

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION) CAUSE NO. 45032 S11
INTO THE IMPACTS OF THE TAX CUTS AND JOBS)
ACT OF 2017 AND POSSIBLE RATE IMPLICATIONS)
UNDER PHASE 2 FOR MIDWEST NATURAL GAS) APPROVED: DEC 27 2018
CORPORATION)

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Lorraine L. Seyfried, Chief Administrative Law Judge

On January 3, 2018, the Indiana Utility Regulatory Commission ("Commission") initiated an investigation into the impact of the Tax Cuts and Jobs Act of 2017 ("Act") to review and consider the implications of the Tax Act on utility rates and to determine what additional action, if any, is warranted. The Act contains provisions that, among other things, reduce the corporate federal income tax rate from a maximum of 35% under a graduated rate structure to a flat 21% rate thereby affecting the current rates charged by utilities. The Commission also ordered all Respondents to apply regulatory accounting treatment, such as the use of regulatory assets and liabilities, for all estimated impacts resulting from the Tax Act.

As set forth in the Commission's February 16, 2018 Order in Cause No. 45032, the investigation into the Act was divided into two phases. The purpose of Phase 1 was "to ascertain the real time existing customer rate impact directly related to the change in the federal income tax rate on the ongoing revenue requirement" for each Respondent¹ and "to foster an expedient process to reflect such impact in customer rates going forward." Id. at 2 (footnotes omitted). Respondents were required to complete a 30-day filing in Phase 1 revising their rates and charges to reflect the new tax rate. The purpose of Phase 2 was to address all remaining issues, including: (1) the amount and amortization of normalized and non-normalized excess accumulated deferred income taxes ("EADIT") and the regulatory accounting being used for estimated impacts resulting from the Act, and (2) the timing and method for how these benefits will be realized by customers, whether directly or indirectly.

On May 14, 2018, the Commission entered its Order establishing subdockets for all Respondents except those who had been dismissed or had motions to dismiss pending, for whom further filings had been stayed, or for whom the impact of the Act did not result in a direct rate benefit to customers. Respondent, Midwest Natural Gas Corporation ("Midwest"), was assigned this subdocket.

¹ Indiana's jurisdictional rate-regulated, investor-owned utilities were made Respondents.

Midwest filed its case-in-chief on June 19, 2018. The Indiana Office of Utility Consumer Counselor (“OUCC”) filed its case-in-chief on August 21, 2018. Midwest filed its rebuttal on September 21, 2018.

An evidentiary hearing in this Cause was held on November 1, 2018, at 1:30 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, Respondent and the OUCC appeared and offered their respective evidence, which was admitted into the record without objection.

Based on the applicable law and the evidence of record, the Commission now finds:

1. Notice and Jurisdiction. Due, legal, and timely notice was given and published as required by law. Respondent is a public utility as defined in Ind. Code § 8-1-2-1. The Commission has jurisdiction to approve changes in the schedule of rates, tolls, and charges of Indiana public utilities under Ind. Code § 8-1-2-42. The Commission also has authority to initiate an investigation into all matters relating to any public utility pursuant to Ind. Code § 8-1-2-58. In addition, Ind. Code § 8-1-2-72 authorizes the Commission to alter or amend any order made by the Commission, upon notice and after opportunity to be heard. Therefore, the Commission has jurisdiction over Midwest and the subject matter of this Cause.

2. Respondent’s Characteristics. Midwest is a public utility currently providing natural gas service to its customers in Clark, Daviess, Greene, Jackson, Jennings, Knox, Monroe, Orange, Scott, and Washington Counties, Indiana pursuant to prior Orders of the Commission.

3. Evidence of the Parties.

A. Respondent’s Case-in-Chief. David A. Osmon, President and Chief Operating Officer of Midwest, explained his understanding of the Commission’s investigation to address changes made by the Act. He noted that Phase 1 called for utilities to file revised rates to reflect the changed corporate income tax rate, which Midwest did and that such rates were approved beginning with the May 2018 billing cycle. He testified that Midwest also established the regulatory accounting required by the Commission’s January 3, 2018 Order in Cause No. 45032. Mr. Osmon stated that Phase 2 was designed to address all remaining issues flowing from the Act, including determining a process to refund the EADIT and any over-collection of federal income tax collected between January 2018 and April 2018.

Mr. Osmon explained the methodology he used to calculate the amount of dollars to be refunded for the over-collection between January 2018 and April 2018 and proposed the use of a tracker mechanism to refund the over-collection. He testified that such tracker should begin in January 2019 to more closely match the usage of Midwest customers that had occurred from January to April 2018. He also proposed that at the end of April 2019, Midwest would reconcile the refund dollars with any difference included in the gas cost adjustment (“GCA”) variances at that time. He stated that Midwest determined the amount of refund owed to its customers is \$147,949.16.

Bonnie J. Mann, a Certified Public Accountant with LWG CPAs & Advisors (“LWG”), testified that she and her colleagues were assisting Respondent and several other small natural gas utilities in addressing the Phase 2 issues. She explained that calculating the amount of EADIT is not a simple math calculation and noted there are differences between year-end tax filers and fiscal year-end tax filers. She noted that Midwest is a fiscal year-end tax filer and therefore, an estimate was calculated for the EADIT liability and a regulatory liability account was created based on that estimate, which now may need to be adjusted.

