

178 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

New York Independent System Operator, Inc.	Docket Nos.	ER20-2051-000
Niagara Mohawk Power Corporation		ER20-2051-001
		ER20-2051-002

ORDER ON COMPLIANCE

(Issued March 31, 2022)

1. On June 15, 2020, as amended on July 24, 2020 and on July 1, 2021, the New York Independent System Operator, Inc. (NYISO), on behalf of Niagara Mohawk Power Corporation (Niagara Mohawk), submitted proposed revisions to Niagara Mohawk's Transmission Service Charge formula rate (Formula Rate) as contained in Attachment H of the NYISO Open Access Transmission Tariff (Tariff) (June 15, 2020 Compliance Filing)¹ to comply with the requirements of Order No. 864—a final rule addressing excess or deficient accumulated deferred income taxes (ADIT) resulting from tax rate changes.² As discussed below, we find that Niagara Mohawk's proposed revisions partially comply with the requirements of Order No. 864. Accordingly, we accept Niagara Mohawk's proposed Tariff revisions, effective January 27, 2020, and direct Niagara Mohawk to submit a further compliance filing within 60 days of the date of this order.

¹ See NYISO, NYISO Tariffs, OATT, § 14 (Attachment H), § 14.1 (TSC) (27.0.0); *id.* §§ 14.2-14.2.1 (Attachment 1 to Attachment H) (19.0.0); *see also id.* § 14 (Attachment H); § 14.1 (TSC) (28.0.0); §§ 14.2-14.2.1 (Attachment 1 to Attachment H) (20.0.0).

² *Public Utility Transmission Rate Changes to Address Accumulated Deferred Income Taxes*, Order No. 864, 169 FERC ¶ 61,139 (2019), *order on reh'g and clarification*, Order No. 864-A, 171 FERC ¶ 61,033 (2020).

I. Background

A. ADIT

2. ADIT arises from timing differences between the method of computing taxable income for reporting to the Internal Revenue Service (IRS) and the method of computing income for regulatory accounting and ratemaking purposes. As a result of the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act) reducing the federal corporate income tax rate from 35% to 21% a portion of an ADIT liability that public utilities collected from customers will no longer be due to the IRS and is considered excess ADIT.

B. Order No. 864

3. In Order No. 864, the Commission focused on ensuring that transmission formula rates properly address excess and deficient ADIT resulting from the Tax Cuts and Jobs Act and any future tax rate changes consistent with the Commission's regulations regarding tax normalization³ and in a transparent manner.⁴ The Commission required public utility transmission providers with transmission formula rates under an Open Access Transmission Tariff, a transmission owner tariff, or a rate schedule to revise their transmission formula rates to address excess and deficient ADIT by incorporating the following three major revisions: (1) a mechanism to deduct any excess ADIT from or add any deficient ADIT to their rate bases (Rate Base Adjustment Mechanism); (2) a mechanism to decrease or increase their income tax allowances by any amortized excess or deficient ADIT, respectively (Income Tax Allowance Adjustment Mechanism); and (3) a new permanent ADIT worksheet that will annually track information related to excess or deficient ADIT (ADIT Worksheet).⁵

4. The Commission stated that it will evaluate a public utility's proposed revisions on a case-by-case basis.⁶ Of note, the Commission stated that it expects public utilities with transmission formula rates to make their proposed revisions effective January 27, 2020.⁷ In addition, the Commission required that such public utilities capture the full regulatory

³ 18 C.F.R. § 35.24 (2021).

⁴ Order No. 864, 169 FERC ¶ 61,139 at P 113.

⁵ *Id.* PP 3-5.

⁶ *Id.* PP 30, 43, and 66. The Commission also allowed public utilities to demonstrate that their existing formula rates and ADIT-related mechanisms, including those established by a Commission-approved settlement, meet the requirements of Order No. 864. *Id.* P 74; *see also id.* P 101.

⁷ *Id.* P 100.

liability for excess ADIT resulting from the Tax Cuts and Jobs Act in rates, beginning on the effective date of any proposed tariff provision.⁸ In other words, the Commission required that the full amount of excess ADIT resulting from the Tax Cuts and Jobs Act must be returned to transmission formula rate customers.⁹

5. Further, the Commission found that the accounting guidance regarding excess and deficient ADIT that the Commission previously adopted in Docket No. AI93-5-000 remains applicable and the Commission did not propose any changes to that guidance.¹⁰

II. Niagara Mohawk's Compliance Filing

6. Niagara Mohawk states that, in order to satisfy the Rate Base Adjustment Mechanism requirements of Order No. 864, it proposes revisions to Schedules 6 and 7 in section 14.2.1 of its Formula Rate to update an existing tariff provision for the transmission regulatory assets and liabilities associated with excess or deficient ADIT as a result of changes in federal, state, or local tax rates.¹¹ Niagara Mohawk states that, in order to satisfy the Income Tax Allowance Adjustment Mechanism requirements of Order No. 864, it proposes revisions to Schedules 1 and 9 in section 14.2.1 of its Formula Rate to provide for the amortization of excess or deficient ADIT as a result of changes in federal, state, or local tax rates.¹² Niagara Mohawk states that it proposes to add a new permanent worksheet in section 14.2.1 of the Formula Rate (ADIT Worksheet) that “will annually track information related to excess and deficient ADIT associated with changes in federal, state or local tax rates.”¹³ Niagara Mohawk also proposes ministerial revisions to section 14.1.9.1.46 of its Formula Rate.

