

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 16, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Docket Number:

Petition of Peoples Gas Company LLC to Distribute the
Amortized Amount of Excess Accumulated Deferred
Income Taxes

P-2022-3031235

OPINION AND ORDER

BY THE COMMISSION:

On March 3, 2022, Peoples Gas Company LLC (“Peoples Gas” or “Company”) filed a Petition pursuant to 52 Pa. Code §5.41, and the Pennsylvania Public Utility Commission’s (Commission) directive in the Order entered on November 18, 2021 at Docket No. P-2021-3025898 (November Order), to approve the distribution of the amortized amount of excess accumulated deferred income taxes (EADIT) associated with the Tax Cuts and Jobs Act of 2017 (TCJA) for the period of January 1, 2018 through December 31, 2021. No party has filed an Answer or Protest to this Petition.

Peoples Gas is proposing to distribute the amortized amount of EADIT-related savings to customers beginning July 1, 2022. The distribution of the EADIT-related savings would result in those tax savings flowing back to Peoples Gas’s customers by December 31, 2022.

Background

On March 15, 2018, the Commission issued a Temporary Rates Order at Docket No. M-2018-2641242, directing Peoples Gas and other public utilities to file their current base rates and riders as temporary rates, pursuant to Section 1310(d) of the Pennsylvania Public Utility Code (Code).

The Commission issued an Order on May 17, 2018, at Docket No. R-2018-3000502 (Peoples Gas Compliance Order), which indicated that a negative surcharge of 2.6676%¹ be applied to customer bills. The Peoples Gas Compliance Order provided that the TCJA temporary surcharge will be effective July 1, 2018 on a prospective basis. However, the Commission also recognized that the tax savings from TCJA commenced on January 1, 2018. In lieu of addressing this portion of the tax savings in the May 17, 2018 Order, the Commission directed Peoples Gas to establish a “deferred regulatory liability” account to record on its books the tax savings associated with the TCJA for the January 1, 2018, through June 30, 2018, time period (the “Stub Period”). The Peoples Gas Compliance Order also directed that: the account shall accrue interest at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41. P.S. §§ 101, et seq.); the rate treatment of this amount plus accrued interest shall be addressed in Peoples Gas’ next base rate case; in that future proceeding, Peoples Gas and parties can address the appropriate negative surcharge, amortization or other disposition of this deferred regulatory liability, including any legal issues; and if Peoples Gas did not file, within

¹ Peoples Gas determined that this calculation did not fully reflect the tax reductions intended by the Commission and did not correctly calculate the negative surcharge. In accordance with the procedure set forth in the Peoples Gas Compliance Order, Peoples Gas then filed on June 4, 2018, a Petition for Reconsideration to allow Commission staff to review and address the newly discovered computation errors. The Petition for Reconsideration stated a corrected negative surcharge of -6.6820%, which was approved by the Commission by Reconsideration Order entered on June 14, 2018. The Petition for Reconsideration did not request modification and the Reconsideration Order did not modify any of the procedures approved in the Peoples Gas Compliance Order related to the establishment of the deferred regulatory liability account and the distribution of funds in that account.

three (3) years of May 17, 2018 (i.e., by May 17, 2021), a Section 1308(d), 66 Pa. C.S. § 1308(d), general base rate case, the Company was directed to file a petition proposing how to distribute the funds in the deferred regulatory liability account related to the Stub Period.

On May 17, 2021, Peoples Gas filed a Petition to Establish a Mechanism to Distribute the Tax Savings Associated with Tax Cuts and Jobs Act of 2017 for the Period between January 1, 2018, and June 30, 2018 (TCJA Petition) at Docket No. P-2021-302598. On November 18, 2021, the Commission approved Peoples Gas’s TCJA Petition. However, the Commission determined that Peoples Gas did not include tax savings associated with the Company’s EADIT for the Stub Period, and that the Commission had approved the distribution of TCJA-related tax savings for the period prior to July 1, 2018, which included the flowback of EADIT, for other utilities. The Commission also stated that the “Commission’s intent to flow back taxes to customers on a current basis is clear.... Thus, it is clear that the Commission intended for all tax savings to be flowed back to customers on a timely basis.” As such, the Commission required Peoples Gas to file a Petition within 60 days of the TCJA Order to distribute the tax savings associated with its EADIT.²

