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	)	

Comments of the Public Utility Law Project of New York

June 26, 2018

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Table of Contents

Introduction 3

The Imperative of Just and Reasonable Rates 5

A Sur-Credit Mechanism Refunding Current Year Tax Savings to Residential Ratepayers of Utilities not in Rate Cases in 2018 would Likely Return $235 Million Annually, or $76 per Ratepayer 9

A Sur-Credit Could also Return $4.8 billion in Excess Utility Deferred Tax Balances (perhaps $450 per Residential Customer) That Will Not Be Needed to Pay Future Taxes under the 2017 Tax Act 10

High Utility Rates amid Persistent Utility Affordability Argue Strongly for a Sur-Credit that Returns Residential Ratepayers their Share of Savings from the 2017 Tax Act 12

Conclusion and Summary of Recommendations 16

Introduction

The Public Utility Law Project of New York, Inc. (PULP) appreciates this opportunity to comment on the March 29, 2018, *Staff Proposal to Address the Accounting and Ratemaking of the Tax Cuts and Jobs Act of 2017* ("Staff Proposal"), in response to the New York State Public Service Commission's ("PSC", "Commission") June 11, 2018, *Notice Soliciting Comments on Staff Proposal* ("June 11 Notice") in Case 17-M-0815.[1,2]

The Tax Cuts and Jobs Act of 2017 ("Tax Act") is a sweeping and complex change in federal taxation on corporations, including public utilities. Under the 2017 Tax Act, the federal income tax ("FIT") rate for corporations has been reduced to a new flat rate of 21% effective January 1, 2018. Since federal income taxes are a major component of utility revenue requirements, their reduction will reduce, and has reduced,[3,4] revenue requirements significantly.

The 2017 Tax Act also has the effect of reducing property and non-property related Accumulated Deferred Federal Income Taxes ("ADFIT"), which must be revalued at the new FIT rate. IRS normalization requirements apply to the portion of the property related ADFIT that relates to the use of bonus depreciation and other types of accelerated tax depreciation. Excess ADFIT related to such property must be "protected" under normalization rules.

Numerous other provisions of the 2017 Tax Act also impact the federal taxation of utilities, including the elimination of bonus depreciation, changes in the taxability treatment of contributions to capital/contributions in aid to construction ("CIAC"), modifications of net operating loss ("NOL") deduction rules, repeal of the corporate alternative minimum tax ("AMT"), and new capitalization rules for research and development expenses.

On December 27, 2017, the Commission initiated proceeding 17-M-0815 ("Tax Act Proceeding") to solicit comments on the Tax Act's implications. The Commission also placed the utilities on notice of its intent to protect ratepayers' interests by ensuring that any federal income

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[1] See: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F7573990-2A9B-4DC1-8C2C-56D354E82A3E}

[2] See: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B8F5BE77-EC41-4863-9FFB-9277D5EEAC4D}

[3] See, *Order Adopting Terms Of Joint Proposal and Establishing Electric and Gas Rate Plans*, Cases 17-E-0238, 17-G-0239; available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={5CD14472-802C-4E01-9165-1A15C6B6E279} at 33.

[4] See, *Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan*, Cases 17-E-0459, 17-G-0460; available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={13CED81C-066E-48ED-A795-9D7300C4587F} at 26.

taxes currently built into rates and ADFIT which, under the Tax Act, would result in excess collection, are deferred for future ratepayer benefit.[5]

Shortly thereafter, on January 8, 2018, Governor Andrew M. Cuomo's office issued a press release stating that the Commission was:

> *"…taking steps to ensure that any financial windfall that might be received by New York's utilities as a result of the federal government's decision to cut corporate federal income taxes is* returned *to the more than 10 million utility customers in New York who indirectly pay the taxes."*[6]

The Governor specifically laid out New York State's policy to be that:

> *"While the federal government slashes corporate income taxes at the expense of middle- and working-class men and women, the PSC will ensure that any resulting financial gains earned by our utilities go to benefit consumers and not company owners, We will do everything in our power to keep this windfall from lining the pockets of the top 1 percent, and deliver savings* directly *to hardworking New Yorkers."*[7]

PULP wholeheartedly agrees with the Governor's advocacy on behalf of New York State utility ratepayers; in particular, the more than 2.3 million low and fixed income residential customers statewide and welcomes this opportunity to comment on Staff's Proposal in the context of the Governor's intentions. As such, PULP strongly endorses Staff's recommended option for providing the Tax Act's net benefits to customers through the implementation of a sur-credit on customer bills, subject to the clarifications we recommend in the body of our comments.[8]

In addition to expressing PULP's strong support for Staff's overall approach to providing the Tax Act's net benefits to customers, these comments also address certain specific implications of the 2017 Tax Act that PULP respectfully recommends be considered in any final order and/or statement of policy resulting from this proceeding.

