

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 24, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, D. Buys, Hightower)

Division of Economics (Coston, Guffey)

Division of Engineering (Ellis)

Office of the General Counsel (DuVal, Dziechciarz)

RE: Docket No. 20180052-GU – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company - Indiantown Division.

AGENDA: 02/05/19 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Brown, Clark, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

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Case Background

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

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

The prehearing conference was held on November 5, 2018. On November 9, 2018, OPC filed an Agreed Motion to Consolidate for Purposes of Hearing in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU and 20180054-GU. On November 16, 2018, the Prehearing Order was issued. The Order reflected proposed stipulations between Indiantown and OPC on most of the issues. Order No. PSC-2018-0555-PCO-GU, issued on November 20, 2018, consolidated the four dockets for purposes of the hearing. The hearing was held on November 27, 2018. At that time, the Commission voted to accept and approve the parties' proposed stipulations. This recommendation addresses the remaining contested issues. The Commission has jurisdiction pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

Discussion of Issues

Issue 4B: What is the appropriate disposition of the protected excess deferred taxes?

Recommendation: Indiantown should be allowed to retain the net amortized amount of the protected excess deferred tax balance of \$7,862. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Indiantown should be allowed to retain the amortized deferred balance less the unprotected deferred tax amortization, thereby fulfilling the purpose of the TCJA by allowing Indiantown to continue making capital improvements and potentially delaying a rate proceeding.

OPC: Indiantown should not be allowed to retain the benefit of the protected excess ADIT. The protected excess ADIT should be reversed using an Average Rate Assumption Method (“ARAM”) if the utility has the available information to calculate the ARAM, or via another appropriate method that complies with normalization requirements, if Indiantown does not have the information to compute the ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that given its earnings posture, the Company should be allowed to retain the protected excess deferred tax amount of \$8,510, less the unprotected excess deferred tax amount of \$648, for a net tax savings of \$7,862. (Indiantown BR 9) Indiantown argued that the ability to retain this amount will provide the Company with the opportunity to earn closer to its authorized range of return on equity (ROE), while also enabling the Company to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Indiantown BR 9) Indiantown argued that it is currently under-earning and even if it is allowed to retain the tax benefits it has requested, the Company's ROE for 2019 is projected to be negative 21.85 percent as opposed to a negative 22.58 percent. (Indiantown BR 10-11; EXH 9, BSP 00048)

Indiantown also argued that while retention of the net tax savings as proposed by Indiantown will not enable the Company to earn within its authorized range, it will improve the current situation. (Indiantown BR 11) This will ensure that the Company remains financially stable pending the next rate case so that it can continue to provide safe and reliable service to its customers. (Indiantown BR 11, TR 123) Indiantown contended that its proposal reflects the more reasonable approach to addressing the disposition of the tax savings and provides the greatest overall benefit for the Company and its customers. (Indiantown BR 13)

OPC

OPC argued that instead of retaining the tax savings as proposed by Indiantown, the tax savings should be returned to the customers via a base rate reduction. (OPC BR 2, 8) OPC contended that Indiantown has knowingly been earning below its authorized range since 2013, and has had

ample opportunity to file for a base rate increase. (OPC BR 2) OPC argued that the TCJA's effect on the excess ADIT amount resulted in ratepayers making overpayments to Indiantown. (OPC BR 8) Like any overpayment, the protected excess deferred taxes should be refunded as rapidly as possible under the IRS regulations to ensure only fair, just, and reasonable rates are paid by ratepayers. (OPC BR 8) Therefore, OPC argued all of the 2018 income tax savings should be applied for the benefit of its customers through a base rate reduction. (OPC BR 2)

