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 on Regulated Utility Companies.	)))	Case No. 18-47-AU-COI

NORTHEAST OHIO PUBLIC ENERGY COUNCIL'S
INITIAL COMMENTS

I. INTRODUCTION

The Northeast Ohio Public Energy Council ("NOPEC") is a regional council of governments established under R.C. Chapter 167, and is the largest governmental retail energy aggregator in Ohio. It is comprised of approximately 220 member communities in the thirteen (14) northern Ohio counties of Ashtabula, Athens, Lake, Geauga, Cuyahoga, Summit, Lorain, Medina, Trumbull, Portage, Huron, Columbiana, Mahoning, and Seneca. NOPEC provides electric aggregation service to approximately 500,000 retail electric customers, and provides natural gas aggregation service to over 300,000 retail natural gas customers. NOPEC has been an active participant in Ohio's competitive natural gas and electric markets since their inception, and has arranged supply contracts that have resulted in customer savings of more than $300 million since 2001.

NOPEC has a vital interest that its members and its customers have the lowest total energy bills possible. The Tax Cuts and Jobs Act of 2917 ("TCJA") reduced Ohio's regulated utilities' federal corporate income tax rate from 35 percent to 21 percent effective January 1, 2018. Economists at University of Pennsylvania's the Wharton Budget Model estimate that the new law will reduce the federal tax bill of the nation's electric industry alone by $1 billion this year; and that the savings would grow to $5 billion in 2021.[1]

NOPEC applauds the PUCO's recognition that this enormous windfall should be passed on to utilities' ratepayers,[2] who provide the funds to pay the utilities' federal tax obligations. Indeed, the question before the PUCO is not whether ratepayers should receive the full benefit of the TCJA tax cut, but how soon. This need for swift action has been recognized by several states, the Federal Energy Regulatory Commission and even the voluntary actions of regulated utilities in other states. This need for swift action recently was made all the more pressing, considering Ohio's electric utilities' request for rehearing of the January 10, 2018 Entry in *TCJA 17*, raising the argument that the prohibition on retroactive ratemaking, among other arguments, prohibited them making their customers whole.

To expedite the return of the excess income taxes Ohio consumers have paid on behalf of the regulated utilities, and to prevent consumers from paying excessive taxes going forward, NOPEC proposes that the PUCO commence a proceeding under R.C. 4905.26 to reduce the utilities rates in the amount of their reduced tax obligations.

II. STATE AND FERC ACTIONS

As reflected in the popular and trade press, nearly all, if not all, state public utility commissions are considering the TCJA's effect on customer rates, and how to return the windfall resulting from the federal corporate tax rate reduction to their customers. For example, several state commissions, like Ohio, have called upon regulated utilities to offer proposals to address how the

[1] www.nytimes.com (January 9, 2018).

[2] *In Re Tax Cuts and Jobs Act of 2017*, Case No. 18-47-AU-COI, Entry (January 10, 2018), at 1 ("*TCJA 17*").

tax reduction can be incorporated into rates, while ordering that tax savings be tracked for future refund.[3]

Some states already have required their regulated utilities to make filings to reduce rates due to the TCJA. For example, the Illinois Commerce Commission has ordered rate-regulated utilities to file revised tariffs within 30 days decreasing customer rates to reflect their net savings as a result of the federal corporate income tax law or demonstrate why the company shouldn't be required to make such a filing. *ICC v. Peoples Gas Light and Coke Co.*, et at., Docket No. 18-0189 et seq (a case for each one) (January 25, 2018).

The Massachusetts Department of Public Utilities has ordered the utilities it regulates to decrease rates based on savings from the TCJA. The utilities have until May 1, to submit proposals for lower rates to customers. See *In Re Investigation by the Department of Public Utilities, on its own Motion, into the Effect of the Reduction in Federal Income Tax Rates on the Rates Charges by Electric, Gas, and Water Companies*, D.P.U. 18-15 (February 2, 2018). Specifically, the Department found that the reduction in the federal corporate income tax rate results in a lower tax expense on current income and booked accumulated deferred income taxes ("ADIT") that are in excess of future liabilities. The Department found that the statutory reduction in the federal corporate income tax rates pursuant to the TCJA constitutes evidence that the rates being charged by the regulated utilities may no longer be just and reasonable as of January 1, 2018. It further

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[3] These include, but certainly are not limited to, the Virginia State Corporation Commission (www.washingtonpost.com (January 9, 2018); Hawaii Public Utilities Commission (Order No. 35421 (January 26, 2018); Kentucky Public Service Commission (www.heralddispatch.com (January 2, 2018); Michigan Public Service Commission www.heralddispatch.com (January 2, 2018). See, also, www.rtoinsider.com (January 8, 2018), which identifies several state regulatory commissions considering flowing the tax savings back to the utilities' customers, including West Virginia, Indiana, Connecticut, Louisiana, Minnesota, Missouri, Montana, Oklahoma, and South Dakota.

