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 Ohio Utility Companies.	)))))))	Case No. 18-47-AU-COI Reply Comments of Environmental Defense Fund, Ohio Environmental Council, Environmental Law & Policy Center, Natural Resources Defense Council, and Sierra Club

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The Environmental Advocates (Environmental Defense Fund ("EDF"), Ohio Environmental Council ("OEC"), Environmental Law & Policy Center ("ELPC"), Natural Resources Defense Council ("NRDC"), and Sierra Club submit these reply comments regarding the Commission's investigation into the financial impact of the Tax Cuts and Jobs Act of 2017 ("TCJA") on Ohio's regulated utilities. The Environmental Advocates urge the Commission to: (1) reject the Joint EDUs' arguments that the Commission can only change their rates through a general rate case; and, (2) reconsider whether the utilities should be allowed to recover revenues for "credit support" and for the OVEC plants.

I. The Commission Should Reject the Joint EDUs' Arguments That the Commission Can Only Change Their Rates Through a General Rate Case.

The Joint Utilities claim the Commission had no power to order the utilities "to record on their books as a deferred liability * * * the estimated reduction in federal income tax resulting from the TCJA."[1] This argument has no merit because the Commission had clear authority to

[1] *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cut and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI, Entry at ¶ 7 (Jan. 10, 2018). *See* Comments of Dayton Power & Light at 1 ("A response to a single variable – single issue ratemaking – is not authorized in Ohio except when explicitly authorized by statute"); Comments of Ohio Power Co. at 5 ("Base rates can only be changed prospectively as part of a proceeding under R.C. 4909.18"); Comments of Duke Energy Ohio, Inc. at 12 ("Therefore, the modifications to utility rates (and riders) ordered by the Commission can only occur prospectively in a rate proceeding (not a generic

take this action.

The issue here is how to treat the financial impact of the Tax Cuts and Jobs Act of 2017. Under Generally Accepted Accounting Principles, an unregulated business will recognize revenue or an expense when the event occurs that causes the new revenue or expense to occur.[2] When a regulated utility incurs an expense, however, it can either amortize the expense or defer it to a future period.[3] Statement of Financial Accounting Standards (SFAS) No. 71, issued by the Financial Accounting Standards Board (FASB) authorizes this accounting treatment.[4]

In fact, the Commission could have simply ordered the utilities to file applications to reduce their rates immediately, as it did when the federal government passed the Tax Reform Act of 1986. This law cut the corporate income tax rate from 46% to 34%, and the Commission used its authority under R.C. 4905.26 to order the utilities to file applications to reduce their rates accordingly.[5]

The Commission has ordered utilities to create regulatory assets or liabilities when FASB has issued new accounting standards that materially change the utilities' revenues or expenses. For example, in 1990, FASB issued SFAS No. 106, changing the accounting treatment for pension plans from a pay-as-you-go method (*i.e.*, pension costs are recognized when they are actually paid) to an accrual method. This caused utilities to incur higher pension expenses than what was reflected in their rates, and the Commission allowed the utilities to treat this incremental difference as a regulatory asset, to be recovered in their next rate case.[6]

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industry proceeding)."); Comments of Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co. at 12 ("In light of the base distribution rate freeze in effect and the outstanding obligation to file a new base distribution rate case, it is not appropriate to modify the Companies' base distribution rates at this time").

[2] M. Sobhy, *U.S. Regulatory Accounting System* at 23 (presented at NARUC), available at: https://pubs.naruc.org/pub.cfm?id=538932FA-2354-D714-51DD-1C253F7DA53F

[3] *Id.*

[4] *Id.* at 26.

[5] *In the Matter of the Commission's Investigation the Financial Impact of the Tax Reform Act of 1986 on Regulated Ohio Utility Companies*, Case No. 87-831-AU-COI (Finding and Order) (June 9, 1987).

