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 AMERICAN SUBURBAN UTILITIES, INC.	)	CAUSE NO. 45032 S15 APPROVED: FEB 06 2019

ORDER OF THE COMMISSION

Presiding Officers:
James F. Huston, Chairman
David E. Veleta, Senior Administrative Law Judge

On January 3, 2018, the Indiana Utility Regulatory Commission ("Commission") initiated an investigation under Cause No. 45032 to review and consider the implications of the Tax Cuts and Jobs Act of 2017 ("TCJA") on utility rates, which was enacted on December 22, 2017. Among other things, the TCJA reduced the federal corporate income tax rate from 35% to 21%. All jurisdictional utilities, including American Suburban Utilities, Inc. ("ASU"), were made Respondents to that investigation.

After holding an attorneys conference, the Commission issued an Order on February 16, 2018, creating two Phases to Cause No 45032. In Phase 1, all Respondents were required to make 30-day filings reflecting the new tax rate for all rates and charges pursuant to the Commission's 30-day filing rules. However, if a respondent believed its rates should not be adjusted as reflected in the 30-day filing, it was permitted to withdraw its 30-day filings and request a subdocket to address the revision of its rates and charges to reflect the new tax rate.

On May 14, 2018, the Presiding Officers issued a docket entry in Cause No. 45032 creating individual subdockets for the Phase 2 issues, including the creation of this subdocket. The docket entry also established a procedural schedule for the subdockets. Motions were filed by both ASU and the Office of Utility Consumer Counselor ("OUCC") to modify the generic schedule, which motions were granted by docket entry.

ASU filed its direct testimony on June 29, 2018, consisting of the testimony of Scott L. Lods. The OUCC filed its direct testimony on September 7, 2018, consisting of the testimony of Margaret A. Stull. ASU filed its rebuttal testimony on October 9, 2018. At ASU's request, we took administrative notice of the following Orders of this Commission:

- January 20, 1982 Order in Cause No. 36696
- December 24, 1957 Order in Cause No. 27527
- September 8, 1959 Supplemental Order in Cause No. 27527

- March 8, 1989 Order in Cause No. 38515

The Commission held an evidentiary hearing at 1:00 p.m. on November 19, 2018, in Room 222, PNC Center, 101 West Washington Street, Indianapolis, Indiana.

1. Notice and Jurisdiction. Notice of the evidentiary hearing in this Cause was given as required by law. ASU owns and operates plant and equipment for the collection and treatment of wastewater in Tippecanoe County and is therefore a public utility as that term is used and defined in Ind. Code § 8-1-2-1, and is subject to the jurisdiction of this Commission to the extent provided by law. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this subdocket.

2. Evidence of the Parties.

A. ASU's Evidence. ASU's President, Scott Lods, testified concerning ASU's proposal for Phase 2 issues. He first explained that there had been a delay in ASU's implementation of the rate reduction reflecting the TCJA in Phase 1. He explained that the TCJA decreased the tax rates but also increased taxable income by including in taxable income developer-contributed main extensions. Given that ASU has elected Option 2 pursuant to 170 IAC 8.5-4-32, ASU's original submission reflected as an offset to the tax rate reduction for the additional income taxes that would have been owed on the main extensions accepted in 2017. That proposal was rejected by the Commission Staff as not being a proper 30-day submission, and ASU submitted a revised tariff in early June 2018 to comply with the Staff's instructions. Mr. Lods explained that the revised tariff was submitted in an effort to avoid controversy in the hopes that ASU could avoid the expense of further participation in this docket. He explained that ASU's net operating income for 2017 produced a return of 2.92% and that ASU was not over earning even if it had kept rates the same.