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required that the utilities account for regulatory liabilities to be refunded to ratepayers as determine by the Department and that ratepayers be made whole for any delay in flow back of ADIT.

In addition, several state regulators have asked FERC to modify public utilities' FERC-regulated cost-of-service revenue requirements to reflect the recent reductions in the federal corporate tax rate.[4] FERC's chairman has indicated that FERC will address the issue, and FERC Commissioner Powell "applauded the 'numerous state commissions who are actively regulating utilities to address the historic tax reform measure,'" noting that some "customers are looking at between $80 and $90 per year in potential rate reductions."[5] FERC staff has initiated inquiries regarding utilities' cost of service and are asking them to provide an adjusted cost of service study within a few business days, and already has ordered a pipeline to reduce its rate to reflect the reduction in corporate income tax rates under the TCJA.[6]

III. UTILITIES' VOLUNTARY ACTIONS

Significantly, several utilities have voluntarily petitioned their state commissions to approve proposals for an immediate reduction in customers' bills. The jurisdictions in which utilities have acted include:

- **<u>Maryland and the District of Columbia</u>**:
    - ***Baltimore Gas & Electric*** proposed to reduce its rates by approximately $103 million annually, a proposal that the Maryland Public Service Commission already

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[4] In a letter to FERC, the Organization of PJM States, Inc. "unanimously support[ed] all efforts by the commission to flow this cost reduction back to consumers." www.opsi.us/filings/2017/12-29-17-FERC-and-Tax-Reductions.pdf. The Organization of MISO States requested FERC to move quickly to ensure customers receive the maximum benefits associated with the TCJA, stating that the tax reduction "directly impacts the cost of service for regulated utilities across the country." www.rtoinsider.com (January 22, 2018).

[5] Inside FERC (January 19, 2018); www.eenews.net (January 19, 2018) ("Chairman Kevin McIntyre said yesterday that the Federal Energy Regulatory Commission is looking into what the agency could do to ensure that the rates paid by consumers reflect the large decline in the federal corporate tax rate enacted late last year.") www.eenews.net (January 19, 2018).

[6] See *PennEast Pipeline Company, LLC*, FERC Docket No. CP15-558-000 (January 19, 2018).

accepted on January 31, 2018. As a result, customers will see their rates reduced begining in February, by an average of $5.41 per month for combined gas and electric service. Maryland PSC Mail Log No. 218429; www.dailysignal.com (February 6, 2018).

  - ***Washington Gas*** similarly has asked regulators in Maryland, Washington D.C. and Virginia to decrease customers' rate by approximately $34 million per year, beginning in the first quarter of this year. www.washingtonpost.com (January 9, 2018).
  - ***Potomac Electric Power Company*** plans to reduce the amount of its rate increase request pending in Maryland, and to reduce rates for its 296,000 customers in the District of Columbia. PHI Holding Press Release (January 5, 2018); www.washingtonpost.com (January 9, 2018).
  - ***Delmarva Power*** will file plans with the Maryland PSC in February to reduce rate to reflect the TCJA's reduced tax rates on utilities. PHI Holding Press Release (January 5, 2018); www.delawarebusienssnow.com (January 7, 2018).

- **<u>Massachusetts</u>**:
  - ***Eversource Energy*** will reduce rates by $35.4 million per year in its eastern Massachusetts service area, and customers in in its western service area will have their previously approved rate increase of $24.8 million reduced to $16.5 million. https://www.eversource.com/content/ema-c/about/news-room/massachusetts/ /newspost? (January 4, 2018).

