

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Consideration of the tax impacts
associated with Tax Cuts and Jobs Act of 2017
for Florida Public Utilities Company -
Indiantown Division.

DOCKET NO. 20180052-GU
ORDER NO. PSC-2019-0077-FOF-GU
ISSUED: February 25, 2019

The following Commissioners participated in the disposition of this matter:

JULIE I. BROWN
GARY F. CLARK
ANDREW GILES FAY

FINAL ORDER ON THE TAX IMPACTS ASSOCIATED WITH
THE TAX CUTS & JOBS ACT OF 2017

APPEARANCES:

GREGORY M. MUNSON and BETH KEATING, ESQUIRES, Gunster Law Firm, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301-1839
On behalf of Florida Public Utilities Company - Indiantown Division (INDIANTOWN).

J.R. KELLY, VIRGINIA PONDER, CHARLES J. REHWINKEL, and PATRICIA CHRISTENSEN, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

RACHAEL DZIECHCIARZ, MARGO DUVAL, and CHARLES MURPHY, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission.

KEITH C. HETRICK, ESQUIRE, General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel.

BY THE COMMISSION:

Background

We opened Docket No. 20180052-GU on February 23, 2018, to consider the tax impacts affecting Florida Public Utilities Company (FPUC) – Indiantown Division (Indiantown or Company), resulting from the passage of the Tax Cuts and Jobs Act of 2017 (TCJA). Indiantown is a subsidiary of Chesapeake Utilities Corporation (CUC). CUC is the parent of the Florida Division of CUC (Chesapeake) and FPUC. Indiantown and FPUC-Fort Meade Division (Fort Meade) are separate divisions of FPUC. Docket Nos. 20180051-GU, 20180053-GU, and 20180054-GU were opened to address the tax impacts affecting FPUC, Fort Meade, and Chesapeake, respectively.

On April 25, 2018, an Order Establishing Procedure for the instant docket was issued, in which controlling dates were set for filing testimony, exhibits, and discovery. On May 31, 2018, the discovery procedures and controlling dates were modified. Order No. PSC-2018-0412-PCO-GU, issued on August 20, 2018, was the second order revising the Order Establishing Procedure that allowed the Company to file revised and supplemental testimony and extended testimony filing dates for Commission staff and the Office of Public Counsel (OPC). OPC is the only intervenor in the docket.

The prehearing conference was held on November 5, 2018. On November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, and 20180054-GU. On November 16, 2018, the Prehearing Order was issued. The Order reflected proposed stipulations between Indiantown and OPC on most of the issues in this docket. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for purposes of the hearing.

The hearing was held on November 27, 2018. At that time, we voted to accept and approve the parties' proposed stipulations on Issue Nos. 1, 2, 3, 4A, 5A, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 20, as set forth in Attachment A of this Order. On December 28, 2018, Indiantown and OPC submitted post-hearing briefs on Issue Nos. 4B, 5B, 17, 18, 19, and 21.

We have jurisdiction over this matter pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Decision

Stipulated Issues

As discussed above, we accepted and approved the proposed stipulations as set forth in Attachment A as being in the public interest, as we find they are just and reasonable and supported by competent, substantial evidence of record.

Contested Issues

I. Protected Excess Deferred Taxes

This section addresses what is the appropriate disposition of the protected excess deferred taxes.

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that given its earnings posture, the Company should be allowed to retain the protected excess deferred tax amount of \$8,510, less the unprotected excess deferred tax amount of \$648, for a net tax savings of \$7,862. Indiantown argued that the ability to retain this amount will provide the Company with the opportunity to earn closer to its authorized range of return on equity (ROE), while also enabling the Company to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. Indiantown argued that it is currently under-earning and even if it is allowed to retain the tax benefits it has requested, the Company's ROE for 2019 is projected to be negative 21.85 percent as opposed to a negative 22.58 percent.

Indiantown also argued that while retention of the net tax savings as proposed by Indiantown will not enable the Company to earn within its authorized range, it will improve the current situation. This will ensure that the Company remains financially stable pending the next rate case so that it can continue to provide safe and reliable service to its customers. Indiantown contended that its proposal reflects the more reasonable approach to addressing the disposition of the tax savings and provides the greatest overall benefit for the Company and its customers.