Finally, it should be noted that PULP uses hypothetical examples in these comments to illustrate certain impacts on New York State's residential ratepayers of key changes in the federal

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[5] See, June 11 Notice at 1.
[6] See: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FF1DB640-C4B1-4DA6-92FD-3D3E3317A24F} at 1.
[7] See: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FF1DB640-C4B1-4DA6-92FD-3D3E3317A24F} at 1.
[8] Staff Proposal at 22.

taxation of utilities under the 2017 Tax Act. The hypotheticals presented are based in part on assumptions made by PULP about data and information to which PULP did not have access in preparing these comments and does not believe have been made publicly available in either this or other Commission proceedings. In such situations, we have made an effort to cite gaps in our access to the relevant data and information.

The Imperative of Just and Reasonable Rates

> "Every gas corporation, every electric corporation and every municipality shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."
>
> *New York State Public Service Law (PSL) §§65(1)*

> "Every water-works corporation shall furnish and provide such service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable."
>
> *New York State Public Service Law (PSL) §§89-b(1)*

> "Every telegraph corporation and every telephone corporation shall furnish and provide with respect to its business such instrumentalities and facilities as shall be adequate and in all respects just and reasonable."
>
> *New York State Public Service Law (PSL) §§91(1)*

The 2017 Tax Act is the most significant change in the federal taxation of corporations since the Tax Reform Act of 1986 ("TRA-86"). TRA-86 also reduced the maximum corporate federal income tax rate, affected the carrying value of ADFIT, and reduced deductions for accelerated depreciation, amongst other provisions. In its comments in the proceeding initiated to address any impacts upon rates caused by the 1986 tax changes, Staff recommended that the Commission implement TRA-86 by adopting the following guidelines:

"

1. Preserve the net savings of TRA-86 for ratepayers;

2. Use deferral accounting[9] as the mechanism for preserving the benefits on an interim basis pending disposition of current and deferred savings in general rate proceedings, including second and third stage proceedings, and;
3. Use the tax benefits as an offset to costs approved for rate recovery and incurred subsequent to a utility's last rate case or apply tax benefits against general cost increases if the utility can demonstrate such action will delay a rate filing, depending upon each utility's circumstances.

"

Statement of Policy on Accounting and Ratemaking Procedures to Implement Requirements of the Tax Reform Act Of 1986 in Case 29465 ("TRA-86 Order") at 2.[10]

In its recommendations for the implementation of the 2017 Tax Act, Staff again calls for the preservation of net savings (benefits) for ratepayers and the use of deferral accounting to preserve benefits on an interim basis, pending their disposition in rate cases. However, Staff's 2017 Tax Act proposal replaces the TRA-86 recommendation that tax benefits be used to offset costs approved for rate recovery since prior rate cases or against general cost increases with a recommendation that the 2017 Tax Act benefits be:

> "…fully passed on to customers through a general rate case and/or sur-credit filing addressing the disposition of all impacts of the Tax Act."
>
> *Staff Proposal at 6*

Staff's 2017 Tax Act recommendation is wholly consistent with the Governor's intention to *return* the Act's savings *directly* to the ratepayers who pay the utilities' federal taxes through pre-determined rates. It is also a welcome departure from the TRA-86 proposal to use tax benefits to offset approved utility costs or general cost increases. The approach taken in TRA-86 was not just and reasonable because the benefits used as offsets were the ratepayers' money; not that of the utilities. Furthermore, unless subjected to consideration in rate cases and/or other Commission

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[9] In accounting this means to defer or to delay recognizing certain revenues or expenses on the income statement until a later, more appropriate time. Revenues are deferred to a balance sheet liability account until they are earned in a later period. When the revenues are earned they will be moved from the balance sheet account to revenues on the income statement. Expenses are deferred to a balance sheet asset account until the expenses are used up, expired, or matched with revenues. At that time they will be moved to an expense on the income statement.

