

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's Investigation of the)
Financial Impact of the Tax Cuts and Jobs Act of 2017) Case No. 18-47-AU-COI
on Regulated Ohio Utility Companies)

**COMMENTS AND RECOMMENDATIONS TO REDUCE OHIOANS' UTILITY BILLS
AS A RESULT OF THE FEDERAL TAX CUTS AND JOBS ACT OF 2017**

**BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

Christopher Healey (0086027)
Counsel of Record
Kevin F. Moore (0089228)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 E. State Street, Suite 700
Columbus, Ohio 43215
Telephone: (614) 466-9571
christopher.healey@occ.ohio.gov
kevin.moore@occ.ohio.gov
(all willing to accept service via e-mail)

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I. INTRODUCTION

The passing of the Tax Cuts and Jobs Act of 2017¹ provides a rare opportunity for across-the-board rate reductions for Ohio utility consumers. The Public Utilities Commission of Ohio ("PUCO") has taken a first step to protect consumers by initiating this Commission-Ordered Investigation. Consumers—not utilities or their shareholders—should reap the benefits of lower federal tax rates under the Tax Cut Act because it is consumers who pay for utilities' tax obligations through their monthly utility bills.

The Office of the Ohio Consumers' Counsel ("OCC") recommends, consistent with State policies favoring reasonably priced utility service,² that the Tax Cut Act savings for consumers be reflected fully in rate reductions or credits to their monthly utility bills. The benefits of reduced utility tax obligations should not be diverted to fund utility infrastructure, modernization, or other projects.

¹ H.R. 1, 115th Cong. (2017) (hereinafter the "Tax Cut Act").

² See, e.g., R.C. 4928.02(A), 4929.02(A)(1).

II. COMMENTS

A. The PUCO has authority to reduce utilities' charges to customers to account for the tax savings that occur under the Tax Cut Act.

i. R.C. 4905.26 authorizes the PUCO to investigate and reduce rates in this proceeding.

By law (R.C. 4905.26), the PUCO has the authority to perform Commission-Ordered Investigations, like this one. R.C. 4905.26 provides that the PUCO, upon its own initiative, may investigate any situation where the PUCO believes "that any rate, fare, charge, toll, rental, schedule, classification, or service ... is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law...." The PUCO recently invoked this authority in its investigation of submetering in Ohio, stating that "the Commission is well within its jurisdiction to conduct investigations under R.C. 4905.26."³

As a result of such investigation, the PUCO can modify rates to prevent them from continuing to be unjust and unreasonable. In *Ohio Consumers' Counsel v. PUCO*,⁴ the utility argued that the PUCO could perform an investigation under R.C. 4905.26 but could not use the results of that investigation to change rates.⁵ On appeal, the Ohio Supreme Court rejected this as illogical. According to the Court, such an interpretation would "strip [R.C. 4905.26] of its usefulness."⁶ In other words, it would not make sense that the General Assembly would allow the PUCO to investigate rates and determine that

³ *In re the Commission's Investigation of Submetering in the State of Ohio*, Case No. 15-1594-AU-COI, Second Entry on Rehearing ¶ 14 (June 21, 2017).

⁴ 58 Ohio St. 2d 153 (1979).

⁵ *Id.* at 156.

⁶ *Id.* at 157.

they are unjust and unreasonable but then lack the authority to provide a remedy. As the Court concluded: "If, after an investigation and hearing pursuant to [R.C. 4905.26], the commission determines that existing rates are unjust and unreasonable, it must follow that the commission can then remedy the situation by ordering that new rates be put in effect."⁷

The Supreme Court reaffirmed this holding in subsequent cases. In *Ohio Consumers' Counsel v. PUCO*,⁸ the Court succinctly concluded: "We have repeatedly held that utility rates may be changed by the PUCO in an R.C. 4905.26 complaint proceeding such as this, without compelling the affected utility to apply for a rate increase under R.C. 4909.18."⁹ And in *Lucas County Commissioners v. PUCO*,¹⁰ the Court was similarly clear in its ruling: "Pursuant to R.C. 4905.26..., the commission may conduct an investigation and hearing, and fix new rates to be substituted for existing rates, if it determines that the rates charged by a utility are unjust and unreasonable."¹¹

The Court has spoken: the PUCO can reduce unjust and unreasonable rates through this Commission-Ordered Investigation proceeding. There is no law that utilities rates can only be changed in a separate proceeding filed under R.C. 4909.18, 4928.143, or any other ratemaking statute.

