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Via E-FILE

March 7, 2018

Public Utilities Commission of Ohio
PUCO Docketing
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215

In re: Case No. 18-47-AU-COI

Dear Sir/Madam:

Please find attached the REPLY COMMENTS OF THE OHIO ENERGY GROUP REGARDING EFFECTS ON RETAIL RATES OF TAX CUTS AND JOBS ACT e-filed today in the above-referenced matters.

Copies have been served on all parties on the attached certificate of service. Please place this document of file.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Michael L. Kurtz", is written over the typed name.

Michael L. Kurtz, Esq.

Kurt J. Boehm, Esq.

Jody Kyler Cohn, Esq.

BOEHM, KURTZ & LOWRY

MLKkew

Encl.

Cc: Certificate of Service

**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 Ohio Utility Companies.	:	Case No. 18-47-AU-COI
	:	
	:	

**REPLY COMMENTS OF THE OHIO ENERGY GROUP
REGARDING EFFECTS ON RETAIL RATES OF TAX CUTS AND JOBS ACT**

The Ohio Energy Group ("OEG") hereby submits these Reply Comments in response to comments filed at the Public Utilities Commission of Ohio ("Commission") on February 15, 2018. OEG's decision not to respond to other arguments raised in this proceeding should not be construed as implicit agreement with those arguments.

I. The Commission Should File A FERC Complaint In Order To Ensure That DP&L's Wholesale Transmission Rates Reflect The Federal Corporate Income Tax Reduction.

The Dayton Power & Light Company ("DP&L") states that the Commission should "*take no action at this time with respect to transmission rates.*"¹ OEG disagrees.

As OEG previously discussed, with respect to FirstEnergy, AEP Ohio, and Duke, the Commission should require those utilities to estimate the impact of the TCJA tax savings on their wholesale transmission formula rates and to make an interim adjustment to their retail transmission rates to reflect those savings. Any over or under recoveries would then be trued-up at both the wholesale and retail levels.

DP&L is a different story. Unlike the other Ohio utilities, DP&L's wholesale transmission rate is not based upon a formula that is annually trued-up. Instead, DP&L's annual wholesale transmission revenue requirement is a fixed amount (\$40.1 million) that, to OEG's knowledge, has not changed since DP&L joined PJM in 2004.² Accordingly, without action by the FERC, DP&L may simply continue to recover that \$40.1 million going forward without adjustment for TCJA-related tax savings.

¹ Comments of The Dayton Power and Light Company at 19.

² Attachment 1 (PJM OATT, Attachment H-15) and Attachment 2 (Excerpt of PJM Compliance Tariff, Docket No. ER04-1068, setting forth DP&L's Network Integration Transmission Service rate).

Because DP&L's wholesale transmission rate will not be automatically trued-up to reflect TCJA rate impacts like the other Ohio utilities, this Commission needs to take additional steps to ensure that DP&L's retail customers receive the transmission-related benefits of the TCJA. Specifically, this Commission should file a Section 206 Complaint at the FERC alleging that DP&L's wholesale transmission rate is no longer just and reasonable because it does not reflect the TCJA tax savings. The Commission should also examine more generally whether DP&L's fixed OATT transmission rate is still just and reasonable consistent with the Federal Power Act given that the rate has not changed in over a decade.

II. The Commission Should Preserve Its Ability To Order Interest On The Deferred Tax Savings Calculated At The Utilities' Weighted Average Cost of Capital.

OCC argues that “[t]o 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 based on that estimate, including carrying costs from January 1, 2018.”³ While procedural barriers may prevent the expeditious relief that OCC requests, OEG agrees that the Commission should preserve its ability to require any tax savings accruing as of January 1, 2018 to be returned to customers with interest calculated at the utility's weighted average cost of capital.

III. The Initial Comments Reveal The Importance Of The Significantly Excessive Earnings Test In Returning Federal Corporate Income Tax Savings To Ohio Retail Customers.

In their comments, Ohio electric utilities argue that the Commission should not alter the federal income tax expense or excess accumulated deferred income taxes (“ADIT”) embedded in their base distribution rates until the utilities file their next base distribution rate cases.⁴ These arguments underscore the importance of Ohio's significantly excessive earnings test (“SEET”) in flowing-through TCJA tax savings to retail customers. Even if the Commission could not alter a utility's base rates due to settlement commitments, procedural requirements, etc., it still retains authority under R.C. 4928.143(F) to review the annual earnings of that utility and to return significantly excessive earnings to customers. Indeed, the statute provides explicit refund authority to the

³ OCC Comments at 11-12.

