**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio re: Implementation of the Tax Cut and Jobs Act of 2017.  In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Tariff Revisions. | )  )  )  )  )  )  )  ) | Case No. 18-1908-GA-UNC  Case No. 18-1909-GA-ATA |

**COMMENTS ON DOMINION’S APPLICATION AND THE PUCO STAFF’S RECOMMENDATIONS FOR CONVERTING DOMINION’S FEDERAL TAX CUTS INTO RATE CUTS FOR OHIO CONSUMERS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# I. INTRODUCTION

A key initiative for Ohio regulation has been to secure for consumers in this state their full sharing of the utilities’ tax savings under the 2017 federal law. Dominion Energy Ohio’s (“Dominion”) application is a good first step to help start this process for its 1.2\_ million customers. In this regard, the most credible approach for transferring a utility’s tax savings to its customers is to use the “AEP model.” Under that approach the PUCO should simply require Dominion to reduce its consumers’ monthly bills commensurate with its federal tax savings. That approach is preferable to allowing Dominion to simultaneously increase its rates (for other reasons) to offset the rate decrease for sharing its tax savings with consumers. Further, we note that another significant issue that needs to be addressed in Dominion’s service area is the outrageous charges by some marketers under the innocuously named “Monthly Variable Rate” program.

On October 24, 2018 in Case No. 18-047-AU-COI, the Public Utilities Commission of Ohio (“PUCO”) ordered that “all Ohio rate-regulated utility companies should be directed to file applications ‘not for an increase in rates,’ pursuant to R.C. 4909.18, in a newly initiated proceeding, to pass along to consumers the tax savings resulting from the TCJA” (the Tax Cut and Jobs Act of 2017) (hereafter the “18-047 Order”).[[1]](#footnote-2) In response to the PUCO’s directive, on December 31, 2018, Dominion filed an application in this proceeding “seeking approval to resolve matters related to the [TCJA] by proposing an approach to establish the rates and charges by and through which to fully return TCJA benefits to its customers.”[[2]](#footnote-3)

On March 5, 2019, the PUCO Staff filed its Review and Recommendations in the case (“Staff Report”). The Staff made several recommendations in four general categories in response to Dominion’s Application: (1) “Reduction in FIT Recommendations”; (2) “EDIT Recommendations”; (3) “Financing Costs Recommendations”; and (4) “True-Up of Pass Back Amounts and Actual TCJA Savings.” As detailed below, on behalf of Dominion’s 1.1 million residential consumers, the Office of the Ohio consumers Counsel (“OCC”) concurs with and supports all of the PUCO Staff’s recommendations. Also, as discussed below, OCC recommends that Dominion should pass the federal tax savings back to consumers in accordance with the rate allocations established in its most recent base rate case that were used to bill consumers for distribution services.

# II RECOMMENDATIONS

## A. In order to expeditiously return to consumers, the full benefit of Dominion’s federal tax savings, OCC supports (and the PUCO should adopt) the PUCO Staff’s recommendations.

The federal tax act reduced the federal corporate income tax rate from 35% to 21%. OCC’s recommendation (number 5) in addition to the PUCO Staff’s four recommendations (numbers 1-4) under its general category entitled ‘Reduction in the FIT Recommendations are included below:

1. Dominion’s Tax Savings Credit Rider (“TSCR”) should be established so that, in the first month after the PUCO issues an order in this case, consumers should begin receiving a credit on their electric bills to recognize Dominion’s income tax rate reductions in ongoing base distribution rates.
2. To protect consumers, the PUCO should reject Dominion’s proposal to defer the income tax savings as a regulatory liability and use the liability to offset the regulatory asset created in Case No. 15-1712-GA-AAM for Dominion’s Pipeline Safety Management Program.[[3]](#footnote-4)
3. The amount of taxes collected by Dominion for the period January 1, 2018 through the date Rider TSCR becomes effective (sometimes referred to as the “Stub Period”), which exceeds the amount of taxes that Dominion actually paid, should be included in Rider TSCR and credited to customers over a twelve-month period.
4. To ensure that consumers get the full benefit of the tax cut, carrying charges at Dominion’s most recently approved cost of long-term debt rate should be applied to the excess taxes collected by Dominion during the Stub Period as illustrated in Attachment A of the Staff Report until Rider TSCR becomes effective.
5. The PUCO should utilize the “AEP model” meaning simply Dominion should be required to reduce its consumers’ monthly bills commensurate with its federal tax savings without allowing Dominion to simultaneously increase its rates (for other reasons) to offset the tax cuts rate decrease.

OCC concurs with and supports each of these recommendations.

OCC agrees with Staff’s first recommendation. Rider TSCR should be established to pass back federal income tax savings to consumers in the month immediately following a PUCO order in this case. Doing so is consistent with expeditiously passing federal tax savings to Dominion’s consumers.

