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INDIANA UTILITY  
REGULATORY COMMISSION

**Respondent's Exhibit No. 5**

OFFICIAL  
EXHIBITS

**INDIANA-AMERICAN WATER COMPANY, INC.**

**INDIANA UTILITY REGULATORY COMMISSION**

**CAUSE NO. 45032 S4**

**PHASE 2**

IURC  
RESPONDENT'S  
EXHIBIT NO. 5  
12-3-18 DATE REPORTER JK

**REBUTTAL TESTIMONY**

**OF**

**JOHN R. WILDE**

**SPONSORING ATTACHMENT JRW-1R**

**REBUTTAL TESTIMONY  
OF  
JOHN WILDE**

**CAUSE NO. 45032 S4  
PHASE 2**

**INTRODUCTION**

1   **Q.     Please state your name and business address.**

2   A.     My name is John Wilde, and my business address is 131 Woodcrest Road, Cherry  
3           Hill, NJ 08003.

4   **Q.     Have you previously filed testimony in this case?**

5   A.     Yes, I filed Direct Testimony in this case.

6   **Q.     What is the purpose of your testimony?**

7   A.     The purpose of my testimony is to address the recommendations of the witness for  
8           the Office of Utility Consumer Counselor ("OUCC"), Mr. Ralph C. Smith. He first  
9           specifies five recommendations for the regulatory treatment of TCJA related federal  
10          income tax savings. The Company does not have any issue with this set of  
11          recommendations at this time. Second, he then specifies five recommendations  
12          regarding the treatment of excess accumulated deferred income taxes ("EADIT")  
13          for Indiana-American Water ("Indiana-American," "IAWC," or "the Company").  
14          The second set of recommendations related to EADIT is as follows:

1 1. IAWC should be required to justify and support its classification of  
2 EADIT between "protected" (required to meet IRS normalization  
3 requirements that pertain to the use of accelerated tax depreciation) and  
4 "unprotected" (for which IRS normalization requirements to not apply  
5 and hence for which disposition is up to the Commission's discretion).  
6

7 2. Based on the information reviewed to date, EADIT related to repairs  
8 deductions should be classified as "unprotected" because the repairs  
9 deductions are a basis difference, not a method/life difference, and thus  
10 are not subject to the normalization requirements that apply to the use  
11 of accelerated tax depreciation. The treatment of EADIT for repairs as  
12 "unprotected" is also consistent with how other utilities, such as  
13 Vectren and Duke, have classified it.  
14

15 3. IAWC's appropriately classified "protected" EADIT should be  
16 amortized according to the ARAM. Compliance with IRS  
17 normalization requirements is necessary to preserve the utility's ability  
18 to utilize accelerated tax depreciation.  
19

20 4. The level of EADIT that is unprotected by IRS normalization rules  
21 for IAWC should be appropriately identified and should be refunded or  
22 applied for the benefit of IAWC's customers. The unprotected EADIT  
23 could be applied to offset known and verified regulatory asset balances  
24 (such as those that have a financing cost element that is being borne by  
25 customers). Alternatively, or in addition, the unprotected EADIT could  
26 be amortized over an appropriate period to reduce or minimize the  
27 impact of other rate increases on customer rates.  
28

29 5. Due to IAWC's delays in quantifying EADIT and properly  
30 classifying it between "protected" and "unprotected," and providing the  
31 related EADIT amortizations for 2018, interest calculated at IAWC's  
32 most recently authorized weighted average cost of capital ("WACC")  
33 of 6.598% should be applied on the EADIT balances from January 1,  
34 2018 through the date when such balances are flowed back to IAWC  
35 rate payers. The Final Order from IAWC's last rate case, Cause No.  
36 44450, shows that the parties settled on a 6.598 percent WACC for IAWC.  
37

38 **Q. Regarding Recommendation #1, what is the status of the Company's analysis**  
39 **regarding its "protected" and "unprotected" EADIT?**

40 **A.** As mentioned in my direct testimony, American Water as a whole, including  
41 Indiana-American, is already in the process of working to break down its records  
42 necessary to calculate protected and unprotected EADIT. It is implementing

1 software to manage this in an efficient and accurate manner. This is necessary so  
2 that the Company can ensure it is following the IRS normalization rules regarding  
3 the return to customers of the protected EADIT pieces. This work will be  
4 completed whether ordered to or not, but it will take time to ensure it gets done  
5 right.

