

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Implementation of) Case No. 18-1830-GA-UNC
the Tax Cut and Jobs Act of 2017.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of Tariff) Case No. 18-1831-GA-ATA
Revisions.)

**COMMENTS ON DUKE’S APPLICATION AND THE PUCO STAFF’S
RECOMMENDATIONS FOR CONVERTING DUKE’S FEDERAL TAX CUTS
INTO RATE CUTS FOR OHIO CONSUMERS
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

Over the last year, a key initiative for Ohio consumers has been to secure the benefits of their full share of the utilities’ tax savings as a result of the Tax Cut and Jobs Act of 2017 (“federal tax cuts”). Duke Energy Ohio, Inc.’s (“Duke”) application is a good first step to help start this process for its approximately 430,000 customers.

In this regard, the Office of the Ohio Consumers’ Counsel (“OCC”) has consistently advocated that the most credible approach for transferring a utility’s tax savings to its customers is to use a simple and straightforward process, such as a credit rider, that does not involve offsetting cost increases from unrelated utility programs. This approach allows a utility such as Duke to efficiently and expeditiously reduce its consumers’ monthly bills commensurate with its federal tax savings.

II. BACKGROUND

On October 24, 2018, in Case No. 18-047-AU-COI, the Public Utilities Commission of Ohio (“PUCO”) ordered that “all Ohio rate-regulated utility companies should be directed to file applications ‘not for an increase in rates,’ pursuant to R.C. 4909.18, in a newly initiated proceeding, to pass along to consumers the tax savings resulting from the TCJA (hereafter the “18-047 Order”).”¹ In response to the PUCO’s directive, on December 21, 2018, Duke stated that it “initiates this instant docket with a proposal to commence crediting its natural gas distribution customers with the full benefit of the TCJA’s impact on base rates and riders, to the extent not already reflected in those rates.”² Duke proposes to pass back the federal tax savings to customers through: (1) a reduction to current tariffed base gas distribution rates; (2) creation of a new rider entitled “Rider Gas TCJA” or “Rider GTCJA” to pass back excess accumulated deferred income taxes (“EDIT”); and (3) modification of its existing Riders AMRP and AU to refund EDIT associated with investments recovered through those riders.³

On April 17, 2019, the PUCO Staff filed its Review and Recommendations in this case (“Staff Report”). The Staff made several recommendations in four general categories in response to Duke’s Application: (1) “Reduction in the FIT Recommendations”; (2) “EDIT Recommendations”; (3) “Rate Design of EDIT and Stub Period”; and (4) “True-Up of Pass Back Amounts and Actual TCJA Savings.” As discussed in greater detail below, the Staff’s recommendations are consistent with OCC’s

¹ PUCO Finding and Order in Case No. 18-047-AU-COI at 18 (October 24, 2018).

² Duke Application at 3 (December 21, 2018).

³ *Id.*

goals of simplicity and expeditiously returning tax savings to consumers. OCC concurs with and supports all of the PUCO Staff's recommendations made in the Staff Report.

In addition, to secure consumer protection, the PUCO should require Duke to fairly distribute its tax savings among the various customer classes, including residential customers, by using the allocation percentages adopted in Duke's most recent base rate case. Duke's customers should also recover their full share of Duke's tax savings through a reduction to their monthly bills commensurate with Duke's federal tax savings.

III. RECOMMENDATIONS

A. To expeditiously return to consumers the full benefit of Duke's federal tax savings, the PUCO should adopt OCC's and the PUCO Staff's recommendations.

The federal tax act reduced the federal corporate income tax rate from 35% to 21%. To recognize this reduction, the following recommendations under the Staff Report's general category entitled "Reduction in the FIT Recommendations," should be adopted:

1. The PUCO should reject Duke's proposal to reflect the federal tax savings as a tariff reduction in favor of recognizing Duke's proposed 5.3558 percent base rate reduction as a credit through the newly created Rider GTCJA.
2. The amount of taxes collected by Duke for the period January 1, 2018 through the date Rider GTCJA becomes effective (sometimes referred to as the "Stub Period"), which exceeds the amount of taxes that Duke actually paid, should be included in Rider GTCJA and credited to customers over a twelve-month period.
3. To ensure that consumers get the full benefit of the tax cut, carrying charges at Duke's most recently approved cost of long-term debt rate should be applied to the excess taxes collected by Duke during the Stub Period until Rider GTCJA becomes effective.

OCC concurs with and supports each of these recommendations.

Regarding Staff's first recommendation, OCC agrees. OCC further recommends that Rider GTCJA should be established to pass back federal income tax savings to consumers in the month immediately following a PUCO order in this case. Doing so is consistent with expeditiously passing federal tax savings to Duke's consumers.