OPC

OPC argued that instead of retaining the tax savings as proposed by Indiantown, the tax savings should be returned to the customers via a base rate reduction. OPC contended that Indiantown has knowingly been earning below its authorized range since 2013, and has had ample opportunity to file for a base rate increase. OPC argued that the TCJA's effect on the excess accumulated deferred income tax (ADIT) amount resulted in ratepayers making overpayments to Indiantown. Like any overpayment, the protected excess deferred taxes should be refunded as rapidly as possible under the Internal Revenue Service (IRS) regulations to ensure only fair, just, and reasonable rates are paid by ratepayers. Therefore, OPC argued all of the 2018 income tax savings should be applied for the benefit of its customers through a base rate reduction.

ANALYSIS

The Parties agree on the amount of the amortization of the protected excess ADIT of \$7,862. In its brief, Indiantown reiterated there is no debate between the Parties regarding the

amount of the protected excess deferred taxes, nor is there any debate regarding Indiantown's earnings posture. Witness Cassel testified that retention of the net protected annual tax savings of \$7,862 will potentially provide the Company with an opportunity to earn a return closer to its authorized range, to continue making capital investments, and will enable Indiantown to charge current rates for a longer period of time, thereby delaying a rate case proceeding. Witness Cassel also testified that retention of the tax savings would potentially enable the Company to continue its interim consolidation efforts pending its next rate case, while also placing downward pressure on any rate increase sought in its next rate case.

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d, 249, 254 (Fla. 1982), which stated, “[a] change in a tax law should no [sic] result in a ‘windfall’ to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving.” OPC argued that, by definition, the excess tax monies in Indiantown’s possession are a windfall to the Company that should be flowed back to the customers who paid the taxes through rates. In response to a Commission staff interrogatory, Indiantown indicated that its forecasted ROE for 2019 would still be negative 19.43 percent, even if it were to retain all the tax savings resulting from the TCJA.

In its brief, Indiantown pointed out that OPC witness Smith also acknowledged that Reedy Creek was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much Reedy Creek would be required to refund. This Commission had already determined that Reedy Creek would have to make a refund, because it was over-earning. In the Reedy Creek decision, the Florida Supreme Court acknowledged this Commission’s decision wherein this Commission stated its position regarding a company’s over-earnings position:

Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return.

OPC maintained that Indiantown witness Cassel’s interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the company in that case with the Court’s use of the term “windfall.” While OPC conceded that the decision in Reedy Creek was driven by the over-earnings posture of the utility, OPC argued the foundation of the analysis was based on the cause of the increase in earnings, not on the extent of the company’s earnings. In the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above the Commission-authorized range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers. In Order No. 8624 this Commission asserted, “[i]t is the Commission’s responsibility to ensure [public utilities] do not earn in excess of a fair and reasonable return upon their investment.”¹

¹ Order No. 8624, issued December 29, 1978, in Docket No. 780921-PU (CI), In Re: Disposition of Federal Tax Savings Realized under the Revenue Act of 1978.

In its brief, Indiantown contended the Company's approach is not inconsistent with Reedy Creek or prior Commission practice as opined by OPC witness Smith. Witness Cassel testified that Reedy Creek was in an over-earnings position, which led to a required refund, while Indiantown is under-earning and should be able to retain the protected excess deferred tax benefit. Indiantown further contended that a key factor in the Reedy Creek case pertained to the utility's earnings posture whereby the utility was required to make a refund because it was over-earning.

In his testimony, Indiantown witness Cassel explained that permitting the Company to retain some of the tax savings would allow immediate financial support to the Company, thereby enabling it to continue to provide reliable service to its customers. Witness Cassel testified that allowing the Company to retain some of the tax savings will also delay the additional expense, and likely rate increase associated with a full rate proceeding, which OPC's witness Smith conceded would be costly. The Company argued that Indiantown is currently earning below its authorized ROE range, and that retention of the net protected excess deferred tax amount will improve the Company's earnings posture, but will not cause it to exceed its authorized range. The authorized range of ROE for Indiantown is 10.50 percent to 12.50 percent.² Indiantown is currently earning a negative return which is well below its authorized ROE range. We find that the record is clear that the Company is currently earning below its authorized ROE and that retention of the net protected tax savings will improve the Company's earnings posture, but will not cause it to exceed its authorized range. We further find that a reduction in the Company's rates as recommended by OPC would put additional downward pressure on Indiantown's earnings and reduce the earned ROE on a prospective basis.

