

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) CAUSE NO. 45032 S 15
JOBS ACT OF 2017 AND POSSIBLE)
RATE IMPLICATIONS UNDER PHASE 1)
AND PHASE 2 FOR AMERICAN)
SUBURBAN UTILITIES, INC.)**

**RESPONDENT'S AMERICAN SUBURBAN UTILITIES, INC.'S
SUBMISSION OF ITS PROPOSED ORDER**

Respondent, American Suburban Utilities, Inc. ("ASU"), hereby submits its Proposed Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the foregoing has been served upon the following via electronic mail this 10th day of December, 2018 to:

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ORDER OF THE COMMISSION

Presiding Officers:

James Huston, Chairman

David Veleta, Administrative Law Judge

Pursuant to this Commission’s Order of January 3, 2018 issued in Cause No. 45032, the Commission initiated an investigation to review and consider the impacts of the Tax Cuts and Jobs Act of 2017 (“TCJA”) and how resulting benefits therefrom should be realized by customers. All jurisdictional rate-regulated, investor-owned utilities were named as Respondents. Respondents were ordered to begin immediately using regulatory accounting with regulatory assets and liabilities for all calculated differences resulting from the TCJA. By our subsequent Order of February 16, 2018, the Cause was divided into two phases, with the first phase to address any reduction in rates resulting from the reduction in the federal income tax rate. Phase 2 was to address “all remaining issues, including (1) the amount and amortization of normalized and non-normalized excess accumulated deferred income taxes and the regulatory accounting being used by Respondents as required by the Commission’s January 3, 2018 Order in this Cause for estimated impacts resulting from the Act, and (2) the timing and method for how those benefits will be realized by customers, whether directly or indirectly.” February 16 Order, p. 3.

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 thereafter filed by both Respondent American Suburban Utilities, Inc. (“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

An evidentiary hearing was convened on November 19, 2018, at which time the direct and rebuttal testimonies, as well as certain stipulated additional exhibits and the administrative notice materials, were accepted into the record.

1. Notice and Jurisdiction. Due, legal and timely 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. Respondent'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 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 as a result of the tax rate reduction.

For purposes of Phase 2, Mr. Lods provided the total accumulated deferred income taxes recorded on ASU's balance sheet as of December 31, 2017 of \$533,026. All of that amount is due to the use of accelerated depreciation for income tax purposes. All of this accelerated depreciation was deducted during the past three tax years. He performed a very simple calculation to derive a level that would likely qualify as "excess" of \$213,000. Amortizing that over the life of sewer utility property using the Commission's generic and ASU's composite depreciation life of 40 years would equate to approximately 15¢ per month per customer. He explained 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 straightline depreciation. Rather than refunds to customers, this would produce additional taxes payable currently for ASU. 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. Accordingly, there are five months for which service was billed after the tax cut at the prior rates, because ASU bills in arrears. 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.

b. OUCC’s Evidence. Margaret Stull opposed in part ASU’s proposal. She first was critical of ASU for not having a precise calculation of excess ADIT. She went through a detailed calculation using \$532,070 from ASU’s 12/31/17 trial balance. She amortized the excess over 30 years, which she estimated was the composite remaining life of ASU’s assets. She arrived at a percent reduction to customer rates of 0.27%. She objected to waiting until April 15 to implement a reduction for amortization of excess ADIT. She noted that ASU had made no showing it would be prudent or beneficial to customers to eliminate ADIT through amending the returns.

Ms. Stull also responded to ASU’s proposal for the deferred liability. She testified that ASU had incorrectly calculated the amount that should be deferred. Even with billing in arrears, there should still be six months (January through June) of receipts after the effective date of the new tax rates. She provided an amount of \$106,622.18. She also disagreed with tying the refund of this amount to the implementation of Phase 3 rates in Cause No. 44676. She testified that the refund should be provided over the months of January through March 2019, regardless of the effective date of the Phase 3 rates. She was concerned over potential delays that might result if there were objections to the Phase 3 tariff calculation.

Ms. Stull also testified that carrying charges should accrue as of January 1, 2018, they should accrue at ASU’s weighted average cost of capital, and they should accrue through approval of the tariffs that pass the deferred liability and excess ADIT to customers.

Finally, Ms. Stull agreed with ASU’s proposed treatment of taxes paid on developer-installed mains, which is to debit CIAC for these payments. She objected to increasing system development charges to reflect the gross-up for income taxes on CIAC. She testified that if ASU

has elected Option 2 for main extensions, it should also be required to live with Option 2 for SDCs.

