

Easton Utilities  
Public Power Association of New Jersey  
(PPANJ)  
Customers and Officials for Sensible  
Transmission (COST);  
Allegheny Electric Cooperative, Inc,  
American Municipal Power-Ohio  
Blue Ridge Power Agency  
Borough of Chambersburg, Pennsylvania  
Central Virginia Electric Cooperative  
City of Dowagiac, Michigan  
City of Hagerstown, Maryland  
City of Sturgis, Michigan  
Craig-Botetourt Electric Cooperative  
Delaware Municipal Electric Corporation,  
Inc.  
Delaware Public Service Commission  
Harrison Rural Electrification Association  
Indiana Municipal Power Agency  
Old Dominion Electric Cooperative  
PJM Industrial Consumer Coalition  
Public Power Association of New Jersey  
Southern Maryland Electric Cooperative  
Town of Easton, Maryland  
Town of Front Royal, Virginia  
Town of Thurmont, Maryland  
Town of Williamsport, Maryland  
Virginia Municipal Electric Association  
No. 1

#### Docket No. ER05-515-000

##### Interventions

Maryland Public Service Commission  
Exelon Corporation  
PJM Interconnection, L.L.C.  
Pennsylvania Public Utilities Commission  
PPL Electric Utilities Corporation  
Rockland Electric Company  
Allegheny Energy Supply Company  
Public Utilities Commission of Ohio  
Allegheny Power  
PJMICC  
D.C. Public Service Commission  
Borough of Chambersburg, Pennsylvania  
Muni-Coop Coalition  
PSEG Companies  
UGI Utilities, Inc.  
ISG Sparrows Point/International Steel  
NJBPU  
Virginia State Corporation Commission  
Wisconsin Electric Power Company  
New Jersey Ratepayer Advocate  
Constellation Energy Commodities Group  
Dominion

##### Comments/Protests

Southern Maryland Electric Company\*  
Allegheny Electric Cooperative\*  
FirstEnergy Companies  
DEMEC  
DE PSC  
Detroit Edison  
Municipalities  
Joint Consumer Advocates  
Maryland Office of People's Counsel  
ODEC  
Easton Utilities\*  
COST  
PPANJ

WOOD, Chairman, *concurring in part*:  
In Docket No. ER05-513, I believe that a better policy outcome would have been for the Commission to show a strong preference for formula rates, similar to the Parties' proposed Option Three. Under Option Three, formula rates will decrease as existing assets

depreciate and the rates will increase when TOs construct new transmission assets (and this is exactly how all TOs in the Midwest ISO recover the costs incurred in the construction of new facilities.) One major benefit of formula rates is that they provide TOs with a relatively simple way to recover new transmission investment in the year that the facility is placed in service, without having to wait for the next rate case, while efficiently protecting customers from overcharges by reflecting decreased costs (due, for example, to depreciation of existing plant). However, since the Three Option proposal set forth by the PJM TOs is not unjust or unreasonable per se, I will concur with respect to this issue.

In Docket No. ER05-515, the issue of the 50 basis point adder is a policy determination which, unlike the situation of the Midwest ISO in Docket No. ER02-485, has had proper notice and received substantial commentary from parties to this proceeding. Based on these pleadings, I believe that the existing record supports the 50 basis point adder for RTO membership without having to reexamine this issue in a hearing. However, since some parties have raised general questions about the adder, I see no harm to err on the side of caution and to permit further inquiry into the 50 basis point adder at the hearing. For these reasons, I concur on this issue.

Pat Wood, III,  
Chairman.

Joseph T. KELLIHER, Commissioner  
*dissenting in part*:

I disagree with the Commission's decision to set the PHI TOs' request for a 50 basis point adder for RTO membership for hearing insofar as the proposal would extend the incentive to existing members of PJM. The purported purpose behind the 50 basis point adder is to provide an incentive for transmission owners to join an RTO.<sup>47</sup> However, under the proposal, the 50 basis point adder would be given not only to new PJM members, but also to transmission owners who were already members of PJM when this policy was announced. I fail to see how granting a 50 basis point adder to existing members of PJM, some of whom joined over fifty years ago, accomplishes the goal of creating an incentive for new members to join. Self-evidently, a 50 basis point adder is not necessary to entice existing members of PJM to join, since they already are members. Nor do I see any nexus between providing an incentive to longstanding members of PJM and the goal of providing an incentive for non-members to join an RTO. Instead, this strikes me as merely providing a windfall to existing members of PJM, many of whom decided long ago to sign up as members.

In my view, the PHI TOs have failed to demonstrate the justness and reasonableness

<sup>47</sup> Proposed Pricing Policy for Efficient Operation and Expansion of the Transmission Grid, 102 FERC ¶ 61,032 at P 24 (2003) ("Under this proposed policy, any entity that transfers operational control of transmission facilities to a Commission-approved RTO would qualify for an incentive adder of 50 basis points on its ROE for all such facilities transferred.").

of providing longstanding PJM members with a 50 basis point adder that is designed to serve as an incentive for other transmission owners to join the RTO, and I see no point in setting the matter for hearing on the issue of whether the proposal is appropriate here. I would reject the proposal outright. Accordingly, I dissent in part from the order.

Joseph T. Kelliher.

