

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on December 29, 2017

COMMISSIONER PRESENT:

Gregg C. Sayre

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

ORDER INSTITUTING PROCEEDING

(Issued and Effective December 29, 2017)

INTRODUCTION

On December 22, 2017, the Tax Cuts and Jobs Act (Tax Act) was signed into law. The Tax Act makes significant changes to the federal tax structure, which will impact the tax liabilities of New York's utilities.

Most immediate is the reduction of the utilities' corporate federal income tax rate from 35% to 21%, which is not reflected in the companies' current rates. Utilities may also be impacted by other aspects of the legislation including the treatment of bonus depreciation and net operating losses, for example. To ensure that any federal income taxes currently built into rates and accumulated deferred income taxes which, under the Tax Act, would result in excess collection are deferred for future ratepayer benefit, this proceeding is instituted to solicit comments on the Tax Act's implications and places the utilities on notice of the Commission's intent to protect ratepayers' interest.

BACKGROUND

In 1986, the Tax Reform Act of 1986 (TRA-86) was signed into law, which significantly altered the taxation of public utilities beginning in 1987. Aspects of TRA-86 that specifically affected public utilities included reducing the corporate tax rate from 46% to 34%, repealing investment tax credits, and reducing deductions for accelerated depreciation.

In response, the Commission instructed Department of Public Service Staff (Staff) to develop a proposed implementation plan for TRA-86 (Plan). The Plan's intent was to preserve the net savings of the TRA-86 for ratepayers' benefit by requiring the utilities to defer the net effect of the tax law changes until the Commission determined the disposition of the funds. After considering comments solicited in response to the Plan, the Commission adopted¹ the deferral approach, finding that it would preserve any windfall for ratepayers without disrupting the utilities' rate plans or cash flows.

DISCUSSION AND CONCLUSION

The effect of the Tax Act's changes to utilities' taxation is likely to be as material and complex as that of TRA-86. For this reason, this proceeding is commenced to begin the process of addressing the impact on the State's utilities and ratepayers. The first steps of the process will be soliciting information from the utilities to quantify the impact of the Tax Act, the scheduling of a technical conference with the utilities, and an issuance of a Staff proposal for treatment of the tax changes, the goal of which will again be the preservation of any net tax benefits for ratepayers.

¹ Case 29465, Tax Reform Act of 1986, Statement of Policy on Accounting and Ratemaking Procedures to Implement Requirements of the Tax Reform Act of 1986 (issued July 7, 1987).

The technical conference is expected to be held within 30 days of the enactment of the Tax Act with scheduling of such conference to be noticed by the Secretary. Further, Staff is instructed to file a recommendation within 90 days for the accounting and ratemaking treatment of the Tax Act's changes.

Once filed, the utilities and other interested parties will be invited to comment on Staff's recommendation. In the interest of efficiency, the utilities are encouraged to collaborate on issues common to them, and separately address any concerns unique to their individual situation.

While it would be premature to make a final determination on the proper approach to achieving this goal, the Commission finds the experience with TRA-86 to be instructive and a useful guide for constructively addressing the ramifications of the Tax Act. The State's utilities are therefore put on notice that it is the Commission's intent to ensure that net benefits accruing from the Tax Act are preserved for ratepayers, either through deferral accounting or another method, from the first day the Tax Act is put into effect. Utilities acting contrary to this intent do so at their own risk.

It is ordered:

1. A proceeding is initiated to study the potential effects of the enactment of the Tax Cuts and Jobs Act on the tax expenses and liabilities of New York State utilities, and the regulatory treatment of any windfalls resulting from same in order to preserve the benefits for ratepayers.

2. Department of Public Service Staff shall, within 90 days of issuance of this Order, file their recommendations for the treatment of the Tax Cuts and Jobs Act's effects.

3. Upon the filing of Department of Public Service Staff's recommendations, interested parties shall have 90 days to comment.

4. The Secretary is directed to issue a notice of technical conference to utilities soliciting the filing of information to quantify the impact of the Tax Cuts and Jobs Act, and to ensure the preservation of resulting benefits; such technical conference to be scheduled within 30 days of the enactment of the Tax Cuts and Jobs Act.

5. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. This proceeding is continued.

(SIGNED)

Commissioner