

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF ENERGY MARKET REGULATION

In Reply Refer To
New York Transco, LLC and New York
Independent System Operator, Inc.
Docket No. ER20-2259-001

Issued: May 9, 2023

Day Pitney LLP
555 11th Street NW
Washington, DC 20004-1300

Attention: Evan C. Reese III, Esq.
Attorney for New York Transco, LLC

Reference: Order No. 864 Compliance Filing

Dear Mr. Reese:

On February 27, 2023, New York Transco, LLC (NY Transco) submitted proposed revisions to its Transmission Formula Rate (Formula Rate) contained in Attachment DD (section 36) of the New York Independent System Operator, Inc. (NYISO) Open Access Transmission Tariff (OATT)¹ to satisfy the Commission's directives in an Order on Compliance² implementing the requirements of Order No. 864 – a final rule addressing excess or deficient accumulated deferred income taxes (ADIT) resulting from tax rate changes.³

In Order No. 864, the Commission required public utility transmission providers

¹ New York Independent System Operator, Inc., NYISO Tariffs, [NYISO OATT, 36 OATT Attachment DD - Rules to Allocate the Cost of NY Tra \(5.0.0\)](#).

² *New York Transco, LLC*, 181 FERC ¶ 61,271 (2022) (Order on Compliance).

³ *Pub. Util. 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).

with transmission formula rates under an OATT, a transmission owner tariff, or a rate schedule to revise those transmission formula rates to account for changes resulting from the Tax Cuts and Jobs Act of 2017 (TCJA).⁴ The Commission required, among other things, that public utilities to include (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.⁵ Please be advised that the compliance filing in response to the Order on Compliance is deficient, and that additional information is required to process the compliance filing. Please provide the information requested below.

ADIT Worksheet

1. In Order No. 864, the Commission required the ADIT Worksheet to include five categories of information: (1) how any ADIT accounts were re-measured and the excess or deficient ADIT contained therein; (2) the accounting for any excess or deficient amounts in Accounts 254 (Other Regulatory Liabilities) and 182.3 (Other Regulatory Assets), respectively; (3) whether the excess or deficient ADIT is protected or unprotected; (4) the accounts to which the excess or deficient ADIT are amortized; and (5) the amortization period of the excess or deficient ADIT being returned or recovered through the rates.⁶ The Commission stated that it expects public utilities to identify each specific source of the excess or deficient ADIT, classify the excess or deficient ADIT as protected or unprotected, and list the proposed amortization period associated with each source in their proposed ADIT Worksheets.⁷ Further, the Commission required the ADIT Worksheet to apply to any future local, state, and federal tax rate changes.
 - a. You state that to address the requirement in the Order on Compliance with respect to category (1), your filing includes a version of the workpapers from your Order No. 864 Compliance Filing as Attachment 11b to the Formula Rate. In accordance with the Order on Compliance, you state that Attachment 11b will only be populated when there is a future tax rate change and will not be provided on a yearly basis, and includes several column, "Notes" and heading titles bounded by time periods specified, including, but not limited to: Gross Accumulated Schedule M Adjustment

⁴ Order No. 864, 169 FERC ¶ 61,139 at P 1.

⁵ *Id.* PP 3-5.

⁶ *Id.* PP 52, 62.

⁷ *Id.* P 65.

(Prior to TCIA) (Note G); 12/31/2017 ADIT Balance (Prior to TCJA); 12/31/2017 ADIT Balance (After TCJA); Change in ADIT due to TCJA; (Excess) Deficient Deferred Income Tax Activity post TCJA; 2017 Return-to-Accrual Adjustment (Recorded in 2018); 2018 Return-to-Accrual (Recorded in 2019), 2019 Amortization (Notes D&E); 12/31/2019 Ending Balance (Note F); Note A: 12/31/2017 ADIT Balances above do not reflect Gross-up on Excess Deferred Income Tax; Note C: Reflects the end of 2017 balance; and Note F: Ending balance of year is the end of 2019 balance.

The Commission required the ADIT Worksheet to apply to any future local, state, and federal tax rate changes. However, Attachment 11b appears to represent only ADIT balances relating to TCJA for years 2017, 2018, 2019 including Notes A, C, and F, with no representation for future tax rate changes as required by Order No. 864. Please explain how Attachment 11b complies with Order No. 864 regarding future tax rate changes. In doing so, please explain how any headings, columns and referenced Notes represent future tax rate changes.

This letter is issued pursuant to delegated authority, 18 C.F.R. § 375.307 and is interlocutory. This letter is not subject to rehearing under 18 C.F.R. § 385.713. NY Transco must respond within 30 days of the date of this letter by making a deficiency letter response filing in accordance with the Commission's electronic tariff requirements using Type of Filing Code 80 – Compliance.

Failure to respond to this letter order within the time period specified may result in a further order rejecting the filing or filings.

Issued by: Kurt M. Longo, Director, Division of Electric Power Regulation – East