ORIGINAL

911
DB
Duo

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 L.M.H. UTILITIES CORPORATION	)))))))	**CAUSE NO. 45032 S17** **APPROVED:** DEC 27 2018

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 investor-owned jurisdictional utilities, including L.M.H. Utilities Corporation ("LMH" or "Respondent"), 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.[1] 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.

By docket entry dated May 14, 2018, this subdocket was created to address possible rate implications under Phase 2 for Respondent. On June 19, 2018, LMH filed its direct testimony and attachments. The Indiana Office of Utility Consumer Counselor ("OUCC") filed its responsive testimony and attachments on August 21, 2018. LMH filed its rebuttal testimony on September 21, 2018. On October 23, 2018, Respondent and the OUCC responded to questions of the Presiding Officers set forth in an October 18, 2018 docket entry.

An evidentiary hearing in this subdocket was convened at 3:00 p.m. on October 24, 2018, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. LMH and the OUCC both appeared by counsel and participated in the hearing. The prefiled testimony and exhibits of both parties were admitted into the record without objection, and

[1] LMH filed a new tariff reflecting the new federal income tax rate of 21% through a 30-day filing, which was approved on June 13, 2018 and became effective with the billing cycle after July 1, 2018.

the Respondent's and OUCC's responses to the Presiding Officers' docket entry questions were also admitted into the record without objection. The OUCC's witness was made available for and responded to questions from the Presiding Officers.

The Commission, having considered the evidence and applicable law, finds as follows:

1. Notice and Jurisdiction. Notice of the hearing in this subdocket was given and published by the Commission as required by law. LMH is a public utility as defined by Ind. Code§ 8-1-2-1(a). Under Ind. Code § 8-1-2-42, the Commission has jurisdiction over LMH's rates and charges for wastewater service. The Commission also has jurisdiction to initiate investigations into all matters relating to public utilities under Ind. Code §§ 8-1-2-58, 8-1-2-59, and 8-1-2-68. Accordingly, the Commission has jurisdiction over LMH and the subject matter of this subdocket.

2. Summary of Evidence.

A. Respondent's Case-In-Chief. Ms. Tracy Wyne, a certified public accountant with Sherman, Barber and Mullikin, testified on behalf of Respondent. She discussed the preparation and filing of a revised tariff reflecting the new federal income tax rates established by the TCJA. She noted that LMH's tariff was approved by the Commission and became effective July 1, 2018. Ms. Wyne testified that she calculated LMH's over-collection of federal income taxes for the period of January through June 2018 to be $10,446. She explained how this amount was calculated and discussed LMH's proposal to refund this amount during January through June 2019 through a new tariff which would reduce LMH's volumetric rate to provide the refund to customers. She added that LMH is prepared to file a reconciliation to show the refund amount has been provided to customers.

Ms. Wyne next discussed the potential impact of the TCJA on deferred income taxes. She said that based on her review of LMH's books and records, LMH has no net deferred taxes. She explained that since 2007, LMH has experienced net losses on its tax return and has accumulated net operating loss carryovers in the amount of $2,445,036. She said this deferred tax benefit created by the net operating losses should be considered protected because it cannot be used until LMH generates sufficient income to offset the net operating losses. Ms. Wyne stated that under generally accepted accounting principles (US GAAP), when the benefit of an asset is not expected to be fully realized, an allowance should be established to reduce the asset to the amount expected to be realized. For LMH, she said this requires that the net operating loss carryovers will offset income only to the extent of the reversal of the deferred tax liability created by the difference in book-tax depreciation methods. Ms. Wyne provided calculations reflecting the deferred tax benefit, the deferred tax benefit allowance, and the deferred tax liability as her Exhibit TW-2.

Finally, Ms. Wyne noted that LMH has incurred costs to respond to the Commission's Orders in Cause No. 45032. She noted that LMH is planning to file a base rate case in the near future, and requested that Respondent be permitted to defer the costs incurred in connection with this Commission investigation as a regulatory asset that can be addressed in the coming base rate case. She further stated that Respondent proposes that the method of handling taxes related to Contributions in Aid of Construction ("CIAC") also be considered in the next base rate case.