Indiantown argued in its brief that witness Smith's refusal to consider Indiantown's earnings posture in rendering his opinion on Indiantown's proposals to retain some of the TCJA benefits is contrary to prior Commission policy as reflected in Commission Order Nos. 8624 and 8624A and overstates the applicability of the Court's conclusions in the Reedy Creek case. As such, Indiantown contended that OPC's arguments on this point should be rejected.

On cross-examination, witness Smith conceded that this Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, this Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the ceiling of their Commission-authorized ROE range to refund the tax savings arising under the 1978 Tax Reform.

CONCLUSION

We believe that it is fair, just, and reasonable for us to consider the earnings position of the Company when making our decision in this matter. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, we hereby find that Indiantown shall

²Order No. PSC-04-0565-PAA-GU, issued June 2, 2004, in Docket No. 20030954-GU, In re: Petition for rate increase by Indiantown Gas Company.

be allowed to retain the net amortized amount of the protected excess deferred tax balance of \$7,862.

II. Unprotected Excess Deferred Taxes

This section addresses what is the appropriate disposition of the unprotected excess deferred taxes.

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown contended that it has an unprotected excess deferred tax asset recorded on its books with an estimated balance of \$6,484. The Company requested this deferred tax asset be amortized over 10 years at \$648 per year. The Company proposed retaining the protected excess deferred tax liability of \$8,510, less the unprotected excess deferred tax asset of \$648, for a net tax savings of \$7,862. Indiantown argued that given its earnings posture, the Company should be allowed to retain the net tax savings of \$7,862. Indiantown argued that the ability to retain this amount will provide the Company with the opportunity to earn closer to its range of ROE, while also enabling the Company to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding.

Indiantown also argued that while retention of the net tax savings as proposed by Indiantown will not enable the Company to earn within its authorized range, it will improve the current situation. This will ensure that the Company remains financially stable pending the next rate case so that it can continue to provide safe and reliable service to its customers. Indiantown contended that its proposal reflects the more reasonable approach to addressing the disposition of the tax savings and provides the greatest overall benefit for the Company and its customers.

OPC

OPC pointed out in its brief that the unprotected excess deferred tax asset of \$6,484 was one of the three impacts of the TCJA. OPC argued that instead of retaining the proceeds as Indiantown has proposed, these tax savings should be returned to the ratepayers as soon as allowable under the IRS guidelines. In its brief, OPC argued that Indiantown witness Cassel affirmed that the TCJA does not contain any language, express or otherwise, suggesting an intended goal of the TCJA was to allow a company to keep tax savings in order to continue making capital investments or to avoid potential rate proceedings.³ OPC maintained that the TCJA's effect on the Company results in Indiantown's customers making overpayments which create excess accumulated deferred income taxes. OPC argued that like any overpayment, the unprotected excess deferred taxes should be refunded as rapidly as possible to avoid

³ However, we note that this question was never asked of witness Cassel for the Indiantown docket. OPC asked witness Cassel this question as it related to the FPUC case in Docket No. 20180051-GU.

intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by Indiantown's ratepayers.

ANALYSIS

Both Indiantown and OPC agreed on the unprotected excess deferred tax balance of \$6,484, and that it should be amortized annually over 10 years. Indiantown witness Cassel testified that the Company's under-earnings posture necessitates the Company's retention of the unprotected excess deferred tax amount arising from the TCJA. Indiantown witness Cassel also testified that permitting the Company to retain some of the tax savings would allow immediate financial support to the Company, thereby enabling it to continue to provide safe and reliable service to its customers. Retention of the unprotected excess deferred income tax amount will potentially provide the Company with an opportunity to earn a reasonable return, to continue making capital investments, and to enable Indiantown to charge current rates for a longer period of time, thus, delaying a rate case proceeding. Witness Cassel explained that if the Company is allowed to retain the net deferred tax savings of \$7,862, the Company would be able to delay a rate case and continue its interim consolidation efforts, and to place downward pressure on the rate increase amount that the Company would be seeking in its next rate case.

In its brief, OPC reiterated its arguments, as articulated in Section I, based on the Reedy Creek Florida Supreme Court case, that, "[a] change in a tax law should no [sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." OPC further argued that the TCJA's effect on Indiantown results in the customers making overpayments, and like any overpayment, the unprotected excess deferred taxes should be refunded to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by the Company's customers.

