BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of a Commission Investigation into the Effects on Electric and Natural Gas Utility Rates and Services of the 2017 Federal Tax Act

ISSUE DATE: December 5, 2018

DOCKET NO. E, G-999/CI-17-895

ORDER RESPONDING TO CHANGES IN FEDERAL TAX LAW

PROCEDURAL HISTORY

On December 22, 2017, Public Law 115-97 (known as the Tax Cuts and Jobs Act, or TCJA) took effect, reducing the marginal federal income tax rate for corporations from a maximum 35 percent to a flat 21 percent, starting in 2018.[1]

On December 29, 2017, the Commission initiated this docket by issuing a notice of its investigation into the effects of the new law on the rates and services of Minnesota's rate-regulated electric and gas utilities (utilities). This notice elicited responses from Northern States Power Company d/b/a Xcel Energy (Xcel) and State Representative Patrick Garofalo.

On January 19, 2018, the Commission solicited additional information and comments from the utilities.

By July 23, 2018, the Commission had variously received comments, reply comments, and/or additional comments from the utilities—

- CenterPoint Energy (CenterPoint),
- Dakota Electric Association (Dakota Electric),
- Great Plains Natural Gas Company (Great Plains),
- Greater Minnesota Gas, Inc. (GMG),
- Minnesota Energy Resources Corporation (MERC),
- Minnesota Power,
- Otter Tail Power Company (Otter Tail), and
- Xcel, on behalf of its electric (Xcel Electric) and gas (Xcel Gas) divisions—

as well as from other commenters—

[1] *See* H.R. 1—115th Congress: AN ACT TO PROVIDE FOR RECONCILIATION PURSUANT TO TITLES II AND V OF THE CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2018.

- The Center for Energy and Environment and the Energy CENTS Coalition (collectively, CEE),
- Fresh Energy, Minnesota Center for Environmental Advocacy, Sierra Club, and Wind on the Wires (collectively, Clean Energy Organizations or CEOs)
- Fresh Energy, the National Housing Trust, and the Natural Resources Defense Council (collectively, the Public Interest Interveners)
- the Minnesota Chamber of Commerce (Chamber),
- the Minnesota Department of Commerce (Department),
- a group of Xcel's industrial, commercial, and institutional customers (ICI Group),
- the Minnesota Large Industrial Group (MLIG),[2]
- the Office of the Attorney General (OAG), and
- the Suburban Rate Authority (SRA).

On August 9, 2018, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary

The Commission must resolve the following questions:

- What should each rate-regulated utility do with the revenues it continues to receive to pay a 35 percent income tax, now that the tax rate has fallen to 21 percent?

- If the utility must return future "surplus revenues" to ratepayers, how should the utility reimburse ratepayers for the surplus revenues the utility has already received? What schedule should the utility employ for amortizing other regulatory liabilities arising from the TCJA?

- How should the utility document that it has implemented the necessary changes?

In this order the Commission establishes methods for its rate-regulated utilities to incorporate into rates the tax cost savings resulting from the TCJA. The Commission approves different methods for different utilities, reflecting each utility's unique circumstances.

II. Consequences of the TCJA for Rate-Regulated Utilities

A. Commission Jurisdiction

The Commission may investigate utility rates and "by order fix reasonable rates" to be charged in the future if the Commission finds that current rates are unjust or unreasonable.[3]

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[2] MLIG is composed of ArcelorMittal USA; Blandin Paper Company; Boise Paper; Enbridge Energy, Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation; United Taconite, LLC; USG Interiors, LLC; and Verso Corporation.

[3] Minn. Stat. §§ 216B.21; 216B.23, subds. 1 and 1a.

B. Effect of Cost Changes on Operating Income

The TCJA triggered a variety of consequences for a utility's operating income. This order focuses on three categories of changes.

First, if a utility's rates cover its costs and authorized rate of return, and then its costs fall significantly for the foreseeable future, the utility will find itself with a stream of future revenues that, all else being equal, demonstrate that the rates the utility charges for service are no longer just and reasonable. The change in marginal tax rates from 35 percent to 21 percent has resulted in this kind of revenue stream. Because these revenues could continue indefinitely, a mechanism must be developed to return these sums to ratepayers until the utility's next rate case.

Second, as discussed further below, the TCJA has left many utilities with an excess accumulated deferred income tax (ADIT) liability. Unlike an indefinite stream of unencumbered revenues, the amount of excess ADIT is calculable at any given point in time and may be returned to ratepayers over a set period via amortization; for example, a utility could return a $1000 surplus to ratepayers by using a mechanism to reduce bills by a total of $200 per year for five years.

