Immediate Action Required to Protect Ratepayers

By Oklahoma Corporation Commissioner Bob Anthony

It's déjà vu for those of us from all 50 states who remember the Tax Reform Act of 1986 that lowered the federal corporate income tax rate from 46% to 34%. This time however, regulators must act immediately to avoid retroactive ratemaking and deal with a January 1, 2018 effective date for the currently proposed federal corporate income tax legislation dropping rates from 35% to 21%.

Regulators know public utility rates include a component for federal income taxes. If new legislation significantly decreases income tax expense paid by regulated utilities to the federal government, shouldn't ratepayers therefore get lower rates? Can single-issue ratemaking be used? How should State utility commissions address the ratemaking implications of the new legislation? Potentially, all public utility ratepayers could benefit, including low-income utility customers.

The Tax Reform Act of 1986 lowered federal corporate income tax rates, modified depreciation provisions and otherwise changed the ways corporate taxes were calculated, resulting in substantial income tax savings for utilities. Many state regulators took timely action to ensure the savings were immediately passed on to utility ratepayers. In Oklahoma, the Commission staff entered into separate settlement agreements with many utilities to change the status of rates from permanent to temporary rates, and the Commission entered orders adopting those settlements. This allowed the Commission time to determine tax savings while ensuring those savings would not be retained by the utilities through regulatory lag. Read more here.

Making rates temporary enabled the Commission staff to undertake the complex task of evaluating all impacts to current and deferred income tax expense resulting from changes in the law. Furthermore, as regulators know, significant timing differences exist between when a utility recognizes certain revenues and expenses for payment of income taxes and when the related deferred tax expense is collected from ratepayers. As a result, utilities have recorded deferred tax assets and liabilities on their books over time at greater federal income tax rates than those of the current congressional legislation. Regulators should consider flowing these savings to ratepayers also.

Oklahoma Corporation Commissioner Bob Anthony is currently the longest serving utility commissioner in the United States and has served six times as chairman of the Oklahoma Corporation Commission. Read his bio here.

State Regulator Warns Action Needed to Ensure Public Utility Customers Benefit from Tax Reform

Charlie Passut
December 21, 2017

In what could be a sign of things to come in the wake of tax reform championed by President Trump and his Republican allies in Congress, a state regulator from Oklahoma warned contemporaries that swift action was needed to ensure that public utility customers, not the utilities themselves, reap the benefits.

Bob Anthony, a member of the Oklahoma Corporation Commission (OCC), said other state regulatory agencies must immediately act to avoid retroactive ratemaking, as the federal corporate tax rate is set to decline from 35% to 21%, beginning on Jan. 1.

"Regulators know public utility rates include a component for federal income taxes," Anthony wrote in an opinion piece published in the latest monthly bulletin of the National Association of Regulatory Utility Commissioners. "If new legislation significantly decreases income tax expense paid by regulated utilities to the federal government, shouldn't ratepayers therefore get lower rates?"

Anthony said state utility commissions needed to address whether a single-issue ratemaking could be used, or how the $1.5 trillion comprehensive tax reform bill passed by Congress on Wednesday would impact ratemaking in general.

"Potentially, all public utility ratepayers could benefit, including low-income utility customers," Anthony said, adding that Oklahoma public utility customers could see $100 million in savings.

According to Anthony, when the federal government enacted comprehensive tax reform 31 years ago, corporate income tax rates were lowered and depreciation provisions were modified. That changed the way corporate taxes were calculated, and utilities saw substantial savings in income tax. The Tax Reform Act of 1986 lowered the top corporate income tax rate from 46% to 34%.

In 1986, "many state regulators took timely action to ensure the savings were immediately passed on to utility ratepayers," Anthony said. "In Oklahoma, OCC staff entered into separate settlement agreements with many utilities to change the status of rates from permanent to temporary rates, and the Commission entered orders adopting those settlements. This allowed the Commission time to determine tax savings while ensuring those savings would not be retained by the utilities through regulatory lag."

Anthony added that temporary rates enabled the OCC to evaluate all of the impacts the 1986 law had on both current and deferred income tax expenses, which he described as a "complex task."

"Furthermore, as regulators know, significant timing differences exist between when a utility recognizes certain revenues and expenses for payment of income taxes and when the related deferred tax expense is collected from ratepayers," Anthony said.

"As a result, utilities have recorded deferred tax assets and liabilities on their books over time at greater federal income tax rates than those of the current congressional legislation. Regulators should consider flowing these savings to ratepayers, also."
WC-1 Resolution Urging Congress to Not Restrict the Right of State Regulators to Determine How Reductions in the Corporate Income Tax Rate are Addressed in Utility Rates

Whereas on September 27, 2017, the Trump Administration announced several proposed changes to the tax code. For public utility customers, the most consequential is the administration’s proposal to reduce the corporate income tax rate from 35% to 20%;

Whereas Congress has also stated its intention to make changes to the tax code and has also proposed reductions in the corporate income tax rate;

Whereas for a State-regulated investor owned utility, a reduction in the corporate income tax rate should result in a direct benefit to customers, so long as it is captured in the State ratemaking process;

Whereas other federal tax policies, such as bonus tax depreciation, have allowed utilities to claim accelerated expenses associated with capital investments which reduce the taxes payable in the year when the deduction is claimed;

Whereas despite the reduction in taxes paid in a given year by a regulated investor owned utility, the rates which customers pay are conventionally designed to recover the statutory corporate income tax rate, and not the taxes actually paid by the utility reflecting such deductions;

Whereas this difference between tax expense paid by consumers in utility rates and taxes actually paid by a utility will increase the cash flow available to a utility’s management in a year when such deductions are claimed. This additional tax benefit is accounted for as a deferred tax reserve and is conventionally treated similarly to customer-contributed capital, reducing the amount of rate base that is accounted for as having been contributed by equity and debt investors;

Whereas a process of normalization will refund to consumers this tax benefit over the lifespan of a given capital asset that has given rise to the deduction. The use of normalization by States is generally required by §168 of the Internal Revenue Code as a precondition of a regulated investor owned utility’s ability to claim certain deductions;

Whereas if the corporate income tax rate is reduced from 35% to a lower rate, this lower rate will increase the deferred tax reserve that should be refunded to customers, because some utility income that will be subject to this lower tax rate has already had its associated tax expense paid for by customers, and at the higher, 35% tax rate. This incremental benefit is known as an excess tax reserve;

Whereas current drafts of the tax reform legislation being considered in Congress include language which requires States to normalize the excess tax reserve and would pre-empt States’ ability to elect a rate treatment of their own choosing to either normalize, flow-through, or take some intermediate approach to refunding the excess tax reserve. This pre-emption reconstitutes a policy enacted by Congress when it last changed the corporate income tax rate in 1986;
Whereas Internal Revenue Code, §162, permits flexibility to regulated investor owned utilities, subject to State regulation, to elect either to flow-through or to normalize a similar type of tax benefit associated with the expensing of repairs to capital property;

Whereas federal tax legislation is not an appropriate vehicle to include language pre-empting States from exercising their traditional ratemaking authority;

Whereas the use of normalization spreads the distribution of the excess tax revenue to both current and future customers, all of whom will help pay off the cost of long-lived assets to benefit customers; and

Whereas while normalization is one potential treatment of the excess tax reserve, the appropriate treatment may depend on local considerations and should rest with the State, exercising its authority to set retail rates for a regulated investor owned utility; now, therefore be it

Resolved that the National Association of Regulatory Utility Commissioners, convened at its Annual Meeting and Education Conference in Baltimore, Maryland, urges Congress to refrain from inserting any language into any revision of the federal tax law that will restrict the jurisdiction of the State public utility commissions over utility rates or specify how State commissions may reflect changes in tax expense in the retail ratemaking process.

Sponsored by the Committee on Water
Recommended by the NARUC Board of Directors November 14, 2017
Adopted by the NARUC Committee of the Whole November 15, 2017
TO: State Regulatory Commissioners – 2017 NARUC Annual Meeting and Education Conference

SUBJECT: KEY POLICY ISSUES

There are many important energy issues that will be addressed at the NARUC Annual Meeting and Education Conference in Baltimore, MD. This letter and materials highlight those issues.

COMPREHENSIVE TAX REFORM – Tab 1

On November 2, House Republicans released their draft tax reform legislation, H.R.1., The Tax Cuts & Jobs Act. The draft includes important provisions which will benefit customers and encourage much-needed investments in critical energy infrastructure. Those provisions include a 20% reduction in the corporate tax rate; maintaining the federal income tax deduction for interest expense and state and local taxes; continuation of normalization, including addressing excess deferred taxes resulting from a reduction in the tax rate; and maintaining the dividend rates low and on par with capital gains.

It is critically important to maintain tax normalization in the tax code. Normalization is a key element in stabilizing electric rates by treating tax benefits in the same manner as the recovery of the cost of the associated property. Normalization also has proven effective in maintaining incentives for electric companies to invest in capital equipment.

The current bill includes a normalization provision that allows for state public utility commissions to normalize excess deferred taxes. Without the normalization provision, commissions would be required to flow-back the excess deferred balance. Commissions choosing not to normalize are able to file a private letter request with the IRS to accelerate the flow-back of the excess deferred balance.

Included in this tab is an EEI press release on the Tax Reform Bill and several EEI tax reform issue briefs.
**Tax Cuts Drive U.S. Stocks**

U.S. stocks have surged in recent sessions as lawmakers preferring shares of companies they expect to benefit from tax cuts.

### Effective Tax Rate by Industry Group*

<table>
<thead>
<tr>
<th>Industry Group</th>
<th>Tax Rate</th>
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<tr>
<td>Retailing</td>
<td>35.0%</td>
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<tr>
<td>Telecom</td>
<td>33.7%</td>
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<tr>
<td>Business services</td>
<td>32.5%</td>
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<td>Utilities</td>
<td>31.5%</td>
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<tr>
<td>Staples retailing</td>
<td>31.3%</td>
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<tr>
<td>Health-care equipment and services</td>
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<tr>
<td>Materials</td>
<td>29.8%</td>
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<tr>
<td>Diversified financials</td>
<td>29.3%</td>
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<tr>
<td>Media</td>
<td>29.1%</td>
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<tr>
<td>Transportation</td>
<td>28.8%</td>
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<tr>
<td>Banks</td>
<td>28.6%</td>
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<tr>
<td>Food, beverage and tobacco</td>
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<tr>
<td>Consumer services</td>
<td>27.5%</td>
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<td>Household and personal products</td>
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<td>Capital goods</td>
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<tr>
<td>S&amp;P 500</td>
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<tr>
<td>Durables and apparel</td>
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<tr>
<td>Insurance</td>
<td>23.0%</td>
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<tr>
<td>Technology hardware</td>
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<tr>
<td>Software and services</td>
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<tr>
<td>Semiconductors</td>
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<td>Pharma and biotechnology</td>
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<td>Automobiles and components</td>
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<tr>
<td>Energy</td>
<td>14.9%</td>
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<tr>
<td>REITs</td>
<td>3.5%</td>
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Implications of a Federal Corporate Income Tax Reduction on Kentucky Utility Rates

KIUC March 23, 2017 Energy Conference

Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
Federal Income Tax Rates
Impact on Utility Rates

- The recovery of federal corporate income taxes is reflected in all cost-based rates of investor-owned electric, gas and water utilities.

- If the federal corporate income tax rate decreases, so does a utility's cost of service.

- Cooperative and municipal utilities generally do not pay federal corporate income taxes and would not be affected by a tax rate reduction.

- Reducing the federal corporate income tax rate will reduce cost-of-service in two ways:
  - 1) income tax expense will be reduced; and
  - 2) through an amortization of "excess" accumulated deferred income taxes (ADIT).
Income Tax Expense

- Income tax expense is calculated in the ratemaking process by “grossing-up” for income taxes the equity component of the utility’s rate of return. The current federal corporate income tax rate is 35%.

- This ensures that the utility has the opportunity to earn its after-tax authorized return-on-equity. For example, for a utility to earn an authorized 10% after-tax ROE, the utility will charge consumers the pre-tax cost of 15.4% \((10\% / 0.65)\) (this example does not include the gross-up for state corporate income taxes).

- If the income tax rate is reduced, then the income tax expense will be reduced through a reduction in the “gross-up.”
Accumulated Deferred Income Taxes

- ADIT is the difference between the amount of tax recovered in rates and the amount of tax actually paid by the utility.

- Because of accelerated and bonus depreciation, the amount of tax actually paid by the utility is generally less than the taxes recovered from ratepayers in the early years of a new asset’s life.

- If the income tax rate remains the same in future years, then over time the process is reversed and the cumulative tax recovered from ratepayers (reflected in ADIT) and paid by the utility is generally equal over the course of an asset’s life.

- Meanwhile, ratepayers receive a return on this ADIT until the utility pays these amounts to the federal government.
Accumulated Deferred Income Taxes

- The ADIT is a zero-cost source of capital to the utility and accordingly is used as an offset to rate base and reduces rates.

- If the income tax rate remains the same in future years, then the ADIT is never refunded to ratepayers because the tax is paid to the federal government.
"Excess" ADIT

- However, when the tax rate is lowered, a portion of the ADIT will never be paid to the federal government and "excess" deferred taxes are created.

- Excess deferred taxes means that the utility charged consumers at a higher tax rate in the early years than the tax rate that will actually be paid by the utility in the future.

- Because the "excess" ADIT will never be paid to the federal government, it must be refunded to the ratepayers who already paid these taxes to the utility.

- The excess ADIT should be refunded over the remaining lives of the assets, rather than in a one-time lump sum payment.
New Administration, New Tax Policy?

- Under the Trump administration, federal corporate income tax rates may be reduced significantly. Current proposal is to reduce from 35% to 15%.

- If that occurs, the rates of utilities in Kentucky should be reduced to reflect the lowered tax rates.
On October 22, 1986, President Reagan signed the Tax Reform Act of 1986 into law, reducing the federal corporate income tax rate from 46% to 34%.

Shortly thereafter, the Kentucky Public Service Commission initiated proceedings to reflect the effects of that Act on utility rates.
The Tax Reform Act Cases

• "...the Commission does not view retaining the savings that result from tax reform as a proper way for a utility to improve its earnings. Likewise, if the Tax Reform Act should result in major cost increases, these costs should be recognized in rates expeditiously" KPSC Order, Case No. 9781 (Dec. 11, 1986).

• The proceedings initially applied to utilities with revenues in excess of $1 million, but the number of utilities subject to review was subsequently reduced to 15 because the rate impacts on other potentially eligible utilities would be minimal.
Some Utilities Resist

- In the 1986 Tax Reform Act cases, utilities raised several arguments:
  - Single-issue ratemaking
  - Commission's burden of proof
  - Retroactive ratemaking
The June 11, 1987 Rulings

• "...the Tax Reform Act is a unique and historic change in tax law that substantially affects the cost of providing utility service."

• The Commission ordered an overall revenue requirement reduction for the 15 utilities exceeding $75 million.

Richard D. Heman, Jr.
KPSC Chairman
The Commission's Reasoning

- **On Single-Issue Ratemaking:** The Commission noted its long-established practice of adjusting rates for single items like fuel in the FAC and gas in the PGA.

- **On Burden of Proof:** The Commission explained that there was no statute assigning a burden of proof in that type of case.

- **On Retroactive Ratemaking:** The Commission found that the rate changes were entirely prospective so the issue was moot.
Subsequent Kentucky Case Law Strengthens the Commission’s Rationale

- “In fact, we find nothing in the statutes that would prohibit ‘single-issue ratemaking’” Kentucky Pub. Serv. Comm’n v. Com. ex rel. Conway, 324 S.W.3d 373, 382 (Ky. 2010).

- “…the plain language of KRS 278.190 does not actually require that the PSC proceed with a general rate case or other particular process every time some new rate or change in rates is requested.” Id. at 378.

- “While the power to approve the AMRP rider at issue may not have been expressly granted by statute before the enactment of KRS 278.509, we, nonetheless, conclude that the PSC has the power to allow such a rider based upon (1) its plenary ratemaking authority derived from KRS 278.030 and KRS 278.040, which essentially require that the PSC act to ensure that rates are “fair, just and reasonable” and (2) the absence of any statutes specifically requiring a particular procedure when determining if rates are fair, just, and reasonable.” Id. at 380-81.
Rate Reductions in Other States

• According to a 1987 report by Regulatory Research Associates:
  
  • About 40 jurisdictions initiated generic proceedings to address the impacts of the 1986 Tax Reform Act.
  
  • 22 took action on a case-by-case basis, regardless of whether a generic proceeding had been conducted.
  
  • 11 instituted rate cuts to reflect the lower tax rate or were ordered to do so on an issue-specific basis.
  
  • 5 declared rates to be temporary/subject to refund or required the utilities to set up a deferral account to capture tax expense difference, pending some type of proceeding addressing rates on an issue-specific or general basis.
What Should Happen If Tax Reform Occurs Again?

- We can largely repeat the process used by the Commission in the 1980s.

- Utility income tax expenses should be reduced and excess ADIT should be returned to customers.

- This process can be done expeditiously and would significantly benefit Kentucky customers. Importantly, the earnings of the affected utilities will not be changed.