As discussed in Section I, the record evidence demonstrates that Indiantown is earning a negative return well below its authorized range of return on equity. In response to a Commission staff interrogatory, Indiantown provided a calculation of its projected ROE of negative 22 percent "with tax savings recognized." Indiantown made a compelling argument that regulatory efficiency supports allowing the Company to retain the annual tax savings of \$648 associated with the unprotected excess deferred accumulated taxes, which would be netted against the annual protected excess deferred accumulated tax amount of \$8,510, for a net tax savings of \$7,862. Furthermore, we believe that Indiantown's approach is not inconsistent with the Reedy Creek decision or prior Commission practice.

We find that the record evidence reflects that Indiantown is currently earning well below its authorized ROE range and retention of the net protected excess ADIT benefit will improve the Company's earnings posture, but will not cause it to exceed its authorized range of ROE.

CONCLUSION

We believe that it is fair, just, and reasonable for us to consider the earnings position of the Company when making our decision in this matter. Reducing base rates as recommended by

OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, we hereby find that Indiantown shall be allowed to retain the unprotected excess deferred tax balance of \$6,484, amortized over 10 years at \$648 per year, netted against the protected excess deferred tax balance.

III. Recovery of Any Detrimental Impact

This section addresses whether Indiantown should be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA, and, if so, whether Indiantown should be allowed to recover such amount through the Energy Conservation Cost Recovery (ECCR) Clause.

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately \$54,096. Indiantown argued that the Company is projected to be earning at the bottom of the earnings range utilized for Indiantown's surveillance reporting purposes.⁴ Indiantown argued that approval to recover the tax detriment will provide the Company with an opportunity to preserve or improve its current earnings posture, thereby potentially deferring a future rate case. The Company argued that such regulatory efficiency will extend rate stability and be more consistent with the stated purpose outlined by the tax bill's sponsor, Congressman Brady, to provide tax relief for workers, families, and job creators. Indiantown acknowledged that approval of the Company's proposal to recover the tax detriment is at the discretion of the Commission.

OPC

OPC argued that a tax detriment is not suffered directly by Indiantown but is suffered, if at all, by Indiantown's parent company, CUC, through its consolidated tax return. OPC contended that witness Cassel admitted during cross-examination that the taxes at issue here are already part of current base rates. Further, OPC argued that the fallacy of Indiantown's proposed treatment of the putative tax detriment is demonstrated by inverting the effects of the TCJA. If, instead of a detriment to the parent company's consolidated tax return, as purported here, the TCJA resulted in a tax benefit on the parent company's consolidated tax return, Indiantown would not be requesting to include said tax benefit in its rate base.

⁴ However, the record demonstrates that Indiantown is actually earning a negative rate of return, well below its authorized rate of return.

ANALYSIS

Indiantown projects to have negative operating income for 2018 and has identified an annual net tax detriment of \$54,096 based on its pro forma surveillance report. Indiantown contended that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately \$54,096 for the Company. Witness Cassel testified that Indiantown's purpose for recovering the tax detriment is to address incremental ongoing costs that have been incurred since the Company's last rate case in 2003.

The alleged tax detriment is the result of Indiantown's net operating loss (NOL) being worth less at 21 percent than at 35 percent on CUC's consolidated tax return. Indiantown does not file its own Federal tax return, but instead files a consolidated Federal tax return with its parent company, CUC. Consequently, the "write off" on CUC's books from Indiantown's NOL is worth less to the parent company due to the lower tax rate. Indiantown is requesting to recover the loss of that tax deduction for its parent company through an increase of \$54,096 in its ECCR clause factors. However, witness Cassel confirmed that regulated public company rates are set on a stand-alone basis, that is, as if the regulated company is required to pay income taxes. The utility rates charged to customers already include an allowance for income taxes in base rates.

The record demonstrates that Indiantown is requesting to use a purported tax detriment on CUC's books to recover incremental costs in lieu of initiating a rate increase. Witness Cassel explained in his direct testimony:

At present, the Company is not over-earning. In fact, the Company is earning below its allowable range and is projected to continue to do so in the foreseeable future. As such, the Company should be allowed to recover this annual tax detriment through the Energy Conservation Cost Recovery ("ECCR") clause for purposes of addressing ongoing, incremental costs that have been incurred since the company's last base rate increase, which was initiated in 2003.

