

**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

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**POST HEARING BRIEF**

**BY  
THE NORTHWEST OHIO AGGREGATION COALITION**

**AND BY  
ITS MEMBER COMMUNITIES:  
THE LUCAS COUNTY BOARD OF COMMISSIONERS, LAKE TOWNSHIP,  
PERRYSBURG TOWNSHIP, THE CITY OF TOLEDO, THE CITY OF  
PERRYSBURG, THE CITY OF MAUMEE, THE CITY OF OREGON,  
THE CITY OF NORTHWOOD, THE CITY OF WATERVILLE, THE CITY  
OF SYLVANIA, THE CITY OF ROSSFORD, THE VILLAGE OF DELTA,  
THE VILLAGE OF OTTAWA HILLS, THE VILLAGE OF HOLLAND, AND  
THE VILLAGE OF WALBRIDGE**

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The Northwest Aggregation Coalition (NOAC) and the fifteen NOAC Communities (“NOAC”) submit this Post Hearing Brief. The fifteen Member Communities are each an opt-out aggregator for electric and a member of NOAC. Collectively, the fifteen Member Communities have over 130,000 residential participants and over 10,000 small business participants. The Member Communities themselves are also large users of electricity. Electric rates are a very important component to many other aspects of the communities’ well-being; for example, economic development.

## **1. Case History**

The Public Utilities Commission of Ohio “opened the above-captioned Commission-ordered investigation (COI) in order 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.” (Second Order on Rehearing, Paragraph 3). In the initial Entry on January 10, 2018, the Commission asked Ohio’s Utilities and other stakeholders for comments. Following the comment period, the Attorney Examiner’s February 20 Entry asked for Reply Comments.

NOAC and the NOAC Communities timely submitted both original and reply comments that supported the Commission’s efforts to ensure that all of the tax cut savings are immediately returned to customers of the utilities. Further we urged the Commission that any money collected for taxes, but not in fact not paid to the U.S. Treasury be returned to customers.

In its April 25, 2018, the Commission issued its Second Entry on Rehearing. It granted in part and denied in part the utilities’ request for a Rehearing. NOAC and the NOAC Communities then formally moved to intervene. The Hearing Officer at the July 10, 2018 hearing granted NOAC’s motion. FirstEnergy wrote the Commission that it would not participate in the Hearing and did not appear.

## **2. Sole Issue at the Hearing**

In the Second Order on Rehearing, the Commission specifically limited the July 10th hearing to a one sole and limited purpose:

Accordingly, we direct the attorney examiner to schedule a hearing in this proceeding on the narrow question of whether the utilities should be required to establish “a deferred tax liability, effective January 1, 2018.” At para. 31.

Unfortunately, at the hearing the two participating utilities spent much time rehashing their theory that the Commission lacked authority to create the accounting charge. The Commission in Paragraph 30 ruled that it has such power as demonstrated by considerable precedents.

Multiple parties also introduced evidence on how the tax reduction funds (a regulatory liability) should be dispersed. Some intervenors also had ideas on how customers’ money should be spent. Others offered their desires on the timing and mechanisms to refund it to customers or use it for other purposes. The participating utilities, of course, simply wanted to keep charging the old tax rate in its current billings and keep the existing hundreds of millions in over-collections. (We note, as large electric customers, we are always bemused when the electric companies tell us that their keeping hundreds of millions in overcharges--our money--is in our best interest.) All of this was outside the notice and narrow scope of the hearing.

Based on this experience, it is likely other parties post hearing briefs will be similarly directed. All of this effort should be disregarded. The Commission is clear in the Second Order that these arguments were not for this Hearing:

{ f 32 } As we have consistently held throughout this Second Entry on Rehearing, the Commission has not yet determined the ultimate resolution of this proceeding, namely the appropriate treatment of the expected reduction in federal income tax accounted for under the regulatory liability. All interested stakeholders will have

the opportunity to participate in this proceeding and contribute to the dialogue concerning these issues.

### **3. The Commission Is Correct To Require a Deferred Tax Liability**

The sole issue here is whether the utilities should establish the “deferred tax liability effective January 1, 2018.” The clear answer is “yes.”

On June 15th, FirstEnergy informed the Hearing Officer that it would not present testimony nor participate in the hearing. On this same date DP&L sent a Notice informing the Hearing Officer that it would not present testimony. Thus, two of the four EDU’s that originally requested a rehearing ceded the issue.

Mr. Borer testified for the Staff, that the deferred tax liability account was both necessary and in accordance with generally accepted accounting principles. (Written Testimony at 3-4).

AEP Witness Nourse testified that prior to the Commission’s order, that before the end of 2017 AEP had already created regulatory liability accounts for both protected and unprotected ADIT (accumulated depreciation income taxes) that totaled more than \$450 million.

The deferrals that were booked at the end of December, those for the excess ADIT, both protected and unprotected, those were booked consistent with GAAP accounting. It didn't require a Commission Order. (Trans. P.18.)

The testimony from Duke was to the same effect.

Throughout the Duke and AEP testimony, there was no real opposition to creating and maintaining the deferred tax liability accounts. Nor any explanation of why they

weren't necessary. Rather their direct testimony and cross-examination was directed at their position that they are entitled to keep the customers' money.

There is no reason to belabor the obvious. There must be deferred liability accounts. As set out by the Commission in its January 10th Entry at Paragraph 3

In order 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, the Commission finds it necessary to open the above-captioned Commission Ordered Investigation (COI). This is consistent with prior Commission action responding to modifications in the Internal Revenue Code. See In re the Commission's Investigation of the Financial Impact of the Tax Reform Bill of 1986 on Regulated Ohio Utility Companies, Case No. 87-831-AU-COI.

As amplified by the first Paragraph of the Second Order Entry on April 25th:

The Commission also affirms that we intend that all impacts resulting from The Tax Cuts and Jobs Act of 2017 will be returned to customers, whether through this proceeding or through a case-by-case determination for each affected utility.

To accomplish this, the deferred tax liability accounts are necessary, consistent with GAAP and in conformance with precedent.

Respectfully submitted,

Filing for all NOAC parties:

/s/ Thomas R. Hays

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion and Memorandum in Support was served electronically upon the parties listed below on August 13, 2018.

/s/ Thomas R. Hays

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Summary: Brief Post Hearing Brief by NOAC and its fifteen communities electronically filed by Mr. Thomas R. Hays on behalf of NOAC and Lucas County Board of Commissioners and City of Toledo and City of Sylvania and Village of Ottawa Hills and City of Perrysburg and City of Northwood and City of Maumee and The Village of Holland and City of Rossford and Lake Township Board of Trustees and Village of Delta and City of Waterville and Village of Walbridge and Perrysburg Township and City of Oregon