

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PETITION OF) DELAWARE DIVISION OF THE PUBLIC) ADVOCATE TO REDUCE THE RATES OF) REGULATED UTILITIES AS A RESULT) OF THE TAX CUTS AND JOBS ACT OF) 2017'S REDUCTION IN CORPORATE) INCOME TAXES AND OTHER TAX) CHANGES (Filed December 27, 2017))	PSC DOCKET NO. 18-____
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**PETITION OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE TO
REDUCE THE RATES OF REGULATED UTILITIES AS A RESULT OF THE TAX
CUTS AND JOBS ACT OF 2017'S REDUCTION IN CORPORATE INCOME TAXES
AND OTHER TAX CHANGES**

The Delaware Division of the Public Advocate ("DPA") hereby petitions the Delaware Public Service Commission (the "Commission") to open a docket to reduce the rates of Commission-regulated utilities as a result of the Tax Cuts and Jobs Act of 2017's (the "Tax Act") reduction in corporate income tax and other tax changes, and in support thereof states as follows:

1. This Commission has long included in a utility's operating expenses an amount of federal corporate income tax equal to what the utility would pay if it were a stand-alone company. For many years, then, the Commission has included in operating expenses an amount of federal corporate income tax equal to 35%. (The Commission has also included a corresponding amount of Accumulated Deferred Income Tax ("ADIT") as a reduction to a utility's rate base).

2. On December 22, 2017, the President signed the 2017 Tax Act, the first significant change in the country's tax laws since the 1986 Tax Reform Act; indeed, the Tax Foundation calls it "a dramatic overhaul of the U.S. tax code."¹ Among other things, the 2017

¹ <https://taxfoundation.org/final-tax-cuts-and-jobs-act-details-analysis/>

Tax Act: (1) reduces the federal corporate income tax rate from 35% to 21%; (2) allows full and immediate expensing of short-lived capital investments for five years; and (3) increases the expensing cap from \$500,000 to \$1 million.

3. The reduction in the federal corporate income tax alone is “an extraordinary circumstance that requires a fresh look” at regulated utilities’ operating expenses “for the express purpose of substantively modifying [utilities’] final revenue requirements”² The DPA respectfully requests this Commission to open a docket and require all regulated utilities to present their determinations of the 2017 Tax Act’s effects on their cost of service and propose changes in rates to reflect those effects.

4. Other states are doing, or will do, just that. The Montana Public Service Commission has directed its regulated utilities to calculate the changes in tax liability that each company expects to receive under the 2017 Tax Act and to proffer a proposal for how to apply those benefits.³ The South Dakota Public Service Commission has granted its staff’s position to require its regulated utilities to file estimates of their determination of the 2017 Tax Act’s effects on their cost of service for the most recent test year available and propose procedures for changing rates to reflect those impacts.⁴ The Kentucky Public Service Commission has ordered its regulated utilities to begin tracking their tax savings and report back to it.⁵ The Michigan Public Service Commission has directed all regulated utilities to use regulatory accounting treatment for any impacts of the 2017 Tax Act, including current and deferred tax impacts, and

²Massachusetts Attorney General’s Motion for Reconsideration, Motion to Reopen the Hearings, or in the Alternative, Complaint, available at:

www.mass.gov/files/documents/2017/12/21/DPU%2017-05%20AGO%20Motion%20to%20Reopen%20Hearings%20and%20for%20Reconsideration.pdf, at p. 4.

³https://www.bozemandailychronicle.com/ap_news/montana/montana-regulators-ask-utilities-to-account-for-tax-cuts/article_9baed270-905a-557e-adf8-91983fb65c64.html;

<http://puc.sd.gov/commission/dockets/gaselectric/2017/ge17-003/staffmotion.pdf>, at p. 1.

