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

THIRD ENTRY ON REHEARING

Entered in the Journal on December 19, 2018

I. SUMMARY

{¶ 1} The Commission denies the joint application for rehearing filed by Ohio Power Company, Duke Energy Ohio, Inc., The Dayton Power & Light Company, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company on February 9, 2018, on the remaining narrow question of whether the utilities should be required to establish a deferred tax liability, effective January 1, 2018. Additionally, the Commission denies the application for rehearing filed by the Ohio Consumers' Counsel on November 23, 2018.

II. PROCEDURAL HISTORY

{¶ 2} 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.

{¶ 3} 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.

{¶ 4} 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.

{¶ 5} 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.

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

{¶ 7} On February 15, 2018, comments were submitted on behalf of various utility companies, consumer groups, and other interested stakeholders in response to the January 10, 2018 Entry.

{¶ 8} 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 Ohio 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.

{¶ 9} On March 7, 2018, reply comments were submitted on behalf of various utility companies, consumer groups, and other interested stakeholders in response to the February 20, 2018 Entry.

{¶ 10} On March 8, 2018, the Commission issued an Entry on Rehearing granting the joint application for rehearing filed by the Ohio 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.

{¶ 11} On April 25, 2018, the Commission granted in part and denied in part the application for rehearing filed by the Ohio EDUs on February 9, 2018. Further, in response to the Ohio EDUs' the Commission directed the attorney examiner to schedule a hearing on the narrow question of whether the utilities should be required to establish a deferred tax liability, effective January 1, 2018.

{¶ 12} By Entry issued May 24, 2018, the attorney examiner scheduled the hearing, as directed by the Commission's Second Entry on Rehearing, for July 10, 2018.

{¶ 13} The hearing occurred, as scheduled, on July 10, 2018. At the hearing, the following witnesses provided testimony: William A. Allen, on behalf of AEP Ohio, William D. Wathen Jr., on behalf of Duke, Joseph G. Bowser, on behalf of IEU-Ohio, W. Ross Willis, on behalf of OCC, Lane Kollen, on behalf of Ohio Energy Group (OEG), Patricia Kravtin, on behalf of The Ohio Cable Telecommunications Association (OCTA), and Jonathan J. Borer, on behalf of Staff.

{¶ 14} At the conclusion of the hearing, the attorney examiner directed that briefs be filed by August 13, 2018. Briefs were timely filed by OMAEG, Kroger, OTA, DP&L, OCC, NOPEC, AEP Ohio, OEG, OPAE, the Northwest Ohio Aggregation Coalition and its fifteen member communities (collectively, NOAC), IEU-Ohio, and Staff.

{¶ 15} On October 24, 2018, the Commission issued its Finding and Order considering the proposed comments and directing Ohio rate-regulated utility companies, unless expressly exempted, to file an application not for an increase in rates, pursuant to R.C. 4909.18, by January 1, 2019, to allow the Commission the opportunity to consider the impacts of the TCJA on each specific company (Finding and Order).

{¶ 16} On November 23, 2018, OCC filed an application for rehearing of the Commission's Finding and Order, asserting two separate assignments of error.

{¶ 17} Thereafter, on December 3, 2018, FirstEnergy filed a memorandum contra OCC's November 23, 2018 application for rehearing.

III. DISCUSSION

A. Ohio EDUs' February 9, 2018 application for rehearing of Commission's January 10, 2018 Entry

1. Summary of hearing testimony and arguments regarding whether the Commission was correct to direct utilities to establish a deferred tax liability.