6 **Q. Why weren't these detailed records maintained prior to the TCJA?**

7 A. In the past, the Company had neither the records nor the system available to  
8 calculate ARAM. When the income tax rate changed as a result of the Tax Reform  
9 Act of 1986, Section 203(e) of that Act required usage of ARAM. At that time  
10 some companies, including the American Water Works Company, Inc. ("American  
11 Water") utilities, were not in a position to calculate ARAM because they were  
12 using a composite rate method for depreciation and had not yet automated their  
13 fixed asset accounting systems and databases, and as a result they did not have the  
14 records or capability to do ARAM at that time. As a result the IRS issued Revenue  
15 Procedure 88-12, which allowed an alternative method, commonly referred to as  
16 Reverse South Georgia Method ("RSGM"). A taxpayer uses this method if the  
17 taxpayer (a) computes the excess tax reserve on all public utility property  
18 included in the plant account on the basis of the weighted average life or  
19 composite rate used to compute depreciation for regulatory purposes, and (b)  
20 reduces the excess tax reserve ratably over the remaining regulatory life of the  
21 property. The RSGM entails taking all the plant-related EADIT and amortizing it  
22 over the remaining life of the underlying property. A utility that does not have a  
23 system in place to do ARAM and does not flow-through non-protected plant

1 differences would not have readily available the split between protected and  
2 unprotected ADIT. The Company has been using RSGM for items relating to the  
3 Tax Reform Act of 1986.

4 The TCJA has codified usage of the alternative method. The criteria to use the  
5 alternative method are clearly stated: It can only be used if a company is required  
6 to use a composite depreciation method for accounting in its regulated books, and  
7 the company does not have the records necessary to calculate ARAM.  
8 Indiana-American uses a composite depreciation method, but it does have the data  
9 and systems available to use ARAM. Therefore, IAWC believes that it must use  
10 ARAM. However, the data and systems need to be aligned and configured to do so,  
11 and that takes time to execute. It is anticipated that it will take until the end of Q1  
12 2019 to complete the process and at that time IAWC will be able to split EADIT  
13 between "protected" and "unprotected" and to calculate the exact return of the  
14 EADIT to customers using ARAM.

15 **Q. Why will it take so long to update the records to determine a precise**  
16 **breakdown between the "protected" and "unprotected" amounts and**  
17 **calculate ARAM?**

18 **A.** As stated previously, the Company has not been keeping its deferred tax inventory  
19 in the detail needed for ARAM because it was not using ARAM. In addition,  
20 Repairs deductions are normalized, and as such there is no need to separate repairs  
21 from any other plant-related differences. For example, Repairs has its own line in  
22 the Company's deferred tax inventory. This line is mostly the tax return deductions

1 taken, but also included in the balance are net adjustments of prior deductions taken  
2 (IRC Section 481(a) adjustments). So in order to calculate true deferred taxes  
3 related to the Repairs deductions, the Company first needs to break down those  
4 481(a) adjustments between basis adjustments and accumulated depreciation  
5 adjustments. Then it needs to relate book depreciation and book retirement  
6 information that occurred over life that should be associated with those tax repair  
7 deductions. Repairs is a temporary difference, and the book information is what  
8 will drive the reversal of the deductions. Currently, the book depreciation  
9 information, whether related to repair book property or non-repair book property,  
10 ends up on other line items within the deferred tax inventory. Currently the  
11 Repairs line in the deferred tax inventory is mostly an accumulation of tax return  
12 deductions. It is not a completely self-contained temporary difference. Therefore  
13 one cannot calculate the excess deferred taxes on that one line item and know that it  
14 is correctly classified as “protected” or “unprotected”. As this information is  
15 determined and developed, the Company will refine how much is truly in the  
16 “protected” bucket for method/life differences. This is also the case for other basis  
17 differences and is one of the reasons for the time line required to complete the  
18 project and be comfortable that the Company can sustain its numbers under IRS  
19 review.