- The following chart gives a simplified order of magnitude analysis of the dollars that could be involved.
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<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
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<tr>
<td><strong>ESTIMATED EFFECTS ON EARNINGS (NOT REVENUE REQUIREMENTS)</strong></td>
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<td><strong>OF FEDERAL INCOME TAX RATE REDUCTION FROM 35% TO 15% ON KENTUCKY ELECTRIC UTILITIES</strong>*</td>
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<td>Data Source: 2015 FERC Form 1s</td>
<td>Kentucky Power Company</td>
<td>Kentucky Utilities Company</td>
<td>Louisville Gas and Electric**</td>
<td>Duke Kentucky***</td>
<td>Total Kentucky</td>
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<td><strong>FEDERAL INCOME TAX RATE ASSUMPTIONS</strong></td>
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<td>5</td>
<td>New Federal Income Tax Rate</td>
<td>15%</td>
<td>15%</td>
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<td>6</td>
<td>Old Federal Income Tax Rate</td>
<td>35%</td>
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<td>Percentage Reduction in Federal Income Tax Rate</td>
<td>57%</td>
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<td>8</td>
<td><strong>INCOME TAX EXPENSE EFFECT</strong></td>
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<td>9</td>
<td>Income Tax Expense</td>
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<td>(19,453,420)</td>
<td>(13,679,235)</td>
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<td>Deferred Income Tax Expense -Debit</td>
<td>299,048,988</td>
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<td>447,741,617</td>
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<td>Deferred Income Tax Expense -Credit</td>
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<td>(376,623,549)</td>
<td>(320,258,358)</td>
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<td>Net Income Tax Expense</td>
<td>1,050,477</td>
<td>141,933,745</td>
<td>113,804,024</td>
<td>28,662,585</td>
<td>285,450,831</td>
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<td>13</td>
<td>Increase in Earnings Due to Reduct in Income Tax Expense</td>
<td>600,273</td>
<td>81,104,997</td>
<td>65,030,871</td>
<td>16,378,620</td>
<td>163,114,761</td>
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<td>14</td>
<td><strong>EXCESS ADIT EFFECT</strong></td>
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<td>Acct 190</td>
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<td>286,542,027</td>
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<td>Acct 281</td>
<td>(60,906,706)</td>
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<td>(190,426)</td>
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<td>18</td>
<td>Acct 283</td>
<td>(258,622,525)</td>
<td>(146,850,085)</td>
<td>(176,967,186)</td>
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<td>19</td>
<td>Net ADIT</td>
<td>(636,544,985)</td>
<td>(1,046,443,828)</td>
<td>(829,102,830)</td>
<td>(289,651,738)</td>
<td>(2,801,743,381)</td>
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<td>Excess ADIT Due to Federal Rate Change</td>
<td>(363,739,991)</td>
<td>(587,967,902)</td>
<td>(473,773,046)</td>
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<td>21</td>
<td>Amortization Period (Years)</td>
<td>20</td>
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<td>22</td>
<td>Increase in Earnings Due to Amort of Excess ADIT</td>
<td>18,187,000</td>
<td>29,889,395</td>
<td>23,688,652</td>
<td>8,275,764</td>
<td>80,049,811</td>
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<td><strong>INCREASE IN ANNUAL EARNINGS</strong></td>
<td>18,787,272</td>
<td>111,003,392</td>
<td>88,719,523</td>
<td>24,654,384</td>
<td>243,164,571</td>
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</table>

* Quantifications based on 2015 data. Quantifications will change, perhaps significantly, if 2016 or 2017 data is used.

** Louisville Gas and Electric includes both electric and gas effects. Electric Utility share of net utility operating income (FERC Form 1, pg 115, line 26) is 82.56%.

*** Duke Kentucky includes both electric and gas effects. Electric Utility share of net utility operating income (FERC Form 1, pg 115, line 26) is 76.17%.
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION
OF HOWARD W. MOTLEY, JR., FOR AN
INQUIRY INTO THE EFFECT OF THE
1986 TAX REFORM ACT ON OKLAHOMA
UTILITIES.

PUD CAUSE NO. Q00260

APPLICATION

APPLICANT: Howard W. Motley, Jr., Director
Public Utility Division
500 Jim Thorpe Office Building
Oklahoma Corporation Commission
Oklahoma City, OK 73105

RESPONDENTS: Arkansas Louisiana Gas Company
Arkansas Oklahoma Gas Corporation
Empire District Electric Company
General Telephone Company of the Southwest
KPL Gas Service Company
Lone Star Gas Company
Oklahoma Gas & Electric Company
Oklahoma Natural Gas Company
Public Service Company of Oklahoma
Southern Union Gas Company
Southwestern Bell Telephone Company
Southwestern Public Service Company

ALLEGATIONS OF FACT:

On October 22, 1986, the President of the United States signed the
1986 Tax Reform Act. This act revises the corporate tax rate from 46
percent to 34 percent, effective July 1, 1987. As a result, calendar
year companies will experience an effective tax rate of 40 percent for
1987 and a 34 percent rate for 1988.

It is in the public interest that this Commission act as quickly as
possible to determine the effect of the Tax Act on Oklahoma utilities.

Therefore, the Staff requests that the Companies named herein be
required to appear at a technical conference in order to establish the
scope of the information required to determine the effect of the Tax
Act. Further, the timing for providing such information for
quantification and regulatory treatment should be established at this
conference.

Other issues which should be addressed are unrecorded tax
liabilities which have been disclosed for financial reporting purposes
but not addressed from a regulatory standpoint and the treatment of the
tax rate change on deferred taxes related to non-depreciation items.

LEGAL AUTHORITY:

Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §137 and
17 O.S. §151 et. seq.
Ratepayers deserve break if tax cut is approved, commissioner says

BY JACK MONEY
Business Writer
jmoney@oklahoman.com

Ratepayers should get a break on their electricity, natural gas and phone bills if a version of Congress’ tax measures to cut corporate taxes becomes law, a member of the Oklahoma Corporation Commission said on Thursday.

Commissioner Bob Anthony made the remarks during a commission meeting as he discussed a resolution approved a couple of weeks ago by the National Association of Regulatory Utility Commissioners during its national conference.

The resolution calls on Congress to not insert any language into a tax cut measure that would prohibit public agencies regulating electricity, natural gas and phone service companies from considering how a cut in the nation’s corporate tax rate would impact those companies’ earnings.

Routinely, regulators consider companies’ earnings (typically called excess revenues) when they set the rates they are allowed to charge consumers for the products they provide.

‘Consumers ought to enjoy some benefit’

Anthony said a tax break like the ones being considered by Congress could make a difference of tens of millions of dollars in income for the state’s main electricity providers.

“Some people are fond of saying that investor-owned, taxing public utilities don’t really pay taxes. They collect taxes from ratepayers and then pass it on to the federal government,” Anthony said.

“So, if that rate changes, then fairness would make you think the consumers ought to enjoy some benefit,” he said.

Anthony said the commission successfully helped consumers benefit from corporate tax cuts enacted by Congress and President Ronald Reagan, and added this resolution asks only that Congress not take away its ability to do the same, going forward.

Brandy Wraith, director of the commission’s public utility division, said his staff is following the issue.

“We would not file one case affecting everyone,” Wraith said, “because that would ... create an administrative nightmare.

“But we would file cases with individual companies based on impact to deal with potential outcomes,” Wraith added, noting those actions likely would impact Public Service Co. of Oklahoma, Oklahoma Gas & Electric and Empire District Electric Co.

“We are poised and ready to file cases with them to address those tax implications,” Wraith said.

Commissioners didn’t vote to support the resolution from National Association of Regulatory Utility Commissioners, but Commission Chairman Dana Murphy said she felt it would be appropriate for individual members to reach out to Oklahoma’s Congressional delegation to make it aware of the agency’s concerns.
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE ATTORNEY GENERAL OF OKLAHOMA, TO LOWER THE RATES AND CHARGES FOR ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA GAS AND ELECTRIC COMPANY RESULTING FROM THE TAX CUTS AND JOBS ACT OF 2017

CAUSE NO. PUD 201700569

APPLICATION

Mike Hunter, the Attorney General of Oklahoma, hereby submits his Application requesting that the Oklahoma Corporation Commission ("Commission") reduce the rates and charges for electric service and provide for any refund due to the customers of Oklahoma Gas and Electric Company resulting from the Tax Cuts and Jobs Act of 2017. He states and alleges the following:

I. PARTIES

1. The Applicant is Attorney General Mike Hunter, acting on behalf of Oklahoma utility customers. His business address is 313 NE 21st Street, Oklahoma City, Oklahoma 73105, and his phone number is (405) 521-3921.

2. The Respondent is Oklahoma Gas and Electric Company ("OG&E"), a public utility providing electric service to customers in Oklahoma and regulated by the Oklahoma Corporation Commission pursuant to the Oklahoma Constitution, Article IX, § 18 et seq. and 17 O.S. § 151 et seq. OG&E's business address is 321 N. Harvey Avenue, Oklahoma City, Oklahoma 73102.
II. ALLEGATIONS

3. The United States Congress passed the Tax Cuts and Jobs Act of 2017, Pub. L. 115-___, Stat. ___ ("Act") on December 20, 2017, and it was signed into law on December 22, 2017. The Act reduced federal corporate income tax rates from a top rate of 35 percent to 21 percent.

4. The rates and charges for electric service for OG&E were most recently determined by this Commission on March 20, 2017, in Order No. 662,059 ("2015 Rate Case Order"), issued in Cause No. PUD 201500273. That order followed the standard methodology for setting rates in Oklahoma, which included a provision for OG&E’s federal corporate income taxes at 35 percent. The Act’s significant reduction in the applicable federal corporate income tax rate reduces the cost to provide service to customers, which should result in lower rates and charges for customers.

5. Further, the provision in the 2015 Rate Case Order for OG&E’s federal corporate income tax rate was calculated on a normalized basis, meaning that customers have been asked to pay rates for their electric service based on OG&E’s regulatory depreciation life for assets, rather than on the assets’ tax depreciation life. The result of normalized accounting is that customer rates are set assuming higher tax costs than would actually occur in early years of an asset’s life, but assuming lower tax costs in later years. These higher customer payments, or deferred taxes, are effectively prepayments of federal corporate income tax, and are accumulated in an account called Accumulated Deferred Income Tax ("ADIT"), which is then drawn down after an asset’s tax depreciation expense falls below the applicable regulatory expense.

6. ADIT is calculated based on the tax rate in effect at the time tax costs are deferred. OG&E has effectively recorded these deferred taxes assuming a 35 percent corporate income tax rate, but will only pay a 21 percent income tax rate on these amounts under the Act. The extra
amount recorded, or "excess ADIT," can and should be returned to OG&E's customers through lower rates and charges.

7. Once assets' tax depreciation lives are exhausted, the ADIT account is reduced over the remaining regulatory life of an asset. Unless immediate Commission action is taken, these ADIT account reductions may occur, as a matter of accounting principles, at the former 35 percent income tax rate, even after the effective date of the Act. This would result in excess ADIT being permanently lost to OG&E's customers. Immediate relief is necessary to ensure that excess ADIT is properly recorded in an account that can be returned to customers.

III. LEGAL AUTHORITY

8. The Commission has the authority to prescribe just and reasonable rates for public utilities, including electric utilities. Okla. Const. art. IX, § 18; 17 O.S. §§ 151, 152.

IV. REQUEST FOR RELIEF

9. Attorney General Mike Hunter requests immediate interim relief as is necessary and appropriate to protect customer interests during the pendency of this cause.

10. Further, the Attorney General requests that the Commission reduce the rates and charges for customer service and provide for any refund due to customers of OG&E resulting from the Tax Cuts and Jobs Act of 2017, along with all other relief necessary and appropriate to protect the interests of Oklahoma utility customers.
Respectfully submitted,

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

[Signature]

DARA M. DERRYBERRY, OBA #16641
Deputy Attorney General
KATY EVANS BORENS, OBA #16649
Assistant Attorney General
JARED B. HAINES, OBA #32002
Assistant Attorney General
OKLAHOMA ATTORNEY GENERAL
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Telephone: (405) 521-3921
Facsimile: (405) 522-0608
Dara.Derryberry@oag.ok.gov
Katy.Boren@oag.ok.gov
Jared.Haines@oag.ok.gov
CERTIFICATE OF SERVICE

On this 22nd day of December, 2017, a true and correct copy of the above and foregoing Application was sent via U.S. mail, postage prepaid, to the following interested parties:

Mr. Brandy L. Wreath
Director of the Public Utility Division
OKLAHOMA CORPORATION COMMISSION
Jim Thorpe Building
2101 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
b.wreath@occemail.com

Mr. William L. Humes
Mr. Patrick D. Shore
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VICTORIA D. KORRECT
Paralegal, Utility Regulation Unit
OKLAHOMA ATTORNEY GENERAL
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE ATTORNEY GENERAL OF OKLAHOMA, TO LOWER THE RATES AND CHARGES FOR ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA GAS AND ELECTRIC COMPANY RESULTING FROM THE TAX CUTS AND JOBS ACT OF 2017  

CAUSE NO. PUD 201700569

ATTORNEY GENERAL'S MOTION FOR IMMEDIATE REDUCTION IN RATES AND PROTECTION OF CUSTOMER INTERESTS

Mike Hunter, the Attorney General of Oklahoma, hereby submits his Motion for Immediate Reduction in Rates and Protection of Ratepayer Interests on behalf of the customers of Oklahoma Gas and Electric Company ("OG&E"). The Attorney General requests that the Oklahoma Corporation Commission ("Commission") take the following actions to provide interim relief to ratepayers: (1) require OG&E to immediately reduce its rates in an amount necessary to reflect lower tax rates as would apply to its most recently approved rate base; and (2) ensure excess Accumulated Deferred Income Tax is recorded as a regulatory liability during the pendency of this cause, the treatment of which can be determined at a later date. The Attorney General provides the following in support of his Motion:

INTRODUCTION

This week, the United States Congress enacted a sweeping overhaul of federal income tax law, including a reduction in the highest corporate income tax rate from 35 percent to 21 percent.1 This action has significant implications for customers of Oklahoma utility companies because utility rates are set based on the cost of service,2 which includes a provision for federal income tax

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1 See generally Tax Cuts and Jobs Act of 2017, Pub. L. 115-___, ___ Stat. ___.

rates. The Attorney General requests that the portion of savings that arises from the lower tax rate applicable to return on rate base be immediately passed through to OG&E’s customers in the form of lower rates.

The federal government’s tax legislation will also provide savings to OG&E’s customers through its effect on an account called Accumulated Deferred Income Tax (“ADIT”). ADIT arises from differences between how assets are treated in a regulatory environment when setting rates and how they are treated for tax purposes. For both tax and regulatory purposes, companies generally treat the cost of an investment—such as a power plant—as an expense called depreciation, which is spread over many years. The number of years over which the expense is spread is typically smaller for tax purposes than it is for regulatory purposes. This shorter number of years results in lower taxes due at the beginning of an investment’s life and higher taxes due later. In the regulatory context, the useful life of an investment is typically longer than for tax purposes. This longer life is also used to calculate the tax costs recovered from customers, even though actual taxes due may be different. As a result, customer rates are set using higher tax expenses in the early life of an investment. The extra amount, or “deferred income tax,” is recorded in ADIT, which is then drawn down in later years when the company’s tax expenses increase.

The value of ADIT is set based on the rates when the deferred income tax is recorded, meaning OG&E’s tax reserves were largely recorded assuming a 35 percent federal income tax rate. Since OG&E will only be required to cover income taxes at a 21 percent rate in the future, a portion of its ADIT—referred to as “excess ADIT”—can and should be returned to customers.

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4 See id.
5 See id. at 287 (discussing excess deferred income taxes).
The Attorney General initiated this proceeding in part to ensure OG&E recognizes and returns this excess ADIT to customers after a full and fair hearing in compliance with the law.6

Until this cause concludes, however, normal accounting principles may result in ADIT being drawn down at a higher federal income tax rate, even after the applicable rates fall. In other words, a portion of excess ADIT reflecting the difference between a 35 percent income tax rate and a 21 percent income tax rate may be permanently lost if the Commission does not take action to ensure OG&E records these amounts as a regulatory liability during the pendency of this proceeding. The Attorney General therefore requests that the Commission enter an order providing this protection for customers’ interests.

BACKGROUND


2. The Act reduces federal corporate income rates from a top rate of 35 percent to 21 percent beginning on January 1, 2018.7

3. The rates and charges for electric service for OG&E were most recently determined by this Commission on March 20, 2017, in Order No. 662,059, issued in Cause No. PUD 201500273 (“2015 Rate Case Order”).

4. The 2015 Rate Case Order set OG&E’s rates assuming an income tax multiplier that relied on a 35 percent income tax rate.8

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6 The Tax Cuts and Jobs Act of 2017 provides parameters for how excess ADIT may be returned to customers in the ratemaking context. See Act § 13001(d).
7 Id. § 13001(a) (amending 26 U.S.C. § 11(b)).
8 See 2015 Rate Case Order, Attachment 1, Section A (showing revenue conversion factor of 1.630768, an amount necessary to produce required operating income while paying 35 percent federal income tax).
With a federal corporate income tax rate of 21 percent applicable to schedules in the 2015 Rate Case Order, OG&E's rates would be reduced by at least $51 million annually and still allow it to earn the return allowed by the Commission.⁹

As reflected in the 2015 Rate Case Order, OG&E had an ADIT balance of $1,480,273,771 as of December 31, 2015.¹⁰

Portions of the ADIT balance may be reduced at a 35 percent income tax rate through the application of accounting principles after January 1, 2018, without Commission action directing that a regulatory liability be created for excess ADIT after that date.

OG&E filed a Notice of Intent on November 9, 2017, stating that it expected to file an application to review its rates and charges for electric service on or around December 29, 2017.¹¹

The statutory timeline to complete a general rate case is 180 days.¹² The statutory timeline does not provide a guarantee that a case will be completed within the timeline.

ARGUMENT

This Commission has the authority to determine the rates and charges for electric service for a public utility in Oklahoma.¹³ Commission rules also authorize it to rule on motions made during the course of a cause.¹⁴ The Attorney General requests that the Commission enter two forms of relief to protect the interests of OG&E's customers in this cause. First, the Attorney General

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⁹ Exhibit B, Impact of Federal Income Tax Legislation, Excluding ADIT.
¹⁰ 2015 Rate Case Order, Attachment 2, p. 39.
¹² 17 O.S. § 152(B).
¹⁴ OAC 165:5-9-2(b).
requests that OG&E’s rates be immediately reduced to reflect the lower federal corporate income tax rate applicable to its authorized return on its rate base. Second, the Attorney General requests that OG&E be required to record excess ADIT as a regulatory liability during the pendency of this cause, which would be available to refund to ratepayers according to future relief offered in this proceeding.

I. Customers’ rates should be immediately reduced due to lower federal income taxes.

This Commission has the authority to set just and reasonable rates.\textsuperscript{15} For an electric utility such as OG&E, these rates are set based on the costs incurred to provide service.\textsuperscript{16} In this instance, one of OG&E’s largest expenses, federal corporate income tax, will be reduced significantly from 35 percent to 21 percent. The Attorney General’s lead analyst and certified public accountant Edwin C. Farrar has calculated the minimum tax savings from this reduction to be over $51 million annually, excluding the impact of ADIT.\textsuperscript{17} That means OG&E will have a sudden and significant reduction in its cost to serve customers. This large reduction, owed to legal changes outside of OG&E’s control, should be reflected in rates immediately, distributed in proportion to each customer class’s share of the revenue requirement recognized in the 2015 Rate Case Order.

There is no reason to delay immediate action to reduce customer rates due to the reduction in tax rates. Although OG&E has recently filed a Notice of Intent that it will file an application to change its rates on December 29, 2017,\textsuperscript{18} the statutory timeline for this proceeding allows nearly

\textsuperscript{17} Exhibit A; Exhibit B.
six months for it to be completed, without a guarantee to customers that it will even finish within the statutory timeline. Simply because OG&E may soon file a rate case does not provide support for allowing it to retain the benefits of tax savings for six months, to the detriment of OG&E’s customers.