Third, utilities have been accruing TCJA-related savings—both from the reduced tax rate, and from the excess ADIT—since the law took effect. The amount of these savings are also calculable at any given point in time, and may be returned to ratepayers via amortization.

Parties identify a variety of means to return these benefits to ratepayers, including the following:

- Change to base rate: A utility could incorporate the savings into its base rates, lowering those rates prospectively.

- Bill credit: The utility could insert a line item on customers' bills listing a deduction that is calculated, in aggregate, to return the tax savings to ratepayers.

- Periodic adjustment: The utility could track the amount of tax savings the utility recovers periodically—monthly or annually—and use that sum to reduce rates prospectively using a rate rider. Utilities might use an existing rider, such as the fuel clause adjustment (FCA) mechanism, or adopt a new rider specifically designed for returning these tax savings to ratepayers.

- Accrual until next rate case: The utility could report periodically on the amount of excess revenues it has recovered because of the tax change, and accrue these sums as a regulatory liability to offset—partially or completely—a future rate increase. Parties disagree about whether a utility should also pay carrying charges to compensate ratepayers for the time value of the liability accrued.

C. TCJA's Consequences for Accumulated Deferred Income Taxes

Depreciation refers to an asset's loss of value over time due to wear and tear, weathering, obsolescence, changes in demand, requirements of public authorities, and other factors.[4] The Commission's rules generally require a utility to amortize the cost of an asset over its "probable service life," extending to "the forecasted date when it will probably be retired from service."[5]

For financial accounting and ratemaking purposes, public utilities depreciate assets using *straight-line depreciation*, reducing an asset's book value by an equal amount for each year of the asset's useful life. But for federal tax purposes, most utilities depreciate assets using *accelerated depreciation*, reducing the asset's net book value more rapidly in the early years of its life, which generates greater deductions and lower income taxes for these years.

The difference between the tax a utility pays under accelerated depreciation and the tax that it would have paid under straight-line depreciation is known as *accumulated deferred income tax* (ADIT). For ratemaking purposes, ADIT represents the prepayment of a utility's income taxes by its ratepayers. In rate cases, the Commission directs utilities to deduct ADIT from the rate base on which they earn a return, reducing the revenue requirement charged to ratepayers. Federal Internal Revenue Service (IRS) rules specify how to calculate the amount of the ADIT rate-base offset.

Now that the corporate tax rate has fallen from 35 percent to 21 percent, utilities are accruing excess ADIT. The IRS identifies two types of excess ADIT: protected and unprotected. *Protected excess ADIT* refers to the tax expense associated with accelerated depreciation of utility plant assets. The TCJA's normalization requirements require utilities to return protected excess ADIT to ratepayers over the remaining life of the underlying plant assets using the Average Rate Assumption Method (ARAM).[6] But *unprotected excess ADIT*—including other tax effects, such as miscellaneous differences between a public utility's tax and book basis in utility assets other than plant assets—are not subject to the TCJA's normalization requirements. Accordingly, parties have proposed a variety of ways for returning unprotected excess ADIT to ratepayers.

D. TCJA's Other Consequences

The TCJA will have additional consequences for public utilities as well, including the following:

Any change to the marginal tax rate would justify changing the size of the *gross-up factor*. The Commission designs rates to permit a utility to recover its prudently incurred costs, including tax costs; as a result, increasing a utility's net operating income by a particular amount requires increasing rates to recover not only that amount but also a gross-up factor designed to recover the income taxes the utility must pay on that amount (and on the amount of the gross-up factor itself). In order to realize a $1,000 increase in net operating income, the utility must recover $1,000/(1 – the marginal tax rate)—which is $1,538 if the tax rate is 35 percent, but only $1,266 if the tax rate is 21 percent.

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[4] Minn. R. 7825.0500, subp. 6.

[5] *Id.*, subp. 10; *see also* subps. 2, 7 (defining "amortization" and "depreciation accounting").

[6] While the IRS identifies circumstances under which a utility would be excused from using ARAM, none of Minnesota's utilities claimed to qualify for the exception.

The TCJA eliminated another form of depreciation on utility property called *bonus depreciation*.[7] Bonus depreciation permitted some utilities to record such large expenditures that expenses would exceed revenues in some years, permitting the utility to report net operating losses and therefore avoid paying income tax for that year. With the elimination of bonus depreciation, utilities, for tax purposes, will revert to using the Modified Accelerated Cost Recovery System (MACRS) depreciation method. Since MACRS is still a form of accelerated depreciation, it will also create additional ADIT; however, the ADIT created by MACRS is substantially lower than the ADIT that would have resulted from bonus depreciation. The elimination of bonus depreciation may result in fewer utilities reporting net operating losses.