20 **Q. Is it necessary at this time for the Company to have the precise breakdown**  
21 **between protected and unprotected?**

1 A. No. Under our proposal, all of the excess deferred income taxes will be flowed  
2 back, whether protected or unprotected, using the ARAM method. This is  
3 consistent with the Commission's treatment of excess deferred income taxes in the  
4 1986 investigation proceeding in Cause No. 38194. I believe the Commission has  
5 already taken administrative notice of the Commission's June 1, 1987 Order in that  
6 Cause. This is also the best result for customers over the long term, as it results in  
7 the benefits from amortization of the excess plant-related ADIT being spread over  
8 the life of the assets that generate the excess ADIT thereby avoiding  
9 intergenerational inequities among customers. Further, it prevents the Company  
10 from needing to attract capital at a cost rate (be it debt or equity capital) in order to  
11 provide the funds so the Company could amortize and thereby eliminate more  
12 rapidly a source of capital (excess ADIT) that has zero cost in the capital structure.  
13 Given that we are proposing ARAM for all excess ADIT (protected and  
14 unprotected), we do not need a more precise split between protected and  
15 unprotected to implement our proposal. We do, however, have an estimate of the  
16 split. Other parties are free to make their own proposals and explain why they  
17 believe their proposals provide a better result for customers. If the Commission  
18 ultimately adopts an alternative proposal, the Company would need to adjust the  
19 results of that proposal to reflect in rates the precise split between protected and  
20 unprotected, which should be available by end of first quarter of 2019. In fact, I  
21 believe the Commission very recently approved a rate case settlement in Cause No.  
22 44988 which approved a later step to implement a flow back of unprotected on a  
23 more rapid basis than ARAM commencing January 1, 2020 with the utility being  
24 required to submit the compliance workpapers showing this effect only in late

1 2019. Also, the Commission approved regulatory accounting treatment to account  
2 for any differences between ARAM and the amortization period for protected  
3 excess ADIT. *Northern Indiana Public Service Co.*, Cause No. 44988 (IURC  
4 9/19/2018), at p. 98.

5 **Q. Why can't the Company estimate its "protected" amounts like Vectren or**  
6 **other Indiana companies can?**

7 **A.** We have estimated the split. I do not know the degree of certainty of our estimate  
8 as compared to other utilities, but we have provided the estimate. There is enough  
9 precision in our estimates that we can look generally at excess ADIT and any  
10 alternative flow-back proposals that may differ from ours. But before Indiana  
11 American actually implements rates to reflect a flow-back, let the Company use the  
12 more precise figure that will be available after first quarter 2019. But as to the  
13 specifics of other utilities, Indiana-American is not privy to Vectren's facts and  
14 circumstances regarding their ability to insure a tax normalization violation will not  
15 occur with respect to its classification and amortization of excess ADIT balances  
16 that resulted from the TCJA. Further, IAWC does not know how or when the Excel  
17 based system was developed implemented and tested. In addition, IAWC does not  
18 have knowledge of the exact circumstances of any other Indiana companies. Mr.  
19 Smith states in his testimony, "I note that other Indiana utilities have been able to  
20 resolve protected ADIT amortization in a manner that also acknowledges ARAM  
21 calculations are subject to further refinement", and goes on to mention Vectren. It  
22 would be inappropriate for IAWC to attempt to comment specifically on the quality of  
23 the ARAM computations that Vectren is doing simply based upon the exhibits and



1 quotations provided by Mr. Smith. IAWC does not have the requisite knowledge of  
2 the Vectren's Excel based computations to know if they are adequate and if they indeed  
3 generate results consistent with a normalization method of accounting. That said, if the  
4 calculations need further refinement, then they potentially pose a risk in that they could  
5 result in a normalization violation if they cause EADIT to be returned too quickly.