[10] The TRA-86 Order is included with these comments as Appendix 1.

proceedings that actively seek public input, such offsets by their very nature are opaque and lacking in accountability.

Consider, for example, a scenario in which the Commission approved the use of the 2017 Tax Act's benefits to offset the cost of a utility's approved deployment of advanced electric meter infrastructure (AMI) at a cost of $1 billion over five years. If current-year tax savings or unprotected excess accumulated deferred federal income taxes ("ADFIT") resulting from the 2017 Tax Act were used to offset the cost of the utility's AMI deployment, ratepayers who paid the utility's federal income taxes at pre-determined but now inflated rates would not receive a refund of some of the federal income taxes that no longer exist. Is that just? No, the excess taxes built into rates and the excess ADFIT represent costs that no longer exist; they are the ratepayers' money.

Some might argue that it is a reasonable use of ratepayer money to pay for such costs in such situations. After all, they might argue, why implement a sur-credit only to have to implement a surcharge later to pay for smart meters?

There may in fact be good reasons for a respective sur-credit and surcharge. One is the mismatch between the useful life of smart meters (20 years) and the timing of utility rate cases (usually 3-4 years). Using "one-shot" savings such those generated by the 2017 Tax Act to pay for assets projected to last 20 years raises questions about the fair and equal treatment of all ratepayers. Will current ratepayers receive 20 years of benefit from smart meters paid for disproportionately with their savings under the 2017 Tax Act? What if some of these ratepayers move or die before ever receiving a smart meter? What if the utility offers combined electric and gas service, but some ratepayers receive only gas service from the utility and will never receive an electric smart meter? To put it another way, the smart meters may never be "used and useful" for such ratepayers, or at least for any length of time that matches the useful life of the meters. Is it fair to them that their savings under the 2017 Tax Act should be used in this manner?

The answer is that the public interest would not be furthered by using this proceeding to authorize such offset mechanisms and any utility proposal in this proceeding to do so should be rejected by the Commission. Rather, these questions should be considered in publicly transparent rate cases addressing *all* the rates, charges, rules and regulations of utilities, since it is through the rate case process that the Commission determines whether or not investments (or non-investments)

are prudent, and whether a specific approach to establishing rates by a utility, and the actual resulting rates, are just or reasonable.

In this regard, Staff considered as an option the reopening of rate cases for utilities that have not filed rate cases for consideration in 2018 but determined that a sur-credit will minimize disruptions in existing rate plans and provide customers with the significant tax savings generated by the changes contained in the Tax Act as soon as possible. (Staff Proposal at 22-23)

PULP agrees with Staff's proposal. For New York's utilities, a sur-credit mechanism is the fairest and most effective way to return the net benefits of the 2017 Tax Act to ratepayers. PULP is willing to discuss that exceptions recognizing the special financial circumstances of smaller gas, telecommunications and water companies may be necessary in order to preserve those companies' financial viability. Accordingly, PULP concurs with Staff's recommendation that:

> "In order to both incorporate the ongoing net tax benefits into utilities' rates, and to begin to return the deferred regulatory liabilities, in a timely manner, Staff recommends utilities that have not had an opportunity to incorporate the Tax Act changes in a recently approved rate plan, be required to file for a tariff rate change, specifically for the implementation of a sur-credit, to be effective October 1, 2018. This sur-credit would reflect both the immediate and ongoing effects of the Tax Act changes (e.g. impact on current federal tax expense of the change in corporate tax rate from 35% to 21%, elimination of bonus depreciation), as well as a proposed plan for pass back or amortization of all deferred benefits, including the pass back of the identified excess accumulated deferred income tax balances."
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> *Staff Proposal at 25-26*

However, PULP believes it is critical for the Commission to clarify in any Order and/or policy guidance resulting from this proceeding that, although the effective date of the sur-credit implementation is to be *October* 1, 2018, the amount of the sur-credit to be issued to customers on October 1 will include all net benefits resulting from the Tax Act since *January* 1, 2018. Thereafter, the monthly sur-credit issued to customers should represent the net benefit for that month. PULP therefore respectfully requests the Commission to Order such a use of the sur-credit.

There is ample precedent for the use surcharge/sur-credit mechanisms in New York State utility ratemaking. A few examples of such mechanisms include those for recovery of site

investigation and remediation (SIR) expenses, pension and other post-employment benefit (OPEB) expenses, and revenue de-coupling mechanisms (RDMs).

