

**BEFORE
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. 18-0047-AU-COI

COMMENTS OF OHIO GAS COMPANY

Frank P. Darr (Reg. No. 0025469)
(Counsel of Record)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
fdarr@mwncmh.com
(willing to accept service by e-mail)

FEBRUARY 15, 2018

ATTORNEYS FOR OHIO GAS COMPANY

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

COMMENTS OF OHIO GAS COMPANY

I. INTRODUCTION

On January 1, 2018, provisions of the Tax Cuts and Jobs Act of 2017 ("TCJA") became effective. One of those provisions lowers the federal corporate income tax rate to 21%. The TCJA also constrains the methods to amortize excess accumulated tax deferral amounts if amortization is ordered.

The Public Utilities Commission of Ohio ("Commission") opened this investigation on January 10, 2018 "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." Entry, ¶ 1 (Jan. 10, 2018). It also ordered all utilities to establish a deferred liability to record the estimated reduction in federal income tax. *Id.*, ¶ 7.

Ohio Gas Company ("Ohio Gas") has proactively addressed the recent change in federal corporate tax rates in its pending rate case. Because it has done so, Ohio Gas urges the Commission to find that Ohio Gas has taken the appropriate steps to implement the changes and that further review of its rates and terms and conditions of service is not necessary.

A. The Commission should adopt a flexible approach to applying the changes in federal corporate income tax

The tax rate change in the TCJA reduces the corporate tax rate to a flat 21%, effective January 1, 2018. Pub. L. 115-97, § 13001(a). The reduction in the tax rate under the TCJA also affects the level of accumulated deferred income tax liabilities and assets (“ADIT”) that public utilities recognize. This is relevant because utility-related ADIT liabilities are typically treated as rate base reductions for ratemaking purposes while ADIT assets are treated as additions to rate base.

The reduction in the tax rate to 21% also results in “excess deferred income taxes” as the ADIT liabilities and assets that were established at a 34% tax rate must be reduced to reflect the fact that the ADIT balances must be restated based on the 21% tax rate. This difference between the ADIT amounts calculated at 34% and the amounts calculated at 21% are the excess deferred income taxes.

Federal law, however, does not require the sharing of excess deferred income taxes with customers. If the Commission orders a sharing, the TCJA limits the manner by which the excess deferred taxes as of December 31, 2017 may be shared with rate payers to one of two methods. *Id.*, § 13001(d). Under one method, called the Average Rate Assumption Method, the amount cannot be returned any faster than the remaining regulatory life of the asset that gave rise to the excess deferred taxes. Under an “alternative method,” the utility would amortize the excess amount over the remaining life of all public utility property included in the plant account or a composite rate used to compute depreciation. *Id.*

Due to the complexity of the potential tax change effects, opportunities to advance customer interests vary based on individual company differences in revenue collection

mechanisms (for example, cost of service base rates and riders versus market based rates) and the accumulation of deferrals for plant additions or expenses. Because the approach to each public utility may be unique, the Commission should address each utility individually and seek to find lawful and reasonable mechanisms to provide customers the benefits of the tax reductions.

Rate reductions are an obvious way of assuring that customers benefit from the lower federal corporate income tax rate. Addressing the complexity presented by the tax change, however, may also entail using the tax benefits to reduce deferred assets and the carrying charges that are accruing on those assets. Directing these public utilities to reduce deferred assets by the tax savings would not increase current rates, but would reduce the future cost to customers.

In 1987, the Commission addressed a situation similar to that presented by the recently enacted reduction in the federal corporate income tax rate. Following the enactment of the Tax Reform Act of 1986, the Chairman of the Commission sought by letter information on the effect of the reduction in the federal corporate income tax rate from all public utilities. Subsequently, the Commission opened an investigation. *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Reform Act of 1986 on Regulated Ohio Utility Companies*, Case No. 87-831-AU-COI, Entry (June 9, 1987) ("1987 Tax COI"). In the first entry in the case, the Commission noted that it was addressing or had addressed the tax rate reduction in several rate cases, that several public utilities' rates were unaffected by the tax rate change, and that three telephone companies were losing revenue due to reductions in intra-LATA toll rates and were exempted from further review. *Id.*, ¶ 3. Because some public utilities failed to respond to

the Chairman's letter, the Commission ordered that the non-responding companies file for a reduction in rates or show cause why they should not.

In a subsequent entry, the Commission noted that the Staff had reviewed financial information for an additional 40 companies and recommended no changes in rates for 28 of them. The reasons for no action included low estimated annual income, lack of jurisdiction over rates, and inclusion of the tax change in ordinance rates. *Id.*, Finding and Order ¶ 3 (Sept. 9, 1987). Twelve rural phone companies remained under investigation.

The Commission closed out its review with a Finding and Order that permitted rates to remain in effect for several small telephone companies and a late-identified water company on the basis, in part, that projected rates of return would not be unreasonable. *Id.*, Finding and Order at ¶ 5. In regard to two companies, the Commissions recognized that they had filed applications for modifications to depreciation accounting that would reduce future revenue requirements. *Id.*

Whatever the unstated reasons for adopting a company-by-company approach were, such an approach is even more appropriate in the current regulatory environment, which has changed substantially since 1987. With the adoption of House Bill 476 in 1996, the General Assembly substantially altered gas regulation, which introduced alternative regulation plans. Similarly, electric regulation changed materially when the General Assembly enacted Senate Bill 3 and Senate Bill 221. At the other end of the spectrum, the Commission has almost no role in the regulation of telephone company charges following the enactment of Senate Bill 162 in 2010. With the introduction of alternative

rate setting methods and competitive pricing, a one-size-fits-all response to the recent tax law changes would not result in successful implementation of the tax reduction.

