BEFORE THE PUBLIC SERVICE COMMISSION
OF NORTH DAKOTA

Public Service Commission Rate Impact and Accounting Treatment Investigation	**Case No. PU-17-490**

Staff Initial Review and Comments Regarding Rate Impact and Accounting Treatment

INTRODUCTION

The North Dakota Public Service Commission (Commission) is vested with authority to "[i]nvestigate all methods and practices of public utilities" and after notice and hearing, to establish, modify, or adjust tariffs, rates, and charges of all public utilities.[1] In carrying out its authority, the Commission has the task of establishing "just and reasonable" rates.[2] The purpose of the initiated investigation is stated to review the "opportunity to reduce rates" presented by the Tax Cuts and Jobs Act of 2017 (TCJA or Tax Reform).[3] To aid in the investigation, Advocacy Staff (Staff) submits a summary, comments and recommendations.

BACKGROUND

On December 22, 2017, President Donald Trump signed the TCJA into law. Among other things, the TCJA reduces the federal corporate tax rate from 35% to 21% and eliminates bonus depreciation for utilities. Believing the TCJA will have a substantial effect on North Dakota's investor owned utilities (IOUs), Staff requested to initiate an investigation and regulatory

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[1] N.D.C.C. § 49-02-02; N.D.C.C. § 49-02-03.
[2] N.D.C.C. 49-05-06(1).
[3] PU-17-490, Doc. 4, pg. 2.

accounting treatment for the distribution of resulting benefits.[4] The Commission responded with a January 10, 2018 Order Initiating Investigation (Order).[5]

In order to capture the benefits of the TCJA for ratepayers, the Commission ordered "regulatory accounting treatment" beginning January 1, 2018 for Great Plains Natural Gas Co. (Great Plains); Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota); Northern States Power Company (NSP); and Otter Tail Power Company (Otter Tail). The Commission also ordered the filing of information regarding the impact of the Tax Reform with supporting calculations and comments.

Although cursory, initial comments were received from all IOUs in compliance with the February 15, 2018 deadline. Three IOUs — Otter Tail,[6] Montana-Dakota gas operations,[7] and Great Plains,[8] are currently engaged in an active rate case before the Commission. The IOUs and Staff will be addressing the TCJA impacts during those proceedings.

PROCEDURAL RECOMMENDATIONS

For IOUs not in a rate case, their status varies due to proximity to past rate cases and varying rate assumptions. Staff recommends that each IOU be reviewed individually within separate dockets. This will provide an opportunity for the Commission and Staff to track, investigate, secure, and present information necessary to process each case. It also would make it easier to address rate impact issues separately and expedite returns until final treatment is determined. Montana-Dakota has an assigned case, PU-18-89, for its proposal to address the

[4] PU-17-490, Doc. 1.
[5] *Id*. Docket 4.
[6] PU-17-398
[7] PU-17-295
[8] PU-17-148.

impacts of the TCJA on its electric operations. Staff recommends also opening separate dockets for NSP-Gas and NSP-Electric.

Staff has already initiated data requests and discussions with Montana-Dakota and NSP. The complexity of the TCJA requires that many adjustments and clarifications will need review — some of which may be better suited for a rate case. The intent is to, if possible, resolve many of the outstanding issues and present a partial or complete settlement for a Commission determination by late summer, along with the resolution of the open rate cases. If it is clear that Staff and an IOU will be unable to come to a full resolution or resolve the majority of the issues, Staff will request that the Commission order the initiation of a rate case.

ANALYSIS

Taxes are a significant part of the reasonable and prudent incurred costs considered in setting a revenue requirement that allows an IOU to cover its expenses and still have an opportunity earn a fair return. The current rates reflect a test year with a 35% federal income tax rate, which should be adjusted to reflect the reduction to 21%.[9]

Tax Reform Act of 1986

The last tax reduction of similar magnitude occurred during the Tax Reform Act of 1986 and resulted in a corporate federal tax rate reduction from 46% to 34%. This resulted in varying regulatory activity to distribute the benefits of reduced taxes in expenses and excess deferred income taxes (EDIT). The Commission responded by opening Case No. 10,906 and directed all IOUs to file information to show the effect of the tax reform on each utility's tax liability and the

[9] PU-17-490, Doc. 14, pg. 5.

resulting change in the revenue requirements.[10] A review of the Orders in Case No. 10,906 show that the Commission made its determination based upon whether the reduction in tax rate resulted in "excessive earnings."

