

Attachment J

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF OHIO POWER
COMPANY'S IMPLEMENTATION OF THE
TAX CUTS AND JOBS ACT OF 2017.

CASE No. 18-1007-EL-UNC

IN THE MATTER OF THE APPLICATION OF
OHIO POWER COMPANY TO AMEND ITS
TARIFFS.

CASE No. 18-1451-EL-ATA

FINDING AND ORDER

Entered in the Journal on October 3, 2018

I. SUMMARY

{¶ 1} The Commission adopts the joint stipulation and recommendation filed by the parties, resolving the issues related to Ohio Power Company d/b/a AEP Ohio's implementation of the Tax Cuts and Jobs Act of 2017.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} Ohio Power Company d/b/a AEP Ohio (AEP Ohio or the Company) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4909.18 provides, in part, that a public utility may file an application to establish or change any rate, charge, regulation, or practice. If the Commission determines that the application is not for an increase in any rate and does not appear to be unjust or unreasonable, the Commission may approve the application without the need for a hearing.

{¶ 4} The Tax Cuts and Jobs Act of 2017 (TCJA), which was signed into law on December 22, 2017, provides for a number of changes in the federal tax system. Most notably, the federal corporate income tax rate was reduced from 35 percent to 21 percent, effective January 1, 2018.

18-1007-EL-UNC
18-1451-EL-ATA

-2-

{¶ 5} In Case No. 18-47-AU-COI, a Commission-ordered investigation (COI) was opened to study the impacts of the TCJA on the Commission's jurisdictional rate-regulated utilities and to determine the appropriate course of action to pass benefits on to ratepayers. *In re 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 (*Tax COI Case*), Entry (Jan. 10, 2018), Second Entry on Rehearing (Apr. 25, 2018).

{¶ 6} On June 8, 2018, AEP Ohio initiated Case No. 18-1007-EL-UNC (*AEP Ohio Tax Case*) by filing a motion for a procedural schedule. In its motion, AEP Ohio requested that the Commission utilize the docket to facilitate the Company's implementation of the TCJA. In support of its motion, AEP Ohio stated that it seeks to move forward in parallel to the *Tax COI Case*, in order to efficiently resolve the Company's implementation of the TCJA. AEP Ohio, therefore, requested that a procedural schedule be established, including a deadline for the Company and other interested stakeholders to file any settlement agreement that may be reached in the case.

{¶ 7} By Entry dated June 12, 2018, the attorney examiner established an intervention deadline of June 22, 2018, and scheduled a procedural conference to occur on July 11, 2018.

{¶ 8} The following parties were granted intervention in the *AEP Ohio Tax Case*: Industrial Energy Users-Ohio (IEU-Ohio), The Kroger Co. (Kroger), Ohio Manufacturers' Association Energy Group (OMAEG), Ohio Energy Group (OEG), Ohio Partners for Affordable Energy (OPAE), Ohio Consumers' Counsel (OCC), and Ohio Cable Telecommunications Association (OCTA).

{¶ 9} The procedural conference occurred, as scheduled, on July 11, 2018. During the procedural conference, the parties discussed the process for proceeding with the *AEP Ohio Tax Case*. The parties agreed to inform the attorney examiner at a later date regarding their progress toward reaching a settlement agreement.

18-1007-EL-UNC
18-1451-EL-ATA

-3-

{¶ 10} On September 26, 2018, all of the parties to the *AEP Ohio Tax Case* submitted, pursuant to Ohio Adm.Code 4901-1-30, a joint stipulation and recommendation (Stipulation) that is intended to resolve the issues related to the Company's implementation of the TCJA. On that same date, in Case No. 18-1451-EL-ATA (*Tariff Case*), AEP Ohio filed, pursuant to R.C. 4909.18, an application to establish a Tax Savings Credit Rider (TSCR), in order to implement the terms of the Stipulation, if approved by the Commission. In the application, AEP Ohio states that the TSCR would provide retail customers with a credit reflecting the Company's reduced tax expense associated with the TCJA. According to AEP Ohio, the credit would be allocated to customer classes based on a percentage of base distribution revenues, while the rider would include a one-time carrying charge at the long-term debt rate to reflect the passage of time in implementing federal income tax savings in rates from January 1, 2018, through the initial effective date of the rider. AEP Ohio also notes that the rider would expire on the same date that new base distribution rates become effective as a result of the base rate case that the Company will file in June 2020.