For purposes of Phase 2, Mr. Lods provided the total accumulated deferred income taxes ("ADIT") recorded on ASU's balance sheet as of December 31, 2017 of $533,026. He testified all of that amount is due to the use of accelerated depreciation for income tax purposes. He performed a very simple calculation to derive a level that would likely qualify as "excess" of $213,000. If that excess is amortized over 40 years, the result would be roughly $5,300 per year or $445 per month. Divided among its customer base, amortization of excess ADIT would equate to approximately 15¢ per month per customer. He testified that ASU does not have the staff on hand to be well-versed in complicated accounting involving excess ADIT and that he would like time to evaluate whether to amend the past three years of federal income tax returns to change to straight line depreciation. Rather than refunds to customers, this would produce additional taxes payable currently for ASU. Mr. Lods testified that if ASU chooses to do this, all of the ADIT would be paid currently to the IRS, but it would eliminate the regulatory obstacles of accounting for excess ADIT. Mr. Lods asked to have until April 15, 2019 to make that decision and indicated that ASU is willing to accrue interest on excess ADIT at a rate of 4% per annum from January 1, 2019 until a revised tariff is submitted for approval if the returns are not amended.

Mr. Lods then explained the proposal with respect to the deferred liability accruing from January 1, 2018 to July 1, 2018. He said that the rate reduction took effect for all bills that were rendered on July 1, 2018. Given ASU bills in arrears, there are five months for which service was

billed after the tax cut at the prior rates. He provided a total estimated deferred liability of $79,042.72. ASU proposed to divide this amount by 3 and for each of the first three months after the Phase 3 tariff in Cause No. 44676 is effective, to provide a bill credit equaling one-third of the deferred liability. In this way, the Phase 3 tariff will step in over four months rather than one. He testified that ASU expected to file the Phase 3 tariff before the end of 2018, but that if for some reason the tariff had not been submitted before March 31, 2019, ASU would file a tariff to reflect a one-time credit to exhaust all of the deferred liability in a single month.

Finally, Mr. Lods explained that for purposes of income tax on contributed mains, ASU has elected Option 2 under 170 IAC 8.5-4-32 and will therefore pay the income tax on contributed mains. ASU proposes to debit contributions in aid of construction ("CIAC") for these payments. For purposes of system development charges, ASU plans to file on a 30-day basis a new system development charge ("SDC") to gross up SDCs for the income tax. Absent the 30-day filing, ASU proposes that the income taxes ASU pays on SDCs also be recorded by debiting CIAC.

B. OUCC's Evidence. Margaret Stull, Chief Technical Advisor with the OUCC, provided her evaluation of the TCJA, and opposed parts of ASU's proposal. She first provided background on the TCJA and the adjustments to utility rates that are necessary as a result. Ms. Stull explained how deferred income taxes are generated. She stated that deferred income taxes are the result of temporary timing differences created by how revenues or expenses are recognized on a company's books and how those same revenues or expenses are recognized for tax purposes. She testified that the primary source of deferred income taxes for regulated utilities is accelerated tax depreciation because accelerated tax depreciation uses a higher rate than the depreciation rate used for book purposes. Ms. Stull pointed out that a higher accelerated depreciation expense for tax purposes lowers the net income on which the utility is taxed, thereby decreasing income tax paid but that a utility's income taxes expense embedded in rates is based on book depreciation, which means the utility pay less in taxes than the utility recovers from customers through rates and charges.

Ms. Stull described excess ADIT, which result when tax rates change and accumulated deferred tax balances must be revalued at the new tax rate. Ms. Stull explained that excess ADIT represent the amounts a utility collected from ratepayers to pay future taxes that, as a result of the reduction in tax rates, will not now be imposed. Ms. Stull testified that ADIT represent a "loan" from ratepayers to the utility, and when the income tax decreases, the amount of the "loan" from ratepayers is reduced and needs to be "repaid" or returned to ratepayers. Excess ADIT represent the amount of the "loan" to be repaid to ratepayers.

