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

OHIO PARTNERS FOR AFFORDABLE ENERGY'S REPLY COMMENTS

Ohio Partners for Affordable Energy ("OPAE") submits to the Public Utilities Commission of Ohio ("Commission") these reply comments in the Commission's investigation of the impact of the Tax Cuts and Jobs Act of 2017 on regulated Ohio utilities. The Commission's January 10, 2018 Entry opening this investigation stated that the Commission would determine the appropriate course of action to pass benefits to ratepayers of the federal corporate income tax rate reduction from 35 percent to 21 percent effective January 1, 2018. The Commission intends to reconcile the new federal income tax rate with the level of tax expense recovered through current base rates, riders containing a tax component, accumulated deferred income taxes, and deferred assets that include tax components calculated using the previous tax rate. The Commission asked each utility individually to provide the information necessary for their rates and riders to reflect the current 21 percent tax rate.

In its initial comments, Ohio Power Company ("Ohio Power") dismisses the significance of the Commission-ordered investigation to adjust rates that are impacted by the tax rate reduction. For base rates, Ohio Power believes that the Commission needs a separate ratemaking proceeding that is prospective in nature and reviews offsetting changes in other expense or carrying charge components. Ohio Power Comments at 5. According to Ohio Power, for base rates, the Commission is not permitted to engage in single-issue ratemaking or change base rates without following the process required in Chapter 4909. Only upon investigation, hearing, and determination that existing rates are unjust and unreasonable can the Commission establish new rates, which have prospective effect only. Id. at 6. As for riders, Ohio Power comments that absent a hearing process and findings supported by substantial evidence, the Commission should not modify riders to reflect the impact of the tax reduction. Ohio Power argues that the Commission may lack authority to modify selectively one component of riders without an existing basis in the rider tariff. Id. at 4. According to Ohio Power, the Commission should not unilaterally modify riders by selectively requiring that the lower tax rate be reflected. Id. Ohio Power also argues that the Commission cannot modify riders adopted in an Electric Security Plan ("ESP") proceeding without the utility's consent or outside the ESP process.

The opening of a Commission-ordered investigation negates all these arguments made by Ohio Power and other utilities. OPAE agrees with the comments of the Ohio Manufacturers' Association Energy Group ("OMAEG") and the Office of the Ohio Consumers' Counsel ("OCC") that the Commission has statutory authority, confirmed by Supreme Court precedent, to ensure that utility rates are just and reasonable and not more than the charges allowed by law. Revised Code ("R.C.") Sections 4905.22 and 4905.26. OMAEG Comments at 6-7; OCC Comments at 2-3. The Commission has authority to adjust rates based on its own investigation to assure that rates are just, reasonable, and lawful. R.C. 4905.26.

The Commission should exercise its statutory authority to give ratepayers relief as soon as the Commission's investigation determines what the impact of the tax reduction on the utilities is. This investigation provides the Commission all the statutory authority, both substantive and procedural, that the Commission needs to address the impact of the new tax rates on Ohio's regulated utilities and provide ratepayers relief. The Commission should address the impact of the rate reduction and provide relief in this investigation and also in any pending rate and rider cases. This investigation provides the utilities all the due process required.

There has been a sudden and dramatic reduction in the federal tax rate used to calculate the utilities' revenue requirements. In the ratemaking process, the equity component of the utility's rate of return is grossed up for federal income taxes using the federal income tax rate, formerly 35%, now 21%. When the income tax rate is reduced, the income tax expense must be reduced through a reduction in the gross up. As a result of the tax reduction, the utilities' base rates and riders have been unjust and unreasonable since January 1, 2018, when the tax reduction went into effect. OCC is correct to refer to the tax reduction as an "extraordinary and rare change in the law" which has made base rates and riders paid by customers no longer just and reasonable as required by Ohio Revised Code 4905.22. OCC Comments at 11.

The Dayton Power and Light Company ("DP&L") comments that the ratemaking process is not a purely mechanical exercise using actual numbers.

DP&L Comments at 5. According to DP&L, the adjustments for the tax reduction are "going to be substituting one set of tax-related numbers that are based on estimates with a different set of tax-related numbers that are based on different estimates." DP&L Comments at 5. DP&L comments that there have been hundreds of changes up and down to its costs and revenues, and that modifying rates to make one change, while ignoring other changes, is "single-issue ratemaking". Id. Similarly, Ohio Power invokes single-issue ratemaking and refers to "utility costs in general, which change over time". Ohio Power Comments at 2.

The utilities are wrong to contend that the tax reduction is similar to an ordinary change in costs and revenues that would occur in the years after any base rate is set. OCC is correct to refer to the tax reduction as an "extraordinary and rare change in the law" which has made rates paid by customers no longer just and reasonable as required by R.C. 4905.22. OCC Comments at 11. Under the ratemaking process, the gross up in utility rates to account for federal taxes simply uses the federal income tax rate; on December 31, 2017, it was 35%, and on January 1, 2018 it was 21%. The gross-up for federal taxes is based on the lawful federal tax rate; it is not part of the process whereby utility revenues and expenses are considered. In the gross up for federal taxes, no consideration is made of the actual amount of federal taxes the utility paid or is projected to pay in the test year. It is understood that customers may pay more to compensate a utility for federal taxes than the utility actually pays. A utility holding company may pay no federal income tax at all. Because the gross up is performed simply using the current federal income tax rate, base rates, riders, and carrying charges based on a tax rate no longer in effect cannot be lawful. Rates based on an incorrect gross up for taxes cannot be considered just and reasonable.