Further, OG&E may request the opportunity to show other changes to its cost to provide service that may offset the tax savings to be passed on to ratepayers. However, this also provides no reason to delay interim relief in this case. The Attorney General’s request relates only to the reduction in tax expense attributable to return on rate base, not tax savings arising from excess ADIT. OG&E would continue to have a meaningful opportunity to present any offsetting expenses that would affect the return of excess ADIT. Further, the possibility of litigation over offsetting costs provides no reason to believe OG&E should retain the benefit of tax savings during the litigation. Customers should immediately retain the benefit of tax savings from the Tax Cuts and Jobs Act.

If the Commission refuses to pass savings on to customers immediately, it should at least require OG&E to record a regulatory liability to reflect tax savings accruing until the completion of this cause, as calculated in an annual figure in Exhibit B.

II. Excess ADIT should be recorded as a regulatory liability during the pendency of this cause.

As stated above, OG&E’s accumulated deferred income tax account recognized at the end of its last rate case stood at over $1.4 billion. A portion of this amount will likely be drawn down over the coming months to reflect OG&E’s higher tax expenses for assets for which tax

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19 17 O.S. § 152(B).
20 2015 Rate Case Order, Attachment 2, p. 39.
depreciation lives have ended—and for assets for which tax depreciation expense is less than its regulatory depreciation expense.\textsuperscript{21} Without immediate action, this excess ADIT could be permanently lost to customers.

The Commission should enter an interim order requiring that excess ADIT that would be drawn down during the pendency of this proceeding be recorded as a regulatory liability. The ultimate treatment of this regulatory liability can be addressed with a final order in this cause, at which time the Attorney General intends to request a refund to ratepayers to the greatest extent permissible under the law and supported by evidence in the record.

There is no reason to delay creating a regulatory liability for excess ADIT, and without doing so, OG&E's customers may permanently lose the benefits of any portion of excess ADIT drawn down during the pendency of this cause.

\textbf{CONCLUSION}

In light of the foregoing reasons, the Attorney General Mike Hunter requests that the Commission immediately enter an order that reduces customer rates by an amount reflecting lower federal corporate income tax rates. He also requests that the Commission require OG&E to recognize a regulatory liability for excess deferred income taxes during the pendency of this proceeding.

\textsuperscript{21} The latter circumstance can happen early in an asset’s useful life due to tax law provisions allowing as much as 50 percent of an asset’s cost to be expensed for tax purposes in its first year—often referred to as “bonus depreciation.” E.g., Thomson Reuters Tax & Accounting, \textit{Renewal of bonus depreciation & enhanced expensing offers tax-saving opportunities} (Mar. 2, 2016), https://tax.thomsonreuters.com/media-resources/news-media-resources/checkpoint-news/daily-newsstand/renewal-of-bonus-depreciation-enhanced-expensing-offers-tax-saving-opportunities/.
Respectfully submitted,

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

DARA M. DERRYBERRY, OBA #16641
Deputy Attorney General
KATY EVANS BOREN, OBA #16649
Assistant Attorney General
JARED B. HAINES, OBA #32002
Assistant Attorney General
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Katy.Boren@oag.ok.gov
Jared.Haines@oag.ok.gov
CERTIFICATE OF SERVICE

On this 22nd day of December, 2017, a true and correct copy of the above and foregoing Attorney General's Motion for Immediate Reduction in Rates and Protection of Customer Interests was sent via electronic mail to the following interested parties:

Mr. Brandy L. Wreath  
Director of the Public Utility Division  
OKLAHOMA CORPORATION COMMISSION  
Jim Thorpe Building  
2101 North Lincoln Boulevard  
Oklahoma City, Oklahoma 73105  
b.wreath@occemail.com

Mr. William L. Humes  
Mr. Patrick D. Shore  
OKLAHOMA GAS AND ELECTRIC COMPANY  
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humeswl@oge.com  
shorepd@oge.com

Mr. Natasha M. Scott  
Managing Deputy General Counsel  
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Oklahoma City, Oklahoma 73105  
n.scott@occemail.com

Fred B. Haines  
Assistant Attorney General
AFFIDAVIT OF EDWIN C. FARRAR, CPA

State of Oklahoma
County of Oklahoma

I, Edwin C. Farrar, do hereby swear/affirm that the following statements are true and correct to the best of my information, knowledge, and belief.

1. I am Edwin C. Farrar. I am an employee of Mike Hunter, the Attorney General of Oklahoma.

2. I am a Certified Public Accountant licensed in the State of Oklahoma.

3. I have determined, based on the accounting schedules included in the final order in Cause No. PUD 201500273, that Oklahoma Gas and Electric Company will have reduced Oklahoma jurisdictional costs as a result of the Tax Cuts and Jobs Act of 2017 of at least $51 million, not including the impact of excess accumulated deferred income taxes resulting from the legislation.

4. I have prepared a schedule outlining my calculations which will be provided with this affidavit.

Edwin C. Farrar, CPA

On this 22nd day of December, 2017, Mr. Edwin C. Farrar, to me personally known, appeared before me. He subscribed and swore/affirmed that the foregoing was true and correct to the best of his information, knowledge, and belief.

[Signature]
Notary Public

Impact of Federal Income Tax Legislation, Excluding ADIT

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**Savings Factor Calculation:**

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<td>Tax Factor from PUD 201500273 (1/(1-(35%+6%)/1.06)-1)</td>
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AG wants utilities to pass along tax savings to you

BY JUSTIN WINGERTER
Staff Writer
jwingerter@oklahoman.com

Attorney General Mike Hunter believes the state's utility companies must lower their rates because they stand to benefit from federal tax reform.

In motions filed with the Oklahoma Corporation Commission, the Republican attorney general asked the OCC to force five utilities to lower utility rates "in an amount necessary to reflect lower tax rates."

"These companies will begin seeing major savings after the tax cut is implemented on Monday," Hunter said in a statement. "Oklahomans who are customers of these companies should immediately retain the benefits of the savings from the tax cut in the form of lower rates."

Republicans in Congress passed a tax reform package this month and President Donald Trump signed it into law. The package will, among other changes, dramatically lower the corporate tax rate from 35 percent to 21 percent.

The Corporation Commission will consider Hunter's motions at a Jan. 4 hearing. The five utilities are Oklahoma Gas & Electric, Public Service Company of Oklahoma, Oklahoma Natural Gas, CenterPoint Energy and Arkansas Oklahoma Gas.

SEE SAVINGS, 2A

INTO THE SUNSET

Seniors lead OSU to victory over Virginia Tech

BY NOLAN CLAY
Regulators Asked to Approve Rebates for Utility Customers

By Jerry Bohnen  January 4, 2018

Acting on the initial recommendation of Oklahoma Corporation Commissioner Bob Anthony followed by Attorney General Mike Hunter, OCC Administrative law judges have recommended that Oklahoma utilities use savings they receive from new federal corporate tax rates to issue rebates to their customers.

The recommendations came Thursday after the Commission held hearings on the formal motion filed by Hunter to have utility rates lowered as a result of the federal tax reforms. The rates, approved by Congress in 2017 and signed into law by President Trump officially took effect on Monday.

Judges in five separate hearings recommended that savings to Oklahoma Gas and Electric, Public Service Company of Oklahoma, Oklahoma Natural Gas, CenterPoint Energy and Arkansas Oklahoma Gas be subject to rebates to their customers, according to Dara Derryberry, Deputy Attorney General. The commission’s staff was instructed by the judges to prepare orders by Friday.

Attorney General Hunter contends the savings from the drop of the highest corporate income tax rate from 35 percent to 21 percent could be more than $100 million a year.

Corporation Commissioner Anthony first brought it to the attention of the commission in November as the legislation was working its way through Congress as first reported by OKEnergyToday.

“We’re all watching our budgets but electric bills are very significant and this plan could result in significant savings also to State government,” said Anthony in explaining his proposal to Commissioners Dana Murphy and Todd Hiett. “It will also have a direct benefit to customers.”

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE ATTORNEY GENERAL OF OKLAHOMA, TO LOWER THE RATES AND CHARGES FOR:

NATURAL GAS SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF CENTERPOINT ENERGY RESOURCES CORPORATION D/B/A CENTERPOINT ENERGY OKLAHOMA GAS

ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA GAS AND ELECTRIC COMPANY

NATURAL GAS SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF ARKANSAS OKLAHOMA GAS CORPORATION

NATURAL GAS SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA NATURAL GAS COMPANY, A DIVISION OF ONE GAS, INC.,

ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF PUBLIC SERVICE COMPANY OF OKLAHOMA

RESULTING FROM THE TAX CUTS AND JOBS ACT OF 2017

Deliberations Statement by Corporation Commissioner Bob Anthony

I favor an immediate public utility rate cut to stop overcollection for federal taxes. Support from the Attorney General, AARP, U.S. Department of Defense and other ratepayer representatives convinces me we need lower rates now, not just IOUs to be paid later.

During the first hearing on January 4, 2018 regarding the recent Tax Cuts and Jobs Act, I raised several topics. Referencing the similar Tax Reform Act of 1986, counsel reaffirmed the previous position of the Department of Defense and all other Federal Executive Agencies (DOD/FEA) in Cause No. PUD 860000260 (PUD 260). In fact, the PUD 260 Recommendations of DOD/FEA filed February 23, 1987 (p. 3) state, "A general or full rate investigation is not recommended or needed to rectify the windfall profits that would result if the present customer tariffs are not adjusted to reflect the Tax Reform Act of 1986’s major alteration in the rate making formula."

Furthermore, counsel for the Oklahoma Industrial Energy Consumers agreed with a December 27, 2017 Order of the Kentucky Public Service Commission stating, "This statutory reduction in the federal corporate tax rate constitutes a prima facie case that the utility rates being charged by each of the Investor Owner Utilities will no longer be fair, just, or reasonable as of January 1, 2018, and need to be reduced."
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE ATTORNEY GENERAL OF OKLAHOMA, FOR ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA GAS AND ELECTRIC COMPANY RESULTING FROM THE TAX CUTS AND JOBS ACT OF 2017

ATTORNEY GENERAL'S REVISED PROPOSED INTERIM ORDER GRANTING THE ATTORNEY GENERAL'S MOTION FOR IMMEDIATE REDUCTION IN RATES AND PROTECTION OF CUSTOMER INTERESTS

Mike Hunter, the Attorney General of Oklahoma, hereby resubmits his Proposed Interim Order Granting the Attorney General’s Motion for Immediate Reduction in Rates and Protection of Customer Interests. Certain revisions have been made to correct scrivener’s errors, correct formatting, and include AARP’s appearance at the January 4, 2018 hearing on the Attorney General’s Motion for Immediate Reduction in Rates and Protection of Customer Interests.

The Attorney General’s proposed order is provided here as Attachment A.
Respectfully submitted,

MIKE HUNTER
Attorney General of Oklahoma

[Signature]

DARA M. DERRYBERRY, OBA #16641
Deputy Attorney General
KATY EVANS BOREN, OBA #16649
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ATTACHMENT A

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE
ATTORNEY GENERAL OF OKLAHOMA,
TO LOWER THE RATES AND CHARGES
FOR ELECTRIC SERVICE AND PROVIDE
FOR ANY REFUND DUE TO THE
CUSTOMERS OF OKLAHOMA GAS AND
ELECTRIC COMPANY RESULTING FROM
THE TAX CUTS AND JOBS ACT OF 2017

CAUSE NO. PUD 201700569

INTERIM ORDER GRANTING ATTORNEY GENERAL’S
MOTION FOR IMMEDIATE REDUCTION IN RATES AND
PROTECTION OF CUSTOMER INTERESTS

HEARING: January 4, 2018 in Courtroom B
2101 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before Michael D. Norris, Administrative Law Judge

APPEARANCES: Bill Humes, Attorney representing Oklahoma Gas and Electric Company
Jack G. Clark, Jr., and Ronald E. Stakem, Attorneys representing OG&E
Shareholders Association
Jared B. Haines, Assistant Attorney General representing Office of
Attorney General, State of Oklahoma
Thomas P. Schroedter, Attorney representing Oklahoma Industrial Energy
Consumers
Matthew Dunne, Attorney representing United States Department of
Defense and all other Federal Executive Agencies
Deborah Thompson, Attorney representing American Association of
Retired Persons
Lauren Hensley, Assistant General Counsel representing Public Utility
Division, Oklahoma Corporation Commission

BY THE COMMISSION:

The Corporation Commission of the State of Oklahoma (“Commission”) being regularly
in session and the undersigned Commissioners being present and participating, there comes on for
consideration and action the above-styled and numbered cause.
I. PROCEDURAL HISTORY

On December 22, 2017, the Attorney General filed the application initiating this cause and a motion styled Attorney General’s Motion for Immediate Reduction in Rates and Protection of Customer Interests. On that same day, the Attorney General filed his Notice of Hearing with service provided to all parties.

On December 27, 2017, the Attorney General filed a Notice of Hearing correcting the January hearing date year from 2017 to 2018.


On January 4, 2018, a hearing on the Attorney General’s Motion was held before Administrative Law Judge Ben Jackson. Oral arguments of all parties were heard.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission has jurisdiction over this matter pursuant to Article IX, Section 18 of the Oklahoma Constitution, 17 O.S. §§ 151 et seq., and the rules of the Commission.

Notice of these proceedings was proper and delivered as required by law and the orders of the Commission. Although OG&E challenged the Attorney General’s notice under OAC 165:5-7-50, the rule identified by OG&E only applies to requests that would result in an interim rate increase. The rule has no provision governing a request for interim relief resulting in an interim rate decrease, as the Attorney General has requested. Further, the Attorney General’s request to create a regulatory liability subject to refund for excess deferred income taxes, as well as any other tax savings not immediately returned to customer, does not involve a change in rates. Instead, the appropriate notice requirement is OAC 165:5-9-2(b), and no party disputes that the Attorney General provided notice compliant with that rule.
In the exercise of its legislative, judicial, and executive powers, the Commission is required to reach its own conclusions based upon the evidence before it; it may adopt, reject, restrict, or expand any or all findings and recommendations of the Administrative Law Judge.\(^1\)

After review of the evidence presented, hearing the arguments of counsel, and review and evaluation of the pleadings, responses, and evidence contained in the record for this cause, and upon full and final consideration thereof, the Commission hereby grants the Motion of Mike Hunter, Oklahoma Attorney General.

A. Immediate Reduction of Rates

This Commission has the authority to set just and reasonable rates.\(^2\) For an electric utility such as OG&E, these rates are set based on the costs incurred to provide service.\(^3\) In this instance, one of OG&E’s largest expenses, federal corporate income tax, will be reduced significantly from 35 percent to 21 percent. The Attorney General’s certified public accountant Edwin C. Farrar calculated the minimum tax savings from this reduction to be $51.675 million annually, excluding the impact of excess deferred income taxes.\(^4\) That means OG&E will have a sudden and significant reduction in its cost to serve customers.

Oklahoma Industrial Energy Consumers (“OIEC”), American Association of Retired Persons (“AARP”), and the Department of Defense and all other federal executive agencies (“DOD-FEA”), supported the Attorney General’s motion. DOD-FEA expressed concern that the


\(^4\) Attorney General’s Motion for Immediate Reduction in Rates and Protection of Customer Interests, Exhibit A; Exhibit B.
national security mission of the armed forces was impacted by energy costs and expressed the need for energy costs to reflect the reduced tax burden. OIEC also stated that its members would benefit significantly from tax savings, which would otherwise be lost during the pendency of this litigation. AARP argued that immediate Commission action is necessary to preserve the Commission’s ability to deal with the rate impact of these issues in the future.

The Commission adopts the Attorney General’s recommendation that the large reduction, owed to legal changes outside of OG&E’s control, should be reflected in rates immediately, distributed in proportion to each customer class’s share of the revenue requirement applicable after the order issued in Cause No. PUD 201500273. The Commission recognizes that the evidence presented by the Attorney General reflects a conservative estimate of the minimum tax savings due to customers, and further orders that any tax savings not captured within the estimate and therefore not returned immediately to customers be recorded as a regulatory liability, subject to refund. The ultimate treatment of this regulatory liability can be addressed with a final order in this cause.

B. Excess Accumulated Deferred Income Tax

OG&E’s accumulated deferred income tax account recognized at the end of its last rate case stood at over $1.4 billion. A portion of this amount would likely be drawn down over the coming months to reflect OG&E’s higher tax expenses for assets for which tax depreciation lives have ended—and for assets for which tax depreciation expense is less than its regulatory depreciation expense. The Commission finds that immediate action is necessary to ensure excess deferred income tax is not permanently lost to customers. The Public Utility Division supported the entry of an order creating a regulatory liability for excess deferred income tax, as well as for any additional tax savings due customers as a result of the Act.
The Commission adopts the Attorney General's recommendation that any excess deferred income tax should be preserved during the pendency of this proceeding and any amount drawn down shall be recorded as a regulatory liability subject to refund. The ultimate treatment of this regulatory liability can be addressed with a final order in this cause.

ORDER

THE COMMISSION THEREFORE ORDERS that the findings of fact and conclusions of law stated above are hereby adopted;

IT IS FURTHER ORDERED that OG&E shall immediately reduce its rates in the amount necessary to reflect lower tax rates, $51.675 million annually, distributed across rate classes in proportion to their share of the revenue requirement as recognized in OG&E's most recently completed cost-based rate setting order issued in Cause No. PUD 201500273;

IT IS FURTHER ORDERED that OG&E shall record any tax savings exceeding $51.675 million annually as a regulatory liability subject to refund during the pendency of this cause;

IT IS FURTHER ORDERED that OG&E shall record excess Accumulated Deferred Income Tax as a regulatory liability subject to refund during the pendency of this cause; and

IT IS FURTHER ORDERED that all balances recorded as regulatory liabilities subject to refund pursuant to the requirements above shall accrue interest at a rate equivalent to OG&E's cost of capital as recognized in the final order issued in Cause No. PUD 201500273.
OKLAHOMA CORPORATION COMMISSION

DANA L. MURPHY, Chairman

J. TODD HIETT, Vice Chairman

BOB ANTHONY, Commissioner

CERTIFICATION

DONE AND PERFORMED this ______ day of ________________, 2018.

