

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. 18-47-AU-COI

COMMENTS OF OHIO POWER COMPANY

In its January 10, 2018 Entry in this case, the Public Utilities Commission of Ohio (“Commission”) directed utilities to file public comments related to the Tax Cuts and Jobs Act of 2017 (“TCJA”) discussing: (1) “those components of utility rates that the Commission will need to reconcile with the TCJA” and (2) “the process and mechanics for how the Commission should do so.” Entry at ¶ 4 (Jan. 10, 2018).

Ohio Power Company (“AEP Ohio” or the “Company”) expects that customers will benefit from tax reform through retail utility rates. Each utility in Ohio is uniquely situated, however, and this undertaking is significant and complex. Therefore, the manner in and process by which those benefits are realized should be thorough, methodical, and individually tailored. The most appropriate manner in which to address tax reform impacts for each utility, including AEP Ohio, is through separate, individualized proceedings – and not in this generic all-utility docket. The Company respectfully submits the following additional comments in accordance with the Commission’s January 10, 2018 Entry.¹

¹ The Company, along with the other electric distribution utilities, jointly filed an application for rehearing in this docket on February 9, 2018; the points raised in the Application for Rehearing are referenced, in part, in these comments but should be fully incorporated when considering the Company’s position in this docket. In presenting these comments, the Company fully reserves all of its positions as reflected in the Application for Rehearing.

I. Utility Rate Components Impacted by the TCJA

The TCJA impacts AEP Ohio's costs in several ways. The quantification of those impacts, which requires complex analysis, will not be final until later in the year. As with utility costs in general, which change over time, the following components of the Company's tax costs are also changing as a result of the changes to the tax laws:

- *Current Tax Expense* – Effective January 1, 2018, current tax expense will decrease due to the reduction in the federal income tax rate from 35% to 21%.
- *Loss of Bonus Depreciation* – As a result of the TCJA, the Company is no longer eligible for bonus depreciation. The loss of bonus depreciation results in increased cash tax payments by the Company and reduces the level of ADIT that can be expected into the future.
- *Excess Accumulated Deferred Income Taxes (“ADIT”)* – The reduction in federal income tax rate creates “excess” ADIT. There are two components of excess ADIT, and they are treated differently under the TCJA – “normalized” excess ADIT and “non-normalized” excess ADIT:
 - *Normalized Excess ADIT* – The TCJA requires normalized excess ADIT to be amortized over “the remaining lives of the property as used in its regulated books of account which gave rise to the reserve for deferred taxes.” See TCJA Subtitle C, Part I, Sec. 13001(d)(3)(B). The amortization period for the normalized excess ADIT will not be known with certainty for a number of months.
 - *Non-Normalized Excess ADIT* – The non-normalized excess ADIT is to be amortized over a period to be approved by this Commission.

How these impacts should be addressed in rates varies and should be analyzed in prospective-looking, individualized proceedings that take into account the considerations discussed in Section II.

II. Financial impacts of the TCJA should only be prospectively reflected in rates: (1) if a rider mechanism and associated tariff already provides for such reconciliation, or (2) as part of a future base rate proceeding that results in comprehensive prospective rate changes.

Utilities are permitted only to charge the filed and approved rates, and the Commission is authorized to change those rates only prospectively. *Keco Industries, Inc. Cincinnati & Suburban Bell Tel. Co.*, 166 Ohio St. 254, 257, 141 N.E.2d 465 (1957). Therefore, the Commission can only modify rates and riders prospectively in a rate proceeding and, in the meantime, the rates and riders are implemented using the terms and conditions that were previously approved by the Commission. Once rates are established, they are not adjusted until new rates are set in a future proceeding. *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm.*, 46 Ohio St.2d 105, 346 N.E.2d 778 (1976).

As a practical matter, the Company believes that the issues addressed herein may best be resolved in individualized proceedings through proactive efforts between utilities and stakeholders to mutually resolve these issues through existing rider mechanisms and/or settlement efforts (subject to Commission approval). That approach, like the similar approach taken in addressing the 1980s tax reform, will allow for consideration of how the tax savings are treated in retail rates depending on the nature of the costs and the mechanisms through which they are collected. Individual proceedings will facilitate consensus settlement opportunities for the complex issues surrounding the TCJA. Significantly, the Commission should also respect the existing commitments that AEP Ohio has made within settlements or as part of prior or pending rate proceedings—including the Company’s commitment to file a base distribution rate case by June 1, 2020.² AEP Ohio submits that TCJA impacts should be prospectively reflected

² *AEP Ohio ESP III Extension*, Case Nos. 16-1852-EL-SSO, *et al.*, Joint Stipulation and Recommendation at Par. III.C.1 (p. 4) (Aug. 25, 2017).

in the Company's rates through changes in rider rates and base rates, in accordance with the timing and procedural considerations discussed below.

A. Some TCJA impacts will automatically flow through riders, but they should do so only in accordance with the terms of the approved rider mechanism and tariffs.

The existing terms and conditions of many riders may automatically reflect some of the TCJA impacts. The Commission should adhere to the statutorily-defined process to make additional changes to rates (including rates in riders). Absent a hearing process and findings supported by substantial evidence, the Commission should not modify riders in order to reflect the impacts of the TCJA. *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229, ¶ 17-19. Depending on the nature of the rider, the terms and conditions under which it was approved – and whether it was created as part of a comprehensive Electric Security Plan (ESP) – the Commission may lack authority to selectively modify one component of the rider (*e.g.*, requiring that a rider be modified to reflect tax reform impacts) without an existing basis in the rider tariff.