It is also worth pointing out two recent rate case examples in which the benefits of the 2017 Tax Act's federal rate reductions were substantially used to drastically reduce distribution *rate* increases: the recent, fully transparent Niagara Mohawk and Central Hudson cases in which residential delivery bill impacts were minimal.[11] In each rate case, the benefits of the 2017 Tax Act were generally not used to offset regulatory asset balances for AMI deployment, SIR or pension/OPEB costs, or any other deferral and, most importantly, were proposed and analyzed by a wide array of parties in a transparent manner in the context of all of the utility's filed rate case issues.

However, regardless of the type of mechanism the Commission ultimately decides to use to return the net benefit of the 2017 Tax Act to residential customers, the process for determining that mechanism should be transparent and should presumptively include a series of public statement hearings in each of the fourteen (14) economic opportunity zones of New York State, ensuring a meaningful opportunity for public input in this proceeding.[12]

A Sur-Credit Mechanism Refunding Current Year Tax Savings to Residential Ratepayers of Utilities not in Rate Cases in 2018 would Likely Return $235 Million Annually, or $76 per Ratepayer

Staff estimates that current utility rate allowances for federal income tax exceed anticipated tax liability under the 2017 Act by $750 Million Annually. (Staff Proposal at 5) Of this amount, PULP estimates approximately $235 million is attributable to eight large electric, gas and water utilities accounting for 73% of statewide residential utility revenues[13] whose rates became effective well before 2017 and that are not involved in rate proceedings in 2018. These utilities (and their last rate cases) include Con Edison (16-E-0060, 16-G-0061); National Fuel Gas (16-G-

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[11] The Orange and Rockland Utilities' rate case is also an example of a utility adopting such an approach to reducing its revenue requirement due to the rate change(s) created by the 2017 Tax Act.
[12] See: New York State Develop Program – Economic Opportunity Zone Program, available at https://esd.ny.gov/opportunity-zones
[13] $6,845,951,025 (Appendix 2 at 1) / $9,355,240,702 (Appendix 3 at 1) = 73%

0257); National Grid – KEDLI (16-G-0058); National Grid – KEDNY (16-G-0059); New York American Water (16-W-0259); New York State Electric & Gas (15-E-0283, 15-G-0284); Rochester Gas & Electric (15-E-0285, 15-G-0286) and Suez Water New York (16-W-0130). The excess rate allowance for federal taxation is attributable to both residential and non-residential (i.e. commercial and industrial) customers – calculations that to PULP's knowledge are not publicly available in rate case filings or elsewhere. However, as Appendix 2 reflects, residential revenue made up 43% percent of the operating revenue of these eight utilities in 2017. If 43% percent of the excess federal income tax calculated by Staff for these utilities is attributable to residential revenue, then it can be estimated that the excess rate allowance being paid by residential customers of these utilities is $235 million, or $76 per customer, annually. (Appendix 2 at 1)

A Sur-Credit Could also Return $4.8 billion in Excess Utility Deferred Tax Balances (perhaps $450 per Residential Customer) That Will Not Be Needed to Pay Future Taxes under the 2017 Tax Act

Staff estimates that New York State utilities have, in aggregate, excess deferred tax balances totaling approximately $4.8 billion that were provided by ratepayers at the previous tax rate, and will not be needed to pay future taxes at the 21 percent tax rate.[14] To PULP's knowledge, information attributing excess utility deferred tax balances between residential and non-residential ratepayers is not publicly available in rate case filings or elsewhere, however, using a 46% residential revenue percentage proxy (all major utilities – see Appendix 3), PULP estimates that perhaps $450 of excess deferred tax balances could be available for return per residential customer. (Appendix 3 at 1) The *timing* of any sur-credit used to return excess deferred tax balances would depend on the extent to which those balances relate to "protected assets", which are subject to IRS normalization rules.

The timing of any return of excess utility deferred tax balances to ratepayers would also, as Staff has appropriately considered, depend upon the extent to which:

> "…immediate refunds of a material amount could potentially significantly impact the company's cash flow, and in turn, credit metrics. The negative impact of a credit

[14] Staff Proposal at 5

downgrade could in turn lead to a higher cost of capital, thereby increasing rates for an extended period of time."