As argued by OPC, the tax detriment is not suffered directly by Indiantown, but is suffered, if at all, by CUC through its consolidated tax return. Further, sufficient record evidence is lacking to support a finding that the tax detriment as proposed by Indiantown is a result of the TCJA on a stand-alone basis. Recovery of a tax detriment or benefit by a regulated company on behalf of its parent company is inconsistent with current regulatory practice to align income tax expense on a stand-alone basis.

As to whether the Company should be allowed to collect any detrimental impact through the ECCR clause, we note that the clause is governed by Rule 25-17.015, Florida Administrative Code, which states that a utility "may seek to recover its costs for energy conservation programs." OPC witness Smith stated that "[t]he estimated amount of the 2018 income tax detriment does not have anything to do with the ECCR and, therefore, should not be charged to ratepayers through the ECCR." Witness Cassel agreed during cross-examination that the taxes in question are part of base rates, and that the ECCR has nothing to do with base rate tax impacts.

Additionally the Company stated in its response to our staff's 2nd Set of Interrogatories, No. 4(c), that it:

recommends that the annual tax detriment be collected through the ECCR clause on an entirely consolidated basis, rather than a per-division basis. The Company believes that this computation is more favorable to the Indiantown customers as compared to assigning the detrimental impacts specific to only the appropriate division customers.

In Order No. PSC-14-0655-FOF-GU, we allowed FPUC to consolidate the conservation programs' expenses of the various divisions for purposes of ECCR cost recovery.⁵ That order is specific to conservation expenses and does not consider non-conservation expenses or costs. As Indiantown proposes, customers from all FPUC divisions would contribute to Indiantown's base rates tax impact through the ECCR factors. The Company further stated in its response to our staff's 2nd Set of Interrogatories, No. 4(f), that it, "anticipates collecting these funds though the clause until its next rate proceeding." Witness Cassel stated during cross-examination that 2020 or 2021 is the current anticipated timeframe for potential rate filings. As such, there would not be a clearly defined endpoint at which the non-division customers would cease supporting Indiantown's base rate tax detriment through ECCR factors.

Based on the aforementioned, we find that Indiantown shall not be allowed to recover any alleged detrimental impact associated with the corporate tax rate change implemented by the TCJA, and that the ECCR clause is not the appropriate mechanism to collect the tax detriment because the taxes are part of base rates and not associated with conservation expenses.

CONCLUSION

Based on the above, we hereby find that Indiantown shall not be allowed to recover from its customers any presumed detrimental impact associated with the corporate income tax rate change implemented by the TCJA through the ECCR clause.

IV. Retention & Amortization of Protected Deferred Tax Liability

This section addresses whether Indiantown should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities.

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that for protected excess deferred income taxes, the grossed-up balance for Indiantown was approximately \$221,269. This deferred tax balance will be amortized

⁵ Order No. PSC-14-0655-FOF-GU, issued November 6, 2014, in Docket No. 20140004-GU, In re: Natural gas conservation cost recovery.

over 26 years using the Average Rate Assumption Method (ARAM) as prescribed by the IRS, which results in an amount of approximately \$8,510 annually.

OPC

As discussed in Section I, OPC argued Indiantown should not be allowed to retain the annual tax savings associated with the protected excess deferred tax amount. However, if the Commission decides to allow Indiantown to retain the protected excess deferred tax savings, then OPC agreed the benefit should be amortized over 26 years consistent with the ARAM.

ANALYSIS

OPC maintained that the protected excess deferred taxes should be returned to customers while Indiantown argued the Company should be allowed to retain the amount of the protected excess deferred taxes. Both parties agreed Indiantown should amortize the protected excess deferred tax balance of \$221,269 over 26 years consistent with the ARAM, for an annual amount of \$8,510.

Based on our analysis in Section I, we believe it is fair, just, and reasonable for us to consider the earnings position of the Company when making our decision in this matter. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, the Company shall be allowed to retain the protected excess deferred tax liability. Further, we find that it is appropriate for the Company to follow the IRS ARAM and that an amortization period of 26 years is consistent with ARAM.

CONCLUSION

Because Indiantown is earning a negative return well below its authorized range of ROE and is expected to continue to earn below this range even with retention of the tax savings, we hereby find that Indiantown shall be allowed to retain the total annual amount of the tax savings associated with the protected excess deferred taxes and shall amortize this balance over 26 years, consistent with the ARAM.