{¶ 18} AEP Ohio initially contends that accounting deferrals are separate from ratemaking and must be without prejudice to ratemaking, with the latter occurring only in utility-specific rate proceedings. AEP Ohio notes that Staff witness Borer agreed that the deferral for the tax liability is separate from the subsequent ratemaking determinations (Tr. at 139-140). If, in fact, the Commission's accounting directive intended to exercise its ratemaking authority, AEP Ohio argues that it would be deprived of due process and such an act would violate the prohibition against retroactive ratemaking and R.C. 4905.13, citing *Lucas Cty. Commrs. V. Pub. Util. Comm.*, 80 Ohio St.3d 344, 348, 686 N.E.2d 501 (1997), especially as the "required hearing under R.C. 4905.13" did not occur until July 10, 2018. To the extent that the regulatory liability encompasses federal income tax expense savings, AEP Ohio maintains that such a deferral should not be reflected in rates until the utility has had

a comprehensive base rate proceeding pursuant to the comprehensive process set forth in R.C. 4905.15.

{¶ 19} In response, many parties referred to the Commission's authority to establish an accounting deferral, pursuant to R.C. 4905.13. IEU-Ohio notes that the deferral merely represents a mechanism to track the amounts of potential tax-related adjustments until the Commission can address each company's situation as it relates to the TCJA and the amounts to be returned to customers (IEU-Ohio Ex. 1 at 10). Furthermore, IEU-Ohio adds that the recognition of the deferral has no effect on rates (Tr. at 93, 112, 134). NOAC, NOPEC, OEG, and OPAE agree with IEU-Ohio and further note that Staff witness Borer stated that the deferred tax liability was both necessary and in accordance with Generally Accepted Accounting Principles (GAAP) (Staff Ex. 1 at 3-4). OEG and OMAEG specifically argue that the Commission's January 10, 2018 Entry was appropriate from an accounting perspective because GAAP allows for a regulator to impose a liability on a regulated entity, an action which is required in order to defer expenses or revenues that otherwise would be recognized in current period income under GAAP (OEG Ex. 1 at 3-4; Staff Ex. 1 at 3). Furthermore, OEG notes that because the Commission did not actually engage in ratemaking by issuing its accounting directive to the utilities, that directive cannot violate the prohibition on retroactive ratemaking. *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, 871 N.E.2d 1176.

{¶ 20} Staff, OMAEG, Kroger, and OPAE also encourage the Commission to utilize the five-factor test that it has historically utilized for determining whether a deferral was appropriate, as adjusted to reflect a regulatory liability instead of a regulatory asset, in which the Commission would review the following: (1) whether the utility's current rates or revenues are sufficient to cover the costs associated with the requested deferral; (2) whether the costs are material; (3) whether the reason for requesting the deferral is outside the utility's control; (4) whether the expenses are atypical and infrequent; and (5) whether the financial integrity of the utility will be significantly and adversely affected if the deferral

is not granted. *In re the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods*, Case No. 17-2118-GA-AAM, Finding and Order, (Apr. 18, 2018). Mr. Borer testified that the first criterion has been met, as rates were developed based upon a 35 percent federal income tax rate, and are therefore sufficient to cover the deferral associated with the lower tax rate (Staff Ex. 1 at 4). Staff also asserts that the expense reductions are material, as they include a 40 percent reduction in the federal income tax rate, an approximate 18 percent reduction to the gross revenue conversion factor, and the excess ADIT, which could amount to hundreds of millions of dollars, and, therefore, satisfy the second prong of the five-factor test (Staff Ex. 1 at 5). In response to the third criterion, Mr. Borer stated that the decision to reduce the federal income tax rate was an act of Congress, and, therefore, falls outside the control of the utility companies. As to the next criterion, Staff witness Borer asserts that the nature of this tax rate reduction should be considered atypical and infrequent, largely due to the fact that the last major change to the tax code occurred in 1986, which was also the last time the Commission required utilities to reflect a decrease in taxes in consumers' rates outside of a rate proceeding. And finally, Staff asserts that utility companies have been ordered to defer the reduced tax obligation, which will offset the increase in net income otherwise resulting from the TCJA. Thus, Mr. Borer indicates that the financial integrity of the companies will not be adversely affected by the deferral. (Staff Ex. 1 at 6-7.) Accordingly, Staff, OMAEG, OPAE, and Kroger contend that all five factors of this test have been satisfied and the Commission was correct to order utilities to account for the deferred liability resulting from the TCJA.