(*Staff Proposal at 25*)

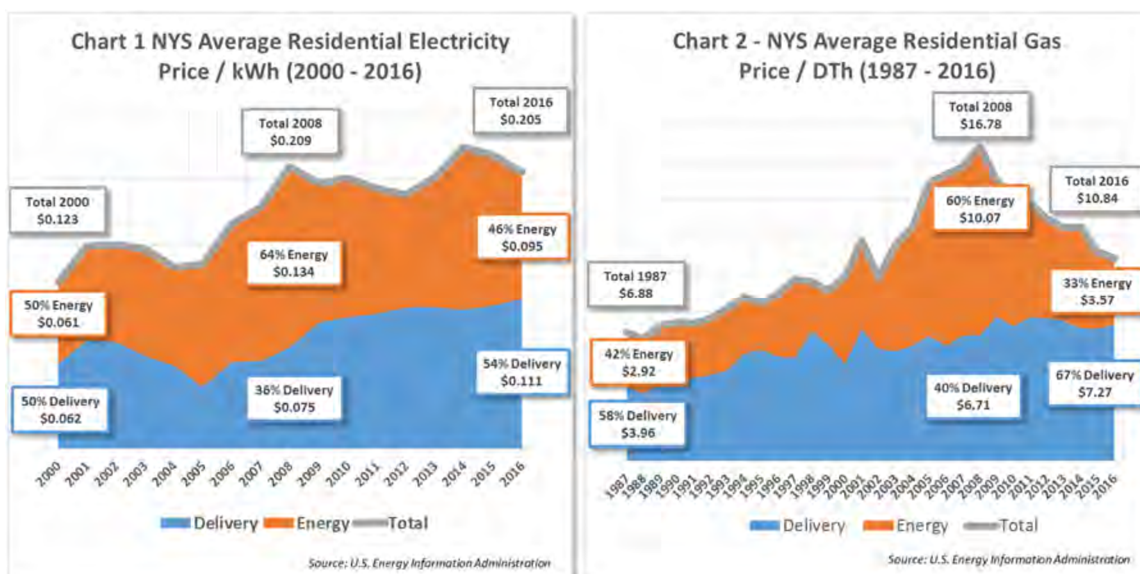
Staff's emphasis of this problem is buttressed by the fact that the cash flow ramifications resulting from some of the Tax Act's provisions are largely viewed negatively by the major ratings agencies (S&P Global, Moody's Investors Service and Fitch Ratings), with Moody's downgrading Con Edison, Orange and Rockland, Brooklyn Union Gas Company and KeySpan Gas East Corporation on January 19, 2018. (Staff Proposal at 33-34) Staff recommends, therefore, that utilities exposed to significant negative cash flow ramifications propose a ratemaking treatment that departs from the immediate return of excess tax allowances and deferred tax balances. (Staff Proposal at 35) PULP offers qualified support for Staff's recommendation as it applies to the return of excess deferred taxes related to unprotected regulatory liabilities. PULP maintains that the full amount of these excess deferred taxes which relate to residential ratepayers should be returned over a reasonable period of time. (PULP clarifies here again, that it does not support any alternative ratemaking treatment to the proposed sur-credit for the reduction in *current* federal income tax rates as of January 1, 2018).

To summarize, the amount and timing of any sur-credit used to return excess deferred tax balances to residential ratepayers would depend on the:

1. Extent to which those balances relate to "protected assets", which are subject to IRS normalization rules; versus unprotected, the disposition of which the Commission has much more discretion;
2. Commission's determination of the weighted-average amortization period for returning unprotected balances, and;
3. Share of those balances applicable to residential ratepayers.

Whatever the values for these variables turn out to be, it seems very likely that refunds of excess deferred tax balances to residential ratepayers for those utilities not involved in rate proceedings in 2018 would result in average annual *total* refunds (excess annual federal income tax plus excess deferred tax balances) *exceeding $76*, perhaps substantially so. (Appendix 2 at 1)

High Utility Rates amid Persistent Utility Affordability Argue Strongly for a Sur-Credit that Returns Residential Ratepayers their Share of Savings from the 2017 Tax Act



Based on data furnished by the U.S. Energy Information Agency (EIA) from 1990 through 2016, New York State was one of the three highest priced states for residential electricity on a total bill basis for twenty-five (25) consecutive years from 1990 through 2014. During that period, New York electricity prices were the highest in the nation six times, second highest twelve times, and third highest seven times. Average retail prices for residential electricity in New York have moderated only slightly since 2014, falling to sixth highest in the U.S.[15] (Chart 1)