The Commission determined that some, but not all of the IOUs had excessive earnings.[11] For the companies determined to have excessive earnings, the Commission required the return of earnings to customers as a "Tax Reform Act Credit" on monthly bills subject to changes in tax liability or other unforeseen conditions affecting the estimated revenue requirement reductions from the 1986 tax reform. The Orders also required an annual true-up for mismatches of estimated sales and actual sales through the purchased gas adjustment or fuel adjustments.

Primary Impacts

Due to the many layers of Tax Reform effects, a comprehensive review is difficult outside of a full rate proceeding. Therefore, the two primary impacts of Staff's focus relate to capturing the benefits of the tax expense savings from the corporate tax rate reduction and the savings for customers resulting from the excess deferred income taxes. The first and more straightforward, is the actual expense adjustment calculated based on annual revenue and expenses. The second and more challenging item is the EDIT.

Deferred taxes reflect the gap in timing between when utilities collect revenue from ratepayers for their federal income taxes and when the taxes are paid to the Internal Revenue Service (IRS). IOUs use straight-line depreciation in their books for the purpose of setting rates while the IRS has allowed accelerated depreciation of assets. The difference in treatment results

[10] Similar to the current tax cuts, a number of proposals were filed including rate change moratoriums and voluntary reduction in rates.
[11] E.g. Otter Tail and NSP – Gas were found to be collecting excessive earnings, but not NSP-Electric, Great Plains and Montana-Dakota – Gas.

in an over-collection from ratepayers in the early years of an asset's life, followed by a shift so that the actual IRS tax expense is higher than the amount collected from ratepayers in later years.[12] Assuming the tax rate remains constant, the amount of taxes paid by the IOU should generally be equal to the amount recovered from customers over the course of an asset's life. When the income tax rate is lowered, the amount over-collected in the earlier years will be in excess of what the IOU will be called to pay to the IRS in the latter years — the result is excess accumulated deferred income tax or EDIT from net over-collection from customers.

The EDIT for plant related assets are subject to IRS normalization rules requiring the EDIT to be amortized over the remaining life of the assets under the average rate assumption method (ARAM).[13] This provides that the benefits from tax change for plant EDIT is shared with customers receiving the benefit of the asset over the remaining life of that asset.[14] The non-plant-related EDITs are "associated with a number of assets and liabilities with differing asset lives, and are not subject to ARAM."[15]

There are a number of other issues that may affect IOU operations and revenue requirements such as the loss of bonus depreciation, deductions, and negative impacts on credit

[12] The over-collection in rates above tax liabilities in early years is viewed as an interest free government loan due to a positive time-value of money. As a result, many states, including North Dakota, require that it offset the rate base to reduce the rate of return that ratepayers pay. The over-collections are tracked in accumulated deferred income tax accounts, and are reduced in the latter years as the tax liability rises above the rates collected.
[13] PU-17-490, Doc. 14, pg. 6; PU-18-89, Doc. 1, pg. 6.
[14] PU-17-490, Doc. 14, pg. 6.
[15] *Id.* at 7.

metrics.[16] Staff will be reviewing these during discussions with the IOUs and adjust for impacts of bonus depreciation on the amortization of EDIT.[17]

Otter Tail, Great Plains, and Montana-Dakota – Gas

Three IOUs — Otter Tail, Great Plains, and Montana-Dakota – Gas are currently engaged in active rate cases. The companies and Staff have already taken steps to incorporate and investigate the impacts of tax reform on the revenue requirement, cost of capital, working capital, and EDIT into those proceedings. As the Commission will be able to fully review the impact of the TCJA on rates, these IOUs should be exempt from having separate dockets.

Otter Tail - Otter Tail's filing for its electric service noted that since it has an active rate case with a 2018 test year, as part of that proceeding, the revenue requirement will be recalculated using the new tax rate.[18] On February 27, 2018, the Commission approved a reduction in the interim rate and several riders to avoid excessive over-earning. This resulted in a reduction in interim revenue collection of $4.5 million. Otter Tail also reduced its transmission, renewable, and environmental riders by approximately $1.7 million. At the conclusion of the rate case, the final approved rates will have the revenue requirement adjusted to reflect the current tax rate and the Commission will have the opportunity to ensure that Otter Tail's customers will receive the full benefit of the Tax Reform. The hearing is currently scheduled for July 11, 2018.

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[16] *Id.* at 2. The companies have stated concerns that change in cash flow and bonus depreciation may potentially affect a company's credit rating. This may result in the Commission making an assessment of needed adjustments to retain a Company's credit rating such as increasing an IOU's ROE.
[17] *Id.* The TCJA eliminated bonus depreciation for regulated utilities along with certain other deductions. The loss of bonus depreciation under Tax Reform is stated to increase the amount of federal income tax the companies will be required to pay.
[18] Case No. PU-17-398.

