

**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       )     Case No. 18-47-AU-COI  
2017 on Regulated Utility Companies.                               )

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**NORTHEAST OHIO PUBLIC ENERGY COUNCIL’S  
REPLY COMMENTS**

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**I.     INTRODUCTION**

The Northeast Ohio Public Energy Council (“NOPEC”) filed initial comments in this proceeding on February 15, 2018, agreeing with the PUCO that the windfall resulting from the Tax Cuts and Jobs Act of 2017 (“TCJA”) should be passed on to the utilities’ customers, who provide the funds to pay the utilities’ federal tax obligation. NOPEC noted that the question before the PUCO is not whether ratepayers should receive the full benefit of the TCJA tax cut, but how soon. To this end, NOPEC provided examples of the voluntary acts of utilities in other states to flow the income tax reduction back to their customers. Indeed, in the wake of the Tax Reform Act of 1986, many Ohio utilities did just that, by filing applications not for an increase in rates under R.C. 4909.18.<sup>1</sup> In a perfect world, Ohio’s utilities would voluntarily reduce their customers’ federal income tax expense by filing such an application; however, none proposes to do so in response to the TCJA. In fact, most utilities seek to delay adjustments to their rates – and keep their customers’ excess tax payments for themselves.<sup>2</sup> Moreover, even when rates

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<sup>1</sup> See *In Re Financial Impact of the Tax Reform Act of 1986 on Regulated Ohio Utility Companies*, Case NO. 87-831-AU-COI.

<sup>2</sup> Ohio Power seeks to delay a rate adjustment until it files a base rate case in 2020 (Ohio Power Initial Comments at 3), and the FirstEnergy Companies seek to delay an adjustment until their base rate cases are filed in 2024! FirstEnergy Companies Initial Comments at 12.

eventually are adjusted, some utilities propose that customers not receive the full benefit of the tax reduction, but that the excess funds be used for other utility purposes.<sup>3</sup>

Because of the utilities' unwillingness to act swiftly to voluntarily return the full benefits of TCJA to their customers, it is imperative that the PUCO immediately initiate actions under R.C. 4905.26 to reduce the utilities' rates in the amount of their reduced tax obligations, as NOPEC stated in its initial comments. Alternatively, the PUCO may adjust the rates under the emergency powers granted by R.C. 4909.16.

## **II. REPLY COMMENTS**

### **A. R.C. 4928.143(C)(1) does not preclude an action under R.C. 4905.26.**

Some utilities<sup>4</sup> claim that rates approved in an electric security plan ("ESP") can be modified only with their consent, citing R.C. 4928.143(C)(2)(a), which provides:

If the commission modifies and approves an application under division (C)(1) of this section, the electric distribution utility may withdraw the application, thereby terminating it, and may file a new standard service offer under this section or a standard service offer under section 4928.142 of the Revised Code.

This provision relates only to the approval of the ESP under division (C)(1) of the statute, which requires the PUCO to make a determination, based upon the evidence of record in that proceeding, whether the ESP is more favorable in the aggregate than the market rate option. The PUCO approved the ESPs under that division of the statute and the utilities accepted any modifications by filing tariffs with the PUCO. R.C. 4905.26 provides separate statutory authority for the PUCO to adjust previously approved rates if they become unjust or unreasonable. See *In re Consumers' Counsel*, 110 Ohio St.3d 394 (2006); *In re Lucas County*

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<sup>3</sup> See, e.g., Duke Initial Comments at 12, et seq.

<sup>4</sup> See, e.g., Ohio Power Initial Comments at 5

*Commissioners*, 80 Ohio St.3d 344 (1997). Thus, R.C. 4928.143(C)(2)(a) does not prevent the PUCO from adjusting the utilities rates due to effects of the TCJA.

**B. Base rates frozen in an ESP do not preclude a subsequent adjustment to rates under R.C. 4905.26 or, alternatively, under R.C. 4909.16.**

The FirstEnergy Companies go to great lengths to explain that the stipulation approved in its last ESP proceeding froze base rates through 2024,<sup>5</sup> thus precluding an adjustment under R.C. 4905.26. The fact that rates were frozen as a result of a stipulation is immaterial. R.C. 4905.26 does not distinguish between the PUCO's litigated and stipulated proceedings. Rather, as stated above, R.C. 4905.26 explicitly permits the PUCO to adjust previously approved rates when they become unjust and unreasonable.

If the terms of the ESP stipulation are to be considered, which they need not be under R.C. 4905.26, the stipulation provides that base rates may be adjusted in the event of an emergency under R.C. 4909.16. This statute permits emergency relief to prevent "injury...to the interest of the public," as well as to any public utility. The FirstEnergy Companies claim that no emergency exists because the TCJA does not imperil the companies' financial ability or impair their ability to render service. The FirstEnergy Companies erroneously rely on the standard used for determining whether an emergency affects the utility.<sup>6</sup> In this proceeding, the question is whether an emergency exists that affects the public.

The windfall resulting from the TCJA amounts to hundreds of millions of dollars to Ohio consumers. An emergency that exists is created by the utilities' refusal to voluntarily adjust their rates and, thereby, retain hundreds of millions of dollars of their customers' funds under claims that adjustments are prohibited by prior ESP order or because they would violate the rule against

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<sup>5</sup> FirstEnergy Companies' Initial Brief at 4-12.

<sup>6</sup> See FirstEnergy Companies' Initial Brief at 7, citing *In re Akron Thermal, Ltd. Partnership*, Case No. 00-2260-HT-AEM, Opinion and Order (January 25, 2001) at 3.

retroactive ratemaking. The harm to the public is significant and imminent. The PUCO may use its broad powers granted by R.C. 4909.16 to adjust rates to reflect the change in tax obligations, and may do so without hearing.<sup>7</sup>

### III. CONCLUSION

NOPEC renews its request that the PUCO initiate a proceeding under R.C. 4905.26, or alternatively under R.C. 4909.16, to adjust customers' rates due to the utilities' reduced federal tax obligations resulting from the TCJA. The proceeding should be initiated *as soon as possible* to adjust base rates, riders with an income tax component and accumulated deferred incomes taxes. The methodology to reduce customers' rates should ensure that customers receive the full benefit of the tax reduction to January 1, 2018. Moreover, to ensure transparency the utilities must retain no portion of their customers' funds for other purposes.

Respectfully submitted,



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<sup>7</sup> See, e.g., *Duff v. Pub. Util. Comm.*, 56 Ohio St.2d 367 (1978).

## 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 *Reply Comments* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 7<sup>th</sup> day of March 2018.



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