BY ORDER OF THE COMMISSION: PEGGY MITCHELL, Secretary
CERTIFICATE OF SERVICE

On this 8th day of January, 2018, a true and correct copy of the foregoing Attorney General’s Revised Proposed Order was sent via electronic mail to the following interested parties:

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Mr. William L. Humes
Mr. Patrick D. Shore
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VICTORIA D. KORRECT
Paralegal, Public Utility Unit
OKLAHOMA ATTORNEY GENERAL
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE ATTORNEY GENERAL OF OKLAHOMA, TO LOWER THE RATES AND CHARGES FOR ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA GAS AND ELECTRIC COMPANY RESULTING FROM THE TAX CUTS AND JOBS ACT OF 2017

CAUSE NO. PUD 201700569
ORDER NO. 671982

HEARING: January 4, 2018, in Courtroom B
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Michael D. Norris, Administrative Law Judge

APPEARANCES: Dara Derryberry, Deputy Attorney General, Katy Evans Boren and Jared B. Haines, Assistant Attorneys General representing Office of Attorney General, State of Oklahoma
William L. Humes, Attorney representing Oklahoma Gas and Electric Company
Lauren D. Hensley, Assistant General Counsel representing Public Utility Division, Oklahoma Corporation Commission
Thomas P. Schroedter, Attorney representing Oklahoma Industrial Energy Consumers
Matthew Dunne, Attorney representing United States Department of Defense and all other Federal Executive Agencies
Ronald E. Stakem and Jack G. Clark, Jr., Attorneys representing OG&E Shareholders Association

ORDER ON THE ATTORNEY GENERAL’S MOTION FOR IMMEDIATE REDUCTION IN RATES AND PROTECTION OF CUSTOMER INTERESTS

BY THE COMMISSION:

The Corporation Commission ("Commission") of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the Attorney General’s Motion for Immediate Reduction in Rates and Protection of Customer Interests ("Motion"), filed on December 22, 2017. The Motion was set for hearing on January 4, 2018, and heard before the Administrative Law Judge ("ALJ"). On this date, the ALJ recommended the Motion be granted in part and denied in part.

Attorney General

The Attorney General’s ("AG") Motion requested that the Commission take the following actions: (1) require Oklahoma Gas and Electric Company ("OG&E") to immediately reduce its rates in an amount necessary to reflect lower tax rates as would apply to its most recently approved rate base; and (2) ensure excess Accumulated Deferred Income Tax ("ADIT") is recorded as a
regulatory liability during the pendency of this cause. The AG’s Motion urged that if the Commission does not pass savings on to customers immediately, it should at least require OG&E to record a regulatory liability to reflect tax savings accruing until the completion of this cause. In support of its Motion, the AG asserts that the Tax Cuts and Jobs Act of 2017 (“Act”), was enacted by the United States Congress and signed into law on December 22, 2017. This Act reduces the federal income tax rate from 35 percent to 21 percent as of January 1, 2018. The AG further asserts this Act will provide savings to OG&E’s customers through its effect on OG&E’s federal income tax expense and on OG&E’s ADIT. The Motion states the AG initiated this cause to ensure that OG&E returns tax savings, including excess ADIT, to OG&E’s customers. The Motion further alleges that during the course of this cause, ADIT will be drawn down at a higher federal income tax rate, and the difference between the 35 percent rate and the 21 percent rate, as well as any other tax savings resulting from the Act, may be permanently lost if the Commission does not order OG&E to record the excess ADIT, as well as any other tax savings not immediately returned to customers, as a regulatory liability.

OG&E

OG&E appeared at the hearing of the Motion through counsel and, on January 4, 2018, filed Oklahoma Gas and Electric Company’s Response to Attorney General’s Motion for Immediate Reduction in Rates (“Response”). In its Response, and through arguments of counsel during the hearing, OG&E argued that the AG’s Application and Motion were filed in apparent disregard for both the recent actions of this Commission though its Public Utility Division (“PUD”) Director to address concerns arising from the Act and OG&E’s recent decision to postpone its rate case application for the same reason. OG&E argues the Application and the Motion are unsupported by evidence, violate due process by disregarding notice requirements and encouraging arbitrary and capricious action by this Commission, and create judicial inefficiency by duplicating actions already taken by both this Commission and OG&E.

OG&E requested that the AG’s Motion be denied.

OG&E Shareholders Association

The OG&E Shareholders Association (“OG&E SH”) appeared at the hearing of the Motion through counsel and opposed the AG’s Motion and the Application. OG&E SH argued the Motion should be denied and the Application dismissed as duplicative of the pending OG&E general rate case in PUD 201700469 in which the issues of any interim rate and any offsets should be considered.

Oklahoma Industrial Energy Consumers

The Oklahoma Industrial Energy Consumers (“OIEC”) appeared at the hearing of the Motion through counsel and supported the AG’s Motion. OIEC also argued that the regulatory liability tracker should include a carrying charge.

United States Department of Defense and all other Federal Executive Agencies

The United States Department of Defense and all other Federal Executive Agencies appeared at the hearing of the Motion through counsel and supported the AG’s Motion.
The Public Utility Division

The Public Utility Division ("PUD") appeared at the hearing of the Motion through counsel. PUD counsel urged the Commission to issue an order making rates subject to refund and to order new tariffs after OG&E's next rate review. PUD also stated its support for a regulatory account to track possible tax implications and refunds due to customers. However, PUD emphasized that any refunds should only occur after a rate review to ensure that only known and measurable amounts are returned to customers. PUD expressed its opposition to a change in rates based solely upon the tax rate reduction, as such action would constitute single-issue ratemaking. PUD noted that numerous changes are still unknown as the law includes, but is not limited to, impacts on depreciation rates for plant assets, elimination of deductions for certain benefits as well as other tax credits and will have other tax-related implications.

PUD counsel recommended that the Commission order rates to be subject to refund and that new tariffs be implemented following OG&E's next rate review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS it has jurisdiction over this matter by virtue of Article IX, Section 18, of the Oklahoma Constitution, 17 O.S. §§ 151 and 153, and the rules of the Commission.

THE COMMISSION FURTHER FINDS notice is proper. Notice for the hearing of this Motion met the requirements of OAC 165:5-9-2(b).

THE COMMISSION FURTHER FINDS the AG's request for immediate reduction in OG&E's rates in an amount necessary to reflect lower tax rates is denied.

THE COMMISSION FURTHER FINDS OG&E shall record a deferred liability beginning on the effective date of this Order, to reflect the reduced federal corporate tax rate to 21 percent and the associated savings in excess ADIT and any other tax implications of the Act on an interim basis subject to refund until utility rates are adjusted to reflect the federal tax savings and a final order is issued in OG&E's pending general rate case in Cause No. PUD 201700496, or as otherwise ordered by the Commission. In the event time delays occur in processing the pending rate case, the Commission may direct OG&E to file a separate proceeding to address the impacts of the Act and establish final rates.

THE COMMISSION FURTHER FINDS the amounts of any refunds determined to be owed to customers shall accrue interest at a rate equivalent to OG&E's cost of capital as recognized in Order No. 662059 issued in Cause No. PUD 201500273 until issuance of a final order in its pending rate case in Cause No. PUD 201700496.
ORDER

THE COMMISSION THEREFORE ORDERS the AG’s request for immediate reduction in OG&E’s rates in an amount necessary to reflect lower tax rates is denied.

THE COMMISSION FURTHER ORDERS OG&E shall record a deferred liability beginning on the effective date of this Order, to reflect the reduced federal corporate tax rate to 21 percent and the associated savings in excess ADIT and any other tax implications of the Act on an interim basis subject to refund until utility rates are adjusted to reflect the federal tax savings and a final order is issued in OG&E’s pending general rate case in Cause No. PUD 201700496, or as otherwise ordered by the Commission. In the event time delays occur in processing the pending rate case, the Commission may direct OG&E to file a separate proceeding to address the impacts of the Act and establish final rates.

THE COMMISSION FURTHER ORDERS the amounts of any refunds determined to be owed to customers shall accrue interest at a rate equivalent to OG&E’s cost of capital as recognized in Order No. 662059 issued in Cause No. PUD 201500273 until issuance of a final order in its pending rate case in Cause No. PUD 201700496.

THIS ORDER SHALL BE EFFECTIVE IMMEDIATELY.

OKLAHOMA CORPORATION COMMISSION

DANA L. MURPHY, Chairman

J. TODD HIETT, Vice Chairman

Dissent: I want a rate cut now to stop the overcollection for taxes.

BOB ANTHONY, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this order as shown by their signatures above this day of January, 2018.

PEGGY MITCHELL, Secretary
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of a General Investigation
Regarding the Effect of Federal Income Tax Reform on the Revenue Requirements of Kansas Public Utilities and Request to Issue an Accounting Authority Order Requiring Certain Regulated Public Utilities to Defer Effects of Tax Reform to a Deferred Revenue Account.

Docket No. 18-GIMX-248-GIV

STAFF'S MOTION TO OPEN GENERAL INVESTIGATION AND ISSUE ACCOUNTING AUTHORITY ORDER REGARDING FEDERAL TAX REFORM

The Staff of the Kansas Corporation Commission (Staff and Commission, respectively), hereby submits a Report and Recommendation (R&R) dated December 13, 2017, attached hereto and made a part hereof by reference, and moves for the Commission to issue an Order:

(1) Opening a general investigation for the purposes of examining the financial impact of anticipated federal income tax reform on regulated electric, natural gas, water, and telecommunications public utilities (identified in Staff’s R&R) operating in Kansas;

(2) Requiring, through the use of an Accounting Authority Order (AAO), certain regulated public utilities (identified in Staff’s R&R) that are taxed at the corporate level to track and accumulate in a deferred revenue account, with interest compounded monthly at the most current Commission-approved customer deposit interest rate, the reduction in their regulated cost of service that would occur in the event that a new lower federal income tax rate is signed into law. These deferrals should take effect at the same time as the new federal corporate tax rate change and the calculations should be performed using the cost of service data that was used to set the utilities’ last Commission-approved revenue requirement (including any line-item surcharges that contain a provision for regulated income tax expense) or Kansas Universal Service Fund (KUSF) determination; and

(3) Confirming that the Commission’s intention regarding the AAO is to preserve any potential tax benefits so that they may be evaluated in the context of a comprehensive evaluation of the reasonableness of the utilities’ rates or KUSF distributions as well as notifying affected public utilities that this portion of their rates or KUSF distributions should be considered interim subject to refund until the Commission has an opportunity to review the reasonableness of the utilities’ rates or KUSF distributions on a comprehensive and case-by-case basis. Lastly, the Commission should confirm that it intends to capture the reduction in Accumulated Deferred Income Tax (ADIT) balances that will occur in the event that a lower corporate federal income tax rate takes effect, over time, in a manner that comports with Internal Revenue Service (IRS) Tax Normalization Rules.
In support of its Motion, Staff states the following:

**Background**

1. The Tax Cuts and Jobs Act (TCJA) is a Congressional bill that amends the Internal Revenue Code (IRC) to reduce federal tax rates and modify policies, credits, and deductions for individuals and businesses.\(^1\) It was first introduced in the U.S. House of Representatives on November 2, 2017, and passed by the House on November 16, 2017 (the House Bill).\(^2\) On December 2, 2017, the U.S. Senate passed its version of the bill (the Senate Amendment).\(^3\) While both versions of the TCJA have similar framework overall, there are some key differences that will need to be resolved prior to sending a final bill to the President.\(^4\) As such, the TCJA is currently in reconciliation conference meetings.\(^5\) For corporations, the TCJA, among other changes, reduces the corporate tax rate from 35% to 20%.\(^6\)

2. The lowering of the federal corporate tax rates could result in substantial reductions in the regulated cost of service for many utilities operating in Kansas.\(^7\) This is because the Commission, in determining rates, generally authorizes recovery of all federal taxes from ratepayers. Failure to recognize the reduction in federal taxes owed if the TCJA becomes law could result in a financial windfall to the utilities in terms of rates, or KUSF support, if applicable.

3. In 1986, in Docket No. 155,094-U, the Commission was faced with the issue of federal tax reform due to the Tax Reform Act of 1986.\(^8\) Similar to the TCJA, the Tax Reform Act of 1986 phased-in a reduction in corporate tax rates from 46% down to 40%, and finally 34%.\(^9\)

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\(^2\)Id.
\(^3\)Id.
\(^4\)Id.
\(^5\)Id.
\(^6\)Id.
\(^7\)Id. at 3.
\(^8\)Id.
\(^9\)Id.
The Commission, concerned that utilities would experience a financial windfall as a result of the tax reductions, but also recognizing that other cost of service components could offset the reductions, decided that it would review company-specific information and data on a case-by-case basis. However, to ensure that income tax savings were not lost to ratepayers, the Commission created a mechanism to capture the ratepayer benefits of the corporate tax reduction accruing during the review period. The mechanism was stated as follows:

"Effective April 1, 1987, each utility...shall accrue monthly in an appropriate deferred revenue subaccount, or other appropriate tracking mechanism approved by the Commission, a percentage of its revenues representing the difference in its cost of service, as determined by the Commission in its most recent rate order, and such cost of service had the federal income tax component been based on the blended rate of 38% rather than 46%. The blended rate of 38% for 1987 is derived by using the statutory rate of 46% for April, May and June and the statutory rate of 34% for July through December.

At such time as the Commission's review is complete, if it is determined that a rate decrease is proper and would have been proper as of April 1, 1987, for those utilities...any excessive collections in the deferred revenue subaccount, or other appropriate tracking mechanism approved by the Commission, with appropriate adjustments, shall be refundable to ratepayers along with interest calculated at the rate being used for interest paid on customer deposits. Any balance remaining in the account will be credited to the utility's operating revenue."  

Staff's Request

4. Similar to the 155,095-U Docket, Staff requests that the Commission open a general investigation and order utilities to use deferral accounting to capture the effect of the reduction in the regulated cost of service for future evaluation on a case-by-case basis. In doing so, as of the effective date of the legislation, each affected utility that is taxable at the corporate level should accrue monthly, in a deferred revenue account, the portion of its revenue representing the

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10 Id. See Order Opening General Investigation, Docket No. 155,094-U (Mar. 18, 1987), attached to Staff’s R&R as Attachment A.
11 Id.
12 Id.
difference between: (1) the cost of service as approved by the Commission in its most recent rate case\textsuperscript{13} or KUSF determination proceeding; and (2) the cost of service that would have resulted had the provision for federal income taxes been based on 20% (or the corporate income tax rate ultimately approved) rather than 35%.

5. For regulated telecommunications utilities that are not taxable at the corporate level, but instead pass through their taxable income to owners of the corporation, Staff is not recommending these utilities be required to utilize deferred accounting at this time.\textsuperscript{14}

6. Staff also notes in its R&R that if the corporate tax rate is lowered, there will also be a significant reduction to the ADIT Liabilities and Assets on the regulated books of utilities operating in Kansas.\textsuperscript{15} This occurs because the deferred taxes on the books of regulated utilities will now be payable at the lower corporate tax rate, as opposed to the higher rate that was assumed when rates were set. This will amount to hundreds of millions of dollars of excess ADIT on the books of regulated utilities operating in Kansas. Staff’s research of this issue indicates that Accounting Standards Codification (ASC) 980, Accounting for Regulated Operations, will require that regulated utilities account for the reduction in ADIT balances as a Regulatory Liability if it is probable that regulators will require a reduction in future revenue through rates in order to reflect the amortization or turnaround of this excess ADIT. Therefore, Staff also requests that the Commission confirm that it intends to capture excess ADIT for the benefit of ratepayers using a

\textsuperscript{13} In this case, “rate case” should also include any line-item surcharge that contains a provision for regulated income taxes in the revenue requirement. Examples would be the Gas System Reliability Surcharge utilized by many natural gas utilities and the Asbury and Riverton Cost Recovery Rider utilized by the Empire District Electric Company.

\textsuperscript{14} As explained in Staff’s R&R, the effects on federal tax reform on the taxable liability of the owners of these companies will not be as easily identifiable as an entity that is taxed at the corporate level. While Staff will evaluate the financial impact of federal tax reform on these utilities, and will request the Commission open company-specific investigations in the event that Staff believes federal tax reform has had a material impact on the tax liabilities of the owners of these utilities, at this time Staff does not recommend any particular Commission action that would apply to those utilities.

\textsuperscript{15} R&R at 5.
methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Tax Normalization Rules, as applicable. This will ensure that these significant reductions in ADIT are preserved as a Regulatory Liability until the Commission has an opportunity to being flowing these excess ADIT balances back to ratepayers over time.

Jurisdiction and Authority

7. The Commission has full power, authority and jurisdiction to supervise and control the public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. Specifically, the Commission is given this power, authority and jurisdiction under K.S.A. 66-101 for electric public utilities, K.S.A. 66-1,201 for natural gas public utilities, K.S.A. 66-1,188 for local exchange carriers, and K.S.A. 66-1,231 for miscellaneous public utilities. All Commission grants of power, authority, and jurisdiction are to be liberally construed, and all incidental powers necessary to carry into effect the provisions of the Public Utility Act are expressly granted to and conferred upon the Commission.16


WHEREFORE, for the reasons set forth above, Staff respectfully requests that the Commission issue an Order adopting Staff's recommendations, as contained in the attached R&R.17

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16See K.S.A. 66-101g (Electric); K.S.A. 66-1,207 (Natural Gas); K.S.A. 66-1,194 (Telecommunications); K.S.A. 66-1,237 (Miscellaneous).

17The specific recommendations are also itemized on page 1 of this Motion, as items (1)-(3). Staff would also note that should the tax reform legislation fail to pass, Staff will recommend the Commission close this docket.
Respectfully Submitted,

Michael Neeley, S. Ct. #25027
Litigation Counsel
Kansas Corporation Commission
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E-mail: m.neeley@kcc.ks.gov
Phone: 785-271-3173
STATE OF KANSAS )
COUNTY OF SHAWNEE ) ss.

VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing Staff’s Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

Michael Neeley  # 25027
Kansas Corporation Commission of the State of Kansas

Subscribed and sworn to before me this 14th day of December, 2017.

My Appointment Expires: August 17, 2019
STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,
to consider changes in the rates of all of the
following Michigan rate-regulated electric,
steam, and natural gas utilities to reflect the effects
of the federal Tax Cuts and Jobs Act of 2017:

ALPENA POWER COMPANY, CONSUMERS
ENERGY COMPANY, DETROIT THERMAL, LLC,
DTE ELECTRIC COMPANY, DTE GAS COMPANY,
INDIANA MICHIGAN POWER COMPANY,
NORTHERN STATES POWER COMPANY,
UPPER PENINSULA POWER
COMPANY, UPPER MICHIGAN ENERGY
RESOURCES CORPORATION,
WISCONSIN ELECTRIC POWER COMPANY,
PRESQUE ISLE ELECTRIC & GAS CO-OP,
MICHIGAN GAS UTILITIES CORPORATION, and
SEMCO ENERGY GAS COMPANY.

Case No. U-18494

At the December 27, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

ORDER

On December 22, 2017, President Donald Trump signed into law the Tax Cuts and Jobs Act of
2017 (TCJA) which contains provisions reducing the corporate tax rate and revising the federal tax
structure. These new federal requirements affect the current tax expense and deferred tax
accounting methods used by employers, including utilities. Most of the provisions of the TCJA go into effect on January 1, 2018.

