

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

[Handwritten signatures and initials]
DW SNK

IN THE MATTER OF THE INDIANA UTILITY)
REGULATORY COMMISSION'S INVESTIGATION INTO) CAUSE NO. 45032 S4
THE IMPACTS OF THE TAX CUTS AND JOBS ACT OF)
2017 AND POSSIBLE RATE IMPLICATIONS UNDER)
PHASE 1 AND PHASE 2 FOR INDIANA AMERICAN) APPROVED: JUL 31 2018
WATER COMPANY, INC.)

PHASE 1 ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

David E. Veleta, Senior Administrative Law Judge

On December 22, 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act of 2017 ("Act"). The Act contains provisions reducing the corporate tax rate of 35% to 21% and revising the federal tax structure. These new federal requirements affect the current tax expense and deferred tax accounting methods used by employers, including utilities. Many of the Act's provisions are effective as of January 1, 2018.

On January 3, 2018, the Indiana Utility Regulatory Commission ("Commission") initiated an investigation into the impact of the Act to determine what, if any, benefits resulting from changes to the federal income tax rate should be reflected in customer bills. The Act contains provisions that, among other things, reduce the corporate federal income tax rate from 35% to 21% thereby affecting the current rates charged by utilities. 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 utility, and "to foster an expedient process to reflect such impact in customer rates going forward." *In re Investigation into Impacts of the Tax Cuts and Jobs Act of 2017*, Cause No. 45032, p. 2 (IURC Feb. 16, 2018) (the "February 16 Order"). The utilities were required to complete a 30-day filing in Phase 1 revising its Rates and Charges to reflect the new tax rate. The purpose of Phase 2 was to address all remaining issues. On January 8, 2018, the Indiana Industrial Group ("Industrial Group") filed its Petition to Intervene.

On March 26, 2018, Indiana American filed its 30-Day filing No. 50163. On April 12, 2018, Indiana American Water Company, Inc. ("Indiana American") filed its *Withdrawal of 30-day Submission and Request for Subdocket* ("Motion"). Indiana American states that its election for addressing the tax on contributions in aid of construction ("CIAC") under 170 IAC 6-1.5-33 should be thoroughly vetted in a subdocket proceeding.

On May 17, 2018, Indiana American filed the Direct Testimony and Attachments of John M. Watkins in Phase 1 of this proceeding.

On May 18, 2018, the Town of Schererville filed its Petition to Intervene, which was granted by Docket Entry on May 30, 2018. On June 12, 2018, United States Steel Corporation filed its Petition

to Intervene, which was granted by Docket Entry on June 25, 2018. On June 15, 2018, the City of Crown Point filed its Petition to Intervene, which was granted by Docket Entry on June 29, 2018.

On June 18, 2018, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the Direct Testimony of Margaret A. Stull and Edward R. Kaufman. On June 18, 2018, Schererville filed the Direct Testimony of Theodore J. Sommer. On June 18, 2018, Schererville and U.S. Steel filed their Joint Motion for Administrative Notice, which was granted by Docket Entry on July 19, 2018.

On June 28, 2018, Indiana American submitted the rebuttal testimony of John M. Watkins in Phase 1 of this proceeding. On June 3, 2018, Indiana American filed its Motion requesting Administrative Notice of certain documents which was granted on July 16, 2018.

On July 17, 2018, the Industrial Group and Crown Point filed a request for interim or expedited relief. On July 17, 2018, the OUCC joined in the request for interim or expedited relief.

A public evidentiary hearing was held in this Cause at 9:30 a.m. on July 20, 2018 in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Indiana American, Crown Point, Schererville, U.S. Steel, and the OUCC appeared and participated in the hearing.

Based upon the applicable law and the evidence presented, the Commission finds:

1. Notice and Jurisdiction. Due, legal and timely notice of the evidentiary hearing in this Cause was given as required by law. The Commission is authorized under Ind. Code § 8-1-2-42 to approve changes in the schedule of rates, tolls, and charges of Indiana public utilities. Such charges must be reasonable and just. Ind. Code § 8-1-2-4. 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. In addition to the foregoing statutory provisions, the Commission notes that the Indiana Court of Appeals has specifically found that inherent in this grant of power is the implicit power and authority to “do that which is necessary to effectuate the regulatory scheme.” *South Eastern Indiana Natural Gas v. Ingram*, 617 N.E.2d 943, 948 (Ind. Ct. App. 1993). Accordingly, the Commission has jurisdiction over the Indiana American and subject matter of this investigation.

2. Indiana American’s Characteristics. Indiana American is an Indiana corporation engaged in the provision of water utility service to the public in and around numerous communities throughout the State of Indiana for residential, commercial, industrial, public authority, sale for resale and public and private fire protection purposes. Indiana American also provides sewer utility service in Wabash and Delaware Counties.

