

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. M-100, SUB 148
DOCKET NO. G-9, SUB 731
DOCKET NO. G-9, SUB 737

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. M-100, SUB 148)	
)	
In the Matter of)	
The Federal Tax Cuts and Jobs Act)	
)	
DOCKET NO. G-9, SUB 731)	
)	ORDER APPROVING
In the Matter of)	PROPOSAL AND APPLICATION
Piedmont Natural Gas Filings to Reflect)	AND REQUIRING FILING OF
The Federal Tax Cuts and Jobs Act)	REVISED TARIFFS
)	
DOCKET NO. G-9, SUB 737)	
)	
In the Matter of)	
Application of Piedmont Natural Gas)	
Company, Inc. for an Adjustment to its)	
Base Rates to Track a Reduction in State)	
Corporate Income Tax Rates)	

BY THE COMMISSION: On October 5, 2018, in Docket No. M-100, Sub 148, the Commission issued an Order Addressing the Impacts of The Federal Tax Cuts and Jobs Act on Public Utilities. The Order directed certain utilities, including Piedmont Natural Gas Company, Inc. (Piedmont), to “adjust their base rates to reflect the reduction in the federal corporate income tax rate to 21% for taxable years beginning after December 31, 2017, as outlined in the Tax Act.” The Commission further requested that certain utilities, including Piedmont, “file proposals . . . to adjust their rates to reflect the reduction in the federal corporate income tax rate to 21%” by no later than October 25, 2018 and that the Public Staff and other parties “file comments on the proposals by no later than Wednesday, November 14, 2018.”

Piedmont’s Federal Proposal

On October 25, 2018, Piedmont filed its proposal in response to the Commission’s Order. Piedmont attached two schedules (Attachments A and B) to its proposal that reflect its proposed implementation to flow through to its base rate customers the economic benefits of the reduction in the federal corporate income tax rate reflected in the Tax Act.

Piedmont stated that Attachment A shows the overall annual cost of service impact to Piedmont as a result of the federal corporate income tax rate decrease from 35% to 21%, based upon the income tax calculations utilized in the Company's last general rate case proceeding in Docket No. G-9, Sub 631. Piedmont noted that that impact, calculated as \$19,822,593, presently corresponds to an annual revenue requirement adjustment of \$26,085,534 as shown in Attachment B. Piedmont maintained that the allocation of the annual revenue requirement adjustment by customer class is also shown in Attachment B, derived from the allocation of margin revenues approved in Piedmont's last general rate case proceeding. Piedmont noted that Line 5 in Attachment B shows the adjustment to base rates that Piedmont is now proposing in order to flow-through the benefit of the Tax Act corporate income tax rate reduction to 21% as required by the Commission in Docket No. M-100, Sub 148.

Piedmont asserted that in its filing, the Company does not propose to change the rates of its long-term negotiated rate customers (industrial special rate customers and power generation special rate customers) who were responsible for 18.92% of Piedmont's total annual margin revenues. Piedmont stated that its rationale for not adjusting its long-term fixed rate special contract customer rates is based on the following factors, each of which mitigates against such adjustments:

1. Scope of the Commission's Order

Piedmont asserted that by its terms, the Commission's October 5, 2018 Order does not address negotiated rate special contract customers. Piedmont noted that instead the October 5, 2018 Order addresses the impacts of the Tax Act and requires mitigating action by Piedmont and the other large utilities in the state with respect to its "base rate" customers. Piedmont maintained that these customers are those receiving service from Piedmont under Piedmont's various Commission approved Rate Schedules at tariff rates determined to be just and reasonable by the Commission in a general rate case proceeding. Piedmont argued that special contract customers, whose rates are determined on a different basis than Piedmont's allocated cost of service and which are approved by the Commission through a different process than base rates, are not similarly situated to and cannot reasonably be included in the term base rate customers. Piedmont asserted that, as such, while the Commission does not discuss this differentiation in customer types in its October 5, 2018 Order, literal compliance with that Order does not involve any rate changes for special contract, non-base rate customers.