⁴ Comments of Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company at 4-12; Comments of Ohio Power Company at 5-6.

Commission. Hence, the SEET provides a last line of defense for retail customers that is insulated from retroactive ratemaking arguments.

The key with respect to future SEET reviews will be the methodology used by the Commission to determine the amount of earnings flowed back to customers. The methodology used in previous Commission cases would not be appropriate for these future reviews since: 1) that methodology was adopted prior to the TCJA; 2) Ohio utilities no longer own generation; and 3) the methodology can lead to absurd results. For instance, Staff's SEET methodology in a recent FirstEnergy case resulted in an earnings threshold of 39.8 percent, which required further adjustment down to 16.08 %.⁵ Even after that adjustment, this SEET threshold was so high as to largely be irrelevant.

The Commission should therefore reevaluate its methodology in future SEET cases, particularly in light of other possible legal constraints that would otherwise prevent some TCJA tax savings from flowing through to retail customers. R.C. 4928.143(F) provides the Commission with flexibility to alter that methodology on a case-by-case basis, as the Commission previously acknowledged, explaining:

Having fully considered all the comments regarding establishing the threshold and in consideration of the discretion afforded the Commission in SB 221, the Commission concludes that 'significantly excessive earnings' should be determined based on the reasonable judgment of the Commission on a case-by-case basis.

Passing a statistical test does not, in and of itself, demonstrate excessive earnings did not occur. The statute requires more from the utilities to meet the burden of proof that excess earnings did not occur. The Commission may use a standard deviation test as one tool by which to determine whether an electric utility had significantly excessive earnings.

However, the Commission is willing to recognize a 'safe harbor' of 200 basis points above the mean of the comparable group. To that end, any electric utility earning less than 200 basis points above the mean of the comparable group will be found not to have significantly excessive earnings.⁶

⁵ Prefiled Testimony of Joseph P. Buckley, Case No. 17-993-EL-UNC (December 8, 2017) at 3:7-4:5.

⁶ Order, Case No. 09-786-EL-UNC (June 30, 2010) at 28-29.

One viable option would be to set future SEET thresholds at the “*safe harbor*” level described in the 2010 SEET Order cited above (200 basis points above the mean return on equity earned by comparable companies during the relevant year). In most years, this methodology would result in a SEET threshold of approximately 12%, which is ample for utilities that are now largely wires companies and appropriate given the Commission’s desire to pass TCJA-related tax savings through to Ohio retail customers.

Respectfully submitted,



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COUNSEL FOR THE OHIO ENERGY GROUP

March 7, 2018

ATTACHMENT 1

ATTACHMENT H-15

Annual Transmission Rates -- The Dayton Power and Light Company For Network Integration Transmission Service

1. The annual transmission revenue requirement is \$40,100,000 and the rate for Network Integration Transmission Service is \$1,107.98 per MW per month. Service utilizing facilities at voltages below 69 kV will be subject to additional charges as set forth in paragraph 5 below.
2. Within the Dayton Zone, a Network Customer's peak load shall be adjusted to include transmission losses equal to 3.0% of energy received for transmission, as well as any applicable distribution losses as reflected in applicable state tariffs or service agreements that contain specific distribution loss factors for said Network Customer. Notwithstanding section 15.7 of the Tariff, the transmission loss factor of 3.0% also shall apply to point-to-point transmission service with a point of delivery in the Dayton Zone.
3. The rate in paragraph 1 of this Attachment shall be effective until amended by the Transmission Owner(s) within the zone or modified by the Commission.
4. In addition to the rate set forth in paragraph 1 above, the Network Customer purchasing Network Integration Transmission Service shall pay for transmission congestion charges, and any other applicable charges, in accordance with the provisions of this Tariff, and any amounts necessary to reimburse the Transmission Owner(s) for any amounts payable to them as sales, excise, "btu," carbon, value-added, or similar taxes (other than taxes based upon or measured by net income) with respect to the amounts payable pursuant to the Tariff.
5.
 - a. Unless otherwise specified in a service agreement that is in effect and on file with the Commission, in addition to the rates and charges set forth and adjusted as provided in paragraphs 1-4 above, a Network Customer receiving service utilizing facilities at voltages below 69 kV shall pay a "Wholesale Distribution Charge" comprised of a monthly demand charge per kilowatt (as stated below) multiplied by the Network Customer's contribution (in kilowatts) to the PJM Network Service Peak Load for the Dayton Zone; excluding any metered peak load received at receipt points operating at 69 kV or above.
 - b. The monthly demand charge shall be as follows:

\$1.32 per kW for Network Customers served through interconnection facilities operating at 12 kV, which include: the Village of Arcanum, the Village of Eldorado, the Village of Lakeview, the Village of Mendon, and the Village of Yellow Springs.