⁴<https://puc.sd.gov/News/2017/122117.aspx>

⁵https://psc.ky.gov/Order_Vault/Orders_2017/201700477_12272017.pdf

opened a docket to “solicit comments regarding the extent of the impacts of the new law, and how any resulting benefits should flow back to ratepayers.”⁶ The Ohio Public Utilities Commission will open a docket in early 2018 to evaluate the impact of the 2017 Tax Act.⁷

5. Unless the Commission adjusts the utilities’ revenue requirements to reflect the 2017 Tax Act’s reduction in the federal corporate income tax rate, Delaware regulated utilities’ customers will be overpaying for their utility service. As the Massachusetts Attorney General explains:

Income tax timing differences arise when a utility’s actual income taxes do not match the taxes recognized on the utility’s accounting books for the same period. Deferred income taxes are accrued when a utility has a current deduction or credit for tax purposes, but not for book purposes. ...

The [2017 Tax Act] significantly decreases marginal federal income tax rates from 35 percent to 21 percent. Thus, [utilities] have recovered an excess of deferred income taxes for customers because [they] accumulated those deferred income taxes at the higher rate of 35 percent rather than the 21 percent that will actually be paid to the Internal Revenue Service. ...⁸

5. Furthermore, as Montana Commission vice-chairman Travis Kavulla points out, the 2017 Tax Act’s allowance of full and immediate expensing of short-lived capital investments for five years “create[s] a ‘front-loaded incentive ... to plow money into infrastructure early.’”⁹ This is a significant benefit to utilities.

6. This Commission’s statutory duty is to ensure that regulated utility customers pay just and reasonable rates.¹⁰ With the drastic reductions in the federal corporate tax burden, Delaware’s regulated utility customers will be paying *unjust* and *unreasonable* rates, and regulated utilities will be reaping a windfall, unless the Commission reduces regulated utilities’

⁶http://www.michigan.gov/documents/mpsc/U-18494_12-27-2017_609572_7.pdf, at p. 2.

⁷<https://www.puco.ohio.gov/media-room/media-releases/puco-chairman-asim-haque-statement-on-tax-bill-passage/>

⁸[www.mass.gov/files/documents/2017/12/21/DPU%2017-](http://www.mass.gov/files/documents/2017/12/21/DPU%2017-05%20AGO%20Motion%20to%20Reopen%20Hearings%20and%20for%20Reconsideration.pdf)

[05%20AGO%20Motion%20to%20Reopen%20Hearings%20and%20for%20Reconsideration.pdf](http://www.mass.gov/files/documents/2017/12/21/DPU%2017-05%20AGO%20Motion%20to%20Reopen%20Hearings%20and%20for%20Reconsideration.pdf), at p. 7.

⁹<https://www.utilitydive.com/news/how-the-gop-tax-overhaul-could-affect-the-power-sector/513308/>

¹⁰ 26 Del. C. §§201(a), 303(a).

rates in an amount that corresponds to the benefits that the 2017 Tax Act confers on Delaware regulated utilities. The DPA respectfully requests that the Commission direct each regulated utility to file estimates of their determination of the 2017 Tax Act's effects on their cost of service for the most recent test year available and propose procedures for changing rates to reflect those impacts on or before March 31, 2018. Should the Commission determine that any utility's rates require reduction as a result of this review, the DPA asks the Commission to then open a new docket for each utility for which it makes this determination, and to establish a procedural schedule for conducting an evidentiary hearing regarding the 2017 Tax Act's impacts on the utility's operations and existing rates.

WHEREFORE, the Delaware Division of the Public Advocate respectfully requests the Commission to:

1. Open this docket;
2. Direct all regulated utilities to file estimates of their determination of the 2017 Tax Act's effects on their cost of service for the most recent test year available (including new rate schedules) and propose procedures for changing rates to reflect those impacts on or before March 31, 2018; and
3. Should the Commission determine that a utility's rates require reduction, open a new docket for each such utility for which it makes this determination and establish a procedural schedule for conducting an evidentiary hearing regarding the 2017 Tax Act's impacts on the utility's operations and existing rates.

Respectfully submitted,

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