B. **<u>OUCC's Case-In-Chief</u>.** Ms. Margaret Stull, Chief Technical Advisor with the OUCC, testified in response to Ms. Wyne. Ms. Stull provided a background on the TCJA, how the impacts of the TCJA on LMH's rates were addressed, and discussed how accumulated deferred income taxes ("ADIT") are generated. She further described the concept of excess ADIT and the differences between "protected" and "unprotected" ADIT.

Ms. Stull testified that she disagreed with the amount of the refund proposed by LMH, the method proposed to provide the refund, and the timeframe over which the refund will be provided. While Respondent had estimated an over-collection of $10,446 in federal taxes for the period January through June 2018, Ms. Stull calculated the actual refund amount to be $10,272 based on data provided by Respondent in discovery.

With respect to Respondent's proposed methodology for providing the refund, Ms. Stull stated LMH's proposal as described by Ms. Wyne appears to be contradictory. She noted that Respondent has provided no calculation of the volumetric rate reduction it proposes or the methodology it proposes to calculate this rate reduction. She added that for purposes of evaluation and securing approval, the proposal is not adequately defined or clear. Ms. Stull also recommended that the refund be provided as a one-time bill credit, rather than over a period of six months. She said this method is simpler than LMH's proposal, will not require any adjustments to LMH's tariff rates, and will provide customer refunds more quickly and with fewer administrative costs. Ms. Stull explained that the refund amount can be calculated on a *pro rata* basis or it can be based on actual volumes billed during the over-collection period.

Ms. Stull also disagreed with LMH regarding the existence of excess ADIT. She testified that LMH has been recovering income tax expense through its approved rates and charges. She said whether LMH has paid income taxes because of its net operating loss ("NOL") has no bearing on this fact. She said that the US GAAP rule quoted by Ms. Wyne in her testimony is not appropriate to apply to this situation because LMH is a regulated utility and, as such, has been recovering income tax expense as a revenue requirement. Ms. Stull recommended LMH be required to return excess ADIT to its customers. She proposed using the Reverse South Georgia method for determining the period over which LMH's excess ADIT should be amortized. Based on her calculations, Ms. Stull recommended that her calculated excess ADIT of $185,500 be amortized over a period of 14.5 years, resulting in a reduction of $17,997 to LMH's annual revenue requirement.

Finally, Ms. Stull responded to the other issues raised by Respondent. With respect to Respondent's request for cost deferral authority for the costs of this investigation, Ms. Stull stated compliance costs should be minimal and involve perfunctory filings unless the utility is arguing against the reduction of its rates to reflect the effects of the TCJA. She stated that while the utility is free to make these arguments, they are appropriately borne by the utility's shareholders, the party that would benefit from these proposals. She stated that LMH has legal and accounting fees embedded in its current rates and no additional compensation should be approved. Finally, Ms. Stull accepted LMH's proposal to defer the method of handling taxes related to CIAC until LMH's next base rate case.

C. **<u>LMH's Rebuttal</u>.** Ms. Wyne agreed with Ms. Stull's updated calculation of $10,272 for the amount of the proposed refund. After reviewing the OUCC's testimony, Ms. Wyne clarified her direct testimony and said Respondent now proposes a bill credit—as Ms. Stull recommends—but allow for the credits to be spread over a six-month period versus a one-time credit. She reiterated that LMH is a small utility, and requiring the refund to be provided in a single period would have a significant negative impact on LMH's cash flow. She explained that spreading this credit out over a six-month period would alleviate the financial strain that a large one-time credit would cause on LMH's operations.

Ms. Wyne responded to Ms. Stull's testimony regarding excess ADIT. She said Ms. Stull fails to recognize that customers pay for service, not for the individual components of service. She noted that Ms. Stull has included $16,473 of state income taxes in her amount, and state tax impacts are not to be considered in this investigation. More fundamentally, Ms. Wyne said it appears Ms. Stull assumes that revenues are first allocated to income tax expense before any other expenses or uses of revenues also included in the rates. She said this does not reflect how utilities actually operate. She said from a practical standpoint, revenues received must provide for all ongoing expenses of operating the utility and providing service. Ms. Wyne explained that over the 10-year period since LMH's last base rate case, LMH incurred other operating expenses in excess of amounts included in the revenue requirements, which also contribute to the NOLs. She said that to argue that LMH has collected $480,024 of federal taxes over a 10-year period is inconsistent with actual results of operations. More specifically, she said the temporary differences in book/tax depreciation are not expected to start reversing until 2029. She added that based on the rate structure in effect as of December 31, 2017, LMH is not expected to generate sufficient income to begin to utilize the benefit of the NOL carryforwards beyond the reversal of the temporary differences. Ms. Wyne therefore disagreed with Ms. Stull's recommendation that US GAAP standards not be applied in this situation, particularly since the corporate tax laws cannot be ignored.