Ms. Stull clarified the difference between protected and unprotected ADIT. Protected ADIT is generated by temporary tax differences between book and tax depreciation rates or depreciation methods. Unprotected ADIT results from all other temporary tax differences, including asset basis differences. She explained this distinction is important because Congress has imposed rules regarding how any protected excess ADIT should be returned to ratepayers in order for the utility to comply with tax normalization rules, but unprotected excess ADIT is not subject to these normalization rules, and how these amounts are returned to ratepayers is left to the discretion of the regulating body. Protected excess ADIT must be returned to ratepayers using the average rate assumption method ("ARAM"). However, Ms. Stull stated that if the utility does not

have adequate data to apply ARAM, the "Reverse South Georgia" method ("RSGM") may be used as an alternative. In general, both the ARAM and RSGM spread the flow-through of excess ADIT over the remaining lives of the property that gave rise to the excess. The amortization of excess ADIT will reduce the ADIT included in ASU's capital structure, thereby increasing the weighted average cost of capital (all other things being equal).

Ms. Stull described ASU's proposal, starting with its calculation of excess ADIT. She testified Mr. Lods' testimony showed a calculation of excess ADIT as of 12/31/2017 of $213,000. She stated that ASU is not proposing to refund excess ADIT at this time, and instead would like until after it files its 2018 federal tax return because it is "contemplating whether we should amend our tax returns so as to do away with accelerated depreciation and pay all of the ADIT back to the Internal Revenue Service as current income taxes payable." Ms. Stull testified that ASU did not specify the method it would use to calculate the annual amount of excess ADIT it would pass back to its customers, and that in response to OUCC discovery regarding whether ASU believes it has a choice of methods on this issue, ASU responded that it "does not know yet what will be required." Ms. Stull testified that this response raises concerns. She explained that ASU has had eight months to review and research what is required under the TCJA, but it has no idea what the law requires and asks for even more time from this Commission. She stated that ASU has provided no evidence that it has taken any steps to date to determine the requirements of the TCJA or that its contemplated changing in the tax accounting methodology is prudent or reasonable. Ms. Stull pointed out that she is unaware of any investor-owned public utility that does not take advantage of accelerated depreciation for tax purposes.

Ms. Stull testified that she disagrees with the amount of excess ADIT identified by Mr. Lods as well as ASU's proposal to delay making a decision on this issue. She used ASU's trial balance to determine its ADIT balance as of 12/31/2017 as $533,026. She noted that Mr. Lods' did not gross-up his annual amortization of excess ADIT amount for taxes and fees that have been embedded in rates and should be removed when rates and revenues are decreased. Ms. Stull recommended ASU be required to return excess ADIT to its customers starting no later January 1, 2019. She testified that, given the OUCC's previous experience with ASU's recordkeeping, it is unlikely ASU has the detailed information necessary to calculate ARAM. Therefore, Ms. Stull used the RSGM to calculate an annual amortization of excess protected ADIT of $7,094 (before gross-up) or $9,980 (after gross-up). While Mr. Lods' testimony suggests the remaining useful life of ASU's utility plant is 40 years, Ms. Stull testified that ASU's 2017 IURC annual report shows a remaining useful life of 30 years, which Ms. Stull used in her calculation. Further, this calculation reflects excess ADIT of $212,828.

Ms. Stull pointed out that ASU has known about the TCJA and its impacts to ASU's operations since December 2017, and it is unclear what information ASU will have when it files its 2018 tax return that it does not have today. She stated that ASU has always hired an outside tax consultant to assist in tax decisions and preparations of its tax returns, and determining the impact of the TCJA is no different. She testified that her calculation demonstrates that the RSGM is straight forward and relatively easy to calculate. Furthermore, unlike ARAM, this calculation only has to be calculated once and the amortization amount remains the same for the remainder of the amortization period. Ms. Stull noted that it is an unfair burden to customers to delay refunds simply because ASU has not prioritized making a decision on its tax accounting methodology.

