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

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|  | Public Meeting held November 18, 2021 |
| Commissioners Present: |  |

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| Gladys Brown Dutrieuille, Chairman |  |
| John F. Coleman, Jr., Vice Chairman |  |
| Ralph V. Yanora |  |
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|  | Docket Numbers: |
| Petition of West Penn Power Company to Establish a Mechanism to Distribute the Tax Savings Associated with the TCJA for the Period Between January 1, 2018, and June 30, 2018 |  P-2021-3025908 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

On May 17, 2021, West Penn Power Company (“West Penn” or “Company”) filed a petition pursuant to 52 Pa. Code §5.41, and the Commission’s directive in the Order entered on May 17, 2018 at Docket No. R-2018-3000604 (West Penn Compliance Order), as modified by its Reconsideration Order entered on June 14, 2018 at the same docket for authority to distribute the tax savings associated with the Tax Cuts and Jobs Act of 2017 (TCJA) for the period of January 1, 2018 through June 30, 2018. No party has filed an Answer or Protest to this Petition.

Consistent with the Commission’s prior order, West Penn states that it is required to file a petition to refund to customers the tax savings associated with the TCJA for the March 16, 2018 through June 30, 2018 time period on or before May 17, 2021. Within this same filing, West Penn separately tracked the tax savings associated with the January 1, 2018 through March 15, 2018 period in a memorandum account. West Penn proposes to begin to distribute the savings associated with both periods by revising the existing TCJA Temporary Surcharge mechanism to provide for the distribution of these savings from January 1, 2022, through December 31, 2022.

**Background**

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

The Commission issued the West Penn Compliance Order on May 17, 2018, which indicated that a negative surcharge of 7.34% be applied to customer bills. The West Penn Compliance Order further noted that "the tax savings from TCJA commenced on January 1, 2018" and directed West Penn "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 a general base rate case was not filed within three (3) years of the adoption date of the West Penn Compliance Order, West Penn shall file a petition to propose how to distribute the funds in the regulatory liability account

On June 1, 2018, West Penn, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company, (collectively, the “FirstEnergy Companies”) jointly filed a Petition for Reconsideration at Docket Number R‑2018‑3000597, *et al*. The Commission issued its Reconsideration Order on June 14, 2018 allowing the FirstEnergy Companies to “record the tax saving associated with the TCJA for the period of January 1, 2018 to March 15, 2018, as well as the interest accrued, in a separate memorandum account.” This memorandum account as well as the deferred regulatory liability account for the period between March 16 and June 30 will be addressed “in each Company’s next base rate proceeding or in an independent filing.”

Consistent with the Reconsideration Order, West Penn recorded in a separate memorandum account, rather than a deferred regulatory liability account, the tax savings associated with the TCJA for the January 1, 2018 to March 15, 2018 time period in the amount of $7,011,129 and in a deferred regulatory liability account the tax savings associated with the March 16, 2018 to June 30, 2018 period in the amount of $5,185,889. The total amount of the tax savings associated with the TCJA for the combined January 1, 2018 through June 30, 2018 time period (hereinafter, the “Stub Period”) is $12,197,018.

West Penn states that it stands by the position it has taken to date with respect to the treatment of rates for the January 1, 2018 through March 15, 2018 period. However, the Company also states that it also is cognizant of the strain that has been placed on customers over the course of the past year or more related to the economic impacts of the global COVID-19 pandemic, from which customers of all classes continue to recover. As such, and notwithstanding its belief that its prior position remains legally viable, West Penn has determined that it is appropriate to voluntarily propose a distribution of the recorded savings associated with this January 1 through March 15, 2018 period to customers in addition to the savings associated with the undisputed March 16 through June 30, 2018 period.

**The Petition**

West Penn established in a separate memorandum account, rather than a deferred regulatory liability account, the tax savings associated with the TCJA January 1, 2018 to March 15, 2018 time period and in a deferred regulatory liability account the tax savings associated with the TCJA March 16, 2018 to June 30, 2018 period. West Penn recorded actual tax savings of $12,197,018 and calculated regulatory interest at the residential mortgage lending rate in the amount of $2,770,602 collectively associated with both accounts.

Accordingly, West Penn proposes to refund tax savings for the Stub Period, including accrued interest, with its next rate change beginning on January 1, 2022 through its existing TCJA Rider. Currently, the TCJA Temporary Surcharge for 2021 provides for a negative surcharge of 4.24%, which applies as a credit for intrastate service on all customer bills. The amount refunded through this mechanism would be $14,967,620, which reflects the actual tax savings associated with the 2018 Period plus applicable interest accrued.

**Discussion**

The West Penn Compliance Order required West Penn to petition the Commission to distribute the TCJA savings if the rate treatment for this account was not addressed in a 1308(d) general base rate case within three years of the Order entered date. As West Penn has not filed a 1308(d) general base rate case on or before May 17, 2021, the Company was required to file this petition. West Penn requested Commission approval of this filing before November 1, 2021, so that the Company could include the refund for the 2018 Stub Period in the December 1, 2021 filing to become effective January 1, 2022.

