Cause No. 45836

FILED
January 10, 2023
INDIANA UTILITY
REGULATORY COMMISSION

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY
d/b/a CENTERPOINT ENERGY INDIANA SOUTH
(CEI SOUTH)

DIRECT TESTIMONY
OF
JENNIFER K. STORY
VICE PRESIDENT, TAX

ON

FEDERAL PRODUCTION TAX CREDIT

PETITIONER'S EXHIBIT NO. 5 (PUBLIC)

DIRECT TESTIMONY OF JENNIFER K. STORY

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Jennifer K. Story. My business address is 1111 Louisiana Street Houston, Texas 77002.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am employed by CenterPoint Energy Service Company, LLC ("Service Company"), a wholly-owned subsidiary of CenterPoint Energy, Inc. The Service Company provides centralized support services to CenterPoint Energy, Inc.'s operating units, one of which includes Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South ("Petitioner", "CEI South", or "Company").

Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS DIRECT TESTIMONY?

A. I am submitting testimony on behalf of CEI South, which is an indirect subsidiary of CenterPoint Energy, Inc.

Q. WHAT IS YOUR ROLE WITH RESPECT TO PETITIONER?

A. I am Vice President, Tax for CenterPoint Energy, Inc. and its subsidiaries and operating units, including CEI South. I am responsible for all federal and state taxes.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I received a Bachelor of Science in Accounting from the University of Texas at Dallas in 2002. I am a licensed certified public accountant in the States of Texas and Hawaii.

Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.

A. I joined CenterPoint Energy, Inc. in October 2022. Prior to joining CenterPoint Energy, Inc., I worked for gas and electric public utilities for 16 years in tax and regulatory leadership roles.

Q. WHAT ARE YOUR PRESENT DUTIES AND RESPONSIBILITIES AS VICE PRESIDENT, TAX?

A. My primary responsibilities include leading the income tax function that is responsible for accurately and efficiently reporting the federal and state taxes of CenterPoint Energy Inc. and its subsidiaries and business units, including CEI South.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE INDIANA UTILITY REGULATORY COMMISSION (THE "COMMISSION") OR ANY STATE REGULATORY COMMISSION?

A. I have never submitted filed testimony before this Commission, though I have submitted direct and rebuttal testimony in Colorado, Kentucky, Mississippi, Tennessee, Texas, and Virginia.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. My direct testimony addresses five interrelated topics. First, I give a brief explanation of the Wind Project. I then explain the history of the federal production tax credit ("PTC") for wind systems and changes resulting from the enacted Inflation Reduction Act ("IRA"). Next, I describe how CenterPoint Energy, Inc.'s tax capacity and the transferability option allow it to directly realize applicable tax incentives without the added cost of a tax equity partner. Thereafter, I describe the customer benefits resulting from CenterPoint Energy, Inc.'s ability to monetize the PTC. Finally, I discuss how traditional cost-of-service, rate-of-return ratemaking allows CEI South to quickly pass that benefit through to customers.

II. PROPOSED WIND PROJECT

Q. BRIEFLY DESCRIBE THE WIND PROJECT FROM WHICH CEI SOUTH EXPECTS TO RECEIVE A PTC BENEFIT AS A RESULT OF THIS PROCEEDING.

A. As explained in more detail by Petitioner's Witness Bradford, CEI South is requesting an Order in this Cause issuing CEI South a CPCN to purchase and acquire, indirectly through a BTA, a wind facility outside the state of Indiana (the "Wind Project" or "Project") pursuant to Ind. Code ch. 8-1-8.5.

Q. PLEASE DESCRIBE HOW CEI SOUTH IS PROPOSING TO ACQUIRE THE PROJECT.

A. As Witness Bradford explains, CEI South will purchase all of the membership interests in the Project Company, which is a special purpose entity established to facilitate ownership transfer of the Wind Project, subject to fulfillment of the conditions precedent to closing. In exchange for the membership interest, the Company will pay an amount set forth in the BTA that is pending negotiation, as further explained by Petitioner's Witness Bradford. At or about that same time, the separate structure of this special purpose entity will be collapsed such that the individual assets making up the Wind Project will be directly owned by CEI South.