Indeed, the PUCO has modified utilities' tariffs in COI proceedings in the past. *See, e.g., In re the Commission's Investigation into the Policies & Procedures of Ohio*

⁷ *Id.*

⁸ 110 Ohio St. 3d 394 (2006).

⁹ *Id.* at 400.

¹⁰ 80 Ohio St. 3d 344 (1997).

¹¹ *Id.* at 347.

Power Co., Columbus S. Power Co., The Cleveland Elec. Illuminating Co., Ohio Edison Co., The Toledo Edison Co. & Monongahela Power Co. Regarding the Installation of New Line Extension, Case No. 01-2708-EL-COI, Opinion & Order (Nov. 7, 2002) (PUCO investigated policies and procedures of Ohio utilities and ordered utilities to file updated tariffs in the COI docket); *In re Conjunctive Elec. Serv. Guidelines Proposed by Participants of the Commission Roundtable on Competition in the Elec. Industry*, Case No. 96-406-EL-COI (approving new conjunctive electric service tariffs as filed by various electric utilities as a result of a COI); *In re the Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Servs.*, Case No. 96-1310-TP-COI, Entry (Dec. 20, 1996) (ordering local exchange carriers to file new tariffs for payphone access).

The PUCO can, and should, exercise its authority to modify rates through this COI by ordering all Ohio utilities to reduce their charges to customers to reflect reductions in tax liabilities under the Tax Cut Act.

ii. The PUCO also has authority to modify rates—including rider rates approved in an electric security plan—under R.C. 4909.16.

The PUCO can invoke its authority under R.C. 4909.16 to protect customers from paying too much for their utilities' tax obligations. R.C. 4909.16 grants the PUCO authority to temporarily amend any existing rates when it "deems it necessary to prevent injury to the ... interests of the public." Whether it is necessary to amend rates is "within the sound discretion of the commission."¹² That is, the PUCO has broad authority regarding the circumstances and manner in which it invokes R.C. 4909.16.

¹² *Seneca Hills Serv. Co. v. PUCO*, 56 Ohio St. 2d 410, 413 (1978).

In *Duff v. PUCO*,¹³ for example, the PUCO entered an order implementing temporary rates under R.C. 4909.16.¹⁴ On appeal, the Ohio Supreme Court ruled that not only can the PUCO modify rates under R.C. 4909.16, but it can do so without a hearing because the PUCO must have the power to "take immediate action to protect the public."¹⁵ The PUCO has similarly recognized the broad scope of R.C. 4909.16. *See, e.g., In re Application of Akron Thermal, Ltd. P'ship for an Emergency Increase in its Rates*, Case No. 09-453-HT-AEM, Opinion & Order ¶ 9 (June 17, 2009) ("The Supreme Court of Ohio has consistently construed [R.C. 4909.16] as vesting the Commission with broad discretionary powers in determining when an emergency exists and in tailoring a remedy ..."); *In re Application of Se. Nat. Gas Co. for an Emergency Increase in its Rates & Charges for Nat. Gas Serv.*, Case No. 01-140-GA-AEM, Opinion & Order ¶ 4 (Jan. 30, 2001) (same).

Notably, R.C. 4909.16 broadly allows the PUCO to reduce "any existing rates."¹⁶ This means that the PUCO can rely on R.C. 4909.16 to reduce base rates and rider rates, including distribution riders approved as part of an electric security plan.¹⁷

Here, the PUCO opened this Commission-Ordered Investigation to ensure that customers receive the benefits of the Tax Cut Act. The public would be harmed if customers were required to continue paying their utilities' taxes at a 35% rate while the

¹³ 56 Ohio St. 2d 367 (1978).