Ms. Stull also questioned the reasonableness and prudency of ASU's contemplation of changing its accounting methodology for tax purposes, including assuming that this change can be implemented retroactively. She stated ASU has provided no evidence that its plan is the proper way to implement a change in tax accounting methodology; ASU has done no cost benefit analysis of the impacts this decision could have, only that it will take time to make the decision. Ms. Stull explained ASU has not provided any private letter ruling from the IRS regarding this change in tax accounting methodology. She testified that it is possible this tax accounting change would be prospective only and impact only future tax years, not past tax years – which means ratepayers would still be owed excess ADIT refunds. Regardless, Ms. Stull pointed out that it is unclear why ASU would want to pay more income taxes than are necessary simply to avoid providing a refund to its customers.

Ms. Stull testified that ASU does not have a choice between ARAM and RSGM. Rather, she explained that, in accordance with IRS normalization rules, a utility must use ARAM if it has the necessary information to do so. If not, then the RSGM or similar method may be used to calculate the remaining useful life of a utility's assets. Ms. Stull stated while the OUCC presumed ASU does not have the records necessary to support an ARAM calculation, if ASU does have such detailed information, which should have been included in Mr. Lods' direct testimony, it must use ARAM to calculate the amortization period for its excess protected ADIT. Ms. Stull also explained that C corporation tax returns are due March 15, 2019, but can be extended to September 15, 2019; therefore, Mr. Lods is potentially requesting a delay in initiating customer refunds for excess ADIT until the end of September 2019. Finally, Ms. Stull testified that if ASU is granted more time before it is required to return excess ADIT to customers, interest on excess ADIT should begin accruing as of January 1, 2018 and should continue to accrue until such time as the revised tariff is approved and refunds begin flowing back to customers. She stated that such interest should be calculated at ASU's weighted average cost of capital approved by the Commission in its most recent base rate case, Cause No. 44676, or 8.31%.

Regarding over-collected federal income tax expense, Ms. Stull testified that she disagreed with the amount of the refund proposal, as well as ASU's proposal to offset the refund against its Cause No. 44676 Phase 3 rate increase. While ASU calculated a $79,042.72 refund, Ms. Stull calculated a $106,622 refund based on ASU's actual rate decrease of 5.63% and actual revenues from January through June 2018. She disagreed with ASU's exclusion of January billings, testifying that, regardless of the month the revenues were earned in, they were billed in January 2018, after the income tax rate was reduced to 21%. Regardless of whether the billings are for the period December 2017 through May 2018 or January through June 2018, ASU over-collected income tax expense for six months. She also stated that the timing of the customer refund for excess federal income tax expense has no relation to the implementation of ASU's Cause No. 44676 Phase 3 tariff. She stated ASU's proposal to provide a bill credit over a three month period is acceptable but that the bill credit should be based on a date certain, ensuring that customers' refunds are not "held hostage" due to the review of ASU's Phase 3 tariff filing. She testified that if ASU makes its Phase 3 tariff filing in a timely manner in 2018 and it is approved to be implemented by January 2019, then the refund will offset the Phase 3 rate increase as proposed by ASU.

Ms. Stull examined ASU's proposal regarding taxation of contributions-in-aid of construction ("CIAC"). Ms. Stull accepts ASU's proposal to debit CIAC for any income taxes paid on contributions. Nonetheless, she explained that in determining how to recover income taxes on CIAC, ASU distinguishes between main extensions (plant contribution) and system development charges (cash contribution); however, she stated nothing in the Commission's prehearing conference order or the Commission's administrative rules makes this distinction. Ms. Stull testified that she believed the Commission intended that respondents choose one option for all CIAC, and not for respondents to choose one option for plant contribution and another cash contribution. She pointed out that to allow ASU to require those making cash contributions to pay the associated income taxes, while not requiring the same from those making plant contributions would be discriminatory and should not be allowed. Ms. Stull testified that under ASU's elected Option 2, the contributor is required to pay the main extension exclusive of the tax associated with the main extension and is still entitled to receive subsequent connector fees for ten years.

