ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF WESTFIELD GAS CORPORATION, D/B/A CITIZENS GAS OF WESTFIELD FOR A CHANGE IN ITS GAS COST ADJUSTMENT CHARGE FOR THE PERIOD DECEMBER 2012, JANUARY AND FEBRUARY 2013	)	CAUSE NO. 37389 GCA 92 S1 APPROVED: OCT 30 2013

ORDER OF THE COMMISSION

Presiding Officers:
Larry S. Landis, Commissioner
Aaron A. Schmoll, Senior Administrative Law Judge

On September 28, 2012, in accordance with Indiana Code § 8-1-2-42, Westfield Gas, LLC d/b/a Citizens Gas of Westfield f/k/a Westfield Gas Corporation ("Westfield Gas") filed its Application for Gas Cost Adjustment ("GCA") for approval of the gas cost adjustment to be applicable for the months of December 2012, January and February 2013. Westfield Gas's Application was docketed as Cause No. 37389 GCA 92. In an Order issued November 28, 2012 approving that gas cost adjustment, we discussed an issue that had been raised regarding Westfield Gas's conversion to a limited liability company. We stated in that Order that "it would be appropriate to address this issue in a subdocket to this proceeding rather than in a summary GCA proceeding." We established this subdocket to address the issues that had been raised regarding Westfield Gas's conversion to a limited liability company.

Pursuant to notice duly published as required by law, proof of which was incorporated in the record and placed in the official files of the Commission, a public evidentiary hearing was held in this Cause on May 16, 2013, at 10:00 a.m., in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Westfield Gas and the OUCC were present and participated. At that hearing, the testimony and exhibits of Westfield Gas and the OUCC that were originally admitted into evidence in Cause No. 37389 GCA 92 were admitted into the record of this proceeding without objection. No members of the general public were present.

Based upon the applicable law and the evidence admitted in this Cause, the Commission now finds:

1. **Statutory Notice and Commission Jurisdiction.** Due, legal and timely notice of the public hearing in this Cause was given and published by the Commission as required by law. Westfield Gas operates a public gas utility and, as such, is subject to the jurisdiction of this Commission as provided in the Public Service Commission Act, as amended. The Commission has jurisdiction over the parties and the subject matter of this proceeding.

2. **Westfield Gas's Characteristics.** Westfield Gas is a limited liability company duly organized and existing under the laws of the State of Indiana, and has its principal office at 2020 N. Meridian Street, Indianapolis, Indiana. It is engaged in rendering natural gas utility service to the public in Boone and Hamilton Counties in the State of Indiana and owns, operates, manages and controls plant and equipment used for the distribution and furnishing of such service. Westfield Gas is an indirect, wholly-owned subsidiary of Citizens Energy Group.

3. **Evidence Admitted in Cause No. 37389 GCA 92.** In her testimony in Cause No. 37389 GCA 92, Westfield Gas's witness Jill A. Phillips, Citizens Energy Group's Manager, Rates and Regulatory Affairs, noted that on September 25, 2012, Westfield Gas had filed with the Indiana Secretary of State "Articles of Entity Conversion of Westfield Gas Corporation Into Westfield Gas, LLC." Ms. Phillips stated that Westfield Gas's conversion to a limited liability company became effective September 30, 2012. She further described the impact Westfield Gas's conversion to a limited liability company would have on future GCA proceedings. Ms. Phillips explained that the conversion would have an impact to the calculation of the earnings test as a result of the fact that Westfield Gas's income would no longer be subject to federal and state income taxes. Ms. Phillips testified that in order to effect the conversion, Westfield Gas was required to make a one-time tax payment of approximately $956,000 to the federal government and another one-time tax payment of approximately $204,000 to the State of Indiana.

Ms. Laura J. Anderson, a Utility Analyst in the OUCC's Natural Gas Division, testified that while she agreed with Ms. Phillips's assessment of the impact of the conversion to Westfield Gas's GCA proceedings, Ms. Phillips' testimony did not address the effect of the conversion on Westfield Gas's base rates as determined in Cause No. 43624 (Westfield Gas's most recent base rate case). Ms. Anderson testified that in Cause No. 43624, the Commission allowed Westfield Gas to recover approximately $392,000 for federal and state income taxes, which represents approximately 6.7 percent of the total $5.9 million revenue requirement in that case. Ms. Anderson recommended that Westfield Gas submit a revision to its current tariff to account for the federal and state income taxes it will not be required to pay in the future.

