

**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.)

**DIRECT TESTIMONY
OF
WM. ROSS WILLIS**

**On Behalf of
The Office of the Ohio Consumers' Counsel**
*65 East State Street, 7th Floor
Columbus, Ohio 43215-4213*

June 29, 2018

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ATTACHMENTS

WRW Attachment A - List of Previous Testimony Filed at the PUCO by Wm Ross Willis

1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.***

4 ***A1.*** My name is Wm. Ross Willis. My business address is 65 East State Street,
5 Columbus, Ohio 43215.

6

7 ***Q2. BY WHOM ARE YOU EMPLOYED?***

8 ***A2.*** I am employed by the Office of the Ohio Consumers' Counsel ("OCC").

9

10 ***Q3. WHAT IS YOUR CURRENT POSITION WITH THE OCC AND WHAT ARE***
11 ***YOUR DUTIES?***

12 ***A3.*** I am a Senior Regulatory Analyst within the Analytical Department. My duties
13 include performing analysis of impacts on the utility bills of residential consumers
14 with respect to utility filings before the Public Utilities Commission of Ohio
15 ("PUCO"), and PUCO-initiated investigations. I examine utility financial and
16 asset records to determine operating income, rate base, and the revenue
17 requirement, on behalf of residential consumers.

18

19 ***Q4. WOULD YOU BRIEFLY STATE YOUR EDUCATIONAL BACKGROUND?***

20 ***A4.*** I earned a Bachelor of Business Administration Degree that included a major in
21 finance and a minor in management from Ohio University in December 1983. In
22 November 1986, I attended the Academy of Military Science and received a

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1 commission in the Air National Guard. Moreover, I have attended various
2 seminars and rate case training programs sponsored by the PUCO.

3

4 ***Q5. PLEASE OUTLINE YOUR WORK EXPERIENCE.***

5 ***A5.*** I joined the PUCO in February 1984, as a Utility Examiner in the Utilities
6 Department. I held several technical and managerial positions with the PUCO
7 over my 30-plus year career. I retired from the PUCO on December 1, 2014. My
8 last position with the PUCO was Chief, Rates Division within the Rates and
9 Analysis Department. In that position, my duties included developing,
10 organizing, and directing staff during rate case investigations and other financial
11 audits of public utility companies subject to the jurisdiction of the PUCO. The
12 determination of revenue requirements in connection with rate case investigations
13 was under my purview. I joined the OCC in October 2015.

14

15 My military career spans 27 honorable years of service with the Ohio National
16 Guard. I earned the rank of Lieutenant Colonel and I am a veteran of the war in
17 Afghanistan. I retired from the Air National Guard in March 2006.

18

19 ***Q6. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUCO?***

20 ***A6.*** Yes, attached to my testimony is WRW Attachment A which lists the cases I
21 presented testimony before the PUCO.

1 **Q7. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 **A7.** The purpose of my direct testimony is to address the PUCO's May 24, 2018 Entry
3 in this case, which directed the attorney examiner to schedule a hearing in this
4 proceeding on the limited question of whether Ohio utilities should be required to
5 establish a deferred tax liability, effective January 1, 2018. The intent of
6 requiring the utilities to establish a deferred tax liability is to preserve the benefit
7 to consumers of the reduced corporate income tax rate from the effective date of
8 the tax rate reduction, January 1, 2018. The Entry invited any electric distribution
9 company ("EDU") or intervening party to present testimony.

10
11 **II. RECOMMENDATION**

12
13 **Q8. PLEASE SUMMARIZE YOUR RECOMMENDATION.**

14 **A8.** In its January 10, 2018 Entry in this case, the PUCO ordered all regulated utilities
15 in Ohio "to record on their books as a deferred liability, in an appropriate account,
16 the estimated reduction in federal income tax resulting from the TCJA [Tax Cuts
17 and Jobs Act]."¹ I recommend that the PUCO order all Ohio regulated utilities to
18 continue to carry these deferred liabilities until the full benefits of the TCJA are
19 refunded to customers. This refund to consumers should be accomplished in as
20 expedient a manner as practicable.

¹ Entry ¶ 7 (Jan. 10, 2018).