{¶ 11} On September 27, 2018, AEP Ohio filed a motion seeking to consolidate the *AEP Ohio Tax Case* and the *Tariff Case* for the purpose of considering the adoption of the Stipulation filed in both cases. In the motion, AEP Ohio also requests that each party granted intervention in the *AEP Ohio Tax Case* be granted party status in the *Tariff Case*, in order to ensure that there is no prejudice associated with the proposed consolidation. AEP Ohio notes that none of the signatory parties opposes the motion. The Commission finds that the motion is reasonable and should be granted.

{¶ 12} On October 3, 2018, testimony in support of the Stipulation was filed on behalf of AEP Ohio by Andrea E. Moore, on behalf of OCC by Wm. Ross Willis, and on behalf of OCTA by Jonathon L. McGee.

18-1007-EL-UNC
18-1451-EL-ATA

-4-

B. Consideration of the Stipulation

{¶ 13} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into a stipulation. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

{¶ 14} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Opinion and Order (Dec. 30, 1993); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

{¶ 15} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Supreme Court of Ohio stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission.

{¶ 16} As previously stated, a Stipulation signed by all of the parties was filed on September 26, 2018. The following is a summary of the Stipulation and is not intended to supersede or replace the Stipulation:

- (1) The application filed in the *Tariff Case* should be approved to provide the benefits of the federal tax cuts to consumers.
- (2) For the normalized accumulated deferred income tax (ADIT) balance, AEP Ohio will begin flowing the amortization of excess ADIT (EDIT) (effective January 1, 2018) back to customers upon approval of the stipulation by the Commission. The normalized EDIT balance as of June 30, 2018, is \$278 million. Mechanically, the Distribution Investment Rider (DIR) will be the rider mechanism used to incorporate (1) a credit for the amount of amortization for normalized ADIT recorded by AEP Ohio each month, and (2) a corresponding decrease from the January 1, 2018 level of the ADIT component of the DIR rate base calculation. As reflected in Attachment A to the Stipulation, the annual DIR revenue caps adopted in Case No. 16-1852-EL-SSO, et al. (*ESP Case*), will not be impacted through the effect of the

18-1007-EL-UNC
18-1451-EL-ATA

-6-

amortization of the EDIT.¹ Upon Commission approval of the Stipulation, the calculation reflected in Attachment A to exclude the TCJA impacts from the DIR annual revenue caps will be used for future DIR filings. The amount of the amortization credit is limited to the amount needed to ensure compliance with tax normalization requirements and avoid a tax normalization violation. The actual amount of normalized ADIT flowing back to customers through the DIR will reflect the final, audited balance, including a federal and state tax gross up, which may be different from the amount listed above. If the normalized EDIT balance is not yet fully credited to customers and the DIR is terminated under Paragraph III.C.2 of the adopted stipulation in the *ESP Case* (for failure to file a rate case by June 2020), the Company will flow the remaining uncredited amount through the TSCR but with the same allocation as the DIR.

- (3) AEP Ohio will return to customers amounts identified as non-normalized EDIT over a period beginning with the first billing cycle after the approval of the Stipulation. The credit shall continue until the amount identified by this paragraph has been returned to customers or December 31, 2024, whichever occurs first. Any unreturned credit or excess credit shall be treated as a liability or asset and addressed in the next succeeding rate case of the Company. The actual amount of non-normalized EDIT flowing back to customers under this

¹ The incremental revenue requirement associated with the amortization of the EDIT will be recovered through the DIR but excluded for purposes of calculating the annual revenue cap.

provision will reflect the final, audited balance, including a federal and state tax gross up, which may be different from the amount identified by the Company on December 31, 2017 (i.e., \$177.6 million). The amount will be credited to customers in the following manner. One half of the amount to be credited to customers under this paragraph shall be allocated to residential and non-residential customers on the basis of a 5 Coincident Peaks (5CP) methodology. The 5CP methodology shall be established based on AEP Ohio's 5CP for the 2017 calendar year. One half of the amount to be credited to customers under this paragraph shall be allocated to residential and non-residential customers based on 2017 kilowatt hour (kWh) sales. Those allocations shall remain fixed for the term of the TSCR. To provide an illustration as to the allocation of the total non-normalized EDIT to be returned to customers if the amount to be credited to customers under this provision is \$177.6 million, the amount to be credited using the procedures described above shall be allocated in an amount of \$69 million for residential customers and \$108.6 million for non-residential customers. The resulting amounts shall be returned to customers as a credit that shall be calculated on the basis of dollars/kWh. Notwithstanding the prior sentence, \$48.2 million of the amount allocated to residential customers will be used as a one-time offset to the amount currently deferred as the residential Pilot Throughput Balancing Adjustment Rider (PTBAR) under-recovery. The remaining \$20.8 million residential allocation and the total \$108.6 million non-

18-1007-EL-UNC
18-1451-EL-ATA

-8-

residential allocation will be credited through the TSCR. Attachment B provides a demonstration of the method that will be applied to the final balances of non-normalized EDIT in establishing the final allocations to residential and non-residential customers.