Ms. Mann testified that the underlying deferred tax elements for the small gas utilities represented by LWG varies by utility and include: comprehensive income components for retirement benefits; unrealized gains and losses on investments; tax carryforwards, including capital loss carryforwards; charitable contribution carryforwards; rate case cost deducted for federal income tax purposes but amortized for regulatory purposes; unbilled revenue; and other miscellaneous differences. She noted, however, the one element they all have in common is the difference between book and tax depreciation.

She explained that Exhibit 1 attached to Respondent’s Exhibit 2 contains the calculation of the amount of EADIT and includes both protected and unprotected portions of the EADIT liability. She also provided the amount of EADIT that should be returned to customers in Exhibit 3 and the amortization period that should be used in Exhibit 2. She indicated that the amortization period should be the same for both protected and unprotected deferred taxes. These exhibits reflect a refundable EADIT amount of \$854,936 to be amortized over a period of 17.45 years.

Finally, Ms. Mann expressed concern related to the use of a blended tax rate for non-calendar year taxpayers and costs associated with this proceeding. She stated that Respondent requests the Commission authorize the deferral of the cost of this proceeding as a regulatory asset for further review and recovery in the next base rate case.

B. OUC’s Case-in-Chief. Isabelle L. Gordon, a Utility Analyst I with the OUC, provided background on the changes required by the Act and described Respondent’s EADIT calculation. She testified that she disagreed with Respondent’s EADIT calculation on Exhibit 1 of Respondent’s Exhibit 2 because Respondent included unrealized gains in its calculation. Ms. Gordon calculated a protected and unprotected EADIT amount of \$612,151 and explained her calculation. She noted that her calculation differed from Respondents in two respects. First, she removed Respondent’s unrealized gains, and then she deducted the state deferred income tax applicable to the protected and unprotected EADIT for a more accurate balance.

She also disagreed with Respondent’s proposal to refund the amount of EADIT calculated in Exhibit 3 of Respondent’s Exhibit 2 for several reasons. First, she stated that not updating deferred tax calculations since the last rate case ignores ratepayer contributions to income taxes or contributions to depreciation expense for the years between the last rate case and the date of the most current deferred income tax balance before the Act went into effect. Second, she asserted that Exhibit 3 was not supported by any other schedules. Third, she disagreed that the short term asset, unbilled revenue, should be subtracted from the calculation because items

generating the deferred tax created a liability (or asset) at a higher tax rate and when the liability (or asset) reverses the following year, it will be at a lower tax rate, leaving excess deferred tax. And finally, she stated the method summarized on Exhibit 1 of Respondent's Exhibit 2 is consistent with methods used by other utilities.

Ms. Gordon expressed agreement with Respondent's proposed amortization period of 17.45 years for both the protected and unprotected EADIT dollars. She testified that amortizing EADIT of \$612,151 over 17.45 years or 209 months yields an annual amortization of \$35,080. She recommended that Respondent's base rates be reduced by this annual amount using the same revenue requirement schedules applicable to the approved rate in Respondent's last rate case, reflecting the revised 21% income tax rate effective on May 1, 2018, in Cause No. 45032.

Regarding the refund of the over-collected tax dollars from January 1, 2018, Ms. Gordon agreed with Respondent's calculation of the over-collection and making the refund over the proposed four-month period in 2019. However, she disagreed with Respondent's proposal to use the GCA mechanism for the tax refunds because not all customer classes receiving refunds are included in the GCA mechanism. Ms. Gordon recommended that any variances in the temporary tracker mechanism be reconciled and refunded in the same temporary tracker mechanism.

Finally, Ms. Gordon addressed Respondent's other concerns. She testified that the blended tax rate for non-calendar year taxpayers will not cause those utilities to refund more than they should because the blended rate will match the appropriate rate collected for the appropriate months. She also disagreed with Respondent's request to defer as a regulatory asset the costs of Midwest's participation in this Cause because the amount is unknown. She testified that because the Act changed Respondent's income tax rate, Respondent would have had to calculate its EADIT to adhere to the normalization requirements of the Internal Revenue Service. She also noted that legal and accounting fees are embedded in Respondent's current base rates. While Ms. Gordon also acknowledged that Respondent's cost of capital may increase, she stated that issue was outside of the scope of this proceeding.

C. **Respondent's Rebuttal.** Mr. Osmon testified that Midwest accepts the OUCC's recommendation to refund \$612,151 in EADIT over 17.45 years. He also accepted Ms. Gordon's proposal to refund the over-collection of tax dollars from January 2018 through April 2018 through a temporary tracker mechanism. However, he disagreed with Ms. Gordon's recommendation that Midwest not be permitted to defer the cost of this regulatory proceeding for recovery in the future. Mr. Osmon testified that Midwest's current base rates were established in August 2017 and did not include funds for changes in the federal income tax law that began in January of 2018. He argued that the cost of responding to the Commission's investigation should be treated no differently than the cost of any other regulatory proceeding.