1 **III. DISCUSSION OF ISSUE**

2

3 ***Q9. PLEASE PROVIDE AN OVERVIEW OF THIS IMPORTANT ISSUE FOR***
4 ***CONSUMERS.***

5 ***A9.*** On December 22, 2017, the President of the United States signed into law the Tax
6 Cuts and Jobs Act of 2017 (“TCJA”). The TCJA reduced the corporate federal
7 income tax (“FIT”) rate from 35% to 21%, effective January 1, 2018. In
8 response, the PUCO opened this docket to study the impacts of the TCJA on Ohio
9 regulated utilities and requested comments from Ohio regulated utilities as well as
10 interested parties. The PUCO also ordered all Ohio regulated utilities to record,
11 as a deferred liability, the savings from the federal income tax rate reduction
12 effective January 1, 2018. The PUCO also ordered the utilities to continue to
13 record the savings until ordered to do otherwise.²

14

15 On February 9, 2018, all of Ohio’s EDUs filed a joint application for rehearing
16 challenging the PUCO’s authority regarding the PUCO’s January 10, 2018 order
17 requiring the deferred liability. Because of that application for rehearing, the
18 PUCO issued an Entry scheduling a hearing, limited to whether the EDUs should
19 be required to establish the deferred tax liability that the PUCO ordered in its
20 January 10, 2018 Entry.

21

² Entry (May 24, 2018).

1 In its second entry on rehearing, the PUCO stated its intent for the deferred
2 liability. “The Commission intends that all tax impacts resulting from the TCJA
3 will be returned to customers, whether through this proceeding or through a case-
4 by-case determination for each affected utility; and the deferred liability for each
5 utility should remain in place until this has been accomplished.”³

6
7 ***Q10. WHAT DOES THE DEFERRED TAX LIABILITY ENCOMPASS, AND HOW***
8 ***DOES IT PROTECT CONSUMERS?***

9 ***A10.*** By lowering the corporate FIT rate from 35% to 21%, customers should save
10 money in four ways, all of which should be accounted for in the deferred tax
11 liability. First, utilities’ FIT expense was reduced by 40% $((.35-.21)/.35)$
12 beginning January 1, 2018. Second, because of the reduced FIT corporate tax
13 rate, approximately 40% of the accumulated deferred income tax (“ADIT”)
14 balances on the books of each utility as of December 31, 2017 are now excess,
15 assuming the utility was at the previous 35% FIT rate. Third, the gross revenue
16 conversion factor (“GRCF”) that is applied to the operating income deficiency
17 used to gross-up for taxes in calculating the base rate revenue requirements will
18 also need to be adjusted if the GRCF includes a FIT rate higher than 21%. The
19 GRCF will need to be lowered to reflect the lower 21% FIT rate. Fourth, any
20 rider rates that contain a pre-tax rate of return will need to be adjusted to the
21 lower corporate FIT rate going forward and any over-collection from January 1,
22 2018 should be deferred as a tax liability.

³ Second Entry on Rehearing (April 25, 2018)

1 ***Q11. WHY SHOULD OHIO UTILITIES BE REQUIRED TO CARRY THE***
2 ***PUCO-ORDERED DEFERRED LIABILITY UNTIL THE TAX SAVINGS***
3 ***ARE PASSED BACK TO CUSTOMERS?***

4 ***A11.*** All four items (the FIT expense, the excess ADIT, the GRCF reduction, and the
5 pre-tax rate of return for riders) represent taxes collected from customers through
6 rates with the expectation of paying the Internal Revenue Service (“IRS”). If
7 utilities are not required to return the deferred tax liability for these amounts, the
8 utilities (and their shareholders) would receive an unjust and unreasonable
9 windfall funded by customers because of the TCJA. The PUCO should order
10 utilities to return all this money to customers. This deferred tax liability balance
11 is an over-collection through customer rates that utilities have been charging
12 since January 1, 2018. Simply put, this is customers’ money. Utilities should not
13 be allowed to keep their customers’ money for the benefit of shareholders when
14 that money was collected for the sole purpose of meeting the utilities’ tax
15 obligations. The necessary rate reductions and refund of this consumer money is
16 overdue. This money should be returned to customers as expeditiously as
17 possible.

18
19 ***Q12. DO YOU RECOMMEND CARRYING COSTS BE APPLIED TO THE***
20 ***DEFERRED TAX LIABILITY?***

21 ***A12.*** Yes. The total deferred tax balance should include a carrying cost component at
22 the cost of debt as determined in the most recent base rate case. Carrying costs
23 should accrue for the benefit of customers until the full amount of the deferred

1 tax liability is returned to customers. The deferred tax liability is a customer
2 supplied source of funds and until the full balance is returned to customers, the
3 utilities should compensate customers for the use of their money.
4

5 ***Q13. ARE THERE FEDERAL REQUIREMENTS ASSOCIATED WITH EXCESS***
6 ***ADIT?***

7 ***A13.*** Yes, for the portion of excess ADIT that is considered “protected.” This relates
8 to book and tax timing differences on depreciation booked at a straight-line
9 method and recorded for tax reporting purposes based on an accelerated method.
10 This excess ADIT is required to be amortized over a period of time based on the
11 average rate assumption method. This is based on normalization requirements,
12 and federal law requires the protected excess ADIT balance to be amortized over
13 the remaining life of the asset. I recommend the PUCO direct Ohio utilities to
14 refund to customers all protected excess ADIT according to IRS timelines and
15 include a carrying cost for the benefit of the customer at the cost of debt as
16 determined in the most recent base rate case.
17