Q. WHAT RIGHTS WILL CEI SOUTH ACQUIRE UNDER THE BTA?

A. By acquiring the membership interest, CEI South will acquire all of the "Project Assets" associated with the Wind Project. Those Project Assets include all assets, properties, rights and interests of every kind, which as described by Witness Bradford includes books and records, the rights to the project site, contracts, land leases and real property agreements, project fixtures and improvements, permits, warranties, and interconnection rights. As I explained, shortly following the acquisition of the membership interests in the special purpose entity, these individual assets held by the special purpose entity will become the direct property of CEI South.

Q. WHEN IS THE PROJECT EXPECTED TO BE COMPLETED?

A. The project is expected to be completed no later than January 1, 2025.

Q. PLEASE EXPLAIN IF THERE IS ANY SIGNIFICANCE TO THIS DATE OF COMPLETION.

A. Yes. Qualified projects for which construction begins prior to January 1, 2025 qualify for the 20% credit ($0.0055/kwh) and a 100% credit ($0.0275/kwh) if certain wage and apprenticeship qualifications are satisfied (see discussion following).

III. <u>PRODUCTION TAX CREDIT</u>

Q. PLEASE DESCRIBE THE FEDERAL PTC FOR WIND ENERGY SYSTEMS.

A. Since 1992 federal tax incentives, in the form of tax credits, have been available for wind energy systems on commercial properties under section 45 of the Internal Revenue Code ("IRC").[1] Section 45 historically provided a federal PTC which reduced a taxpayer's federal income tax liability on a dollar-for-dollar basis based on energy produced and the PTC rate in effect. The wind PTC was first established under the Energy Policy Act of 1992 to stimulate the construction of renewable technologies for power generation by providing a production-based credit for the first 10 years of project operations. The PTC provided a way for Congress to encourage private investment in wind energy facilities. The initial rate was $0.015/kwh. This rate was adjusted for inflation each year. In 2015, Congress took steps to phase-out the PTC with the last year of eligibility being for projects

[1] Unless otherwise noted, all "section" or "§" references are to the IRC, all references to "Reg. §" are to the Treasury Regulations promulgated under the IRC (the "regulations"), and all references to "tax" are to U.S. federal income tax.

beginning construction in 2019. Two one-year extensions were granted. Therefore, projects for which construction started in 2016 through 2021 were subject to phased-down credit amounts and prior to enactment of the IRA, projects beginning in 2022 would not be eligible for the credit.

Q. WHAT EFFECTS DID THE INFLATION REDUCTION ACT HAVE ON THE VALUE OF THE PTC?

A. The IRA extended the PTC for qualified wind projects for which construction begins prior to January 1, 2025. To qualify for a full credit ($0.0275/kwh in 2022), the IRA introduced two new requirements, a prevailing wage and an apprenticeship requirement (see detailed discussion below).[2]

Q. DID THE IRA HAVE ANY OTHER EFFECTS ON CEI SOUTH'S ABILITY TO CAPTURE THE PTC BENEFIT?

A. Yes. First, the IRA has introduced the wage and apprenticeship requirements, which must be met to claim the full PTC. These requirements are as follows:

> To satisfy the prevailing wage requirement, laborers, mechanics, contractors and subcontractors must be paid wages at least at prevailing rates in the locality in which the facility or project is located as determined by the Secretary of Labor, during the construction, alteration, and repair of the "qualified facility" for a ten-year period beginning with the date the facility was originally placed in service.
>
> To satisfy the apprenticeship requirement, the following percentage of total labor hours for construction, alteration, or repair work on the qualified facility or energy project must be performed by qualified apprentices:
>
> > Before 1/1/23 – 10%; During 2023 – 12.5%; After 12/31/23 – 15%
> >
> > Each contractor and subcontractor who employs four or more individuals to perform construction with respect to a qualified facility or an applicable project must employ at least one qualified apprentice.

IRC Sections 45(b)(7)(A)(ii) and 45(b)(8)(A)(i-ii).

[2] The IRA eliminated the credit phaseout for wind projects placed in service after December 31, 2021. However, wind projects placed in service prior to January 1, 2022 remain subject to the PTC phase out.