Although New York State residential gas prices on a total bill basis since 1987 do not rank in the top ten percent of states on any consistent basis, it is still the case that New York's prices were higher than average residential gas prices nationally every year from 1987 through 2016 and in fact, were in the top third of states for twenty-seven (27) of those years.[16] (Chart 2)

However, with regard to this proceeding, it is not so much the average price on a total bill basis that is of concern; rather, it is the component of residential energy prices representing taxable distribution revenue that is most significant. Electric distribution charges for New York utilities

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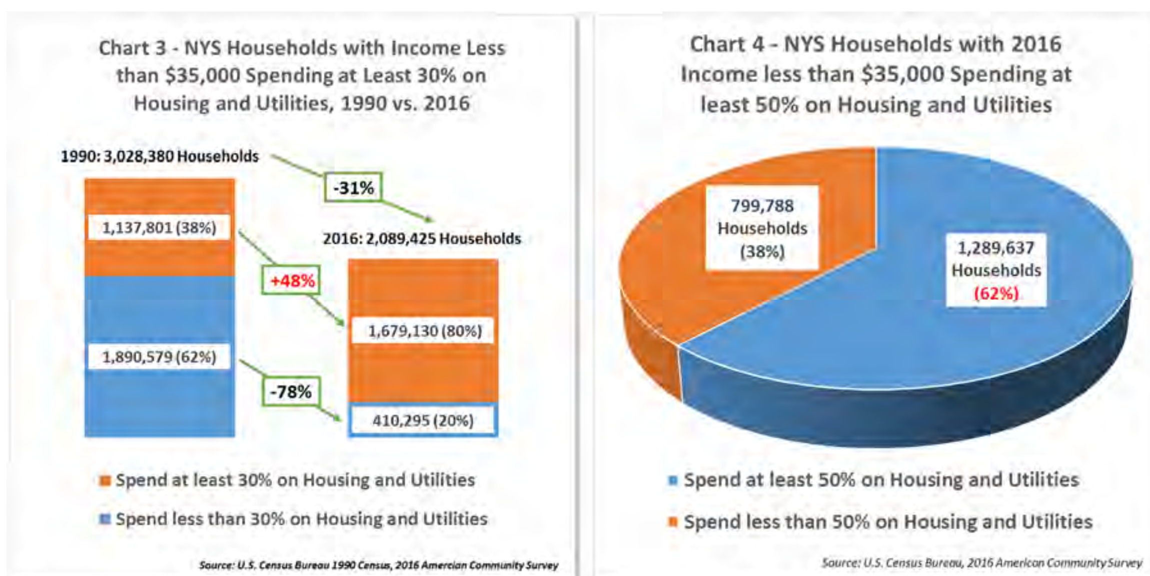
[15] See: Average retail price of electricity to ultimate customers by sector, by state, by provider (annual), 1990-2016, available at: https://www.eia.gov/electricity/data.php#sales.

[16] See: Average residential natural gas prices by state (annual), 1987 – 2016, available at: https://www.eia.gov/dnav/ng/ng_pri_sum_a_EPG0_PRS_DMcf_a.htm.

have increased steadily since 2005, while gas distribution charges have been marching higher ever since 1990. These increases have almost entirely offset the savings to ratepayers that could have been achieved by the sharp decline in natural gas prices since 2008. Instead, New York has earned the dubious distinction of having some of the highest utility distribution costs in the United States – so much so that distribution charges now make up more than half the total bill for most New York residential ratepayers.

It must be kept in mind that allowances for federal income taxes make up a significant share of distribution revenues. Now that federal tax rates have been reduced, PULP respectfully argues that it is incumbent upon the Commission to lower rate allowances for current federal taxes accordingly for the eight electric, gas and water utilities not active in rate cases in 2018, and to require that ADFIT be revalued for all utilities. The net benefits resulting from these adjustments and revaluations should be returned to ratepayers through a sur-credit, with any exceptions as previously noted.