7. Niagara Mohawk requests an effective date of January 27, 2020 for its proposed revisions.¹⁴

⁸ *Id.* P 45.

⁹ *Id.*

¹⁰ *Id.* P 31 (citing *Accounting for Income Taxes*, Docket No. AI93-5-000 (Apr. 23, 1993), <https://www.ferc.gov/enforcement-legal/enforcement/accounting-matters/ai93-5-000>).

¹¹ June 15, 2020 Compliance Filing at 3.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ *Id.* at 6.

III. Notice and Responsive Pleadings

8. Notice of Niagara Mohawk's compliance filing was published in the *Federal Register*, 85 Fed. Reg. 37,090 (June 19, 2020), with interventions and protests due on or before July 6, 2020. The Municipal Electric Utilities Association of New York State filed a timely motion to intervene. The New York Association of Public Power (NYAPP) filed a timely motion to intervene and protest (NYAPP Protest).

9. On July 24, 2020, Niagara Mohawk filed an amendment to its June 15, 2020 Compliance Filing in Docket No. ER20-2051-001 (Amended Filing).

10. Notice of Niagara Mohawk's Amended Filing was published in the *Federal Register*, 85 Fed. Reg. 45,874 (July 30, 2020), with interventions and protests due on or before August 14, 2020. None was filed.

11. On May 4, 2021, Commission staff issued a letter informing Niagara Mohawk that its compliance filing was deficient and requested additional information (May 4 Deficiency Letter). On May 28, 2021, Niagara Mohawk submitted a request for extension of time in responding to the May 4 Deficiency Letter. On June 3, 2021, the Commission issued a notice granting an extension of time. On July 1, 2021, Niagara Mohawk submitted a response to the May 4 Deficiency Letter in Docket No. ER20-2051-002 (July 1 Deficiency Response).

12. Notice of Niagara Mohawk's July 1 Deficiency Response was published in the *Federal Register*, 86 Fed. Reg. 36,129 (July 8, 2021), with interventions and protests due on or before July 22, 2021. None was filed.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2021), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

14. As discussed below, we find that Niagara Mohawk's proposed revisions partially comply with the requirements of Order No. 864. Accordingly, we accept Niagara Mohawk's proposed revisions, effective January 27, 2020, and direct Niagara Mohawk to submit a further compliance filing within 60 days of the date of this order.

1. Rate Base Adjustment Mechanism

15. The Rate Base Adjustment Mechanism is a mechanism used by public utilities to deduct any excess ADIT from or add any deficient ADIT to their rate bases.¹⁵ The Commission stated that this mechanism ensures that all public utilities with transmission formula rates offset their rate bases by any amortized excess and deficient ADIT, thus maintaining rate base neutrality.¹⁶

16. The Commission required that the Rate Base Adjustment Mechanism apply to any future tax rate changes that give rise to excess or deficient ADIT, including changes to state and local tax rates.¹⁷ The Commission stated that it will evaluate proposed Rate Base Adjustment Mechanisms on a case-by-case basis. The Commission also clarified that public utilities must clearly demonstrate in their compliance filings how their proposed mechanisms adjust rate base for excess and deficient ADIT through their transmission formula rates.¹⁸

a. Niagara Mohawk's Compliance Filing

17. Niagara Mohawk proposes revisions to lines 8-10 of Schedule 7 in section 14.2.1 of its Formula Rate to provide increased transparency for the transmission regulatory assets and liabilities associated with excess or deficient ADIT as a result of changes in federal, state, or local tax rates. Niagara Mohawk proposes corresponding changes to lines 5, 6, and 21 of Schedule 6 in section 14.2.1 of the Formula Rate. Niagara Mohawk states that these revisions satisfy the Rate Base Adjustment Mechanism requirements of Order No. 864.¹⁹

b. Deficiency Response

18. The May 4 Deficiency Letter asked Niagara Mohawk to explain whether the proposed revisions in line 10 contain any FAS 109 items other than excess and deficient ADIT. In response, Niagara Mohawk states that line 10 was meant to include FAS 109 items other than excess and deficient ADIT. Niagara Mohawk provides further revisions to Schedule 7 to separately identify FAS 109 items from excess and deficient ADIT. Additionally, Niagara Mohawk includes additional references in Schedule 7 to make

¹⁵ Order No. 864, 169 FERC ¶ 61,139 at P 28.