Finally, a change to the customer rates of a "decoupled" utility would justify making corresponding changes to the utility's decoupling formula. *Decoupling* refers to the use of a rate formula designed to separate a utility's revenue from changes in the utility's energy sales in order to reduce the utility's disincentive to promote energy efficiency.[8] When the Commission authorizes a utility to use decoupling, the relevant formula typically incorporates the utility's Commission-approved rates.

III. Commission Analysis

A. Xcel Electric

Because Xcel Electric received more attention from the parties than any other utility, the Commission will use the discussion of this utility's circumstances to develop many of the issues and rationales that will apply throughout the rest of this order.

1. Utility Proposal

Xcel Electric estimates that the TCJA will generate annual net savings of $80,246,667 plus the amortized portion of the excess ADIT liabilities. The utility proposes to amortize (using ARAM) its protected excess ADIT as early as IRS provisions allow. And during oral arguments, Xcel agreed to amortize unprotected excess ADIT over ten years.

Xcel Electric proposes to refund to ratepayers roughly half of its savings by using an existing rate adjustment mechanism (rider). Xcel notes that it already has rate adjustment mechanisms to compensate the utility for, among other things, net operating losses, and that these mechanisms would eventually refund the tax saving to ratepayers even without any additional changes.

But Xcel Electric proposes using the other half of the tax savings for three purposes:

First, Xcel Electric has been planning to file a rate case in 2019 at the conclusion of its current multi-

[7] The TCJA both expanded and contracted the bonus depreciation provisions of 26 U.S.C. § 168(k). The statute now permits firms to *expense* the cost of qualified property—that is, to offset current revenues by 100 percent of the property's cost in a single year, regardless of the asset's useful life. But the statute also now defines "qualified property" to exclude property used by utilities as defined at 26 U.S.C. § 163(j)(7)(A)(iv).

[8] Minn. Stat.§ 216B.2412.

year rate plan.[9] Xcel proposes using part of the tax savings to offset the anticipated growth in Xcel's revenue requirement, permitting the utility to postpone this next rate case by one year. This proposal would provide customers with rate stability, postpone the cost of the rate case, and provide time for the Commission to review Xcel's next resource plan before addressing the rate case.

Second, Xcel proposes using $22 million of the tax savings to accelerate the depreciation of the coal-fueled Allen S. King Generating Station on the St. Croix River. Xcel states that this proposal would reduce Xcel's incentive to keep the plant operating through 2037, its current operating life; retiring the plant early would advance the state's goal of reducing emissions that contribute to climate change. Xcel states that this proposal would also provide cash flow to bolster Xcel's credit rating, which permits the utility to borrow funds at favorable rates. And Xcel states that the proposal would reduce the amount of Xcel's plant in service, which would tend to reduce the size of any future rate increase.

Third, Xcel proposes to use $2 million of the savings each year to extend its PowerOn program, which offers low-income Minnesota households a discount on a portion of their monthly electric bill.

2. Positions of the Parties

Otter Tail supports Xcel's proposals, emphasizing that strategic use of the TCJA savings can benefit all parties by delaying rate cases. The Public Interest Interveners support Xcel's proposal to allocate a portion of the tax savings to defer Xcel's next rate case, on the condition that Xcel increase its investment in energy efficiency programs, particularly for low-income and multifamily customers. The CEOs support allocating a portion of the tax savings to accelerate the depreciation of the King Plant. CEE and the Public Interest Interveners support adding $2 million to Xcel's PowerOn program, noting that most PowerOn customers live on incomes at or below 75 percent of the federal poverty level.

The Chamber, the Department, the ICI Group, MLIG, OAG, and SRA argue that the benefits utilities receive from lower tax costs should flow back to ratepayers. Some question whether any cost-based rates could be deemed just or reasonable following TCJA's adoption. Others argue that returning these tax savings to current ratepayers would promote intergenerational equity. Intergenerational equity seeks to ensure that ratepayers pay their fair share of the plant employed in their service—not shifting these costs to future ratepayers, nor bearing the costs of serving former ratepayers. Because the TCJA became effective roughly at the beginning of 2018, these parties argue that the benefits should accrue to ratepayers retroactive to the beginning of the year. Parties also express skepticism that implementing the rate change would reduce cash flow to such an extent as to threaten Xcel's credit rating.