Mr. Aaron D. Johnson, Citizens Energy Group's Vice President of Corporate Development, provided rebuttal testimony on behalf of Westfield Gas. He stated that the OUCC's recommendation runs counter to the Commission's policy and the policy the OUCC itself has consistently advocated regarding "single issue ratemaking." Mr. Johnson stated that single issue ratemaking has been defined by the Commission as "altering a utility's rates on the basis of only one of the numerous factors that are considered when determining that utility's revenue requirement." Mr. Johnson pointed out that the Commission has cautioned that single issue ratemaking runs the risk of producing distorted or false results.

Mr. Johnson testified that Westfield Gas's base rates were established in Cause No. 43624 in a final Order issued almost three years ago. He stated that the OUCC's recommendation is based on a change to only one factor and ignores many other costs that may and likely have increased. He further pointed out that Ms. Anderson herself noted that her

recommendation disregards items that make up more than 93 percent of the costs taken into consideration to determine Westfield Gas's revenue requirement when its base rates were set.

Mr. Johnson further testified that the OUCC's recommendation completely ignores the tax payments of approximately $1.16 million (three times the amount of federal and state income taxes included in base rates) that Westfield Gas will be required to make in order to achieve the tax benefits of the conversion. Mr. Johnson testified that it would be unfair to expect Westfield Gas to immediately reduce its base rates and charges to reflect the elimination of income taxes without also providing the utility an opportunity to recover the substantial tax expense it will incur to make those future tax savings possible. Mr. Johnson testified that Westfield Gas did not seek the creation of a regulatory asset in order to guarantee recovery of the $1.16 million one-time tax payments made in order to effect the conversion.

Mr. Johnson stated that Westfield Gas will no longer gross up its GCA factor as a result of the conversion and customers would receive that immediate benefit through the GCA. Mr. Johnson testified that the one-time tax payments, estimated to total approximately $1.16 million, would reduce Westfield Gas's earnings in the year of the payments, causing a deficit in Westfield Gas's earnings bank for GCA purposes. At the same time, Westfield Gas will report earnings in future GCA proceedings without deduction for state or federal income taxes thereby resulting in earnings that will likely be in excess of Westfield Gas's authorized return. Mr. Johnson testified that those excess earnings will reduce the deficit in the earnings bank caused by the one-time payments. Mr. Johnson stated that it could take several years for Westfield Gas to earn amounts sufficient to fully exhaust the deficit in the earnings bank, and thereafter customers would have their rates reduced via the GCA mechanism by an amount equal to any Westfield Gas earnings in excess of the utility's authorized return, whether resulting from the tax conversion or otherwise.

4. Discussion and Findings. The Commission established this subdocket to allow the parties to further address what, if any, actions Westfield Gas may need to take to reflect changes in its ongoing tax expense following its conversion to an LLC. We agree Westfield Gas must reflect its actual income tax expense for purposes of calculating its net operating income in future GCA proceedings. However, that does not mean Westfield Gas should be directed to revise its base rates as a result of its conversion to a limited liability company. Such a directive would result in single issue ratemaking. Ms. Anderson stated that the federal and state income taxes she is concerned about represent approximately 6.7 percent of the revenue requirement that served as the basis for establishing Westfield Gas's base rates more than three years ago. Ms. Anderson did not testify that no other changes occurred relating to the majority of costs that were considered in determining Westfield Gas's revenue requirement. The OUCC's recommendation also does not address the one-time tax payments Westfield Gas made in order to convert to a LLC.

Given that Westfield Gas has eliminated an ongoing tax expense of approximately $400,000 at a cost of approximately $1.16 Million, the initial cost will not be offset by the tax benefit for approximately three years. We note that pursuant to our Order in Cause No. 44124, issued on April 10, 2013, Westfield Gas's currently authorized decoupling mechanism will expire on December 31, 2015, unless it files a base rate case by that date. Accordingly, any net

benefits realized by Westfield Gas in excess of its initial expense will be short-lived. Further, during the interim period, Westfield Gas's avoided tax liability will be reflected under Ind. Code § 8-1-2-42(g)(3)(C).

In conclusion, we find that the manner in which Westfield Gas is currently reflecting the tax consequences of its conversion to an LLC through the GCA proceedings is appropriate. Accordingly, Westfield Gas does not need to further reflect the changes in its tax payments driven by the LLC conversion through a revision of its tariffed rates.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Subdocket established by the Commission's November 28, 2012 Order in Cause No. 37389 GCA 92 is hereby closed.

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS AND ZIEGNER CONCUR; MAYS NOT PARTICIPATING:

APPROVED: OCT 30 2013

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission