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U.S. Investor-Owned Utilities: Bonus Depreciation Provides Material Near-Term Benefit For The Sector But Raises Longer-Term Questions

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» Recent federal stimulus efforts, specifically related to bonus depreciation deductions, should produce a material near-term cash flow benefit for some U.S. investor-owned utilities. However, it is unlikely that these benefits will result in positively-biased rating actions – primarily due to the temporary nature of the improvement.

» Over the longer-term horizon, we see increased uncertainty with cash flows due to reduced rate base growth, potential IRS tax-challenges and the temptation for regulators to indirectly capture a portion of the benefit for consumers. Prolonged weak economic conditions would exacerbate this worry.

» Although the decision to utilize bonus depreciation is voluntary, we do not expect to see a 100% utilization of available deductions due to negative impacts on rate base growth. But neither GAAP nor the tax code requires companies to separately identify the tax benefits associated with bonus depreciation, so the transparency of cash flow from operations (CFO) will decline.

» Nevertheless, the aggregate size of the benefit for the sector appears large. Over the next two years (2011 – 2012), we estimate that CFO could benefit by up to $30 billion.

» These higher cash flows are the result of utilizing the tax shields associated with depreciating an asset on an accelerated basis, in the year that the asset is placed in service. As a result, bonus depreciation does not produce incremental cash flow, but instead simply represents a loan of future cash flows – interest free, thanks to federal stimulus efforts.

» How utilities utilize this unexpected CFO windfall will likely become a more critical ratings factor over the near-to intermediate term horizon. It is possible that bonus depreciation, despite near-term benefits, could actually limit potential rating upgrades, largely due to decreased transparency and expected higher tax payments in the future.

Summary

On Dec. 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Act). Although the Act contained many tax decreases or benefit extensions for individual taxpayers, there was one very significant item included for most corporate / industrial companies – namely, the increase and extension of bonus depreciation.

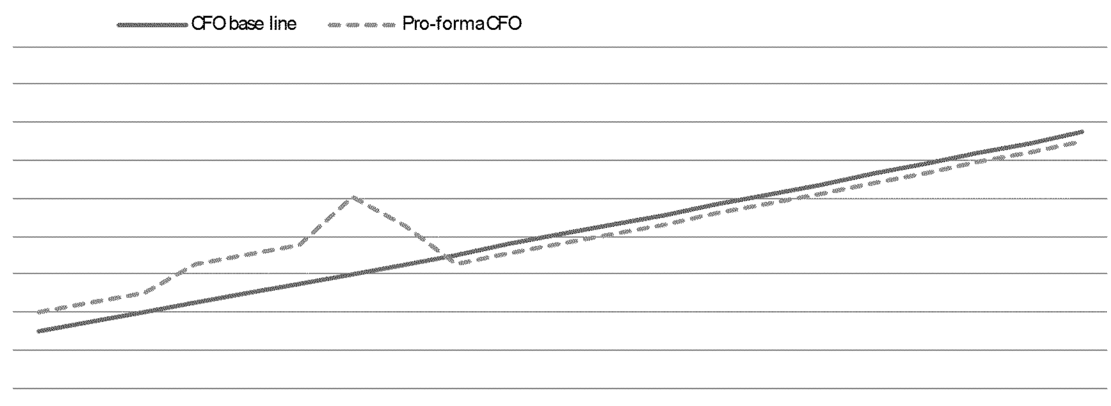
Although it has been around for several years, the Act increases the allowed depreciation deduction for tax purposes from 50% to 100% for qualifying property placed in service by year-end 2011. Bonus depreciation deductions reduce a company's cash taxes because it allows firms to deduct capital expenditures more quickly, thereby reducing taxable income. The 100% bonus depreciation rate allows companies to expense the entire amount of the qualified expenditure from taxable income in its first year of being placed in service.

For the U.S. utility sector, the near-term CFO benefits associated with bonus depreciation could be material, largely due to the amount of potentially qualifying capital expenditures / assets that the sector is expected to make over the next two years. We estimate the benefits available from bonus depreciation will be approximately $20 billion in 2011 and $10 billion in 2012.

However, bonus depreciation is not incremental cash flow. Instead, we view bonus depreciation as a borrowing which pulls forward future tax benefits that would normally be realized over the longer-term tax-life of the asset. As such, the cash received today will be repaid in the form of higher cash taxes in future years.

Bonus depreciation is currently scheduled to expire in 2012; however, if extended indefinitely or made permanent (which we view as unlikely at this time) a net credit positive could be applied across the industry as a whole. This would largely be a function of how the permanent higher cash flows are utilized. We have not, however, factored any extension into our analysis at this time.