¹⁶ *Id.*

¹⁷ *Id.* P 29.

¹⁸ *Id.* P 30.

¹⁹ June 15, 2020 Compliance Filing at 3.

clear that both FAS 109 items and excess and deficient ADIT are sourced from its ADIT Worksheet in Schedule 14.²⁰

c. Commission Determination

19. We find that Niagara Mohawk's Rate Base Adjustment Mechanism partially complies with the requirements of Order No. 864. We find that the proposed Rate Base Adjustment Mechanism may be applied to any future tax rate changes that give rise to excess or deficient ADIT, including changes to state and local tax rates. We further find that the Rate Base Adjustment Mechanism allows Niagara Mohawk to deduct all excess ADIT or add all deficient ADIT from rate base, thus preserving rate base neutrality for transmission formula rate customers. However, it appears that the inputs in lines 8-10 of Schedule 7 are sourced from excess and deficient ADIT amounts in the ADIT Worksheet in Schedule 14 (i.e., Schedule 14, line 2, column Q) that already include gross-up. Niagara Mohawk's Formula Rate indicates that its rate base is then grossed-up as part of Niagara Mohawk's cost of capital calculation in Schedule 8 (i.e., resulting in a double gross-up).²¹ In the compliance filing ordered below, we direct Niagara Mohawk to explain whether its Formula Rate computes a double gross-up on excess and deficient ADIT in rate base. If so, we direct Niagara Mohawk to revise its Formula Rate to remove the double gross-up of excess and deficient ADIT.

2. Income Tax Allowance Adjustment Mechanism

20. The Income Tax Allowance Adjustment Mechanism is a mechanism used by public utilities to decrease or increase their income tax components of their formula rates by any amortized excess or deficient ADIT, respectively. This mechanism ensures that public utilities compute the income tax components in their costs of service by making provisions for any excess or deficient ADIT following changes in tax rates.²²

21. In Order No. 864, the Commission required that the Income Tax Allowance Adjustment Mechanism apply to any future tax rate changes that give rise to excess or deficient ADIT, including changes to state and local tax rates. The Commission stated

²⁰ July 1 Deficiency Response at 2.

²¹ Double gross-up could arise if gross-up on deficient or excess ADIT included in Account 182.3 or Account 254 is included in a given year's amortization and then subsequently grossed up as part of the Income Tax Allowance Adjustment Mechanism embedded in a formula rate's income tax allowance calculation.

²² Order No. 864, 169 FERC ¶ 61,139 at P 42.

that it will evaluate proposed Income Tax Allowance Adjustment Mechanisms on a case-by-case basis.²³

a. Niagara Mohawk's Compliance Filing

22. Niagara Mohawk proposes to revise Schedule 9 of its Formula Rate to provide for amortization of excess or deficient ADIT as a result of changes in federal, state, or local tax rates. Specifically, Niagara Mohawk explains that line 46 of Schedule 9 reflects the "Amortization of (Excess)/Deficient ADIT" and notes that the definition column states that "Transmission related Amortization of Regulatory Liabilities shall equal the product of the electric Amortization of Regulatory Assets and Liabilities multiplied by the Gross Transmission Plant Allocation Factor."²⁴ Niagara Mohawk further states that it proposes corresponding changes to lines 5 and 17 of Schedule 7 in section 14.2.1 of the Formula Rate. Niagara Mohawk notes that the definition of Amortization of Regulatory Assets and Liabilities has been added to section 14.1.9.1.46 to clarify that the Amortization of Regulatory Assets and Liabilities "shall equal credits and expenses as recorded in FERC account 411 or 410 solely related to FAS 109 balances associated with changes in federal, state or local tax rates and other FERC approved amortization of FAS 109 assets or liabilities." Niagara Mohawk states that these revisions satisfy the Income Tax Allowance Adjustment Mechanism requirements of Order No. 864.²⁵

b. Deficiency Response

23. The May 4 Deficiency Letter noted that the input reference for line 46 of Schedule 9 refers to Schedule 14, line 5, column K, which contains only excess and deficient ADIT for tax rate changes, and asked Niagara Mohawk to explain whether line 46 includes FAS 109 amounts other than excess and deficient ADIT resulting from tax rate changes. In response, Niagara Mohawk explains that it has revised line 46 of Schedule 9 to make clear that the amortization of excess/deficient ADIT on that line is transmission-specific. Niagara Mohawk states that "[t]he recovery or refund of any FAS 109 amounts other than excess and deficient ADIT is conditioned on Commission approval of a Federal Power Act . . . 205 filing" and explains that if Niagara Mohawk makes such a filing, the definition of Amortization of Regulatory Assets and Liabilities "will likely need to be amended to include the amortization of the approved amounts."²⁶ Additionally, Niagara Mohawk proposes to revise section 14.1.9.1.46 of its Formula Rate to clarify that

²³ *Id.* P 43.

²⁴ June 15, 2020 Compliance Filing at 3-4.