Second, the IRA addresses the issue of taxpayer "tax capacity" by allowing transferability, which will facilitate more cost-effective utilization of the expanded credits regime. Transferability allows taxpayers to sell tax credits to an unrelated party and provides a more efficient way to monetize the present value of the tax credits. Prior to the enactment of the IRA, taxpayers without sufficient current income-tax liability to self-monetize credits had to either (a) rely on expensive tax equity financing or (b) carry forward deferred tax assets on their own balance sheets with corresponding losses due to the time value of money.

Q. PLEASE EXPLAIN WHY CEI SOUTH WILL QUALIFY FOR PTC BENEFITS FROM THE WIND PROJECT.

A. As previously explained, to qualify for the PTC, construction on the project must begin prior to January 1, 2025. The construction phase of the project is expected to begin during the second half of 2023 with project construction being complete in December 2024. Based on this timing, the Company will qualify for the PTC by meeting the continuous progress safe harbor. This safe harbor allows developers to meet the continuous progress test if construction is completed within four years of commencement of construction.[3] This four-year safe harbor serves as an alternative to scrutinizing development schedules and monetary outlays for continuous progress. Additionally, the Company is committed to achieving the maximum PTC available by satisfying the wage and apprenticeship requirements over the life of the project.

Q. WHAT FACTORS DETERMINE WHEN A PROJECT BEGINS AND IS FINISHED FOR PURPOSES OF QUALIFYING FOR THE WIND PTC?

A. Under IRS guidance, developers can show that construction has begun in one of two ways. They can either begin actual physical work of a significant nature or they can meet the safe harbor by incurring a non-refundable expenditure representing 5% or more of a facility's total cost. The year in which this occurs is deemed the year that construction begins. Construction is complete when the project is placed into service.

Q. ARE THERE ANY OTHER REQUIREMENTS THAT CEI SOUTH OR THE PROJECT MUST MEET TO QUALIFY FOR THE FULL BENEFIT?

A. No.

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[3] IRC Notice 2016-31, I.R.B 2016-23, May 18, 2016

Q. HOW IS THE PTC TREATED DIFFERENTLY FOR THIS PROJECT AS OPPOSED TO A PPA?

A. When a developer or other entity retains ownership of a wind project, that entity often receives the PTCs for the project. In negotiating a PPA agreement, the benefit of those credits can sometimes reduce the cost of energy for the utility offtaker, but not always. Many times, there is no assurance that these tax benefits are passed along to customers in the form of lower energy purchase costs. In fact, PPA pricing is often at competitive rates which may be significantly higher than the costs produced through traditional ratemaking. In contrast, under traditional ratemaking, tax benefits directly reduce the costs of generating electricity and the benefits are passed through to customers. When a utility owns the project itself, the credits are received by the utility and the utility passes those benefits to customers through lower tax expense, or in the case of the Wind Project, through a reduction to the amount recovered through rates associated with this Project, as further described by Witness Chrissy M. Behme and illustrated by Petitioner's Exhibit No. 4, **Attachment CMB-1**, the CECA-X CMB Filing Exhibit, tab CMB-2 Sch 1, Excel row 55.

Q. HOW IS A PTC DIFFERENT THAN AN INVESTMENT TAX CREDIT ("ITC")?

A. As described above, a PTC is a tax credit based on annual generation of energy. This tax credit reduces income tax expense each year it is generated. In contrast, an investment tax credit is a credit based on qualified investment in an eligible energy-related property. Therefore, the ITC is calculated by multiplying qualifying capital expenditures times the ITC rate in effect. A tax basis adjustment is recorded for the qualified ITC property, reducing the amount of tax depreciation allowable. In contrast, no tax basis adjustment is required for PTCs since the credit is not based on capital investment. In addition, ITCs are subject to the normalization provisions of the Internal Revenue Code. This means that the benefits from ITCs are flowed through customer rates via amortization of the credit over the productive life of the underlying asset. PTC benefits are not subject to normalization and the benefits can be flowed to customers as soon as they are monetized by the utility. While wind generation projects have never qualified for ITCs, other renewable energy projects brought before this Commission, such as solar, have and continue to qualify for ITCs.