¹⁴ *Id.* at syllabus.

¹⁵ *Id.* 377-78 (citation omitted).

¹⁶ Emphasis added.

¹⁷ Furthermore, if the Court relies on R.C. 4909.16 or R.C. 4905.26 to modify rates previously approved in an electric security plan case, such modification would not give rise to a utility's right to unilaterally terminate its electric security plan. A utility can only terminate its electric security plan if the PUCO modifies the plan "under division (C)(1) of" R.C. 4928.143. Here, the PUCO would not be modifying any electric security plan under R.C. 4928.143; it would be doing so under R.C. 4909.16 or R.C. 4905.26.

utility is in fact only paying taxes at a rate of 21%. The PUCO should invoke R.C. 4909.16 to immediately order utilities to modify all rates—including base rates and riders approved in ESP cases—to reflect the savings from the Tax Cut Act.¹⁸ Without such relief, customers might continue to pay rates that are demonstrably unjust and unreasonable.

B. The PUCO should order that all rates, including base rates and rider rates are subject to refund.

In its Entry, the PUCO required Ohio utilities to enter a deferred liability in the amount of the estimated reduction in federal income tax resulting from the Tax Cut Act (the "Accounting Directive").¹⁹ OCC supports this ruling as one way to protect customers' right to receive the benefits of any reduction in utilities' tax obligations. But the PUCO should take another step to protect consumers' right to receive the full benefits of the Tax Cut Act by ordering all public utilities in Ohio to immediately update each of their rate-related tariffs to include the following proposed language:

Any charges under this tariff shall be subject to refund based upon the Commission's findings in Case No. 18-47-AU-COI or any other proceeding in which the Commission, the Supreme Court of Ohio, or any other court or agency of competent jurisdiction determines that the rates charged under this tariff should be reduced to reflect the benefits to customers of the Tax Cuts and Jobs Act of 2017, H.R. 1, 115th Cong. (2017).

This language will protect consumers in at least two ways.

¹⁸ As discussed below, OCC recommends that utilities be required to estimate the tax benefits under the Tax Cut Act and to begin immediately providing a credit to customers. Then, these reductions will be incorporated in the utilities' next base rate cases. The reduction in rates will be temporary, as required by R.C. 4909.16, because the bill credits will end with the effectiveness of new rates through each utilities' next base rate case.

¹⁹ Entry ¶ 7.

First, several Ohio electric utilities have argued that the PUCO's Accounting Directive did not comply with R.C. 4905.13, which is the statute that authorizes the PUCO to enter accounting orders.²⁰ While this argument is meritless,²¹ should the electric utilities ultimately prevail in overturning the PUCO's Accounting Directive, consumers could be left with no remedy regarding any tax savings that occur from January 1, 2018 until a final order reducing rates in this case. But if the PUCO immediately requires all rates to be refundable, then the PUCO could provide the tax benefits to consumers, even in the absence of the Accounting Directive.

Second, the Accounting Directive requires utilities to record a deferred liability in the amount of the "estimated reduction in federal income tax resulting from the" Tax Cut Act. It is possible, therefore, that utilities will underestimate this amount; indeed, they have an incentive to underestimate to avoid crediting customers with the full value of the tax benefits. And if the benefits to consumers are ultimately deemed to be greater than the amount that the utility has record as a deferred liability, consumers may not have any mechanism to recover the difference between the actual tax benefits and the amount in

²⁰ See Joint Application for Rehearing of Ohio Power Co., Ohio Edison Co., the Dayton Power & Light Co., Duke Energy Ohio, Inc., the Cleveland Elec. Illuminating Co., & the Toledo Edison Co. at 5-6 (Feb. 9, 2018) (arguing that because the PUCO's Accounting Directive violates R.C. 4905.13 because the electric utilities "did not receive advance notice or a hearing regarding that directive").