CHART A
Illustrative projected bonus depreciation cash flow relationship over 20 years



Source: Moody's

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From a credit perspective, we see bonus depreciation providing a strong near-term CFO benefit to liquidity sources, but we are maintaining several longer-term concerns. These concerns include: reduced rate base growth rates; potential IRS challenges regarding which assets qualify and / or their in-service dates, and the temptation for state regulators (or elected officials) to indirectly pursue a portion of the benefit for the sake of local consumers.

Near-Term Cash Flow Benefit

Since bonus depreciation is effectively a borrowing of future tax benefits, it has the greatest impact on cash flows for longer lived property. The average depreciable life for the utility industry for tax purposes is 16.7 years[1]. Even though useful lives for tax purposes are generally shorter than for financial reporting purposes not all capital expenditures will qualify. Today, we estimate that approximately 75% - 80% of utility capital expenditures for 2011 and 2012 will qualify for bonus depreciation.

TABLE B

Illustrative Cash Flow Benefit Associated with Bonus Depreciation for the U.S. Utility Sector ($ billions)

	2011	2012
Estimated capital expenditures	$75.0	$75.0
% capital expenditures that qualify	75%	75%
	$56.3	$56.3
Depreciation deduction rate	100%	50%
	$56.3	$28.2
Tax rate	35%	35%
CFO benefit	$19.7	$9.9
Estimated CFO w/o bonus depreciation	$76.5	$76.5
Estimated debt outstanding	$425.0	$425.0
Implied CFO / debt	18%	18%
Adjusted CFO / debt w/ bonus depreciation	23%	20%

While this rough estimate appears to be very large, we do not expect to see the full amount realized. Bonus depreciation is an elective deduction. According to an Office of Tax Analysis report[2] on bonus depreciation for tax years 2002-2004 only 67% of available deductions were taken by utilities. The hypotheses put forward in the report was that utilities were unwilling to reduce future rate base growth rates due to the increased deferred taxes.

Additionally, some large projects may fall across several different depreciation rates, thus making it hard to estimate the exact impact on cash flows. For example, Dominion Resources (Baa2 senior unsecured / stable outlook) recently disclosed the potential benefit of bonus depreciation would be between $1.6 billion and $2.5 billion for 2011 and 2012. The reason for the large range is the

1 Source: Department of the Treasury

2 Source: Corporate Response to Accelerated Tax Depreciation: Bonus Depreciation For Tax Years 2002-2004, May 2007

uncertainty of whether they will receive a 50% or 100% deduction on two of their larger capital projects.

Accounting and Reporting – Transparency is Lacking

The ability to exactly quantify the benefits of bonus depreciation is further complicated by the lack of transparency in the financial statements. Neither GAAP nor the tax code require companies to separately identify the tax benefits associated with bonus depreciation.

We believe accumulated deferred income tax liabilities ("ADIT") and expense will increase while cash taxes decrease. But we can only make an educated guess as to how much of these movements are specifically linked to bonus depreciation.

We see a strong incentive for companies to ensure that capital expenditures are placed "in service" as quickly as possible. But we worry about the potential for future IRS challenges, given the ambiguity in interpreting the law. As such, some companies might be more aggressive with their interpretation of the rules.

We note that any tax position that management considers "more likely than not" to be reversed upon review by the IRS must be disclosed in the footnotes to the financial statements. Accordingly, if there are large increases in this disclosure over the next couple of years it may be directly linked to an aggressive interpretation of the law. An example of this type of disclosure can be found with Entergy Corp (Baa3 senior unsecured / stable outlook), who recently reported a large increase in its uncertain tax positions with respect to deductions taken for nuclear decommissioning.

Regulatory Considerations

Traditionally, ADIT is treated in base rate cases either as a rate base reduction or as a zero cost capital component of the capital structure in the rate of return determination. In simple terms, regulators view ADIT as interest free capital; therefore, the rate base components financed with ADIT are reduced to recognize the cost free nature of these funds. Thus, with large increases in ADIT, the growth in rate base will slow, which inevitably results in a reduction of future revenue requirements.

For several years now, we maintained that most utilities enjoy credit supportive relationships with their state regulators. However, as capital and operating costs rise in a weak or struggling economy, regulators may seek additional ways to reduce customer's all-in bills.

We would become concerned if regulators view bonus depreciation as an extraordinary, one-time cash benefit. There could be a enticing temptation to return a portion of this benefit to customers in a comparably accelerated manner, instead of over the life of the asset.

That said, the issues regarding the ability for regulators to directly pass through federal tax benefits to customers are governed by obscure and highly technical sections of the Internal Revenue Code. Today, we incorporate a view that the general interpretation by the industry is that normalization rules do not allow for federal tax benefits associated with ADIT and investment tax credits (ITC) to be immediately passed back to ratepayers.