4. **Commission Discussion and Findings.** Based on the evidence presented and the agreement of the parties, we find that the EADIT dollars to be refunded to Respondent's customers is \$612,151. Both the protected and unprotected EADIT should be amortized over 17.45 years, which results in an annual amortization of \$35,080. The annual amortization is to be reflected as a reduction to Respondent's existing rates using revenue requirement schedules from Respondent's last rate case, updated to the new tax rate as of May 1, 2018, using the same

customer allocation and rate design as approved in Respondent's last rate case, and effected through the Commission's 30-day filing process under 170 IAC 1-6.

With regard to refunding the over-collection of tax funds from January 2018 through April 2018, Midwest proposed that such refund occur through a temporary tracking mechanism beginning in January 2019 to refund the over-collection as closely as possible to the customers by class who paid such over-collection during a similar heating period as when the taxes were collected. The OUCC agreed with both the amount and the use of a tracker mechanism. Therefore, based on the evidence of record, we find that the over-collection in the amount of \$147,949.16 should be refunded to the customer classes as proposed by Midwest to begin in January 2019 and run through April 30, 2019. Such temporary tracker shall be implemented as a compliance filing under this Cause made at least three business days prior to intended implementation.

The parties disagreed on the approach that should be used to reconcile and return (or collect) any variances related to the refund of the over-collection of tax dollars. Midwest proposed to reflect the variances through the GCA process; whereas, the OUCC recommended using the temporary tracking mechanism. The evidence indicates that not all customers receiving refunds are included in the GCA mechanism. In addition, Respondent has only one GCA rate for all customer classes, so the allocation of variances would deviate from the customer class allocation approved in Respondent's last rate case. Given that the refunds will occur in a temporary tracking mechanism that is effected as a compliance filing under this Cause, we find that reconciling any variance in a similar manner to be reasonable and appropriate. Therefore, we find that any variances in the temporary tracking mechanism should be reconciled and refunded (or collected) in a final refund tracker by making a compliance filing under this Cause in May 2019. The filing shall include workpapers sufficient to support the reconciliation amounts. Any further variance amounts, if not de minimus, should then be included in the GCA mechanism with any supporting workpapers.

Finally, Respondent requested approval to defer the cost of its participation in this Commission investigation proceeding as a regulatory asset. When we have previously considered such requests to create a regulatory asset, we have indicated that,

...it is necessary to consider the balance struck between the utility and its ratepayers by approving such a request. For example, the gravity of the financial event involved and its impact upon the utility is appropriate to consider, as well as the impact such accounting and/or ratemaking treatment will have upon the utility's ratepayers. Further, it is necessary for the utility requesting such extraordinary treatment to be able to demonstrate with convincing evidence that the financial event is in fact occurring, and that such financial impact is fixed, known, and measureable. If all of these elements are established, a utility might receive approval for such an extraordinary request.

Ind. Mich. Power Co., Cause No. 40980 at 6-7 (IURC Nov. 12, 1998); *see also*, *Duke Energy Ind., Inc.*, Cause No. 43743 (IURC Oct. 19, 2011).

In this case, despite acknowledging that such approval has generally been given when costs are found to be reasonable, Respondent did not provide any evidence of the costs it has incurred in participating in this proceeding or the reasonableness of those costs. In addition, as noted by the OUCC, even without this investigation, Respondent would have been required by the Act to incur some costs to calculate and address its EADIT. Respondent also has legal and accounting fees embedded into its current rates. Therefore, we find that Respondent has failed to provide sufficient evidence that would allow us to approve the creation of a regulatory asset for the unknown costs it has incurred to participate in this proceeding. While we are not approving Respondent's request at this time, such decision does not preclude Respondent from seeking recovery of such costs in its next rate case.

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

1. As set forth in this Order, Respondent shall refund \$612,151 as the amount of EADIT.
2. Such amortization of EADIT dollars shall occur over 17.45 years using the same customer allocation and rate design as approved in Respondent's last base rate case.
3. Respondent shall propose a new tariff annually through the Commission's 30-day filing process to change its existing tariff to reflect the refund of the EADIT amount.
4. Respondent shall refund \$147,949.16 in the over-collection of taxes from January 2018 through April 2018 through a temporary tracker mechanism implemented as a compliance filing under this Cause to begin in January 2019 and continue through April of 2019. The reconciliation and return (or collection) of any variance shall also occur through a final refund tracker by making a compliance filing under this Cause in May 2019 to true-up any remaining refund balances. Any further variance amounts, if not de minimus, shall be included in Respondent's GCA mechanism.
5. Prior to implementing the authorized rate adjustment, Respondent shall file the applicable rate schedules under this Cause for approval by the Commission's Energy Division. Such rates shall be effective on or after the date of this approval.
6. This Order shall be effective on and after the date of its approval.

HUSTON, OBER, AND ZIEGNER CONCUR; FREEMAN AND KREVDA ABSENT:

APPROVED: DEC 27 2018

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



Mary M. Becerra
Secretary of the Commission