ANALYSIS

The Parties agree on the amount of the amortization of the protected excess accumulated deferred income taxes of \$7,862. (TR 253-254; TR 120-121) In its brief, Indiantown reiterated there is no debate between the Parties regarding the amount of the protected excess deferred taxes, nor is there any debate regarding Indiantown's earnings posture. (Indiantown BR 7; TR 252) Witness Cassel testified that retention of the net protected annual tax savings of \$7,862 will potentially provide the Company with an opportunity to earn a return closer to its authorized range, to continue making capital investments, and will enable Indiantown to charge current rates for a longer period of time, thereby delaying a rate case proceeding. (Indiantown BR 9; TR 121-122) Witness Cassel also testified that retention of the tax savings would potentially enable the Company to continue its interim consolidation efforts pending its next rate case, while also placing downward pressure on any rate increase sought in its next rate case. (Indiantown BR 10; TR 121-123)

OPC witness Smith relied on the 1982 Florida Supreme Court decision in Reedy Creek Utils. Co. v. Fla. Public Serv. Comm., 418 So. 2d, 249, 254 (Fla. 1982), which stated, "[a] change in a tax law should no[sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 6; TR 255; EXH 18) OPC argued that, by definition, the excess tax monies in Indiantown's possession are a windfall to the Company that should be flowed back to the customers who paid the taxes through rates. (OPC BR 6) In response to a staff interrogatory, Indiantown indicated that its forecasted ROE for 2019 would still be negative 19.43 percent, even if it were to retain all the tax savings resulting from the TCJA. (EXH 11, BSP 00063)

In its brief, Indiantown pointed out that OPC witness Smith also acknowledged that Reedy Creek was in an over-earnings position at the time of the 1978 Tax Reform; thus, the issue that ultimately came before the Florida Supreme Court in the Reedy Creek case was a question of how much Reedy Creek would be required to refund. (Indiantown BR 12-13; TR 310-311) The Commission had already determined that Reedy Creek would have to make a refund, because it was over-earning. (Indiantown BR 12-13, TR 314-315) In the Reedy Creek decision, the Florida Supreme Court acknowledged the Commission's decision wherein the Commission stated its position regarding a company's over-earnings position:

Viewing the documents together with the testimony in the record, it is clear that a utility would be required to refund revenues if and only if it were earning in excess of the range of its authorized rate of return. (EXH 17)

OPC maintained that Indiantown witness Cassel's interpretation of the Reedy Creek decision mistakenly links the over-earnings posture of the company in that case with the Court's use of the term "windfall." (OPC BR 6) While OPC conceded that the decision in Reedy Creek was driven by the over-earning posture of the utility, OPC argued the foundation of the analysis was based on the cause of the increase in earnings, not on the extent of the company's earnings. (OPC BR 6; TR 314-315) Staff disagrees with OPC's argument. It is staff's opinion that in the Reedy Creek case, the utility was ordered to make a refund to its customers because regulated utilities are not allowed to earn above the Commission authorized range of ROE regardless of the cause, and therefore, any over-earnings should be refunded to the customers. In Order No. 8624 the Commission asserted, "It is the Commission's responsibility to ensure [public utilities] do not earn in excess of a fair and reasonable return upon their investment."¹

In its brief, Indiantown contended the Company's approach is not inconsistent with Reedy Creek or prior Commission practice as opined by OPC witness Smith. (Indiantown BR 12-13; TR 314-315) Witness Cassel testified that Reedy Creek was in an overearnings position, which led to a required refund, while Indiantown is under-earning and should be able to retain the protected excess deferred tax benefit. (Indiantown BR12-13; TR 308) Staff agrees with Indiantown that a key factor in the Reedy Creek case pertained to the utility's earnings posture whereby the utility was required to make a refund because it was over-earning.