But the Department acknowledged that Xcel's proposals entail policy judgments that are within the scope of the Commission's jurisdiction.

3. Commission Action

The Commission generally concurs with the Chamber, the Department, the ICI Group, MLIG, OAG,

[9] *See In the Matter of the Application of Northern States Power Company, d/b/a Xcel Energy, for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-15-826, Findings of Fact, Conclusions, and Order (June 12, 2017).

and SRA that utilities should return to ratepayers the savings resulting from the TCJA. If the tax changes arising from the TCJA had been known and measurable in any utility's rate case, the Commission would have taken that fact into account, and the utility would not have received these excess payments. Moreover, whatever the merits of the alternative proposals for expending ratepayer funds, the Commission concludes that those merits can be better addressed in other forums, such as rate cases and resource plan dockets.

The Commission will, however, make an exception to this policy regarding Xcel Electric's PowerOn program for low-income customers. The Commission established a budget for this program based largely on estimates of customer need. It appears that these estimates were too low, in that the program closed to new participants in September 2017 due to lack of funds. While the Commission would generally prefer to address this matter in Xcel Electric's 2019 rate case, waiting until the completion of that case to re-open the PowerOn program would be unduly burdensome to customers in need. In the interest of expedience, therefore, the Commission will authorize Xcel to appropriate an additional $2 million to this program as recommended by CEE, the Public Interest Interveners, and Xcel Electric itself.

The Commission will direct Xcel Electric to refund the balance of the TCJA's annual impact to ratepayers. This balance includes the savings generated by reducing the marginal tax rate from 35 to 21 percent, minus the $2 million allocated to the PowerOn program, plus the annual impact of excess ADIT amortization (both protected and unprotected). The Commission will accept the utility's agreement to amortize (using ARAM) its protected excess ADIT as early as IRS provisions allow, and its unprotected excess ADIT over ten years. While the IRS prescribes no specific schedule for returning unprotected excess ADIT liability, during oral arguments Xcel agreed to amortize the sum over ten years; the Commission finds this period reasonable.

More specifically, the Commission will direct Xcel Electric to use these savings to reduce customers' base rates prospectively. Incorporating the savings into base rates avoids the delays and administrative burdens of a refund mechanism, and eliminates the question of whether to assess carrying charges prospectively on the excess sums collected. The Commission will direct Xcel to allocate these savings to customers in proportion to the size of each customer's bill, or to each customer class in proportion to the class's size.

However, because these adjustments to base rates will apply only prospectively, they will not capture the savings that Xcel Electric has accrued since the beginning of the year. The Commission will direct Xcel to return these net savings to ratepayers via a one-time refund.

Two final matters arise from the fact that Xcel Electric has a multi-year rate plan. First, the rate adjustment formulas in the multi-year rate plan incorporate a sales true-up mechanism—that is, a calculation of revenues based on Xcel Electric's actual sales and its Commission-approved rates. Unaltered, this mechanism would arguably reverse any TCJA-related refunds. Accordingly, the Commission will direct Xcel Electric to modify its sales true-up mechanism to reflect the tax-related changes to Xcel's rates.

Second, while Xcel's Commission-approved multi-year rate plan contemplated the utility's next rate case filing would reflect the then-current federal income tax rate of 35 percent, Xcel has duly filed a revised calculation of its 2019 revenue requirement to reflect the new tax rate. But the revision failed to disaggregate the numbers into base rates, protected excess ADIT, and unprotected excess ADIT. The Commission will direct Xcel Electric to refine its filing to provide this additional information.

B. Xcel Gas

Similar to Xcel Electric, Xcel Gas estimates that the TCJA will generate annual net savings for the utility. Xcel Gas estimates those savings will be $2,412,004 per year plus the amortized portion of the excess ADIT liabilities. The utility proposes to amortize (using ARAM) its protected excess ADIT as early as IRS provisions allow, and the unprotected excess ADIT over ten years. Xcel Gas proposes using half of the savings to create an annual bill credit to reduce base rates, and to also flow some of the savings to ratepayers though existing rate riders. But Xcel Gas proposes to use the other half to help defray the cost of cleaning up the sites of its manufactured gas plants.

The Chamber, the Department, the ICI Group, MLIG, OAG, and SRA argue for returning all of the tax savings to the utility's ratepayers directly.