As OCC states, the utilities should be required to estimate the tax impact on base rates since January 1, 2018 and provide a monthly bill credit to customers. The credit can be accounted for in the deferred liability account which the Commission has already ordered. In the next base rate case, when new base rates using the reduced tax rate are in effect, the monthly bill credits based on the utility's estimate should be discontinued with a true-up occurring in the base rate case. OCC Comments at 12. All utility riders with tax components should be reduced immediately to reflect the 21% tax rate beginning on January 1, 2018. The Commission should order all utilities to update all riders that contain tax components to reduce the amount that customers pay for federal taxes, including carrying costs from January 1, 2018.

Utilities should also be required to return all excess accumulated deferred income taxes ("ADIT") to customers. Id. at 13-14. Accelerated and bonus depreciation cause the amount of tax actually paid by utilities to be less than the tax expense recovered from ratepayers in the early years of an asset's life. If the tax rate remains the same, the process reverses itself; but a lower tax rate means that a portion of ADIT will never be paid to the government. Ratepayers are paying a higher rate for taxes that will never be paid. Customers should receive relief based on the utilities' best estimates of their excess ADIT. Id. at 14. The excess ADIT are revenues collected from ratepayers for federal taxes that the utilities will never actually pay to the federal government. Therefore, excess ADIT must be refunded to ratepayers.

Among the utility comments, those filed by Dominion East Ohio ("Dominion") reflect the need not to complicate unnecessarily the process whereby the benefits of the federal tax rate reduction from 35 percent to 21 percent are passed to ratepayers. Dominion correctly points out that current base rates reflect a federal income tax expense calculated at a 35 percent rate and that these rates can be restated under a 21 percent tax rate using test-year information from the last rate case. The calculation would be straightforward. Dominion Comments at 2-3. As for riders, the revenue requirement for upcoming rider rates can be calculated using the 21 percent rate, and an adjustment for the impact on current rider rates could be similarly determined and included in the revenue requirement of the upcoming rate filings. For carrying costs in riders, the 21 percent tax rate could be used to determine the interest rate applied to over/under recovered balances. Id. The ADIT calculation is also straightforward for assets that are subject to annual rider adjustments. The ability to modify annually updated cost-recovery riders presents an opportunity to pass through the tax reduction benefits quickly. Id. at 4.

In spite of its generally positive response to the need to reduce customers' rates as quickly as possible, Dominion, along with some other utilities, suggests that current regulatory assets will eventually be reflected in higher customer rates and that the benefits of the tax reduction could be used to reduce future rates. Dominion Comments at 4. Duke Energy Ohio ("Duke") comments that the need to ensure the financial health and creditworthiness of utilities should also be considered. Duke suggests that consideration be given to the impact that a "sudden reduction in utility rates" will have on the quality of service a utility is providing. Duke Comments at 15. Duke, like Dominion, also suggests that the tax savings could fund future utility investments and reduce future costs by eliminating existing regulatory assets. Id. at 15.

OPAE agrees with OCC's comments that the benefits of the tax reduction should be returned to customers, who are currently funding the utilities' federal tax expense at the former 35% rate, immediately through reductions to customers' bills so that they are funding the tax at the current 21% rate. The tax savings should not be diverted to fund utility investments or other projects. OCC Comments at 16. Savings from tax reductions are not a proper way for a utility to improve its earnings and creditworthiness or to finance investments. Ratepayers paying rates and riders that are grossed up at a now defunct 35% federal income tax rate are paying unjust and unreasonable rates when the gross up should only be at 21%. Those rates and riders must be reduced to the actual tax rate and excess collections must be returned to ratepayers. Only in this way will customers no longer be paying unjust, unreasonable, and unlawful and rates.

The utilities can avoid any issues resulting from their continued collection of unjust, unlawful, and unreasonable rates and riders containing the wrong federal corporate income tax rate by immediately filing applications to reduce their rates and riders with the effective date of January 1, 2018 to reflect the correct federal corporate income tax rate as of January 1, 2018. Utilities may file self complaints ("SLF") under R.C. 4905.26 that any service they render may be unjust, unreasonable, or unlawful, such as a service the charges for which contain the wrong federal tax rate as of January 1, 2018.

The utilities have all the information necessary to make these applications to reduce rates or SLFs immediately in order to avoid the need for further regulatory action and deferred liability accounts to refund ratepayers for unjust, unlawful, and unreasonable charges resulting from the utilities' use of the wrong federal tax rate as of January 1, 2018. The utilities can take responsibility and initiate their own actions to avoid issues with refunds and deferrals. If the utilities fail to act immediately to adjust their unjust, unlawful, and unreasonable rates and riders, they should be held accountable for their own failure to act. Their voluntary failure to act should serve to void any argument they may make against refunds, deferrals, or other regulatory actions needed to compensate ratepayers. Utility rates and riders should reflect the correct federal income tax rate as of January 1, 2018; the utilities can resolve this issue on their own initiative and need not wait for the Commission to force them to act.

Respectfully submitted,

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A copy of the foregoing Reply Comments will be served by the Commission's Docketing Division electronically upon persons who electronically subscribe to this case on this 7th day of March 2018.

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