To ensure that all utilities account for these changes in a similar manner, beginning January 1, 2018, regulatory accounting treatment is required for all regulated utilities for any impacts of the new law including current and deferred tax impacts. It is likely that, in the near future, the Commission will open a separate docket for each above-captioned utility to begin a contested case proceeding in which interested parties can address the effects of the TCJA on the utility’s rates. In the meantime, the Commission finds that it is appropriate and in the public interest to authorize, and to direct, the above-captioned utilities to use regulatory accounting, which includes the use of regulatory assets and liabilities, for all calculated differences resulting from the TCJA and what would have been recorded if the TCJA did not go into effect. It is the Commission’s intention that utilities begin accruing the ratepayer benefits of the TCJA, using regulatory accounting, beginning on the effective date, January 1, 2018.

The Commission opens this initial docket to solicit comments regarding the extent of the impacts of the new law, and how any resulting benefit should flow back to ratepayers. The above-captioned utilities are directed to file, no later than January 19, 2018, information detailing the calculation of the change in revenue requirements with and without the TCJA effective January 1, 2018, and outlining the preferred method to flow the benefits of those impacts to ratepayers. All interested parties are invited to file reply comments in this docket no later than February 2, 2018.

THEREFORE, IT IS ORDERED that:

A. Beginning January 1, 2018, all of the above-captioned utilities shall apply regulatory accounting treatment, which includes the use of regulatory assets and regulatory liabilities, for all impacts resulting from the Tax Cuts and Jobs Act of 2017.
B. The above-captioned utilities are directed to file comments in this docket no later than January 19, 2018. Utilities are to include the impacts of the Tax Cuts and Jobs Act of 2017, including the impacts on current tax and deferred tax, and the impact on revenue requirements with and without the Tax Cuts and Jobs Act of 2017, effective January 1, 2018. Utilities shall also outline the preferred method to flow the benefits of those impacts to ratepayers.

C. All interested parties are invited to file reply comments in this docket by February 2, 2018.

The Commission reserves jurisdiction and may issue further orders as necessary.
Any person desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court’s requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission’s Executive Secretary and to the Commission’s Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of December 27, 2017.

Kavita Kale, Executive Secretary
MPSC orders utilities to report on savings from new federal tax law

FOR IMMEDIATE RELEASE
December 27, 2017

LANSING, Mich. – The Michigan Public Service Commission (MPSC) today ordered all rate-regulated utilities to report to the Commission on the impact passage of the new federal tax law will have on their customers.

Commission Chairman Sally Talberg said the special meeting was called to make sure the savings are calculated from the effective day of the federal legislation, which is Jan. 1, 2018.

The new law, signed by President Donald Trump on Dec. 22, is expected to reduce the amount utilities will pay in federal taxes.

“While regulatory accounting isn’t always the most headline-grabbing topic, the guidance the Commission is providing in today’s order is important because it maximizes our future options as we sort through the totality of impacts the new federal tax law will have when it takes effect Jan. 1,” Commissioner Rachael Eubanks said.

“The information we receive in this docket will be incredibly useful in understanding the magnitude of the expected reduction in federal taxes that the utilities pay, which is likely to be significant. It will also provide broader input regarding the appropriate avenue for how to extend benefits to customers.”

Utilities have until Jan. 19 to file their comments with the Commission (Case No. U-18494) on how they propose to return savings to ratepayers. Other interested parties will have until Feb. 2 to respond to utility proposals. The Commission will then determine how and when the savings will flow back to ratepayers.

For more information about the MPSC, please visit www.michigan.gov/mpsc or sign up for one of its listservs to keep up to date on MPSC matters.

DISCLAIMER: This document was prepared to aid the public's understanding of certain matters before the Commission and is not intended to modify, supplement, or be a substitute for the Commission's orders. The Commission's orders are the official action of the Commission.

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A public hearing to consider the possible parole of Harvey Ware, #130377
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF STAFF’S REQUEST ) ORDER REQUIRING COMMENTS;
TO INVESTIGATE THE TAX CUTS AND ) ORDER REQUIRING RATES IN
JOBS ACT ON SOUTH DAKOTA ) EFFECT JANUARY 1, 2018, ARE
UTILITIES ) SUBJECT TO REFUND; ORDER

GE17-003

On December 21, 2017, the South Dakota Public Utilities Commission (Commission) received a filing from Commission staff (Staff) requesting a docket be opened to investigate the Tax Cuts and Jobs Act on South Dakota utilities. Staff also filed a Motion Requesting Order Requiring Comments and Securing Tax Effects for Customers as of January 1, 2018 (Motion). In the Motion Staff requested the Commission investigate the effect the Tax Cuts and Jobs Act (Act) will have on South Dakota utilities and requests the Commission issue an order requiring utilities to submit comments on the effect the Act will have on each utility. Additionally, Staff requests the Commission issue an order that any adjustment to rates due to the Act will be effective on January 1, 2018. Staff requests that the filing and any order issued by the Commission be contingent on the President signing the Act into law. On December 22, 2017, the President signed the Act into law.


The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-34A, specifically 49-34A-4, 49-34A-6, 49-34A-8, and 49-34A-26.

At its Motion Hearing on December 29, 2017, the Commission considered this matter. Staff recommended the Commission grant Staff’s motion and clarified that all rates impacted by the federal income tax, not limited to base rates, should be adjusted effective January 1, 2018, and therefore are subject to refund as of that date. Staff further recommended the utilities identify how federal income taxes will be adjusted through the Federal Energy Regulatory Commission (FERC) transmission tariffs that are collected through the adjustment clause to determine if the Commission needs to make any filings before the FERC.

Having heard from the impacted utilities and Staff as to how to proceed, the Commission voted unanimously to require BHP, MidAmerican, MDU, NorthWestern, OTP, and Xcel to file initial comments in this matter by February 1, 2018, regarding the general effects of the Act on the utility’s cost of service in South Dakota and possible mechanisms for
adjusting rates. Staff will work with the utilities to determine a deadline for additional comments including more specific proposals and impacts and, at a minimum to address: 1) an estimate of the company’s determination of the Act’s effects on its South Dakota cost of service, inclusive of all elements; 2) include an explanation of these effects, and 3) propose a procedure for changing the company’s rates to reflect these impacts. Each utility shall file separate comments for electric and natural gas, if applicable; and, pending a determination of the impact of the Act on the utilities’ rates, the rates in effect as of January 1, 2018, shall be subject to refund or any other ratemaking treatment which ensures ratepayers receive the benefits of the tax change. Any utility collecting FERC transmission tariff rates though an adjustment clause shall inform the Commission of any FERC proceedings addressing how federal income taxes will be adjusted. The Commission further voted unanimously to grant intervention to all parties. It is therefore

ORDERED, that BHP, MidAmerican, MDU, NorthWestern, OTP, and Xcel shall file initial comments by February 1, 2018, regarding the general effects of the Act on the utility’s cost of service in South Dakota and possible mechanisms for adjusting rates. It is further

ORDERED, that BHP, MidAmerican, MDU, NorthWestern, OTP, and Xcel shall file additional comments including more specific proposals and impacts and shall work with Staff to determine a deadline for the additional comments. The comments shall, at a minimum, address: 1) an estimate of the company’s determination of the Act’s effects on its South Dakota cost of service, inclusive of all elements; 2) include an explanation of these effects, and 3) propose a procedure for changing the company’s rates to reflect these impacts. Each utility shall file separate comments for electric and natural gas, if applicable. It is further

ORDERED, that all rates impacted by the federal income tax, not limited to base rates, shall be adjusted effective January 1, 2018, and are subject to refund or any other ratemaking treatment which ensures ratepayers receive the benefits of the tax change as of January 1, 2018, pending a determination of the impact of the Act. It is further

ORDERED, that any utility collecting FERC transmission tariff rates though an adjustment clause shall inform the Commission of any FERC proceedings addressing how federal income taxes will be adjusted. It is further

ORDERED, that the Petitions to Intervene by NorthWestern, BHP, MidAmerican, Xcel, MDU, OTP, and SDIP are hereby granted.

Dated at Pierre, South Dakota, this 29th day of December 2017.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: Karen E. Gremel
Date: 12/29/17

(Official Seal)

BY ORDER OF THE COMMISSION:
Kris Fiegen
Chairperson

Gary Hanson

Chris Nelson
Commissioner

January 4, 2018

000073
IN THE MATTER Of the Investigation of Federal Tax reform impacts on public utility revenue requirements

REGULATORY DIVISION

DOCKET NO. N2017.12.94

NOTICE OF COMMISSION ACTION

PLEASE TAKE NOTICE that the Commission held a business meeting on December 27, 2017, to discuss a conference report for H.R. 1, An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018 (2017 Tax Act). This report passed through both chambers of the United States Congress on December 20, 2017.1

This 2017 Tax Act, the first major reform of federal taxation since the 1980s, was signed into law by the President on December 22, 2017, and is effective for tax year 2018. The 2017 Tax Act has at least two significant changes to business income tax, which will impact investor-owned utilities and their consumers:

1) a reduction in the corporate Federal Income Tax (FIT) rate, from 35% to 21%.

Consumers pay utility rates which gross-up a utility's equity return by its statutory tax liability. The 2017 Tax Act will reduce the FIT by more than a third, substantially reducing this expense; and

2) an excess deferred tax reserve which must be normalized for the benefit of customers.

Deferred tax liabilities are owed by utilities as a consequence of mandatory normalization pursuant to existing federal tax code.

The Commission recognizes the revenue impacts of this reform are material, unplanned, beyond the control of utility management, and unusual. See Order 7528a, Docket D2016.11.88, ¶ 18 (Mar. 6, 2017) (deferred accounting order factors). The Commission may at any time, upon

its own motion, investigate any of the rates, tolls, charges, rules, practices, and services. Mont. Code Ann. § 69-3-324 (2017). The Commission believes the tax benefit associated with the reform is subject to deferred accounting under the Commission’s precedent and pursuant to authority granted by statute. Id.; Order 7528a ¶ 18; see Mont. Code Ann. §§ 69-3-106, -110, -202, -206, -208 and Mont. Admin. R. 38.5.110 (2017). Expedient action by the Commission is necessary so that the Commission’s options relative to this tax benefit are preserved. Order 7528a ¶ 38 (retroactive ratemaking prohibited).

In this notice, the Commission requires NorthWestern Energy’s electric and gas utilities, Montana-Dakota Utilities (MDU) electric and gas utilities, and Energy West Montana/Cut Bank Gas Co. (EWM/CBG) to record on their books as a deferred liability, in an appropriate account, the estimated reduction in FIT resulting from the 2017 Tax Act. The entries for the deferral shall be calculated using the methodology utilized by the Commission in setting revenue requirements: the utilities shall take the equity currently invested in rate base, multiplied by the last-approved return on equity, to derive an equity return, and then calculate relative to this return the difference between the gross-up for a FIT of 35% and 21%. This difference shall be entered as a deferred liability, until final rates are established for a public utility in a general rate case or until otherwise ordered by the Commission. These entries may or may not equal the actual FIT benefit realized by a utility or its parent company. The Commission is cognizant that this method of calculating a deferral is not the sole method that could be used. However, the Commission believes this is the simplest and the most suitable in light of the time constraints imposed by the legislation’s enactment. Additionally, the public utilities subject to this notice shall calculate the excess deferred tax reserve caused by the reduction in the corporate FIT rate. Utilities shall recognize as a deferred liability the estimated reduction of the utilities’ revenue requirement resulting from the normalization requirements of the legislation.

No later than March 31, 2018, public utilities subject to this notice shall file a proposal to address the effect of the 2017 Tax Act, including any financial information that is sufficient to establish a revenue requirement which reflects prospectively any possible impacts of the 2017 Tax Act, as well as financial information that will support any proposals for future investment or
expense programs which might offset any possible rate reduction. The proposals will provide for the following:

- A calculation of the deferred liability accrued thus far in 2018 and expected to be accrued until the time when final rates are next issued in accordance with a general rate case;
- If a public utility wishes, an alternative proposal for a methodology to appropriately calculate the amount of this deferral;
- A proposal to extinguish the deferral, either through refunds to consumers, its use as customer-contributed capital for infrastructure projects, or as an offset to unusually large operating expenditures not captured in current rates, or through some other use;
- A proposal to file occasional reports on the accrual and extinguishment of the deferred liability, including what financial information the utility would file that is sufficient to establish a revenue requirement which reflects the impacts of the tax act, as well as financial information that would support the extinguishment of the deferred liability through incremental spending; and
- Other issues related to the effects of the legislation as the public utility wishes to raise.

The Commission recognizes the amount of the deferral is subject to change if the utility proposes an alternative methodology.

Such filings will be separately docketed by utility and subject to further proceedings consistent with the contested case provisions of the Montana Administrative Procedures Act, including comment or testimony from intervenors, such as the Montana Consumer Counsel, and the opportunity for hearings, as necessary.

The Commission recognizes that the gas utility operations of MDU and EWM/CBG currently have rate cases before the Commission and will address the pass-through of 2017 Tax Act effects directly in those dockets. See Dockets D2017.9.79 and D2017.9.80. In lieu of a separate filing, the Commission will direct MDU and EWM/CBG gas operations to file supplemental testimony and financial information addressing these issues in the aforementioned rate case dockets. Pursuant to Mont. Admin. R. 38.5.102(3), the Commission can determine whether good cause exists to waive Mont. Admin. R. 38.5.106 in order to allow the Commission to consider making an appropriate adjustment to rates due to the 2017 Tax Act.
BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner
PSC to Determine Rate Reductions Resulting from Federal Corporate Tax Cut

Investor-owned utilities ordered to track federal tax savings

FRANKFORT, Ky. (Jan. 2, 2018) – The Kentucky Public Service Commission (PSC) has ordered for-profit utilities to track their savings under lower corporate tax rates that took effect yesterday, paving the way for those savings to be passed on to customers in the form of lower electric, gas or water rates.

In two orders issued Wednesday, Dec. 27, 2017, the PSC noted that investor-owned utilities recover their federal tax expenses from ratepayers. Under the federal tax law enacted last month, the corporate income tax rate will decline from 35 percent to 21 percent this year, substantially reducing the tax burden on for-profit, investor-owned utilities.

"Since ratepayers are required to pay through their rates the tax expenses of a utility, any reduction in tax rates must be timely passed through to ratepayers," the PSC said in the orders.

The orders direct the affected utilities to begin tracking their savings from the immediate reduction in the corporate tax rate. The PSC also ordered the utilities to calculate the excess amount of future tax liabilities that they are carrying on their books and that will need to be refunded to ratepayers.

One of the two orders is in response to a complaint filed by the Kentucky Industrial Utility Customers (KIUC) an organization that represents large electric customers in rate cases and other matters before the PSC. On Dec. 21, 2017, KIUC filed a complaint arguing that the rates of four utilities would no longer be "fair, just and reasonable," as required by law, once the federal tax cut takes effect.

The PSC order directs the four utilities – Duke Energy Kentucky, Kentucky Power Co., Kentucky Utilities Co., and Louisville Gas and Electric Co. (LG&E) – to respond within ten days to the KIUC complaint and to begin tracking the tax savings. All provide electric service, while Duke Energy and LG&E also provide natural gas service.

"While the exact amount of the tax savings and resulting rate reductions cannot be determined with precision at this time, each of the (companies) should use its best estimate to determine the amount to be recorded...subject to review and adjustment as part of this case," the PSC said.

-more-
The second order directs three other natural gas utilities – Atmos Energy Corp., Delta Natural Gas Co. and Columbia Natural Gas of Kentucky - and two water utilities – Kentucky-American Water Co. and Water Service Corp. of Kentucky – to begin recording their estimated tax savings.

The second order also directs those utilities to submit, within 30 days, testimony on the impact of the federal tax cuts on their finances and to propose new rates reflecting the tax reductions.

The four utilities cited in the KIUC complaint are not being told to file such testimony, since they must respond to KIUC's proposed revenue and rate reductions. KIUC estimated that the tax cut would lead to rate reductions in the range of 4 percent to 7 percent, depending on the utility.

In total, more than two million customer accounts could be affected by rate changes resulting from the corporate tax reduction.

A procedural schedule in each case will be set by the PSC at a later date.

The orders and other documents in the cases are available on the PSC website, psc.ky.gov. The cases numbers are 2017-00477 (KIUC complaint) and 2017-00481.

The PSC is an independent agency attached for administrative purposes to the Energy and Environment Cabinet. It regulates more than 1,500 gas, water, sewer, electric and telecommunication utilities operating in Kentucky.
COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE IMPACT OF THE
TAX CUTS AND JOB ACT ON THE RATES OF
ATMOS ENERGY CORPORATION, DELTA
NATURAL GAS COMPANY, INC., COLUMBIA GAS
OF KENTUCKY, INC., KENTUCKY-AMERICAN
WATER COMPANY, AND WATER SERVICE
CORPORATION OF KENTUCKY

ORDER

The Commission, on its own motion, initiates this investigation of the impact of the recently enacted Tax Cuts and Jobs Act on the rates of Atmos Energy Corporation ("Atmos"); Delta Natural Gas Company, Inc. ("Delta"); Columbia Gas of Kentucky, Inc., ("Columbia Gas"); Kentucky-American Water Company ("Kentucky-American"); and Water Service Corporation of Kentucky ("WSCK") (collectively, "Investor Owned Utilities"). The current rates being charged by each of the Investor Owner Utilities were established by the Commission to include recovery of the 35 percent federal corporate tax rate on the equity portion of capital investments. However, under the Tax Cuts and Jobs Act, that tax rate will be reduced to 21 percent as of January 1, 2018. This statutory reduction in the federal corporate tax rate constitutes a prima facie case that the utility rates being charged by each of the Investor Owner Utilities will no longer be fair, just, or reasonable as of January 1, 2018, and need to be reduced.

Utility rates must be set at a level to allow a utility to recover all of its reasonable expenses, including taxes, and to provide its shareholders an opportunity to earn a fair
return on invested capital. Since ratepayers are required to pay through their rates the tax expenses of a utility, any reduction in tax rates must be timely passed through to ratepayers. The reduction in the federal corporate tax rate results in both lower tax expense on current income and booked deferred taxes that are in excess of future liability. Since the tax rate reduction is effective January 1, 2018, and the Commission's ratemaking authority is prospective in nature, each of the Investor Owner Utilities should record a deferred liability starting January 1, 2018, to reflect both the reduced federal corporate tax rate expense of 21 percent and the excess deferred accumulated income taxes to be returned to ratepayers over the next 20 years.

While the exact amount of the tax savings and resulting rate reductions cannot be determined with precision at this time, each of the Defendants should use its best estimate to determine the amount to be recorded as a deferred liability, subject to review and adjustment as part of this case. This is the same procedures followed by utilities in Kentucky when they seek approval of deferred assets before the final amounts are known with certainty. The issue to be addressed in this investigation are properly limited to the savings resulting from the January 1, 2018 tax reduction, the appropriate level of deferred liabilities to be recorded on an interim basis to reflect the reduced federal corporate tax rate, and the appropriate level of reductions in utility rates to reflect the reduced federal corporate tax rate.

