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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 Peoples Gas Company LLC 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-2021-3025898 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

On May 17, 2021, Peoples Gas Company LLC (“Peoples Gas” 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-2018-3000502 (Peoples Gas Compliance Order) 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 (Stub Period). No party has filed an Answer or Protest to this Petition.

Consistent with the Commission’s prior order, Peoples Gas is required to file a petition to refund to customers the tax savings associated with the TCJA for the Stub Period on or before May 17, 2021. Peoples Gas proposes to begin to distribute the savings 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**

The Peoples Gas Compliance Order provided that the TCJA temporary negative surcharge of 2.6676% 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 Peoples Gas Compliance 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 Stub Period. The 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’s 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 has not filed, within three (3) years of May 17, 2018, a Section 1308(d) general base rate case, Peoples Gas must file a petition to propose how to distribute the funds in the deferred regulatory liability account related to the Stub Period.

On June 4, 2018, the Company filed a petition for reconsideration as it determined that the negative surcharge utilized in the Peoples Gas Compliance Order did not fully reflect the tax reductions intended by the Commission. 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.

**The Petition**

The Peoples Gas Compliance Order provided that if Peoples Gas has not filed, within three (3) years of May 17, 2018, a Section 1308(d) general base rate case, Peoples Gas must file a petition to propose how to distribute the Stub Period funds in the regulatory liability account. Peoples Gas has not filed a Section 1308(d) general base rate case during that three-year period. Peoples Gas, therefore, now files this petition for approval of distribution of the funds in the regulatory liability account.

The Company currently estimates a total refund obligation of $3,723,470. This amount includes $3,087,632 representing the tax savings associated with the TCJA for the Stub Period, plus $635,838 of projected interest accrued 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.) through June 2022, the midpoint of the proposed refund period. Peoples Gas proposes to distribute these funds over the calendar year 2022 through an adjustment to the TCJA Temporary Surcharge as part of the annual TCJA Temporary Surcharge filing to be made on December 1, 2021.

Therefore, if this Petition is granted, Peoples Gas will include the Stub Period liability amount of $3,723,470, inclusive of interest, in the calculation of the negative surcharge in the annual TCJA filing on December 1, 2021, to be effective January 1, 2022. The tax savings associated with the TCJA for the Stub Period, plus accrued interest, would be distributed over the calendar year 2022. In the next TCJA Temporary Surcharge annual filing to be made on December 1, 2022, Peoples Gas will remove the Stub Period liability amount from the TCJA negative surcharge rate effective January 1, 2023. Any over or under refund of the Stub Period liability amount will be reconciled via the normal annual reconciliation mechanism for the TCJA Temporary Surcharge pursuant to 1307(e) and provided for in the Company’s tariff.

**Discussion**

The Peoples Gas Compliance Order required Peoples Gas 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 Peoples Gas has not filed a 1308(d) general base rate case on or before May 17, 2021, the Company was required to file this petition.

Peoples Gas has not included tax savings associated with 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).

Peoples Gas states it has not flowed back EADIT to customers at this time as EADIT has not been part of the Company’s calculation of Rider TCJA since its inception. The Peoples Compliance Order did not specify that the Company should flow back EADIT to customers resulting from TCJA. As a result, Peoples Gas established a deferred regulatory liability related to the stub period.[[1]](#footnote-2) It is the Company's position that because the TCJA mechanism approved by the Commission did not determine the treatment of excess deferred income tax balances, then the treatment of excess deferred income tax balances should be determined in the Company's next 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. Although Peoples Gas states that the TCJA negative surcharge was accepted by the Commission, all tax savings are not being flowed back to customers as intended by the Commission.

We further note that interest calculation provided by the Company differs from the interest calculation utilized in the *PPL Petition* and *NFGDC Petition*. While the interest calculation is not inherently inaccurate, the Commission has determined that Peoples Gas shall utilize the same methodology as the previous petitions.[[4]](#footnote-5) Peoples Gas has provided an interest calculation consistent with the previous petitions in a response to a Commission data request.[[5]](#footnote-6) Consequently, the Company will return $697,836 in interest in addition to the tax savings of $3,087,632 for a total of $3,785,468.

We find that Peoples Gas’s proposal to utilize the existing TCJA Surcharge Mechanism to distribute Stub Period tax savings is appropriate, however, the interest calculation shall be modified consistent with the *PPL Petition* and *NFGDC Petition*. We further 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 Peoples Gas Compliance Order, and we will approve this Petition with only the modification of the interest calculation to prevent further delay of the tax savings. We shall require Peoples Gas to file a petition within 60 days of the adoption date of this order to distribute tax savings associated with EADIT. The EADIT tax savings 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, we modify Peoples Gas’s Petition for authority to distribute the tax savings of $3,785,468, 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 Peoples Gas’ Petition for authority to distribute the tax savings of $3,785,468 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 Peoples Gas shall file a petition within 60 days of the adoption date of this order to distribute tax savings associated with EADIT. The 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 Peoples Gas, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.
4. 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 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-3. [↑](#footnote-ref-2)
2. *See* response to data request TUS-12. [↑](#footnote-ref-3)
3. With the exception of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, and Peoples Gas, 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)
4. Peoples Gas avers it calculated the interest on the stub period amount consistent with the methodology used in the Company’s 1307(e) annual reconciliation filed at Docket No. M-2019-3009278 on April 30, 2019. [↑](#footnote-ref-5)
5. *See* response to data request TUS-5. [↑](#footnote-ref-6)