We recall that when the utility industry was deregulating in the mid to late 1990's, the National Association of Regulatory Utilities Commissioners (NARUC) passed a resolution recommending that the Secretary of the Treasury provide direction that would allow state regulators to consider ADIT's and unamortized ITC's in any determination of the restructuring upon ratepayers. This included but was not limited to stranded cost / benefit recovery mechanisms. In short, the NARUC wanted rates reduced to reflect the federal tax benefits of ADIT's and ITC's which would have otherwise accrued primarily to shareholders.

This thought process was again demonstrated in 2007, when the Public Utility Commission of Texas ordered CenterPoint Energy Houston (Baa2 senior unsecured / stable outlook) to reduce its stranded cost recovery by $146 million for ADIT's and ITC's. CenterPoint Energy subsequently received a private letter ruling upholding its position that such a reduction would be a violation of normalization rules.

However, regulators appear to be increasingly concerned with the impact of rising costs on consumer rates and total bills. Since most big regulatory rate cases are being settled, rather than litigated, we think there could be some room for regulators to indirectly capture a portion of the bonus depreciation benefit. Separately, the utility sector does not appear to be materially ramping up its investment plans, which is what the legislation is designed to encourage. Instead, we see most utilities simply adhering to their longer-term resource plans, most of which were put in place several years ago, given the long-lived and capital intensive nature of the sector.

Credit Implications – Our Initial Take

How companies use their accelerated cash flows could become a key ratings driver over the near to intermediate term horizon. Whilst stopping short of directly returning the cash to shareholders some utilities are using the proceeds in lieu of issuing common equity. We believe this is simply kicking the can down the road in terms of utilities' need to strengthen their balance sheets. This is primarily related to our views regarding the sizeable negative free cash flow position for the sector, and the need to finance these negative cash flows with a balance of both debt and equity.

TABLE C

Recent Announcements on Intended Use of Bonus Depreciation Proceeds

Company	Senior Unsecured Rating	Intended Use	Rating Implications
American Electric Power	Baa2	Avoidance of debt	Neutral/Positive
		Avoidance of equity	Negative
Exelon Corp.	Baa1	Reducing pension obligations (debt)	Neutral/Positive
Dominion Resources	Baa2	Reducing pension obligations (debt); avoidance of debt	Neutral/Positive
		Repurchasing equity	Negative
DukeEnergy / Progress Energy	Baa2	Avoidance of debt	Neutral/Positive
		Avoidance of equity	Negative
Southern Company	Baa1	Avoidance of debt	Neutral/Positive
		Avoidance of equity	Negative

But if bonus depreciation becomes a sustainable alternative (i.e., extended indefinitely or made permanent), which we view as unlikely at this time, the neutral credit comments above may become more positive, depending on how the proceeds are utilized.

Finally, we note that some companies in the sector are not expected to benefit from utilizing bonus depreciation to the same degree as others. Specifically, some companies, such as Entergy, NextEra Energy (Baa1 senior unsecured / stable outlook) and many of the unregulated power companies have large net operating loss carry-forwards or Production Tax Credits that decrease the tax-shields over the near-term.

Appendix

Bonus depreciation has been used as a stimulus measure in the past to spur economic growth. In 2001, Congress enacted a provision that allowed an additional first-year depreciation deduction for "qualified property" equal to 30% of a newly acquired asset's cost.

The determination of what assets qualify is embedded in recent tax legislation. The categories of qualified property include: any tangible property depreciated under IRS rules with a useful life of 20 years or less; any water utility property which generally has a recovery period of 25 years; any "qualified leasehold improvement property"; and any computer software that would be depreciated over a 36-month period.

For utilities, almost all capital expenditures qualify, with the exception of real estate. This includes most transmission and distribution assets (15-year taxable deprecation life), generation (20-year taxable depreciation life), as well as office supplies, computers, automobiles, etc. (generally, a seven-year taxable depreciation life).

