

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

ENTRY

Entered in the Journal on May 24, 2018

{¶ 1} The Tax Cuts and Jobs Act of 2017 (TCJA), signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate is reduced from 35 percent to 21 percent, effective January 1, 2018.

{¶ 2} The Commission opened the above-captioned Commission-ordered investigation (COI) in order to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and determine the appropriate course of action to pass benefits on to ratepayers.

{¶ 3} By Entry issued January 10, 2018 (January 10, 2018 Entry), the Commission invited all of the rate-regulated Ohio utilities, as well as other interested stakeholders, to file comments discussing the following: (i) those components of utility rates that the Commission will need to reconcile with the TCJA and (ii) the process and mechanics for how the Commission should do so. The Commission noted several components of utility rates that commenters could potentially discuss in response. Additionally, the Commission directed utilities to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax resulting from the TCJA, effective January 1, 2018. The utilities were instructed to continue this treatment until otherwise ordered by the Commission.

{¶ 4} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission. The statute further requires that such application shall be in

writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.

{¶ 5} On February 9, 2018, Ohio Power Company, Duke Energy Ohio, Inc., The Dayton Power and Light Company, and the FirstEnergy operating companies, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the EDUs), filed a joint application for rehearing of the Commission's January 10, 2018 Entry in this proceeding.

{¶ 6} On February 20, 2018, Ohio Partners for Affordable Energy (OPAE), Industrial Energy Users-Ohio (IEU-Ohio), the Ohio Consumers' Counsel (OCC), and The Kroger Co. (Kroger) filed memoranda contra the EDUs' application for rehearing. The Ohio Manufacturers' Association Energy Group (OMAEG) filed its memorandum contra on February 21, 2018, as well as a motion to accept the memorandum contra as timely filed or, in the alternative, to file out-of-time.

{¶ 7} On March 8, 2018, the Commission issued an Entry on Rehearing granting the joint application for rehearing filed by the EDUs for further consideration of the matters specified in the application for rehearing, as well as granting OMAEG's motion for leave to file out-of-time.

{¶ 8} On April 25, 2018, the Commission issued a Second Entry on Rehearing, in which it granted in part and denied in part the EDUs' application for rehearing. In response to the EDUs' third assignment of error, in which the EDUs argued that directing rate-regulated utilities to account for the deferred regulatory liability without prior notice and an opportunity for hearing was unreasonable and unlawful, the Commission provided that it has consistently held that it may issue an accounting order under R.C. 4905.13 without holding a hearing. *See, In re Dayton Power and Light Co.*, Case No. 04-1645-EL-AAM, Finding and Order (Jun. 1, 2005), Entry on Rehearing (Jul. 13, 2005); *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM, Finding and Order (Nov. 12, 2009); *In re Columbus S. Power Co. and*

Ohio Power Co., Case No. 08-1338-EL-AAM, Finding and Order (Jan. 7, 2009). However, the Commission noted that, pursuant to R.C. 4905.13, it is authorized to hold a hearing on an accounting order in its discretion. Upon exercising that discretion, the Commission granted rehearing to the extent the EDUs requested a hearing. The Commission directed the attorney examiner to schedule a hearing in this proceeding on the narrow question of whether the utilities should be required to establish a deferred tax liability, effective January 1, 2018. The Commission further noted that no portion of its January 10, 2018 Entry had been stayed and that all utilities should continue to comply with that Entry until otherwise ordered by the Commission.

{¶ 9} The attorney examiner notes that no EDU or any other party is required to file testimony or otherwise participate in the hearing and that any testimony filed by any party should be limited to the narrow question of whether the utilities should be required to establish a deferred tax liability, effective January 1, 2018. Accordingly, the attorney examiner finds that the parties should abide by the following procedural schedule:

- (a) Testimony on behalf of the EDUs should be filed by June 15, 2018.
- (b) Testimony on behalf of all other rate-regulated utilities should be filed by June 22, 2018.
- (c) Testimony on behalf of all intervenors should be filed by June 29, 2018.
- (d) In order to participate in the hearing, motions to intervene should be filed by June 15, 2018.
- (e) A hearing shall convene on July 10, 2018, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-C, Columbus, Ohio.

{¶ 10} Further, given the narrow scope of the hearing and to allow parties sufficient time to prepare testimony, the attorney examiner finds that the response time for discovery should be shortened to seven days for all discovery served after the issuance of this Entry. Discovery requests and replies shall be served by hand delivery, e-mail, or facsimile (unless otherwise agreed by the parties). An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming (unless otherwise agreed by the parties). To the extent that a party has difficulty responding to a particular discovery request within the seven-day period, counsel for the parties should discuss the problem and work out a mutually satisfactory solution.

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That the procedural schedule set forth in Paragraph 9 be observed by the parties. It is, further,

{¶ 13} ORDERED, That parties respond to discovery requests served after the issuance of this Entry within seven days, in accordance with Paragraph 10. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all public utilities (other than motor transportation companies) subject to the Commission's jurisdiction and all interested stakeholders of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/mef

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Summary: Attorney Examiner Entry setting the procedural schedule. electronically filed by Ms. Mary E Fischer on behalf of Megan J. Addison, Attorney Examiner, Public Utilities Commission of Ohio