In his testimony, Indiantown witness Cassel explained that permitting the Company to retain some of the tax savings would allow immediate financial support to the Company, thereby enabling it to continue to provide reliable service to its customers. (Indiantown BR 11-12; TR 123) Witness Cassel testified that allowing the Company to retain some of the tax savings will also delay the additional expense, and likely rate increase associated with a full rate proceeding, which OPC's witness Smith conceded would be costly. (Indiantown BR 12; TR 121-123, 306) The Company argued that Indiantown is currently earning below its authorized ROE range, and that retention of the net protected excess deferred tax amount will improve the Company's earnings posture, but will not cause it to exceed its authorized range. (Indiantown BR 13; EXH 9, BSP 00048) The authorized range of ROE for Indiantown is 10.50 percent to 12.50 percent.² (EXH 9, BSP 00044) Indiantown is currently earning a negative return which is well below its authorized ROE range. (EXH 9, BSP 00045) Staff agrees with Indiantown that the Company is currently earning below its authorized ROE and that retention of the net protected tax savings will improve the Company's earnings posture and will not cause it to exceed its authorized range. (TR 121-122) Further, staff agrees with Indiantown that a reduction in the Company's rates as recommended by OPC would put additional downward pressure on Indiantown's earnings and reduce the earned ROE on a prospective basis, which would produce an unreasonable outcome. (TR 122; EXH 11, BSP 00063)

Indiantown argued in its brief that witness Smith's refusal to consider Indiantown's earnings posture in rendering his opinion on Indiantown's proposals to retain some of the TCJA benefits is contrary to prior Commission policy as reflected in Order Nos. 8624 and 8624A and overstates

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

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

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the applicability of the Court's conclusions in the Reedy Creek case. (Indiantown BR 13) As such, Indiantown contended, and staff agrees, OPC's arguments on this point should be rejected. (Indiantown BR 13)

Staff agrees with Indiantown's argument that OPC's reliance upon the Reedy Creek case is misplaced. (Indiantown BR 12) On cross-examination, witness Smith conceded that the Commission's orders underlying the Reedy Creek case, Order Nos. 8624 and 8624A, reflect that, in addressing the 1978 Tax Reform, the Commission considered the circumstances of the utilities on a case-by-case basis and only required those utilities that were earning above the ceiling of their Commission-authorized ROE range to refund the tax savings arising under the 1978 Tax Reform. (Indiantown BR 12-13; TR 310-315)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff recommends that Indiantown be allowed to retain the net amortized amount of the protected excess deferred tax balance of \$7,862.

Issue 5B: What is the appropriate disposition of the unprotected excess deferred taxes?

Recommendation: Indiantown should be allowed to retain the unprotected excess deferred tax balance of \$6,484, amortized over 10 years at \$648 per year, netted against the protected excess deferred tax balance. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Indiantown should be allowed to retain the deferred tax liability associated with the unprotected deferred tax asset amortized over 10 years, netted against the protected excess deferred taxes.

OPC: Indiantown should not be allowed to retain the benefit of the unprotected excess ADIT. The unprotected excess ADIT net asset of \$6,484 should be amortized over 10 years at \$648 per year.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown contended that it has an unprotected excess deferred tax asset recorded on its books with an estimated balance of \$6,484. (Indiantown BR 8) The Company requested this deferred tax asset be amortized over 10 years at \$648 per year. (Indiantown BR 8-9; TR 120-121) The Company proposed retaining the protected excess deferred tax liability of \$8,510, less the unprotected excess deferred tax asset of \$648, for a net tax savings of \$7,862. (Indiantown BR 9; TR 121-122) Indiantown argued that given its earnings posture, the Company should be allowed to retain the net tax savings of \$7,862. (Indiantown BR 9) Indiantown argued that the ability to retain this amount will provide the Company with the opportunity to earn closer to its range of return on equity (ROE), while also enabling the Company to provide service at current rates for a longer period, to continue making necessary capital investments, and to delay a costly rate proceeding. (Indiantown BR 9)

Indiantown also argued that while retention of the net tax savings as proposed by Indiantown will not enable the Company to earn within its authorized range, it will improve the current situation. (Indiantown BR 11) This will ensure that the Company remains financially stable pending the next rate case so that it can continue to provide safe and reliable service to its customers. (Indiantown BR 11-12; TR 123) Indiantown contended that its proposal reflects the more reasonable approach to addressing the disposition of the tax savings and provides the greatest overall benefit for the Company and its customers. (Indiantown BR 13)