6 Given Indiana-American's facts and circumstances, including but not limited to the  
7 fact that it is one of 14 regulated utilities for which American Water is remeasuring  
8 ADIT and determining EADIT amortization periods, and in light of its understanding  
9 of the normalization rules, Indiana-American and American Water prefer not to  
10 implement a temporary ARAM computation only to replace it in a short period of time  
11 with a best in class system solution. The usage of resources to generate the return of  
12 EADIT using a temporary computation for 14 separate utilities while also working on  
13 implementation of a best in class solution would both be inefficient as well as risky.

14 IAWC has no specific knowledge regarding other Indiana companies. That said,  
15 IAWC believes that any company that had implemented and used the PowerTax  
16 deferred tax module prior to enactment of the TCJA will most likely be able to  
17 more precisely identify protected vs. unprotected differences and perform ARAM  
18 computations more quickly than IAWC because their data and system presumably  
19 were already set up to calculate ARAM accurately. As mentioned above, the  
20 American Water group consists of 14 separate regulated companies. It currently  
21 uses the book and tax depreciation modules of PowerPlant and PowerTax but not  
22 the PowerTax deferred tax module that will help with the classification and

1 calculation of deferred taxes. Due to the nature of the system and SOX (Sarbanes  
2 Oxley) internal control requirements, this endeavor to refine the data necessary for  
3 the deferred tax module cannot be done individually by the companies but must be  
4 done together as a company-wide project in order to be efficient and cost effective.  
5 We will have the more precise amount after first quarter 2019, which can be  
6 implemented in the general rate case that Indiana American has filed. Parties are  
7 free to use our estimates for purposes of their work in that case and can make their  
8 alternative proposals, but we maintain that using the more precise figures in the  
9 actual rates that are finally implemented is the better approach. This will also avoid  
10 the need to use a deferral mechanisms that some of the other Indiana utilities appear  
11 to be using or proposing.

12 **Q. Regarding Recommendation #2, is it the Company's position that the Repairs**  
13 **deduction is "protected" pursuant to the Internal Revenue Code's**  
14 **normalization requirements?**

15 **A.** No. Indiana-American has not asserted that the Repairs deduction is "protected"  
16 pursuant to the application of the tax normalization rules. In fact,  
17 Indiana-American would agree that repairs would not be "protected" based on the  
18 typical use of that term in application of the tax normalization rules.

19 **Q. Please explain then why the Company insists that Repairs deductions be**  
20 **considered "protected" and amortized using ARAM for Indiana-American?**

21 **A.** As previously explained in my direct testimony and response to data request OUC  
22 04-014, Attachment JW-R1, Indiana-American executed its tax repair method

1 change pursuant to a consent agreement with the IRS. That consent agreement  
2 requires Indiana-American to use a normalized method of accounting to account  
3 for those repair deductions. Indiana-American is not aware of any applicable  
4 guidance or directive from the IRS that releases Indiana-American from the terms  
5 and conditions of the consent agreement. Indiana-American believes that acting  
6 contrary to that consent agreement would put Indiana-American and its customers  
7 at risk of losing part or all of the benefits of taking advantage of its tax repairs  
8 method of accounting. Mr. Smith is recommending we take that risk by classifying  
9 the repairs deduction as “unprotected” or not subject to a normalized method of  
10 accounting and return it to customers faster than allowed by ARAM.

11 **Q. Does the IRS determine whether and under what terms and conditions a**  
12 **taxpayer can change its method of accounting for income tax purposes?**

13 **A** Yes. In general, once a taxpayer has established a method of accounting, it cannot  
14 change that method of accounting without permission. In order to secure that  
15 permission, the taxpayer may be required to agree to terms and conditions set forth  
16 by the IRS. Specifically Treasury Regulation 1.466(e)(3) states in pertinent part:  
17 “Permission to change a taxpayer's method of accounting will not be granted unless  
18 the taxpayer agrees to the Commissioner's prescribed terms and conditions for  
19 effecting the change.”

