

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR
IMPLEMENTATION OF THE TAX CUTS
AND JOBS ACT OF 2017**

CASE No. 18-1185-EL-UNC

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC., FOR
APPROVAL OF TARIFF AMENDMENTS.**

CASE No. 18-1186-EL-ATA

FINDING AND ORDER

Entered in the Journal on February 20, 2019

I. SUMMARY

{¶ 1} The Commission approves Duke Energy Ohio, Inc.'s application to establish a rider to credit customers with the benefits of the Tax Cuts and Jobs Act of 2017.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or Company) is an electric distribution utility (EDU) and a public utility as defined in R.C. 4928.01(A)(6) and R.C. 4905.02, respectively. As such, Duke is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.18 provides, in relevant part, that where an application is not for an increase in any rate, but is for a new service, the application shall fully describe the new service and the Commission may permit the filing of the schedule proposed in the application and fix the time when such schedule shall take effect.

{¶ 4} 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.

{¶ 5} On January 10, 2018, the Commission opened an investigation 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. *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 (*Tax COI Case*).

A. Summary of Application

{¶ 6} On July 25, 2018, Duke filed an application to adopt a new tariff regarding Rider Electric TJCA (Rider ETCJA). Duke requests tariff amendment approval under R.C. 4909.18 to flow through all of the remaining benefits of the TCJA for electric distribution operations. In its application, Duke proposes crediting its electric distribution customers with the full benefits of the TCJA and resolve all TCJA related issues. Rider ETCJA is designed to provide Duke's electric distribution customers with a reduction in the federal income tax (FIT) and excess accumulated deferred income taxes (EDITs). This reduction will be a credit to base distribution rates. The annualized credit amount for Rider ETCJA shall be allocated to each rate class based on the percentage of base distribution rates and the credit rate to be applied to each customer will be reflected as percentage of the customer's base distribution charges.

{¶ 7} Duke states that the new service proposed is not for an increase in rates, but rather a rate reduction through a credit to its electric distribution customers. Duke requests the Commission grant the application without hearing and on an expedited basis so that Duke may provide electric distribution customers with benefits of the TCJA.

B. Procedural Matters

i. Motions to Intervene

{¶ 8} Industrial Energy Users Ohio (IEU-Ohio), the Ohio Manufacturers' Association Energy Group (OMA), the Kroger Company (Kroger), the Office of the Ohio

Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Ohio Energy Group (OEG), and the Ohio Cable Telecommunications Association (OCTA) all filed motions to intervene in this proceeding. No party opposed the motions to intervene filed by IEU-Ohio, OMA, Kroger, OCC, OPAE, and OEG. Accordingly, the Commission finds that those motions comply with the requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, and should, therefore, be granted.

{¶ 9} OCTA contends that OCTA members pay Duke's pole attachment rates and will be directly and substantially affected by the outcome of this proceeding. OCTA argues that the TCJA affects Duke's pole attachment rates because taxes are a component of the pole attachment rate-setting formula approved by the Commission and the Commission's decision in this matter could affect the pole attachers' interest particular if this credit rider is not applicable and yet accepted as a full resolution of the remaining TCJA related issues. Lastly, OCTA notes its interest are not represented by any other party in this proceeding and intervention will not result in any undue delay of the proceeding.

{¶ 10} Duke filed a memorandum contra OCTA's motion to intervene. Duke argues OCTA does not meet the test for intervention as it will not be adversely affected by this proceeding or contribute to the full development of equitable resolution of the issues. Duke contends that the application is clear that the proposed rider provides a credit to electric distribution customers and does not include adjustment of pole attachment rates. Duke notes that it does not disagree that taxes are a component of the calculation of pole attachment rates but that OCTA's justification for intervention misconstrues the impact of the TCJA as it relates to the Commission-approved pole attachment formula rate.

{¶ 11} In its reply in support of the motion to intervene, OCTA argues that determinations in these proceedings could affect OCTA members since Duke argues its

application would resolve the TCJA related issues through this proceeding. OCTA contends it has every reason to expect that the outcome of this proceeding could decide TCJA related issues that could impact OCTA and its members.

{¶ 12} The Commission finds that OCTA has interests related to the TJCA and ensuring that the benefits of the TCJA are appropriately recognized. The Commission finds that the motion to intervene filed by OCTA complies with the requirements set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11 and should, therefore, be granted.

ii. Motion to Establish a Procedural Schedule

{¶ 13} On December 19, 2018, OEG filed a motion to establish a procedural schedule. In its memorandum in support, OEG requested for the attorney examiner to establish an expedited procedural schedule including both a prehearing conference as well as an opportunity for intervenor testimony and a hearing. OEG argues that Duke's proposed base distribution revenue allocation methodology for Rider ETCJA is unreasonable and OEG seeks an opportunity to present a different allocation methodology for the EDIT. OEG contends that while it is appropriate to credit the FIT savings to customer classes on the basis of current distribution revenues since it is easy to verify that the FIT costs are currently being paid on the same basis, that rationale does not hold true for the EDIT.

{¶ 14} On January 2, 2019, Duke filed a memorandum contra OEG's motion to establish a procedural schedule. Duke argues that the Commission should not allow OEG to raise issues of rate design that have been settled by the Commission. Duke contends that OEG is seeking to receive a greater portion of the savings from the TCJA than what Duke's current rate structure would otherwise allow its members to receive. Duke argues that its application should be approved without the further delay of an evidentiary hearing to allow customers to receive benefits from the TJCA.

