

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

REPLY COMMENTS OF VECTREN ENERGY DELIVERY OF OHIO, INC.

Vectren Energy Delivery of Ohio, Inc. (VEDO) hereby submits reply comments responding to issues raised by certain February 15, 2018 comments filed with the Public Utilities Commission of Ohio (Commission) addressing the January 10, 2018 Entry's request for information on passing the benefits accruing from the Tax Cuts and Jobs Act of 2017 (the TCJA) to VEDO's customers. In addition to the caveats stated in its initial comments, VEDO would further clarify it does not address all comments filed with the Commission, but focuses only on select comments.

I. COMMENTS

VEDO's reply comments group into three basic points. First, some commenters suggested that any rate case dealing with TCJA impacts should be limited to an application "not for an increase." This recommendation is contrary both to Ohio law and sound regulatory policy, however, and should be rejected.

Second, a number of commenters seek a reduction in rates immediately or in the very near future. While VEDO understands the desire to reflect the TCJA in rates as quickly as possible, the most practical approach to reflect the impact on VEDO's rates and charges is through its rate case.

Finally, the Commission should consider the precedent to be set in this case. While the TCJA may have resulted in a reduction in expenses paid by Ohio public utilities, future income

tax changes may increase those rates. A Commission conclusion today that the public interest requires fast, almost haphazard, reductions in utility rates would in turn expose customers to higher rates in the future if the federal income tax rate is increased.

A. Any Rate Case Addressing the TCJA Cannot and Should Not Be Limited to Flowing Through the Impact of the TCJA.

The comments of the Northeast Ohio Public Energy Council (NOPEC) recommend a rate investigation as the best approach for addressing the impacts of the TCJA. VEDO agrees that, at least for itself, the best approach to deal with the TCJA is as part of the base rate case for which VEDO recently filed and served its pre-filing notice. *See* Case No. 18-298-GA-AIR.

Unfortunately, NOPEC goes further, recommending that an expedient method for dealing with the TCJA is to file an application “not for an increase” in rates under R.C. 4909.18. Stated more directly, NOPEC urges the Commission to require utilities to initiate rate investigations that ignore cost increases and recognizes only the decrease in costs resulting from the TCJA. The statute on which NOPEC relies does not support such an approach, however, and the recommendation is inconsistent with Ohio law.

R.C. 4909.18 provides that “[a]ny public utility desiring to establish any rate . . . or to modify, amend, change, increase, or reduce any existing rate . . . shall file a written application with the public utilities commission.” The statute provides a utility the right to seek an increase or decrease in its existing rates—there is no basis in the statute for limiting a utility’s R.C. 4909.18 request to “not an increase.” NOPEC wants the Commission to order Ohio utilities to file only for a rate decrease, and to ignore any cost increases that must be reasonably reflected in adjusted rates to result in rates that are just and reasonable. This approach is not tenable. A rate can only be approved if it is “just and reasonable.” R.C. 4909.19(C). Rates that reflect only reduced expenses and ignore undisputed increases cannot be considered just and reasonable.

Indeed, such a one-sided, head-in-the-sand approach to ratemaking would not only be contrary to statute, but would raise serious constitutional concerns regarding confiscation.

VEDO's own recent filing demonstrates that it would be unreasonable to limit a rate case to rate reductions. VEDO pre-filing notice includes tariff schedules that propose increases in most customer charges *even after accounting for the impacts of the TCJA*. This shows two things: first, that even accounting for the TCJA, updating a utility's rates would not necessarily lead to a reduction, but could well lead to an increase; and second, that it would be overly simplistic to assume that TCJA benefits can only be experienced via reduced rates. When all ratemaking impacts are considered, the impact of the TCJA is to reduce the rate customers otherwise would have experienced; however, the outcome may not be an absolute rate reduction.

It bears noting that NOPEC's approach, if accepted, could result in significant confusion to VEDO's customers and an inefficient use of Commission resources. VEDO would effectively be forced to initiate two simultaneous requests for changes in its rates: one to decrease the rates for the TCJA, while another moved forward to reflect other proposed rate changes. Customers would receive multiple, conflicting notices and potentially be confused when revised rates go into effect at different times. In addition, interested parties (including the Commission's Staff) would be required to invest duplicative time and effort pursuing two proceedings rather than efficiently addressing all issues in one proceeding. Given that VEDO is already deferring tax differences back to January 1, 2018, there is no need for an approach of such doubtful legality and procedural difficulty.

B. The Speed of Any TCJA Rate Adjustments Must Be Balanced Against Customer Confusion and the Commission's Legal Authority.