18 For the “unprotected” excess ADIT, book and tax timing differences not related
19 to plant, there are no federal requirements associated with how quickly the
20 money should be returned to customers. AEP witness Allen asserts that
21 unprotected ADIT balances do not have any IRS limitation placed on them and
22 the distribution related balances will remain on the utility’s books until there is

1 an order from the PUCO related to their treatment.⁴ I recommend the PUCO
2 issue that order and direct Ohio utilities to refund to customers all unprotected
3 excess ADIT over no more than five years and include a carrying cost for the
4 benefit of customers at the cost of debt as determined in the most recent base rate
5 case.

6
7 ***Q14. HOW WOULD YOU PROPOSE THE PUCO MEET ITS STATED***
8 ***OBJECTIVE OF PASSING THE BENEFITS OF THE TCJA BACK TO***
9 ***CUSTOMERS?***

10 ***A14.*** I recommend the PUCO require all utilities that have not addressed the full
11 impacts of the TCJA in base rates, to file an application not for an increase in
12 rates (a rate reduction application) and pass back all tax savings as soon as
13 possible.

14
15 These reductions are known and easily measurable and should be accomplished
16 without further delay. Each utility should be required to use the most recent base
17 rate PUCO Staff schedules used in the PUCO Opinion and Order that authorized
18 current base rates and re-calculate the revenue requirement reflecting the full
19 impact of the TCJA as of January 1, 2018. This is the fastest way to return the
20 over-collection of charges paid by customers. It would also be the most practical
21 method from an administrative standpoint. This would entail a quick review by

⁴ Allen Direct Testimony at 3; Wathen Direct Testimony at 7 (“The Company will continue making monthly deferral entries until either (1) the Commission issues a final order regarding the deferrals, or (2) the Company’s rates fully reflect the lower FIT rate.”).

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1 PUCO Staff and other parties of the updated revenue requirement schedules and
2 corresponding customer rate schedules submitted by the utility through its rate
3 reduction application.

4
5 If, after recalculating the revenue requirement reflecting the full impact of the
6 TCJA, a utility determines that its revenues do not sufficiently cover its
7 expenses, then the utility can file a base rate case. Contrary to utility testimony,
8 such an assessment is not appropriate in this proceeding. Ohio Power Company
9 witness Allen asserts that any tax savings for an EDU's distribution function
10 should only be deferred as a regulatory liability if the utility is earning above a
11 just and reasonable level from a jurisdictional cost of service perspective.⁵

12 Similarly, Duke Energy Ohio witness Wathen asserts that without finding that a
13 utility's current revenues are sufficient to cover its expenses, the PUCO has no
14 basis to say whether the utility's revenue is sufficient or insufficient.⁶ I disagree.

15 It is not the responsibility of the PUCO (outside of a rate case) to determine if
16 each utility's current revenues are sufficient or insufficient. It is the utility's
17 responsibility. If current base rates were insufficient, the utility could have
18 already filed for an increase in rates. The PUCO has determined in each utility's
19 most recent base rate case that revenues sufficiently cover expenses and provide
20 for a reasonable return on investment. And since the utility's most recent base
21 rate case, the FIT rate has decreased 40%. Therefore, all the tax components of

⁵ Allen Direct Testimony at 4.

⁶ Wathen Direct Testimony at 10.

1 the revenue requirement from each utility's most recent base rate case should be
2 re-calculated to account for the 40% reduction. This way, customers would begin
3 to see their money returned through reduced base rates, and the benefits of TCJA
4 would be passed on to customers.

5
6 ***Q15. ARE YOU ONLY RECOMMENDING BASE RATES BE REDUCED FOR***
7 ***CUSTOMER PROTECTION?***

8 ***A15.*** No. Any rider rates being charged to consumers that have a pre-tax rate of return
9 component should also be immediately reduced to reflect the lower FIT rate
10 effective January 1, 2018, and any overcollection since January 1, 2018 should
11 be returned as soon as possible to customers.

12
13 ***Q16. SHOULD THE PUCO ESTABLISH AN EARNINGS THRESHOLD TO***
14 ***DETERMINE WHETHER A REGULATORY LIABILITY IS***
15 ***ESTABLISHED?***

16 ***A16.*** No. With respect to the FIT rate, as Duke Energy Ohio witness Mr. Wathen
17 explains in his testimony, recording a deferral for TCJA based on actual taxable
18 income earned would not be possible until after the tax returns are completed.
19 Additionally, customer rates are based on the revenue requirement from the most
20 recent rate case.⁷ I concur. Base rates are established using the amounts included
21 in the revenue requirement calculation at the end of the case and is used by the
22 PUCO when it issues its Opinion and Order to establish the base rate.