{¶ 21} Similarly, OCC agrees with the general tenants of using the five-factor test, recognizing these factors are not determinative, but recommends that the fifth factor be revised to focus on the financial well-being of customers as opposed to the financial integrity of the utility in order to ensure a reasonable result for consumers (OCC Ex. 1 at 11). OCC also recommends utilizing a sixth factor, which determines whether the Commission can encourage the utility to do something it would not otherwise do through the granting of deferral authority. *In re Duke Energy Ohio, Inc.*, Case No. 14-1160-EL-UNC, Opinion and

Order (Apr. 27, 2016) at 7. Using its modified version of Staff's proposed test, OCC reaches a similar conclusion that the creation of a regulatory liability is appropriate in this case (OCC Ex. 1 at 5-6, 9).

{¶ 22} If rate relief is implemented in advance of a base rate proceeding, Duke and AEP Ohio would alternatively agree with Staff that the Commission incorporate a revenue sufficiency test instead, consistent with the five factors of consideration used by the Commission in deciding whether to permit a regulatory asset deferral mechanism. AEP Ohio contends that, while Staff witness Borer testified that this five-factor test is not a strict test but rather "a framework for evaluating deferrals so that there's some sort of standard that could be applied" to decide whether a regulatory asset should be adopted, this framework could be used to establish whether the regulatory liability should have been established in order to promote consistency in the Commission's granting of such deferrals. (Tr. at 137-138.) Duke goes further to provide its own analysis to the five-factor test, ultimately concluding that the factors to establish a deferral have not been met under the circumstances presented in this case. Specifically, Duke witness Wathen testifies that no analysis or evidentiary record has been considered to determine whether current electric base distribution rates are sufficient to cover the costs associated with the deferral, thereby failing to meet the first criterion. Further, Mr. Wathen noted the Commission should also evaluate the materiality of the deferral in relation to the impact of a utility's earnings to determine whether and to what extent the deferral amount creates a material impact on the utility's ability to provide service, citing previous Commission cases where materiality was lacking. Without such consideration, Duke contends the second criterion cannot be adequately addressed. As to the third criterion, Duke posits that it is within the Commission's control whether or not there is a need to record deferral regarding the impact of the TCJA on each utility. Similarly, in relation to the fourth criterion, Duke witness Wathen explains that additional changes in the federal income tax law are possible in the future. Finally, Duke suggests that a more appropriate fifth criterion may be for the

Commission to determine whether granting the deferral will affect the financial integrity of the utility. (Duke Ex. 1 at 9-12).

{¶ 23} IEU-Ohio, OMAEG, and Kroger generally object to Duke's analysis and characterization of many of the factors identified in the five-factor test, specifically noting Duke's suggestion that the Commission focus on whether the amounts to be deferred are material to the companies and the fact that the Commission's order, and not the change in legislation, should be considered to be within the Commission's control (Duke Ex. 1 at 8-9, 14). OMAEG also contends that the deferred funds were never intended to add to the utilities' net revenues, so the accounting order should not affect the utilities' net revenues, adding that if the utilities believe their revenues are no longer able to cover their expenses, they may file a base rate case with the Commission. Moreover, IEU-Ohio and OMAEG point out that Duke, along with the other Ohio EDUs, have already indicated their books are in compliance with GAAP and the Federal Energy Regulatory Commission, which require Duke to track a deferred liability for amounts that will more likely than not be returned to customers and adjust deferred tax liabilities and asserts for changes in tax law or rates, thus arguing that the Commission's order is merely reflecting what the utilities should already be doing in response to the TCJA (IEU-Ohio Ex. 1 at 5). However, even if the Commission were to apply the proposed five-factor test, IEU-Ohio contends that the circumstances surrounding the Commission's order to book a deferred liability would satisfy the criteria of the test when properly applied (Staff Ex. 1 at 5-7).