IT IS THEREFORE ORDERED that:

1. This investigation is initiated to review the impact of the reduction of the federal corporate tax rate from 35 percent to 21 percent on the utility rates of Atmos, Delta, Columbia Gas, Kentucky-American, and WSCK.
2. Atmos, Delta, Columbia Gas, Kentucky-American, and WSCK shall commence recording deferred liabilities on their respective books for gas or water service, as applicable, to reflect the reduction in the federal corporate tax rate to 21 percent and the associated savings in excess deferred taxes.

3. Within 30 days of the date of this Order, Atmos, Delta, Columbia Gas, Kentucky-American, and WSCK shall individually file prepared testimony on the impact of the reduction in federal corporate tax rate on their financial operations, utilizing a historical 12-month period, along with copies of the accounting entries made to reflect the deferred liabilities and a schedule of proposed rates to reflect the tax rate reduction.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

By the Commission

ATTEST:

[Signature]
Executive Director
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF THE IMPACT OF THE
TAX CUTS AND JOB ACT ON THE RATES OF
ATMOS ENERGY CORPORATION, DELTA
NATURAL GAS COMPANY, INC., COLUMBIA GAS
OF KENTUCKY, INC., KENTUCKY-AMERICAN
WATER COMPANY, AND WATER SERVICE
CORPORATION OF KENTUCKY

ORDER

The Commission, on its own motion, initiates this investigation of the impact of the recently enacted Tax Cuts and Jobs Act on the rates of Atmos Energy Corporation ("Atmos"); Delta Natural Gas Company, Inc. ("Delta"); Columbia Gas of Kentucky, Inc., ("Columbia Gas"); Kentucky-American Water Company ("Kentucky-American"); and Water Service Corporation of Kentucky ("WSCK") (collectively, "Investor Owned Utilities"). The current rates being charged by each of the Investor Owner Utilities were established by the Commission to include recovery of the 35 percent federal corporate tax rate on the equity portion of capital investments. However, under the Tax Cuts and Jobs Act, that tax rate will be reduced to 21 percent as of January 1, 2018. This statutory reduction in the federal corporate tax rate constitutes a prima facie case that the utility rates being charged by each of the Investor Owner Utilities will no longer be fair, just, or reasonable as of January 1, 2018, and need to be reduced.

Utility rates must be set at a level to allow a utility to recover all of its reasonable expenses, including taxes, and to provide its shareholders an opportunity to earn a fair
return on invested capital. Since ratepayers are required to pay through their rates the tax expenses of a utility, any reduction in tax rates must be timely passed through to ratepayers. The reduction in the federal corporate tax rate results in both lower tax expense on current income and booked deferred taxes that are in excess of future liability. Since the tax rate reduction is effective January 1, 2018, and the Commission's ratemaking authority is prospective in nature, each of the Investor Owner Utilities should record a deferred liability starting January 1, 2018, to reflect both the reduced federal corporate tax rate expense of 21 percent and the excess deferred accumulated income taxes to be returned to ratepayers over the next 20 years.

While the exact amount of the tax savings and resulting rate reductions cannot be determined with precision at this time, each of the Defendants should use its best estimate to determine the amount to be recorded as a deferred liability, subject to review and adjustment as part of this case. This is the same procedures followed by utilities in Kentucky when they seek approval of deferred assets before the final amounts are known with certainty. The issue to be addressed in this investigation are properly limited to the savings resulting from the January 1, 2018 tax reduction, the appropriate level of deferred liabilities to be recorded on an interim basis to reflect the reduced federal corporate tax rate, and the appropriate level of reductions in utility rates to reflect the reduced federal corporate tax rate.

IT IS THEREFORE ORDERED that:

1. This investigation is initiated to review the impact of the reduction of the federal corporate tax rate from 35 percent to 21 percent on the utility rates of Atmos, Delta, Columbia Gas, Kentucky-American, and WSCK.
2. Atmos, Delta, Columbia Gas, Kentucky-American, and WSCK shall commence recording deferred liabilities on their respective books for gas or water service, as applicable, to reflect the reduction in the federal corporate tax rate to 21 percent and the associated savings in excess deferred taxes.

3. Within 30 days of the date of this Order, Atmos, Delta, Columbia Gas, Kentucky-American, and WSCK shall individually file prepared testimony on the impact of the reduction in federal corporate tax rate on their financial operations, utilizing a historical 12-month period, along with copies of the accounting entries made to reflect the deferred liabilities and a schedule of proposed rates to reflect the tax rate reduction.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.

By the Commission

ENTERED
DEC 27 2017
KENTUCKY PUBLIC SERVICE CO. MA

ATTEST:
For Executive Director

Case No. 2017-00481
*Kentucky-American Water Company aka
2300 Richmond Road
Lexington, KY 40502

*Atmos Energy Corporation
3275 Highland Pointe Drive
Owensboro, KY 42303

*Columbia Gas of Kentucky, Inc.
290 W Nationwide Blvd
Columbus, OH 43215

*Delta Natural Gas Company, Inc.
3617 Lexington Road
Winchester, KY 40391

*Water Service Corporation of Kentucky
2335 Sanders Road
Northbrook, IL 60062-6196

*Denotes Served by Email
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.

COMPLAINANT

V.

KENTUCKY UTILITIES COMPANY, LOUISVILLE GAS AND ELECTRIC COMPANY, KENTUCKY POWER COMPANY, AND DUKE ENERGY KENTUCKY, INC.

DEFENDANTS

ORDER

On December 21, 2017, Kentucky Industrial Utility Customers, Inc. ("KIUC") filed a formal complaint, on behalf of 18 named customers, against Kentucky Utilities Company ("KU"); Louisville Gas and Electric Company ("LG&E"), operating as an electric and gas utility; Kentucky Power Company ("Kentucky Power"); and Duke Energy Kentucky, Inc. ("Duke Energy"), operating as an electric and gas utility; (collectively, "Defendants"), alleging that their respective rates are no longer fair, just, and reasonable due to the recent enactment of the Tax Cuts and Jobs Act reducing the federal corporate tax rate from 35 percent to 21 percent. The complaint states that the current rates of each of the Defendants were established by the Commission to include recovery of the 35 percent federal corporate tax rate on the equity portion of capital investments, but that as of January 1, 2018, that tax rate is reduced to 21 percent. In addition to requesting rate
reductions to reflect the lower tax rate, the complaint alleges that each of the Defendants has on its books deferred taxes which are now in excess of future liability and these excess deferred taxes need to be refunded to ratepayers over the remaining useful life of the property, estimated to be 20 years. In support of its complaint, KIUC filed an affidavit of a consulting accountant recommending revenue reductions for each of the Defendants based on its respective financial figures for the 12 months ended September 30, 2017.

Based on a review of the complaint and being otherwise sufficiently advised, the Commission finds that KIUC has established a prima facie case that as of January 1, 2018, the rates of each of the Defendants will no longer be fair, just, or reasonable. Rates must be set at a level to allow a utility to recover all of its reasonable expenses, including taxes, and to provide its shareholders an opportunity to earn a fair return on invested capital. Since ratepayers are required to pay through their rates the tax expenses of a utility, any reduction in tax rates must be timely passed through to ratepayers. Since the tax rate reduction is effective January 1, 2018, and the Commission's ratemaking authority is prospective in nature, each of the Defendants should record a deferred liability starting January 1, 2018, to reflect both the reduced federal corporate tax rate expense of 21 percent and the excess deferred accumulated income taxes to be returned to ratepayers over the next 20 years.

While the exact amount of the tax savings and resulting rate reductions cannot be determined with precision at this time, each of the Defendants should use its best estimate to determine the amount to be recorded as a deferred liability, subject to review and adjustment as part of this case. This is the same procedures followed by utilities in Kentucky when they seek approval of deferred assets before the final amounts are known.
with certainty. Rate cases were recently concluded for KU and LG&E, and rate cases are now ongoing for Kentucky Power and Duke Energy. Thus, the issues to be addressed in this complaint case are properly limited to the savings resulting from the January 1, 2018, tax reduction, the appropriate level of deferred liabilities to be recorded on an interim basis to reflect the reduced federal corporate tax rate, and the appropriate level of reductions in utility rates to reflect the reduced federal corporate tax rate.

Finally, KU, LG&E, Kentucky Power, and Duke Energy are hereby notified that they have been individually named as Defendants in a formal complaint filed on December 21, 2017, a copy of which is attached as the Appendix to this Order.

IT IS THEREFORE ORDERED that:

1. Pursuant to 807 KAR 5:001, Section 20, KU, LG&E, Kentucky Power, and Duke Energy shall satisfy the matters complained of or file a written answer to the complaint within ten days from the date of service of this Order.

2. KU, LG&E, Kentucky Power, and Duke Energy shall commence recording deferred liabilities on their respective books for electric and gas service, as applicable, to reflect the reduction in the federal corporate tax rate to 21 percent and the associated savings in excess deferred taxes on an interim basis until utility rates are adjusted to reflect the federal tax savings.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record. A party filing a paper containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the paper so that personal information cannot be read.
By the Commission

ENTERED
DEC 27 2017
KENTUCKY PUBLIC SERVICE COMMISSION

ATTEST:

Case No. 2017-00477
Before The Corporation Commission Of The State of Oklahoma

In the Matter of the Application of Howard W. Motley, Jr., for an Inquiry into the Effect of the 1986 Tax Reform Act on Oklahoma Utilities

PUD Cause No. 000260
Cause No. PUD 860000260

PETITION FOR INTERVENTION

DELLON E. COKER
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Falls Church, VA 22041-5013

For
THE DEPARTMENT OF DEFENSE
And
THE OTHER FEDERAL EXECUTIVE AGENCIES

CAPTAIN DAVID A. CARSON
Trial Attorney
Of Counsel
Before The
Corporation Commission
Of The
State of Oklahoma

In the Matter of the Application
of Howard W. Motley, Jr., for
an Inquiry into the Effect of
The 1986 Tax Reform Act on
Oklahoma Utilities

PUD Cause No. 000260

PETITION FOR INTERVENTION

The Secretary of Defense, through duly authorized Counsel
and on behalf of the consumer interests of the United States
Department of Defense and All Other Executive Agencies of the
Federal Government, hereby petitions the Commission for leave to
intervene in the above-captioned proceeding. This petition is
filed pursuant to the rules of practice and procedure before
the Oklahoma Corporation Commission. As grounds for the
intervention, the Secretary and Executive Agencies of the
United States state:

I

That the name, mailing address and telephone number of the
person to whom communications should be addressed is:

Dellon E. Coker
Chief, Regulatory Law Office
U.S. Army Legal Services Agency
JALS-RL 3472
5611 Columbia Pike
Falls Church, VA 22041-5013
Telephone: (703) 756-2015
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION
OF HOWARD W. MOTLEY, JR., FOR AN
INQUIRY INTO THE EFFECT OF THE
1986 TAX REFORM ACT ON OKLAHOMA
UTILITIES.

ORDER GRANTING INTERVENTION TO
DEPARTMENT OF DEFENSE, ET AL.

The Corporation Commission of the State of Oklahoma being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for consideration and action by this Commission upon the Petition for Intervention filed herein by the Department of Defense and the Other Federal Executive Agencies.

Upon full and fair consideration of said petition, the Commission finds that the Department of Defense and the Other Federal Executive Agencies are parties interested in the subject matter of this Cause and that their petition should be granted.

IT IS THEREFORE ORDERED that the Petition for Intervention be and the same is hereby granted and that the Department of Defense and the Other Federal Executive Agencies are hereby granted intervenor status in this Cause.

CITY, COUNTY AND STATE OF OKLAHOMA

JAMES T. TOWNSEND, Chairman

NORMA EAGLETON, Commissioner

DONE AND PERFORMED this 27th day of MARCH, 1987.

BY ORDER OF THE COMMISSION:

BERNICE S. HOLT, Secretary
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

In the Matter of the Application of Howard W. Motley, Jr., for an Inquiry into the Effect of the 1986 Tax Reform Act on Oklahoma Utilities

PUD Cause No. 000250

RECOMMENDATIONS OF THE DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES

DELLON E. COKER
Chief, Regulatory Law Office
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CAPTAIN DAVID A. CARSON
Trial Attorney
Of Counsel
BEFORE THE
CORPORATION COMMISSION
OF THE
STATE OF OKLAHOMA

In the Matter of the Application
of Howard W. Motley, Jr., for
an Inquiry into the Effect of
The 1986 Tax Reform Act on
Oklahoma Utilities

RECOMMENDATIONS
OF
THE DEPARTMENT OF DEFENSE
AND ALL OTHER FEDERAL
EXECUTIVE AGENCIES

The Department of Defense through duly authorized counsel
and on behalf of the consumer interests of all Other Federal
Executive Agencies hereby submits its recommendations in this
docket.

Communications should be addressed as follows:

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I. TAX REFORM ACT OF 1986

The overall impact of the Tax Reform Act of 1986 on investor owned utilities is to reduce their cost of providing regulated utility services. The corporate income tax rate is lowered to 34% as of July 1, 1987. The lower corporate tax rate is offset by the determination that "unbilled revenues" and "contributions in aid of construction" are taxable revenues and the partial reduction in allowable meal expenses. Capital asset investment cost are increased with the elimination of the Investment Tax Credit and the extension of tax depreciation lives. Under the alternative minimum tax, a portion of the "Allowance for Funds Used During Construction" could be taxed.

Fair utility rates are based on an analysis of the firm's investment, operating expenses, and the return plus related income taxes on the investment. Using a test period, the regulatory agency sets customer tariffs that reflect the relationship between the utility's investment, expenses, and return plus income taxes. The customer tariffs generally do not reflect a specific revenue goal but instead the expected "investment-expense-return plus income tax" relationship which is expected to continue during the period that the customer tariffs are in effect. This relationship methodology of setting fair rates allows customer tariffs to remain in effect for long periods of time and yet give the utility an opportunity to earn a fair rate of return as long as the basic "investment-expense-return plus income tax" relationship is
unaltered. The Tax Reform Act of 1986 alters a main component of this generally used rate making formula with the result that customer tariffs are unreasonable as of January 1, 1987, or July 1, 1987.

Recommendation: We recommend that the Commission adjust the present customer tariffs to reflect the impact of the Tax Reform Act of 1986. A general or full rate investigation is not recommended or needed to rectify the windfall profits that would result if the present customer tariffs are not adjusted to reflect the Tax Reform Act of 1986’s major alteration in the rate making formula. A general or full rate investigation would require at least six months of litigation and could require a year or longer—a period in which the customers could be forced to pay unreasonable rates due to an action beyond the control of the utility or its customers.

II. 1987 TRANSITION YEAR ADJUSTMENTS

The Tax Reform Act of 1986 uses 1987 as a transition year. The reduction in the corporate tax to 34% does not take effect until July 1987. For 1987, corporations filing on a calendar year are required to use a 40% average rate on their income tax returns. This requirement eliminates a firm claiming that it operated at a loss in the first six months and at a profit in the last six months and should be taxed at the 34% rate for all profits. There is no requirement, however, that a 40% rate be used for rate making purposes.
Recommendation: We advocate that the full impact of the Tax Reform Act of 1986 be implemented as of July 1, 1987. The utility rate making formula, "investment-expenses-return plus income tax", supports the concept that customer tariffs could be adjusted on July 1, 1987 to reflect the permanent corporate income tax rate of 34%. Adjusting customer tariffs only once, on July 1, 1987, provides needed time to accurately determine the impact of the Tax Reform Act of 1986 on each utility and also provides the customer with a better price signal. A single adjustment also eliminates the problem of attempting to correct for periods when service has been provided at higher than necessary rates. Adjusting customer tariffs now for a 40% 1987 rate would be difficult because January service has been rendered and billed.

III. IMPLEMENTATION METHODOLOGY FOR TAX REFORM ACT OF 1986 ADJUSTMENTS

The regulatory rate making formula, "investment-expenses-return plus income taxes", results from a detailed analysis of a "test period" that has been adjusted for abnormalities and regulatory disallowances. The rate making formula that supports the present customer tariffs should not be reinvestigated but only altered for the effects of the Tax Reform Act of 1986. A reinvestigation of the present rate making formula would require a full rate case analysis and delay the adjustment the Tax Reform Act of 1986 requires in customer tariffs if customer tariffs are to remain fair and
reasonable. If the Commission, the utility, or any party to the regulatory process believes that the underlying rate making formula should be reinvestigated because of perceived changes in the investment, expense, or return components of the rate making formula, a detailed rate case inquiry could be requested but should not be used to delay the adjustment required in the present rate making formula to reflect the Tax Reform Act of 1986.

**Recommendation:** We recommend that the Commission re-open the last rate making proceeding for each investor-owned utility and adjust the rate making formula for the effect of the Tax Reform Act of 1986. The utility's adjusted rate making formula will result in a lower jurisdictional revenue requirement and lower present customer tariffs. This proposed adjustment methodology may be used irrespective of the regulatory agency's desire to make only one adjustment on July 1, 1987, or to use a two step adjustment process effective January 1, 1987, and January 1, 1988.

A simplified example of the recommended adjustment process illustrates how and why adjusting the rate making formula developed in the last rate case correctly adjusts current customer tariffs.

**Example:** Utility "A" applied for increased customer tariffs from the Public Service Commission in March, 1983, based on an annualized 1982 year-end test period. The Commission issued a decision in December, 1983, approving new customer tariffs that are still in effect. 1987 kWh sales are 10% greater than the test period.
The fact that 1987 kilowatt-hour sales are greater than the sales during the test period does not effect the requirement that the regulatory agency should use the 1982 test period and rate making formula developed from that test period to make the Tax Reform Act of 1986 adjustments. In the above example the 1982 test period income taxes would be reduced by $1,550,000 and the Commission would prepare new customer tariffs designed to produce 1982 test period revenues of $76,720,000 rather than the customer tariffs that the Commission approved in 1983 to produce 1982 test period revenues of $78,270,000. This adjustment process does not imply that 1987 revenues will be reduced by $1,550,000. All other things being equal, the revenue reduction in 1987 would be approximately $1,705,000 under the new tariffs because of the growth in sales.

Proposals to implement the effect of the Tax Reform Act of 1986 through a comparison of actual 1986 income taxes and 1986 income taxes recalculated under the requirements of the Tax Reform Act of 1986 would not necessarily be fair to the customer or the utility. Actual 1986 income taxes may reflect the deduction of regulatory disallowances, abnormal revenues or
expenses, or a return that was inconsistent with the return that was authorized by the regulatory agency. Attempting to correct the 1986 operating results to be consistent with the last decision and order of the regulatory agency would essentially require a full rate case proceeding.