2. Long-Term Fixed Price Contracts

Piedmont stated that base rate customers pay for the services Piedmont provides pursuant to generally applicable tariff rates determined by the Commission in periodic rate case proceedings. Piedmont noted that these rates are impacted by a myriad of factors affecting Piedmont's cost of service over time. Piedmont asserted that special contract rates are negotiated and bear no resemblance to base rates in their derivation or structure. Piedmont noted that the rates agreed to with special contract customers are typically based on a project-specific cost of service calculation and may, in certain

circumstances, be discounted to meet competitive market conditions or to avoid system bypass. Piedmont maintained that they are typically fixed in nature for the term of the agreement, which is typically 20 years or more, and are not open for renegotiation by either party during that term of the agreement for the tax rate changes or any other reason. Piedmont stated that they are also negotiated between Piedmont and sophisticated business entities with significant experience in negotiating commercial agreements who have significant bargaining power in the negotiations. Piedmont argued that the long-term fixed nature of the rates contained in these Commission-approved agreements includes inherent risk for both Piedmont and the special contract customer that circumstances could change during the term of the agreement that would make the rate agreed to less desirable from the perspective of one or both parties. Piedmont asserted that this risk is part of the fundamental bargain struck in reaching long-term, fixed, negotiated rate agreements.

Piedmont maintained that in light of these factors, Piedmont does not consider that it is appropriate to adjust rates under these agreements for the one-time event of a reduction in the federal corporate income tax rate when it is impractical to adjust rates for other similar changes to the underlying costs of providing service to these customers over time. Piedmont stated that it also considers that such modification of Commission-approved special contract arrangements raises problematic legal issues involving when and under what circumstances modifications should be made to previously-approved commercial agreements that do not impact the public generally. Piedmont maintained that for these reasons, the Company does not recommend that long-term special contract arrangements be included in the base rate reductions ordered by the Commission in this docket.

3. Impact on Revenues

Piedmont stated that its proposed rate adjustments will result in Piedmont's retention of the special contract customer share of the cost of service impact from the Tax Act until the effective date of Piedmont's next general rate case. Piedmont noted that the special contract customer share of the cost of service impact from the Tax Act is \$4.9 million, derived as 18.92% of the annual revenue requirement adjustment of \$26.1 million. Piedmont noted that in its next general rate case, which is currently anticipated to occur in 2019, the entirety of annual revenues from special contract customers will be absorbed into Piedmont's overall cost of service calculation and base rates, thereby ending Piedmont's retention of the special contract customer share of the cost of service impact from the Tax Act. Piedmont asserted that given the impropriety and regulatory hazard involved in making adjustments to approved fixed rate long-term special contracts, and the lack of justification for flowing back excess federal corporate income tax revenues associated with special contract agreements to its base rate customers, Piedmont considers that the proposed adjustments of rates for base rate customers reflected in its filed proposal are appropriate and properly reflect the risk calculus built into its special contract arrangements. Piedmont stated that its proposed retention of the special contract customer share of the cost of service impact from the Tax

Act will not cause it to over-earn its authorized return approved in Docket No. G-9, Sub 631.

Piedmont requested that the Commission accept its compliance filing and direct Piedmont to implement the rates set forth on Attachment B for service rendered on and after the first day of the month following the date of the Commission's order.

Initial Comments

On November 14, 2018, the Public Staff filed its comments pursuant to the Commission's October 5, 2018 Order. No other party filed comments. The Public Staff stated that it had reviewed Piedmont's proposal and had specific comments on the proposal.

The Public Staff specified that it had reviewed Piedmont's calculations for the base rate reductions to reflect the change in the federal corporate income tax rate from 35% to 21% and agrees with the Company's calculations which result in an annual revenue requirement decrease of \$26,085,534. The Public Staff maintained that it objects to Piedmont's calculation of the rates as set forth in its filing, and more specifically that the base rates are not reduced by the entire \$26,085,534 annual revenue requirement decrease. The Public Staff noted that Piedmont's filing states that it cannot reduce the rates of special contract customers due to the fixed nature of the rates, and therefore, has not proposed to refund approximately \$4,936,552 of the \$26,085,534 federal corporate income tax rate revenue requirement reduction. The Public Staff recommended that the Commission require Piedmont to recalculate its rates in the same manner that Piedmont used in its state corporate income tax compliance filings in Docket No. M-100, Sub 138, in order to reduce base rates for the total calculated revenue requirement for system customers filed in this docket.

The Public Staff noted that the Commission's July 10, 2018 Orders in Piedmont's most recent special contract filings dockets (Docket No. G-9, Sub 557; Docket No. G-9, Sub 711; and Docket No. G-9, Sub 718¹) reflect language agreed to by Piedmont that states that benefits from these agreements should flow through to system customers:

The Public Staff stated that it believes that this Agreement [as amended] should provide benefits that will flow to other ratepayers as determined in a fair and reasonable manner in a general rate case proceeding. Further, the Public Staff stated that Piedmont has committed to the Public Staff that in its next general rate case filing it will present costs and revenues associated with the Agreement [as amended] in a manner which is contributory to its overall North Carolina cost of service, and will not seek to isolate economic benefits from the Agreement from its system customers.

