

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission        )       Case 17-M-0815  
on Changes in Law that May Affect Rates.        )

**AARP Comments on DPS Staff Proposal for Rate Relief  
Related to Changes in Federal Corporate Tax Law for Regulated Utilities**

On behalf of its 2.6 million members in the state of New York, AARP submits these comments, which are generally supportive of the Department of Public Service Staff (“Staff”) recommendations for ratemaking treatment to recognize the impact of the Tax Cut and Jobs Act of 2017 (“Tax Act” or “TCJA”). AARP makes some additional suggestions; however, it applauds the Staff’s thorough analysis laid out in its March 29 strawman proposal (“Staff Proposal”). Regardless of the rate relief mechanism favored by the Commission, AARP’s overarching plea is that corresponding utility rate reductions be ordered sooner rather than later. Residential utility households deserve to receive timely and complete rate relief.

When the Tax Act was signed into law on December 22, 2017, and it became immediately clear that, unless and until timely action is taken by regulators, the corresponding reduction in the federal corporate tax rate from 35% to 21% would result in a dramatic windfall for utilities. This windfall would come at the expense of consumers who are paying utility rates that have been calculated based upon a 35% corporate tax rate, a tax rate that is significantly higher than utilities are now required to pay to the Internal Revenue Service (“IRS”). DPS Staff estimates that the statewide reduction in

federal income tax for regulated New York utilities is over \$750 million (three-fourths of a billion dollars) on an annual basis, accounting for approximately 3.2% of all utility revenues.<sup>1</sup> AARP believes that this enormous windfall should be corrected by the Commission in the most expeditious manner, adjusting utility rates so that consumers are granted the full benefit of the reduction on corporate tax for regulated utilities, retroactive back to the Tax Act's general effective date of January 1, 2018.

Foremost, AARP urges the Commission to take *swift action* to align utility rates with the new lower tax rates. No matter how the rate reductions are implemented by the Commission, consumers deserve a timely reduction to capture the estimated impact of the new lower corporate tax rate, netted against a recognition of other changes resulting from the Tax Act.<sup>2</sup> Ratepayers should not have to wait any longer than 30 days to see the necessary reductions appear on their monthly bills. Disagreements about the exact size of the net rate impact of the Tax Act are not large enough to merit any further delay. Utility rates should be quickly reduced to reflect the *undisputed* estimate of necessary reductions. Utility rates can be trued up later through a subsequent adjustment, when the actual net impact determination is refined after the end of calendar year 2018. The Commission should resist any attempt by utilities to interject unrelated issues that would delay the undisputed amount of rate relief that is due to the public because of the Tax Act.

New York State is trailing many states in effectuating utility rate reductions to consumers to recognize the new lower corporate taxes. Over 100 of the largest utilities

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<sup>1</sup> "Staff Proposal to Address Accounting and Ratemaking of the TCJA of 2017", March 29, 2018, p. 5.

<sup>2</sup> As Staff explains, other relevant tax changes include Excess Accumulated Deferred Income Tax (ADIT) and the elimination of Bonus Tax Depreciation.

across the country have already voluntarily reduced their rates or were ordered to do so by public utility commissions.<sup>3</sup> Many additional regulatory proceedings are on the verge of ordering rate relief to recognize the effects of the TCJA. It is time for the New York Commission to take decisive action, guided by the Staff's recommendation for sur-credits directly to consumers.

AARP believes the Commission should be applauded for promptly notifying utilities of the need to prepare for rate changes. When the Commission initiated this proceeding on December 29, 2018, it stated that its intent was to protect ratepayers' interests, with the goal of "ensuring that any federal income taxes currently built into rates and accumulated deferred income taxes, which would result in excess collection, are *captured for ratepayer benefit*."<sup>4</sup> Thus, even before the TCJA's general effective date of January 1, 2018, the Commission promptly ordered regulated electric, natural gas, and water utilities to begin identifying and isolating the impact of the Tax Act with rate adjustments in mind and putting them on notice that ratepayers should not be paying for taxes that utilities no longer have to pay to the IRS. AARP believes that consumers deserve every dollar of the benefit of the TCJA corporate tax reductions. No matter the ultimate amount of rate relief ordered for each utility, it should be calculated retroactively to January 1, 2018 to ensure that ratepayers see the full benefit of the tax changes. Again, New York utilities were properly put on notice by the Commission before that effective date.

The Staff recommends that New York utilities "be required to defer the revenue requirement impact of the change in the corporate tax rate on current and originating

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<sup>3</sup> Washington Examiner, "\$3 billion payoff: 101 utilities cut rates, Credit GOP tax cuts", June 7, 2018.

<sup>4</sup> Commission Order Instituting Proceeding, p. 1. [Emphasis added].

deferred income tax expenses until such time as the new tax rate is reflected in rates”.<sup>5</sup> AARP agrees that deferral accounting is the proper way to ensure that the full benefit is captured for ratepayers. Deferral accounting has been ordered by the Commission numerous times in the past to capture material expenses that were later granted extraordinary treatment of one-time events to the benefit of utilities. It is only fair in this situation that deferral accounting be employed for the benefit of ratepayers, provided that the deferral does not delay the actual reduction of utility bills.

No tax law as material as the TCJA has occurred since 1986, and such changes in US tax policy are unlikely to happen again for another generation, and thus it clearly qualifies as an “extraordinary event” for the purposes of deferral accounting. The Tax Reform Act of 1986 reduced the corporate tax rate from 46% to 34%. In 1987, the Commission properly adopted deferral accounting to capture the interim tax saving for ratepayers from the first day that that tax law went into effect.<sup>6</sup> In that regard, the Commission follow its past practice.