IV. Utility Cost of Service Impact of the Tax Reform Act of 1986

A. Reduction in the Corporate Income Tax Rate to 34% on July 1, 1987

The 34% corporate income tax rate is a 26% reduction in the 46% corporate income tax rate that applied in 1986 and the first half of 1987. Under our recommendation that customer tariffs be adjusted as of July 1, 1987, the new customer tariffs would be based on a 34% corporate income tax rate. If the Commission chooses to reduce customer tariffs on a two-step basis the initial reduction should use a corporate income tax rate of 40% for 1987 with the 34% corporate income tax rate used for the 1988 customer tariffs.

Most regulatory agencies provide for the full normalization of income taxes so that the usual cost of service income tax expense consists of actual taxes paid plus deferred income taxes. Deferred income taxes result when the utility is allowed to claim more depreciation for tax purposes than it claims for book reporting purposes or it is able to deduct as a current expense items which it is capitalizing for book purposes. Deferred income taxes also result when the utility is able to reduce its income tax liability by the use of
investment tax credits. Under our recommendation that customer tariffs be adjusted as of July 1, 1987, both the currently payable and deferred income taxes would be calculated at the 34% corporate income tax rate.

If the customer tariffs are to be adjusted on a two step basis the deferred income tax expense for 1987 creates a problem. No question exists that the deductibility of excess tax deprecation and capitalized items reduces income taxes that would be due at a 40% corporate income tax rate, but under tax normalization it is also known that the "tax savings" will be used to offset additional taxes due at a 34% corporate income tax rate. The tax normalization theory relies on an assumption that the currently greater than book allowable tax deduction is only a "timing difference" and that over time the total taxes paid will be the same—what you don't pay now will have to be paid later. This "timing difference" belief supported the creation of the Deferred Federal Income Taxes account as a contingent liability. When it is known that only 85% of the 1987 deferred income tax expense will be used to pay back the tax savings in the future it is questionable that the entire 1987 deferred income tax expense should be added to the Deferred Federal Income Tax contingent liability account. The quandry is that current deferred income tax expense, the debit, should equal the addition to the Deferred Federal Income Tax account, the credit.
Recommendation: We advocate that customer tariff adjustments made as of July 1, 1987, have both the current and deferred income tax expense determined using the 34% corporate income tax rate. When the customer tariffs are to be adjusted in a two step process, the current income tax expense for 1987 should reflect the 40% corporate income tax rate but the deferred income tax expense should reflect the 34% corporate income tax rate, the tax rate that will exist when the saved taxes must be paid under the timing difference theory.

B. Corporate Income Tax on Unbilled Revenues

The Tax Reform Act of 1986 essentially provides that revenues and expenses should match for the tax year. That revenues and expenses should match is a generally accepted principle in accounting and in regulation. The test period used by the regulatory agency to determine the components of the rate making formula generally matches the utility's revenues and expenses such that unbilled revenues do not exist and no additional corporate income tax would be calculated.

Utility unbilled revenues exist because all customer's meters cannot be read and billed as of the end of the year. While the utility does read most large customer's meters on the last day of the month and year, most customer's meters are read on a thirty-day cycle which results in a slight mis-match of revenues and expenses in the utility's taxable year but not in the test period used to develop the rate making formula underlying the authorized customer tariffs. A revenue-expense
mis-match occurs because all expenses for the year have been recorded while all of the revenue related to the recorded expenses will not have been recorded. Recording unbilled revenues does not necessarily result in increased taxable income for a utility especially if the utility is not growing. In most cases recording unbilled revenues would not materially increase a utility's income tax liability but instead make the corporate income tax liability consistent with the test period's "investment-expense-return plus income taxes" analysis used to determine authorized customer tariffs. Unbilled revenues would not materially increase a utility's income tax liability because the calculation of unbilled revenues is a net calculation. If the tax period revenues and expenses are to match then revenues related to prior periods must be removed as unbilled revenues are added. For example:

All expenses for utility "B" are recorded as incurred.

All revenues for utility "B" are recorded when the customer is billed. In January 1986 customers are billed for service that occurred partially in December 1985 and January, 1986. In February 1986 customers are billed for service that occurred partially in January 1986 and February 1986 and so on for each month of the year. The total 1986 revenues for utility "B" reflect a portion of December 1985 service, all of the January through November service and a portion of December 1986 service, but exclude the December 1986 service that will be billed in January 1987.

The taxable unbilled revenues for utility "B" would be the net difference between the December
1986 sales that will be billed in 1987 and the December 1985 sales that were billed in 1986. Taxable income would increase if the December 1986 unbilled revenues are greater than the December 1985 unbilled revenues. Taxable income would be lower if the December 1986 unbilled revenues are less than the December 1985 unbilled revenues.

Recommendation: We advocate that the unbilled revenue tax portion of the Tax Reform Act of 1986 is not applicable to an annualized test period cost of service and that any additional income taxes that the utility may have to pay because of unbilled revenues have already been reflected in the rate making formula underlying customer tariffs.

C. **Contributions in Aid of Construction**

**Defined as Utility Revenue**

Utilities are required to provide service to all customers unless the customer cannot be served at a reasonable cost. Regulatory agencies determine the criteria which the customer must meet in order to receive utility service. In most instances the service criteria consists of a minimum revenue per investment dollar analysis. "Contributions in Aid of Construction" are required of those customers who would not meet the minimum revenue requirement so that they may be served by the utility and still not impose additional costs on the other customers of the utility. The "Contribution in Aid of Construction" lowers the amount of funds that the utility has to invest to provide service. Rate case treatment of "Contributions in Aid of Construction" insure that the plant built with the customer's contribution does not provide a
return to the utility and is not recovered by the utility through depreciation charges.

Internal Revenue Service auditors have frequently attempted to classify customer "Contributions in Aid of Construction" as taxable income rather than as customer investment funds. The Tax Reform Act of 1986 supports the Internal Revenue Service's position and classifies customer "Contributions in Aid of Construction" funds as revenue receipts rather than investment funds provided by the customer. Taxing "Contributions in Aid of Construction" will increase the utility's income taxes and decrease the construction funds the customer has provided to the utility to offset the higher cost of providing his service. "Contributions in Aid of Construction" have only an indirect effect on the rate making formula in that the funds provided as "Contributions in Aid of Construction" were used to offset the uneconomic investment the utility was required to make in order to provide service. In order that "Contributions in Aid of Construction" continue to offset the uneconomic investment required to provide service to customers that do not provide sufficient revenue to support the investment required to serve them, "Contributions in Aid of Construction" will have to be increased by 67% in 1987 and by 52% in 1988. A customer who was required to provide a "Contribution in Aid of Construction" of $100 in 1986 would have to provide $167 in 1987 or $152 in 1988 so that in each case the investment made by the utility to provide service will
be reduced by $100. While the Tax Reform Act of 1986 results in a drastic increase in "Contributions in Aid of Construction" payments by customers, the payment is necessary and for most customers not permanent but more like a temporary loan to the utility--many of the "Contributions in Aid of Construction" are refunded by the utility when the real estate project is built up and the added usage provides sufficient revenues to the utility to support the total investment it has made in facilities.

**Recommendation:** We advocate that customer tariffs not be adjusted because "Contributions in Aid of Construction" are taxable under the Tax Reform Act of 1986. The additional income taxes related to "Contributions in Aid of Construction" are not a cost of service item to be considered in the rate making formula. An increase in the amount of "Contributions in Aid of Construction" provided by the customer to offset uneconomic investment is needed to account for the income taxes that must be paid by the utility and let the utility retain sufficient investment contributions to let the net utility's investment earn a minimum return.

**D. Reduction in Allowable Employee's Food and Entertainment Expense**

The Tax Reform Act of 1986 disallows 20% of all corporate food and entertainment costs as an allowable deduction to determine taxable income. Entertainment is not a major utility expense but most utility employees are entitled to meal costs
when working overtime or away from home on business. The rate making formula assumed that 100% of prudent meal and entertainment cost would be tax deductible. Adjustments to the rate making formula should include the extra income taxes that will be due under the Tax Reform Act of 1986 because less than 100% of meal and entertainment costs will be tax deductible. Customer tariffs adjusted as of July 1, 1987, should reflect an increase in corporate income taxes of 10% of the meal and entertainment costs included in operating expenses of the rate making formula underlying the present customer tariffs. Those regulatory agencies that chose to adjust customer tariffs in two steps should allow additional corporate income taxes of 13% of the meal and entertainment costs included in operating expenses of the rate making formula underlying the present customer tariffs for the 1987 adjustment.

Recommendation. We advocate that the test period income taxes be increased to reflect that only 80% of the employee meal and entertainment costs may be deducted in calculating taxable income under the Tax Reform Act of 1986. Any questions as to the prudence of the employee's meal and entertainment expenditures must be reserved for the next full rate case investigation of the utility.

E. Longer Asset "Tax Depreciation" Life.

The Internal Revenue Code of 1954, as amended, has provided an investment incentive by allowing shorter tax depreciation lives than the book or true investment life. This
shorter tax life incentive created a "timing difference" that reduced income taxes during the first years that the asset was used in business but increased income taxes in the last years of the asset's normal life. While the utilities have actually paid less than the full corporate income tax rate because of the allowable shorter tax lives, the customer tariffs have been based on "normalized income taxes" which assume that the utility paid income taxes at the statutory corporate rate—all "timing differences" are eliminated under tax normalization. The Tax Reform Act of 1986 changes in the allowable tax lives of depreciable assets does not affect the rate making formula since all "timing differences" are eliminated under the tax normalization methodology employed by the regulatory agencies to determine fair and reasonable customer tariffs.

Recommendation. We are opposed to any changes in the rate making formula resulting from the shorter tax lives provided under the Tax Reform Act of 1986 because under tax normalization all "timing differences" have been eliminated in setting customer tariffs.

F. Loss of "Investment Tax Credits" Applicable to New Investment

In order to promote new investment the Internal Revenue Code of 1954, as amended, provided that up to 10% of the cost of qualifying new production facilities could be used to reduce current income tax liabilities. Qualifying production investment costs did not include the capitalized Allowance for
Funds Used During Construction. The Tax Reform Act of 1986 does away with the "investment tax credit" incentive for building production plant and reduces earned but unused "investment tax credits" to reflect the lower corporate income tax rates provided for in the Tax Reform Act of 1986.

Investment tax credits did not create a "timing difference" in the payment of income taxes since the investment tax credit was a reduction in income taxes due. Under law the investment tax credit was normalized when taken and amortized to income over the life of the asset which gave rise to the investment tax credit. Unlike the tax normalization methodology used to account for tax depreciation differences from book depreciation, unamortized investment tax credit balances could not be deducted from the rate base.

The Tax Reform Act of 1986 allowed investment tax credits to continue for many of the electric generating plants that were under construction or in advanced planning stages. Tax normalization eliminates any need to adjust the rate making formula for the loss of investment tax credits under the Tax Reform Act of 1986.

Recommendation. We advocate that the rate making formula need not be adjusted because of the loss of the investment tax credit under the Tax Reform Act of 1986. In time the utility's common equity investors will be required to invest funds equivalent to the asset cost that is being charged to customers but this will not alter the rate making formula. The income
credit that has been amortized to the customers over the life of the asset and recognized in the rate making formula will continue.

G. Corporate Minimum Tax

The Tax Reform Act of 1986 requires that corporations reporting a profit pay at least a minimum income tax. The corporate income tax return is first prepared taking advantage of all allowable tax deductions. If no or insufficient income taxes are due, taxes must be recalculated on what is essentially a book reporting basis. Customer tariffs based on full tax normalization have assumed that the utility is paying income taxes at the full rate. Present customer tariffs, before adjustment for the Tax Reform Act of 1986, assume an income tax expense at 46% and customer tariffs adjusted for the Tax Reform Act of 1986 will assume an income tax expense at 34%, 40% if the customer tariffs are adjusted as of January 1, 1987.

Recommendation. We advocate that the minimum tax provision of the Tax Reform Act of 1986 does not require that customer tariffs be adjusted since the customer tariffs reflect a rate making formula that tax normalizes for all timing differences and assumes income tax expenses at the full corporate income tax rate.
V. CUSTOMER TARIFF ADJUSTMENTS TO REFLECT THE TAX REFORM ACT OF 1986

Customer tariffs should be adjusted to reflect the changes that result in the rate making formula when the rate making formula is adjusted for the Tax Reform Act of 1986. The Tax Reform Act of 1986 requires two adjustments to the rate making formula underlying present customer tariffs. First, normalized income tax expenses must be adjusted to the 34% corporate income tax rate included in the Tax Reform Act of 1986. Second, income tax expenses must be increased to account for the reduced deductibility of meal and entertainment costs allowed under the Tax Reform Act of 1986. The Tax Reform Act of 1986 adjustments to the rate making formula do not equally impact on present customer tariffs and it would not be appropriate to make an equal percentage reduction in customer tariffs to reflect the jurisdictional revenue reduction in the rate making formula resulting from the Tax Reform Act of 1986.

A. Customer Tariff Adjustment for the Lower Corporate Tax Rate

Some commissions have approved customer class tariffs that provide higher or lower rates of return to the utility than the overall rate of return authorized for the utility. While it has been our position that all customer classes should provide an equal rate of return to the utility, it would be inappropriate to attempt to correct the rate design that the commission had approved for present customer tariffs in a proceeding that is designed to only correct the rate making

Maintaining the rate of return differentials that exist in the present customer tariffs requires that the present customer tariffs be adjusted for the lower corporate income tax rate by an appropriate reduction in the income tax expenses included in present customer tariffs. Customer classes that currently provide a higher return to the utility would have their rates reduced more than would customer classes that provide a lower return to the utility.

B. Customer Tariff Adjustment for Increased Income Tax Expenses Resulting from the Non-Deductibility of Full Meal and Entertainment Costs

Utility employee meal and entertainment expenses are not an equal cost of providing service to all customer classes. In the case of electric or gas utilities, transmission class customers are not responsible for the maintenance costs of the distribution system since the transmission customers do not use the utility's distribution system. The increased income tax expense associated with the lower deductibility of meal and entertainment costs under the Tax Reform Act of 1986 should be allocated to each customer class based on the utility's labor ratio.

Recommendation. We advocate that customer tariffs be adjusted to reflect the impact of the Tax Reform Act of 1986 based on the impact the Tax Reform Act of 1986 on the expenses that the customer currently pays to the utility under present customer tariffs. The income tax expense currently included in
each customer tariff at 46% should be lowered to 34%. Meal and entertainment expenses included in present customer tariffs should be increased to reflect the increased income tax expense resulting from the non-deductibility of full meal and entertainment cost under the Tax Reform Act of 1986. The proper adjustment of present customer tariffs requires that the customer class cost of service study underlying present customer tariffs be revised to reflect the impact of the Tax Reform Act of 1986.

Average revenue or base rate decreases would increase present customer class return differentials and result in higher return classes providing an increased subsidy to lower return classes.

Respectfully submitted,

DELLON E. COKER
Chief

DAVID A. CARSON
Trial Attorney

Regulatory Law Office
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5611 Columbia Pike
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For

THE DEPARTMENT OF DEFENSE
And
THE OTHER FEDERAL EXECUTIVE AGENCIES
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the following by mailing copies properly addressed with postage prepaid to each.

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Dated at Fairfax County, VA this 19th day of February 1987.

DAVID A. CARSON
BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF MIKE HUNTER, THE ATTORNEY GENERAL OF OKLAHOMA, TO LOWER THE RATES AND CHARGES FOR:

NATURAL GAS SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF CENTERPOINT ENERGY RESOURCES CORPORATION D/B/A CENTERPOINT ENERGY OKLAHOMA GAS

ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA GAS AND ELECTRIC COMPANY

NATURAL GAS SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF ARKANSAS OKLAHOMA GAS CORPORATION

NATURAL GAS SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF OKLAHOMA NATURAL GAS COMPANY, A DIVISION OF ONE GAS, INC.,

ELECTRIC SERVICE AND PROVIDE FOR ANY REFUND DUE TO THE CUSTOMERS OF PUBLIC SERVICE COMPANY OF OKLAHOMA

RESULTING FROM THE TAX CUTS AND JOBS ACT OF 2017

CAUSE NO. PUD 201700568
CAUSE NO. PUD 201700569
CAUSE NO. PUD 201700570
CAUSE NO. PUD 201700571
CAUSE NO. PUD 201700572

Asst. AG Butkin and AG Henry told HOW to Protect Ratepayers in 1991

Corporation Commissioner Bob Anthony herewith provides a copy of a Motion and subsequent Brief, both signed by Assistant Attorney General Robert Butkin and filed in Cause No. PUD 890000662 during January of 1991. The Motion proposes placing “rates under bond and subject to refund, with interest,” for protection of consumers. The Brief states, “The Commission Has Broad Powers By Which to Protect Utility Customers From Excessive Rates,” ... “The Requested Order Would Not Constitute Retroactive Ratemaking.” On page 8 the Brief continues, “The Commission Has the Power to Immediately Issue the Requested Order and Thus Protect ... Ratepayers From Even One Day of Additional Delay.”
IN THE MATTER OF THE APPLICATION OF
HOWARD W. MOTLEY, JR., FOR AN
INQUIRY INTO THE RATES AND CHARGES
OF SOUTHWESTERN BELL TELEPHONE
COMPANY,

IN THE MATTER OF THE APPLICATION OF
SOUTHWESTERN BELL TELEPHONE COMPANY
FOR APPROVAL OF TELESTATE/21,
A PROPOSAL FOR RATE STABILITY,
NETWORK MODERNIZATION, AND PRICE
REGULATION.

MOTION TO PLACE BELL'S RATES SUBJECT TO REFUND
AND TO COMPEL DISCOVERY

COMES NOW Robert H. Henry, Attorney General of Oklahoma
(Attorney General) and hereby moves that this Commission issue an
order to:

1) Place the Oklahoma jurisdictional rates of Southwestern
Bell Telephone Company (Bell or SWBT) subject to refund,
with interest, effective with the date of the order,
pending the completion of the Bell rate case, Cause PUD
000662; and

2) Require Bell to respond to discovery requests within
twenty days; to provide copies of certain responses which
must be provided under the terms of a proprietary
agreement executed between the Attorney General and Bell;
and to respond to other data requests to which Bell has
lodged unfounded objections.

In support of this Motion, and as more fully discussed in the
enclosed Brief, the Attorney General would show that Bell is
currently overearning in excess of $40 million a year, and after
July 1, 1991 will be overearning more than $70 million a year.
This rate proceeding, which was commenced on January 25, 1989, has
been pending now for 22 months. Each month of delay permits Bell
to earn excessive earnings of more than $3.3 million a month.
Moreover, Bell is largely responsible for causing delays which have
prevented the Attorney General from identifying additional
excessive earnings that are being achieved by Bell. Bell's average
turnaround time of close to three months in responding to the
Attorney General's data requests is, to our knowledge, the most excessive discovery delay ever experienced in a rate proceeding in Oklahoma.