[FR Doc. 05-11596 Filed 6-13-05; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL05-109-000]

#### Tax Deduction for Manufacturing Activities Under the American Jobs Creation Act of 2004; Guidance Order on Tax Deduction for Manufacturing Activities Under American Jobs Creation Act of 2004

Issued June 2, 2005.

Before Commissioners: Pat Wood, III,  
Chairman; Nora Mead Brownell, Joseph T.  
Kelliher and Suedeen G. Kelly

1. This order provides guidance on the Commission's ratemaking policy with respect to the Tax Deduction for Manufacturing Activities (TDMA) in section 102 of the American Jobs Creation Act of 2004 (the Act).<sup>1</sup> The Act provides for a deduction for income attributable to certain domestic production activities, including income from the sale of electricity and natural gas produced in the United States.<sup>2</sup> The TDMA will have ratemaking implications for public utilities that make jurisdictional sales of electricity at cost-based stated rates or cost-based formula rates, which are discussed further below, but not for jurisdictional natural gas pipelines.

#### Background

2. On October 22, 2004, the President signed the Act into law. The TDMA provides for a deduction of up to 9 percent<sup>3</sup> of the income attributable to qualified production activities. Income from qualified production activities includes income from the lease, rental, sale, exchange or other disposition of electricity, natural gas or potable water

<sup>1</sup> Pub. L. No. 108-357, 118 Stat. 1418 (2004) (adding additional section 199 to the Internal Revenue Code, 26 U.S.C. 1 *et seq.* (2000)).

<sup>2</sup> Act, section 102, section 199(c)(4)(A)(i)(III) (2004).

<sup>3</sup> The TDMA will be phased in so that the allowable deduction equals 3 percent from 2005-2006, 6 percent for 2007-2009, and 9 percent from 2010 onwards. Act, section 102, section 199(a)(2) (2004).

produced in the United States. However, the TDMA does not apply to income attributable to the transmission and distribution of electricity, natural gas and water. When fully implemented, the TDMA will be the equivalent of reducing the effective federal corporate income tax rate on production activities from 35 percent to 32 percent.<sup>4</sup>

#### Discussion

3. The TDMA is a special deduction that reduces the amount of income tax due from energy sales. The TDMA will have ratemaking implications only for public utilities that make jurisdictional sales of electricity at stated cost-based rates and cost-based formula rates. Income taxes are a cost that is included in the determination of virtually all cost-based rates. Accordingly, we expect these public utilities to appropriately reflect the TDMA amounts in any future filings to change their cost-based stated rates and cost-based formula rates.

4. Additionally, some public utilities utilize cost-based formula rates that are designed to automatically track changes in costs. The Commission is concerned that certain of the formulas established to develop rates may not be structured in a way that will provide an adequate mechanism for tracking the TDMA amount. Accordingly, we direct these public utilities to separately identify the TDMA amounts in any future filings to change their cost-based formula rates.

5. Moreover, since the TDMA only affects rates for jurisdictional entities to the extent that the TDMA amounts are reflected in the cost of service, the TDMA will not have any ratemaking implications for jurisdictional entities to the extent that they engage in the sale of electricity at market-based rates.

6. The TDMA also does not have any ratemaking implications for jurisdictional pipelines. The TDMA applies only to income attributable to qualified production activities, and jurisdictional pipelines do not engage in production activities.

*The Commission orders:* Public utilities with cost-based stated rates or cost-based formula rates for electric energy sales should appropriately reflect the TDMA amounts in any future filing to change a stated cost-based rate or formula rate.

<sup>4</sup> For individuals, the reduction in the effective tax rate varies depending on the individual's tax bracket, but, in any case, the amount of the allowable TDMA cannot exceed 50 percent of the individual's W-2 wages of the employer for the taxable year. Act, section 102, section 199(b)(1) (2004).

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. 05-11659 Filed 6-13-05; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RM05-16-000]

#### Generator Run Status Information

May 27, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission should require jurisdictional generators to provide the Commission with confidential access to generator run status information.

**DATES:** Comments on this Notice of Inquiry are due on August 15, 2005.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the NOI for additional information on how to file comments.

#### FOR FURTHER INFORMATION CONTACT:

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Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, [joseph.lynch@ferc.gov](mailto:joseph.lynch@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Notice of Inquiry

1. The Commission is seeking comments on the need for access to generator run status information from all public utility generators on a confidential basis. Generator run status includes information on the commitment, operating performance and capability of generating units connected to the interconnected transmission system. Confidential access to this information would allow the Commission to better oversee markets by ensuring that generation resources are represented accurately and would allow the Commission to promptly monitor and investigate market abuses and unduly discriminatory behavior thereby upholding the Commission's standards of conduct.

#### Background

2. With the issuance of Order No. 888, the Commission required public utilities that own, control or operate interstate transmission facilities to file open access transmission tariffs that offer others the same transmission service that they provide themselves. In doing this, the Commission opened wholesale power sales to greater competition.<sup>1</sup> Order No. 889, issued in tandem with Order No. 888, required transmission providers to establish or participate in an Open Access, Same-Time Information System (OASIS) and to comply with prescribed standards of conduct.<sup>2</sup>

3. The standards of conduct required, among other things, that companies separate their transmission operations from their power sales marketing/merchant functions. The standards of conduct were designed to prevent employees of a public utility, or any of its affiliates, engaged in the power sales

<sup>1</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>2</sup> *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, 61 FR 21,737 (1996), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, 62 FR 12,484 (1997), FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,049 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).