20 **Q. Please explain how the IRS imposes terms and conditions on the taxpayer's**  
21 **accounting change.**

1     **A.**     They did so for Indiana-American in the form of a Consent Agreement between the  
2             IRS and the Company.

3     **Q.**     **Is Mr. Smith's recommendation to treat the EADIT resulting from repairs**  
4             **deduction in a manner inconsistent with a normalization method of**  
5             **accounting prudent?**

6     **A.**     No, for several reasons. First, Mr Smith is recommending that Indiana-American  
7             intentionally violate the terms and conditions set forth the consent agreement it  
8             signed that secured the permission necessary to change its method of accounting.  
9             Second, the result of violating the terms of the consent agreement could be the  
10            payback of all net tax benefits received from the repairs deduction including the  
11            EADIT. If Mr. Smith's recommendation were adopted, his goal of forcing swift  
12            payback of EADIT would be realized. The problem would be that the payback  
13            would flow to the IRS, not to customers.

14    **Q.**     **It does not seem reasonable that Mr. Smith could have intended that result.**  
15             **Does he explain or offer any specific discussion on the consent agreement and**  
16             **why its terms can be ignored?**

17    **A.**     No. He does not address the language of the consent agreement and only offers  
18             arguments that repairs deductions are "unprotected". We have already said that we  
19             agree they are not "protected" under IRS rules. However, we do not agree that we

1 can treat them in a manner inconsistent with a normalization method of accounting  
2 because the consent agreement requires us to do so.

3 **Q. Are other companies mentioned in Mr. Smith's testimony, such as Vectren**  
4 **and Duke, subject to a similar consent agreement?**

5 **A.** Indiana-American does not know whether any of the utilities owned by those  
6 entities are subject to an IRS consent agreement requiring the use of a  
7 normalization method of accounting for repairs deductions. In the case of  
8 non-automatic changes in methods of accounting, each consent agreement is  
9 unique to the taxpayer involved. Automatic method changes related to repairs  
10 made in the 2009 time frame may have required similar agreements.

11 We are aware that when the electric utilities were issued safe harbor methods of  
12 accounting pursuant to Revenue Procedure 2011-43 and 2013-24, changing to  
13 those safe harbor methods required another change in accounting to be filed. In  
14 those changes there were no provisions requiring a normalization method of  
15 accounting. Therefore an electric company changing to a method consistent with  
16 with the safe harbor method would have no obligation to use a normalization  
17 method of accounting even if their initial change either was automatic with the  
18 requirement or if they had a consent agreement requiring it in an earlier change. In  
19 addition, in the case of any utilities that adopted the repairs method of accounting  
20 change after Treasury Decision 9636 became final in 2013, their change may have  
21 been done under automatic method change provisions that no longer had that  
22 stipulation.

1   **Q.   Mr. Smith mentions that data requests repeatedly asked for the EADIT**  
2       **related to repairs and the tax deductions related to repairs. Please explain**  
3       **your ability to provide this data.**

4  
5   **A.**   As stated above, the Company was using RSGM and therefore did not maintain the  
6       repairs deductions separate from other ADIT, as is needed for an ARAM  
7       calculation. Segregating the repairs deductions is part of the scope of the project  
8       implementing ARAM.

9  
10   **Q.   Why can't you simply make high level assumptions and approximate the**  
11       **amounts**

12   **A.**   We can make high level assumptions and approximate the amounts. We have done  
13       so in our estimates. What we are claiming is that before rates are implemented to  
14       address the flow back of excess ADIT, that we calculate the results of that using the  
15       more precise amounts that will be available after March 2019. To do otherwise  
16       risks a normalization violation and severe penalties. To minimize that risk, we  
17       simply need the time to do the implementation correctly. There would be virtually  
18       no delay under our proposal, because the actual flowback would commence in  
19       conjunction with our pending rate case, with the actual rates approved after more  
20       precise figures are available. This is far preferable to having the commission or the  
21       taxpayer beg for IRS forgiveness for normalization violations resulting from  
22       approximating EADIT balances and amortization periods using high level  
23       assumptions.