{¶ 24} AEP Ohio witness Allen also suggests that the Commission review each company separately to identify the financial issues that specific company may be facing, including the existence of ADIT or whether a revenue reduction due to the lower federal income tax rate would affect the Company's ability to earn its authorized rate of return (AEP Ohio Ex. 1 at 5-6). Similarly, AEP Ohio notes that Staff witness Borer acknowledged that Staff would be willing to entertain as a reasonable and fair application in the first factor of the five-factor test that current revenues and their sufficiency should be measured (Tr. at

144). By circumventing such an analysis, Mr. Allen warns that companies could face dire consequences that could have a lasting impact on the company and its customers (Tr. at 19-21).

{¶ 25} IEU-Ohio contends that AEP Ohio's argument that it should not have to record the deferred liability unless it is earning more than its permitted return on investment is rendered moot, as the Commission has already directed the company to return the benefits of the tax reduction to its customers, citing AEP Ohio's separate docket in which the company acknowledges it will be adhering to the Commission's directive. See *In re Ohio Power Company*, Case No. 18-1007-EL-UNC. IEU-Ohio argues that the Commission's order that rate-regulated utilities record a deferred liability is just and reasonable and is also consistent with GAAP. IEU-Ohio first contends that an accounting adjustment to recognize a deferred liability is justified in those instances when it is probable that the regulatory liability will adjust rates to account for amounts that may be returned to customers (IEU-Ohio Ex. 1 at 5). Given the Commission's previous orders regarding its intent that all tax impacts resulting from the TCJA be returned to customers, IEU-Ohio notes that the deferral is the correct application of GAAP and will permit tracking of these amounts that may be returned to customers (IEU-Ohio Ex. 1 at 9-10; Tr. at 141).

{¶ 26} OCC further contends that, even if the Commission requires utilities to establish a deferred tax liability, consumers may nonetheless be harmed unless the Commission also imposes a carrying cost component to the deferral, as it represents a "customer-supplied" source of funds for utilities (OCC Ex. 1 at 6-7).

{¶ 27} AEP Ohio recommends that the Commission reject OCC's suggestion that utilities be ordered to accrue carrying charges on their deferred tax balances until the full amount of the deferred tax liability is returned to customers, regardless of the amount of time they remain unrecovered. Initially, AEP Ohio argues that the Commission has held that carrying charges on a regulatory asset should only accrue on deferred costs that remain unrecovered for a period longer than 12 months, noting that OCC witness Willis could not

provide a reason to treat regulatory assets and liabilities differently as to this specific issue (Tr. at 124). Furthermore, to the extent deferred excess ADIT tax liabilities are credited to customers over a period longer than 12 months, AEP Ohio argues that, due to the nature of these credits and how their balances are applied against its distribution investment rider (Rider DIR), carrying charges would likewise be inappropriate (Tr. at 22-23).

{¶ 28} OCTA raises its concerns regarding the effect that the federal corporate income tax rate change will have on pole attachment rates, which are established pursuant to the rate-setting process described in Ohio Adm.Code 4901:1-3-04(D) (OCTA Ex. 1 at 6). As such, OCTA suggests several recommendations that the Commission can implement in order to ensure that revised pole attachment rates reflect the appropriate amount of excess ADIT and deferred tax savings in the formula (OCTA Ex. 1 at 8; Tr. at 87-88, 141).

{¶ 29} AEP Ohio argues that pole attachment rates should only be updated to reflect tax savings as part of a comprehensive update of pole attachment rates under the Federal Communications Commission-approved formula in utility-specific proceedings, rather than an individual rate component basis in this generic proceeding. Staff urges the Commission to review future pole attachment rates to determine if any unamortized excess ADIT transferred from ADIT as a result of the TCJA should, in addition to current ADIT and depreciation reserves, be used as a reduction to total gross plant and gross pole investment in the pole attachment formula.