\$0.82 per kW for Network Customers served through interconnection facilities operating at 33 kV, which includes: the Village of Waynesfield.¹

c. Buckeye Power, Inc. and its members that are served through interconnection facilities operating below 69 kV are not subject to the Wholesale Distribution Charge set forth in this paragraph 5 because their wholesale distribution charges are specified in a service agreement that is in effect and on file with the Commission. Any modifications to such charges or any future applicability of a Wholesale Distribution Charge to Buckeye Power, Inc. or its members shall be effective only if made and approved by the Commission as the result of filings made in conformance with the provisions of a settlement approved by the Commission in Docket Nos. ER15-33-000, *et al.*

d. Any Network Customer not identified in paragraphs 5.b or 5.c who seeks wholesale distribution service from The Dayton Power and Light Company through interconnection facilities operating at below 69 kV shall pay a Wholesale Distribution Charge as set forth above based on the voltage level of the interconnection facilities.

¹ As provided in the Settlement approved by the Commission in Docket Nos. ER15-33-000, *et al.*, the rates, terms, and conditions set forth in paragraphs 5.a and 5.b are fixed and not subject to change absent mutual consent of The Dayton Power and Light Company and the Network Customers identified in paragraphs 5.b and 5.c through and including December 31, 2018. Pursuant to the Settlement, neither The Dayton Power and Light Company nor the Network Customers may unilaterally file to change these rates with an effective date prior to January 1, 2019.

ATTACHMENT 2

Docket No. ER04-1068-003

Filing Date: 10/28/04

Effective Date: 10/1/04

Substitute Original Sheet No. 314E

Superseding Original Sheet No. 314E

PJM Interconnection, L.L.C.

FERC Electric Tariff

Sixth Revised Volume No. 1

ATTACHMENT H-15

Annual Transmission Rates – The Dayton Power and Light Company

For Network Integration Transmission Service

1. The annual transmission revenue requirement is \$40,100,000 and the rate for Network Integration Transmission Service is \$1,107.98; provided, however, that for October and November, 2004, the monthly charges, including wholesale distribution charges, applicable to service to each existing Network Customer in the Dayton Zone will be as stated in the local delivery service agreement for such customer.
2. Within the Dayton Zone, a Network Customer's peak load shall be adjusted to include transmission losses equal to 3.0% of energy received for transmission, as well as any applicable distribution losses as reflected in applicable state tariffs and/or service agreements that contain specific distribution loss factors for said Network Customer. Notwithstanding section 15.7 of the Tariff, the transmission loss factor of 3.0% also shall apply to point-to-point transmission service with a point of delivery in the Dayton Zone.
3. The rate in section 1 of this Attachment shall be effective until amended by the Transmission Owner(s) within the zone or modified by the Commission.
4. In addition to the rate set forth in section (1) above, the Network Customer purchasing Network Integration Transmission Service shall pay for transmission congestion charges, and any other applicable charges, in accordance with the provisions of this Tariff, and any amounts necessary to reimburse the Transmission Owners for any amounts payable to them as sales, excise, "btu," carbon, value-added, or similar taxes (other than taxes based upon or measured by net income) with respect to the amounts payable pursuant to the Tariff.
5. Charges for Network Integration Transmission Service to customers of The Dayton Power and Light Company that are subject to the provisions of the October 14, 2003 Stipulation and Agreement of Settlement ("Settlement") approved in FERC Docket No. EL03-56-000 shall be governed by such settlement. Any inconsistency between the Tariff and the Settlement, including but not limited to Settlement provisions governing the provision of network losses and short-term firm service to the municipal customers that were parties to the Settlement, shall be resolved in favor of the Settlement.

Issued By: Craig Glazer
Vice President, Government Policy

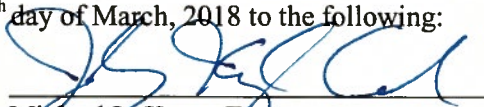
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CERTIFICATE OF SERVICE

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 OF THE OHIO ENERGY GROUP (OEG) was sent to the following parties of record *via* electronic transmission this 7th day of March, 2018 to the following:



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Summary: Comments Ohio Energy Group (OEG) Reply Comments electronically filed by Mr. Michael L. Kurtz on behalf of Ohio Energy Group