II. OHIO GAS COMPANY

A. The Ohio Gas rate structure and current deferrals

Ohio Gas provides gas distribution services to communities located in northwest Ohio. It does not sell natural gas to customers and has exited the merchant function. Customers in the area served by Ohio Gas take service either under community aggregation programs or under contract from gas suppliers. Ohio Gas currently has the lowest base distribution charges in the region and has avoided the use of riders to replace unprotected pipe and maintain service connections, including risers, to customer locations.

Ohio Gas base rates have not changed since 1985 with the exception of riders incorporating state and federal tax changes. In 2017, it sought to increase its tariffed customer charge in an application to increase rates. *In the Matter of the Application of Ohio Gas Company for an Increase in Gas Distribution Rates*, Case Nos. 17-1139-GA-AIR, *et al.*, Application (May 31, 2017) (“Rate Case”). As demonstrated by the Staff Report in that case, Ohio Gas was earning a rate of return of 2.84%, based on the Staff’s adjustments to the Application, well below a reasonable return on its plant used to provide service. *Id.*, Staff Report, Schedule A-1 (Oct. 22, 2017). The parties to that case submitted a Joint Stipulation and Recommendation that resolves all issues in the case on January 26, 2018. *Id.*, Joint Stipulation and Recommendation (Jan. 26, 2018). The Joint Stipulation and Recommendation proposes the incorporation of the 21% tax rate to set rates. *Id.* at 5.

As a result of another Commission order, Ohio Gas is currently authorized to defer the costs associated with the development of a geographic information system (“GIS”). *In the Matter of the Application of Ohio Gas Company for Approval to Change Accounting Methods Application Of Ohio Gas Company for Authority to Establish a Regulatory Asset*, Case No. 15-222-GA-AAM, Finding and Order (July 29, 2015). The GIS development and implementation is in its second year. Ohio Gas has not elected at this point to secure authority to begin amortizing the deferred asset booked for this project.

B. Recommendations regarding the application of the TCJA to Ohio Gas

Through the recent Rate Case settlement, Ohio Gas has proposed to incorporate the federal corporate tax rate reduction and recommends that any additional rate relief be applied to reduce the deferred asset it is booking for the GIS project.

As previously noted, Ohio Gas has already proactively addressed the effect of the federal corporate tax rate reduction on its rates. As part of the settlement filed with the Commission on January 26, 2018, it has agreed to incorporate a reduction in federal corporate income taxes to determine the revenue deficiency.

The settlement also addressed the implementation of the results of the Commission investigation. Under the terms of the settlement, Ohio Gas and the parties recognized that the Commission may issue orders that would have the effect of increasing or decreasing the rates proposed in the settlement. Ohio Gas agreed “to waive its opportunity to request such an increase. To the extent that that order would require Ohio Gas to reduce its rates, Ohio Gas agree[d] to make an application to effect that change, but may do so under protest.” *Rate Case*, Joint Stipulation and Recommendation at 5.

Because the TCJA limits the methods of amortizing excess accumulated deferred income taxes, Ohio Gas does not anticipate that an amortization would produce a rate benefit for its customers. Using a composite approach based on approximately 35 years, Ohio Gas has estimated that amortization would result in a rate increase relative to what is proposed in the settlement, which Ohio Gas has agreed to waive.¹

If the Commission were to determine that Ohio Gas should return additional amounts to customers as a result of the TCJA, Ohio Gas recommends that the amounts be applied to its current GIS deferred asset.² Applying any customer benefit to the deferred asset would reduce future rate effects of the deferral and reduce the carrying cost of the deferred asset to Ohio Gas. *1987 Tax COI*, Finding and Order at ¶ 5 (Dec. 23, 1987).

Finally, the Commission should terminate the order directing the accounting of the tax effects as it is applied to Ohio Gas. Until new rates are in effect, Ohio Gas is earning a rate of return substantially below that authorized by law. Ordering a reduction in rates would further erode a situation that is already not compensatory. Therefore, as it did in 1987, the Commission should not direct any change in the current effective rates for Ohio Gas to account for the reduction in the federal corporate income tax rate. *Id.*, Finding and Order at ¶ 3 (Sept. 9, 1987).

¹ A composite rate of approximately 35 years is consistent with the remaining life depreciation approved by the Commission in Ohio Gas's recent depreciation study. *In the Matter of the Application of Ohio Gas Company to Change its Depreciation Accrual Rates*, Case No. 16-2124-GA-AAM, Application (Oct. 26, 2016).

² Under the terms of the Joint Stipulation and Recommendation, Ohio Gas reserved the right to seek review of a Commission order directing it to decrease rate in this or another proceeding. *Rate Case*, Joint Stipulation and Recommendation at 5. The recommendation to apply any excess accumulated deferred taxes to the GIS deferral is not intended to waive Ohio Gas's reservation of rights.

III. CONCLUSION

Ohio Gas has proactively addressed the recent change in federal corporate tax rates in its pending rate case. Implementation of changes related to amortizing excess accumulated deferred income taxes would likely increase rates, a result Ohio gas has elected to forego. Accordingly, Ohio Gas urges the Commission to find that Ohio Gas has taken the appropriate steps to implement the changes and that these changes are in the public interest.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Reg. No. 0025469)

(Counsel of Record)

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

fdarr@mwncmh.com

(willing to accept service by e-mail)

ATTORNEYS FOR OHIO GAS COMPANY

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon interested parties on February 15, 2018.

/s/ Frank P. Darr

Frank P. Darr

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/15/2018 1:56:39 PM

in

Case No(s). 18-0047-AU-COI

Summary: Comments Comments of Ohio Gas Company electronically filed by Mr. Frank P Darr on behalf of Ohio Gas Company