The Petition

Peoples Gas states that it has undertaken a detailed review of its annual TCJA surcharge calculations, along with reviewing other utilities’ calculations. As a result of this review, the Company has determined that, in addition to refunding EADIT for the Stub Period and the rate base offset, the Company must correct its treatment of accumulated deferred income taxes since the inception of the Company’s TCJA Rider. The rate base offset used in the TCJA calculation needs to be cumulative in order to

² The company sought and was granted a 45-day extension, making the Petition due on or before March 3, 2022.

conform to tax normalization requirements, as explained in the Internal Revenue Service Private Letter Ruling at PLR-101169-21³

Accordingly, Peoples Gas proposes to refund the amortization of EADIT-related tax savings and rate base offset, including a gross up and accrued interest, upon Commission approval through December 31, 2022, through the Company's existing TCJA rider. Currently, the TCJA surcharge for 2022 provides for a negative surcharge of 8.5353%, which applies as a credit for service on Peoples Gas's customer's bills. The amount refunded through this petition will be an additional \$939,925. Upon implementation of the new TCJA tariff supplement, a new negative surcharge of 11.4253% would be implemented effective July 1, 2022, through December 31, 2022. Peoples Gas avers it will calculate its TCJA surcharge going forward from January 1, 2022, to include the amortization of the Company's EADIT and a rate base offset in accordance with IRS normalization rules.

Discussion

The proposed update to the TCJA surcharge allows for the flowback of EADIT from January 1, 2018 to December 31, 2021 and Peoples Gas has stated that the TCJA surcharge will include EADIT for January 1, 2022 forward. Thus, Peoples Gas customers should be receiving all benefits of the lower corporate tax rate as the Commission has intended.

However, the IRS PLRs highlight the difficulty of implementing the TCJA tax changes for ratemaking purposes. The TCJA became law on December 22, 2017, and utilities and regulators are still making adjustments to comply with IRS requirements

³ PLR-101961-21 concluded that normalization rules require that adjustments to EADIT using ARAM amortization require similar adjustments to rate base, accumulated deferred income taxes (ADIT), book depreciation expense, and tax expense.

years later. Implementing the TCJA changes is even more difficult without the use of a base rate case to comprehensively examine all aspects of the ratemaking process. We note that Orders approving the flowback of tax savings have never confirmed the accuracy of the figures or the appropriateness of a utility's tax calculation. Thus, while the Commission intends to have utilities flow back the tax savings on a current basis, it reserves the ability to examine the tax savings comprehensively in a rate case.

We find that Peoples Gas's proposal to utilize the existing TCJA Surcharge Mechanism to distribute EADIT-related tax savings is appropriate consistent with the November Petition. Accordingly, Peoples Gas's Petition for authority to distribute the EADIT-related tax savings of \$939,925, associated with the Tax Cuts and Jobs Act of 2017 for the period of January 1, 2018 through December 31, 2021, is hereby approved;

THEREFORE,

IT IS ORDERED:

1. That Peoples Gas's Petition for authority to distribute the excess accumulated deferred income tax savings of \$939,925 associated with the Tax Cuts and Jobs Act of 2017 for the period of January 1, 2018 through December 31, 2021 utilizing the TCJA Temporary Surcharge mechanism beginning on July 1, 2022, is hereby approved.

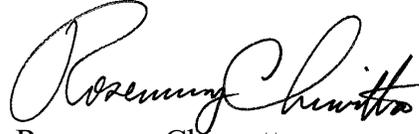
2. That a copy of this order be served upon Peoples Gas, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

3. That Peoples Gas shall include the necessary tariff updates to implement the distribution of savings with the Company's annual TCJA tariff to be filed on 10 days' notice, to become effective July 1, 2022, consistent with this Order.

4. That approval of this Petition neither confirms the accuracy of the figures nor the appropriateness of the calculation.

5. That this proceeding be marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2022

ORDER ENTERED: June 16, 2022