Several commenters expressed interest in adjusting utility rates to reflect the TCJA as soon as reasonably possible, premised on the concern that delays would allow the utilities to

retain the tax benefits. Although concerns for timeliness are legitimate, they can be easily overstated. VEDO agrees that the reflection of TCJA impacts in customer rates should not be unduly delayed. Indeed, VEDO has already committed that it will return the benefits resulting from the TCJA to customers starting from the date those benefits began accruing on January 1, 2018. But addressing these impacts is best accomplished through a base rate case, which VEDO has already initiated. Within that proceeding, VEDO will propose a mechanism to return the benefits of the TCJA that have accrued since January 1, 2018, which will further reduce the impact of rates approved in its rate case for customers.

Some commenters urge the Commission to take action to implement reduced rates faster. The Northwest Ohio Aggregation Coalition urges the Commission to “immediately order Ohio’s utilities to cease collecting any charges to customers imbedded in any rates or riders in excess of the federal 21% tax rate.” No statutory procedure is outlined for implementing this requested “immediate” order, and such comments ignore the realities that a replacement rate must be determined. Indeed, the Commission could not immediately approve revised rates reflecting the TCJA without revised rates first being proposed. The timing concern inherent in this recommendation has already been addressed by the Commission’s order to defer differences as of January 1, 2018.

Similarly, the Office of the Ohio Consumers’ Counsel (OCC) urges the Commission to utilize its emergency authority under R.C. Chapter 4909 to reduce utilities’ base rates and riders to reflect the TCJA. OCC contends that the public would be harmed if customers were required to continue paying at rates based on a 35% rate. In VEDO’s case at least, this contention is factually incorrect. VEDO’s pre-filing notice makes clear its proposed rates, even after reflecting the TCJA, are higher than current rates. No serious contention can be made that VEDO’s

customers are harmed by not immediately approving revised rates; fully updated rates would be higher. Moreover, VEDO has committed to record the TCJA benefits that began accruing on January 1, 2018, and to return those benefits to customers within the rate case. Customers are not losing these benefits. Customers are currently paying less for VEDO's service than is warranted and will receive the benefits of the TCJA that began accruing January 1, 2018.

For the same reason, OCC's contention that the mere passage of the TCJA leads to the conclusion that "the rates customers have been paying this year are no longer just and reasonable as required by Ohio Revised Code 4905.22" is also not true. VEDO's proposed rates demonstrate that its customers are not disadvantaged by any delay in updating rates; again, rates will increase even when accounting for the TCJA impacts.

Again, these concerns for sudden action would drive confusion. OCC wants the Commission to order utilities to prepare rates that reflect "estimates" of the TCJA impact and then later true-up those rates to the correct rates. For VEDO customers, that would lead to at least three rate changes in the sphere of 12 to 15 months: customer rates would first be reduced to reflect the TCJA estimate; a second change would likely be required to true-up those rates; finally, revised rates would be approved through VEDO's rate proceeding. Most residential customers likely would not understand the basis for the constant change in rates, and commercial and industrial customers would find it difficult to budget for their gas utility service with all the changes. The time of the Commission and its Staff would also be required to evaluate tariff changes for VEDO three times in the span of 12 to 15 months.

This push to get it done now, necessitating multiple rate updates to offset the consequent inaccuracies, creates more problems than it solves—especially when VEDO has already initiated a base rate proceeding.

C. The Commission Should Treat Federal Income Tax Changes Consistently, Whether the Rate Increases or Decreases.

VEDO understands the desire to promptly demonstrate to customers that their rates reflect TCJA benefits. But while the concern for promptness is legitimate, so are other concerns, including accuracy, efficiency, and compliance with the law. The Commission should recognize the importance of a deliberative approach. The ability to defer past impacts largely eliminates concerns about timing; for individual customers, the cash-flow impact of the TCJA is minimal.

The Commission should also consider the precedent this proceeding will establish. Parties who stand to benefit from rate reductions, such as consumer parties, are eager to quickly incorporate the federal income tax reductions in utility rates. Whether these parties will support a similar haste if a future administration increases federal income taxes remains to be seen. But the Commission does not have the luxury of changing its approach based on political expediency. *See, e.g., In re Appl. of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, 2017-Ohio-5536, ¶ 23 (“We have instructed the commission to respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law.”) (internal quotations omitted). If it is important to immediately reflect federal income tax reductions, then it must also be important to immediately reflect income tax increases.

Future changes to the federal income tax rate are certainly possible, perhaps even likely, and those changes could well be in a different direction. Whatever approach is adopted today will set the course for future utility rate changes related to the federal income tax rate. The Commission should bear that in mind before accepting the invitation to act with unnecessary haste.

II. CONCLUSION

The fairest, most efficient, and undoubtedly lawful approach to address TCJA impacts in VEDO's rates is through the prompt resolution of VEDO's pending rate case. VEDO will ensure that its customers garner the benefits of the TCJA that began accruing January 1, 2018, through rates approved as part of its rate proceeding. Customers will not be harmed by a deliberative process, and the potential for confusion and conflicting precedents will be avoided.

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Respectfully submitted,

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Summary: Reply Comments electronically filed by Ms. Rebekah J. Glover on behalf of Vectren Energy Delivery of Ohio, Inc.