1     **Q.     Do you agree with Recommendation #3?**

2     **A.**     Yes, for the reasons stated above and in my direct testimony, the Company believes  
3             it is required to use ARAM for “protected” plant EADIT in order to avoid a  
4             normalization violation. That is why it is working expeditiously to build the data  
5             set and implement the process to do so. American Water also believes that the  
6             repairs deduction is to be treated similar to “protected” ADIT as required by the the  
7             IRS consent agreement.

8     **Q.     What is your response to Recommendation #4?**

9     **A.**     The Company agrees that the “unprotected” non-plant-related EADIT is not subject  
10            to the IRS normalization rules and the return to customers over an appropriate  
11            amortization period is ultimately based on the decision of the Commission. While  
12            there is also “unprotected” plant-related EADIT, we feel that because plant-related  
13            deferred taxes were built up over time as property was placed in service, it would be  
14            economically sound and create generational equity to return the excess deferred  
15            taxes over the life of the underlying property using ARAM. This includes all basis  
16            adjustments whether ultimately classified as “protected” or “unprotected”. Also,  
17            the maintenance of keeping three different amortization methods - protected plant  
18            using ARAM, non-protected plant amortized over a certain period of time and  
19            non-protected non-plant amortized over a different period of time - can be  
20            burdensome.

21    **Q.     Regarding Recommendation # 5, is the Company benefiting by waiting to**  
22    **return the EADIT to customers?**

1     A.     No. The Company is not benefiting by waiting to return the EADIT because its rate  
2           base still reflects the deferred taxes at 35%. In other words, its return on base has  
3           been reduced by the larger amount of deferred taxes at 35% rather than the lesser  
4           amount of deferred taxes at 21%. The Company therefore will not earn a return on  
5           the rate base associated with the EADIT until it is amortized. And since the  
6           Company has reduced rates to reflect the TCJA's rate reduction, its recovery of  
7           income tax expense is at 21%. A utility amortizing EADIT would increase return  
8           on rate base as it normalizes and returns the EADIT balance in customer rates. A  
9           utility delaying the amortization of plant-related EADIT would not increase return  
10          on rate base. Thus, customers of a utility delaying the amortization of excess  
11          deferred taxes are, due to the mechanics of rate base/rate of return ratemaking,  
12          being kept whole during the delay. Furthermore, once an interest cost is applied to  
13          excess ADIT, then this is no longer cost-free capital. Whatever interest rate is  
14          assumed would need to be added to the capital structure.

15    **Q.     Please explain this last point.**

16    A.     In Indiana, ADIT and excess ADIT are reflected for ratemaking purposes as a  
17           source of zero cost capital in the capital structure. This has the effect of reducing  
18           the overall weighted average cost of capital in rate cases. If we require interest to  
19           be paid on excess ADIT balances, then it will no longer be a source of capital at  
20           zero cost; it will bear a cost rate equal to whatever interest rate is applied. The sum  
21           and substance of Mr. Smith's interest proposal would be to increase Indiana  
22           American's weighted average cost of capital.



1     **Q.     Is Mr. Smith correct in saying that interest needs to be added to the EADIT to**  
2     **be returned to customers?**

3     **A.**     No, he is not correct since the customer is not being harmed and the Company is not  
4     benefiting from the lower ADIT amount in rate base. The split of a subsidiary  
5     utility's EADIT between what is to be considered "protected" or "unprotected" is a  
6     complex analytic, as is the application of the method to be used to normalize the  
7     balance classified as protected. The time that a utility has to complete those tasks  
8     is subject to the current state of the utility's data structure and system configuration  
9     at the time the law is enacted, and the ultimate goal is deriving a result that best  
10    serves customers interests, which includes not violating the tax normalization rules.