¹ All three of these dockets address agreements between Piedmont and Duke Energy Carolinas, LLC (DEC).

The Public Staff recommended that the Commission direct Piedmont to file new calculations revising its rates to return the total revenue requirement decrease filed in this docket to system customers based on the methodology approved by the Commission in Docket No. M-100, Sub 138. The Public Staff further recommended that the Commission direct Piedmont to file revised tariffs and give notice to its customers of the revised rates.

Reply Comments

On November 20, 2018, Piedmont filed reply comments in response to the Public Staff's November 14, 2018 comments concerning Piedmont's proposal. Piedmont noted that the Public Staff's comments recommended that the Commission require Piedmont to file new calculations revising its rates to allocate, to base rate customers, \$4,936,552 in tax savings attributable to Piedmont's special contract customers. Piedmont stated that the justification offered by the Public Staff for this request was twofold: (1) that a similar allocation of tax savings from special contract customers to base rate customers had not been opposed by Piedmont in Docket No. M-100, Sub 138; and (2) that Piedmont had recently indicated support for the notion that special contract revenues should be included in calculating its cost of service in its next general rate case proceeding.

Piedmont asserted that the matter for decision by the Commission in this docket is straightforward: Should the Tax Act's savings on taxable income generated by long-term negotiated rate special contract customers be allocated to base rate customers during the interim period between the effective date of the Tax Act, January 1, 2018, and the effective date of new rates in Piedmont's next general rate case, in addition to the tax savings already allocated to base rate customers on the taxable income they generate. Piedmont noted that the Public Staff says yes, although they offer no logical or legal justification for the proposed subsidization of base rate customers by special contract customers through their proposed allocation. Piedmont disagrees for the reasons outlined in its reply comments.

Piedmont stated that the primary reason the Company opposes transferring tax savings attributable to special contract customer revenues to base rate customers is that there is no legal or logical rationale supporting such an allocation. Piedmont maintained that the Commission's October 5, 2018 Order in Docket No. M-100, Sub 148 clearly required utilities subject to the Order to adjust their base rates to flow through the tax savings of the Tax Act to base rate customers. Piedmont noted that the Order did not address special contract rate customers whose rates are not calculated or approved in general rate case proceedings on the basis of a utility's general cost of service. Piedmont argued that its October 25, 2018 compliance filing is fully compliant with the October 5, 2018 Order in reducing rates for base rate customers for the Tax Act impact attributable to the revenues such customers generate. Piedmont argued that it cannot think of any adequate rationale, in any proceeding other than a general rate case, wherein all aspects of utility costs and revenues are examined, for taking tax savings attributable to one class of customers and using them to subsidize another class of customers who have already received the benefit of the rate reductions with respect to the revenues they generate. Piedmont maintained that absent such a rationale, Piedmont submits that

directing Piedmont to make such an allocation would be confiscatory in nature because it would involve taking Piedmont's property, a portion of the revenues collected from special contract customers under Commission approved rate structures, without a legally sufficient justification. Piedmont asserted that the fact that Piedmont may have voluntarily acquiesced to such an allocation in another docket under different circumstances does not cure the legal and rational deficiencies in the Public Staff's proposal in this proceeding.

Piedmont maintained that its position in this docket is supported not only by the plain language of the Commission's October 5, 2018 Order but also by the distinct nature of special contract rates versus cost of service based base rates. Piedmont noted that base rate customers receive service from Piedmont in exchange for the payment of tariff rates established by the Commission in general rate case proceedings where a revenue requirement based on Piedmont's annual cost of service is established. Piedmont stated that these rates remain in effect until changed by the Commission in a subsequent general rate proceeding. Piedmont stated that when base rates are established, they include all changes in Piedmont's rate base, depreciation, capital structure, finance costs, revenue, taxes, and O&M expense. Piedmont maintained that they are variable in nature and may be changed several times during the course of a 15 to 20 year period, always with the Commission's review and approval and always based on an annual updated cost of service calculation of the costs of providing base rate service. Piedmont stated that on the other hand, special contract rates are fixed for the term of the special contract, typically 15 to 20 years, and do not adjust for changes in Piedmont's cost of service either generally or specific to the special contract service provided. Piedmont noted that special contract rates are also established through negotiations between commercially sophisticated parties, reviewed by the Public Staff, and ultimately approved by the Commission in contract specific dockets rather than general rate case proceedings.