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 Mr. Lods 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 the returns. 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 Findings. We will first address the amount that ASU has deferred until it implemented the Phase 1 rate reduction from this investigation, and we will then move on to excess ADIT. Finally, we will address the dispute over CIAC and SDCs.

a. Deferred Liability. After rebuttal, it appears there is no dispute over 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.

The dispute centers around how the benefits of this deferral will be realized by customers, whether directly or indirectly. ASU's proposal is to use the deferral to mitigate the third step in the rate increase resulting from our Order in Cause No. 44676. 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 to implement a bill credit for one-third of the deferred liability. In this way, the rate increase will take effect over a four-month period for customers rather than at one time. And if for some reason ASU has not filed its Phase 3 tariff before March

31, 2019, ASU will file a stand-alone bill credit to reflect 100% of the deferred liability in one month. Respondent's Ex. No. 1, p. 5.

We find ASU's proposal is reasonable and should be accepted. First, the proposal to use the deferred liability to ease the implementation of the Phase 3 increase is reasonable. The estimated Phase 3 increase (before accounting for the TCJA tax rate reduction) is approximately 34% from a current monthly rate of \$53.33. *See American Suburban Utils.*, Cause Nos. 44676 and 44700 (IURC 11/30/2016), p. 39; Respondent's Exhibit No. 1-R, Attachment SL-1R. Using the deferred liability to phase in this increase is prudent, especially given the customer confusion and frustration that might otherwise occur over rates bouncing up and down over a short period of time. Rates for ASU customers increased approximately 17% for the implementation of second step of the increase in the last rate case; then they decreased 5% on July 1, 2018 as a result of the reduction for the TCJA. *ASU*, p. 39. Under the OUCC's proposal, rates would drop again, then increase for the Phase 3 rates, then increase yet again for expiration of the amortization of the deferred liability. With ASU's proposal, and assuming ASU's Phase 3 tariff is submitted before March 1, 2019, ASU should have flowed back 100% of the deferred liability during the first half of 2019. And if the tariff has not been submitted by March 31, 2019, ASU has committed to flowing back 100% of the deferred liability in a single month – again, occurring during the first half of 2019. The benefits of the deferred liability will be realized by ASU's customers on essentially the same time frame (or better) than customers of much larger utilities will realize the benefits of deferred accounting under proposals that have either been approved or are pending approval.¹ Even if there is a delay for review of ASU's Phase 3 tariff, we would still expect that review to be completed and a tariff approved that would allow the complete credit of the deferred liability well before the end of 2019, which is when Aqua Indiana's customers will have received complete benefit of Aqua's deferred liability. The OUCC has not offered a cogent reason to treat ASU differently or less favorably than other Respondents in this investigation.

b. Excess ADIT. The dispute over excess ADIT in this case is somewhat mystifying. All of ASU's excess ADIT is related to accelerated depreciation for income tax purposes taken over the course of three years of federal returns. ASU offered a simple calculation on direct of the monthly effect on rates from commencement of amortization, or approximately fifteen cents per customer. The OUCC took ASU to task for its calculation but then offered a revised calculation of approximately fifteen cents per month. So the amount does not appear in dispute.

The only issue in dispute is timing. Mr. Lods wants until April 15, 2019 to submit a tariff reflecting amortization of any remaining excess ADIT. He wants to consider amending the past returns to eliminate excess ADIT by eliminating accelerated depreciation. If so elected, ASU would file proof that the returns have been amended and all ADIT (including excess) has been eliminated thereby. If the returns are not amended, then a tariff reflecting the 14¢ reduction in

¹ Northern Indiana Public Service Co. (gas), Vectren Energy (Indiana Gas and Southern Indiana Gas & Electric), and Aqua Indiana will all pass the deferred liability over six or twelve months commencing on or about January 1, 2019. Duke Energy customers will not see any reduction for the deferred liability until its next general rate case. Respondent's Cross Exhibit No. 1.

rates for amortization of excess will be filed instead.² Interest on the excess ADIT (if any) will accrue at ASU's weighted average cost of capital from January 1, 2019 until the tariff, if any, is filed.