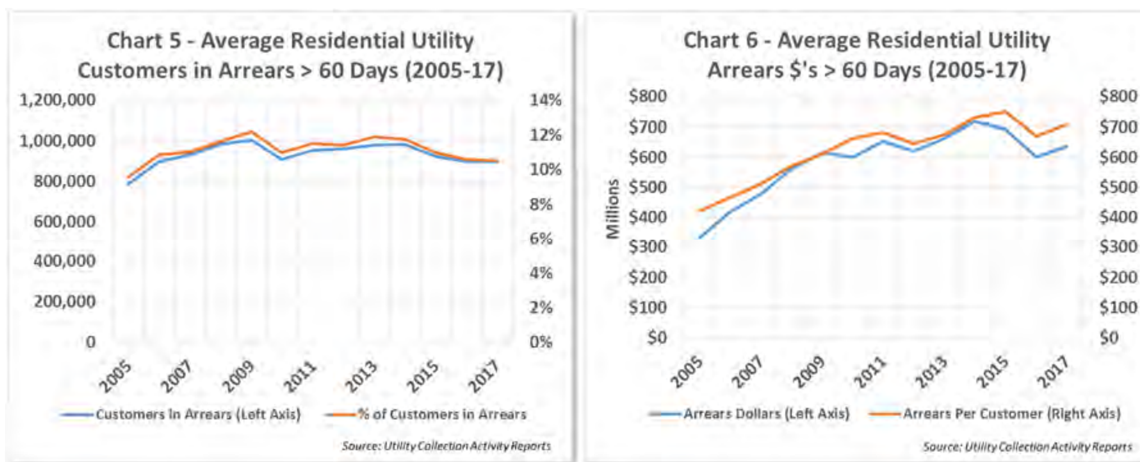
Escalating utility costs have occurred at the same time that overall housing cost burdens have soared. As shown in Chart 3, from 1990 – the first decennial year after TRA-86 – through 2016 the number of New York State households with incomes less than $35,000 dropped 31%, from 3,028,380 to 2,089,425 households. Factors contributed to this decrease in "lower"[17] income

[17] The data used is not adjusted for inflation and is thus not comparable in *real* terms; therefore, the threshold income for a "low income" household in 2016 would be significantly higher in terms of eligibility for public assistance such as HEAP, SNAP and Medicaid. The purpose of this comparison is to show the significant increase

households include but are not limited to general wage inflation, changes in income distribution, and the sources and amounts of non-wage income.

Yet, although almost one million fewer New York State households in 2016 had income less than $35,000 than was the case in 1990, 48% *more* of these households – a total of almost 1.7 million - spent at least thirty percent (30%) on housing and utilities in 2016 versus 1990.[18] The percent of households with incomes less than $35,000 spending at least 30% on housing and utilities more than doubled between 1990 and 2016, from 38% to 80%. Even more startling is the fact that 62% of New York households, almost 1.3 million, with incomes less than $35,000 *spent at least 50%* on housing and utilities in 2016 (Chart 4).

Unsurprisingly, the combination of high utility prices and increasing overall housing cost burdens has led to a pattern of persistent levels of residential customers in arrears greater than 60 days since 2005, ranging between 800,000 and 1,000,000 customers, or 10.5 – 12.5% of all residential customers. Equally troubling, the dollar amount of arrears and arrears per customer has steadily increased during this period. (Charts 5 - 6)



At least 800,000 residential utility customers in New York State (over 10%) have struggled *continuously* with paying their utility bills since 2005 (Chart 5). As noted, the rates that generate those bills are among the highest of any state in the country, largely due to ever-increasing

from 1990 to 2016 in the number of households with income less than $35,000 who spend at least 30% on housing and utilities.

[18] A key indicator of this deterioration in housing and utility affordability is the change in median household income versus median gross rent (which includes utilities). While household income rose 90% during the period, gross rent increased 138%. Incomes simply did not keep up with housing and utility costs from 1990 through 2016.

distribution costs - the part of residential bills representing income to the utility. As also noted, a significant share of distribution income is comprised of allowances for federal taxation, an allowance for which is built *prospectively* into its residential rates in each rate case. Hardworking, struggling New Yorkers have therefore been charged in advance for the utilities' federal income tax based on assumptions about tax rates established in rate cases, and have suffered from straitened means as a result. On this basis alone, it is difficult to argue against the simple proposition that a sur-credit returning excess ratepayer advances for taxes that the utilities will never need to pay is the only fair and equitable outcome of this proceeding.

Finally, the Commission itself has strongly demonstrated that addressing unaffordability is in the best interests of New York ratepayers, by having taken significant action to address utility unaffordability for low income residential customers in New York State – as plainly evidenced by the Commission's efforts to increase funding and standardize eligibility criteria and benefits for low income discount plans sponsored by electric and gas utilities.