- (4) AEP Ohio agrees to include a credit of \$20.4 million to customers annually through the TSCR, in order to reflect reduced federal income tax expense associated with the TCJA. This credit will be allocated to customer classes based on a percentage of base distribution revenues. AEP Ohio will include a one-time carrying charge in the initial TSCR rate based on the long-term debt rate to reflect the time lag in implementing the federal income tax savings in rates (applied from January 1, 2018, through the initial effective date of the TSCR). Presuming the TSCR is approved effective November 2018, the initial level will be in effect for 14 months (through the end of 2019), reflecting both: (1) 14 months of the annualized \$20.4 million credit (\$23.8 million), and (2) \$17.4 million (the prorated portion of the 2018 credit through October 2018, including carrying charges). Beginning January 2020, the TSCR will reflect \$20.4 million annually. The basis for the values listed in the preceding sentences are set forth in Attachment C, which also contains values for an example that presumes the TSCR is approved effective December 2018. If the Commission approves the TSCR effective after December 2018, the signatory parties request that the Commission specify how the initial level of the TSCR

will be established in a manner consistent with the terms of the Stipulation. The component of the TSCR reflecting AEP Ohio's obligation to convey the federal income tax expense credit of \$20.4 million will expire on the same date that new base distribution rates become effective as a result of the rate case to be filed in June 2020 under R.C. 4909.18. In addition, AEP Ohio agrees to contribute \$1 million annually to the Neighbor-to-Neighbor Fund for bill assistance to its low-income residential customers (starting in 2018 and continuing through 2021); in 2022, the Company will provide a final report to Staff and OCC accounting for the \$4 million for low-income billing assistance. For purposes of implementing the PTBAR starting in 2018, neither the test year revenue nor the actual energy revenue collected from customers shall be adjusted to reflect the TSCR credit; this will help ensure that the PTBAR continues to function as originally approved by the Commission.

- (5) Regarding pole attachment rates, the signatory parties agree as follows:
 - (a) Regarding the accounting for EDIT as it relates to the Federal Communications Commission's pole attachment formula, the normalized EDIT will be amortized each year using the average rate assumption method. The entry includes debits to accounts 2821001 and 2544001 and credits to accounts 4111001, 2824001, and 1904001. The non-normalized EDIT will be amortized each year for the

number of years as determined by the Commission. The entry includes debits to accounts 2821001, 2831001, and 2544001 and credits to accounts 4111001, 2824001, 2834001, and 1904001. The amortization of normalized and non-normalized EDIT, which is recorded in account 4111001, is included on line 18, page 114 of the Federal Energy Regulatory Commission (FERC) Form 1. This results in the entire unamortized balances of the normalized and non-normalized EDIT being reflected in the pole attachment calculation, along with the federal income tax savings (reflected in the FERC Form 1 being used to perform the pole attachment calculation).

- (b) AEP Ohio agrees to promptly provide to the OCTA, upon its request, the following data: (a) amortization schedules as of May 1, 2019 (or the date of the OCTA request, whichever is later) for the refund of the normalized and non-normalized EDIT resulting from the TCJA; (b) the filed FERC Form 1 for 2018; and (c) a copy of the 2018 year-end continuing property records for utility account 364, inclusive of all pole and appurtenance investment costs booked to account 364 and associated units of investment. AEP Ohio will work with the OCTA in good faith to timely provide access to any additional

information reasonably needed to evaluate the OCTA election.

- (c) Upon request by OCTA on or after May 1, 2019, AEP Ohio agrees to prospectively adjust its pole attachment rate upon Commission approval based on 2018 cost data and the Stipulation. Within 60 days after OCTA's request to adjust the rate, AEP Ohio will file an application with the Commission requesting approval to adjust the pole attachment rate.
 - (d) Unless requested by the OCTA as set forth above, AEP Ohio agrees not to seek an adjustment to its pole attachment rate (currently at \$9.59 per pole per year) before its new base distribution rates are established as a result of the rate case to be filed by June 2020.
- (6) The signatory parties agree that the Stipulation satisfies the three-part test traditionally used by the Commission to consider stipulations.
 - (7) Upon issuance of a final, non-appealable order approving the Stipulation, the issues raised by AEP Ohio in the *Tax COI Case* will be considered fully resolved and the Company waives the right to pursue the claims raised in its February 9, 2018 application for rehearing.