OPC

OPC pointed out in its brief that the unprotected excess deferred tax asset of \$6,484 was one of the three impacts of the TCJA. (OPC BR 8) OPC argued that instead of retaining the proceeds as Indiantown has proposed, these tax savings should be returned to the ratepayers as soon as allowable under the IRS guidelines. (OPC BR 8) OPC argued that Indiantown witness Cassel

affirmed that the TCJA does not contain any language, express or otherwise, suggesting an intended goal of the TCJA was to allow a company to keep tax savings in order to continue making capital investments or to avoid potential rate proceedings.³ (OPC BR 9; TR 184) OPC maintained that the TCJA's effect on the Company results in Indiantown's customers making overpayments which create excess accumulated deferred income taxes. (OPC BR 9) OPC argued that like any overpayment, the unprotected excess deferred taxes should be refunded as rapidly as possible to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by Indiantown's ratepayers. (OPC BR 9-10)

ANALYSIS

Both Indiantown and OPC agreed on the unprotected excess deferred tax balance of \$6,484, and that it should be amortized annually over 10 years. (TR 121, 251-252) Indiantown witness Cassel testified that the Company's under-earnings posture necessitates the Company's retention of the unprotected excess deferred tax amount arising from the TCJA. (Indiantown BR 9-11; TR 121-122) Indiantown witness Cassel also testified that permitting the Company to retain some of the tax savings would allow immediate financial support to the Company, thereby enabling it to continue to provide safe and reliable service to its customers. (Indiantown BR 12; TR 121-122) Retention of the unprotected excess deferred income tax amount will potentially provide the Company with an opportunity to earn a reasonable return, to continue making capital investments, and to enable Indiantown to charge current rates for a longer period of time, thus, delaying a rate case proceeding. (Indiantown BR 9-10; TR 121-122) Witness Cassel explained that if the Company is allowed to retain the net deferred tax savings of \$7,862, the Company would be able to delay a rate case and continue its interim consolidation efforts, and to place downward pressure on the rate increase amount that the Company would be seeking in its next rate case. (Indiantown BR 10, TR 121-122)

In its brief, OPC reiterated its argument as articulated in Issue 4B, based on the Reedy Creek Florida Supreme Court case, that, "[a] change in a tax law should no[sic] result in a 'windfall' to a utility, but in a refund to the customer who paid the revenue that translated into the tax saving." (OPC BR 9) OPC further argued that the TCJA's effect on Indiantown results in the customers making overpayments, and like any overpayment, the unprotected excess deferred taxes should be refunded to avoid intergenerational inequity and to ensure only fair, just, and reasonable rates are paid by the Company's customers. (OPC BR 9-10)

As discussed in Issue 4B, the record evidence demonstrates that Indiantown is earning a negative return well below its authorized range of return on equity. (EXHs 9, 11, 19) In response to a staff interrogatory, Indiantown provided a calculation of its projected ROE of negative 22 percent "with tax savings recognized." (EXH 11, BSP 00061) Staff agrees with Indiantown's contention that its approach is not inconsistent with the Reedy Creek decision or prior Commission practice as acknowledged by OPC witness Smith. (Indiantown BR 12-13; TR 314-315) In staff's opinion, Indiantown made a compelling argument that regulatory efficiency supports allowing the

³ However, staff would point out that OPC's post hearing brief is mistaken on this point and that question was never asked of witness Cassel for the Indiantown docket. (TR 186 - 195) OPC asked witness Cassel the question as it related to the FPUC case in Docket No. 20180051-GU. (TR 184)

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Company to retain the annual tax savings of \$648 associated with the unprotected excess deferred accumulated taxes, which would be netted against the annual protected excess deferred accumulated tax amount of \$8,510, for a net tax savings of \$7,862.

Staff concurs that Indiantown is currently earning well below its authorized ROE range, and retention of the net protected excess ADIT benefit will improve the Company's earnings posture, but will not cause it to exceed its authorized range of ROE. (Indiantown BR 10-11; TR 121-122, 190-191)

CONCLUSION

Staff recommends that it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff recommends that Indiantown should be allowed to retain the unprotected excess deferred tax balance of \$6,484, amortized over 10 years at \$648 per year, netted against the protected excess deferred tax balance.