As with Xcel Electric's proposals, the Commission evaluates Xcel Gas's proposals from the perspective that the TCJA savings should be returned to the ratepayers who provided the payments in the first place, and that other spending proposals—whatever their merits—should generally be addressed in other dockets. In this case, the Commission has already opened a docket to address financing the cost of cleaning up Xcel's manufactured gas plants.[10] Consequently the Commission will decline to address those issues here.

Accordingly, the Commission will direct Xcel Gas to refund the TCJA's annual impact to ratepayers. The Commission will accept the utility's agreement to amortize (using ARAM) its protected excess ADIT as early as IRS provisions allow, and its unprotected excess ADIT over ten years. The Commission will direct Xcel Gas to use these savings to reduce customers' base rates prospectively—allocating these savings to customers in proportion to the size of each customer's bill, or to each customer class in proportion to the class's size. Finally, the Commission will direct Xcel to return to ratepayers the TCJA-related savings that have already accrued via a one-time refund.

C. CenterPoint Energy

On July 20, 2018, the Commission issued an order in CenterPoint's then-pending rate case.[11] The order incorporated the TCJA's tax changes into CenterPoint's new rates, ensuring that ratepayers would receive the benefits accruing since the TCJA took effect.

This accomplished the Commission's objective of returning the tax savings to ratepayers through base

[10] Docket No. G-002/M-17-894, *In the Matter of the Petition of Northern States Power Company (Xcel Energy) for Approval of Deferred Accounting for Manufactured Gas Plant (MGP) Cleanup Costs*.

[11] *In the Matter of the Application by CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas (CPE) for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. G-008/GR-17-285, Order Accepting and Adopting Agreement Setting Rates (July 20, 2018).

rates. The Commission concludes that no further action is warranted.

D. Minnesota Energy Resources Corporation

MERC has a pending rate case.[12] MERC proposes, with the Department's approval, to adopt rates incorporating the new level of taxation and amortizing accrued liabilities such as excess ADIT. No party has objected to this proposal.

Because MERC's rate case achieves the objective of returning the tax savings to ratepayers through base rates, the Commission concludes that no further action is warranted.

E. Minnesota Power

Minnesota Power also had a rate case pending at the time the TCJA became effective, but that case had advanced to a stage that made it difficult to incorporate the full effects of the tax law change into base rates.[13] But upon reconsideration, the Commission was able to incorporate some of the tax law's savings into the rate case.[14]

In order to mitigate the size of its rate increase in that rate case, Minnesota Power proposed—and the Commission approved—setting depreciation rates for some generators at the coal-fueled Boswell Energy Center using accounting lives longer than the period Minnesota Power intended to operate the generators. But in reconsidering its decision, the Commission found that the utility would be able to maintain standard depreciation practices while avoiding an undue rate increase if the utility incorporated the 2018 calendar year share of the ongoing TCJA savings into its case.

The CEOs supported this plan. Because they seek to retire the Boswell Energy Center at the earliest opportunity, they want to avoid prolonging the plant's useful life. As an added benefit, they noted that restoring Minnesota Power's depreciation balance would help mitigate any harm to the utility's credit rating resulting from the reduced cash flow.

MLIG argues that Minnesota Power's circumstances do not justify deviating from the general principle of returning TCJA savings to ratepayers. But both the Department and OAG reached the opposite conclusion.

As previously discussed, the Commission generally favors returning the balance of the tax refunds to ratepayers directly in order to maintain intergenerational equity. But the Minnesota Power rate case posed atypical circumstances. The benefits to intergenerational equity arising from restoring standard depreciation practices more than offsets any impairment to equity arising from redirecting a portion of the TCJA refund. This fact led the Commission to authorize this use of the current period's tax savings.

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[12] Docket No. G-011/GR-17-563, *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*.

[13] *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-16-664, Finding of Fact, Conclusion, and Order (March 12, 2018).

[14] *Id.*, Order on Reconsideration (May 29, 2018).

Accordingly, the Commission required Minnesota Power to recalculate its revenue requirement to reflect the current period income tax savings resulting from the TCJA, and to restore the depreciation accounting lives of the Boswell facilities effective January 1, 2018. In this order the Commission will return the benefits of the utility's excess ADIT to its ratepayers.

Specifically, the Commission will direct Minnesota Power to amortize (using ARAM) its protected excess ADIT liability as early as IRS provisions allow, and amortize its unprotected excess ADIT liability over ten years. Given the stage of Minnesota Power's rate case, the Commission will authorize the utility to return these sums to ratepayers via a rate rider rather than through a reduction in base rates, to be implemented in conjunction with implementation of the final rates from its rate case. Regarding the savings that have already accrued, Minnesota Power must either return a one-time refund to ratepayers, or incorporate the sum into the rate case's interim rate refund calculation.