²¹ In their application for rehearing, the electric utilities argue that R.C. 4905.13 requires them to receive notice and a hearing, and they claim they did not receive either. This argument fails. First, R.C. 4905.13 does not require notice. It states only that a hearing must be held. See R.C. 4905.13 ("The public utilities commission may, after hearing had upon its own motion or complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged, or credited."). Second, the PUCO has consistently held, at the request of Ohio utilities, that it can enter accounting orders without a hearing. See, e.g., *In re Application of the Dayton Power & Light Co. for Authority to Modify its Accounting Procedures*, Case No. 04-1645-EL-AAM, Finding & Order (June 1, 2015) (rejecting argument that R.C. 4905.13 requires a hearing and entering accounting order without one). OCC reserves the right to supplement this and to further respond to the electric utilities' application for rehearing on this issue in a memorandum contra the application for rehearing.

the utility's deferral liability account.²² Including language that subjects all rates to refund would protect consumers from this unjust result.

C. The PUCO must account for the impact of the Tax Cut Act when approving new rates in pending cases.

OCC supports the PUCO's proactive protection of customers in this docket. But this is not the only forum where the PUCO can protect customers from paying too much for their utilities' taxes. The PUCO should—and indeed must—reduce rates in all currently-pending cases before it to reflect the lower tax rate effected through the Tax Cut Act.

Binding Ohio Supreme Court precedent requires the PUCO to account for changes to tax rates under the Tax Cut Act when setting new rates in pending cases before it. In *East Ohio Gas Co. v. PUCO*,²³ the PUCO knew that tax rates changed from the time of the test period to the time that new rates would actually be in effect.²⁴ The Supreme Court found that "[i]t was the duty of the commission to consider not only the taxes actually assessed during the test period, but to compute what they would be after the test period in view of the change in laws...."²⁵ Because the PUCO knew about the change in tax rate at the time of its order, its decision to base rates on the old tax rate was "arbitrary and unreasonable."²⁶ The Court remanded the case to the PUCO and instructed

²² See *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Op. No. 2018-Ohio-229, ¶¶ 18-19 (Jan. 24, 2018).

²³ 133 Ohio St. 212 (1938).

²⁴ *Id.* at 226.

²⁵ *Id.* (emphasis added).

²⁶ *Id.*

it to determine the amount of taxes that the utility would actually pay when setting new rates.²⁷

The binding precedent of the Ohio Supreme Court is unambiguous: when the PUCO has actual knowledge of the tax rate that a utility will be assessed, the PUCO must account for the actual tax liability when setting rates.

The PUCO has in past cases followed the Court's dictate and made adjustments that reflect changes in the actual taxes a utility is liable for. In *In re Application of Ohio Power Co. to Increase Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*,²⁸ for example, the PUCO cited *East Ohio Gas* and concluded, quite plainly: "Ohio law **requires** that all known changes in the tax laws after the test year must be recognized in setting rates."²⁹ Accordingly, the PUCO approved rates based on a new tax rate that went into effect after the test period ended.³⁰

Similarly, in *In re Application of the Cleveland Electric Illuminating Co. for Authority to Amend and Increase its Filed Schedules Fixing Rates and Charges for Electric Service*,³¹ the PUCO adjusted tax allowances to reflect the lower tax liability of utilities in response to the Tax Reform Act of 1986. There, the PUCO rejected the utility's argument that a higher tax allowance should be approved.³² Parties argued that allowing any rate higher than the actual tax rate would cause the utility to over-collect its costs

²⁷ *Id.* at 227. *See also Gen. Tel. Co. v. PUCO*, 174 Ohio St. 575, 576-80 (1963) (citing *East Ohio Gas* and concluding that the PUCO is required to set rates based on the actual federal taxes that a utility will pay).

²⁸ PUCO Case No. 78-676-EL-AIR, 1979 Ohio PUC LEXIS 2 (Apr. 16, 1979).