Issue 17: Should Indiantown be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA? If so, what amount, and should Indiantown be allowed to recover such amount through the Energy Conservation Cost Recovery (ECCR) clause?

Recommendation: No, Indiantown should not be allowed to recover from its customers an alleged detrimental impact associated with the corporate income tax rate change implemented by the TCJA. (Hightower, D. Buys, Cicchetti, Coston)

Position of the Parties

INDIANTOWN: Yes, Indiantown should be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA. The amount Indiantown should be allowed to recover through the ECCR clause is \$54,096.

OPC: No, Indiantown should not be allowed to recover any detrimental impact associated with the corporate income tax rate change implemented by the TCJA.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately \$54,096. (Indiantown BR 8; TR 119) Indiantown argued that the Company is projected to be earning at the bottom of the earnings range utilized for Indiantown's surveillance reporting purposes.⁴ (Indiantown BR 8; TR 119) Indiantown argued that approval to recover the tax detriment will provide the Company with an opportunity to preserve or improve its current earnings posture, thereby potentially deferring a future rate case. (Indiantown BR 8) The Company argued that such regulatory efficiency will extend rate stability and be more consistent with the stated purpose outlined by the tax bill's sponsor, Congressman Brady, to provide tax relief for workers, families, and job creators. (Indiantown BR 8) Indiantown acknowledged that approval of the Company's proposal to recover the tax detriment is at the discretion of the Commission. (Indiantown BR 8)

OPC

OPC argued that a tax detriment is not suffered directly by Indiantown but is suffered, if at all, by Indiantown's parent company, CUC, through its consolidated tax return. (OPC BR 10; TR 213-215) OPC contended that witness Cassel admitted during cross-examination that the taxes at issue here are already part of current base rates. (OPC BR 10; TR 189) Further, OPC argued that the fallacy of Indiantown's proposed treatment of the putative tax detriment is demonstrated by inverting the effects of the TCJA. (OPC BR 10) If, instead of a detriment to the parent company's consolidated tax return, as purported here, the TCJA resulted in a tax benefit on the

⁴ However, the record demonstrates that Indiantown is actually earning a negative rate of return, well below its authorized rate of return. (EXH 9, BSP 00045)

parent company's consolidated tax return, Indiantown would not be requesting to include said tax benefit in its rate base. (OPC BR 10)

ANALYSIS

Indiantown projects to have negative operating income for 2018 and has identified an annual net tax detriment of \$54,096 based on its pro forma surveillance report. (TR 119) Indiantown contended that the change in the corporate income tax rate from 35 percent to 21 percent results in a tax detriment of approximately \$54,096 for the Company. (Indiantown BR 8; TR 119) Witness Cassel testified that Indiantown's purpose for recovering the tax detriment is to address incremental ongoing costs that have been incurred since the Company's last rate case in 2003. (Indiantown BR 8; TR 119)

The alleged tax detriment is the result of Indiantown's net operating loss (NOL) being worth less at 21 percent than at 35 percent on CUC's consolidated tax return. (TR 213-214) Indiantown does not file its own Federal tax return, but instead files a consolidated Federal tax return with its parent company, CUC. (TR 214) Consequently, the "write off" on CUC's books from Indiantown's NOL is worth less to the parent company due to the lower tax rate. (TR 214) Indiantown is requesting to recover the loss of that tax deduction for its parent company through an increase of \$54,096 in its ECCR clause factors. (TR 119) However, witness Cassel confirmed that regulated public company rates are set on a stand-alone basis, that is, as if the regulated company is required to pay income taxes. (TR 214) The utility rates charged to customers already include an allowance for income taxes in base rates. (TR 189)

In staff's opinion, Indiantown is requesting to use a purported tax detriment on CUC's books to recover incremental costs in lieu of initiating a rate increase. Witness Cassel explained in his direct testimony:

