

171 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Alliance Pipeline L.P.

Docket No. AC19-95-000

ORDER ON ACCOUNTING ENTRIES

(Issued June 18, 2020)

1. On April 11, 2019, Alliance Pipeline L.P. (Alliance) submitted a filing pursuant to 18 C.F.R. Part 201, seeking approval of certain accounting entries with respect to its deferred tax balances and income taxes (Accounting Request). In relevant part, 18 C.F.R. Part 201 states that Account 439 (Adjustments to Retained Earnings) shall “with prior Commission approval, include significant nonrecurring transactions accounted for as prior period adjustments . . . that result from realization of income tax benefits of pre-acquisition operating loss carryforwards of purchased subsidiaries.”¹ As discussed below, the Accounting Request is accepted in part to allow Alliance to reflect deferred tax accounts on its balance sheet and to reflect income taxes on its income statement. The Accounting Request is denied with respect to Alliance’s request to not record excess Accumulated Deferred Income Taxes (ADIT) as a regulatory liability. Alliance should resubmit its annual financial report required by the Commission’s regulations² (Form No. 2) for the years ended December 31, 2018 and December 31, 2019, within 60 days of the date of issuance of this order, to reflect these accounting adjustments.

I. Accounting Request

2. Alliance states that it is a limited partnership owned by three corporations, with each corporate parent preparing and paying income taxes based upon their U.S. tax returns. Alliance states that it has historically reflected deferred taxes for purposes of its annual Form No. 2 on the supporting worksheets of the Form No. 2, not on the balance sheet, and supplementary income tax information on the supporting worksheets of the Form No. 2, not on the income statement. Alliance now proposes to account for ADIT on the balance sheet and impute income taxes on the income statement. Alliance states that, whereas most of Alliance’s firm shippers were under negotiated rate contracts prior

¹ 18 C.F.R. pt. 201 (2019).

² 18 C.F.R. pt. 260 (2019).

to April 2019, all of Alliance's firm shippers are under negotiated rate contracts as of April 2019. Alliance states that its negotiated rate contracts do not provide for a rate adjustment for reductions in U.S. federal income taxes. As a result, Alliance states that the excess ADIT does not contain economic substance because flowing back the excess ADIT would not impact future revenues from the negotiated rate shippers. Accordingly, Alliance states that the excess ADIT amount would not result in a "probable future . . . reduction in future revenue," which is required by the Commission for booking excess ADIT as a regulatory liability on Alliance's books.³ Therefore, Alliance asserts that it is not recording the excess ADIT as a regulatory liability.

3. Alliance states that it will record deferred income taxes in Accounts 282 (Accumulated Deferred Income Taxes – Other Property) and 283 (Accumulated Deferred Income Taxes – Other) on the balance sheet of the Commission's Uniform System of Accounts. Alliance also commits to reflect income taxes on the Form No. 2 income statement. Alliance states that these accounting adjustments to the balance sheet and income statement will necessitate a change to Account 439. Alliance proposes to record the journal entries, which will be reflected in its Form No. 2 for the year that ended December 31, 2018, in the 2017 comparative balances in that Form No. 2.⁴

II. Responsive Pleadings

4. On April 26, 2019, Indicated Shippers⁵ filed a protest arguing that Alliance's Accounting Request should be rejected because: (1) its underlying rationale—i.e., that it does not need to credit excess ADIT to its shippers—is premature in light of Alliance's upcoming rate case, which will overlap with the contract expiration dates for many of its firm negotiated rate agreements; and (2) Alliance's proposal is contrary to the Commission's negotiated rate policy, which requires the continued viability of recourse rates.

5. Indicated Shippers assert that pursuant to a 2016 settlement, Alliance agreed to file a general section 4 rate case under the Natural Gas Act no earlier than October 1, 2019 and no later than April 1, 2020.⁶ Indicated Shippers state that the majority of Alliance's

³ Alliance Accounting Request at 1.

⁴ *Id.* at 2.

⁵ Indicated Shippers consist of BP Canada Energy Marketing Corp., ConocoPhillips Company, and Hess Trading Corporation.

⁶ Indicated Shippers Protest at 3 (citing Stipulation and Agreement, Docket No. RP15-1022-000, at Art. II (July 7, 2016)). On March 30, 2020, the Commission granted Alliance's motion to amend the settlement and extend the time for Alliance to file a section 4 rate case by 60 days from April 1, 2020 to June 1, 2020. *Alliance Pipeline*

firm negotiated rate agreements will expire, or are likely to expire, during the rate case proceeding. Alliance contends that this makes it impossible to predict when Alliance files its rate case whether: (1) Alliance's firm shippers will continue service under negotiated rate agreements or pay recourse rates; (2) existing shippers may take additional services; and (3) new shippers may elect service. Indicated Shippers argue that probable reductions in revenue should be recorded as regulatory liabilities if a decrease in taxes is likely to be returned to customers through future rates. Thus, Indicated Shippers assert that Alliance's Accounting Request prematurely assumes that no firm shipper will pay recourse rates by the time that Alliance files its next rate case.⁷