Regarding Staff's second recommendation, and in accordance with the 18-047 Order, Rider GTCJA should include the refunds for the period January 1, 2018 through the date Rider GTCJA becomes effective. Regarding Staff's third recommendation, OCC agrees with the PUCO Staff that carrying charges set at Duke's most recently approved cost of long-term debt rate⁴ should be applied to the Stub period refunds. Setting the carrying charge rate at Duke's cost of long-term debt is consistent with Duke riders that provide for carrying costs that are billed to consumers, such as Rider AMRP.

Duke's residential consumers should receive the full benefit of the federal tax cuts as soon as possible. OCC recommends that the PUCO adopt the PUCO Staff's and OCC's recommendations for implementing Rider GTCJA and establishing the appropriate carrying charge rate.

⁴ 5.32% as set in Case No. 12-1685-GA-AIR.

B. To maximize the return of Duke's tax cut savings to consumers, OCC's and the PUCO Staff's recommendations related to Excess Deferred Income Taxes should be adopted.

With the reduction of the income tax rate under the federal tax cuts, a portion of the accumulated deferred income taxes recorded by public utilities becomes “excess” as the income tax rate is lowered. This excess, commonly referred to as EDIT, should be recognized and returned to consumers. “Protected” or “Normalized” EDIT reflects the timing differences for utility plant assets that were booked utilizing straight-line depreciation for regulatory purposes but recorded for tax purposes as accelerated depreciation. In accordance with federal tax normalization requirements, normalized EDIT should be amortized over a period of time based on the average rate assumption method (“ARAM”) to avoid a tax normalization violation. Federal law provides that normalized EDIT must be amortized over the remaining life of the assets. “Unprotected” or “Non-Normalized” property and non-property EDIT involves a book-to-tax timing difference, which does not have federal requirements dictating how quickly the excess money held by utilities must be returned to consumers. Therefore, the money should be returned to consumers as expeditiously as possible.

In the Staff Report in this case, PUCO Staff makes several recommendations about the proper recognition and timing of returning EDIT. In summary, these recommendations are:

1. Duke's Normalized EDIT should only include balances that are required to be amortized in accordance with ARAM.
2. Duke's Normalized EDIT should be based on ARAM to conform with normalization rules.
3. The monthly amortization of Duke's Normalized EDIT included in Rider GTCJA should be based on the balance at

December 31, 2017, less any balance for Normalized EDIT accounted for in Duke's AMRP and AU Riders.

4. Amortization of EDIT related to the AMRP and AU Riders through December 31, 2017 should be recognized in each Rider beginning with the next filing for each Rider.
5. Non-Normalized EDIT should be amortized over 72 months (six years) beginning with the first month that Rider GTCJA is effective.
6. Amortization of EDIT should be grossed up for taxes utilizing a gross revenue conversion factor based on prevailing tax rates.

OCC agrees with and supports all of these recommendations. The recommendations are consistent with OCC's recommendations in other cases related to the federal tax cuts and conform to IRS requirements. Duke's consumers should get back all EDIT as soon as possible. Therefore, OCC recommends that the PUCO adopt the PUCO Staff's recommendations.

C. To ensure that the federal tax cut refunds are apportioned to customers fairly, OCC recommends that the PUCO adopt PUCO Staff's recommendations related to rate design.

Under a heading entitled "Rate Design of EDIT and Stub Period" in the Staff Report, the PUCO Staff recommends that the annualized credit amount for Rider GTCJA be allocated to each customer rate class based on the base rate percentages adopted in Duke's most recent base rate case. Staff further recommends that for all customer classes (except for interruptible transportation ("IT")) applicable GTCJA credits will be reflected as dollar credits per bill. For IT customers, the Rider GTCJA credits will appear on a volumetric (per CCF) basis and the billing determinants will be the billing determinants filed in the most recent Rider AMRP update filing.

These recommendations are consistent with similar recommendations made by OCC in other cases related to federal tax cuts refunds to consumers. Therefore, to make sure that Rider GTCJA credits are allocated equitably, OCC recommends that the PUCO adopt the Staff's recommendations in this case.

IV. CONCLUSION

OCC's and the PUCO Staff's recommendations would expeditiously provide Duke's natural gas consumers with the bill reductions they are due as a result of Duke's federal tax savings. The PUCO should therefore adopt these recommendations consistent with the discussion herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 13th day of May 2019.

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Summary: Comments Comments on Duke's Application and the PUCO Staff's Recommendations for Converting Duke's Federal Tax Cuts into Rate Cuts for Ohio Consumers by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.