

Support Appropriate Electric Utility Ratemaking Treatment of Federal Income Taxes

HB 3115 by Rep. Otto

AECT Position: Support

Proposal

- HB 3115 would direct the Public Utility Commission of Texas (PUC) to compute an electric utility's income tax expense on a stand-alone basis using only the regulated utility cost of service used to determine the electric utility's rates and the applicable income tax rates.
- This legislation would treat this tax issue for electric utilities in Texas in the same manner as 52 other states and jurisdictions (including the Federal Energy Regulatory Commission, Washington D.C., and the Railroad Commission of Texas).

AECT Position

- AECT supports HB 3115 as fair and equitable treatment of utilities' federal income taxes.
- Utilities currently must share with their customers a portion of the income tax benefits that result from the losses of affiliate company operations. On the other hand, these same utility customers do not share in the income tax expenses that result from profitable affiliate operations. This frustrates the incentives to invest and take advantage of favorable Federal income tax regulations by utility affiliates.

Discussion

- The gains and losses of an electric utility's competitive affiliates, including the Federal Income Tax (FIT) consequences of such gains and losses, should not affect the electric utility's cost of service and rates charged for utility service.
- Regulatory policies protect customers from the financial consequences of the activities of the electric utility and its affiliates (i.e. affiliate activities are not included in the rate-making process).
- To capture for customers one component of non-regulated activities or the FIT benefits from these competitive activities (in this case, the consolidated tax savings) is inconsistent with the overall policy of separation of regulated and competitive activities.
- The current provision has the potential to frustrate Federal policy as established by Congress through the Internal Revenue Code.
- The "consolidated" FIT treatment provision essentially dictates that utility customers are to be given the benefit of tax deductions or credits that belong to a utility's affiliates. The only costs and investments that are built into regulated utility rates are costs and investments related to regulated transmission and distribution and as appropriate bundled service.
- The cost and investments of an unbundled and or competitive affiliate are not included in regulated rates. Thus, it is unfair to apply tax credits generated by those competitive entities towards regulated utility rates.
- To do otherwise creates a disincentive for the parent to make investments encouraged by Congress through favorable tax treatment under the Internal Revenue Code.