⁷ Wathen Direct Testimony at 5-6.

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1 Ohio Power Company witness Mr. Allen opines that a regulatory liability should
2 only be established for items other than excess ADIT if current revenues do not
3 produce a pre-determined earnings level based upon a comprehensive review of
4 the utilities jurisdictional current level of costs and revenues.⁸ The PUCO should
5 reject this approach for two reasons.

6
7 First, a utility's earnings are irrelevant in this context. Utilities charge customers
8 for taxes, and those monies are passed through to relevant taxing authorities like
9 the Internal Revenue Service. These charges for taxes are not designed to
10 improve a utilities' earnings. This money that would not be earmarked for paying
11 a tax obligation is customers' money. Utilities are not entitled to retain it or
12 redirect it for other corporate purposes. Certainly, these tax savings resulting
13 from the TCJA should not be used to boost earnings at customer expense.

14
15 Second, to permit each utility to use some other method or time-period other than
16 what was used to set existing base rates would be an administrative nightmare. It
17 would require the PUCO Staff to investigate a whole new set of assumptions and
18 calculations as if it was another rate case all in its own. It would also be a labor-
19 intensive, time-consuming process because this proposed process is not based on
20 how the existing charges are set. To require the PUCO Staff to complete an
21 operating income investigation on every utility is simply not practical. Most
22 importantly, it would unnecessarily delay the necessary refunds to customers.

⁸ Allen Direct Testimony at 5-6.

1 **Q17. IS THERE ANYTHING IN THE PUCO'S JANUARY 10, 2018, ENTRY IN**
2 **THIS PROCEEDING THAT PREVENTS ANY UTILITY FROM FILING A**
3 **NEW BASE RATE CASE?**

4 **A17.** No. There is nothing that prevents any utility from filing a new base rate case
5 now or in the future if it believes that its existing rates are not just or reasonable.
6 It is the utility's responsibility to evaluate current revenue and decide whether
7 current rates are sufficient.

8

9 **IV. CONCLUSION**

10

11 **Q18. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

12 **A18.** My recommendation is simple and straightforward: all Ohio utilities should
13 continue to carry a deferred liability in the amount of all TCJA savings, including
14 FIT expense, reduction in the gross revenue conversion factor, excess ADIT, and
15 the reduction in the pre-tax rate of return. This is customers' money and they
16 should be compensated for the use of it through carrying costs. They should get
17 their money back as soon as possible. All utilities should be directed to file
18 applications for a rate reduction to the base rates and rider rates effected by the
19 TCJA. The utilities should also be required to use the most recent PUCO Staff
20 report schedules used in the PUCO Opinion and Order to make the base rate
21 adjustments.

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Q19. DOES THIS CONCLUDE YOUR TESTIMONY?

A19. Yes. However, I reserve the right to incorporate new information that may subsequently become available. I also reserve the right to supplement my testimony if the Utilities, the PUCO Staff, or other parties submit new or corrected information in connection with this proceeding.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Direct Testimony of Wm. Ross Willis on behalf of the Office of the Ohio Consumers' Counsel* has been served upon those persons listed below via electronic service this 29th day of June 2018.

/s/Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

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WRW Attachment A

Testimony before The Public Utilities Commission of Ohio

Ohio Gas Company – Case No. 17-1139-GA-AIR

Aqua Ohio, Inc. – Case No. 16-907-WW-AIR

Globe Metallurgical, Inc. - Case No. 16-737-EL-AEC

Ohio Power Company - Case No. 13-2385-EL-SSO

Aqua Ohio, Inc. – Case No. 13-2124-WW-AIR

Camplands Water LLC. - Case No. 13-1690-WW-AIR

Duke Energy Ohio, Inc. - Case No. 12-1685-GA-AIR

Duke Energy Ohio, Inc. - Case No. 12-1682-EL-AIR

Ohio American Water Company - Case No. 11-4161-WS-AIR

Water and Sewer LLC. - Case No. 11-4509-ST-AIR

Aqua Ohio, Inc. - Case No. 09-1044-WW-AIR

Duke Energy Ohio, Inc. - Case No. 08-709-EL-AIR

*Ohio Edison Company, The Cleveland Electric Illuminating Company
And The Toledo Edison Company - Case No. 07-551-EL-AIR*

Northeast Ohio Natural Gas Corp. - Case No. 03-2170-GA-AIR

Water and Sewer LLC. – Case No. 03-318-WS-AIR

Southeast Natural Gas Company – Case No. 01-140-GA-AEM

Masury Water Company - Case No. 00-713-WW-AIR

Akron Thermal, Limited Partnership - Case No. 00-2260-HT-AEM

GTE North Inc., - Case No. 87-1307-TP-AIR

The Cleveland Electric Illuminating Company - Case No. 85-675-EL-AIR

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