By placing Bell's rates under bond and subject to refund, with interest, this Commission will provide the same protection to Bell's Oklahoma customers that it affords to utilities when it authorizes interim rates. In fact, failure to place Bell's rates subject to refund will permit Bell to permanently retain more than $3.3 million per month in excessive earnings at the expense of its customers.

The Commission's legal authority to grant the requested relief is found in article IX of § 18 of the Oklahoma Constitution.

Respectfully submitted,

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ROBERT A. BUTKIN
ATTORNEY GENERAL ROBERT HENRY’S BRIEF ON COMMISSION’S AUTHORITY TO ASSUME EN BANC JURISDICTION AND PLACE BELL’S RATES SUBJECT TO REFUND

I. INTRODUCTION

Attorney General Robert H. Henry requests that the Commission assume en banc jurisdiction and issue an order placing the Oklahoma rates of Southwestern Bell Telephone Company (Bell) subject to refund pending the completion of Bell’s current rate case.

If Bell’s rates are not subject to refund, hundreds of thousands of Bell’s Oklahoma customers will be harmed, because they will not have returned to them excess rates paid while the case is pending.

Time is of the essence. Each day that the Commission delays action could cost Bell’s customers more than $100,000 per day. After July 1, 1991, when a temporary $30 million a year depreciation charge expires, each day of delay could cost Oklahomans as much as $200,000 per day.

Bell, on the other hand, is not unfairly disadvantaged if the requested relief is granted. Bell’s only refund liability will be that which the Commission ultimately determines Bell is overearning during the refund period.

Immediate Commission Action is Needed to Protect Ratepayers.

The Administrative Law Judge, Robert Goldfield, has denied our application to advance to the Commission en banc our motion to place Bell’s rates subject to refund. Currently, our motion is not even scheduled to be heard before Judge Goldfield until March 7, 1991. Thus, in the absence of prompt relief, Bell’s Oklahoma customers may have to wait for months before the Commission issues an order placing Bell’s rates subject to refund—a period of delay
for which Bell's customers could not be refunded excessive rates paid to Bell. Each day of delay before the Commission makes Bell's rates subject to refund permanently deprives Oklahomans of tens of thousands of dollars. Accordingly, we urge the Commission to immediately agree to hear the case en banc, and to issue the order necessary to protect Bell's customers from further delay in the hearing process.

I. THE COMMISSION SHOULD ISSUE AN ORDER PLACING BELL'S RATES SUBJECT TO REFUND TO PROTECT BELL'S RATEPAYERS PENDING THE COMPLETION OF THE CURRENT BELL RATE INVESTIGATION.

Telephone Rates Have Declined Dramatically Nationwide.

State public utility commissions in 1989 ordered major telephone companies to cut rates by nearly $840 million, marking the continuation of a three-year downward trend in rates. Public utility commissions reduced rates for telephone subscribers a total of $2.72 billion between 1987 and 1989.1

Bell Customers in Other States Have Received Rate Cuts.

In our neighboring states, recent Commission proceedings involving Bell have led to significant rate reductions reflecting this national trend.

* Bell's customers in Texas received reductions in excess of $200 million.
* Bell's customers in Missouri received rate reductions in excess of $70 million.
* Bell's customers in Kansas received rates reductions in excess of $25 million.

Similarly, Bell Customers in Oklahoma Will Be Due Significant Rate Cuts As a Result of The Pending Bell Rate Case.

In Oklahoma, expert witnesses retained by the Attorney General's office have filed testimony in the pending Bell rate investigation, Cause PUD 000662, indicating that Bell's Oklahoma customers are due rate reductions of as much as $40 million and that these rate reductions will grow to approximately $70 million upon the expiration of a $30 million reserve deficiency charge in

While there will no doubt be adjustments to these calculations, it is critical that the Commission place Bell's rates subject to refund so that Bell's customers can be made whole at the conclusion of the case for excess rates paid to Bell while the case is pending.

Oklahoma Ratepayers Benefit From New Standards Adopted by the Oklahoma Supreme Court in the Landmark Turpen Decision, Which May Ultimately Increase the Amount of Rate Savings for Oklahomans.

The current rate proceeding, Cause FUD 000662, is the first case in which Bell's rates will be examined under the new standards established by the Oklahoma Supreme Court in Turpen v. Oklahoma Corporation Commission, 769 P. 2d 1309 (Okl. 1988) ("Turpen"). In that decision, the Court recognized the need to prevent Bell from using its captive Oklahoma customers to unfairly subsidize its entry into new, more speculative business ventures.

The Supreme Court now requires the Commission to protect Bell's customers in the following ways:

* The Commission must closely scrutinize Bell's financial relationship with its affiliate companies, and must make adjustments where necessary to ensure that Bell is not unfairly overcharging its basic phone subscribers to gain competitive advantages in unregulated, speculative markets.

* The Commission must impute a capital structure when it finds that the structure chosen by Bell results in higher rates than necessary for basic telephone services.

* The Commission must develop standards to account for yellow pages revenues in order to insure that Bell's customers are properly benefitting from these revenues.

When all the adjustments authorized or required by the Turpen decision are made, the Attorney General's evidence may point to even greater rate reductions than $40 million per year (until July 1, 1991) and $70 million per year (after July 1, 1991)

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2 See A.G. Exhibits 1 and 2, Prefiled Testimony of Michael L. Brosch and Michael Ileo, Exhibits in Support of Motion to Place Southwestern Bell Telephone Company's Rates Subject to Refund and to Compel Discovery.
Delays in the Pending Case Harm Bell's Ratepayers

The current Bell rate proceeding, Cause FUD 000662, has been pending for two years since it was filed on January 25, 1989. Throughout this proceeding, the Attorney General has been handicapped by Bell's failure to respond promptly to our discovery requests. Accordingly, on January 14, 1991, the Attorney General advised the Commission of the following:

* Bell had failed to respond to 340 data requests that were unanswered as of that date.
* Bell was averaging 150 days—five months—of delay for all data requests that were unanswered as of that date.
* Bell had failed to answer 18 data requests after a delay of 285 days—more than nine months.
* Three months had passed since Bell had last responded to a data request.3

On January 16, 1991, Administrative Law Judge Robert Goldfield issued an order requiring Bell to more promptly respond to our data requests. That order also set a procedural schedule, under which the full hearing on the merits of the rate case will be held before the hearing officer in late August.

Even if Bell complies with the discovery schedules and the August hearing dates are not extended, it will probably be early 1992 before the briefing and appeal cycles are completed and a final order is issued by the Commission. Three years (or more) will pass between the filing of the case and the issuance of a final order by the Commission. A final order will probably not issue until the passage of another year (or more) from today's date.

Unless Bell's customers are protected by an order placing the utility's rates subject to refund, excess rates paid during the pendency of the case will be permanently lost to those customers.

3 See Updated Information Concerning Southwestern Bell Telephone Company's Delays in Responding to Data Requests from the Attorney General, filed January 14, 1991.
A. By Granting the Attorney General's Motion, the Commission Can Protect Bell's Ratepayers From Further Harm Caused by Delay, Without Unfairly Harming Bell.

The Attorney General's Motion requests that the Commission issue an order placing Bell's rates subject to refund, so that the rate reduction ultimately found appropriate by the Commission can be made effective as of the date of that order. The order would not require any immediate rate reduction or dollar amount of refund, not would it preclude Bell or any other of the parties from fully litigating any relevant issue in the context of a full rate hearing.

Counsel for Bell has represented that Bell opposes our motion because Bell "disagrees" with our evidence pointing to forthcoming rate reductions of $40 million to $70 million per year. We have advised the Commission and the parties that Bell's statements reflect a serious misunderstanding of the remedy sought in our motion. The order we seek would protect this commission's constitutional power to protect Bell's ratepayers through refunds once it ultimately determines appropriate rates for Bell. That Bell currently "disagrees" with our numbers is irrelevant, as the only amount Bell would ever be required to refund would be the amount that the Commission determines Bell to be overearning. The remedy would protect Bell's customers from harm caused by additional delays, not fix the final amount of overearning or refund liability.

B. The Delays that Harm Bell's Customers in the Instant Case Are More Severe than the Delays That Have Led This Commission to Grant Interim Relief to Bell.

The Attorney General's motion presents even more compelling reasons for placing Bell's rates subject to refund than are present when utilities have received interim rate relief. Most recently, this Commission awarded an interim rate increase to Bell upon a showing that there would be an eleven month total delay between the filing of the original rate application and the

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anticipated date of final hearing. Order No. 273137, issued February 13, 1985, p. 4 (testimony of D. Linnenbrink). In fact, in a twenty-month time frame of May 1983 to February, 1985, Bell received interim rate increases totaling more than $210 million. Turpen, supra, 769 P. 2d at 1316.

In the instant case, Bell's customers will suffer a total passage of three years or more between initial application and issuance of a final order, three times the delay that led the Commission to protect Bell with an interim rate increase in 1985.

II. THE COMMISSION HAS THE AUTHORITY TO PLACE BELL'S RATES SUBJECT TO REFUND PENDING THE COMPLETION OF THE CURRENT RATE CASE.

This Commission's broad constitutional power to regulate utilities includes the power to place Bell's rates subject to refund during the pendency of the current rate investigation. Upon a showing that Bell's customers may be harmed by delays in the hearing process, this Commission should promptly use these powers to protect those ratepayers. Only by promptly assuming en banc jurisdiction and granting our motion can the Commission insure that excess rates paid to Bell can be refunded to its customers.5

A. The Commission is Constitutionally Required to Protect Bell's Ratepayers From Excessive Rates.

Under Article IX, Section 18, of the Oklahoma Constitution, this Commission is charged with the broad "duty of supervising, regulating, and controlling all transportation and transmission companies doing business in State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies."

In the landmark Turpen decision, the Oklahoma Supreme Court has recognized that the Commission's constitutional duty is not just intended to permit a utility to earn a fair return on its investment, but includes the duty "to prevent a public utility

5 This pleading responds to the request of Administrative Law Judge Robert Goldfield that the parties prepare a brief of the relevant legal issues.
from making excess monopoly profits and to assure fair prices and adequate service to ... consumers." Turpen, supra, 769 P.2d at 1315.

B. The Commission Has Broad Powers By Which to Protect Utility Customers From Excessive Rates, Which Must Include the Power to Place a Utility's Subject to Refund to Protect Customers From Harm Caused by Delay During a Rate Investigation.

This Commission's powers are not limited to prescribing permanent rate schedules. Rather, the Commission's powers may be exercised as the "exigencies of the times and changing conditions demand." Lone Star Gas Co. v. Corporation Commission, 39 P.2d 547, 550. The Courts have recognized that the Commission should be guided by "broad equitable principles" in the discharge of its duties, and that the Constitution has invested the Commission with broad legislative, administrative, and judicial powers so that it can structure appropriate remedies to meet the needs of particular situations. Id; Community Natural Gas Co. v. Corporation Com'n, 76 P.2d 393 (Okl. 1938).

The Supreme Court has recognized that this Commission has an affirmative duty to protect utility shareholders when they suffer as a result of delay. Southwestern Bell Telephone Co. v. State, 214 P. 2d 715 (1949) (interim rate increases). In the instant case, the "exigencies of the times" require that the Commission invoke its broad equitable powers and structure a remedy to protect ratepayers from the harmful effect of delay. Where each day of delay could cost Bell's customers as much as $100,000 per day, the only appropriate remedy is an order placing Bell's rates subject to refund so that excessive rates paid while the case is pending can be returned. Construing constitutional language similar to Oklahoma's, courts have held that the Commission's power to prescribe just and reasonable rates includes by necessity the power to declare rates "interim and subject to decrease" where necessary to protect a utility's customers. Pueblo Del Sol Water v. Arizona Corporation Com'n, 772 P. 2d 1138 (Ariz. App. 1988).
The Requested Order Would Not Constitute Retroactive Ratemaking.

The remedy sought by the Attorney General would not constitute prohibited retroactive ratemaking under Southwestern Public Service Com'n v. State, 617 P.2d 92,102 (Okl. 1981). In that case, the Commission attempted to reach back to a prior rate order and to correct mistakes made in the determination of rates in that order. Here, in contrast, we do not seek to correct alleged mistakes made in past Bell rate orders. Rather, we seek an order which would place Bell's rates prospectively subject to refund during the pendency of the current Bell rate investigation.

C. The Commission Has the Power to Immediately Issue the Requested Order and Thus Protect Bell's Ratepayers From Even One Day of Additional Delay.

Unlike an Interim Rate Increase, the Appropriate Remedy Here Does Not Require Any Immediate Rate Change and Therefore Can Be Implemented Immediately.

When this Commission awards an interim rate increase, the Commission recognizes that it has not yet had time to fully evaluate the relevant issues for the proper determination of permanent rates. See Southwestern Bell Telephone Co., Cause No. 28002, Order No. 250987, 57 PUR 4th 627, 643 (December 29, 1983) (imperative that rates be interim, because full data not yet available). Interim rate increases are always made subject to refund, because the issues are not fully tried and determined until the full hearing on permanent rates.

When the Commission awards an interim rate increase, however, there is still a need for some type of proceeding to quantify the amount of that interim increase. Thus, the Commission holds a hearing, usually of very limited duration. See, e.g., Kansas Power and Light Co., Order No. 346303 (April 9, 1990) (one day hearing); Southwestern Bell Telephone Co., Order No. 273137 (February 13, 1985) (one day hearing). The need for such an abbreviated hearing and preliminary quantification derives from the nature of the remedy sought by the utility: an actual immediate increase in rates charged to their customers.
The remedy sought here derives from a similar constitutional duty to protect Bell's customers from harm caused by delay, but it is a remedy of a different nature than an interim change in rates. There is no need, at the instant time, to quantify any precise level of rate savings, even on a preliminary basis, because the remedy we seek does not require an immediate reduction in rates. Accordingly, the Commission can place the remedy into effect immediately, knowing that the amount of refund and rate savings will be fully tried and determined in the full rate proceeding. In fact, each passing day of delay before the remedy is placed into effect destroys the effectiveness of the remedy, since it deprives the Commission of the power to refund excess rates paid during this period.

The Commission is Not Required to Limit Bell's Refunds to Return on Equity Established in Past Cases.

In interim rate increase proceedings, this Commission has not restricted itself to applying historical return on equity established in previous rate proceedings to determine the appropriate level of rate relief. Thus, in Order No. 238961, authorizing interim relief to Bell, the Commission, for the purposes of setting interim relief, reduced Bell's authorized return on equity from 15.0% to 13.5%. The Commission acknowledged that no evidence had been considered on this issue, but based its decision on downward trends in national interest rates since the last full case. Order No. 238961, Cause No. PUD 28002 (May 24, 1983).

Since Every Day of Delay Before Rates Are Placed Subject to Refund Harms Bell's Customers, The Order Should Issue Immediately, and Return on Equity for the Refund Period Can Be Determined in the Full Rate Hearing.

In the instant case, the Commission will ultimately have to determine the appropriate return on equity during the refund period. However, every day that this Commission delays placing Bell's rates subject to refund may harm ratepayers by as much as $100,000. Because the protective remedy we seek does not require an immediate quantification of interim rate savings, the order
should promptly issue and determination of appropriate return on equity for the refund period should be deferred to the full hearing.

In *United Telephone Co. of Florida v. Mann*, 403 So.2d 962 (Fla. 1981), the Court authorized just such a determination. The Court held that the state Public Utility Commission had the power to place rates subject to refund during the pendency of a full rate case.

The Mann Court also recognized that the consideration of extensive testimony regarding return on equity would be too time-consuming for an interim rate hearing. Yet, the Court squarely rejected the view that the "amount to be refunded must necessarily be calculated by the previously authorized rate of return." *Id.* at 967.

To so hold would defeat the purpose of allowing the utility to collect excess revenues subject to refund. The Commission is unable to determine at the time of the interim hearing the amount of the utility's revenues, if any, which are excessive. Such a determination can only be made after a comprehensive rate proceeding has been held. A part of that determination is the rate of return which the utility should be authorized to earn during the pendency of the full ratemaking proceeding.

Therefore, the Commission may base its refund order upon the newly established rate of return so long as the new rate is based upon data that existed before the commission issued its interim order. *Id.* at 967.

The Mann Court concluded: "The Commission properly ordered a refund of all revenues that were collected in excess of the newly authorized rate of return." *Id.* at 968.

Similarly, in our case, the determination of appropriate return on equity for the refund period can be determined in the full rate hearing, based on data that existed before the Commission issued its order placing Bell's rates subject to refund.
III. CONCLUSION

This Commission is constitutionally required to protect Bell's Oklahoma customers from excessive rates. In the instant case, every day of delay that the Commission fails to place Bell's rates subject to refund could permanently deprive Bell's Oklahoma customers of tens of thousands of dollars. Yet, Bell is not unfairly harmed by such an order, as the only refund liability Bell would have is that which this Commission ultimately determines Bell to be overearning.

We request that the Commission exercise its broad constitutional power, assume banc jurisdiction, and immediately issue an order placing Bell's rates subject to refund. 6

Respectfully submitted,

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6 The Attorney General is attaching a Proposed Order placing Bell's Oklahoma rates subject to refund. See Attachment "B", hereto.
Regulation’s main principles: In tweet form

It’s true—tweeting is tempting. So for the new year, I've tried to distill regulation’s essence into 14 principles, each (approximately) 140 characters.

1. All regulation, from speed limits to return on equity, has the same purpose: to align private behavior with the public interest.
2. Whether applied to monopoly markets or competitive markets, regulation’s purpose is performance.
3. “What gets measured, improves.” (Peter Drucker)
4. Regulation does not “balance the interests of shareholders and ratepayers.” A balance presumes opposites, but shareholders’ and ratepayers’ legitimate interests are compatible.
5. The appropriate balancing is not between competing private interests but between competing components of the public interest.
6. The midpoint between two wrong positions is not necessarily the right position.
8. Regulation should emulate competition. So regulation, like competition, must penalize those who don’t measure up.
9. The purpose of a rate case is not to recover costs but to align compensation with performance.
10. Rates are not “low” or “high”; rates are right or wrong—depending on whether they induce efficiency in production and consumption.
12. “The due process clause ... prevent[s] governmental destruction of existing economic values. It ... cannot be applied to insure values or to restore values that have been lost by the operation of economic forces.” Market St. Railway Co. v. Railroad Commission of California, 324 U.S. 548 (1945).
13. Calls for “consensus” only reward the holdouts—those with the resources to wait out everyone else.
14. Commissions are not courts; regulators are not judges. Effective regulators don’t preside; they lead.
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