²⁵ *Id.*

²⁶ July 1 Deficiency Response at 2-3.

Amortization of Regulatory Assets and Liabilities is specific to excess/deficient ADIT and does not include other FAS 109 items.²⁷

c. Commission Determination

24. We find that Niagara Mohawk's proposed revisions comply with Order No. 864's Income Tax Allowance Adjustment Mechanism requirements. Niagara Mohawk's proposed Income Tax Allowance Adjustment Mechanism allows Niagara Mohawk to decrease or increase the income tax components of its Formula Rate by any amortized excess or deficient ADIT, respectively, and may be applied to any future tax rate changes that give rise to excess or deficient ADIT, including changes to state and local tax rates.

3. ADIT Worksheet

25. The ADIT Worksheet is a new permanent worksheet that annually tracks information related to excess and deficient ADIT.²⁸ The Commission found that the ADIT Worksheet will provide transparency for excess and deficient ADIT resulting from the Tax Cuts and Jobs Act and future local, state, and federal tax rate changes that are included in transmission formula rates.²⁹ The Commission stated that it will evaluate the proposed ADIT Worksheets on a case-by-case basis.³⁰

26. The Commission required that, at a minimum, the ADIT Worksheet must contain five specific categories of information, which are discussed below.³¹ In addition, the Commission stated that it expects public utilities to identify each specific source of the excess and deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each classification or source. The Commission found that such information will provide enough detail to verify excess and deficient ADIT resulting from the Tax Cuts and Jobs Act and future tax rate changes.³² Further, the Commission acknowledged that a public utility or its transmission formula rate might have some unique attribute that requires additional categories of information to provide interested parties and the Commission with a complete understanding of that public utility's treatment of excess and deficient ADIT.³³

²⁷ *Id.* at 3.

²⁸ Order No. 864, 169 FERC ¶ 61,139 at P 62.

²⁹ *Id.* PP 62, 63, 69, and 71.

³⁰ *Id.* P 66.

³¹ *Id.* PP 62, 66.

³² *Id.* P 65.

a. Category 1

27. The first category of information is how any ADIT accounts were remeasured and the excess or deficient ADIT contained therein.³⁴

28. As the Commission explained in *Accounting for Income Taxes*, a public utility shall adjust its ADIT liabilities and assets for the effect of the change in tax laws or rates in the period that the change is enacted. The adjustments shall be recorded in Accounts 190 (ADIT), 281 (ADIT-Accelerated Amortization Property), 282 (ADIT-Other Property), and 283 (ADIT-Other).³⁵

i. Niagara Mohawk's Compliance Filing

29. Niagara Mohawk proposes to include its ADIT Worksheet as Attachment 1 to Schedule 14 of its Formula Rate. Niagara Mohawk states that its ADIT Worksheet shows columns for FERC Accounts, their beginning and ending balances, as well as the amount amortized. Niagara Mohawk's populated ADIT Worksheet shows FERC Accounts 190, 282, and 283.³⁶

ii. Deficiency Response

30. The May 4 Deficiency Letter asked Niagara Mohawk to explain how its ADIT accounts were remeasured, as well as the pre- and post-Tax Cuts and Jobs Act ADIT balances for each account. In its Deficiency Response, Niagara Mohawk proposes to amend its ADIT Worksheet to add a new Schedule 14(a) showing the calculations used to remeasure ADIT account balances (Remeasurement Support). Niagara Mohawk states that the revised populated ADIT Worksheet it provides as Attachment D in its Deficiency Response includes the calculations for remeasurement resulting from the Tax Cuts and Jobs Act.³⁷

iii. Commission Determination

31. We find that Niagara Mohawk's ADIT Worksheet partially complies with Order No. 864 ADIT Worksheet category 1 requirements. We find that the proposed

³³ *Id.* P 66.

³⁴ *Id.* PP 52, 62.

³⁵ *Accounting for Income Taxes* at 8.

³⁶ *See* June 15, 2020 Compliance Filing, attach. C.

³⁷ July 1 Deficiency Response at 3. *See* July 1 Deficiency Response, attach. D.

Schedule 14(a) of Niagara Mohawk's Formula Rate provides the pre- and post-tax rate change ADIT account balances and the resulting excess and deficient ADIT. As such, Niagara Mohawk's ADIT Worksheet satisfies the requirement of Order No. 864 to demonstrate how any ADIT accounts were remeasured and the excess or deficient ADIT contained in each account before and after remeasurement. Furthermore, the calculation steps are shown clearly enough for an interested party to be able to verify that the calculations were done correctly.

