ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE INDIANA UTILITY REGULATORY COMMISSION'S INVESTIGATION INTO THE IMPACTS OF THE TAX CUTS AND JOBS ACT OF 2017 AND POSSIBLE RATE IMPLICATIONS UNDER PHASE 2 FOR SOUTH EASTERN INDIANA NATURAL GAS COMPANY, INC.	))))))	**CAUSE NO. 45032 S13** **APPROVED:** DEC 27 2018

ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Chairman
Loraine 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 Respondent[1] 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, South Eastern Indiana Natural Gas Company, Inc. ("South Eastern"), was assigned this subdocket.

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

South Eastern 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. South Eastern filed its rebuttal on September 21, 2018.

An evidentiary hearing in this Cause was held on November 1, 2018 at 10:00 a.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 South Eastern and the subject matter of this Cause.

2. Respondents Characteristics. South Eastern is a public utility currently providing natural gas service to its customers in Dearborn, and Ripley Counties, Indiana pursuant to prior Orders of the Commission.

3. Evidence of the Parties.

A. Respondent's Case-in-Chief. 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 South Eastern files taxes based on the calendar year and therefore, its EADIT liability was calculated at the end of the calendar year at 21%, and an EADIT account was created.

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 1 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 $168,652 to be amortized over a period of 19.65 years.

Ms. Mann explained the methodology she used to calculate the amount of dollars to be refunded for the over-collection of tax dollars between January and April of 2018 and recommended a temporary tracker mechanism be used to refund the over-collection, with a reconciliation of any variances between the amount required to be refunded and the amount actually refunded being included in a gas cost adjustment ("GCA") filing after April 2019. She proposed the tracker begin in January 2019 to more closely match the natural gas usage of customers that occurred from January to April 2018. Exhibit 4 of Respondent's Exhibit 1 reflects a refund amount of $17,709.

Finally, Ms. Mann expressed concern related to the costs of this proceeding and requested 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. OUCC's Case-in-Chief. Amy E. Larsen, a Utility Analyst II with the OUCC, provided background on the changes required by the Act and described Respondent's EADIT calculation. She testified that she agreed with Respondent's protected and unprotected EADIT calculation, but deducted the state deferred income tax applicable to the protected and unprotected EADIT separately to provide a more accurate balance of $176,222. She also disagreed with Respondent's alternative calculation reflected in Exhibit 3 for the EADIT refund 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 liabilities, accrued wages and 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 1 is consistent with methods used by other utilities.

Ms. Larsen expressed agreement with Respondent's proposed amortization period of 19.65 years for both the protected and unprotected EADIT dollars. She testified that amortizing EADIT of $176,222 over 19.65 years or 235.8 months yields an annual amortization of $8,968. 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. Larsen 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. Larsen recommended that any variances in the temporary tracker mechanism be reconciled and refunded in the same temporary tracker mechanism.

Finally, Ms. Larsen addressed Respondent's other concerns related to the costs of this proceeding. She disagreed with Respondent's request to defer as a regulatory asset the costs of South Eastern's participation in this Cause because the amount is unknown. She also 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. Larsen 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. Ms. Mann testified that although she disagrees with some of Ms. Larsen's recommendations, Respondent's management accepts Ms. Larsen's recommendations on the EADIT refund because of the immateriality of the impact. However, Respondent does not agree with Ms. Larsen's objection to Respondent's request for approval to defer the costs of its participation in this Cause as a regulatory asset. Ms. Mann testified that costs to appear before the Commission are typically allowed to be recovered assuming they are reasonable. She also disagreed that Respondent has funds within it current revenue requirement to cover these costs because Respondent's base rates were last established in 2012 and therefore, the costs of this proceeding could not have been included.

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 $176,222. Both the protected and unprotected EADIT should be amortized over 19.65 years, which results in an annual amortization of $8,968. 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, South Eastern 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 $21,509 should be refunded to the customer classes as proposed by South Eastern 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. South Eastern 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. 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 $176,222 as the amount of EADIT.

2. Such amortization of EADIT dollars shall occur over 19.65 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 $17,709 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 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

Mary M. Becerra
Secretary of the Commission