Ms. Wyne stated that LMH should not be required to return "excess" ADIT to its customers because there is no such excess ADIT to return. That said, she added that if the Commission were to reject her position, there was an error in Ms. Stull's calculation that would need to be corrected, which would lower the reduction in rates identified by Ms. Stull.

Ms. Wyne also responded to Ms. Stull's testimony regarding LMH's request to defer costs associated with this investigation for consideration in LMH's next base rate case. Ms. Wyne explained that these are costs Respondent is incurring as a result of the Commission-initiated investigation into the impacts of the TCJA. She clarified that LMH is not requesting cost recovery now for the costs incurred in connection with this proceeding. Rather, LMH is merely seeking to preserve its right to present these costs for inclusion in its next rate case, where they can be considered in the context of LMH's other expenses and revenues. She stated the fact that this is a docketed proceeding means that there will necessarily be some level of costs incurred to comply with the Commission's directives. Moreover, she said Respondent has incurred costs to respond to numerous sets of discovery from the OUCC and to prepare rebuttal testimony responding to the OUCC's arguments.

Ms. Wyne disagreed with Ms. Stull that the costs of this investigation "are more appropriately borne by the utility's shareholders." First, Ms. Wyne did not agree that a utility should be punished for advocating a position it believes is reasonable or for objecting to or clarifying positions taken by other parties in regulatory proceedings. Further, she said LMH does not oppose allowing the benefits of the TCJA to flow through to its customers and thus Ms. Stull's argument is not relevant in this case. She said that excluding these costs from consideration in rates is contrary to the long-standing ratemaking principle that rates should reflect the cost of service and that the Commission should not adopt the punitive policy advocated by the OUCC. Finally, Ms. Wyne noted that the Commission's January 3, 2018 Order initiating Cause No. 45032 ordered all Respondents (including LMH) to apply regulatory accounting treatment for all estimated impacts resulting from the TCJA. She said the "estimated impacts" resulting from the passage of the TCJA include the costs LMH has been required to incur to participate in and comply with the Commission's directives in this investigation. She added that the OUCC's proposal to outright reject these costs now results in an asymmetric treatment of the impacts of the TCJA on LMH's rates and revenues. Accordingly, Ms. Wyne stated these costs should be deferred and examined for cost recovery in Respondent's next rate case.

D. Responses to Docket Entry and Bench Questions. In response to the Presiding Officers' docket entry requesting additional information, Respondent reiterated its belief that its position on excess ADIT is correct. However, Respondent stated that if the Commission were to order a return of excess ADIT, it would be more appropriate to calculate the excess ADIT as the reduction of the deferred federal tax liability of $185,500, rather than the asset based on net operating losses. In its response, the OUCC agreed that the appropriate excess ADIT amount related to depreciation is $185,500, not the $362,700 originally identified in Ms. Stull's testimony. At the evidentiary hearing, Ms. Stull was asked to elaborate on the Respondent's use of a 28.91% blended federal tax rate in its 30-day filing, versus the 35% tax rate used to calculate the excess ADIT in this proceeding. Ms. Stull stated that the 28.91% rate used in the 30-day filing reflected the tax rate used in calculating LMH's revenue requirement in its last base rate case. She further testified that because Respondent is not currently paying any federal income tax it is difficult to determine the appropriate tax rate going forward. That said, Ms. Stull acknowledged that it would probably be more reasonable to use the 28.91% tax rate used in LMH's last rate case for purposes of calculating the excess ADIT, rather than the 35% rate.