32. However, we find that Niagara Mohawk's populated worksheets in Schedule 14 and 14(a) include combined amounts from multiple originating accounts. For example, cell D19 of Schedule 14 in Niagara Mohawk's populated ADIT Worksheet lists Accounts 190, 282, and 283. We also note that this issue is present in the populated remeasurement support worksheet that Niagara Mohawk proposed as Schedule 14(a). Therefore, to provide transparency as to the source of excess or deficient ADIT in Schedule 14 as well as each remeasured amount in Schedule 14(a), in the compliance filing ordered below we direct Niagara Mohawk to revise both schedules to separately specify each originating account.

b. Category 2

33. The second category of information is the accounting for any excess or deficient amounts in Accounts 254 (Other Regulatory Liabilities) and 182.3 (Other Regulatory Assets), respectively.³⁸

34. As the Commission explained in *Accounting for Income Taxes*, if as a result of action by a regulator, it is probable that the increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, then an asset or liability shall be recognized in Accounts 182.3 or 254, as appropriate. That asset or liability is also a temporary difference for which a deferred tax asset or liability shall be recorded in Accounts 190 or 283, as appropriate.³⁹

i. Niagara Mohawk's Compliance Filing

35. Niagara Mohawk states that its proposed ADIT Worksheet satisfies the category 2 requirements of Order No. 864 by accounting for any deficient or excess ADIT amounts in Accounts 182.3 (Other Regulatory Assets) and 254 (Other Regulatory Liabilities), respectively.⁴⁰

³⁸ Order No. 864, 169 FERC ¶ 61,139 at PP 52, 62.

³⁹ *Accounting for Income Taxes* at 8.

⁴⁰ June 15, 2020 Compliance Filing at 4.

ii. Deficiency Response

36. The May 4 Deficiency Letter asked Niagara Mohawk to explain how Schedule 14 shows the accounts to which excess and deficient ADIT are recorded. In its Deficiency Response, Niagara Mohawk proposes to revise Schedule 14 so that lines 6 and 7 indicate that deficient ADIT is amortized to Account 182.3 and excess ADIT is amortized to Account 254, respectively.⁴¹

iii. Commission Determination

37. We find that Niagara Mohawk's ADIT Worksheet complies with the Order No. 864 ADIT Worksheet category 2 requirement. Within its ADIT Worksheet, Niagara Mohawk identifies both beginning and ending balances of excess and deficient ADIT in Accounts 254 and 182.3, respectively, inclusive of gross-up.⁴² Additionally, Niagara Mohawk includes references for lines 6 and 7 to FERC Form No. 1, pages 232 and 278, respectively, which correspond to the appropriate accounts (i.e., Accounts 182.3 and 254).

c. Category 3

38. The third category of information is whether the excess or deficient ADIT is protected or unprotected.⁴³ As further discussed below, protected ADIT is subject to the Tax Cuts and Jobs Act's normalization requirements, whereas unprotected ADIT is not.

i. Niagara Mohawk's Compliance Filing

39. Niagara Mohawk's proposed ADIT Worksheet shows separate column headers for "Protected" and "Unprotected" ADIT.⁴⁴

⁴¹ July 1 Deficiency Response at 3. *See* July 1 Deficiency Response, attach. D.

⁴² We clarify that Order No. 864 did not change the Commission's guidance in *Accounting for Income Taxes*, which states that public utilities are required to record deficient ADIT to Account 182.3 and excess ADIT to Account 254. Order No. 864, 169 FERC ¶ 61,139 at P 31.

⁴³ Order No. 864, 169 FERC ¶ 61,139 at PP 52, 62.

⁴⁴ *See* June 15, 2020 Compliance Filing, attach. C.

ii. Commission Determination

40. We find that Niagara Mohawk's ADIT Worksheet complies with the Order No. 864 ADIT Worksheet category 3 requirement because the proposed ADIT Worksheet appropriately identifies whether excess or deficient ADIT is protected or unprotected.

d. Category 4

41. The fourth category of information is the accounts to which the excess or deficient ADIT are amortized.⁴⁵

42. Under the Commission's Uniform System of Accounts, public utilities should record the amortization of excess and deficient ADIT recorded in Accounts 254 and 182.3, respectively, by recording offsetting entries to Account 411.1 (Provision for Deferred Income Taxes – Credit, Utility Operating Income) or Account 410.1 (Provision for Deferred Income Taxes, Utility Operating Income), as appropriate.⁴⁶

i. Niagara Mohawk's Compliance Filing

43. Note G to Niagara Mohawk's ADIT Worksheet states "(Excess)/deficient ADIT to be amortized to FERC Account 411 or 410."⁴⁷

ii. Deficiency Response

44. The May 4 Deficiency Letter asked Niagara Mohawk to clarify whether amortized excess ADIT is recorded to Account 411.1 and amortized deficient ADIT is recorded to Account 410.1. In response, Niagara Mohawk states that it has revised Note G to specify that "[e]xcess ADIT amounts will be amortized to subaccount 411.1, and deficient ADIT amounts will be amortized to subaccount 410.1."⁴⁸

iii. Commission Determination

45. We find that Niagara Mohawk does not comply with the Order No. 864 ADIT Worksheet category 4 requirement because it does not show the accounts to which excess or deficient ADIT are amortized.⁴⁹ Note G, as revised in the deficiency response,

⁴⁵ *Id.* at PP 52, 62.