11    **Q.     Your testimony has been addressed predominantly to Mr. Smith. However,**  
12    **Mr. Kaufman suggests that the Company's proposal for use of the deferred**  
13    **liability resulting from the Commission's January 3, 2018 Order in the main**  
14    **docket in the manner proposed by Mr. Watkins may result in taxable**  
15    **contributions in aid of construction for Indiana American. Is he correct?**

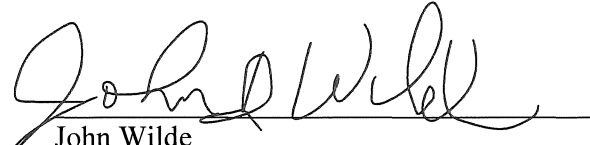
16    **A.**     No. I note that Mr. Kaufman does not testify that this would be the tax effect; just  
17    that he has a concern in this regard. Mr. Smith does not testify about Mr.  
18    Kaufman's concern. Using the deferral in the manner proposed by Mr. Watkins  
19    will not create taxable CIAC for Indiana American.

20    **Q.     Does this conclude your rebuttal testimony?**

1    A.    Yes it does.

### VERIFICATION

I, John Wilde, Vice President - Tax, American Water Works Service Company, Inc., affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.

  
John Wilde

Date: 9/25/18

**OUC 04-014****DATA INFORMATION REQUEST****Indiana-American Water Company****Cause No. 45032 S4****Information Requested:**

Is Mr. Wilde or anyone at American Water Works aware of any other investor-owned regulated public utilities that are claiming that ADIT for repairs deductions taken under Section 162 or 263 of the Internal Revenue Code is a "protected" item (i.e., is subject to normalization requirements under sections 167 or 168 of the Internal Revenue Code)? If not, explain fully why not. If so, identify each other investor-owned regulated public utility of which Mr. Wilde and American Water is aware of that is claiming that ADIT for repairs deductions is a "protected" item that is subject to normalization requirements under sections 167 or 168 of the Internal Revenue Code.

**Information Provided:**

As a point of clarification, American Water is not saying repairs are "protected" if the term "protected" can only mean subject to IRS normalization rules. In other words, the Company has never said that repairs are subject to the normalization rules under 168. American Water's position is that it would not be allowed to claim the repairs deductions that have been claimed if the company had not agreed to normalize the effects of the deductions pursuant to the consent decree it signed. In simple terms, if American Water is forced to flow back the tax effects of the repairs deductions faster than ARAM (i.e. in the same manner as normalized property), American Water would be in violation of its agreement with the IRS, and the change in accounting would no longer be valid. As a result, the excess deferred taxes would essentially be paid back to the government instead of customers.

With that in mind, it is American Water Works' understanding that other regulated utilities in the process of filing a change in their accounting methods with similar timing and facts should have had to make a similar representation in their consent decree. However, electric utilities who did so, but subsequently changed their method to conform to the electric distribution or electric generation safe harbor methods in later IRS guidance, may have been able to eliminate that requirement. American Water Works has no way of knowing if gas distribution, water and wastewater utilities filed for a tax repairs method or if they are following their book method for most tax repairs because of the lack of a safe harbor method being available. American Water Works has no way of knowing which investor-owned utilities are similarly situated, meaning they would be subject to the same IRS requirements outlined in the American Water Works - IRS consent decree, who are also required to use ARAM to normalize tax repairs.

American Water believes that all investor owned utilities planning to use RSGM to normalize TCJA excess ADIT balances should be treating all plant related excess consistently under that method. This is simply because anyone using RSGM would lack the ability to break out tax repairs from plant related ADIT balances. In order to be able to break out repairs one must know the book depreciation by vintage for repair property. Therefore, any utility that can break out repairs would also have the ability and records to use ARAM. Thus, American water believes all utilities that intend to use RSGM would treat tax repairs in exactly the same manner as protected differences, because they would have no records or ability to do otherwise. American Water Works has not maintained a list of those investor owned utilities that plan to use RSGM.