BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. M-100, SUB 148

In the Matter of:	)	
	)	REPLY COMMENTS OF
The Federal Tax Cuts and Jobs Act	)	NORTH CAROLINA JUSTICE
	)	CENTER AND NORTH CAROLINA
	)	HOUSING COALITION
	)	

PURSUANT TO the North Carolina Utilities Commission's ("Commission") January 3, 2018 Order Ruling that Certain Components of Certain Public Utility Rates are Provisional as of January 1, 2018, Initiating a Generic Proceeding, and Requesting Comments, intervenors North Carolina Justice Center and North Carolina Housing Coalition (together, the "Low-Income Advocates") file these Reply comments.

Introduction

The crucial question before the Commission remains how best to take advantage of the federal tax cut for the benefit of customers. In their initial comments, the Low-Income Advocates submitted several principles to guide the Commission's decision: excess revenues resulting from the reduction in the public utilities' cost of service should not accrue to their shareholders; these excess revenues should not be retained and spent by the public utilities for ongoing expenses; the Commission should not account for the entire impact of the tax cut through reduced rates, rebates or decrement riders; some portion of the tax savings for the residential class should go towards funding measures that reduce customer bills, particularly for low-income customers; and the Commission should consider reduced rates first for fixed monthly charges before it considers reductions to volumetric rates.

Summary of Initial Comments

The Public Staff indicated in its initial comments that the Commission should consider the following options in this docket: "a reduction in rates to reflect the reduction in the Federal corporate income tax rate, the flowback to customers of Excess Deferred Income Taxes (EDIT), and the effects of changes to the taxability of Contributions in Aid to Construction (CIAC)." Initial Comments of the Public Staff, p. 2. The Attorney General similarly recommended that the Commission "order utilities to flow through these federal tax reductions to consumers as soon as possible in the form of rate decreases." Initial Comments of the Attorney General's Office, p. 3. The Low-Income Advocates support these recommendations. As set forth in more detail below, however, a portion of the excess accumulated deferred income taxes should be directed toward funding efficiency measures for low-income customers, which would provide greater bill-reduction benefits to customers on a per-dollar basis than a reduction in rates.

The utilities have indicated a number of different approaches for handling the 2017 Tax Act. Duke Energy Progress ("DEP") and Duke Energy Carolinas ("DEC") (collectively, "Duke") call on the Commission to neither reduce rates nor order a flow-back of already over-collected revenues to their customers. Instead, Duke wants to use over-collected funds to offset costs that it would otherwise seek to collect from ratepayers. Duke suggests that it could use the over-collected tax components of existing rates to offset "storm response costs, ongoing coal ash basin closure compliance costs or other environmental compliance costs, or accelerating the depreciation of certain assets such as the existing AMR meters or coal plants." DEP asks that any changes resulting from the 2017 Tax Act wait until its next general rate case, whereas DEC acknowledges that the issue could be addressed in its pending rate case (Docket No. E-7, Sub 1146). Initial Comments of Duke, pp. 9-10.

Piedmont Natural Gas Company, Inc. ("Piedmont")— a subsidiary of Duke— similarly indicates its preference for "deferring tax rate reductions on its base rates until the next general rate case proceeding where such deferral can be amortized and used to offset any requested base rate increase in that docket." Initial Comments of Piedmont, p. 3.

Dominion indicated in its initial comments that it plans to account for excess collected revenues on its books, but wait to adjust its rates until it next approaches the Commission in a general rate case, and to wait on adjusting its current excess deferred income tax decrement rider until a future rider proceeding. Initial Comments of Dominion, pp. 6-7.