TABLE D

Summary of Recent "Temporary" Bonus Depreciation Legislation

Enabling Legislation	First Year Bonus Depreciation	For Investments Placed in Service Between
Job Creation and Worker Assistance Act of 2002	30%	09/10/2001 - 09/11/2004
Jobs and Growth Tax Relief Reconciliation Act of 2003	50%	05/05/2003 - 12/31/2004
Economic Stimulus Act of 2008	50%	01/01/2008 - 12/31/2008
American Recovery and Reinvestment Act of 2009	50%	01/01/2009 - 12/31/2009
Small Business Jobs Act of 2010	50%	01/01/2010 - 12/31/2010
Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010	100%	09/09/2010 - 12/31/2011
Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010	50%	01/01/2011 - 12/31/2012

Moody's Related Research

Rating Methodologies:

» Moody's Approach to Global Standard Adjustments in the Analysis of Financial Statements for Non-Financial Corporations, December 2010 (128137)

» Regulated Electric and Gas Utilities, August 2009 (118481)

» Unregulated Utilities and Power Companies, August 2009 (118508)

» Natural Gas Pipelines, December 2009 (121678)

Industry Outlooks:

» Regulation provides stability as risks mount, January 2011 (129930)

» Six-month update: US Electric utilities Stable but Face Increasing Regulatory Uncertainty, July 2010 (125996)

» U.S. Electric Utilities Face Challenges Beyond Near-Term, January 2010 (121717)

» U.S. Coal Industry Fundamentals Achieve Better Balance, October 2010 (128380)

Special Comments on Taxes:

» IRS Proposed Disclosure of Uncertain Tax Positions Would Tighten the Leash, February 2010 (122988)

» FASB Issues Guidance on Uncertain Tax Positions for All Companies Reporting Under U.S. GAAP, July 2006 (98240)

Special Comments:

» Investment-Grade, Unregulated Power: Not Immune to Rating Pressures, November 2010 (128985)

» U.S. Electric Utilities: Uncertain Times Ahead; Strengthening Balance Sheet Now Would Protect Credit, October 2010 (128462)

» Key Drivers for Utility and Power Sector Rating Actions in 2010, October 2010 (128381)

» Regulatory Frameworks – Ratings and Credit Quality for Investor-Owned Utilities, June 2010 (125664)

» Cost Recovery Provisions Key to Investor Owned Utility Ratings and Credit Quality, June 2010 (122304)

» U.S. Wholesale Merchant Energy: Bigger is Better, April 2010 (124300)

» U.S. Electric Utility Sector Weathers the Recession, November 2009 (121216)

» Credit Roadmap for Energy Utilities and Power Companies in the Americas, March 2009 (115514)

» U.S. Corporate Governance: Reviewing 2007, Previewing 2008, December 2007 (106273)

» Storm Clouds Gathering on the Horizon for U.S. Electric Utilities Sector, August 2007 (103941)

» Regulatory Pressures Increase for U.S. Electric Utilities, March 2007 (102322)

Special Comments on Liquidity/Hedging:

» Liquidity: A Key Component to Investor-Owned Utility Ratings and Credit Quality, September 2010 (127546)

» Refinancing Risk for Unregulated Power: All Eyes On 2012, March 2010 (123877)

» U.S. Electric G&T Cooperatives Not Immune to Liquidity Concerns, February 2010 (123245)

» Investor-Owned Utilities Face Significant Bank Facility Refinancing Risk as Substantial 2011-2012 Maturities Approach, October 2009 (120596)

» Right-Way Hedging for Power Companies, June 2009 (117978)

» Near Term Bank Credit Facility Renewals To Be More Challenging For U.S. Electric And Gas Utilities, January 2009 (114031)

Special Comments on Natural Gas:

» Oil Prices Signal Buoyant 2011 for Energy, But Natural Gas and Capacity Issues Pose Risks, January 2011 (129899)

» Marcellus Stokes Pipeline Competition for the New York Gas Market, June 2010 (125833)

» Low Natural Gas Prices Chill North American Energy Sectors, While Others See Some Gains, April 2010, (124884)

» Evaluating Natural Gas Companies, February 2010 (123063)

» Oil and natural gas outlook: Supply and demand pressures persist, January 2010 (122453)

Special Comments on Environmental Risks:

» The 21st Century Electric Utility: Substantial uncertainties exist when assessing long-term credit implications, May 2010 (124891)

» U.S. Electric Utilities See Some Clarity in Evolving Federal Energy Policies, February 2010 (123062)

» Carbon Risks Becoming More Imminent for U.S. Electric Utility Sector, March 2009 (115175)

» Carbon Dioxide: Regulating Emissions Following a Long and Winding Road, November 2008 (112822)

» Environmental Regulations Increase Capital Cost for Public Power Electric Utilities, June 2007 (103616)

Special Comments on New Nuclear Development:

» New Nuclear Generation: Ratings Pressure Increasing, June 2009 (117883)

» New Nuclear Generating Capacity: Potential Credit Implications for Investor Owned Utilities, May 2008 (109152)

» New Generating Capacity in a Carbon Constrained Environment, March 2008 (107453)

» New Nuclear Generation in the United States: Keeping Options Open vs Addressing An Inevitable Necessity, October 2007 (104977)

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