{¶ 30} As a final matter, NOAC and DP&L argue that two of the Ohio EDUs and intervenors raised many points that should be considered outside the scope of the June 10, 2018 hearing and those arguments should be disregarded by the Commission in its review of narrow question at issue for the hearing, consistent with its earlier rulings. Second Entry on Rehearing (Apr. 25, 2018) at ¶ 31.

2. Commission Conclusion

{¶ 31} As an initial matter, our January 10, 2018 Entry was very clear that, pursuant to R.C. 4905.13, the Commission is authorized to issue an accounting directive without first holding a hearing, but nevertheless elected to hold a hearing, in our discretion, on the narrow issue of whether the Commission should establish the deferral. Similarly, the Commission notes that our October 24, 2018 Finding and Order addressed many of the arguments raised at the June 10, 2018 hearing and in the subsequently filed briefs, or rendered them moot. Moreover, as we discuss later in this Third Entry on Rehearing, no Ohio EDU sought rehearing on any of the conclusions of the Finding and Order. Accordingly, we will not reiterate our findings from these decisions, nor will we expand our discussion into matters that lie beyond the prescribed scope of the July 10, 2018 hearing. Any argument raised that is not specifically discussed herein has been thoroughly considered by the Commission and rejected.

{¶ 32} As indicated above, our discussion in this portion of the Third Entry on Rehearing will be focused on the purpose of the July 10, 2018 discretionary hearing, which was to determine whether the utilities should be required to establish a deferred liability in response to the TCJA, effective January 1, 2018. With that focused direction, we note that two questions remain from the testimony and briefs submitted: (1) whether Staff's proffered five-factor test, which is largely based on the Commission's historical standard for establishing regulatory assets, is appropriate to apply to the circumstances before us today; and (2) if so, whether those factors have been satisfied and support the establishment of the deferral. While we recognize the five-factor test utilized by this Commission on whether to establish a deferral is not determinative, but rather provides the necessary framework for our consideration, we agree with Staff that utilizing a modified version of this test is appropriate for the circumstances presented in this case and reaffirms the Commission's decision and order to require utilities to establish the deferred tax liability in response to the TCJA.

{¶ 33} We find Staff's use of the modified five-factor test to be reasonable, as it produces a practicable and consistent approach for the Commission's consideration of potential regulatory liabilities, much like the test delineated for our consideration of regulatory assets. *See In re the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Methods*, Case No. 17-2118-GA-AAM, Finding and Order, (Apr. 18, 2018). We recognize that certain modifications were necessary to accommodate the fact that we are considering a regulatory liability, rather than a regulatory asset, but the resulting five factors provide us with a well-conceived and robust framework upon which to base our decision in this case.

{¶ 34} As to whether these five factors have been satisfied under the circumstances presented in this case, we find Mr. Borer's testimony to be very compelling and persuasive, especially to the second, third, and fourth criteria, pertaining to materiality, control, and infrequency, respectively (Staff Ex. 1 at 5-7). Furthermore, we agree with Staff's assertion that the rates currently being collected by utilities are sufficient to cover the deferral associated with the lower tax rate and that the deferral will not adversely affect the financial integrity of the utilities (Staff Ex. 1 at 4, 7). Moreover, even assuming that any one of the five factors could not be met under these circumstances, the extraordinary nature of the TCJA and this investigation would warrant the creation of a deferral, consistent with GAAP and as demonstrated by several of the parties' submitted testimony and briefs. However, we do no find OCC's suggestion to incorporate a sixth factor to be necessary, especially in this proceeding, as the Commission has been working collaboratively with utilities to address the complex issues related to the TCJA. Finding and Order at ¶ 28. As such, we find that Staff's modified five-factor test is appropriate to utilize under these circumstances, and, when applying those five factors, the Commission was correct in its determination that utilities should be required to establish a deferred tax liability, effective January 1, 2018, in response to the TCJA.