V. Retention & Amortization of Unprotected Deferred Tax Liability

This section addresses whether Indiantown should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liabilities.

PARTIES' ARGUMENTS

INDIANTOWN

The Company argued that it has an unprotected excess deferred tax balance of \$6,484. The Company requested this excess deferred tax balance be amortized over 10 years at \$648 per year. The Company requested that this annual amortization amount be retained by the Company.

OPC

OPC argued Indiantown should not be allowed to retain the annual tax savings associated with the unprotected excess deferred tax amounts. However, if the Commission decides to allow Indiantown to retain the unprotected excess deferred tax savings, OPC agreed the balance should be amortized over 10 years.

ANALYSIS

OPC maintained that Indiantown should not be allowed to retain the annual tax savings associated with the unprotected excess deferred tax balance. Indiantown argued the Company should be allowed to retain the amount of the unprotected excess deferred tax amount. Both Parties agreed Indiantown should amortize the unprotected excess deferred tax balance of \$6,484 over 10 years for an annual amount of \$648.

In Section II, OPC maintained that the unprotected excess deferred tax savings should be returned to customers while Indiantown argued the amount should be retained by the Company. However, both Parties agree Indiantown should amortize the total unprotected excess deferred tax balance over a 10 year period.

Based on our analysis in Section II, we believe it is fair, just, and reasonable for us to consider the earnings position of the Company when making our decision in this matter. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, the Company shall be allowed to retain the unprotected excess deferred tax savings. Further, we find that a 10 year amortization period is appropriate and reasonable.

CONCLUSION

Because Indiantown is earning a negative return well below its authorized range of ROE, and is expected to continue to earn below this range even with retention of the tax savings, we hereby find that Indiantown shall be allowed to retain the total annual amount of the tax savings associated with the unprotected excess deferred taxes and shall amortize this balance over 10 years.

VI. Docket Closure

This section addresses whether this docket should be closed.

PARTIES' ARGUMENTS

INDIANTOWN

None provided.

OPC

Once the Commission makes the findings contained herein it will be unnecessary to keep this docket open. However, until that time, the docket should not be closed.

CONCLUSION

Upon issuance of this Order, this docket shall be closed after the time for filing an appeal has run.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the stipulations as set forth in Attachment A of this Order are hereby approved. It is further

ORDERED that all other findings set forth in the body of this Order are hereby approved. It is further

ORDERED that Florida Public Utilities Company - Indiantown Division shall abide by the stipulations, findings, and rulings herein. It is further

ORDERED that this docket shall be closed after the time for filing an appeal of this Order has run.

ORDER NO. PSC-2019-0077-FOF-GU
DOCKET NO. 20180052-GU
PAGE 14

By ORDER of the Florida Public Service Commission this 25th day of February, 2019.



ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

COMMISSION-APPROVED TYPE 1 STIPULATIONS

- ISSUE 1:** Is the methodology and process Indiantown used to calculate the impact of the TCJA appropriate?
- STIPULATION:** Yes, the methodology and process Indiantown used to calculate the impact of the TCJA is appropriate.
- ISSUE 2:** Were Accumulated Deferred Income Taxes (“ADIT”) appropriately calculated?
- STIPULATION:** Yes, ADIT is appropriately calculated.
- ISSUE 3:** Are Indiantown’s classifications of the excess ADIT between “protected” and “unprotected” appropriate?
- STIPULATION:** Yes, Indiantown’s classifications of the excess ADIT between “protected” and “unprotected” is appropriate.
- ISSUE 4A:** Were “protected excess deferred taxes” for 2018 using a 21 percent corporate tax rate appropriately calculated?
- STIPULATION:** Yes, “protected excess deferred taxes” for 2018 using a 21 percent corporate tax rate are appropriately calculated.
- ISSUE 5A:** Were “unprotected excess deferred taxes” for 2018 using a 21 percent corporate tax rate appropriately calculated?
- STIPULATION:** Yes, the “unprotected excess deferred taxes” for 2018 using a 21 percent corporate tax rate are appropriately calculated.
- ISSUE 6:** Should Indiantown seek a private letter ruling from the IRS regarding its classification of the excess ADIT relating to cost of removal/negative net salvage as “unprotected”?
- STIPULATION:** Indiantown should await IRS guidance, including guidance provided to larger, similarly-situated Florida utilities.