The Commission Should Reject the Utilities' Proposals to Retain the Benefits of the Tax Reduction

The Commission should not follow Duke's, Dominion's, or Piedmont's recommendations. First, in the case of Duke, its pending rate cases are not yet decided. It would be premature to set aside funds that belong to consumers now for costs that have not yet been authorized by the Commission as an appropriate cost of service. Even though an order from the Commission in the DEP case is likely to be issued soon, given the possibility of appeal, the contested issues will not likely be fully resolved for some time. Duke and the other regulated public utilities should not be allowed to continue over-collecting or to hold onto previously over-collected deferred taxes pending the resolution of those contested issues.

Moreover, even if all contested issues were quickly resolved in Duke's pending rate cases, the basis for those rates would include outdated figures for tax collections within the utilities' base rates, and would thus lead to an over-collection and inflated rates for customers unless they were adjusted by the Commission. In addition, the longer the lag time between adjusting rates to account for the dramatically reduced tax liabilities faced by the utilities, the greater chance that some ratepayers will not receive any benefit from the utilities' tax cut. For example, a Duke customer who paid rates over the last several years was over-paying for both excess accumulated deferred income taxes and, since January 1, 2018, for the income-tax component of Duke's cost of service. If that customer moves out of Duke's service territory before any adjustments are made by the Commission, the customer will never recoup those overpayments.

The Commission Should Direct the Utilities to Use the Tax Savings to Reduce Fixed Monthly Charges

The Low-Income Advocates urge the Commission to require the utilities, as soon as practicable, to first apply the tax reductions to reduce utilities' fixed, monthly charges. This will not only lower customers' bills, it will maximize the chance that low-income customers—who are disproportionately low-volume customers— receive the full value of benefit from such a reduction. Applying the reductions to the fixed charges also guarantees that all customers will get an equal benefit from the reduced rates. Otherwise, high-volume users would potentially see a greater reduction in their bills than would a low-volume user.

The Commission Should Require the Utilities to Direct a Portion of Excess Deferred Income Taxes Toward Efficiency Programs

The Low-Income Advocates recommend that the Commission order a portion of the previously over-collected taxes to flow back to ratepayers in the form of investments in low-income efficiency programs. The accumulated deferred income taxes have already been collected from customers, and given the changes in the corporate tax rate enacted by Congress, have been over-collected. This excess is now a regulatory liability that should be returned to customers. Consistent with the requirements for the normalization method of accounting for deferred taxes for regulated public utilities, the public utilities in this docket should return the difference between the deferred income taxes accounted for under the higher corporate tax rates under prior law and the lower rates that were recently established in the 2017 Tax Act. A portion[1] of these accumulated excess deferred income taxes ("EDIT") should be returned to ratepayers in the form of direct investments in low-income energy efficiency.

For Duke Energy Progress and Duke Energy Carolinas, this objective can most readily be achieved by directing a portion of its excess deferred income taxes to the Helping Home Fund, a program administered by the North Carolina Community Action Association ("NCCAA") that supplements the federal Weatherization Assistance Program by providing efficiency upgrades to low-income households. There is precedent for using a regulatory liability for the benefit of retail customers to fund energy-efficiency investments for the utility's low-income customers. The Helping Home Fund

[1] The Low-Income Advocates are not yet in a position to present an exact figure for these investments in low-income efficiency. From the initial comments of the public utilities in this docket, it is not clear what the total change in the EDIT will be over the next several years, or how fast the utilities can return the over-collected deferred income taxes to ratepayers under normalization rules. At a minimum, it would be reasonable for the public utilities to invest at least 25 percent of EDIT for low-income efficiency.

was itself established out of a $20 million regulatory liability from Duke Energy Progress for the benefit of its North Carolina low-income residential customers. *Agreement and Stipulation of Settlement of the Public Staff and Progress Energy Carolinas, Inc.*, N.C.U.C. Docket No. E-2, Sub 1023, p. 3 (Feb. 28, 2013). As to Dominion, it could likewise return a portion of its excess deferred income taxes to the NCCAA, which could replicate the Helping Home Fund in Dominion's North Carolina territory with the assistance of community action agencies that operate in the Northeast corner of the state. The gas and water utilities could direct a portion of EDIT to their existing efficiency programs for low-income customers, or propose alternative methods for making direct investments in low-income efficiency programs.