At present, the Company is not over-earning. In fact, the Company is earning below its allowable range and is projected to continue to do so in the foreseeable future. As such, the Company should be allowed to recover this annual tax detriment through the Energy Conservation Cost Recovery ("ECCR") clause for purposes of addressing ongoing, incremental costs that have been incurred since the company's last base rate increase, which was initiated in 2003. (TR 119)

As argued by OPC, the tax detriment is not suffered directly by Indiantown, but is suffered, if at all, by CUC through its consolidated tax return. (OPC BR 10; TR 213-215) Further, sufficient record evidence is lacking to support that the tax detriment as proposed by Indiantown is a result of the TCJA on a stand-alone basis. In staff's opinion, recovery of a tax detriment or benefit by a regulated company on behalf of its parent company is inconsistent with current regulatory practice to align income tax expense on a stand-alone basis.

Regarding whether the Company should be allowed to collect any detrimental impact through the ECCR clause, staff notes that the clause is governed by Rule 25-17.015, F.A.C., which states that a utility "may seek to recover its costs for energy conservation programs." OPC witness Smith stated that "[t]he estimated amount of the 2018 income tax detriment does not have

anything to do with the ECCR and, therefore, should not be charged to ratepayers through the ECCR.” (TR 254) Witness Cassel agreed during cross-examination that the taxes in question are part of base rates, and that the ECCR has nothing to do with base rate tax impacts. (TR 189)

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

recommends that the annual tax detriment be collected through the ECCR clause on an entirely consolidated basis, rather than a per-division basis. The Company believes that this computation is more favorable to the Indiantown customers as compared to assigning the detrimental impacts specific to only the appropriate division customers. (EXH 17)

In Order No. PSC-14-0655-FOF-GU, the Commission allowed FPUC to consolidate the conservation programs’ expenses of the various divisions for purposes of ECCR cost recovery.⁵ The Order is specific to conservation expenses and does not consider non-conservation expenses or costs. As Indiantown proposes, customers from all FPUC divisions would contribute to Indiantown’s base rates tax impact through the ECCR factors. The Company further stated in its response to staff’s 2nd Set of Interrogatories, No. 4(f), that it, “anticipates collecting these funds through the clause until its next rate proceeding.” (EXH 17) Witness Cassel stated during cross-examination that 2020 or 2021 is the current anticipated timeframe for potential rate filings. (TR 218) As such, there would not be a clearly defined endpoint at which the non-division customers would cease supporting Indiantown’s base rate tax detriment through ECCR factors.

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

CONCLUSION

Staff recommends Indiantown not be allowed to recover from its customers any presumed detrimental impact associated with the corporate income tax rate change implemented by the TCJA through the ECCR clause.

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

Issue 18: Should Indiantown be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities?

Recommendation: Yes, Indiantown should be allowed to retain and amortize, over 26 years, the total annual amount of the tax savings associated with the protected excess deferred taxes consistent with the ARAM. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Yes, Indiantown should be allowed to retain and amortize, over 26 years, the total annual benefit associated with the Protected Deferred Tax liabilities.

OPC: No, Indiantown should not be allowed to retain any portion of the protected deferred income taxes; however, OPC agrees with the 26 years amortization which is consistent with ARAM.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

Indiantown argued that for protected excess deferred income taxes, the grossed-up balance for Indiantown was approximately \$221,269. (Indiantown BR 9; TR 120) This deferred tax balance will be amortized over 26 years using the Average Rate Assumption Method (ARAM) as prescribed by the Internal Revenue Service (IRS), which results in an amount of approximately \$8,510 annually. (Indiantown BR 9; TR 121; EXH 2)

OPC

As discussed in Issue 4B, OPC argued Indiantown should not be allowed to retain the annual tax savings associated with the protected excess deferred tax amount. (OPC BR 11) However, if the Commission decides to allow Indiantown to retain the protected excess deferred tax savings, then OPC agreed the benefit should be amortized over 26 years consistent with the ARAM. (OPC BR 11)