{¶ 35} It is for the above-cited reasons that we also take significant issue with the testimony of Duke witness Wathen in that his application of the modified five-factor test would unnecessarily and severely limit the Commission's discretion to order utilities to establish regulatory liabilities. Notably, his explanations as to the second, third, and fourth factors are riddled with presumptive statements to which we cannot reasonably afford any weight (Duke Ex. 1 at 9-12). For instance, Mr. Wathen's testimony stating that additional changes in the federal income tax law are "entirely possible" in the future does not detract from the reality that there has been only one other major tax legislation overhaul such as this, which was also the last time the Commission required utilities to reflect a decrease in taxes in consumers' rates outside of a rate proceeding. (Staff Ex. 1 at 6.) *See In re the Commission's Investigation of the Financial Impact of the Tax Reform Bill of 1986 on Regulated Ohio Utility Companies*, Case No. 87-831-AU-COI. To simply assert an event may occur in the future is not a reasonable basis for the Commission to decline to act on our deferral authority. Furthermore, in response to Duke witness Wathen's concerns over due process (Duke Ex. 1 at 14), Duke and all other Ohio rate-regulated utilities had an opportunity to submit comments, present testimony at the scheduled hearing, and file post-hearing briefs as to this narrow remaining issue, the last of which options Duke elected not to file. Moreover, Duke has also had ample opportunity to raise its specific tax-related concerns in its pending distribution rate case. *In re the Application of Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, et al. Thus, the parties have been afforded sufficient due process in this proceeding and will continue to have the opportunity to participate in utility-specific proceedings related to the TCJA.

{¶ 36} Finally, we agree with AEP Ohio, as well as numerous other parties, and it is our expectation, that the accounting and ratemaking treatment associated with the TCJA should continue to comply with GAAP and normalization requirements, as required by the Internal Revenue Service. 20 U.S.C. § 50(d)(2); IRC § 168(f)(2). (AEP Ohio Ex. 1 at 3; OEG Ex. 1 at 6-7; OCC Ex. 1 at 7; OCTA Ex. 1 at 14).

{¶ 37} In conclusion, we find that the Ohio EDUs' application for rehearing should be denied as to the remaining issue of whether the Commission was correct to order utilities to account for a deferred liability in response to the TCJA. Second Entry on Rehearing at ¶¶ 26-32.

B. OCC November 23, 2018 application for rehearing of the Commission's October 24, 2018 Finding and Order

1. Summary of arguments

{¶ 38} In its November 23, 2018 application for rehearing, OCC raises two assignments of error: (1) Paragraph 29 of the Commission's order unreasonably provides that utilities have greater rights to participate in tax-related proceedings than other parties, suggesting that the order be modified to allow equal participation by all parties; and (2) Paragraph 32 of the Commission's order is unreasonably vague and could be interpreted as contradicting the Commission's view that all tax savings under the TCJA must be returned to customers, suggesting that FirstEnergy is required to promptly pass all tax savings back to customers, notwithstanding the "rate freeze" found in FirstEnergy's electric security plan.

{¶ 39} In support of its first assignment of error, OCC notes that the Commission's statement that it would be open to "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," is unreasonable for two separate reasons. First, OCC notes that all parties, especially parties that represent consumers, should be entitled to make such proposals to the Commission. Secondly, OCC contends that this statement may unintentionally indicate that the Commission is required to adopt these alternative proposals. Thus, OCC requests clarification on these two points.

{¶ 40} In its memorandum contra, FirstEnergy argues that OCC's first assignment of error is moot as to FirstEnergy and many other utility companies, as many of these companies have already complied with the Commission's directive set forth in its Finding

and Order.[1] Alternatively, even if this argument is not considered moot, FirstEnergy notes that OCC lacks the statutory authority to choose the form of proceeding commenced by a utility company.

{¶ 41} In support of its second assignment of error, OCC suggests that the Commission clarify that Paragraph 32 of the Finding and Order does not change the Commission's stance that all tax savings are to be returned to customers, specifically in relation to any alternative proposal that FirstEnergy may suggest.