- **<u>Virginia</u>**:
  - ***Dominion Energy*** plans to reduce customers' rates by $125 million per year. www.dailysignal.com (February 6, 2018)

- **Illinois**:
  - ***Commonwealth*** Edison, which serves over 4 million customers, has petitioned the Illinois Commerce Commission to reduce rates by $200 million per year, or approximately $2 to $3 per month per customer. www.dailysignal.com (February 6, 2018); ICC Docket No. 18-0034.
- **Oregon and Washington:**
  - ***Pacific Power***, which serves parts of Oregon and Washington, announced that it intends to pass along savings from tax reform to customers. https://www.pacificpower.net/about/nr/nr2018/tax-cut-savings.html

IV. OHIO'S PRECEDENT UNDER THE TAX REFORM ACT OF 1986

The PUCO previously addressed the effect of federal income tax reductions on regulated utilities in the wake of the Tax Reform Act of 1986.[7] The PUCO's chairman initiated the process by a letter to the regulated utilities to review the effect of TRA 86 and to propose how savings should be passed on. In response to the chairman's letter, Ohio's major electric and natural gas utilities either reduced rates by filing applications under R.C. 4909.18 (application not for an increase in rates), or through pending or filed applications for an increase in rates, which incorporated the effect of the federal income tax rate reductions.[8]

For utilities that had not responded satisfactorily to the chairman's letter, the PUCO initiated investigations under R.C. 4905.26 to ensure an expedited resolution of the issue. In furtherance of its investigation, the PUCO required the utilities to submit information that included (1) their operating income statement using pre-TRA 86 tax rates and (2) their estimated operating income using their post-TRA 86 tax rates. The utilities were to file the information as a part of an

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[7] *See In Re Financial Impact of the Tax Reform Act of 1986 on Regulated Ohio Utility Companies*, Case NO. 87-831-AU-COI ("*TRA 86*").

[8] TRA 86, Entry (June 9, 1987).

application to reduce rates, or to show cause why their rates should not be reduced as a result of TRA 86.

V. THE PUCO'S RESPONSE TO TCJA

By its entry of January 10, 2018, in *TCJA 17* the PUCO asked for comments on:

(1) the components of the utility rates that the PUCO will need to reconcile with the TCJA; and

(2) the process and mechanics for how the PUCO should do so.

A. Components to consider

As to the components of the utilities' rates that must be reconciled with the TCJA, NOPEC believes it is the utilities' responsibility in the first instance to make this identification, and provide proposed calculations of the difference between pre-TCJA and post-TCJA obligations. However, NOPEC opposes consideration of a utility's need for increased revenues or whether it currently is earning its authorized rate of return as a part of this *TCJA 17* proceeding. Federal income taxes are a pass through to consumers and are not intended to affect a utility's rate of return either positively or negatively. When a utility is granted a rate increase, the increased revenue requirement is grossed up for taxes, to ensure that the utility's shareholders receive the full benefits of the authorized revenue increase and utility returns are not reduced by tax obligations. Conversely, when tax rates are reduced, the benefits of that reduction should be flowed through to ratepayers as expeditiously as possible, to prevent a windfall to shareholders. Regardless of a utility's revenue requirement, or whether it currently is earning its authorized rate of return, no portion of the benefit of a reduced tax rate should be retained by the utility.

B. Process and mechanics

Filing an application not for an increase in rates under R.C. 4909.18 provides an expedient method for Ohio's regulated utilities voluntarily to return the windfall tax savings to their customers, as Ohio's major utilities did in *TRA 86*, and as utilities in other states have done or are proposing as a result of TCJA. However, noting in particular the Ohio electric utilities' resistance to rightfully returning this windfall to their customers,[9] NOPEC proposes that the PUCO issue an entry under R.C. 4905.26 finding that reasonable grounds exist that Ohio's regulated utilities' rates are unjust and unreasonable. The PUCO should order the regulated utilities, in lieu of filing the R.C. 4909.18 application, to provide information, complete with work papers and testimony, to reflect the difference in their rates under pre-TCJA and post-TCJA income taxes, holding all other rate-components constant. The filing also should specifically address how excess accumulated deferred incomes taxes and income taxes incorporated into various riders should be returned to customers. The PUCO should establish a deadline for filing this information, and the date upon which new rates would be effective, **as soon as possible** to ensure that Ohio customers receive the full benefit of the TCJA income tax reductions promptly.

Respectfully submitted,

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[9] See *TCJA 17*, Ohio electric utilities' application for rehearing of the PUCO's entry of January 10, 2018.

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Comments* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15th day of February 2018.

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