Finally, to ensure compliance over the long term, the Commission will direct Minnesota Power to make compliance filings by March 1 of each year.

F. Great Plains Natural Gas Company

Great Plains cites its jurisdictional annual reports to support the claim that its current revenues do not permit it to recover its costs and earn the return on its investment authorized by the Commission in the utility's last rate case. Accordingly, Great Plains proposes to retain all $235,708 of its annual savings resulting from the TCJA (excluding excess ADIT). Alternatively, Great Plains proposes retaining a sufficient portion of this savings to permit the utility to earn its authorized rate of return, using a tracking account, and to refund the remainder. Great Plains argues that its proposals would be cheaper for ratepayers than if Great Plains filed a rate case, given that ratepayers bore $525,000 in expenses for its last rate case.

The Chamber, the Department, the ICI Group, MLIG, OAG, and SRA argue that the benefits utilities receive from lower tax costs should flow back to ratepayers. The Department and SRA argue that Great Plain's proposal would inappropriately shift normal business risk from utilities to ratepayers. The Commission concurs.

Great Plains cites its jurisdictional annual report as the basis for its claim that it is not recovering sufficient revenues. Under Minn. Stat. § 216B.10, the Commission directs utilities to maintain books and records disaggregated by jurisdiction, and to file jurisdictional annual reports, to better facilitate scrutiny of a utility's operations in Minnesota. However, unlike data in rate cases, data in jurisdictional annual reports have not been scrutinized for reasonableness and prudence. A jurisdictional annual report is not a substitute for a rate case.

Great Plains correctly observes that substantial resources are expended for rate cases, and utilities should not incur those expenses needlessly. But Great Plains does not indicate how long it would be able to delay a rate case even with the benefit of retaining the tax savings. It is far from clear that ratepayers would benefit by foregoing an annual savings of $235,708 merely for the hope of delaying, for an unspecified period, the one-time cost of a rate case.

Finally, while Great Plains claims that it has failed to earn its authorized return on equity, the Commission authorized that return under the assumption that investors would bear normal business risks, including the risk that returns will fluctuate. A change in tax rate may justify a change in rates; this is also true of a change in risk allocation. The Commission concludes that the more appropriate forum for addressing Great Plain's proposal would be a rate case, where all of the factors that influence a utility's cost of service—including the return on equity to investors—may be considered simultaneously.

Accordingly, the Commission will direct Great Plains to refund to ratepayers $235,708 of TCJA-related savings as well as the value of the excess ADIT. And the Commission will direct Great Plains to use these savings to reduce customers' base rates prospectively—allocating the savings to customers in proportion to the size of each customer's bill, or to each customer class in proportion to the class's size. Finally, the Commission will direct the utility to return to ratepayers the TCJA-related savings that have already accrued via a one-time refund.

G. Otter Tail

Similar to Great Plains, Otter Tail proposes to return the proceeds of the TCJA to ratepayers, but only to the extent that Otter Tail is receiving sufficient revenues to cover its costs and earn the Commission-prescribed rate of return on the utility's investment. Otter Tail argues that it is entitled to seek higher rates if it is under-earning, so its proposal would merely provide a less-expensive path to that end. Otter Tail also proposed to return excess ADIT to ratepayers by creating a regulatory liability account and amortizing the balance over the life of the underlying assets.

Again, the Chamber, the Department, the ICI Group, MLIG, OAG, and SRA argue that the benefits utilities receive from lower tax costs should flow back to ratepayers. The Department and SRA argue that Otter Tail's proposal would inappropriately shift normal business risk from utilities to ratepayers. The Department questions how it could be just or reasonable for Otter Tail to continue to apply its current rates, adopted under the assumption that Otter Tail faced a 35 percent tax rate, when Otter Tail now faces a 21 percent rate. And the Department questions whether ratepayers could ever be persuaded of the fairness of Otter Tail's proposal.

As the Commission found regarding Great Plains, the more appropriate forum for addressing Otter Tail's proposal would be a rate case, where all of the factors that influence a utility's cost of service—including the return on equity to investors—may be considered simultaneously.

Accordingly, the Commission will direct Otter Tail to refund the TCJA's annual impact to ratepayers. The utility must amortize (using ARAM) its protected excess ADIT as early as IRS provisions allow, and its unprotected excess ADIT over ten years. Otter Tail should use its 2017 year-end ADIT balance to calculate its excess ADIT balance. The Commission will direct Otter Tail to use these savings to reduce customers' base rates prospectively—allocating the savings to customers in proportion to the size of each customer's bill, or to each customer class in proportion to the class's size. Finally, the Commission will direct the utility to return to ratepayers the TCJA-related savings that have already accrued via a one-time refund.