Q. HOW IS THE ALLOWABLE AMOUNT FOR THE PTC DETERMINED?

A. The full allowable PTC for 2022 is $.0275/kwh. This amount will be adjusted for inflation each year thereafter. This full PTC is allowed if the basic PTC requirements regarding construction start and end dates, and the wage and apprenticeship requirements are satisfied. In addition, there are bonus "adders" for domestic content and if the project is located in an "energy community." Each of these bonus amounts add 10%[4] to the PTC and can be stacked on top of each other.

Q. PLEASE DESCRIBE THE DOMESTIC CONTENT ENHANCEMENT.

A. After 2022, an adder of 10% for the PTC will apply if specific domestic materials requirements are met (phased in initially for onshore wind projects at 40% and rising to 55% for onshore projects beginning construction in 2027 or later). The requirement is met if the above percentage of total costs of all manufactured products of such facility or project are attributable to manufactured products (including components), which are mined, produced, or manufactured in the United States. The Treasury Secretary can provide exceptions to this requirement in certain circumstances (e.g., if the requirement results in cost increases of more than 25% or comparable products are not readily available in the United States). Clarifying guidance is expected to be issued regarding the domestic content enhancement eligibility.

Q. PLEASE DESCRIBE THE LOCATION OF PROJECTS IN "ENERGY COMMUNITIES" ENHANCEMENT.

A. The IRA also provides a PTC enhancement for projects placed in service within an "energy community" defined to include brownfield sites; a census tract or any adjacent census tract in which a coal mine has closed after 1999, or a coal-fired electric generating unit has been retired after 2009; and a metropolitan or nonmetropolitan statistical area that (1) at any time after 2009 has had at least 0.17% direct employment or 25% local tax revenues from the extraction, processing, transport, or storage of coal, oil, or natural gas and (2) had an unemployment rate at or above the national average for the previous year, in each case as determined by the Treasury Secretary. Assuming the prevailing wage and apprenticeship requirements are met, the amount of the base PTC is increased by 10% (or 2% if the wage and apprenticeship requirements are not satisfied). Clarifying guidance is expected to be issued regarding the eligibility for the energy communities enhancement.

[4] If wage and apprenticeship requirements are met. If they are not met, the bonus adders are 2% each.

Q. WHAT DO YOU ESTIMATE IS THE VALUE FROM MONETIZING THE PTC BENEFITS?

A. The estimated value from monetizing the PTC benefits associated with the Project is [redacted] per year. This amount is derived from the estimated annual kwh of [redacted], using a PTC rate of $0.0275/kwh and assuming inflation adjustments of 2% for each of the next three years. This estimated value assumes that the project will meet the wage and apprenticeship requirements but will not qualify for the domestic content adder or the enhancement for being located in an energy community.

IV. CENTERPOINT ENERGY INC.'S ABILITY TO DIRECTLY REALIZE THE PTC

Q. IS CEI SOUTH PROPOSING TO USE A TAX EQUITY PARTNER FOR THIS PROJECT?

A. No.

Q. WHY HAS A TAX EQUITY PARTNER HISTORICALLY BEEN NEEDED TO UTILIZE TAX CREDITS?

A. There could be a number of reasons, but the most likely reason is the utility or company constructing the project does not have sufficient income to fully use the credit. To promote capital spending, the government in recent years implemented many taxpayer-friendly rules including bonus depreciation[5]. These rules have resulted in some companies having net operating loss carryforwards and not paying cash taxes. When a company is not paying cash taxes it has historically (prior to the IRA) been unable to realize the benefits of a PTC, since the credit cannot reduce current cash taxes. For a taxpayer in this situation, it has been necessary to bring in a tax equity partner to benefit from the PTC.

Q. WHY IS CENTERPOINT ENERGY INC. ABLE TO UTILIZE THIS CREDIT WITHOUT A TAX EQUITY PARTNER?

A. CenterPoint Energy, Inc. is not in the tax situation that I just described and so, in the year this Project is placed in service, should be able to fully utilize the credit without a tax equity partner resulting in efficient utilization of the PTC. In other words, the PTC will be fully used by CenterPoint Energy, Inc. to offset its income taxes. In addition, the IRA provision allowing transferability of PTCs allows taxpayers without sufficient taxable income to monetize these credits by transferring them to a third party.