Montana-Dakota - Montana-Dakota – Gas also has an active rate case that will reflect a 2018 test year.[19] As with Otter Tail, the revenue requirement will be recalculated using the new tax rate. On February 27, 2018, the Commission approved Montana-Dakota's interim rate reduction resulting in a decrease in revenue collection of approximately $1.9 million. The final approved rates will have the revenue requirement adjusted to reflect the current tax rate and the Commission will have the opportunity to ensure that Montana-Dakota's customers will receive the full benefit of the Tax Reform. The hearing is currently scheduled for May 30, 2018.

Great Plains - Great Plain's filing for its natural gas service also addressed the Tax Reform by stating that the company currently has an active rate case. Great Plains is expected to submit a proposal before the end of May that will recommend reductions to account for the Tax Reform. As part of this proceeding, Great Plains proposed to modify rate forms, update the cost of gas, extension policy, meter testing policy, and its terms and conditions of service. The initial estimate is a reduction of annual revenue requirement by $200,000.[20] At this time, a procedural schedule has not been set and rates have been suspended until September 30, 2018. Due to the size of this utility, this rate case proceeding is expected to proceed with some flexibility and Staff will review the effects of Tax Reform during the process.

Northern States Power Company

NSP filed initial comments, but stated that they are still currently evaluating the precise impacts of the Tax Reform. NSP acknowledges that the Tax Reform is significant, but the company states that the fluctuation of rising and falling expenses between rate cases are expected

[19] PU-17-295.
[20] PU-17-75.

and generally do not result in corrective action.[21] NSP also states that the Commission's focus has historically been based upon whether the company is overearning relative to its return on equity. NSP requests that the Commission consider the timing of the utility's last rate case, status of a current rate case, postponement of future rate cases, what mechanisms are already in place that may be utilized for refunds.[22]

A concern presented by NSP relates to net operating loss (NOL). NSP states that the loss of bonus tax depreciation will result in higher taxable income and higher utilization of net operating losses in 2018.[23] The TCJA also caps NOL utilization at 80 percent, and eliminate NOL carrybacks.[24] Another state concern is over credit metrics. Net income is expected to remain unaffected, but earnings before interest, taxes, depreciation and amortization will be lower.[25] Combined with the lower deferred income tax and bonus depreciation an effect on cash flow is expected.

NSP explains that three major credit rating agencies have reported on the negative credit impact from the TCJA, and that the cash flow impacts have led Moody's Investor Service (Moody's) to change the ratings for 24 IOUs from steady to negative.[26] To mitigate the risk, NSP suggests increasing its equity portion of capitalization through higher regulated equity ratios, increasing the amount of book depreciation that a utility recognizes, and allowing a higher authorized return on equity.

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[21] PU-17-490, Doc. 14, pg. 1.
[22] *Id.* at 3. The earnings sharing mechanism in the last electric rate case requires a refund of all earnings over the authorized ROE to be refunded to customers.
[23] Leaving only modified accelerated cost recovery system (MACRS) for the asset rather than MACRS in addition to bonus depreciation.
[24] Previously, NOLs were allowed to be used as a carryback for two tax periods to receive a tax rebate.
[25] *Id.* at 8.
[26] *Id* at 9.

Electric: In the preliminary analysis provided by NSP, the company estimates a reduction in revenue requirements for electric operations by approximately 5 percent or $11-13 million. NSP - Electric's last rate case was PU-12-813 and provided a mechanism for revenue sharing above the authorized ROE (revenue sharing mechanism). In a subsequent proceeding, NSP and the Commission agreed to a moratorium provision extending through the end of 2017. The NSP – Electric rate mechanisms are: base rates, the fuel cost rider (FCR), transmission cost recovery rider (TCR), and renewable energy rider (RER). NSP claims that the revenue sharing mechanism protects ND customers from excessive revenues. At this time, NSP is not aware of any changes to the FCR, but NSP forecasts an increase in the revenue requirements for the TCR and RER.[27]

NSP – Electric is projecting an earning deficiency in 2018 and 2019 and claims that refunding the revenue requirement reductions would "create instability in rates" due to an imminent need for an application for rate increase. Because of this, NSP suggests that the "most efficient and administratively effective option" is to extend the current moratorium for an additional identified multi-year term with the retained revenue sharing mechanism, or alternatively, directing the savings to distribution reliability capital investments.[28]

Gas: The most recent NSP-Gas case was filed in 2007. In determining rates for NSP-Gas, the mechanisms are base rates and the cost of gas charge. The cost of gas is expected to remain unaffected. A preliminary analysis of NSP's gas operations estimates a reduction of 2 percent or $1-1.5 million in base rates. NSP states that its gas operations are also under earning and recommends a similar rate moratorium and cost savings being directed towards known

[27] Due to an increase in regionally shared transmission included in the rider and a decrease and the production tax credits reflecting the change in the corporate tax rate gross-up factor.
[28] PU-17-490, Doc. 14,pg. 10-11.

future costs. One option that NSP provides is the Fargo manufacturing gas plant (MGP) clean-up from PU-15-514.