6. Indicated Shippers further contend that the Accounting Request is inconsistent with the Commission's negotiated rate policy. Specifically, Indicated Shippers assert that Alliance's proposal to not record excess ADIT as a regulatory liability allows Alliance to avoid adjusting for excess ADIT in its rate base, and to avoid ensuring that its recourse rates are just and reasonable.⁸

7. On May 30, 2019, Alliance submitted an answer to Indicated Shippers' protest. In its answer, Alliance asserts that the Accounting Request is not the appropriate forum to raise ratemaking concerns. Alliance notes that approvals in accounting dockets often explicitly state that the approval is for accounting purposes only and is not intended to influence the outcome of any rate treatment that may be established. Finally, Alliance reiterates that its proposed accounting entries are consistent with the Commission's accounting rules and regulations.⁹

III. Discussion

A. Procedural Matters

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Alliance's answer because it has provided information that assisted us in our decision-making process.

L.P., 170 FERC ¶ 61,292, at P 6 (2020). Alliance filed a section 4 rate case on May 29, 2020 in Docket No. RP20-908-000.

⁷ Indicated Shippers Protest at 4.

⁸ *Id.* at 5.

⁹ Alliance Answer at 2.

B. Substantive Matters

9. The Commission's accounting and financial regulations require Alliance to report its income taxes and ADIT (including related excess and deficiencies) in the Form No. 2 using the accounts prescribed in the Uniform System of Accounts. We have reviewed the Accounting Request and find that Alliance's proposal to reflect deferred tax accounts on its balance sheet and income taxes on its income statement brings it into compliance with these requirements. Thus, we approve Alliance's proposal to: (1) record ADIT on the balance sheet as reflected in Accounts 282 and 283 of the Commission's Uniform System of Accounts; and (2) reflect income taxes on the Form No. 2 income statement, and make any applicable changes to Account 439, consistent with the Commission's accounting and financial reporting regulations. We note that Alliance further commits to reflect these changes in its Form No. 2 for the year ended December 31, 2018 in the 2017 comparative balances. We remind Alliance that it should report the results of its operations using all applicable balance sheet and income statement tax accounts as required by the Commission's Uniform System of Accounts.

10. We deny Alliance's request to not record excess ADIT as a regulatory liability. The instructions to Account 254 (Other Regulatory Liabilities) require that credits which are probable of being included in a different period for purposes of developing the rates that the utility is authorized to charge for its utility services must be recorded in that account.¹⁰ We agree with Indicated Shippers that in a future ratemaking proceeding a negotiated rate shipper should generally be treated as if it were paying the maximum recourse rate to ensure that shippers paying the maximum recourse rate are not adversely affected by the pipeline's negotiated rate transactions.¹¹ Thus, even though Alliance may currently have negotiated rate agreements with its shippers, when it next submits a rate case it must present cost-of-service information as if Alliance had been collecting recourse rates from those shippers.¹² We note that this is a shift from the position in the delegated letter order issued in the Equitrans proceeding, which approved Equitrans' proposal to account for the portion of the excess ADIT associated with its negotiated rate customers as a non-operating deferred income tax benefit instead of a regulatory

¹⁰ 18 C.F.R. pt. 201 (2019), Account 254, Other Regulatory Liabilities.

¹¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,240 (1996). The Commission reasoned that the availability of a recourse service would prevent pipelines from exercising market power by assuring that the customer can fall back to cost-based, traditional service if the pipeline unilaterally demands excessive prices or withholds service.

¹² *See id.*

liability.¹³ The delegated letter order noted “that if the required refund amount related to excess ADIT changes, Equitrans is required to make appropriate adjustments to its accounting for the excess ADIT regulatory liability to reflect the actual refund obligation.”¹⁴ Equitrans’ accounting request to remove excess ADIT from its books was approved based on the Commission’s longstanding policy that a reduction in a pipeline’s costs, including a reduction in its tax costs, does not necessarily lead to a reduction in the negotiated rate.¹⁵ Based on that policy, and Equitrans’ representation that its request was applicable only to its negotiated rates, its request was approved. However, consistent with the discussion above, following additional consideration of how excess ADIT may be used for future rate setting, irrespective of currently negotiated rates, we find our determination here to be a more accurate interpretation of the Commission’s accounting and ratemaking requirements. Accordingly, Alliance is directed to record the excess ADIT as a regulatory liability on its books to be amortized. Alliance is also directed to resubmit its Form No. 2 for the years 2018 and 2019 within 60 days of the date of issuance of this order, to reflect this regulatory liability.

¹³ See *Equitrans, L.P.*, Docket No. AC18-115-000 (Aug. 21, 2018) (delegated order) (Equitrans).

¹⁴ *Id.* at 2.

¹⁵ See *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031, at P 247 (2018).

The Commission orders:

(A) The Accounting Request is accepted in part, as discussed in the body of this order.

(B) Alliance is directed to record the excess ADIT as a regulatory liability on its books to be amortized, and to resubmit a revised Form No. 2 for the year 2018 and 2019 within 60 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.