OCC supports Staff’s second recommendation. Dominion’s proposal to record income tax savings as a regulatory liability and use it to offset the Pipeline Safety Management Program (“PSMP”) regulatory asset should be rejected. Dominion’s proposal comingles unrelated cases and adds needless complexity to what should be a straight-forward pass back of savings that are due to consumers.

Regarding Staff’s third recommendation, and in accordance with the 18-047 Order, the TSCR should include the refunds for the Stub Period. Regarding Staff’s fourth recommendation, OCC agrees with the PUCO Staff that carrying charges set at Dominion’s most recently approved cost of long-term debt rate[[4]](#footnote-5) should be applied to the Stub period refunds. Dominion’s recommendation to use a 3.0% annual interest rate should be rejected. Setting the carrying charge rate at Dominion’s cost of long-term debt is consistent with Dominion riders that provide for carrying costs that are billed to consumers, such as the Pipeline Infrastructure Replacement Customer Charge[[5]](#footnote-6) and Automated Meter Reading (“AMR”) Rider.[[6]](#footnote-7) In addition, the PUCO should require Dominion to reduce its consumers’ monthly bills commensurate with its federal tax savings without allowing Dominion to simultaneously increase its rates (for other reasons) to offset the rate decrease for sharing its tax savings with consumers.

Dominion’s residential consumers should receive the full benefit of the TCJA tax reductions as soon as possible. OCC recommends that the PUCO adopt all of the PUCO Staff recommendations concerning implementing the TSCR and establishing the appropriate carrying charge rate.

## B. In order to maximize the return of Dominion’s tax cut savings to consumers, OCC supports (and the PUCO should adopt) the PUCO Staff’s recommendations related to Excess Deferred Income Taxes.

With the reduction of the income tax rate under the TCJA, a portion of the accumulated deferred income taxes (“ADIT”) recorded by public utilities becomes “excess” or Excess Deferred Income Taxes (“EDIT”) as the income tax rate is lowered. This excess should be recognized and returned to consumers. “Protected” or “Normalized” EDIT reflects the timing differences for utility plant assets that were booked utilizing straight-line deprecation for regulatory purposes but recorded for tax purposes as accelerated depreciation. In accordance with federal tax normalization requirements,) protected/normalized EDIT should be amortized over a period of time based on the average rate assumption method (“ARAM”) to avoid a tax normalization violation. Federal law provides that protected/normalized EDIT must be amortized over the remaining life of the assets. “Unprotected’ or “Non-Normalized” property and non-property EDIT involves a book-to-tax timing difference that does not have federal requirements dictating how quickly the excess money held by utilities must be returned to consumers. Therefore, the money should be returned to consumers as expeditiously as possible.

In the Staff Report in this case, PUCO Staff makes several recommendations concerning proper recognition and timing of the return of EDIT. In summary, these recommendations are:

1. Dominion’s Normalized EDIT should only include balances that are required to be amortized in accordance with ARAM.
2. Plant-related EDIT balances not subject to ARAM and amortization over the life of the asset should be treated the same as Non-Normalized EDIT.
3. Dominion’s Normalized EDIT should be based on ARAM to conform with normalization rules.
4. The monthly amortization of Dominion’s Normalized EDIT included in the TSCR should be based on the balance at December 31, 2017, less any balance for Normalized EDIT accounted for in Dominion’s PIR and AMR Riders.
5. Amortization of EDIT related to the PIR and AMR Riders through December 31, 2017 should be recognized in each Rider.
6. Non-Normalized EDIT should be amortized over 72 months (six years) beginning with the first month that Rider TSCR is effective.

OCC agrees with and supports all of these recommendations. The recommendations are consistent with Generally Accepted Accounting Principles and IRS requirements. Dominion’s consumers should get back all EDIT as expeditiously as possible. OCC recommends that the PUCO adopt the PUCO Staff’s recommendations.

## C. A full rate case review of Dominion’s operations would benefit consumers; therefore, OCC supports (and the PUCO should adopt) the PUCO Staff recommendations concerning financing costs.

Under a heading entitled “Financing Costs Recommendations” in the Staff Report, the PUCO Staff states that amortization of PIR and AMR rider-related EDIT will be recognized in the respective riders. It also states that Dominion will have an opportunity to charge consumers for any incremental revenue requirements resulting from amortization of PIR and AMR rider-related EDIT in the PIR and AMR riders. But the PUCO Staff notes that there currently is no mechanism for Dominion to charge consumers for any incremental return on rate base associated with amortization of EDIT that is not associated with the PIR and AMR riders. The Staff points out that Dominion is requesting that this incremental return on rate base should be recovered from consumers via a new mechanism incorporated into the TSCR.