[5] Available for public utilities prior to the Tax Cuts and Jobs Act enactment in 2017.

V. CUSTOMER BENEFITS RESULTING FROM CENTERPOINT ENERGY, INC.'S ELIGIBILITY FOR PTC

Q. HOW DOES CENTERPOINT ENERGY, INC.'S ABILITY TO REALIZE THE PTC FOR THE WIND PROJECT BENEFIT CUSTOMERS?

A. The PTC realized by CenterPoint Energy, Inc. will result in a reduction to the amount recovered through rates associated with this Project as further described by Witness Behme. This ensures that every dollar of benefit the Company receives will be used to lower customer rates. As further described by Witness Behme, CEI South will include the eligible revenue requirement amounts associated with the Wind Project in its next general rate case or, if not there, in the Company's annual Clean Energy Cost Adjustment ("CECA") mechanism filing once the Wind Project investments have been placed into service. The difference between the actual PTC and any amount that is reflected in base rates will flow through the CECA, even if the Project itself is reflected in base rates.

Q. WHAT IS THE VALUE OF THE PTC THAT WILL BE PASSED ON TO CEI SOUTH'S CUSTOMERS?

A. CEI South's customers will receive the full value of the PTC, estimated to be [redacted] per year if CenterPoint Energy, Inc. is able to fully utilize the PTC as anticipated. If CenterPoint Energy, Inc. instead must monetize the credit by transferring it, customers will receive the full amount monetized.

Q. IF THE PTC IS TRANSFERRED, WHAT IS THE VALUE OF THE PTC THAT WILL BE PASSED ON TO CEI SOUTH'S CUSTOMERS?

A. The IRA included the option to transfer credits, enabling taxpayers to monetize PTCs and ITCs even if they lack sufficient taxable income to utilize the credits currently. Future guidance will likely further clarify the means by which companies will be able to take advantage of this provision. Discount rates will be determined by the market. CEI South will include the total amount received in exchange for transferred PTCs as a reduction to customer rates. As with the variances described earlier in my testimony, CEI South will still use CECA to reflect the PTC generated by the Project, or in the event it is included in rate base in Petitioner's next general rate case, the extent the actual PTC differs from the amounts reflected in base rates.

Q. IN YOUR OPINION, WILL ACQUIRING THE WIND PROJECT BE BENEFICIAL TO CEI SOUTH'S CUSTOMERS?

A. Yes. As described by Company Witness Bradford, the Wind Project will increase the resilience of CEI South's system while utilizing clean generation. This activity is incentivized by the federal government in the form of PTCs, which are used to offset tax expense. The full benefit received by the Company for these PTCs will be used to reduce CEI South's customer rates.

Q. BASED ON THE USE OF THE COST-OF-SERVICE OR RATE-OF-RETURN RATEMAKING, WILL THE WIND PROJECT BE TREATED AS PUBLIC UTILITY PROPERTY FOR TAX PURPOSES?

A. Yes. However, as explained below, this categorization will not impact the Company's timing or ability to flow benefits of the PTC to customers.

VI. <u>RATEMAKING FOR WIND PROJECT</u>

Q. IN YOUR OPINION, IS USE OF A COST-OF-SERVICE OR RATE-OF-RETURN RATEMAKING WITH PTC REASONABLE AND IN THE PUBLIC INTEREST?

A. Yes, the traditional ratemaking approach benefits customers and utilities. This methodology provides the utility the opportunity to recover appropriately incurred costs to provide electricity service and encourages capital investment. Unlike previous filings relating to solar projects that qualify for ITCs, the Wind Project is eligible for a PTC. The benefit for the credit can immediately be flowed to customers in rates and is not constrained by IRS normalization rules regarding when and how the benefit can be shared with customers. Finally, the Company's proposed traditional ratemaking treatment ensures that 100% of the realized PTC benefits are flowed to ratepayers via lower electricity costs.

VII. <u>CONCLUSION</u>

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, at the present time.

VERIFICATION

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A CENTERPOINT ENERGY INDIANA SOUTH

Jennifer Story

Jennifer K. Story
Vice President, Tax

1/10/2023
Date