²⁹ *Id.* at *41 (emphasis added).

³⁰ *Id.*

³¹ Case No. 86-2025-EL-AIR, 1987 Ohio PUC LEXIS 28 (Dec. 16, 1987).

³² *Id.* at *194-200.

from customers and that known and measurable tax changes should be recognized.³³ The PUCO agreed and found that allowing the utility to charge customers utility rates based on outdated, higher tax rates "would, without a doubt, overstate [federal income tax] expense for the period [the utility's] rates approved in this case will be in effect."³⁴

In light of Ohio Supreme Court precedent and the PUCO's own acknowledgment that changes in tax rates must be accounted for in pending cases, the PUCO must protect customers in all cases currently before it by accounting for the impacts of the Tax Cut Act. These include, but are not necessarily limited to, Dayton Power & Light's pending base rate case (Case No. 15-1830-EL-AIR) and Duke Energy's pending base rate case (Case No. 17-32-EL-AIR). In DP&L's case, the PUCO Staff should address the tax savings for consumers in its forthcoming report of investigation, and the PUCO should incorporate those tax savings into base rates. And in Duke's case, the PUCO or Attorney Examiner should find that although the Staff report was filed before the Tax Cut Act was passed, it must still be taken into account. The PUCO's rules allow the Attorney Examiner in that case, or the PUCO itself, to expand the scope of that proceeding to address the tax savings for consumers under the Tax Cut Act.³⁵

The protections afforded customers through this current Commission-Ordered Investigation, while crucial for consumer protection, must be supplemented with PUCO decisions in pending rate cases that affirmatively address the reduction in federal tax rates under the Tax Cut Act.

³³ *Id.* at 194-96.

³⁴ *Id.* at *197 (citing *Ohio Power*, Case No. 78-676-EL-AIR (Apr. 16, 1979)).

³⁵ See Ohio Adm. Code 4901-1-28(C) (PUCO or attorney examiner "may designate additional issues or areas of inquiry" beyond those raised in objections to the Staff report). Nothing in this rule requires the utility to consent to such designation.

D. The PUCO should require utilities to estimate the tax impact on base rates and immediately begin providing a monthly bill credit to customers.

Customers pay utilities' income taxes through base rates. One way that this is done is by "grossing up" the utility's authorized after-tax return on equity. For example, if the PUCO authorizes an after-tax return on equity of 6.0%, and the utilities' assumed tax rate is 35%, then rates will be set to "gross up" the 6.0% return to about 9.2%.³⁶ But if the assumed tax rate is 21%, then the 6.0% return on equity will only gross up to 7.6%.³⁷ This difference means millions of dollars in savings for consumers.

As a result of the Tax Cut Act's reduction in the federal tax rate, Ohio public utilities' base rates have been unjust and unreasonable since January 1, 2018.³⁸ This is because they were set using the old corporate tax rate of 35%, not the 21% tax rate in effect since January 1. Given this extraordinary and rare change in the law, the rates that customers have been paying this year are no longer just and reasonable as required by Ohio Revised Code 4905.22.

To protect customers from paying unjust and unreasonable rates, and to provide the benefits of the Tax Cut Act to customers as soon as possible, the PUCO should order all Ohio public utilities, within 20 days of any Entry or Order in this case, to estimate the tax impact on base rates and to then begin providing a monthly bill credit to customers

³⁶ $6\% / (1 - 0.35) = 9.23\%$.

³⁷ $6\% / (1 - 0.21) = 7.59\%$. These numbers are not intended to reflect the actual tax rates used for a utilities' gross-up; they demonstrate generally how customers' rates should go down as a result of a decrease in tax rates. The gross-up may account for both federal and state taxes and thus is not typically equivalent to the utility's marginal federal tax rate.