Ms. Stull responded to Mr. Lods' testimony regarding ASU's earnings. She stated that ASU's comparison of its 2017 net income to its authorized return is not a fair comparison to determine whether it is under-earning. She testified that ASU's 2017 net income represents only 9 months of the Phase 2 rate increase, making Mr. Lods' statements regarding ASU's under-earning overstated. She stated that even if ASU's earnings were more accurately stated, the question of whether its customers are entitled a refund due to excess ADIT has no bearing on ASU's earnings because income taxes are a pass-through expense, and utility rates must reflect actual, not hypothetical, expenses. Ms. Stull summarized the Commission's order in Cause No. 38194, in which the Commission determined that a change in the federal income tax rate should have no effect on a utility's net operating income and therefore its ability to earn its authorized return.

C. **Rebuttal.** Mr. Lods also testified on rebuttal. He responded to Ms. Stull's criticism over his calculation of the effect on rates from excess ADIT. He testified that even with her different calculation, she was recommending a rate reduction of 14.4¢ per month, which is essentially what he had recommended on direct. He also explained that the expense of and issues surrounding excess ADIT in this docket are one of the reasons why he wants to consider simply eliminating ADIT altogether by amending ASU's returns. Mr. Lods explains that he would like to finish the immediate task at hand, which is to complete this major plant addition, and then focus on whether it would be better simply to eliminate accelerated depreciation altogether. He responded to Ms. Stull's testimony that there has been no showing of prudence in amending the tax returns by indicating that he felt the decision whether to take accelerated depreciation should be a management decision and not one to be reviewed by the Commission.

Mr. Lods accepted Ms. Stull's revised calculation of the deferred liability, but he objected to Ms. Stull's stance on timing of implementation. He testified that her proposal would be very confusing to customers, many of whom have set up electronic payments that are automatic. Under the OUCC's proposal, rates may be reduced in January only then to increase again for the implementation of the Phase 3 rates within the next month. He thought it would be much better for customers to use the credit as a means to phase in the Phase 3 increase.

Mr. Lods disagreed with Ms. Stull's opposition to grossing up SDCs. He explained that the election pursuant to the main extension rules only applies to main extensions.

With respect to carrying charges on excess ADIT, Mr. Lods objected to Ms. Stull's proposal to begin accrual as of January 1, 2018. Instead, he repeated the original proposal, which is to accrue carrying charges from January 1, 2019 until ASU files the tariffs reflecting the reductions. Mr. Lods was willing to accrue carrying charges at the weighted average cost of capital.

3. **Commission Discussion and Findings.**

A. **Deferred Liability.** The parties agree on the amount of the deferred liability. It is the equivalent of the tax rate reduction applied to six months of billing and equals $106,622.18. Public's Ex. No. 1, p. 15 and Respondent's Exhibit No. 1-R, p. 5.

While the parties agree on the amount of the deferred liability, they disagree about how soon the customers should realize the benefit of this deferred liability. ASU proposes to divide the deferred liability by three and, for each of the first three months that the Phase 3 rates from Cause No. 44676 are in place, implement a bill credit for one-third of the deferred liability. ASU also proposed that if it has not filed its Phase 3 tariff before March 31, 2019, ASU would file a stand-alone bill credit to reflect 100% of the deferred liability in one month. If ASU files its refund tariff as late as March 30, 2019 (i.e. before March 31, 2019), the credit would not be completed before the end of the second quarter of 2019. Thus, ASU proposes that it not be required to begin issuing a refund until after the end of the first quarter of 2019. The OUCC proposed ASU's customers receive a bill credit over a three month period for the over-collected income tax expense beginning on January 1, 2019.