3. Commission Discussion and Findings.

A. Tax Regulatory Liability Refund. With respect to the over-collected taxes for the period of January 1, 2018 through June 30, 2018, the parties agree that the amount of $10,272 should be flowed back to customers through a bill credit. The only issue between the parties on this point is the period of time over which this amount should be returned. LMH advocates for a six-month refund from January to June 2019 while the OUCC argues a one-time bill credit in January 2019 is appropriate.

Given the relatively small amount of refund owed to customers, we find that the administrative ease created by a one-time bill credit merits implementation. A one-time credit will not only return funds over-collected from customers back to those customers in an expeditious manner, but it will also ease LMH's administrative burden, which the utility has referenced a number of times in its filing in this subdocket through its request to defer and ultimately recover its costs to participate in this investigation from its customers. As such, Respondent is ordered to implement a one-time bill credit, based on actual volumes billed during the over-collection period, refunding $10,272 back to its customers in the first full billing period after a final order is issued in this Cause.

B. **Excess ADIT.** LMH argues it has no excess deferred taxes to refund to its customers because its operating losses reported on its tax returns offset this benefit. The OUCC maintains that a ratepayer benefit exists because LMH's customers have continued to pay rates that include an income tax revenue requirement on LMH's net operating income, which is higher than its income status for tax purposes. LMH's witness Tracy Wyne testified that US GAAP supports offsetting LMH's deferred tax balance against its NOLs because, as LMH continues to under-earn, it will lose any benefit of its NOLs for taxes. She testified that US GAAP provides "when the benefit of an asset is not expected to be fully realized, an allowance should be established to reduce the asset to the amount expected to be realized." (Resp. Ex. 1 at 4.) In response, OUCC witness Stull stated that LMH's testimony on US GAAP should be disregarded, as US GAAP is only designed to provide general guidance, and this is one of the situations in which it should not apply to a regulated utility for ratemaking purposes. She testified LMH has received a benefit from its ADIT and its NOL because LMH has recovered income tax expense from its customers that it has not paid and may never pay. Ultimately, as discussed in more detail below, we conclude that, as a result of the TCJA, LMH owes its customers an excess ADIT refund.

At the outset, our January 3, 2018 order initiating this investigation noted the customer benefits created by the TCJA:

> 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 [Tax Cuts and Jobs] 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.
>
> 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 estimates to determine the amount to be recorded as a deferred liability, subject to review and adjustment as part of this proceeding.
>
> Order at 2.

Our February 16, 2018 order in this Cause defined the scope of Phase 2 of our investigation into the impacts of the Act on Indiana jurisdictional rate-regulated, investor-owned utilities. In addition to the refund of excess income tax expense over-collected from customers, Phase 2 of our investigation includes addressing the amount and amortization of normalized and non-normalized excess ADIT.

To guide our analysis, we first note how deferred taxes are generated, which Ms. Stull described at length in her testimony. A utility electing to use accelerated tax depreciation uses a tax depreciation expense that is higher than the book depreciation expense factored into its base rates. A higher tax depreciation expense lowers the utility's net taxable income. A lower book depreciation expense increases the utility's net operating income, upon which an income tax revenue requirement is calculated. Therefore, the amount of income tax expense recovered from customers is higher than the actual income tax paid by the utility to the government. With each taxable year, the utility continues to experience and accumulate the benefit – monies from customers that are not yet owed to the government. These monies are generated by the lower taxes paid by the utility based on tax depreciation and the higher tax expense collected from customers based on book depreciation. Absent an income tax rate change, the balance of deferred taxes would reverse as accelerated depreciation falls away. But because of the TCJA's tax rate change, which became effective January 1, 2018, not all of the benefit will reverse at the old tax rate, leaving excess ADIT that must be calculated and ultimately refunded to those who paid them – the customer.