3. Evidence. John M. Watkins, Senior Director Regulatory Services for American Water Works Service Company, Inc. set forth Indiana American’s original position as stated in its case-in-chief evidence. Indiana American proposed to phase in the effects of the reduction in the federal income tax rate implemented by the Act over the course of approximately one year. Mr. Watkins testified that Indiana American proposed to reflect the reduction in the federal income tax rate from 35% to 21% in two steps: the first step upon issuance of an Order in this subdocket, with the second step to take effect upon the issuance of an Order in an upcoming general rate case. He testified that the immediate rate reduction should be implemented entirely by reducing the volumetric rate. He

explained that this was consistent with the directive in the February 16 Order to allocate the reduction among customer classes using the class allocation methodology approved in the last rate order, Cause No. 44450. He testified that the cost of service study in the last general rate case showed that 51% of Indiana American's fixed costs must be recovered through volumetric rates and so further reducing the fixed rate component of the rate structure would make no sense. Finally, for purposes of main extensions, Indiana American proposed Option 3 under 170 IAC 6-1.5-33.

The OUCC (through the testimonies of Margaret Stull, Chief Technical Advisor for the Water/Wastewater Division and Edward Kaufman, Water/Wastewater Division Assistant Director) and the Town of Schererville (through the testimony of Theodore Sommer, Partner with LWG CPAs and Advisors) opposed Indiana American's proposal to phase in the reduction in income tax expense, asking instead that the reduction be fully implemented as soon as possible in this subdocket. Ms. Stull also opposed the proposal to implement the change only through reducing the volumetric rate. Ms. Stull did not believe a change in rate design should be accomplished through this subdocket. Mr. Sommer expressed the opposite view, proposing that the reduction be made entirely through reducing the volumetric rate. With respect to main extensions, Ms. Stull expressed concern regarding Indiana American's subsequent connector fees and revenue allowances proposal. In addition, she indicated that Indiana American's proposal did not address the income tax on system development charges. She recommended that if Indiana American intended to gross up the system development charges for the income tax, it should submit a 30-day filing to that effect.

On rebuttal, Indiana American withdrew its request to phase in the reduction over two steps. Mr. Watkins testified that Indiana American had submitted a new filing on a 30-day basis to reduce rates so as to reflect 100% of the tax rate reduction. We took administrative notice of this submission, Filing No. 50207, filed by Indiana American on June 28, 2018. He also testified that the 30-day submission reflected the entire savings through a reduction in the volumetric rate. As to main extensions he confirmed that Indiana American's proposal was to implement Option 3 precisely as it is written in 170 IAC 6-1.5-33, and this too was reflected in Filing No. 50207, which addressed Ms. Stull's concerns. As to system development charges, Mr. Watkins explained that Indiana American will separately submit a revised tariff on a 30-day basis to reflect the gross-up for the income tax as recommended by Ms. Stull.

4. Commission Discussion and Findings. On July 17, 2018, the Industrial Group and Crown Point filed an unopposed Request for Interim or Expedited Relief ("Motion"). None of the other parties objected to the Motion. The same day, the OUCC filed a Joinder to the Motion.

The Commission previously approved the 30-Day filing process as an appropriate vehicle for respondent utilities to reflect the reduction in rates as a result of the Act. As such, the Commission has received and approved numerous 30-Day filings to implement reduced rates. In this case, Indiana American withdrew its initial 30-Day filing No. 50163, but subsequently made a second 30-Day filing, Filing No. 50207, to reflect the tax impact on rates. The Motion seeks to have Filing No. 50207 explicitly deemed an allowable filing under the 30-Day Filing rules so that it can be processed and approved as the other allowable filings implementing the reductions of federal tax expense for other utilities, on an interim or otherwise expedited basis.

The Commission has taken administrative notice of Filing No. 50207, as well as Indiana American's initial 30-Day Filing No. 50163, that was made on March 26, 2018, and withdrawn on April 12, 2018. The two filings differ in how the tax reduction is reflected in rates, with Filing #50207

reflecting the reduction in the volumetric charge, and Filing No. 50163 reflecting the reduction in the customer charge and the volumetric charge. The OUCC's Joinder noted that while the OUCC supports approval of the Filing No. 50163 over Filing No. 50207, the OUCC recognizes that the priority should be securing the implementation of lower federal income tax in Indiana American's rates. Accordingly, the OUCC also supports the Motion and the interim relief requested to allow Filing No. 50207 to be approved in an expeditious manner.

The Commission's February 16, 2018 Order requires any rate reduction to be allocated in accordance with a utility's allocation methodology used at the time that the current rate or charge was approved. Thus, we deny the Industrial Group and Crown Point's Motion, as Filing No. 50207 does not use an allocation methodology consistent with Indiana American's last rate case. However, Indiana American's initial 30-Day Filing No. 50163 complied with this directive. Therefore, we approve the rate reduction consistent with Indiana American's 30-Day Filing No. 50163, received on March 26, 2018, which reflect, the reduction in both the customer charge and the volumetric charge.

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

1. Indiana American is authorized to revise its rates consistent with the rate reduction that was reflected in its 30-Day Filing No. 50163 that was received by the Commission on March 26, 2018.

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

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED: JUL 31 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