[6] *In the Matter of the Commission's Investigation into the Financial Impact of FASB Statement No. 106, "Employers*

The Commission faced the same arguments in that case that the Joint Utilities are making here—except the parties making those arguments are reversed in this matter. That case led to higher rates for customers, so the customer groups argued that the Commission had no authority to order the utilities to establish a regulatory account, whereas the present case will lead to customer refunds, so now we find the utilities arguing that the Commission has no such authority. The Commission dealt with this argument as follows:

> The OMA and the Customer Coalition also contend that it would be unlawful to include the SFAS106 costs in rates. The Commission reiterates that we are not establishing rates in this proceeding. We are conducting a generic proceeding to determine a policy on an issue that affects the utility industry in general. While we are stating our general ratemaking policy, both the underlying validity of the policy and its application to particular facts may be challenged and are subject to further consideration in individual cases. These arguments may be raised in each company's rate case which seeks to include recovery of SFAS 106 costs. Nevertheless, the Commission does not believe that inclusion of SFAS106 accrual costs in rates would be unlawful.
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> Concerning the transition obligation, OMA and the Customer Coalition contend that the amortization would be an out-of-test-period expense and not an annual recurring expense, and would constitute unlawful retroactive ratemaking. The Commission generally views the unrecognized transition obligation and its amortization no differently than other costs afforded this treatment in prior Commission proceedings. The Commission has approved the use of such a method with respect to depreciation reserve deficiency amortizations as pointed out in the reply comments of Ohio Bell Telephone Company and Gas Companies. Decommissioning costs have also been handled in this manner. Affording like treatment of the transition costs of SFAS106 is consistent with prior Commission policy and precedent.[7]

Accounting for Postretirement Benefits Other Than Pensions", Case No. 92-1751-AU-COI (Finding and Order) (February 25, 1993).

[7] *Id.* at 13-14.

The Commission should therefore reject the Joint Utilities' argument that it had no power to order the utilities to record their excess tax revenues on their books as a deferred liability.

II. The Commission Should Reconsider Whether the Utilities Are Allowed to Recover Revenues for "Credit Support" and for the OVEC Plants.

The Commission should also reconsider the impacts of the new tax law on the cases where FirstEnergy and DP&L requested customer-funded financial support to Ohio's utilities to help improve their credit rating[8] and where the utilities requested rate increases tied to the OVEC plants.[9] FirstEnergy's situation is especially noteworthy. In FirstEnergy's case, the Commission approved a rate increase to bolster the credit metrics for FirstEnergy and its parent company, FirstEnergy Corp. The Commission should reexamine whether this credit support, in the form of Rider DMR, is needed any longer, in light of the new tax law and the current financial health of FirstEnergy Corp.

The Commission is to be commended for acting so quickly to protect utility customers by addressing the impact of the TCJA on the Joint Utilities' regulated businesses. The Commission should also act quickly to evaluate the impact of the TCJA on the financial health of the Joint Utilities, to determine whether the credit support and OVEC rate recovery mechanisms should be

[8] *In the Matter of the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO (Fifth Entry on Rehearing) (Oct. 12, 2016); *In the Matter of the Application of the Dayton Power & Light Company for Approval of its Electric Security Plan*, Case No. 16-0395-EL-SSO (Opinion and Order) (Oct.20, 2017).

[9] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Purchase Power Agreement for Inclusion in the Purchase Power Agreement Rider*, Case No. 14-1693-EL-RDR. (Second Entry on Rehearing) (Nov. 3, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Modify Rider PSR*, Case No. 17-0872-EL-RDR (Application) (Mar. 31, 2017) (pending).

modified to avoid overcollection by the utilities.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served via the Commission's e-filing system and via email on all parties referenced in the service list of the docket.

/s/ Miranda Leppla
Miranda Leppla

Summary: Reply Comments of Environmental Defense Fund, Ohio Environmental Council, Environmental Law & Policy Center, Natural Resources Defense Council, and Sierra Club electronically filed by Ms. Miranda R Leppla on behalf of Environmental Defense Fund and Ohio Environmental Council and Environmental Law & Policy Center and Natural Resources Defense Council and Sierra Club