{¶ 42} In response, FirstEnergy also requests that the Commission deny rehearing as to OCC's second assignment of error, noting that both FirstEnergy and OCC provided comments on the impact that FirstEnergy's base distribution rate freeze might have on its ability to react to the TCJA. FirstEnergy further contends that the Commission correctly determined that utility-specific issues would be better addressed in the required utility-specific proceedings, rather than this generic proceeding. Thus, FirstEnergy claims this argument was thoroughly addressed in the Finding and Order. Further, FirstEnergy maintains that OCC will have the ability to raise its utility-specific concerns in those other proceedings and argues that the Commission should avoid preemptive judgment on agreements seeking to address these issues filed in other cases.

2. Commission Conclusion

{¶ 43} Initially, the Commission would once again note that no rate-regulated utility company sought rehearing from the Commission's Finding and Order, including the Ohio EDUs. This portion of our decision is focused on responding to the sole application for rehearing of the Finding and Order, filed by OCC on November 23, 2018. As to OCC's first assignment of error, we find that rehearing should be denied. At no time did this Commission waive or limit our authority to review and modify any application submitted

[1] FirstEnergy has made filings in Case Nos. 18-1604-EL-UNC and 18-1656-EL-ATA; AEP Ohio has made filings in Case Nos. 18-1007-EL-UNC and 18-1451-EL-ATA; Duke has made filings in Case Nos. 18-1185-EL-UNC and 18-1186-EL-ATA.

pursuant to R.C. 4909.18, or an alternative proposal suggested by a utility, as directed in the Finding and Order. Any reading otherwise would be nonsensical and would jeopardize the entire objective of this proceeding. Additionally, and consistent with our Finding and Order, we agree with FirstEnergy in the sense that the utility companies are in the best position to first suggest an alternative proposal to acknowledge company-specific concerns. At the time an alternative proposal is filed for our consideration, any interested party, including OCC, will be afforded the same level of due process as in any Commission proceeding, including the ability to comment on the alternative proposal and suggest any modifications it believes to be necessary. Moreover, we noted that before the Commission would even consider an alternative proposal, such proposals would be required to pass all tax savings on to customers, have the full agreement of Staff, and provide for input from interested stakeholders. Finding and Order at ¶ 29. As such, further clarification from the Commission for our expectations set forth in Paragraph 29 of the Finding and Order is not necessary at this time.

{¶ 44} We also find that rehearing should be denied as to OCC's second assignment of error. As we noted above, we specifically indicated that any alternative proposal coming before the Commission would be required to pass all tax savings on to customers. We have been unwavering on this position throughout this proceeding. Finding and Order at ¶ 27 (where the Commission states "this COI was initiated to determine when and how any tax benefits resulting from the TCJA would be passed on to ratepayers, not if they would be passed on to ratepayers.") We also agree with FirstEnergy that arguments regarding FirstEnergy's base distribution rate freeze were presented in OCC's comments and the Commission correctly determined that any company-specific issues should be raised in proceedings specific to that utility, rather than a generic proceeding such as this investigation. Finding and Order at ¶ 32. Thus, this issue was thoroughly addressed in the Commission's Finding and Order.

{¶ 45} Accordingly, we find that OCC's November 23, 2018 application for rehearing should be denied.

IV. ORDER

{¶ 46} It is, therefore,

{¶ 47} ORDERED, That the February 9, 2018 joint application for rehearing filed by the Ohio EDUs be denied as to the narrow issue of whether the Commission was correct to order the establishment of the deferred tax liability in response to the TCJA. It is, further,

{¶ 48} ORDERED, That the November 23, 2018 application for rehearing filed by OCC be denied. It is, further,

{¶ 49} ORDERED, That a copy of this Third Entry on Rehearing 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

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

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MJA/mef

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Barcy F. McNeal

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Secretary