Piedmont argued that both the Company and its special contract customers assume risks associated with changes in Piedmont's cost of service during the term of their agreements and no rate adjustments are contemplated by or permitted under the agreements. Piedmont asserted that in this case, the change in the federal corporate income tax rate is just one of many aspects of the underlying Piedmont costs to provide service to its special contract customers. Piedmont stated that in this instant case, the tax rate change favors Piedmont but there may be many categories of changes in underlying costs that favor the special contract customers. Piedmont argued that in both cases the parties have assumed the risk of changes during the term of the agreement. Piedmont stated that as such the appropriate treatment of the annual tax savings associated with taxable income generated by the special contracts, in this case \$4,936,552, is to leave it with Piedmont until Piedmont's next general rate case as that is the risk allocation agreed to by the parties, recommended by the Public Staff, and approved by the Commission in Piedmont's special contract rate proceedings.

Finally, Piedmont reminded the Commission that it has previously stated in its compliance filing its intent to file a general rate case in 2019. Piedmont noted that in the general rate case proceeding, all of Piedmont's North Carolina jurisdictional rate base, depreciation, capital structure, financing costs, revenue, taxes, and O&M expense will be

incorporated into the determination of its annual cost of service, including all such amounts associated with special contract customers. Piedmont maintained that the savings associated with the federal income tax reduction on special rate contracts that are the source of disagreement in this proceeding will reduce the amount of its revenue increase request in such a case, to the benefit of Piedmont's base rate customers. Piedmont noted that this is exactly the type of benefit Piedmont had in mind when it recently agreed that the revenues from its special contracts should be included in its cost of service calculation in its next general rate case as cited by the Public Staff.

Piedmont concluded by stating that it strongly disagrees with the Public Staff proposal that the Commission should direct Piedmont to allocate tax savings associated with special contract customers to its base rate customers in this proceeding and instead recommends that the Commission should allow such savings to be treated in a manner consistent with the risk allocations agreed to by Piedmont and its special contract customers in their service agreements as recommended by the Public Staff and approved by the Commission. Piedmont recommended that the Commission approve its October 25, 2018 compliance filing.

State Corporate Income Tax Rate Decrease Application

On December 17, 2018, Piedmont filed an Application in Docket No. G-9, Sub 737 for an adjustment of its base rates to track a reduction in the state corporate income tax rate. Piedmont noted that in its Application, it is seeking Commission authorization to flow-through the benefits of a reduction in the state corporate income tax rate effective January 1, 2019 to its base rate customers. Piedmont noted that if the Commission did not issue an order in the docket prior to December 31, 2018, Piedmont would not have sufficient time to efficiently implement the rate change and associated customer notice for its January 2019 customer invoices. Piedmont maintained that in such circumstance it will calculate its difference in revenue pending Commission directive.

On December 18, 2018, in Docket No. G-9, Sub 737, the Public Staff filed a letter regarding Piedmont's December 17, 2018 Application. The Public Staff stated that it does not object to Piedmont reducing its rates to take the North Carolina corporate income tax rate reduction into account. The Public Staff maintained that it had reviewed the calculation of the total revenue requirement decrease (including that applicable to special contract customers) associated with the North Carolina corporate income tax rate reduction effective January 1, 2019 and that the Public Staff finds those calculations to be reasonable. However, the Public Staff asserted that, as with Piedmont's calculations in Docket No. G-9, Sub 731 to reflect the reduction in the federal corporate income tax rate, the Public Staff disagrees with Piedmont's calculation of the rates to refund the state corporate income tax rate revenue requirement reduction to base rate customers (those not receiving service pursuant to special contracts), and recommends that Piedmont recalculate its base rates in the same manner that Piedmont used in its state corporate income tax compliance filings in Docket No. M-100, Sub 138 (the generic docket to address the recent decreases in the state corporate income tax rate) which were

approved by the Commission, in order to reduce base rates for the total calculated revenue requirement for system customers filed in this docket.

The Public Staff further recommended that the Commission direct the Company to preserve any excess deferred income taxes (EDIT) created by the reduction in the North Carolina corporate income tax rate in a regulatory liability account for disposition in the Company's next general rate case consistent with the EDIT treatment previously approved by the Commission in Docket No. M-100, Sub 138.