³⁸ This refers to rates being unreasonably high as a result of the change in tax law. The Consumers' Counsel does not concede that all Ohio utilities' rates were just and reasonable prior to January 1, 2018. Nor does the Consumers' Counsel concede that addressing this tax issue will necessarily result in rates that are just and reasonable. It is a good start for consumers, but there is more work to be done in other areas outside the scope of this tax proceeding.

based on that estimate, including carrying costs from January 1, 2018. The tax benefit between January 1, 2018 and the effective date of a base rate adjustment or a monthly bill credit for capturing the Tax Cut Act benefit for consumers should be accounted for in the deferred liability account discussed above.

Subsequently, the effects of the Tax Cut Act should be incorporated into the utilities' base rates in their next base rate case. For those utilities with pending base rate cases (like Duke Energy Ohio and Dayton Power & Light), the impact of the Tax Cut Act must be incorporated into their new base rates in these cases.³⁹ Other utilities should be encouraged to file base rate cases as soon as practicable to incorporate the tax change. Once a utility's new rates are put into effect following a base rate case, the monthly bill credits based on the utility's estimate should be discontinued with a true-up occurring in the applicable base rate case.

This two-step process (monthly credits based on the utility's estimate followed by true-up and new base rates using the new tax rates) properly balances the interests of customers and utilities. It allows customers to start benefitting from the Tax Cut Act as soon as possible based on the utility's best estimate of the tax savings resulting from the Tax Cut Act. And utilities are protected because the actual amount of tax savings will ultimately be accounted for in the utility's next base rate case.

³⁹ See § II.C above.

E. All Ohio public utilities should estimate the amount of excess accumulated deferred income taxes resulting from the Tax Cut Act and should immediately begin providing a monthly credit to customers based on that estimate.

As the PUCO recognized in its Order, it will need to address how the Tax Cut Act impacts utilities' accumulated deferred income taxes ("ADIT").⁴⁰ There should be universal agreement that the reduction in the corporate tax rate from 35% to 21% under the Tax Cut Act will result in excess ADIT for Ohio utilities.

Customers generally pay for utilities' taxes through their utility bills. But because of the differences in utilities' accounting for book and tax purposes, the amount of taxes that customers pay to utilities is greater than the amount of tax that the utilities actually pay during that same time period. The difference is the utility's deferred income taxes, and these deferred income taxes accumulate over time to generate "accumulated" deferred income taxes, or ADIT.

The value of ADIT is set based on the tax rates when the deferred income taxes are recorded. The utilities' ADIT reserves were largely recorded assuming the 35% income tax rate that has been in effect since 1993.⁴¹ Since utilities are now required to cover income taxes at a 21% rate, a portion of their ADIT will be considered excess and should be returned to customers.

Customers should receive the full benefit of the Tax Cut Act. Utilities should be required to return all excess ADIT to customers. OCC therefore recommends the following process to ensure that utilities do not receive a windfall as a result of their excess ADIT:

⁴⁰ Entry (Jan. 10, 2018).

⁴¹ Omnibus Budget Reconciliation Act of 1993, H.R. 2264, 103rd Cong. (1993).

1. Utilities will file, within 20 days of an Entry or Order in this case, (a) an estimate of their excess ADIT, and (b) a proposed monthly bill credit through which excess ADIT can be returned to customers, including carrying costs from January 1, 2018. These proposed monthly bill credits will go into effect the first of the month following the utility's filing.
2. Utilities will file, within 90 days of an Entry or Order in this case, (a) a final calculation of total excess ADIT, and (b) an adjusted proposed monthly bill credit through which excess ADIT can be credited to customers, including carrying costs from January 1, 2018. These filings should be supported by the sworn testimony of at least one utility witness and should include all applicable assumptions, calculations, and workpapers supporting the result. Parties will have 21 days to file comments regarding these filings, and the utilities will have ten days after that to file reply comments. The PUCO will then set final amounts for each utility's monthly bill credit, which shall include a true-up of the estimated amounts previously credited to customers.