⁴⁶ 18 C.F.R. pt. 101 (2021).

⁴⁷ *See* June 15, 2020 Compliance Filing, attach. C.

⁴⁸ July 1 Deficiency Response at 4. *See* Deficiency Response, attach. D.

⁴⁹ *See* Order No. 864, 169 FERC ¶ 61,139 at PP 52, 62.

provides that excess ADIT will be amortized to Account 411.1 and deficient ADIT will be amortized to Account 410.1. However, neither Note G nor the rest of the ADIT Worksheet provide the information necessary to determine which amounts on the proposed ADIT Worksheet have been included to Account 411.1 and which amounts have been included to Account 410.1. For ratemaking purposes,⁵⁰ in the compliance filing ordered below, we direct Niagara Mohawk to revise its ADIT Worksheet to identify the deficient ADIT amounts are included in Account 410.1 and the excess ADIT amounts are included in Account 411.1 (e.g., by adding new columns and/or rows).

e. Category 5

46. The fifth category of information is the amortization period of the excess or deficient ADIT being returned or recovered through the rates.⁵¹ The Commission stated that it will determine whether the proposed amortization periods for any excess and deficient ADIT resulting from the Tax Cuts and Jobs Act are just and reasonable.⁵² As such, the Commission required public utilities to provide supporting documentation necessary to justify their proposed amortization periods.⁵³

47. The Commission stated that public utilities should follow the guidance provided in the Tax Cuts and Jobs Act for protected excess ADIT.⁵⁴ The Tax Cuts and Jobs Act requires public utilities to return protected excess ADIT no more rapidly than over the life of the underlying asset using the Average Rate Assumption Method.⁵⁵ The Commission also stated that, while the Tax Cuts and Jobs Act does not mention protected deficient ADIT specifically, the Commission expects that public utilities will recover such protected deficient ADIT in the same manner prescribed for protected excess ADIT.⁵⁶

⁵⁰ 18 C.F.R. § 35.24(d) (“Ratemaking purposes means for the purpose of fixing, modifying, approving, disapproving or rejecting rates under the Federal Power Act or the Natural Gas Act.”).

⁵¹ Order No. 864, 169 FERC ¶ 61,139 at PP 52, 62.

⁵² *Id.* PP 65, 104.

⁵³ *Id.* P 65.

⁵⁴ *Id.* P 44.

⁵⁵ Where a public utility’s books and underlying records do not contain the vintage account data necessary, it must use an alternative method. *Id.*

⁵⁶ *Id.* at n.71. We note that we similarly expect public utilities to recover unprotected deficient ADIT in the same manner as unprotected excess ADIT.

48. The Tax Cuts and Jobs Act does not specify a method to calculate amortization schedules for unprotected excess and deficient ADIT. Accordingly, the Commission stated that it will evaluate proposed amortization periods for unprotected ADIT on a case-by-case basis⁵⁷ and that public utilities can propose amortization schedules that appropriately balance the respective circumstances of those public utilities and their customers, provided the full amount of excess ADIT resulting from the Tax Cuts and Jobs Act is returned to customers.⁵⁸

i. Niagara Mohawk's Compliance Filing

49. Niagara Mohawk's proposed ADIT Worksheet states that its proposed amortization period for protected and unprotected property is the Average Rate Assumption Method.⁵⁹ Niagara Mohawk requests leave to defer determining the amortization of both protected and unprotected excess ADIT until the NYPSC makes a determination on related amortization issues in Niagara Mohawk's next retail rate case. Niagara Mohawk states that once the NYPSC approves an amortization period for unprotected excess ADIT associated with the Tax Cuts and Jobs Act applicable to retail rates, it will submit a subsequent compliance filing proposing an amortization period for unprotected excess ADIT, and a start date to return protected and unprotected ADIT related to the in its Formula Rate. Niagara Mohawk explains that the amortization period for unprotected excess ADIT and the proposed start date for returning ADIT will correspond with the NYPSC determination on both issues in Niagara Mohawk's next retail rate case. Niagara Mohawk also requests leave to propose the date on which it will commence returning protected and unprotected ADIT associated with the Tax Cuts and Jobs Act of 2017. Niagara Mohawk states that it anticipates filing its next retail rate case with the NYPSC no later than mid-2021.⁶⁰

ii. Protest

50. NYAPP argues that Niagara Mohawk's request to defer determining the amortization periods and start date until after the conclusion of its next retail rate case with the NYPSC is contrary to the transparency requirements of Order No. 864. NYAPP contends that Niagara Mohawk's next rate case may not be concluded until "two or three years in the future."⁶¹ NYAPP states that "[a]ssuming prompt Commission action on the

⁵⁷ *Id.* The Commission also stated that it will evaluate requests to amortize excess and deficient ADIT using an amortization period approved in a state proceeding on a case-by-case basis. *Id.* P 47.

