

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. M-100, SUB 148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Federal Tax Cuts and Jobs Act)))))	INITIAL COMMENTS OF THE CAROLINA INDUSTRIAL GROUPS FOR FAIR UTILITY RATES
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Pursuant to the *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”) issued by the North Carolina Utilities Commission (the “Commission”) in this docket on January 3, 2018, the Carolina Industrial Groups for Fair Utility Rates I, II, and III (“CIGFUR”) hereby submit initial comments.

Introduction

CIGFUR I, II, and III are associations of large industrial retail purchasers of electric power from Virginia Electric and Power Company, d/b/a Dominion Energy North Carolina (“DENC”), Duke Energy Progress, Inc. (“DEP”), and Duke Energy Carolinas, LLC (“DEC”), respectively.

On December 22, 2017, President Trump signed into law 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”) into law, which, among other things, 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 the revenue requirements of DENC, DEP, and DEC and consequently on the ratepayers of these electric utilities.

I. The Commission should pass the substantial and material benefits of the 2017 Tax Act onto ratepayers and may properly do so through this rulemaking proceeding.

The Commission is charged with setting just and reasonable rates for public utilities. N.C.G.S. § 62-2(4). While Chapter 62 of the North Carolina General Statutes authorizes the Commission to modify base rates through a general rate case, there are exceptions. In 1990, the North Carolina Supreme Court affirmed a Commission order changing rates via a rulemaking proceeding under similar circumstances: the substantial decrease to the federal corporate income tax rate as a result of the Tax Reform Act of 1986. *See State ex rel. Utils. Com. v. Nantahala Power & Light Co.*, 326 N.C. 190, 203, 388 S.E.2d 118, 126 (1990) (“ . . . we conclude that the Commission was acting within its authority when it ordered the affected utilities, including Nantahala, to determine the amount of savings resulting from the [Tax Reform Act of 1986] and to pass these savings on to the ratepayers.”) The *Nantahala* Court held that this Commission properly ordered affected utilities, through a rulemaking procedure, to lower their rates to reflect savings generated by the Tax Reform Act of 1986 when the final rule “applied uniformly to the affected utilities which were similarly situated” and “1) the tax reduction affected all utilities uniformly; 2) a large number of utilities were affected, making individual hearings for all inappropriate¹; and 3) no adjudicative-type facts were in dispute so as to require a trial-type hearing for each individual utility.” *Id.*

CIGFUR understands that the impact of the 2017 Tax Act will be substantial and material upon the revenue requirements of DEC, DEP, and DENC and will thus trigger the Commission’s

¹ For the reasons discussed herein, CIGFUR believes that it is most efficient and therefore appropriate for the Commission to prioritize effectuating the tax reduction through pending general rate cases, wherever possible.

authority to pass tax reduction savings onto ratepayers via a rulemaking procedure as contemplated by the *Nantahala* Court. To this end, in addition to the Commission's January 3, 2018, Order that impacted utilities place the difference between revenues billed under present rates and the savings afforded by the reduction in the federal corporate income tax from 35% to 21% in a deferred account, CIGFUR respectfully requests that the Commission:

1. Order that all public utilities subject to this docket file information setting forth each company's assessment of the 2017 Tax Act on its North Carolina intrastate operations, including its proposal to adjust rates to reflect the reduction in the corporate income tax effectuated by the 2017 Tax Act as soon as practicable and certainly no later than March 1, 2018;
2. Issue an order establishing procedures to implement tariff reductions and refunds related to the corporate income tax savings related to the Tax Act;
3. Order that all affected utilities begin filing quarterly reports, no later than April 30, 2018, reflecting the status of the deferred account which the utilities were required to establish pursuant to the paragraph No. 2 of the Commission's Order dated January 3, 2018; and
4. Order each utility to establish a regulatory liability account to address excess deferred income taxes (EDIT) resulting from the 2017 Tax Act.

Notwithstanding the Commission's authority to address the tax reduction outside of a general rate case, both DEP and DEC have general rate cases pending before the Commission, dockets E-2, Sub 1142 and E-7, Sub 1146, respectively. CIGFUR believes that it would be appropriate for the Commission to address the impacts of the 2017 Tax Act through these general rate case proceedings as doing so is both efficient and will reduce confusion among DEP and DEC's ratepayers.

II. The Commission should resolve the impacts of the Tax Act on DEC and DEP through the utilities' respective pending general rate case proceedings.

While in its late stages, DEP's general rate case (E-2, Sub 1142) remains pending before the Commission. The record is closed; however, the Commission may properly take judicial notice of the 2017 Tax Act and the 40% reduction in corporate income tax. *See* N.C.G.S. § 62-65(b) ("the Commission may take judicial notice of . . . federal statutes, . . . generally recognized technical and scientific facts within the Commission's specialized knowledge, and such other facts and evidence as may be judicially noticed by justices and judges of the General Court of Justice."); *see also State ex rel. Utils. Comm'n v. Carolina Indus. Grp. for Fair Util. Rates*, 130 N.C. App. 636, 642, 503 S.E.2d 697, 701-02 (1998) ("Furthermore, under Rule 201 of the North Carolina Rules of Evidence, the Commission, sitting as a trial tribunal, may judicially notice facts that are "not subject to reasonable dispute in that [they are] either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.") The Commission may properly take judicial notice in its discretion and at any stage in the proceeding. N.C. R. Evid. 201(c) and (f). CIGFUR requests that the Commission take judicial notice of the 2017 Tax Act in docket E-2, Sub 1142, and, accordingly, order DEP to amend its filing to comport with the 2017 Tax Act, which should be the basis for final approved rates.

The evidentiary hearing in DEC's general rate case (E-7, Sub 1146) is fast approaching. Requiring DEC to update its application to comport with the 2017 Tax Act prior to the start of the evidentiary hearings on February 27th will provide much-needed transparency and accuracy on a significant component of DEC's revenue requirement.

Revised and accurate income tax expense and revenue requirements are critical in informing the Commission's determination of just and reasonable rates for DEP and DEC; if the

Commission approves rates based on inflated tax numbers, such rates will be unreasonable and in violation of N.C.G.S. § 62-131. Further, setting base rates based upon incorrect tax rates and then later refunding the excess and resetting rates in a separate proceeding will be an inefficient use of the resources of the Commission, the Public Staff, the utility, and, ultimately, the using and consuming public. The pending general rate cases are the most efficient and economic vehicle for effectuating the substantial and material impact of the 2017 Tax Act. Further, addressing the corporate income tax reduction through the pending general rate cases will avoid ratepayer confusion, which is of great importance considering the significant public scrutiny that is being afforded to DEP and DEC's general rate case proceedings.

Conclusion

In sum, CIGFUR believes that the Commission should, as quickly as practicable, pass the substantial and material benefits of the 2017 Tax Act onto ratepayers through the most efficient means available, be that through this rulemaking proceeding or through pending general rate cases.

This the 1st 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 **Initial 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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