Comparisons to the Tax Reform Act of 1986 are helpful to the current situation; however, the Commission should be mindful of the fact that the 1986 law specifically allowed utilities to spread out (normalized) the benefit to consumers over many years. The TCJA of 2017 contains no such provisions. Nothing in this new federal tax law supports the idea that regulated utilities were intended to receive a windfall as a result of the TCJA or that the corresponding rate benefit to consumers should be phased in slowly.

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<sup>5</sup> Staff Proposal, p. 8.

<sup>6</sup> Case 29465, Statement issued on July 7, 1987.

In fact, statements from Congress and from the President support the idea that the economic benefit of the TCJA was intended to immediately flow to the general public.

The Staff Proposal discusses various IRS regulations that limit the way that excess tax reserves are to be treated as it relates to accelerated depreciation.<sup>7</sup> Utility rates should recognize actual tax liabilities; however, it is important to realize that the Commission has the legal authority over utility rates and is still the ultimate arbiter of utility rates, with the authority to determine the most reasonable method and timing of passing the economic benefit of the new tax law on to consumers.

Ordering expeditious rate reductions related to the TCJA is the right thing to do, despite any multi-year agreements or rate plans (“MYPs”) currently in effect. AARP supports the Staff recommendation to implement utility rate reductions through a “sur-credit” until each utility has a full rate case review to incorporate the impact of new tax law.<sup>8</sup> New York has already approved dozens of surcharges that primarily benefit the utility by shifting business risk of increasing expenses and investments onto consumers. What is good for the goose should also be good for the gander. AARP believes that the extraordinary nature of the Tax Act is so material (\$750 million annually) that it certainly deserves to be treated as a separate item, especially when it is necessary to protect the public. Many state public utility commissions have also been treating TCJA issues in a generic fashion and ordering rate reductions for all their regulated utilities through special isolated mechanisms. While it is important to conduct full rate case reviews on a regular basis, the impact of the TCJA is of a magnitude such that consumers should not have to

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<sup>7</sup> Staff Proposal, pp. 9-12.

<sup>8</sup> Staff Proposal, pp. 23, 25-27.

wait for the next MYP to see the benefits appear on their monthly utility bills as a result of this extraordinary event. And it should be remembered that regulated utilities generally have the ability to control the timing of rate cases.

The TCJA's dramatic one-time reduction in federal corporate tax expense should be a cautionary tale about the downside of adopting multi-year plans (MYPs). AARP has long opposed the use of MYPs for this very reason---the fact that MYPs creates arguments to prevent or delay consumers from enjoying the benefit of unexpected changes in the cost of providing service (even when it is a dramatic event, measurable and the result of government action). Thankfully, the New York Commission has the broad legal authority under the law to order immediate rate reductions to protect consumers in this matter, and thus ensure just and reasonable utility rates.<sup>9</sup> MYPs should not be considered a barrier to implementing a sur-credit for the benefit of the public, or a barrier to preventing a massive and unintended windfall to utilities. AARP agrees with the Staff that a sur-credit is the preferred method of passing back the significant benefit of the TCJA, because it would avoid excessive delay.<sup>10</sup>

AARP agrees with the Staff recommendation of calculating carrying costs for rate reductions based upon each utility's Commission-approved pre-tax rate of return.<sup>11</sup> This is the fairest carrying rate as it applied to each utility.

The Staff Proposal does not extensively address the rate design for any rate reductions due to the TCJA. AARP is concerned that residential consumers be treated

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<sup>9</sup> Public Service Law Sections 65(1), 79(1), and 89-b(1).

<sup>10</sup> Staff Proposal, p. 26.

<sup>11</sup> Staff Proposal, p. 31.

fairly, as compared to other rate classes, and thus sur-credits should be spread equally to the customer classes in an equal proportion. AARP is also concerned that low usage customers receive an equitable share of the benefit of rate reductions. AARP recommends that rate reductions be equally applied to all rate classes and to all rate components equally, including reductions to fixed customer charges. Nonetheless, rate design disputes should not be allowed to delay any further the rate reductions that consumers deserve. Again, if any rate design disputes arise, the undisputed amounts should be credited to consumers without delay.

AARP prefers that the estimated net tax benefits be flowed to consumers right away, with a more exact, refined true-up to occur after actual expenses are known after actual expenses have been audited for calendar year 2018. Some utilities that were in the middle of a rate case when the TCJA was adopted (i.e., Niagara Mohawk Power Corporation d/b/a National Grid) and which had a rough estimate of the new law's impact incorporated into a settlement.<sup>12</sup> The record was closed and no workpapers were provided to allow for contesting parties to examine. Such utilities should also have their tax expense examined at the end of the year for a possible true-up adjustment to ensure that their ratepayers are getting the full benefit of the TCJA.

In summation, AARP primary recommendations are that the Commission adopt these remedies:

1. Order regulated utilities to employ deferral accounting for all items on its books and records related to the TCJA, retroactive back to January 1, 2018, the

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<sup>12</sup> Case 17-E-0238, et al.

effective date for the new tax law. This is consistent with Staff Proposal recommendations.

2. Order regulated utilities in New York to file for a one-time rate reduction or “sur-credit”, estimating the net impact on annual revenue requirements, which would become effective in 30 days. AARP recommends implementing sur-credit mechanisms, as opposed to opening up Multi-Year Plans, which is consistent with the Staff Proposal.
3. Order true-up adjustments to utility rates soon after the complete audited calendar year 2018 financial impacts of the TCJA are known for each utility. These true-up adjustments should also be applied to utilities that have already made estimated reductions, to match up utility rates with actual tax impacts.

Respectfully submitted,

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