We reject ASU's proposal to allow it to delay issuing the refund until the end of the first quarter of 2019. We find there is no need to complicate the return of over-collected tax dollars. We initiated this investigation on January 3, 2018 in order to examine how resulting benefits from the Tax Cuts and Jobs Act of 2017 ("TCJA") should be realized:

> The Commission recognizes that the approved tax reform will create benefits for utility customers because of the reduced federal tax burden on Respondents. The determination and customer realization of these benefits that flow from the Act warrant deliberative consideration. Accordingly, the purpose of this investigation is to review and consider the impacts from the Act and how any resulting benefits should be realized by customers.

The deferred tax liability represents excess income tax expense collected from customers over the period of time in which ASU's tax liability had been decreased by the TCJA, but ratepayers were continuing to pay utility rates to ASU based on the higher income tax rate. The public interest demands that these funds are returned to customers without delay. The amount of the deferred tax liability is not in dispute, and neither is the timeframe over which a refund will be provided – over three months. Given that these material issues have been resolved, we find no compelling reason to create uncertainty around when the deferred tax liability will be initiated.

Our finding that the interests of customers is not served by any delay in receiving a timely refund of these monies is consistent with our order in Cause No. 38194, the Commission's investigation into federal tax changes made in 1986, in which we noted, "[t]he actions of this Commission must, by statute, be based and predicated upon findings that those actions are in the public interest. It is most difficult, if not impossible, to find that a potential rate reduction should be delayed for a number of months or years to be in the best interest of the ratepaying public." (Cause No. 38194, Interim Order, June 1, 1987 at p. 15.) As such, we decline to delay initiation of the deferred tax liability refund until ASU files its Phase 3 base rate increase. ASU should initiate its three-month refund to be effective the first full billing period following a final order in this Cause.

B. Excess ADIT. The evidence demonstrates that the sole source of ASU's excess ADIT is its election of accelerated tax depreciation, which allows ASU to reduce its taxable income by claiming a higher depreciation expense for tax purposes than the book depreciation expense it collects from customers through rates. In effect, as explained by Ms. Stull, excess ADIT represents a "loan" from ratepayers. ASU offered a generic calculation of this balance in its case-in-chief, and did not dispute the OUCC's calculation of the excess ADIT amount. Furthermore, because the source of ASU's excess ADIT is its election of accelerated depreciation, the parties agree that ASU's excess ADIT is governed by the IRS' normalization requirements, which permit a utility to return excess ADIT funds to its customers over the remaining regulatory life of its assets. Depending on the adequacy of the utility's records, the remaining lives of utility assets can be calculated using either ARAM or the RSGM. ASU's rebuttal testimony did not dispute the OUCC's excess ADIT calculation or the remaining life of 30 years.

Despite a lack of discord on these material issues, ASU injected uncertainty into the refund of excess ADIT by asserting that, as a result of the TCJA, it would consider amending its past tax returns to eliminate accelerated depreciation and pay all of the ADIT back to the IRS. ASU seeks accommodation to notify the Commission and the parties to this subdocket of its election by April 15, 2019.

We decline to endorse ASU's requested delay. The TCJA was enacted on December 22, 2017, and this Cause was initiated on January 3, 2018, with every Indiana jurisdictional rate-regulated, investor-owned utility as a respondent. Respondents were timely notified of the scope of the investigation, and its time-sensitive nature:

> Under the Act, the tax rate reduction is effective January 1, 2018. Because customer utility service rates today reflect a now materially altered tax structure, the reform-driven benefits are accruing today and going forward. Accordingly, the Commission finds it is appropriate and in the public interest for Respondents to immediately begin using regulatory, accounting, such as the use of regulatory assets and liabilities, for all calculated differences resulting from the Act and what would have been recorded if the Act did not go into effect. While the exact amount of the tax benefits and resulting rate impacts cannot be determined at this time, each of the Respondents should use its best estimate to determine the amount to

be recorded as a deferred liability, subject to review and adjustment
as part of this proceeding.

January 3 Order at 2.