- ISSUE 7: If Indiantown seeks a private letter ruling and the IRS rules therein (or in another private letter ruling) that the excess ADIT relating to cost of removal/negative net salvage is to be treated as “protected,” what process should be followed for the reclassification?
- STIPULATION: If the IRS issues guidance that cost of removal should be a protected asset, the Parties agree that the balances associated with the cost of removal shall be accounted for using the IRS prescribed methodology for protected assets.
- ISSUE 8: What mechanism should be utilized to avoid the negative impact to Indiantown of the cost of seeking a Private Letter Ruling?
- STIPULATION: If it becomes necessary to seek clarification from the IRS by way of a Private Letter Ruling, then the Parties agree that the costs associated with the procedural activity may be deferred and amortized over five years, or until the next base rate proceeding.
- ISSUE 11: What is the forecasted NOI for the tax year 2018 at a 21 percent corporate tax rate?
- STIPULATION: A net operating loss of \$196,879 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.
- ISSUE 12: What is the forecasted NOI for the tax year 2018 at a 35 percent corporate tax rate?
- STIPULATION: A net operating loss of \$156,494 excluding the effects of any amortization of protected and unprotected ADIT, and the refund of any benefits.
- ISSUE 20: Should Indiantown update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018? If so, how should it be handled?
- STIPULATION: Yes, Indiantown should update the estimated tax benefit to be consistent with any adjustments to those estimates through December 22, 2018 by adjusting the amount Indiantown is able to retain.

COMMISSION-APPROVED TYPE 2 STIPULATIONS

ISSUE 9: What is the forecasted tax expense for Indiantown for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION: Excluding the effects of any amortization of protected and unprotected ADIT, or the refund of any benefits, the forecasted tax expense using the 21% corporate tax rate for Indiantown is negative \$77,366. If the ADIT is amortized but not refunded, the forecasted tax expense using the 21% corporate tax rate is a negative \$75,374.

ISSUE 10: What is the forecasted tax expense for Indiantown for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: Excluding the effects of any amortization of protected and unprotected ADIT, or the refund of any benefits, the forecasted tax expense using the 35% corporate tax rate for Indiantown is a negative \$117,752. If the ADIT is amortized but not refunded, the forecasted tax expense using the 35% corporate tax rate is a negative \$114,719.

ISSUE 13: What is the forecasted capital structure for the tax year 2018 at a 21 percent corporate tax rate?

STIPULATION:

			LOW POINT		MIDPOINT		HIGH POINT	
			COST	WEIGHTED	COST	WEIGHTED	COST	WEIGHTED
			RATE	COST	RATE	COST	RATE	COST
AVERAGE	BALANCE	(%)	(%)	(%)	(%)	(%)	(%)	(%)
COMMON EQUITY	\$1,009,314	42.31%	10.50%	4.44%	11.50%	4.87%	12.50%	5.29%
LONG TERM DEBT	\$ 495,445	20.77%	4.54%	0.94%	4.54%	0.94%	4.54%	0.94%
SHORT TERM DEBT	\$ 467,002	19.58%	1.77%	0.35%	1.77%	0.35%	2.09%	0.41%
CUSTOMER DEPOSITS	\$ 8,389	0.35%	2.37%	0.01%	2.37%	0.01%	2.37%	0.01%
DEFERRED INCOME TAXES	\$ 405,156	16.99%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
TOTAL AVERAGE	\$2,385,306	100.00%		5.74%		6.17%		6.65%

ISSUE 14: What is the annual forecasted capital structure for the tax year 2018 at a 35 percent corporate tax rate?

STIPULATION: The capital structure is the same as the capital structure at 21% because the Company has assumed that the regulatory liability should be grouped with deferred income taxes as a part of the capital structure at a zero cost rate.

ISSUE 15: What is the forecasted annual revenue requirement for Indiantown for the tax year 2018 using a 21 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$200,818 using the 21% corporate tax rate.

ISSUE 16: What is the forecasted annual revenue requirement for Indiantown for the tax year 2018 using a 35 percent corporate tax rate?

STIPULATION: Using the midpoint rate of return, the revenue requirement is \$244,072 using the 35% corporate tax rate.