⁵⁸ *Id.* P 46.

⁵⁹ See June 15, 2020 Compliance Filing, attach. C.

⁶⁰ June 15, 2020 Compliance Filing at 1, 4.

proposed compliance filing, [this timeline] still suggests that it is optimistic to think any excess ADIT will be returned in the 2023 Annual Update, making a later date more likely.”⁶²

51. NYAPP asserts that Niagara Mohawk has not met its burden of proof to justify its request to defer determining the amortization period and start date and states that no other public utility with a transmission formula rate has “raised any concerns about a necessary linkage between retail amortization periods and wholesale amortization periods in the comments in Docket No. RM19-5-000.”⁶³

52. NYAPP notes that Niagara Mohawk indicates in its ADIT Worksheet that the amortization period for both protected and unprotected property excess ADIT is the Average Rate Assumption Method but argues that Niagara Mohawk’s filing is deficient without an explanation of the use of Average Rate Assumption Method for unprotected excess ADIT. Additionally, NYAPP states that Niagara Mohawk has previously specified to the NYPSC that it plans to propose an amortization period of 50 years for protected property ADIT and 33 years for unprotected ADIT when its current retail rate plan ends and argues that Niagara Mohawk could propose these amortization periods in this proceeding. NYAPP declares that “[r]equiring transmission customers to wait two or three more years before they can accept or reject the Company’s proposed amortization periods, and start date, for the return of excess ADIT is not acceptable to customers.”⁶⁴

iii. Amended Filing

53. Niagara Mohawk states that, upon consideration of NYAPP’s protest, it proposes to use the Average Rate Assumption Method as the amortization period for protected excess or deficient ADIT as well as for unprotected plant-based excess or deficient ADIT. Niagara Mohawk notes that the Commission recently approved the use of Average Rate Assumption Method to amortize unprotected plant-based ADIT.⁶⁵ Niagara Mohawk proposes a 10-year amortization period for unprotected non-plant deficient ADIT and states that this period “aligns with the estimated average remaining lives of the balances giving rise to a deficient balance.”⁶⁶

⁶¹ NYAPP Protest at 3.

⁶² *Id.* at 4.

⁶³ *Id.*

⁶⁴ *Id.* at 5-6.

⁶⁵ *Id.* (citing *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,083, at PP 7, 32, 33 (2019), *S. Cal. Edison Co.*, 166 FERC ¶ 61,006, at P 23 (2019)).

54. Niagara Mohawk states that it anticipates beginning to reflect excess or deficient ADIT resulting from the Tax Cuts and Jobs Act in its next annual formula rate update after the Commission accepts this amendment to Niagara Mohawk's pending compliance filing. Niagara Mohawk argues that, with this amendment to its compliance filing, "NYAPP's concerns about the timing for ADIT to be reflected in the [Formula Rate] will be fully addressed."⁶⁷ Niagara Mohawk also includes an updated populated ADIT Worksheet showing amortization calculations using the proposed amortization periods.⁶⁸

iv. Deficiency Response

55. The May 4 Deficiency Letter asked Niagara Mohawk to provide justification for its proposal to use the Average Rate Assumption Method for unprotected plant-based excess and deficient ADIT. In response, Niagara Mohawk has revised its ADIT Worksheet and proposes an amortization period of 31 years for unprotected plant-based excess and deficient ADIT. Niagara Mohawk states its proposed amortization period is based on the average remaining book life of transmission plant as of December 31, 2017. Niagara Mohawk states that this will return the excess ADIT to customers more quickly than would have been the case using Average Rate Assumption Method for the amortization period.⁶⁹

v. Commission Determination

56. We find that Niagara Mohawk complies with Order No. 864's category 5 requirements. We accept Niagara Mohawk's proposal to amortize protected excess and deficient ADIT using the Average Rate Assumption Method and to amortize unprotected plant-based excess and deficient ADIT over 31 years. We also accept Niagara Mohawk's proposal to amortize unprotected non-plant excess and deficient ADIT over 10 years.⁷⁰ We find that Niagara Mohawk's proposed amortization periods are just and reasonable because they are no longer than a reasonable estimate of the remaining lives of the underlying assets.⁷¹

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 3.

⁶⁹ July 1 Deficiency Response at 5.

⁷⁰ *See id.*, attach. C, Schedule 14, n. (f).