Although the Commission allowed West Penn to establish a memorandum account for the period between January 1, 2018 to March 15, 2018, it is the Commission’s determination that tax savings began when the TCJA went into effect. Furthermore, the Commission notes no other utilities other than the Companies have requested a memorandum account. As West Penn has agreed to return tax savings beginning January 1, 2018, no further discussion is warranted at this time

West Penn has not included tax savings associated with amortization of excess accumulated deferred income taxes (EADIT) for the January 1, 2018 to June 30, 2018 period. The Commission notes that it has previously approved petitions to refund TCJA-related tax savings for the period prior to July 1, 2018. The previous approvals included the flowback of EADIT. *See, e.g., Petition of PPL Electric Utilities Corporation to Establish a Mechanism to Distribute the Tax Savings Associated with the TCJA for the Period Between January 1, 2018, and June 30, 2018*, Docket No. P-2019-3013366 (Order entered Nov. 14, 2019) (approving a proposal to distribute the tax savings associated with the 2018 Period utilizing the utility’s existing TCJA temporary surcharge mechanism) and *Petition of National Fuel Gas Distribution Corporation To Establish a Mechanism to Distribute the Tax Savings Associated with the TCJA for the Period Between October 1, 2017, and June 30, 2018*, Docket No. P-2021-3025909 (Order Entered August 26, 2021) (approving a proposal to distribute the tax savings associated with the 2018 Period utilizing the utility’s existing TCJA temporary surcharge mechanism).

West Penn avers that under the TCJA negative surcharge calculated using the method prescribed by the Commission, no EADIT has been or is being flowed back to customers in 2018, 2019, 2020, or 2021.[[1]](#footnote-2) It is the position of the Company that EADIT should be flowed back to customers in a subsequent base rate case.[[2]](#footnote-3)

However, the Temporary Rates Order at Docket No. M 2018-2641242 (Order entered May 17, 2018) states “that Commission is persuaded that the tax savings and associated reductions in utility revenue requirements should be flowed back to consumers on a current basis.” (Temporary Rates Order at 14). The Commission also ordered that the TCJA temporary surcharge will be effective July 1, 2018, on a prospective basis. Furthermore, the Commission finds no plain language indicating that EADIT should be flowed back to customers at a different time.[[3]](#footnote-4) Thus, all tax savings occurring on or after July 1, 2018, should be flowing back to customers.

The Commission’s intent to flow back taxes to customers on a current basis is clear. The Commission further required utilities to file a petition, if no rate case was filed during the prescribed time period, to distribute the regulatory liability accumulate during the January 1, 2018 to June 30, 2018 time period to avoid an unreasonable delay in dealing with such funds. Thus, it is clear that the Commission intended for all tax savings to be flowed back to customers on a timely basis. While West Penn avers it has calculated the TCJA negative surcharge utilizing the methodology prescribed by the Commission, all tax savings are not being flowed back to customers as intended by the Commission.

We find that West Penn’s proposal to utilize the existing TCJA Surcharge Mechanism to distribute Stub Period tax savings is appropriate, however, we note that EADIT has not been flowed back to customers consistent with the *PPL Petition* and *NFGDC Petition*. The distribution of the Stub Period regulatory asset was required per the West Penn Compliance Order and Reconsideration Order and we will approve this Petition to prevent further delay of the tax savings. We shall require West Penn to file a petition within 60 days of the adoption date of this order to distribute the amortized amount of EADIT. The amortized EADIT 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. Accordingly, West Penn’s Petition for authority to distribute the tax savings of $14,967,620, all associated with the Tax Cuts and Jobs Act of 2017 for the period of January 1, 2018 through June 30, 2018, is hereby approved; **THEREFORE,**

**IT IS ORDERED:**

1. That West Penn’s Petition for authority to distribute the tax savings of $14,967,620 associated with the Tax Cuts and Jobs Act of 2017 for the period of January 1, 2018 through June 30, 2018 utilizing the TCJA Temporary Surcharge mechanism beginning on January 1, 2022 is hereby approved.
2. That West Penn shall file a petition within 60 days of the adoption date of this order to distribute the amortized amount of Excess Accumulated Deferred Income Taxes. The amortized EADIT 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.
3. That a copy of this order be served upon West Penn, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate.
4. That West Penn shall include the necessary tariff updates to implement the distribution of savings with the Company’s annual TCJA tariff to be filed on or before December 1, 2021, to become effective January 1, 2022, consistent with this Order.
5. That approval of this Petition neither confirms the accuracy of the figures nor the appropriateness of the calculation.
6. That this proceeding be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 18, 2021

ORDER ENTERED: November 18, 2021

1. *See* response to data request TUS-4. [↑](#footnote-ref-2)
2. *See* response to data request TUS-1. [↑](#footnote-ref-3)
3. With the exception of the FirstEnergy Companies and Peoples Gas Company, LLC, all utilities recognized to have a TCJA-related tax liability have flowed back EADIT either explicitly via a petition to distribute the regulatory liability accrued prior to July 1, 2018 or implicitly via a base rate case proceeding. [↑](#footnote-ref-4)