{¶ 15} On January 7, 2019 OEG filed a reply to Duke's memorandum contra. OEG contends that they are not attempting to change the past, but seeking to ensure all relevant facts are considered when addressing the results from the TCJA. OEG argues that recent TCJA cases at the Commission, which allowed interested stakeholders an opportunity to participate in discussions, did not result in undue delay. OEG seeks an opportunity to present a reasonable alternative EDIT allocation methodology and asks the attorney examiner to set a procedural schedule.

{¶ 16} On January 9, 2019, OCTA filed a reply in support of establishing a procedural schedule. OCTA argues that a procedural schedule will allow parties, including the OCTA, to present their concerns without undue delay. OCTA states that a thorough review of Duke's application should include a fair opportunity for all interested stakeholders to participate in discussions. OCTA contends that a procedural schedule, including a prehearing conference among the parties, would provide an opportunity for a review of Duke's application.

{¶ 17} The Commission denies OEG's motion and finds that a procedural schedule is not necessary in regard to Duke's application establish a rider to credit customers with the benefits of the TJCA. Further, the Commission finds that this case is not the forum to address the cost of service allocation for Duke's customers as OEG had an opportunity in Duke's latest base distribution rate case to raise the issue of cost allocation.

C. Staff Recommendation and Comments

{¶ 18} On December 17, 2018, Staff filed its Review and Recommendation with regard to Duke's application. Staff recommends that, in the first month following a Commission order in this proceeding, Rider ETCJA be established and include an annual credit to customers attributable to the remaining impact of TCJA's reduction in the federal income tax to 21 percent that is attributable to the Company's distribution base rates going forward and that is not already included in the company's electric

distribution rider rates. Staff notes that the annualized credit amount for Rider ETCJA shall be allocated to each rate class based on the percentage of base distribution rates. Further, Staff recommends that the deferrals recorded by the Company for electric distribution service in response to the Commission's October 24, 2018 Finding and Order in the *Tax COI Case*, accumulated from January 1, 2018, through the date in which Rider ETJCA becomes effective be included in the credit amount, with carrying charges, and credited to customers over a twelve-month period. Lastly, Staff recommends that normalized EDIT be amortized based on the Average Rate Assumption Method as required to conform to normalization rules and that the non-normalized EDIT be amortized over ten years, beginning with the first month the rider is effective.

D. Conclusion

{¶ 19} Upon review of Duke's application and Staff's recommendation, the Commission finds that the application is not for an increase in any rate, joint rate, toll, classification, charge, or rental and appears to be just and reasonable. Duke's proposed allocation was agreed to by Staff and we find that the allocation is a fair and reasonable method to credit customers with TCJA. We note that this allocation is consistent with the Commission's Finding and Order in the *AEP Ohio Tax Case. In the Matter of Ohio Power Company's Implementation of the Tax Cuts and Jobs Act of 2017.*, Case. No. 18-1007-EL-UNC (*AEP Ohio Tax Case*), Finding and Order (October 3, 2018). Further, the Commission finds it unnecessary to hold a hearing in this matter. Accordingly, we find that the application to establish Rider ETJCA should be approved, subject to the Staff's recommendations.

III. ORDER

{¶ 20} It is, therefore,

{¶ 21} ORDERED, That OCTA's motion to intervene be granted. It is further,

{¶ 22} ORDERED, That OEG's motion be denied. It is, further,

{¶ 23} ORDERED, That the application filed by Duke on July 25, 2018, be approved, as modified by Staff's Review and Recommendation. It is, further,

{¶ 24} ORDERED, That Duke be authorized to file in final form complete copies of the tariff pages consistent with this Finding and Order and to cancel and withdraw any superseded tariff pages. It is, further,

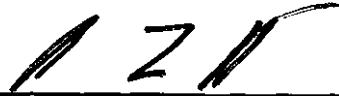
{¶ 25} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariffs are filed with the Commission. It is, further,

{¶ 26} ORDERED, That Duke shall notify all affected customers via a bill message or via a bill insert within 30 days of the effective date of the tariffs. A copy of the customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least 10 days prior to its distribution to customers. It is, further,

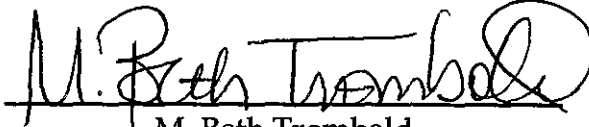
{¶ 27} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 28} ORDERED, That a copy of this Finding and Order be served upon all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO



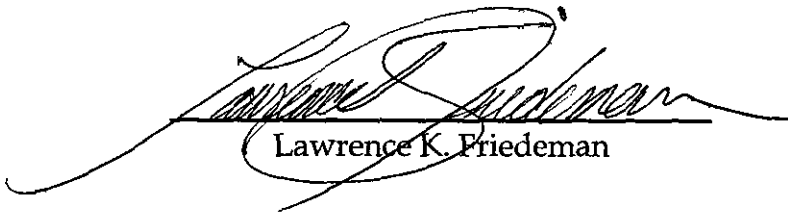
Asim Z. Haque, Chairman



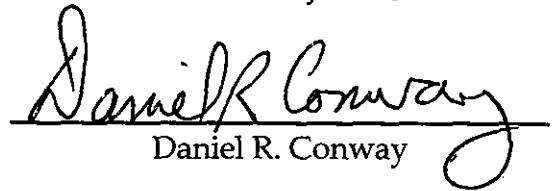
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