Staff: Staff is of the view that the most reasonable treatment of the tax reform is that customers who should not have had to pay it should recoup the benefits. However, Staff agrees that there may be some merit to the discussion presented by NSP. The span of time between rate cases for both gas and electric operations may be a worthwhile consideration for the Commission. If under earnings require an imminent rate increase, there may be a customer benefits in forgoing a rate increase. However, it should be noted that NSP's under earnings are based upon a 10.25 ROE for electric operations and 10.75 for gas operations.

Generally, the use of the TCJA for alternative uses and future costs is not preferred. Distribution reliability capital investments may be appropriate investments, but should not be creating use for "found money." There is a process already that provides an opportunity to recoup investments which are reviewed and determined to be prudent and necessary. A unique circumstance where offsetting future costs may be worthwhile is the Fargo MGP.[29] In PU-15-514, deferred accounting was granted for the Fargo MGP remediation.[30] If cost recovery is granted, customers will carry the costs for something from which they have received no benefit. Directing earnings to forego the future customer cost burdens for the Fargo MGP cleanup may be a worthwhile discussion.

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[29] The Fargo MGP plant produced gas from coal for retail heating, cooking, and lighting in the mid-1880's. The plant was taken down and sold to private parties before it was redeveloped into a residential apartment building. The MGP pipes were discovered to have caused conditions requiring removal and disposal of soil due to coal gas by-products (coal tars, ashes, sludges, and wastes) being spilled at the site or contained in infrastructure.

[30] PU-15-514, Doc. 4, pg. 2. The Commission previously authorized the amortization over 8 years of $2.9 million associated with a Grand Forks MGP remediation in PU-400-00-521 for NSP; and Montana-Dakota's Bismarck MGP in PU-10-58 and PU-13-803.

Although NSP points to the negative movement of ratings for 24 IOUs, including Southwestern Public Service Company – an Xcel Utility – NSP did not specify itself as one of them. Moody's also reports that the vast majority of IOUs are expected to maintain stable credit outlooks with no material change expected from cash flow reduction because "sufficient cushion exists within the projected financial metrics for their current ratings."[31] North Dakota's statutes provide a constructive framework with advanced determinations of prudence for large capital investments, interim rates to avoid the risk of regulatory lag and under-recovery, and the Commission has approved a number of riders. Staff also suspects that North Dakota's regulatory environment and smaller customer base relative to the system would not likely weigh as heavily on credit metrics.

Staff has initiated discussions and data requests, but has insufficient information at this point to draw conclusions regarding NSP's concerns of cash flow metrics, credit ratings, and cost of capital credit profile. Staff will continue to investigate, but if these become larger issues or require greater scrutiny, Staff would request that the Commission be provided with a full rate case. In the meantime, Staff has been given the impression that regulatory accounting has been implemented and Staff will work with the Company to present a solution to the Commission.

Montana-Dakota – Electric

Montana–Dakota filed initial comments with the Commission providing a summary of its review, agreeing to the regulatory accounting, and estimating a reduction in base retail rates of $8-10 million. On March 9, 2018, Montana-Dakota filed a comprehensive update and proposal. Montana-Dakota-Electric's proposal appears to have four mechanisms for Commission review:

[31] PU-17-490, Doc. 14, Exhibit C.

(1) An initial refund credit from over-collection beginning January 1, 2018 with an added 3-month T-bill rate; (2) A decrease of revenue requirements by 7.2 million dollars; (3) The company retaining plant EDIT; and (4) A ten-year amortization of non-plant EDIT.

Montana-Dakota–Electric's rates were recently set on August 7, 2017 in PU-16-666. In that case, the Commission approved an annual revenue increase of $7.5 million.[32] This resulted in a net change to base retail rates of $8.5 million.[33] Montana-Dakota's March 9, 2018 filing provided updates from the TCJA and requested approval of the electric rates and refund plan. The updates equate to a decrease in annual revenues of $7,231,009 or 3.87 percent from base retail rates. The Company proposes to allocate the decrease using the rate design authorized in PU-16-666 and provide a bill credit to customers for the over-collection beginning January 1, 2018 including a three-month Treasury bill rate titled "Tax Act Refund."