⁷¹ *Emera Maine*, 165 FERC ¶ 61,086, at P 45 (2018) ("We find that Emera Maine has demonstrated that its 10-year amortization period represents a reasonable estimate of the remaining lives of the associated assets."). *See also PJM Interconnection, L.L.C.*, 167

f. Additional ADIT Worksheet-Related Requirements

i. Populated ADIT Worksheets

57. The Commission required that public utilities with transmission formula rates submit populated ADIT Worksheets with excess and deficient ADIT resulting from the Tax Cuts and Jobs Act.⁷² The Commission stated that any interested party will have an opportunity to comment on that populated information.⁷³

(a) Niagara Mohawk's Compliance Filing

58. Niagara Mohawk provides a populated ADIT Worksheet in Attachment C. Niagara Mohawk states that it will provide a revised populated ADIT Worksheet once it makes a subsequent compliance filing to include amortization periods.⁷⁴

(b) Protest

59. NYAPP contends that, because the populated ADIT Worksheet submitted by Niagara Mohawk does not contain amortization periods, it does not allow an interested party to assess how ADIT accounts were remeasured. NYAPP asserts that Niagara Mohawk's filing is therefore deficient.⁷⁵

(c) Amended Filing

60. Niagara Mohawk states that its amendment includes a populated ADIT worksheet illustrating its calculations and proposed amortization periods. Niagara Mohawk contends that this will address NYAPP's concerns. Niagara Mohawk states that it has also added information in Note A to its ADIT Worksheet to provide more detail on how the relevant ADIT accounts were remeasured as a result of the Tax Cuts and Jobs Act.⁷⁶

FERC ¶ 61,083 at P 33; *Midcontinent Indep. Sys. Operator, Inc.*, 163 FERC ¶ 61,163, at P 56 (2018).

⁷² Order No. 864, 169 FERC ¶ 61,139 at P 63.

⁷³ *Id.* P 104.

⁷⁴ June 15, 2020 Compliance Filing at 5.

⁷⁵ NYAPP Protest at 5.

⁷⁶ Amended Filing at 3.

(d) Deficiency Response

61. The May 4 Deficiency Letter asked Niagara Mohawk to submit a populated version of its ADIT Worksheet in workable format. In response, Niagara Mohawk provided a populated Excel version of the ADIT Worksheet as Attachment D.⁷⁷

(e) Commission Determination

62. We find that Niagara Mohawk has complied with the requirement to provide a populated version of its ADIT Worksheet through the submission of Attachment D to the Deficiency Response.

ii. Future Tax Rate Changes

63. The Commission required the ADIT Worksheet to apply to future tax rate changes.⁷⁸ The Commission found that, because the ADIT Worksheet will provide transparency for excess and deficient ADIT included in transmission rates following future tax rate changes, public utilities are no longer required to seek Commission approval prior to including excess and deficient ADIT in their transmission rates.⁷⁹ The Commission stated that, for future tax rate changes, it expects public utilities to provide supporting documentation for the excess and deficient ADIT inputs to the ADIT Worksheet to customers as part of the annual update process.⁸⁰ The Commission also stated that, as with any other transmission formula rate input, customers can request information about, and challenge, inputs to the ADIT Worksheet as part of the annual update process.⁸¹

(a) Niagara Mohawk's Compliance Filing

64. Niagara Mohawk states that its ADIT Worksheet can accommodate future tax rate changes.⁸²

⁷⁷ Deficiency Response at 4.

⁷⁸ Order No. 864, 169 FERC ¶ 61,139 at P 62.

⁷⁹ *Id.* PP 48, 69.

⁸⁰ *Id.* P 65.

⁸¹ *Id.* P 49.

⁸² June 15, 2020 Compliance Filing at 5.

(b) Deficiency Response

65. The May 4 Deficiency Letter asked Niagara Mohawk to explain generally how its ADIT Worksheet applies to future tax rate changes. In response, Niagara Mohawk explains that “[a]ny future excess or deficient ADIT balances related to tax rate changes will initially be shown in [its ADIT Worksheet] on new sublines under 1[] and in the ‘Other Adjustments’ columns,” and that “[t]he related amortization expenses will be shown in column (J) in following periods, with additional footnotes added as needed.”⁸³

(c) Commission Determination

66. We find that Niagara Mohawk’s proposed ADIT Worksheet complies with Order No. 864’s requirements to apply to future tax rate changes because the ADIT Worksheet is applicable to future federal, state, and local tax rate changes.⁸⁴ We find that the ADIT Worksheet will provide transparency for excess and deficient ADIT included in transmission rates following future tax rate changes is separate and distinct from our findings discussed above as to whether the ADIT Worksheets meet the requirements of Order No. 864. We reiterate the Commission’s finding in Order No. 864 that, for future tax rate changes, we expect public utilities to provide supporting documentation for the excess and deficient ADIT inputs to the ADIT Worksheet to customers as part of the annual update process.⁸⁵ Additionally, as discussed in Order No. 864, as with any other transmission formula rate input, customers can request information about and challenge those inputs as part of the annual update process.⁸⁶

⁸³ Deficiency Response at 5.

⁸⁴ Order No. 864, 169 FERC ¶ 61,139 at P 62.

⁸⁵ *Id.* P 65.

⁸⁶ *Id.* P 49.

The Commission orders:

(A) Niagara Mohawk's proposed revisions are hereby accepted, effective January 27, 2020, subject to a further compliance filing, as discussed in the body of this order.

(B) Niagara Mohawk is hereby directed to submit a further compliance filing within 60 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.