

In the Matter of the Commission’s)
Investigation of the Financial Impact of) Case No. 18-0047-AU-COI
the Tax Cuts and Jobs Act of 2017 on)
Regulated Ohio Utility Companies.)

One of the Ohio Consumers' Counsel's ("OCC") key goals is to convert the utilities' corporate tax savings into utility bill savings for Ohio consumers. The Public Utilities Commission of Ohio ("PUCO") did the right thing by ordering Ohio utilities to return all benefits of the federal Tax Cuts and Jobs Act ("Federal Tax Cuts") to customers.¹ Customers pay for utilities' tax obligations, so because the Federal Tax Cuts reduced utilities' federal income tax rate from 35% to 21%, customers should pay less for their utility service. OCC supports the Order in this regard.

At the same time, however, the PUCO should make a few small modifications to the Order to provide better protection to consumers. First, it should allow all parties broader participation in utility-specific tax cases. And second, it should rule that FirstEnergy's electric security plan does not shield FirstEnergy from returning to customers the benefits of the Federal Tax Cuts. These changes would more fully facilitate the PUCO's goal of returning all tax savings to customers.

¹ Opinion & Order ¶¶ 27-30 (Oct. 24, 2018) (the “Order”).

The Order is unlawful and unreasonable in the following respects:

Assignment of Error 1: Paragraph 29 of the Order unreasonably provides that utilities have greater rights to participate in tax-related proceedings than other parties. It should be modified to allow equal participation by all parties.

Assignment of Error 2: Paragraph 32 of the Order is unreasonably vague and could be interpreted as contradicting the PUCO's long-stated view that *all* tax savings under the Federal Tax Cuts must be returned to customers. It should be modified to state that FirstEnergy is required to promptly pass all tax savings back to customers, notwithstanding the "rate freeze" found in FirstEnergy's electric security plan.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Bryce McKenney (0088203)
Amy Botschner-O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [Healey] (614) 466-9571
Telephone: [McKenney] (614) 466-9585
Telephone: [O'Brien] (614) 466-9575
christopher.healey@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
Amy.botschner.obrien@occ.ohio.gov
(Will accept service via email)

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The Order benefits customers by requiring Ohio utilities to open new dockets to pass tax savings to customers. Utilities are paying lower federal income tax rates, and customers pay for those taxes in their rates, so customers should see lower bills as a result. But the Order should be improved to provide better consumer protection. The PUCO should adopt OCC's recommendations provided in this application for rehearing.

After an order is entered, intervenors in a PUCO proceeding have a statutory right to apply for rehearing “in respect to any matters determined in the proceeding.”² An application for rehearing must “set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”³

In considering an application for rehearing, R.C. 4903.10 provides that the PUCO may grant and hold rehearing if there is “sufficient reason” to do so. After such rehearing, the PUCO may “abrogate or modify” the order in question if the PUCO “is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted.”⁴

⁴ R.C. 4903.10(B).

II. ASSIGNMENTS OF ERROR

Assignment of Error 1. Paragraph 29 of the Order unreasonably provides that utilities have greater rights to participate in tax-related proceedings than other parties. It should be modified to allow equal participation by all parties.

In support of the PUCO’s case-by-case approach to providing the benefits of the Federal Tax Cuts to customers, its Order states that “the Commission is open to any alternative proposals by utilities, provided such proposals pass all tax savings on to customers, have the full agreement of Staff and provide for input from other interested stakeholders.”⁵ This is unreasonable for several reasons.

First, it states only that *utilities* can make alternative proposals. It is unreasonable (and unfair) to limit any such alternative proposals to those made by utilities. Other parties—especially parties that represent the customers who are supposed to receive the benefits of the Federal Tax Cuts—should be permitted to make alternative proposals as well.

Second, the phrase “open to any alternative proposals by utilities,” on its face, could be read to mean that the PUCO is required to *adopt* any alternative proposal by a utility. Presumably, with this statement, the PUCO intends only that it will *consider* alternative proposals. An entry on rehearing should clarify this point.

⁵ Order ¶ 29.