The timing of ASU's proposal is reasonable. First, implementation of the amortization of excess ADIT is in keeping with proposals approved or pending approval for other utilities in subdockets under this main docket. Respondent's Cross-Exhibit No. 1. Further, ASU's offer of interest accruing on the balance while it considers the tax position issue is something no other utility has offered or been required to do. *Id.* Finally, the purpose for the delay is also reasonable. The decision to elect or not accelerated depreciation is for the utility and not the Commission. As we explained in *Terre Haute Gas Corp.*, Cause No. 38515, 1989 Ind. PUC LEXIS 113: *45-46 (IURC 3/8/1989):

This Commission has recognized over a period of about thirty years that whether a utility uses any of the accelerated depreciation permitted under the Internal Revenue Code is a matter of election on its part. (See Orders in Cause No. 27527, approved December 24, 1957 and Supplemental Order entered therein on September 8, 1959, Petitioner's Rebuttal Exhibits AR-6 and AR-7). This order, as supplemented, has been recognized by the Commission as having continued effect. An order was subsequently entered under it as recently as January 20, 1982 in the Commission's Cause No. 36696 (Petitioner's Rebuttal Exhibit AR-8). The two earlier orders referred to clearly have application to accounting procedures to be followed by utilities "resulting from their election" to use accelerated depreciation. The utility's right to elect is recognized.

1989 Ind. PUC LEXIS 113, *45-46 (emphasis in original). Now, the recognition that it is the utility's decision whether to elect accelerated depreciation for income tax purposes has stood the test of nearly seventy years. ASU has no obligation to demonstrate the prudence of its income tax decisions. An additional three months of time for ASU to make what is a very important tax decision is reasonable.

We therefore find that ASU's proposal with respect to excess ADIT should be approved.

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. Public's Ex. No. 1, p. 17; Respondent's Exhibit No. 4. For SDCs, ASU plans to file a new tariff reflecting gross up for the income tax. With respect to developer installed mains, we find that ASU's proposal is consistent with our rules. Further, debiting CIAC for actual taxes paid is consistent with the Uniform System of Accounts. *See Respondent's Exhibit Nos. 2 and 4*. With respect to SDCs, we agree with Mr. Lods. The election to pay the tax is an election under the main extension rules which, by their terms, do not

² Given that the Internal Revenue Code prohibits us from requiring amortization faster than would result under the Average Rate Assumption Method or the Reverse South Georgia Method, we are rounding Ms. Stull's calculation down to 14¢.

apply to SDCs. Further, as explained by Mr. Lods on rebuttal, the purpose of the SDC was so that new customers would make a cash contribution towards the additional capacity needed to serve them. If we now require ASU to pay the income tax on the amount approved, the SDC will serve less of that purpose. We have already determined during the course of this investigation that “taxes in utility rates are purely a pass-through expense.” *In re TCJA Investigation (Sycamore Gas Co.)*, Cause No. 45032-S3 (IURC 10/9/2018), p. 5. If we are to require one utility to reduce its rates automatically because of the tax rate reduction, consistency dictates that we authorize another utility to increase its SDC automatically for the same reason. Accordingly, we find Ms. Stull’s proposal should be rejected.

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

1. ASU shall be and hereby is directed to reflect the deferred liability of \$106,622.18 through three-monthly bill credits, which shall take effect across-the-board upon the approval of ASU’s Phase 3 tariff in Cause No. 44676.
2. In the event ASU does not submit its Phase 3 tariff in Cause No. 44676 for approval on or before March 31, 2019, ASU shall submit a tariff reflecting a one-month across-the-board bill credit for the entire deferred liability on or before April 1, 2019.
3. ASU shall submit a revised tariff on or before April 15, 2019, reflecting a monthly reduction in rates per equivalent dwelling unit of 14¢ for amortization of excess accumulated deferred income taxes unless ASU first amends its past federal income tax returns to eliminate accelerated depreciation and thereby eliminate all accumulated deferred income taxes on ASU’s balance sheet through payment of additional taxes to the IRS.
4. ASU shall record all income taxes paid by ASU on developer contributed main extensions by debiting contributions in aid of construction.
5. ASU shall be and hereby is authorized to submit on a 30-day basis a revised tariff reflecting an increase to ASU’s system development charge to gross up for income taxes.
6. ASU’s deferred liability and excess accumulated deferred income taxes shall bear interest at a rate equal to ASU’s weighted average cost of capital as determined in Cause No. 44676 from January 1, 2019 until the date of tariff submissions in ordering paragraphs numbers 1 through 3.
7. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR

APPROVED:

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

Mary M. Becerra
Secretary of the Commission