H. Greater Minnesota Gas Company

GMG proposes to retain all of its $48,258 net annual savings resulting from the TCJA to offset its net operating losses. The utility cites two arguments in support of its proposal:

First, GMG notes that in its last rate case in 2009, the utility had proposed rates that were too low to permit the utility to fully recover its revenue requirement.[15] As a young company, GMG wanted to limit the size of any rate increase in order to attract new customers and retain existing ones, even if this meant incurring revenue shortfalls for a period. GMG now sees the TCJA tax savings as a potential stream of revenues available to offset its losses, at least in part.

Second, given that the utility was incurring net operating losses, GMG had little incentive to accelerate depreciation of its assets, which would have made the losses greater. As a result of GMG's carry-forward losses, it carries *negative* ADIT on its books; therefore, GMG's ADIT amortization *decreases* the annual tax savings generated by the TCJA.

The Chamber, the Department, the ICI Group, MLIG, OAG, and SRA argue for returning the tax savings directly to ratepayers. And the Commission concurs.

The Commission stands ready to address claims that a utility is failing to recover its prudently-incurred costs, but the appropriate forum for demonstrating and addressing those claims is a rate case—a forum GMG has not chosen to visit since 2009. For purposes of the present docket, the Commission is not persuaded that GMG's circumstances warrant a deviation from the general policy of returning tax savings to ratepayers.

Accordingly, the Commission will direct GMG to reduce its base rates prospectively to reflect its lower income tax costs resulting from the TCJA—allocating the savings to customers in proportion to the size of each customer's bill, or to each customer class in proportion to the class's size. The Commission will also direct GMG to refund to customers the savings that have accrued since the beginning of the year.

I. Dakota Electric Association

Dakota Electric states that, due to its status as a member-owned electric distribution cooperative organized under Minnesota Statute 308B (the Minnesota Cooperative Associations Act), the cooperative is exempt from federal income taxes under Internal Revenue Service Code § 501(c)(12). Instead, the cooperative passes through any excess earning to its member electric utilities.

No party contested this claim. Accordingly, the Commission will not require Dakota Electric to make any TCJA-related adjustments.

IV. Housekeeping

The Department recommends requiring utilities to reflect all the TCJA's changes since the beginning of the year in the utility's calculation of riders and adjustments—including net operating losses and periodic revenue decoupling adjustments. The Commission concurs.

That said, the complexity of applying tax law changes to utility ratemaking creates ample risk for double-counting costs or overlooking a formula that offsets a Commission-approved rate reduction. To better manage these risks, the Commission will not only require compliance filings from the utilities, but

[15] Docket No. G-022/GR-09-962, *In the Matter of the Application of Greater Minnesota Gas, Inc. for Authority to Increase Rates for Natural Gas Service in the State of Minnesota.*

will also invite scrutiny and comments from other interested parties.

Accordingly, the Commission will direct all rate-regulated energy utilities to make a compliance filing within 30 days. That filing shall include 1) a date for implementing the required changes, 2) a calculation of the Commission-required refund and adjustment to base rates (as applicable), along with supporting documentation, and 3) a proposed customer notice. The Commission will then invite interested parties to file comments on each utility's filing within 30 days of the filing. The Commission will also delegate authority to its Executive Secretary to vary this order's deadlines and procedures as appropriate.

Finally, while the Chamber and MLIG ask the Commission to require utilities to add carrying charges to the sums they must return to ratepayers, the Commission will decline this request. Given the complexity of this docket, the Commission will decline to add more complexity by compelling utilities to assess carrying charges. In omitting carrying charges in this docket, however, the Commission does not alter any duty to assess carrying charges arising from some other statute, rule, or order.

ORDER

Northern States Power Company d/b/a Xcel Energy's Electric Utility

1. Xcel Electric shall return to ratepayers the savings resulting from the federal Tax Cut and Jobs Act.

    A. The utility shall allocate $2 million of the savings to its PowerOn program.

    B. The utility shall reduce its base rates, consistent with its current rate design, to reflect the following annual savings:

        1) $80,246,667, less the $2 million allocated to its PowerOn program, plus

        2) Protected excess accumulated deferred income tax liability, amortized using the Average Rate Assumption Method as early as the federal Internal Revenue Service provisions allow, plus

        3) Unprotected excess ADIT liability, amortized over ten years.