Assignment of Error 2. Paragraph 32 of the Order is unreasonably vague and could be interpreted as contradicting the PUCO’s long-stated view that *all* tax savings under the Federal Tax Cuts must be returned to customers. It should be modified to state that FirstEnergy is required to promptly pass all tax savings back to customers, notwithstanding the “rate freeze” found in FirstEnergy’s electric security plan.

Paragraph 32 of the Order refers to FirstEnergy’s argument that the base distribution rate freeze from its recent electric security plan (“ESP”) case would not allow for an adjustment to base rates until 2024. The PUCO declined to address this argument, stating that it would be addressed on a case-by-case basis in a utility-specific case.⁶ But the Order also states that the PUCO agrees with FirstEnergy that “the scope of these future company-specific proceedings will not be expanded to reevaluate every aspect of past applications from prior proceedings, including *FirstEnergy ESP IV*.”⁷

OCC agrees that company-specific tax proceedings should not be used to “reevaluate every aspect” of cases decided in the past. But the PUCO should clarify on rehearing that paragraph 32 of the Order does not change the PUCO’s repeatedly-emphasized view that *all* tax savings must be returned to customers.⁸ On rehearing, the PUCO should clarify that FirstEnergy cannot rely on paragraph 32 as justification for any proposal it might make to deny or delay returning every dime of tax savings to customers under the Federal Tax Cuts.

⁶ Order ¶ 32.

⁷ Order ¶ 32.

⁸ See, e.g., Second Entry on Rehearing (Apr. 25, 2018) (“The Commission also affirms that we intend that all impacts resulting from the Tax Cuts and Jobs Act of 2017 will be returned to customers, whether through this proceeding or through a case-by-case determination for each affected utility.”).

III. CONCLUSION

The PUCO should modify the Order to (i) clarify, as described above, that parties other than utilities shall have equal rights of participation in cases (and making proposals) involving passing tax savings to customers, and (ii) rule that FirstEnergy's "rate freeze" in no way allows FirstEnergy to deny customers the benefits of the Federal Tax Cuts. Accordingly, OCC respectfully requests that the PUCO grant its application for rehearing.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Christopher Healey
Christopher Healey (0086027)
Counsel of Record
Bryce McKenney (0088203)
Amy Botschner-O'Brien (0074423)
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [Healey] (614) 466-9571
Telephone: [McKenney] (614) 466-9585
Telephone: [O'Brien] (614) 466-9575
christopher.healey@occ.ohio.gov
bryce.mckenney@occ.ohio.gov
Amy.botschner.obrien@occ.ohio.gov
(Will accept service via email)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served on the persons stated below via electronic transmission, this 23rd day of November 2018.

/s/ Christopher Healey

Christopher Healey
Counsel of Record

SERVICE LIST

| | |
|--|--------------------------------|
| William.wright@ohioattorneygeneral.gov | cmooney@ohiopartners.org |
| | mkurtz@bkllawfirm.com |
| Attorney Examiner: | kboehm@bkllawfirm.com |
| Megan.addison@puc.state.oh.us | jkylern@bkllawfirm.com |
| | joliker@igsenergy.com |
| | mnugent@igsenergy.com |
| | rocco.dascenzo@duke-energy.com |
| | Jeanne.kingery@duke-energy.com |
| | gkrassen@bricker.com |
| | dstinson@bricker.com |
| | whitt@whitt-sturtevant.com |
| | campbell@whitt-sturtevant.com |
| | glover@whitt-sturtevant.com |
| | cdunn@firstenergycorp.com |
| | michael.schuler@aes.com |
| | randall.griffin@aes.com |
| | mwhelan@egas.net |
| | jfinnigan@edf.org |
| | dsawmiller@nrdc.org |
| | mleppla@theoec.org |
| | neil.waggoner@sierraclub.org |
| | mfleisher@elpc.org |
| | stnourse@aep.com |
| | cblend@aep.com |
| | selisar@mwncmh.com |
| | mpritchard@mwncmh.com |
| | fdarr@mwncmh.com |
| | sseiple@nisource.com |
| | josephclark@nisource.com |
| | mlozich@securustechologies.com |

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Summary: App for Rehearing Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.