Further, the financial impacts of the TCJA may vary when it comes to being reflected in retail rates. For example, while excess normalized ADIT or the loss of bonus depreciation may be automatically reflected in a particular rider, tax expense or a gross revenue conversion factor may not be automatically reflected under the terms and conditions adopted by the Commission when creating that rider. Moreover, if a rider was approved with fixed carrying charges, that rider should not be unilaterally amended by the Commission to reflect the lower tax rate without being comprehensively examined in an appropriate ratemaking proceeding. In sum, some riders will automatically reflect some TCJA impacts but the Commission should not unilaterally modify other riders by selectively requiring that the lower tax rate be reflected.

B. Changes in rider rates established under the ESP process must conform to the requirements established for the ESP process.

As the Commission is aware, many of AEP Ohio's current riders were created as part of an Electric Security Plan proceeding under R.C. 4928.143. It would violate the ESP statute to modify riders adopted in an ESP without the Company's consent or outside of the comprehensive ESP process. *See* R.C. 4928.143; *In re Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, ¶30. As part of the ESP statute, there is a significantly excessive earnings test (SEET) that forms the basis for any potential customer refunds relating to significantly excessive over-earnings associated with ESP rate adjustments; in that context, the Commission can only refund TCJA impacts that drive significantly excessive over-earnings and the accounting directive may violate the SEET statute. In any event, the Commission can only modify how TCJA impacts are reflected in the terms and conditions of riders through a separate ratemaking proceeding that is prospective in nature and comprehensively reviews offsetting changes in other expense or carrying charge components, as discussed above.

C. Base rates can only be changed prospectively as part of a proceeding under R.C. 4909.18.

The Commission should incorporate the effect of the TCJA in setting new base rates in accordance with the terms of the pending Stipulation in the Company's ESP III Extension case, which commits the Company to file a base distribution rate case by June 1, 2010.³ The Commission is not permitted to unilaterally engage in single-issue ratemaking or change base rates without following the statutory process required in R.C. Chapter 4909. While the General Assembly has delegated authority to the PUCO to set just and reasonable rates for public utilities

³ *AEP Ohio ESP III Extension*, Case Nos. 16-1852-EL-SSO, *et al.*, Joint Stipulation and Recommendation at Par. III.C.1 (p. 4) (Aug. 25, 2017).

under its jurisdiction, it has done so by providing a detailed, comprehensive and, as construed by this court, mandatory ratemaking formula under R.C. 4909.15, and AEP Ohio's base rates may only be established or modified through a full cost of service study in a base rate proceeding.

Columbus Southern Power Co. v. Pub. Util. Comm., 67 Ohio St.3d 535, 537-538 (1993).

If expenses rise, an EDU cannot raise base rates until it establishes the need to do so in a base rate proceeding that follows the process and requirements of R.C. 4909. Had the recent tax law change resulted in a tax increase, AEP Ohio has little doubt that this same principle would have been enforced against it in response to any attempt to use the tax increase as a basis for single-issue ratemaking of base rates. Likewise, it would be unreasonable and unlawful for the Commission to unilaterally force a base rate reduction based on a single expense reduction.

Establishing base rates under R.C. Chapter 4909 must be done prospectively and as part of a comprehensive review of the Company's costs in accordance with the traditional ratemaking formula and process found in R.C. Chapter 4909. Only upon investigation, hearing, and determination that existing rates of public utility are unjust or unreasonable, can the Commission establish new rates to be substituted for existing rates, and the new rates shall have prospective effect only. *Lucas County Comm'rs v. Pub. Util. Comm.*, 80 Ohio St.3d 344, 686 N.E.2d 501 (1997).⁴ In terms of rate impact, the net impact of the gross dollar amount created in the regulatory liability that the Commission has ordered in this proceeding will be determined with the other cost changes presented at the time of the future rate case.

⁴ Although the Commission also has the authority to commence a "reverse rate case" under R.C. 4905.26, AEP Ohio does not believe that approach would be appropriate here because that process would place a burden on the Commission and, in light of the fact that all utilities are affected by the TCJA, would be a daunting and time-consuming task. In any case, the Commission still has to follow R.C. 4909.15 in such a reverse rate case.

III. AEP Ohio is complying with the Commission's order to establish a regulatory liability.

Although the Company contends that it would be generally appropriate to reflect the impact of the TCJA in rates through rider updates (as applicable) and when new base rates are established, as discussed above, the Company is complying with the Commission's Order and has recorded a deferred liability for "the estimated reduction in federal income taxes resulting from the TCJA." That said, the Company also raised important clarification questions in the Application for Rehearing that it and the other EDUs filed in this docket, and the Commission's ruling on those matters could affect the regulatory liability that AEP Ohio has booked. But the Company has taken provisional action already, and it will defer the regulatory liability until further order of the Commission. AEP Ohio will make periodic downward adjustments to the regulatory liability to reflect the portion of savings passed back through Company riders pursuant to future Commission orders. In addition, the impact of the TCJA on transmission costs will flow through the Company's Basic Transmission Cost Recovery rider and will not be deferred.

CONCLUSION

AEP Ohio appreciates the opportunity to provide comments in this proceeding and looks forward to working proactively with the Commission and interested stakeholders in a separate proceeding(s) to address the cost and rate impacts of the TCJA addressed above. To that end, AEP Ohio stands ready to pursue cooperative, proactive efforts in Company-specific dockets to attempt resolution of these issues through settlement and facilitate the efficient reflection of tax benefits in customers' retail rates. Finally, the Company reserves the right to file reply comments to respond to any argument advanced in any other stakeholder's comments submitted in this proceeding.

Respectfully submitted,

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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 the following parties.

In addition, I hereby certify that a service copy of the foregoing *Comments* was sent by, or on behalf of, the undersigned counsel to the following parties of record this 15th day of February 2018, via electronic transmission.

/s/ Christen M. Blend

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2/15/2018 2:13:08 PM

in

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

Summary: Comments electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company