On December 19, 2018, Piedmont filed a letter in response to the Public Staff's December 18, 2018 filing. Piedmont noted that it disagrees with the Public Staff's proposals for the reasons set forth in its November 20, 2018 reply comments in Docket No. G-9, Sub 731 addressing reductions in the federal corporate income tax rate.

Piedmont stated that in the Public Staff's view, Piedmont should be required to allocate tax savings attributable to special contract customer revenues to Piedmont's base rate customers who will already be receiving the benefit of tax savings attributable to the revenues they generate. Piedmont asserted that the Public Staff's proposal has no basis in the Commission's October 5, 2018 Order Addressing the Impacts of the Federal Tax Cuts and Jobs Act on Public Utilities issued in Docket No. M-100, Sub 148 which only addresses changes to utility base rates.

Piedmont stated that it also has no basis in reason as base rate customers have no rational claim on tax savings associated with revenues generated by special contract customers, whose rates are established through an entirely distinct process from the general rate case procedures utilized to establish Piedmont's base rates. Piedmont noted that it has no objection to the inclusion of special contract costs and revenues in the calculation of its overall cost of service in a general rate case proceeding. However, Piedmont asserted that arbitrarily modifying the flow of such revenues on an intra-rate case basis, without a compelling regulatory rationale is inappropriate. Further, Piedmont noted that subsidization of base rate customers with special contract tax savings, on an intra-rate case basis, undermines the basic balance of risk structures of fixed-price, long-term, special contract rates approved by the Commission and diverts contract revenues to which Piedmont is clearly legally entitled to base rate customers, without justification.

Piedmont acknowledged that it previously acquiesced to the Public Staff's preferred allocation methodology in Docket No. M-100, Sub 138, but has since given more critical consideration of that allocation methodology and now considers it to be unjustified from both a legal and policy perspective.

Discussion and Conclusions

Based upon the record, the Commission finds good cause to approve Piedmont's October 25, 2018 proposal to implement the change in the federal corporate income tax

rate and Piedmont's December 17, 2018 Application for an adjustment of its base rates to track a reduction in the state corporate income tax rate.

The Commission notes that its decision reached herein is made exclusively on the written comments filed by Piedmont and the Public Staff, and shall not be considered precedential in future proceedings. The Commission agrees with Piedmont that no legal justification has been presented to allow the Commission to require Piedmont to allocate tax savings attributable to special contract customer revenues to Piedmont's base rate customers. As Piedmont noted, the rates set for the special contracts are fixed and cannot be adjusted to reflect the tax savings attributable to the special contract revenues. Further as noted by Piedmont, under its proposal, its base rate customers will receive all of the tax savings associated with the revenues those customers generate but will not receive the tax savings associated with the revenues generated by special contracts. The Commission finds that this outcome is appropriate based on the facts presented to the Commission in these proceedings.

Further, although Piedmont did allocate the tax savings due to the special contract customers to the base rate customers when flowing through the recent state corporate income tax rate reductions, the Commission acknowledges that Piedmont has now reconsidered its position on the issue. Therefore, the Commission must now consider Piedmont's arguments and provide a decision based on the comments of the parties now before the Commission. Based upon careful consideration of the current comments, the Commission concludes that Piedmont's proposed allocation is appropriate in this circumstance. Again, the Commission's decision herein should not be considered precedential in any way, and the Commission has made its decision based solely on the comments filed by the parties in these specific dockets. The Commission also notes that Piedmont has filed a Notice in Docket No. G-9, Sub 743, stating that it intends to file a general rate case application with the Commission on or about April 1, 2019.

As recommended by the Public Staff, the Commission finds it appropriate to direct Piedmont to preserve any EDIT created by the reduction in the North Carolina corporate income tax rate in a regulatory liability account for disposition in the Company's next general rate case.

The Commission hereby approves Piedmont's October 25, 2018 proposal to implement the change in the federal corporate income tax rate and Piedmont's December 17, 2018 Application for an adjustment of its base rates to track a reduction in the state corporate income tax rate. Piedmont shall file its revised tariffs within 10 days of

the issuance of this Order, and the Public Staff is requested to file a letter as soon as reasonably possible thereafter verifying that the revised tariffs are correct and, if appropriate, recommending Commission approval. Piedmont shall notify customers of the rate change through either a bill insert or a bill notation.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of March, 2019.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in black ink, appearing to read "Janice H. Fulmore". The signature is written in a cursive style with a horizontal line extending from the start of the name.

Janice H. Fulmore, Deputy Clerk