This process would provide relief to customers in the immediate future based on the utilities' best estimates of their excess ADIT. It would also protect utilities by giving them additional time to analyze this complex tax issue before arriving at a final calculation of the amount of excess ADIT that should be credited to customers going forward.

F. All riders with tax components should be immediately reduced to reflect the new corporate tax rate.

Many of the riders that consumers pay contain a tax component that is a part of the overall rate. The Tax Cut Act's reduction in the federal corporate income tax rate—from 35% to 21%—has left these riders overstated and in need of reduction. Accordingly, OCC recommends that all utility rider rates with tax components should be reduced immediately to reflect the 21% tax rate established by the Tax Cut Act. The tax benefit between January 1, 2018 and the effective date of a rider's rate adjustment for capturing

the Tax Cut Act benefit for consumers should be accounted for in the deferred liability account discussed above.

An example of a rider that is affected by the Tax Cut Act's rate reduction is FirstEnergy's Delivery Capital Recovery ("DCR") Rider. One of the components of the DCR revenue requirement is the return on rate base. As can be seen in revenue requirement calculation for Rider DCR, the last step in calculating the revenue requirement is computing the taxes on the equity component of the rate of return.⁴² The income tax rate used to calculate the income taxes on the equity return includes a component for local income taxes, which varies over time for each of the FirstEnergy companies but appears to be about 1.5%. With a federal income tax rate of 35% and a local income tax rate of 1.5%, the combined income tax rate is 35.975% (giving effect to the deductibility of local income taxes for federal income tax purposes).⁴³

Assuming an incremental DCR rate base of \$783 million,⁴⁴ and weighted equity return of 5.145%,⁴⁵ the equity return component of the return requirement would be \$40.3 million.⁴⁶ As shown in the FirstEnergy revenue requirement calculation, the income taxes on the equity return is calculated as the equity return * (1 / (1-t) - 1), with t being the

⁴² See *In re Application for Tariff Update of Rider DCR*, Case No. 17-1921-EL-RDR, Tariff Update at 2 of 71 (Jan. 12, 2018).

⁴³ *Id.* (35.975% being the approximate weighted average of the composite income tax rates provided on this schedule).

⁴⁴ *Id.* (combined rate base of \$782.8 million for the three FirstEnergy companies).

⁴⁵ $0.49 * 10.5\%$.

⁴⁶ $\$783,000,000 * 0.05145$.

combined tax rate.⁴⁷ Thus, with an equity return of \$40.3 million and a combined income tax rate of 35.975%, the income tax is about \$23.6 million.

When the federal income tax rate is reduced from 35% to 21%, the combined income tax rate is reduced to 22.185%. Applying the same formula described in the last paragraph, the income tax expense included in the DCR revenue requirement is reduced from \$22.6 million to \$11.1 million, which should mean savings to consumers of about \$11.5 million.

The PUCO should order all Ohio public utilities to file, within 20 days of any Order or Entry in this case, an update to all riders that contain tax components to similarly reduce the amount that customers pay for utilities' taxes, including carrying costs from January 1, 2018. This is a necessary step to protect customers from paying unjust and unreasonable rates.

G. The benefits of the Tax Cut Act should be returned to customers through reductions in their bills. They should not be diverted to fund utility investments or other projects.

Utilities in some jurisdictions (including affiliates of certain Ohio utilities) have proposed that instead of returning the benefits of the Tax Cut Act directly to customers through their utility bills, utilities should use the tax savings to fund various investments and other projects.⁴⁸ The PUCO should not entertain any such proposals. A direct

⁴⁷ *In re Application for Tariff Update of Rider DCR*, Case No. 17-1921-EL-RDR, Tariff Update at 2 of 71 (Jan. 12, 2018).

