



COMMONWEALTH OF PENNSYLVANIA

March 9, 2018

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Tax Cuts and Jobs Act of 2017 / Docket No. M-2018-2641242

Dear Secretary Chiavetta:

I am delivering for filing today Comments, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, reading "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

Enclosures

cc: Robert D. Knecht
Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tax Cuts and Jobs Act of 2017

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Docket No. M-2018-2641242

**COMMENTS OF THE OFFICE OF
SMALL BUSINESS ADVOCATE
TO SECRETARIAL LETTER**

I. INTRODUCTION

Public Law No. 115-97 was signed into federal law on December 22, 2017, the short title of which is the Tax Cuts and Jobs Act (“TCJA”). On February 12, 2018, the Secretary of the Pennsylvania Public Utility Commission (“Commission”) issued a letter (“Secretarial Letter”), which commenced a proceeding to determine the effects of the TCJA on the tax liabilities of Commission-regulated electric, gas, and water public utilities for 2018 and future years, and the feasibility of reflecting such impacts in the rates charged to Pennsylvania utility ratepayers. The Secretarial Letter directed certain Pennsylvania utilities to provide verified responses to data requests in order to calculate, among other things, the net effect on income tax expense and rate base as a result of implementation of the TCJA and to complete a template in order to assist the Commission in its calculation of the effects on taxable income and customer rates related to the TCJA.

The Secretarial Letter also invited comments from interested parties on three issues: (1) whether the Commission should adjust current customer rates to reflect the reduced annual state and federal income tax expenses of public utilities due to the tax rate changes in the TCJA; (2) if so, the appropriate negative surcharge or other

methodologies that would permit immediate modifications to consumer rates; and (3) whether the surcharge or other methodology should provide that any refunds to customers due to these reduced taxes be effective as of January 1, 2018.

The Office of Small Business Advocate (“OSBA”) submits the following comments in response to the Secretarial Letter for the Commission’s consideration.

II. COMMENTS

1. In response to the first and third questions posed above, the OSBA respectfully submits that yes, the Commission should reflect the cost impact of the TCJA in rates as of January 1, 2018, the effective date of the legislation, and it should implement such rate adjustments as quickly as possible.

2. While the OSBA is cognizant of concerns about single-issue ratemaking, the TCJA represents a radical change in the tax policy environment of investor-owned utilities. As such, it is akin to a *force majeure* event, which could not reasonably be anticipated in rates. It is therefore conceptually similar to the cost impact of a massive ice storm for which utilities are typically permitted full cost recovery, rather than more modest changes to cost input parameters that are typically the subject of single-issue ratemaking concerns.

3. In addition, the OSBA observes that the public is well-aware that the change in the tax law will have a large favorable impact on utility earnings unless the benefits are passed back to ratepayers.¹ While the OSBA has not conducted an

¹ See “Power Companies Got a Tax Cut. Will Your Bill Reflect It,” New York Times, January 9, 2018, <https://www.nytimes.com/2018/01/09/business/economy/tax-cut-power.html>; “Pa. regulators sizing up tax-cut impact on utility rates” Central Penn Business Journal, January 19, 2018, <http://www.cpbj.com/article/20180111/CPBJ01/180119973/pa-regulators-sizing-up-taxcut-impact-on-utility-rates>.

exhaustive survey, through our membership in the National Association of State Utility Consumer Advocates (NASUCA), we are aware of numerous jurisdictions that are actively in the process of adjusting rates to reflect the TCJA. In some cases, in recognition of public sentiment regarding the potential windfall, utilities are proactively supporting rate reductions associated with the tax law changes by filing with their respective commissions formal proposals to reduce rates.

4. Nevertheless, the OSBA is aware that calculating the specific revenue requirement implications of the TCJA will require a number of Commission decisions regarding the appropriate ratemaking methodology, and will likely involve company-specific calculations related to the treatment of accumulated deferred income taxes. While a formal investigation is necessary to address these issues, the OSBA strongly recommends that rates be modified as soon as possible, on an interim basis, to reflect the TCJA's immediate effects, with interim rates eventually reconciled after completion of the formal ratemaking process.

5. In particular, the OSBA recommends that each regulated utility (i) estimate the revenue requirement impact of the TCJA relative to the tax rules that were in place at the time of each company's last base rates case, and (ii) submit a filing as soon as practicably possible (*e.g.*, May 1) to implement such reductions as an interim credit to rates, based on forecast billing determinants ("Interim Rate Credit"). The reduction in the revenue requirement from January 1, 2018, to the implementation date for the Interim Rate Credit should be separately returned to ratepayers as a one-time bill credit ("One-Time Bill Credit").

6. With respect to the nature of the One-Time Bill Credit and Interim Rate Credit, the OSBA observes that the costs in question are generally related to rate base. Thus, in theory, the optimal allocation of TCJA savings to rate classes would be ultimately based on each class's allocated share of rate base (adjusted for realized class rates of return). However, the OSBA respectfully submits that such a calculation would be too complicated to complete in time to implement the One-Time Bill Credit and Interim Rate Credit in an expedited manner. The OSBA therefore recommends that the One-Time Bill Credit and Interim Rate Credit simply reflect a proportional reduction in each distribution base rates charge. (As negotiated rate customers generally have discounted rates that are not subject to charges such as the DSIC, these rates should similarly be exempted from the One-Time Bill Credit and Interim Rate Credit.) Similarly, reconcilable charges that are directly based on the cost of capital, notably the DSIC charges, should be adjusted effective January 1, 2018, for the change in the federal tax rate.

7. Following the implementation of the One-Time Bill Credit and the Interim Rate Credit, the Commission should convene a generic proceeding to develop a formal methodology for reflecting the cost savings from the TCJA. Once a specific methodology is adopted, it should be applied to each utility, to develop final annualized savings amounts. Differences between the final savings and the Interim Rate Credit can then be reconciled, and an adjusted TCJA credit adopted ("Final Rate Credit"). OSBA generally recommends that the percentage bill credit method continue to apply until each Company's next base rates case, for reasons of simplicity.

III. CONCLUSION

The OSBA respectfully requests that the Commission consider and adopt the foregoing comments.

Respectfully submitted,


Elizabeth Rose Triscari
Deputy Small Business Advocate
Attorney ID No. 306921

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
300 North Second Street, Suite 202
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Dated: March 9, 2018

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tax Cuts and Jobs Act of 2017

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Docket No. M-2018-2641242

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: March 9, 2018



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