

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. M-100, SUB 148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

<p>In the Matter of</p> <p>The Federal Tax Cuts and Jobs Act</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>REPLY COMMENTS OF THE</b></p> <p><b>CAROLINA INDUSTRIAL GROUPS</b></p> <p><b>FOR FAIR UTILITY RATES</b></p>
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The Carolina Industrial Groups for Fair Utility Rates I, II, and III (“CIGFUR”) hereby submits these reply comments in response to the North Carolina Utilities Commission (“the Commission”) *Order Ruling that Certain Components of Certain Public Utilities Rates are Provisional as of January 1, 2018, Initiating a Generic Proceeding and Requesting Comments* (the “Order”) concerning the effect of Public Law No: 115-97, the Law to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (short titled, “Tax Cuts and Jobs Act”) referred to herein as the “2017 Tax Act”) on utility rates.

Among other things, the 2017 Tax Act reduced the federal corporate income tax rate from 35% to 21% – a 40% decrease – effective January 1, 2018. Because income taxes are a major component of utility revenue requirements, the 2017 Tax Act will have a substantial and material impact on public utilities’ revenue requirements and consequently on the ratepayers of these utilities. In initial comments filed on February 1, 2018, Dominion Energy Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“DENC”) estimates that its annual North Carolina jurisdictional income tax expense will decrease by approximately \$10.8 million with a corresponding increase to operating income of the same amount beginning January 1,

2018. In initial comments also filed on February 1, 2018, Duke Energy Carolinas, LLC, (“DEC”) and Duke Energy Progress, Inc., (“DEP”) (collectively “Duke”) state that the 2017 Tax Act results in a reduction of \$104 million in DEP’s annual revenue requirement and a reduction of \$172 million for DEC.

**I. The Commission should adjust customer rates to pass tax savings onto ratepayers in the form of rate decreases as soon as practicable.**

DENC states that it now treating the Federal corporate income tax component of its existing approved rates and charges as provisional and will hold the amounts in a deferred account. DENC proposes to address the cost of service impacts and disposition of deferred amounts due to the 2017 Tax Act through its next general rate case. With respect to DEP, Duke proposes to defer the tax savings to a regulatory liability, until DEP’s next rate case, but also offers as an alternative, that the Commission could approve a rider in this M-100, Sub 148 proceeding to reduce DEP customer rates. With respect to DEC, Duke proposes that federal tax reform impacts should be addressed in its pending general rate case, docket number E-7, Sub 1146.

As noted in initial comments filed by CIGFUR, CIGFUR supports implementing the corporate tax reduction through the general rate case process for utilities with pending general rate case proceedings, and thus supports DEC’s proposal to address the 2017 Tax Act through its pending rate case, E-7, Sub 1146. However, CIGFUR opposes DENC’s and DEP’s proposals to defer cost savings until their next general rate cases, which may not occur for several years. Rather, CIGFUR recommends that the Commission consider the holistic impact of the 2017 Tax Act and adjust customer rates to pass tax savings onto ratepayers in the form of rate decreases as soon as practicable.

**II. EDITs should be refunded to ratepayers through a decrement rider as soon as practicable.**

In the early years of a given capital asset, the utility collects more in tax expense from ratepayers than it pays out to the Internal Revenue Service (the “IRS”) due to the difference in accelerated depreciation for tax purposes and straight-line depreciation for ratemaking purposes. That situation reverses once the ratemaking depreciation expense begins to exceed the tax depreciation. Assuming that tax rates stay constant, over the life of a capital asset, the total tax expense paid by the ratepayers to the utility should match the tax expense the utility pays the IRS. As a result of the differences in depreciation timing and because tax funds are ratepayer supplied, in the early years of a given capital asset ratepayers provide the utility an interest-free loan, reflected as a credit to the utility’s accumulated deferred income taxes (“ADIT”) liability account.

Due to the 2017 Tax Act, DENC’s, DEP’s and DEC’s future tax liabilities will not be as high as anticipated when rates were originally designed. The amount by which DENC’s, DEP’s and DEC’s current ADIT balances exceeds their future income tax liability as a result of the 2017 Tax Act are the excess deferred income taxes (“EDIT”) at issue. Further, until the Commission adjusts utility rates to reflect the new lower tax rate, the utilities will continue to collect excess income tax from ratepayers at the 35% tax rate, which the Commission approved for DENC, DEP, and DEC, in dockets E-22, Sub 532, E-2, Sub 1023, and E-7, Sub 1026, respectively.

These EDIT should be promptly flowed back to ratepayers; however, DENC and Duke argue against returning EDIT to ratepayers in a timely manner and instead propose to defer their EDIT as regulatory liabilities until their next general rate cases. CIGFUR opposes long-term deferral of EDIT and proposes that, concurrent with the immediate rate reductions discussed

above, the Commission establish a decrement rider for each utility to refund EDIT to ratepayers over a two or three year period.

### **Conclusion**

In sum, CIGFUR opposes the long-term deferral of tax savings and proposes that as soon as possible the Commission should reduce customer rates to pass the substantial and material benefits of the 2017 Tax Act onto ratepayers and concurrently establish decrement riders to refund excess accumulated deferred income taxes.

This the 20<sup>th</sup> day of February, 2018.

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CERTIFICATE OF SERVICE

The undersigned attorney for CIGFUR I, II, & III hereby certifies that she served the foregoing **Reply Comments of the Carolina Industrial Group for Fair Utility Rates** upon the parties of record in this proceeding by electronic mail.

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