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 Pennsylvania Power Company to Distribute the Amortized Amount of Excess Accumulated Deferred Income Taxes	P-2022-3030987

OPINION AND ORDER

BY THE COMMISSION:

On February 18, 2022, Pennsylvania Power Company ("Penn Power" 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-2021-3025904 (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.

Consistent with the November Order, Penn Power is proposing to distribute the amortized amount of EADIT-related tax savings to customers beginning on the first day of the month after receiving Commission approval, provided Penn Power is able to provide 10 days' notice, consistent with the interim revision provision contained in the tariff, through December 31, 2022. In order to facilitate this distribution, Penn Power proposes to file an interim rate change to include the tax savings associated with amortization of EADIT in its existing TCJA surcharge mechanism, the Tax Cuts and Jobs Act Voluntary Surcharge Rider (TCJA Rider). The distribution of the EADIT-related tax savings in the TCJA Rider would result in those tax savings flowing to customers by December 31, 2022.

Background

On March 15, 2018, the Commission issued a Temporary Rates Order at Docket No. M-2018-2641242, directing Penn Power 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-2018-3000602 (Penn Power Compliance Order), which indicated that a negative surcharge of 8.07% be applied to customer bills. The Penn Power Compliance Order further noted that "the tax savings from TCJA commenced on January 1, 2018" and directed Penn Power "to record on its books the tax savings associated with the TCJA for the January 1, 2018 through June 30, 2018 time period." The Commission further explained that this account shall also accrue interest at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law. The Commission further determined that the rate treatment of this account was to be addressed in a Section 1308(d) general base rate case. If Penn Power did not file a general base rate case within three (3) years of the adoption of the Penn Power Compliance Order, the Company was directed to file a petition proposing how to distribute the funds in the regulatory liability account.

On May 17, 2021, Penn Power filed a Petition proposing to refund all amounts for the period January 1, 2018 through June 30, 2018 to customers beginning January 1, 2022 (May Petition). On November 18, 2021, the Commission entered an Opinion and Order approving Penn Power's proposed return of tax savings for the period January 1, 2018 through June 30, 2018 as outlined in its May Petition. Within the same Order, however, the Commission identified that, through the course of data responses, Penn Power had failed to recognize the amounts associated with the amortization of EADIT-related savings it had realized as a result of the passage of the TCJA. As a result, the November Order directed the Company to file a Petition within sixty days, or January 18, 2022, outlining a proposal as to how it would return the additional EADIT-related tax savings to customers.[1]

The Petition

Penn Power stated that it completed a comprehensive analysis of the annual TCJA surcharge calculation along with reviewing other utilities' calculations and determined that the Company's original calculations from January 1, 2018 through December 31, 2021 included an annual rate base offset rather than a cumulative rate base offset. The rate base offset used in the TCJA calculation should be cumulative in order to reflect the growth in the Company's rate base over time. Therefore, the Company modified the calculation to include a cumulative rate base offset by calculating the difference between the cumulative rate base offset amount and the annual rate base offset amount included in the original TCJA surcharge calculations.

As part of this analysis the Company examined Internal Revenue Service (IRS) private letter rulings (PLR) regarding normalization issues.[2] PLR-101961-21 concluded

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

[2] Penn Power also reviewed PLR 101169-21 and PLR 113635-21. The Company states that the PLRs determined that cost of removal (COR) should not be part of book depreciation for purposes of computing EADIT when using average rate assumption method (ARAM). The COR tends to increase book depreciation, resulting in the refund of depreciation-related EADIT faster than what ARAM generally allows. The Company is currently making changes to its fixed asset software to segregate COR and salvage value from book depreciation. Penn Power will propose changes in future proceedings or TCJA filings if corrections are needed to comply with IRS normalization rules.

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.[3] The Company has stated that it believes the use of a cumulative rate base offset is consistent with the requirements of IRS normalization and consistency rules.

Penn Power recorded tax savings of $4.3 million comprised of the amortization of EADIT and a cumulative rate base offset, and an additional $0.7 million for regulatory interest calculated at the residential mortgage lending rate.

Accordingly, Penn Power proposes to refund the amortization of EADIT-related tax savings and a cumulative rate base offset, including accrued interest, upon Commission approval through December 31, 2022 through its existing TCJA Rider. Currently, the TCJA Temporary Surcharge for 2022 provides for a negative surcharge of 11.23%, which applies as a credit for intrastate service on all customer bills. The amount refunded through this mechanism would be an additional $5.0 million, which reflects the additional tax savings associated with the amortization of EADIT and a cumulative rate base offset plus applicable interest. Assuming timely approval of this change to allow for a July 1, 2022 implementation of the new TCJA tariff supplement, a negative surcharge of 20.30% would be implemented through December 31, 2022.

Penn Power will calculate its TCJA surcharge for January 1, 2022 forward to include the amortization of EADIT and a cumulative rate base offset in accordance with IRS normalization rules.

[3] This normalization issue is colloquially known as the consistency rule.

Discussion

The proposed update to the TCJA surcharge allows for the flowback of EADIT from January 1, 2018 to December 31, 2021 and Penn Power has stated that the TCJA surcharge will include EADIT for January 1, 2022 forward. Thus, Penn Power 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 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 Penn Power's proposal to utilize the existing TCJA Surcharge Mechanism to distribute EADIT-related tax savings is appropriate consistent with the November Petition. Accordingly, Penn Power's Petition for authority to distribute the EADIT-related tax savings of $5,003,768, 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 Penn Power's Petition for authority to distribute the excess accumulated deferred income tax savings of $5,003,768 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 Penn Power, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

3. That Penn Power 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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 16, 2022

ORDER ENTERED: June 16, 2022