ANALYSIS

This issue is basically a fall-out issue from Issue 4B. OPC maintained that the protected excess deferred taxes should be returned to customers while Indiantown argued the Company should be allowed to retain the amount of the protected excess deferred taxes. Both parties agreed Indiantown should amortize the protected excess deferred tax balance of \$221,269 over 26 years consistent with the ARAM, for an annual amount of \$8,510. (Indiantown BR 9; OPC BR 11; TR 120-121; TR 251-252)

Based on the staff analysis in Issue 4B, in staff's opinion, it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further

downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff agrees with Indiantown and recommends that the Company be allowed to retain the protected excess deferred tax liability. Staff also agrees that it is appropriate for the Company to follow the IRS ARAM and that an amortization period of 26 years is consistent with ARAM.

CONCLUSION

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

Issue 19: Should Indiantown be allowed to retain and amortize, over 10 years, the total annual benefit associated with the Unprotected Deferred Tax liabilities?

Recommendation: Yes, Indiantown should be allowed to retain and amortize, over 10 years, the total annual amount of the tax savings associated with the unprotected excess deferred taxes. (Hightower, D. Buys, Cicchetti)

Position of the Parties

INDIANTOWN: Yes, Indiantown should be allowed to retain and amortize, over 10 years, the total annual benefit associated with the unprotected deferred tax liabilities.

OPC: No, Indiantown should not be allowed to retain any portion of the unprotected deferred income taxes; however, OPC agrees with the 10 years amortization period.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

The Company argued that it has an unprotected excess deferred tax balance of \$6,484. (Indiantown BR 8; TR 120) The Company requested this excess deferred tax balance be amortized over 10 years at \$648 per year. (Indiantown BR 8-9; TR 121) The Company requested that this annual amortization amount be retained by the Company. (Indiantown BR 9; TR 120 - 121)

OPC

OPC argued Indiantown should not be allowed to retain the annual tax savings associated with the unprotected excess deferred tax amounts. (OPC BR 11) However, if the Commission decides to allow Indiantown to retain the unprotected excess deferred tax savings, OPC agreed the balance should be amortized over 10 years. (OPC BR 11)

ANALYSIS

This issue is basically a fall-out issue from Issue 5B. OPC maintained that Indiantown should not be allowed to retain the annual tax savings associated with the unprotected excess deferred tax balance. Indiantown argued the Company should be allowed to retain the amount of the unprotected excess deferred tax amount. Both Parties agreed Indiantown should amortize the unprotected excess deferred tax balance of \$6,484 over 10 years for an annual amount of \$648. (Indiantown BR 8-9; OPC BR 11; TR 120-121; TR 251)

In Issue 5B, OPC maintained that the unprotected excess deferred tax savings should be returned to customers while Indiantown argued the amount should be retained by the Company. (OPC BR 11) However, both Parties agree Indiantown should amortize the total unprotected excess deferred tax balance over a 10 year period. (Indiantown BR 9; OPC BR 11)

Date: January 24, 2019

Based on the staff analysis in Issue 5B, in staff's opinion, it is fair, just, and reasonable for the Commission to consider the earnings position of the Company in its decision. Reducing base rates as recommended by OPC would result in a cash flow reduction to the Company, put further downward pressure on Indiantown's earnings, and accelerate the need for a full rate case sooner due to Indiantown earning well below its authorized range of ROE. Therefore, staff agrees with Indiantown and recommends that the Company be allowed to retain the unprotected excess deferred tax savings. Staff also agrees that a 10 year amortization period is appropriate and reasonable.

CONCLUSION

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

Issue 21: Should this docket be closed?

Recommendation: Yes, this docket should be closed after the time for filing an appeal has run. (Dziechciarz, DuVal)

Position of the Parties

INDIANTOWN: Yes.

OPC: No.

Staff Analysis:

PARTIES' ARGUMENTS

INDIANTOWN

None Provided

OPC

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

ANALYSIS

Upon issuance of an order determining the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division, this docket should be closed after the time for filing an appeal has run.