LMH asserts "customers pay for service, not for the individual components of service" and "revenues received must provide for all ongoing expenses of operating the utility and providing service." (Resp. Ex. 2 at 3.) It is on this maxim that LMH alleges its NOLs, driven by contended historical under-earnings, should offset the deferred tax balance LMH has accrued over the same period. In considering the merits of this argument, we take guidance from our interim order in the 1986 Investigation into the reduction of the federal income taxes:

> This Commission realizes that a change in the Federal Income Tax Rate should have no substantive bearing on whether a utility is or is not earning its authorized return. Federal Income Tax Expense, like many other utility expense items, is a pass through expense. In other words, the utility's Federal Income Tax obligation is passed-through as a cost of doing business to its ratepayers. Because of the pass-through nature of this expense, 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. Further, this Commission has often stated that public utilities are in no fashion guaranteed to earn their authorized return, or any return at all, but, are only provided an opportunity to earn such return. If a utility is in a position where its legitimate expenses have increased to the point that it is no longer able to earn its authorized return, that utility should petition this Commission for rate relief. If that utility is for some reason barred from commencing a general rate proceeding, or its circumstances are dire, it may petition this Commission for emergency rate relief.

In the Matter of the Commission's Investigation, Cause No. 38194, Interim Order, 1987 WL 1464855, Slip Copy at 15 (Ind. Util. Regulatory Comm'n June 1, 1987).

More recently, we directly rejected assertions that a change in income tax rate bears any substantive connection to whether a utility is earning its authorized return:

> Because taxes are a pass-through expense, a change in the federal income tax rate should have no substantive bearing on whether a utility is or is not earning its authorized return. We also note that the nature of the income tax component of the revenue requirement makes it different than many types of expenses because the rate of the burden is defined in statute rather than dependent on management actions of the utility. Further, we have consistently held that utilities are not guaranteed to earn their authorized return but, rather are only entitled to a reasonable opportunity to earn such a return. *Ind. Mich. Power Co.,* Cause No. 44075 at 48 (IURC Feb. 13, 2013).

Cause No. 45032 S3, *Sycamore Gas Company*, October 9, 2018, Final Order at 6, (Respondent's Notice of Appeal filed November 7, 2018).

We decline in this subdocket to deviate from our prior findings. Respondent urges this Commission to consider its losses for tax purposes, which it alleges are created by historical under-earnings, as reason to permit the utility to retain all excess deferred taxes created by the TCJA's revision of the federal income tax rate from 35% to 21%. LMH's taxes are a pass-through expense that bear no relation to the utility's ability to earn or not earn its authorized return. If LMH is not adequately recovering its costs from its customers, it can file a base rate case to secure an appropriate increase. On the other hand, whether LMH's taxable earnings will allow it to make full use of its NOLs is not in the customer's control, and it would be improper to repurpose the deferred tax balance LMH's customers have funded in order to compensate the utility for any losses it could have avoided through its own actions. Consistent with our prior findings in the 1986 Investigation, we find that denying ratepayers the full benefit of the new tax rate in the TCJA is not the appropriate redress for LMH's tax operating losses.

Respondent claims that it should not be required to return excess ADIT to customers because it has no excess deferred income taxes to return. Respondent explains that losses on its tax return result in net operating loss ("NOL") carryovers of $2,445,036. This results in a deferred tax asset which the utility explains it cannot use until the company generates taxable income to offset the NOLs. Under US GAAP, an allowance should be established to reduce the deferred tax asset to the amount expected to be realized. Respondent established an allowance at a level that reduced the deferred tax asset equal to its deferred tax liability. Thus, when the deferred tax asset is netted against the deferred tax liability, the result is zero.

The Commission agrees that US GAAP requires a valuation allowance to reduce a deferred tax asset to the amount expected to be realized. However, the Commission is not bound to make a determination based on this accounting requirement. Respondent's Exhibit TW-2 shows the utility will continue to maintain a deferred tax liability of $278,200 in Account 282.1 related to the difference between book and tax depreciation expense. When Respondent's rates were established, a component of the approved rates included deferred federal income tax expense which is reflected in Account 282.1. Further, Respondent's calculation of the allowance it calculated to offset the deferred federal tax asset is not adequately supported. When determining a valuation allowance, an estimate of future income is made to determine the amount of allowance needed to decrease the deferred tax asset to an amount that is more likely than not to be realized. Exhibit TW-2 includes the following statement, "As such, an allowance has been established to reduce the deferred tax assets to the extent of the deferred tax liability created by the difference in depreciation methods." Thus, Respondent's estimate of future income is based on the deferred tax liability created by the timing difference between book and accelerated depreciation expense. There is no apparent relationship between the estimated future earnings of LMH and the deferred tax liability recorded on its books which is a function of the historical timing difference between book and tax depreciation. Further, there was no testimony presented to explain how the utility's historical timing difference between book and tax depreciation is a reasonable method to estimate future income to establish the valuation allowance.