⁴⁸ See, e.g., <https://news.duke-energy.com/releases/duke-energy-to-pass-savings-from-new-federal-tax-law-to-north-carolina-customers> (Duke Energy Carolinas proposing that tax savings be used for storm-related and environmental compliance costs or to accelerate the depreciation of assets); <https://www.utilitydive.com/news/florida-power-light-to-use-tax-savings-to-pay-for-irma-damage/514972/> (utility proposal to use tax savings to repair storm damage); *Accounting Treatment of the Impacts Resulting from the Passage of the 2017 Tax Reform Bill H.R. 1*, Wisconsin Public Service Commission, Docket 5-AF-101, Dahlberg Light & Power Company Comments (Feb. 9, 2018) (utility arguing that it should be permitted to simply keep the tax savings until it files a new rate case); *Accounting Treatment of the Impacts Resulting from the Passage of the 2017 Tax Reform Bill H.R. 1*, Wisconsin Public Service Commission,

reduction in customers' bills is the most efficient, and fairest way to provide benefits to Ohio customers.

First, a bill reduction is a simple, equitable way to ensure that all customers benefit from the Tax Cut Act. Ohioans should be given the opportunity to put more money in their pockets, which they can use for other necessities, rather than being forced to use the tax savings to fund utility investments.

Second, allowing a utility to instead offset other costs could result in subsidies if the costs that are offset are not allocated in the same manner as the utility's tax liabilities. For example, if residential customers pay 50% of a utility's tax liabilities, then they should receive 50% of the benefits from the Tax Cut Act. But if the utility uses its tax savings to fund a project that would otherwise be allocated only 40% to residential customers, then the residential class would be subsidizing the nonresidential classes.

Third, the PUCO should strive to return tax overpayments to customers as soon as possible. This will ensure that those customers who actually made the excess tax payments to their utilities are more likely to see the benefits of the Tax Cut Act. If the PUCO allows utilities to use the tax savings for future projects, it will take more time (years or decades) for customers to realize the full benefits of the Tax Cut Act. As time passes, more and more Ohioans that made tax overpayments to their utilities will no longer be customers of that utility and will never get their money back, thereby creating inter-generational inequity in rates.

Docket 5-AF-101, St. Croix Valley Natural Gas Company, Inc. Comments (February 9, 2018). (utility proposing that tax savings be used for capital improvements).

Fourth, allowing utilities to spend tax overpayments on other investments would not give customers the benefit of their bargain. Customers have been paying utilities higher rates so that the utilities could pay their taxes at the previous rate of 35%. In effect, a portion of each customer's bill is earmarked for the utility's tax obligations. Allowing utilities to instead use those funds for other purposes would constitute an after-the-fact appropriation of customer money for a use that was not contemplated when the customer paid his or her utility bill.

The Consumers' Counsel supports putting money back into the hands of Ohioans so that they can spend it or save it on their own. Utilities should not be permitted to hold their customers' funds for future investment projects.

III. CONCLUSION

Ohio consumers can save many millions of dollars on their utility bills as a result of the Tax Cut Act. But to make this happen, the PUCO, with the assistance of utilities, OCC, and other interested parties must work together to ensure that (i) the savings resulting from the Tax Cut Act are accurately calculated, (ii) efficient mechanisms are in place to timely provide those savings to customers, and (iii) the utility savings attributable to Tax Cut Act translate fully to savings for consumers in rate reductions or credits to their monthly utility bills. The tax cut savings should not be diverted to fund utility investment projects.

OCC looks forward to working with the PUCO in this investigation and in other dockets to ensure that the PUCO's goal of passing the benefits of the Tax Cut Act to consumers⁴⁹ comes to fruition.

Respectfully submitted,

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Kevin F. Moore (0089228)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 E. State Street, Suite 700
Columbus, Ohio 43215
Telephone: (614) 466-9571
christopher.healey@occ.ohio.gov
kevin.moore@occ.ohio.gov
(all willing to accept service via e-mail)

⁴⁹ Entry ¶ 1 (Jan. 10, 2018).

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments and Recommendations was served on the persons stated below via electronic transmission, this 15th day of February 2018.

/s/ Christopher Healey
Christopher Healey
Energy Resource Planning Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov

Attorney Examiner:
Megan.addison@puc.state.oh.us

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