The PUCO Staff recommends that the PUCO reject Dominion’s request for a new mechanism in the TSCR. Instead, the PUCO Staff favors the filing of a base rate case by Dominion. The Staff states that the appropriate mechanism for collecting any incremental return on rate base resulting from amortization of EDIT not associated with the PIR and AMR riders from customers is a base rate case. These rates were initially set in a base rate case. Therefore, any incremental revenue requirements resulting from amortizing EDIT associated with these rates should be confirmed and recognized in a base rate case.

OCC concurs with and supports this recommendation. As the PUCO Staff points out, any incremental revenue requirements resulting from amortization of PIR and AMR rider-related EDIT in the PIR and AMR riders will be collected from consumers in those riders.

Further, Dominion has not filed a base rate case since 2007. It has been 12 years since Dominion’s capital investments, depreciation, revenues, expenses, numerous riders, as well as any incremental revenue requirements resulting from amortizing EDIT, have been examined and trued-up in a case for examining the base rates that consumers pay for natural gas distribution service. Therefore, OCC recommends that the PUCO adopt the PUCO Staff’s recommendation that Dominion file a base rate case.

## D. To protect consumers, OCC supports (and the PUCO should adopt) the PUCO Staff’s recommendation that the TCSR should be trued-up annually.

To avoid potentially large variances between actual TCJA tax impacts and amounts refunded through the TSCR, PUCO Staff recommends that the TSCR be trued up annually. Staff states that such a true-up will contribute towards minimizing the regulatory asset or liability that will be part of the Dominion’s next base rate case. OCC concurs and recommends that the PUCO adopt Staff’s recommendation. Staff’s recommendation will ensure that consumers get the full benefit of the tax reduction.

## E. The PUCO should direct Dominion to return TCJA savings to consumers based on the customer class allocation percentages adopted in Dominion’s most recent base rate case for billing consumers for services rendered.

In addition to the recommendations of the PUCO Staff, the PUCO also should adopt a fair allocation of Dominion’s total tax savings for sharing among the customer classes (residential, commercial, industrial, etc.). A fair allocation for residential consumers and other customer classes is to distribute Dominion’s tax savings based on the allocation percentages adopted in Dominion’s most recent base rate case. Dominion collected rates from consumers based on such allocation percentages and the rates collected give rise to the federal tax cut refunds which should be returned to consumers based on the same customer class allocations.

OCC recommends that the PUCO direct Dominion to return federal tax savings to consumers through the TSCR based on the allocation percentages adopted in Dominion’s most recent base rate case for billing consumers for services rendered.

## F. The PUCO should adopt the “AEP Model” to ensure that consumers fully share in Dominion’s tax savings.

Securing for consumers in this state their full sharing of the utilities’ federal tax savings has been a key regulatory initiative in Ohio. Dominion’s application is a good first step to help start this process. We believe that the most credible approach for transferring Dominion’s tax savings to its customers is to use the “AEP model.” Under that approach the PUCO should simply require Dominion to reduce its consumers’ monthly bills commensurate with its federal tax savings. That approach is preferable to allowing Dominion to simultaneously increase its rates (for other reasons) to offset the rate decrease for sharing its tax savings with consumers.

# III. CONCLUSION

The PUCO should adopt OCC’s recommendations, which include support for the PUCO Staff’s recommendations, to give Dominion’s natural gas consumers all the bill reductions they are due for Dominion’s federal tax savings OCC’s recommendations include requiring Dominion to fairly distribute its tax savings between the various customer classes, including residential customers, by using the allocation percentages adopted in Dominion’s most recent base rate case. OCC’s recommendations also include securing for Dominion’s customers their full sharing of Dominion’s tax savings by using the “AEP Model” – requiring Dominion to reduce its consumers’ monthly bills commensurate with its federal tax savings.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 4th day of April 2019.

*/s/ William J. Michael*

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1. PUCO Finding and Oder in Case No. 18-047-AU-COI, at 18 (October 24, 2018). [↑](#footnote-ref-2)
2. Dominion Application at 1 (December 31, 2018). [↑](#footnote-ref-3)
3. *See, In re Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval to Change Accounting Methods Associated with Its Pipeline Safety Management Program*, Case No. 15-1712-GA-AAM, Opinion and Order (November 3, 2016). [↑](#footnote-ref-4)
4. 6.5% as set in Case No. 07-829-GA-AIR. [↑](#footnote-ref-5)
5. *See, In re Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Rate Plan for Its Gas Distribution Service*, Case No. 07-830-GA-AL, *et. al*. Opinion and Order (October 15, 2008). [↑](#footnote-ref-6)
6. *Id*. [↑](#footnote-ref-7)