{¶ 17} Upon review, we find that the Stipulation submitted by the parties satisfies the three-part test used by the Commission in the consideration of stipulations. In the Stipulation, the parties note that their settlement agreement was openly negotiated by the participating stakeholders and that it is a product of lengthy and serious bargaining among capable, knowledgeable parties. The parties also state that, as a package, the Stipulation benefits customers and the public interest by, among other things, providing direct benefits to the residential customer class, including low-income customers. According to the parties, the Stipulation violates no regulatory principle or practice. (Stipulation at 1.) The testimony filed by AEP Ohio, OCC, and OCTA also confirms that the Stipulation meets the Commission's three-part test (Moore Testimony at 4-9; Willis Testimony at 4, 5-8; McGee Testimony at 4-5).

{¶ 18} Accordingly, the Commission finds that the Stipulation is a reasonable resolution of the issues related to AEP Ohio's implementation of the TCJA and its adoption will ensure that ratepayers receive the benefits of the lower federal corporate income tax rate. AEP Ohio has appropriately agreed to flow through a \$20.4 million credit to customers annually in the TSCR to reflect the Company's reduced federal income tax expense, along with additional compensation for the time lag in implementing the tax savings in rates for the period from January 1, 2018, through the initial effective date of the TSCR. AEP Ohio has also agreed to pass back to customers the savings associated with its EDIT balances and to provide bill payment assistance funds for low-income residential customers. Additionally, the Stipulation is consistent with our intention that all tax impacts resulting from the TCJA be returned to customers, whether through the *Tax COI Case* or through a case-by-case determination for each affected utility. *Tax COI Case*, Second Entry on Rehearing (Apr. 25, 2018) at ¶ 15. The Stipulation should, therefore, be adopted in its entirety. We also find that the TSCR should be subject to a financial audit and reconciliation process, as set forth in the testimony of Andrea E.

18-1007-EL-UNC
18-1451-EL-ATA

-13-

Moore (Moore Testimony at 8). Finally, we find that no hearing is necessary in these proceedings.

III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the Stipulation filed by the parties be adopted and approved. It is, further,

{¶ 21} ORDERED, That AEP Ohio's motion to consolidate the *AEP Ohio Tax Case* and the *Tariff Case* be granted. It is, further,

{¶ 22} ORDERED, That IEU-Ohio, Kroger, OMAEG, OEG, OP AE, OCC, and OCTA be granted party status in the *Tariff Case*. It is, further,

{¶ 23} ORDERED, That AEP Ohio's application in the *Tariff Case* be approved. It is, further,

{¶ 24} ORDERED, That AEP Ohio's proposed TSCR tariffs be approved. It is, further,

{¶ 25} ORDERED, That AEP Ohio be authorized to file tariffs, in final form, consistent with this Finding and Order. AEP Ohio shall file one copy in these case dockets and one copy in its TRF docket. It is, further,

{¶ 26} ORDERED, That the effective date of the new tariffs shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission. It is, further,

{¶ 27} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

18-1007-EL-UNC
18-1451-EL-ATA

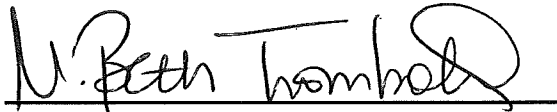
-14-

{¶ 28} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



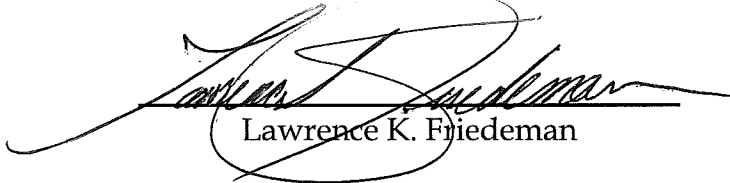
Asim Z. Haque, Chairman



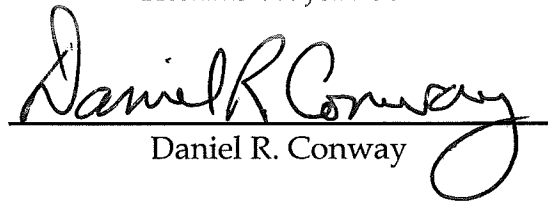
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Thomas W. Johnson



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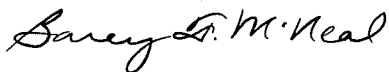


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