In her rebuttal testimony, Ms. Wyne states, "Based on the rate structure in effect as of December 31, 2017, LMH is not expected to generate sufficient income to begin to utilize the benefit of the NOL carryforwards beyond the reversal of the temporary differences." However, as we previously stated, Respondent can file a rate case to obtain a sufficient increase. Further, in her direct testimony, Ms. Wyne expresses her opinion that a base rate case is expected to be filed in the fall of 2018. Thus, it is not clear why LMH is not expected to be able to begin to utilize the benefit of the NOL carryforwards or why the related rate schedules could not be used to estimate future income to establish the valuation allowance to offset its deferred tax asset.

In conclusion, the record reflects LMH has not paid taxes since 2007 while, over that same period, its base rates reflected an income tax revenue requirement paid by its customers. Ms. Wyne's testimony indicated her firm and counsel of record in this subdocket are currently working on a new base rate case for LMH; therefore, an opportunity for an increase to LMH's income via a base rate change is imminent. The impacts of the TCJA should not result in a windfall to the utility, but rather a benefit to its customers whose rates have generated the accumulated deferred taxes that will not now reverse at the higher tax rate. Accordingly, and based on our discussion above, we find LMH's excess ADIT related to the difference between tax and book depreciation shall be refunded to its customers effective on the date of a final order in this subdocket, subject to a true-up compliance filing.

To determine the precise amount of LMH's excess ADIT, we look to the OUCC's responses to questions from the Presiding Officers. LMH's excess ADIT should be calculated based on Respondent's blended 28.91% tax rate instead of the 35% rate used in LMH's filing and in Ms. Stull's direct testimony. When the correct tax rate is substituted into Ms. Wyne's Attachment TW-2, the resulting excess ADIT is $104,800, rather than the $185,500 previously calculated by the parties. Further, Ms. Stull also states that "[i]t is unlikely LMH has accumulated the data necessary to calculate ARAM; therefore, [her] recommendation is based on the Reverse South Georgia ("RSG") method for determining the period over which LMH's excess ADIT should be amortized." Ms. Stull calculated an amortization period of 14.5 years. However, we note that LMH responded to the OUCC's discovery (OUCC Attachment MAS-2) that it would use the

ARAM method to determine its annual reduction to its federal income tax expense. Therefore, we direct Respondent to submit a compliance filing that supports its chosen method of amortization for the excess ADIT determined above.

C. **Other Issues.** In its case-in-chief, Respondent requested authority to defer the costs of this investigation as a regulatory asset for consideration in Respondent's next base rate case. The OUCC opposed this request, arguing that compliance costs should be minimal and that any such costs are more appropriately borne by Respondent's shareholders. 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. 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.

Finally, Respondent proposed that the method of handling taxes related to CIAC also be considered in Respondent's next base rate case. The record shows Respondent intends to file its next base rate case in the near future. The OUCC indicated it had no objections to this proposal. Accordingly, we find Respondent's proposal to be reasonable, and direct LMH to address the handling of taxes related to CIAC as part of its next base rate case.

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

1. Respondent is directed to flow $10,272 to its customers through one-time bill credits as directed in Paragraph 3(A) above in the first full billing period following approval of this Order.

2. Respondent shall refund $104,800 as the amount of excess ADIT based upon its deferred tax balance as of December 31, 2017. Within 30 days of the date of the Order, Respondent shall file a compliance filing that includes an excess ADIT calculation with its proposed amortization that is either supported by the use of the RSG or ARAM method. The excess ADIT amount shall be allocated to the customer classes in the same manner in which Respondent's revenue requirements were allocated to volumetric rates in its last base rate case. Respondent shall also submit a compliance filing to adjust its rates and charges showing the annual adjustment to reduce its revenue requirement accordingly.

3. Respondent shall address the handling of taxes related to CIAC as part of its next base rate case.

4. This subdocket is closed.

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

<u>HUSTON, OBER, AND ZIEGNER CONCUR; FREEMAN AND KREVDA ABSENT</u>:

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