There are several sound policy reasons for using some of the already over-collected tax revenues for targeted investments in low-income energy efficiency rather than rebates or a decrement rider.

As noted in the Low-Income Advocates' initial comments, each dollar invested in energy efficiency yields up to $4 in benefits for customers.[2] Investments in energy efficiency reduce customer bills, lower energy costs during periods of high demand, avoid or defer the need to build or upgrade power plants and transmission infrastructure, and reduce air and water pollution.[3] Energy efficiency is the least-cost energy resource—the energy savings achieved through energy efficiency programs are approximately one-

[2] ACEEE, Press Release, New Report Finds Energy Efficiency is America's Cheapest Energy Resource (Mar. 25, 2014), http://aceee.org/press/2014/03/new-report-finds-energy-efficiency-a. "Each dollar invested in electric energy efficiency measures yields $1.24 to $4.00 in total benefits for all customers, which include avoided energy and capacity costs, lower energy costs during peak demand periods like heat waves, avoided costs from building new power lines, and reduced pollution."

[3] ACEEE, Press Release, New Report Finds Energy Efficiency is America's Cheapest Energy Resource (Mar. 25, 2014), http://aceee.org/press/2014/03/new-report-finds-energy-efficiency-a.

half to one-third the cost of generating the same amount of electricity from traditional sources such as fossil fuels.[4]

Low-income households are more likely than the average household to have older and less efficient appliances.[5] Low-income households, minority households, renting households, and low-income households residing in multifamily buildings experience higher than average energy burdens, meaning that they pay a higher percentage of their income on energy bills.[6] The Southeast faces some of the highest energy burdens in the nation.[7] Households with high energy burdens must face difficult trade-offs between paying utility bills and paying for other necessities such as food, prescriptions, transportation, and medical care. Utility investments in energy efficiency help to alleviate high energy burdens faced by low-income households while bringing system-wide benefits that are shared by all customers.

Conclusion

The Low-Income Advocates respectfully urge the Commission to use the reduced income tax portion of the public utilities cost of service to lower customer bills as soon as possible. This should take the form of lower fixed, monthly charges for residential customers. For a portion of the excess, accumulated deferred income taxes, the utilities

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[4] ACEEE, Energy Efficiency as a Resource (last visited Dec. 28, 2017), http://aceee.org/topics/energy-efficiency-resource. *See also* ACEEE, Press Release, New Report Finds Energy Efficiency is America's Cheapest Energy Resource (Mar. 25, 2014), http://aceee.org/press/2014/03/new-report-finds-energy-efficiency-a.

[5] Energy Efficiency for All, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency can Improve Low Income and Underserved Communities at 12 (Apr. 2016), http://energyefficiencyforall.org/sites/default/files/Lifting%20the%20High%20Energy%20Burden_0.pdf.

[6] Energy Efficiency for All, Lifting the High Energy Burden in America's Largest Cities: How Energy Efficiency can Improve Low Income and Underserved Communities at 3-4 (Apr. 2016), http://energyefficiencyforall.org/sites/default/files/Lifting%20the%20High%20Energy%20Burden_0.pdf

[7] ACEEE, Fact Sheet, How energy efficiency can help low-income households in South Carolina (2017), https://aceee.org/sites/default/files/pdf/fact-sheet/ses-northcarolina-100917.pdf.

should make investments in efficiency measures that directly benefit low-income customers, such as the Helping Home Fund.

Respectfully submitted this 20th day of February, 2018.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Comments of the North Carolina Justice Center and North Carolina Housing Coalition as filed today in Docket No. M-100, Sub 148 has been served on all parties of record by electronic mail or by deposit in the U.S. Mail, first-class, postage prepaid.

This 20th day of February, 2018.

s/ Robin G. Dunn