    C. The utility shall also provide a one-time refund, consistent with its current rate design, capturing the TCJA's impacts that have already accrued.

2. Xcel Electric shall adjust its sales true-up formula to reflect the TCJA's impact on Xcel's rates.

3. Within 30 days, Xcel Electric shall report the forecasted consequences of the TCJA for 2019, disaggregated by segment.

Northern States Power Company d/b/a Xcel Energy's Natural Gas Utility

4. Xcel Gas shall return to ratepayers its TCJA-related savings.

   A. The utility shall reduce its base rates, consistent with its current rate design, to reflect the following annual savings:

      1) $2,412,004, plus

      2) Protected excess accumulated deferred income tax liability, amortized using ARAM as early as IRS provisions allow, plus

      3) Unprotected excess ADIT liability, amortized over ten years.

   B. The utility shall also provide a one-time refund capturing the TCJA's impacts that have already accrued, consistent with its existing rate design, and shall track the refunds separately.

Minnesota Power

5. Minnesota Power shall return to ratepayers its TCJA-related savings as follows:

   A. The utility shall use a rider to return the following annual savings, to be implemented in conjunction with the implementation of final rates in Docket No. E-015/GR-16-664*, In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*:

      1) Protected excess accumulated deferred income tax liability, amortized using ARAM as early as IRS provisions allow, plus

      2) Unprotected excess ADIT liability, amortized over ten years.

   B. The utility shall also return to ratepayers the benefits of the excess ADIT impacts that have already accrued by—

      1) a one-time refund, consistent with its current rate design, or

      2) incorporating the benefits into the rate case interim refund calculation.

6. Minnesota Power shall make compliance filings by March 1 of each year.

Minnesota Energy Resources Corporation

7. Minnesota Energy Resources Corporation shall address the TCJA's savings in its rate case, Docket No. G-011/GR-17-563, *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota.*

Great Plains Natural Gas

8. Great Plains Natural Gas shall refund TCJA-related savings to ratepayers as follows:

A. The utility shall reduce its base rates, consistent with its current rate design, to reflect the following annual savings:

1) $235,708, plus

2) Protected excess accumulated deferred income tax liability, amortized using ARAM as early as IRS provisions allow, plus

3) Unprotected excess ADIT liability, amortized over ten years.

B. The utility shall also provide a one-time refund capturing the TCJA's impacts that have already accrued, consistent with its existing rate design, and shall track the refunds separately.

Otter Tail Power Company

9. Otter Tail Power Company shall refund TCJA-related savings to ratepayers as follows:

A. The utility shall reduce its base rates, consistent with its current rate design, to reflect the following annual savings:

1) $4,894,671, plus

2) Protected excess accumulated deferred income tax liability, amortized using ARAM as early as IRS provisions allow, plus

3) Unprotected excess ADIT liability, amortized over ten years.

B. The utility shall also provide a one-time refund, consistent with its existing rate design, capturing the TCJA's impacts that have already accrued, and shall track the refunds separately.

10. The utility shall use its 2017 year-end ADIT balance to calculate its excess ADIT balance.

Greater Minnesota Gas Company

11. Greater Minnesota Gas shall refund TCJA-related savings to ratepayers as follows:

A. The utility shall reduce its base rates, consistent with its current rate design, to reflect net annual savings of $48,258.

B. The utility shall also provide a one-time refund, consistent with its existing rate design, capturing the TCJA's impacts that have already accrued, and shall track the refunds separately.

All Energy Utilities

12. The utilities addressed in this order shall do the following:

    A. Reflect the TCJA's changes back to January 1, 2018, in all relevant compliance filings, including compliance filings for –

        1. Net operating losses,

        2. For utilities with revenue decoupling, the periodic revenue decoupling adjustments, and

        3. For Xcel, sales true-up calculations.

    B. Exclude carrying costs from TCJA-related refund calculations.

13. The Commission adopts the following procedural schedule:

    A. Within 30 days, all rate-regulated energy utilities shall make a compliance filing including—

    - a proposed implementation date,

    - all supporting calculations for the Commission-required refund and adjustment to base rates (as applicable), and

    - a proposed customer notice.

    B. Within 30 days of each compliance filing, interested parties may file comments on the filing.

14. The Commission hereby delegates authority to the Executive Secretary to vary the deadlines and procedures specified herein as appropriate.

15. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Janet F. Gonzalez for

Daniel P. Wolf
Executive Secretary

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