According to Montana-Dakota's analysis, the elimination of bonus depreciation increases the amount of federal income tax that Montana-Dakota will be required to pay and will cause a "flow back" of excess deferred income taxes. Montana-Dakota states that this causes concern for its credit metrics and its ability to fund infrastructure. As a result, Montana-Dakota proposes to retain the annual amortization of plant EDIT and amortize the non-plant EDIT over 10 years. The company states that this will improve cash flow for funding of infrastructure upgrades, transmission and distribution substation upgrades, and system looping to minimize impacts and supports the "job creation" intent of the TCJA.[34]

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[32] PU-16-666, Doc. 136, pg. 3. The original request was for $13.4 million, or an increase of 6.6%.
[33] PU-18-89, Doc. 1, pg. 2. *See* 18-89, doc. 1, Exhibit 2, pg. 2 for calculation.
[34] *Id.* at 5.

Staff: Staff is currently engaged in discussion and data requests to clarify the proposal, calculations, and to evaluate the issues affecting Montana-Dakota. From Staff's initial review, although agreeable to parts of Montana-Dakota's proposal, Staff's impression is that it is not in the public interest. A reduction of $7,231,009 in accordance with the approved rate design with the over-collected amount beginning January 1, 2018, subject to a 3 month T-bill rate, would be beneficial the customers. However, 80% of the decrease in revenue identified with the TCJA falls short of the benefit that customers should be realizing.[35]

More specifically, Staff is not agreeable to Montana-Dakota's proposed amortization period for non-plant EDIT and its retaining of plant and non-plant EDIT. The non-plant EDIT is not subject to IRS normalization rules and may be flow-through to customers. As proposed, the annual amortization of $177,828 over a decade is lengthy and a shortened amortization schedule would be beneficial to many customers. The plant EDIT varies from $1.2 million in 2018, up to 1.98 million in 2021. This substantial over-collection from customers should be returned in accordance with IRS normalization rules. Staff has already requested information of what mechanisms would be the most reasonable to return this value to customers.

It is unclear how Montana Dakota's interpretation of the TCJA for job creation is expected to be realized, but Staff is of the impression that the TCJA's purpose is to benefit individuals and small businesses by allowing them to retain their money and lower their expenses. If the Commission agrees, it only follows that lower utility rates for captive customers should be the goal.

[35] PU-18-89, Doc. 1, pg. 5.

With regard to concerns of excessive earnings, Montana-Dakota states that it would agree to implement a mechanism to ensure that, to the extent that the reported rate of return for 2018 exceeds the authorized return, a refund to customers will be triggered.[36] Staff disagrees with this concept in part because it only extends to 2018, but also because it distorts the concept of rate of return regulation. The Commission sets the revenue requirement to allow a well-managed company a reasonable *opportunity* to earn a fair rate of return, not provide confidence that it will receive those earnings subject to a refund when expenses incurred are excessive. Additional earnings from the TCJA has little to do with efficient management, innovation, or lowering of expenses and allowing the company to retain money to offset future investments will only incentivize gold plating the system.

Staff has already initiated discussions and data requests and will continue to review responses. From an initial review and discussion, Staff believes the reduction in revenue requirement should nearly, if not entirely, negate the net increase from the last rate increase. Staff will continue to apprise the Commission of any recommendations as the investigation moves forward and will work with the Company to present a workable solution for Commission review and approval. If it becomes clear that there will not be agreement, Staff will attempt to narrow the issues and request a procedural schedule.

Conclusion

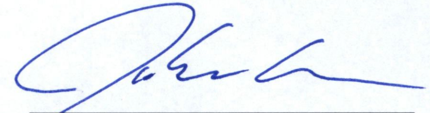
Staff recommendations should provide a clear and accessible path for the Commission and Companies to proceed. With the current work that has already been done and the completion of the open rate cases, Staff intends to resolve issues relating to Tax Reform by the

[36] PU-18-89, Doc. 1, pg. 6.

end of September 2018 or recommend procedural steps to address outstanding issues. As Staff proceeds, it intends to provide specific recommendations within each individual docket. Therefore, Staff respectfully recommends the Commission:

1. Exempt companies currently engaged in a rate case from continuing in the investigation.
2. Open separate dockets for NSP-Gas and NSP-Electric.
3. If necessary, provide clarification of expectations to both the Companies and Staff.

Signed April 20, 2018 by:



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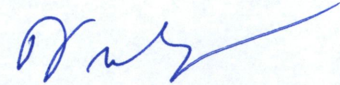

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