 144. Consistent with the requirement in Order No. 144 that FAS 109 recovery for ADIT excesses and deficiencies should at least be addressed in the ''next rate case,'' we announce a limited period in which public utilities may file to recover past ADIT if the public utility did not file a rate case subsequent to the Commission's issuance of Order No. 144 or if the public utility properly preserved [188] its right to recover past ADIT through settlement terms.[189] If one of these two conditions are met, we will permit a public utility to make a FPA section 205 filing to revise its formula rate provisions to allow for the refund or recovery of all previously incurred income tax amounts as a result of full tax normalization within one year after this order is published in the **Federal Register**, i.e. this one-year time period continues to constitute ''a reasonable period of time'' under Order No. 144 to file for recovery.

133. Regarding the recovery of ADIT amounts incurred in the future after the expiration of this limited compliance period, we also clarify that it is the Commission's expectation that public utilities will make FPA section 205 filings to recover such ADIT amounts within two years after they are incurred.

The Commission orders:

The revisions to Exelon Companies' Formula Rates are hereby rejected, as discussed in the body of this order.

By the Commission.

Issued: September 7, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–19994 Filed 9–13–18; 8:45 am]

BILLING CODE 6717–01–P

[187] The guidance that we are providing does not address Flow Through Items. While Exelon Companies have not specified the date on which they adopted full normalization, we do not expect that, if Exelon Companies had begun amortization as of the date on which full normalization occurred, ADIT associated with the adoption of full normalization remains to be recovered.

[188] By ''properly preserved,'' we mean that the settlement of the ''next rate case'' included terms that expressly reserved the right of the utility to file to recover past ADIT in a future rate case.

[189] While we find Exelon Companies did not expressly reserve recovery of deferred income tax amounts for future consideration in their settlements, we note that Order No. 144 permits a company to reserve in a settlement such issues for future consideration. Order No. 144 states that ''[t]he rule, of course, leaves undisturbed the ability of the parties to reach a settlement on any of the issues covered by the rule.'' Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,519. Reading this sentence in the context of the rule, parties may reach a settlement on any of the issues concerning the ratemaking method for deferred income tax recovery, and if the Commission approves the settlement, it complies with Order No. 144.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–46–001]

Notice of Applications; Adelphia Gateway, LLC

Take notice that on August 31, 2018, Adelphia Gateway, LLC (Adelphia), 1415 Wyckoff Road Wall, New Jersey 07719, filed an amendment to its January 12, 2018 application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's rules and regulations requesting certificate authority to reflect an increase in its design capacity on Zone North A from 175,000 dekatherms per day (Dth/d) to 250,000 Dth/d. In light of the increased Zone North A design capacity, Adelphia proposes to modify its initial transportation rates in the *pro forma* FERC Gas Tariff. Adelphia also proposes to amend the Usage-2 Rate under Rate Schedule FTS to reflect the 100 percent load factor rates, all as more fully described in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to William P. Scharfenberg, Assistant General Counsel, Adelphia Gateway, LLC, 1415 Wyckoff Road, Wall, NJ 07719, or call (732) 938–1134, or email: *WScharfenberg@NJResources.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will