Our investigation provided a process for ASU and all other respondents to make determinations as to the application of the TCJA to each unique tax situation in order to request any related regulatory treatment. As a public utility actively providing utility service in the state, during the course of the investigation, each respondent faced the same daily management demands as ASU in order to manage its operations to provide safe and reliable service at reasonable rates. ASU's wastewater treatment project does not establish adequate cause to delay its consideration of how it desires to respond to the TCJA through amending, or not, its federal tax returns. Given the customer benefits created by the TCJA, the public interest requires timely action.

Further, while we agree whether to elect accelerated depreciation for income tax purposes is a management decision. ASU made that decision to implement the IRS's accelerated depreciation method for tax purposes many years ago. We agree with the OUCC that ASU provided no evidence that its contemplated change in tax accounting methodology to retroactively restate its tax returns is prudent or reasonable.

Accordingly, ASU shall reduce its revenue requirements by $9,980 per year for the next 30 years to return excess ADIT to its customers.

C. CIAC and System Development Charges. ASU elected Option 2 for main extensions pursuant to 170 IAC 8.5-4-32. Under this option, ASU pays the income tax on main extensions and proposes to debit CIAC for the taxes it pays. Ms. Stull agreed with this proposal and the accounting treatment. In a docket entry dated November 5, 2018, the Commission questioned ASU about its proposal to debit CIAC for income taxes on contributed property instead of debiting a deferred tax account. ASU explained, in part, "[i]t would not be appropriate accounting to record these payments as a debit to deferred taxes." ASU further stated, "[t]he payment of the income tax on CIAC does not create a timing difference but a permanent difference. It is thus inappropriate to use deferred taxes to account for it." It is not clear to the Commission that this conclusion is correct. When CIAC is taxable, a timing difference is generated because a difference between the accounting or book basis of the asset and the tax basis will be generated. This difference will create a temporary difference that should be normalized. A temporary difference is created because a utility will incur a tax expense in the year of receipt while the asset will also generate tax depreciation deductions that will provide a tax benefit over the tax life of the property. For instance, if plant valued at $1 million is donated to ASU, and ASU pays tax on that CIAC, then the utility will have a tax basis of $1 million in the asset and zero accounting basis. Thus, in this example, ASU may be required to normalize and record a deferred tax asset of $210,000 ($1,000,000 times 21%).

The Commission recognizes the complexity of the tax and accounting matters at hand and does not believe it is necessary to prescribe the accounting treatment in this order. Instead, the Commission directs ASU to meet with Commission and OUCC staff to discuss the accounting treatment within 90 days of the date of this Order.

For SDCs, ASU explained that it planned to file a new tariff reflecting gross up for the income tax through a 30-day filing. However, 170 IAC 1-6-4 explicitly prohibits an SDC filing under the 30-day filing process. Further, we agree that the election to pay the tax is an election under the main extension rules which, by their terms, do not apply to SDCs. Accordingly, if ASU desires to increase its system development charge to incorporate its tax liability, it should initiate an appropriate proceeding before this commission. We note that ASU, in its post filing suggests it be permitted in this subdocket to increase its SDC because of the change from the same tax law. We would have had no problems with this request had it been included in ASU's case.

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

1. Effective in the first full billing period following a final order in this Cause ASU shall reflect the deferred liability of $106,622.18 through three-monthly bill credits.

2. ASU is ordered to submit a tariff compliance filing in this Cause providing the necessary rate reduction to refund its excess ADIT of $212,828 over the amortization period of 30 years such that reduced rates can be made effective by the first full billing period following approval of the tariff by the Commission's Water/Wastewater Division.

3. ASU shall meet with Commission and OUCC staff within 90 days from the date of this order to discuss the proper accounting treatment of income taxes paid by ASU on developer contributed main extensions.

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

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

APPROVED: FEB 06 2019

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

Mary M. Becerra
Secretary of the Commission