On May 20, 2016, the Commission issued its *Order Adopting Low Income Program Modifications and Directing Utility Filings* in Case 14-M-0565 ("Low Income Order"). The Low-Income Order established a standard framework for the low-income programs to be offered by all New York State utilities. In particular, the Commission adopted a framework for statewide utility low income programs to set low income discounts to achieve a target energy burden (i.e., the percentage of a household's income that is spent on energy) of a maximum of 6% of monthly household income. To implement this policy, the Commission established a four-tiered discount structure and a formula to establish a discount level for each tier. The Commission directed utilities to submit implementation plans detailing how they would comply with the May 2016 Order.[19]

In adopting its goal of reducing household energy burden to a maximum of 6% of household income for all low income customers, the Commission indicated that approximately 2.3 million households in New York State face energy burdens in excess of that level.[20] According to the U.S. Census Bureau's 2012-2016 American Community Survey, there were approximately 7.3 million households in New York State in 2016, which means that approximately 32% of New York households faced an excessive energy burden that the Commission felt compelled to address.

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[19] Order Adopting Low Income Program Modifications and Directing Utility Filings, Case 14-M-0565 – available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={BC2F31C9-B563-4DD6-B1EA-81A830B77276}.

[20] Low Income Order at 14.

That the Commission felt it necessary to use ratepayer funding to alleviate New York's deepening crisis of utility unaffordability certainly argues for immediate sur-credits (refunds) of ratepayer funded current income taxes. What would be the point of asking ratepayers to fund low income discounts on rates that are not just and reasonable? It is certainly unreasonable for ratepayers to be subsidizing rate allowances that include a portion of federal income taxes that will never be paid. Consequently, as noted above, PULP respectfully requests the Commission to order sur-credits that return the ratepayers' previously paid monies to them as rapidly as is commensurate with not triggering significant declines in the financial positions of the companies and concomitant increases in rate requests.

Conclusion and Summary of Recommendations

PULP's comments in response to the Staff Proposal in this proceeding have echoed the basic principle and State policy of fairness and equity announced in the January 8, 2018 statement by the Governor's office. His simple statement was that the more than ten million utility customers in New York who have indirectly paid the federal taxes of public utilities through rates (and will continue to do so) deserve to have that portion of taxes that no longer exists as a result of the 2017 Tax Act returned to them. The impact of lower federal tax rates has already been considered in the context of the fully transparent proceedings of National Grid rate cases 17-E-0238 and 17-G-0239, and Central Hudson cases 17-E-0459 and 17-G-0460. As of this writing, the same process is underway in Orange & Rockland cases 18-E-0067 and 18-G-0068. However, for utilities that have not reflected the 2017 Tax Act changes in a recently approved rate plan, rates include allowances, and deferred tax balances include amounts for federal taxes that serve no purpose, have no cost causation, and cannot be allocated to customer classes. Those excess allowances and balances are the ratepayers' money – it should be returned to them.

PULP believes that important, if incremental, progress toward affordability - culminating in the first reduction in fixed customer (basic service) charges for both electric and gas service by any investor-owned utility in New York State in many years - was achieved for New York's low income residential customers in the National Grid and Central Hudson proceedings in large part

due to the savings made available by the 2017 Tax Act.[21] Staff has weighed the advantages and disadvantages of requiring other utilities that do not have filed rate cases for consideration during 2018 to make rate filings (temporary or otherwise) incorporating the tax reform changes, and determined that such an option would be in direct conflict of the Commission's goal to minimize reopening existing rate plans. As an alternative, Staff has proposed a sur-credit taking the form of an offset on customer bills, which would allow for a timely pass back of the significant immediate and ongoing benefits to customers of the 2017 Tax Act changes, as well as a proposed plan for pass back or amortization of all deferred benefits, including the identified excess ADFIT balances. Staff has also proposed appropriate procedures by which any utility can justify an alternative to the sur-credit mechanism that balances the interests of returning the Tax Act's benefits to ratepayers with the longer-term ratepayer interest in the stability of utility's cash flow and credit metrics; and individual treatment for small utilities whose financial condition justify outright exceptions to the implementation of a sur-credit.[22]

With the admittedly limited data and information available to calculate the benefits of the 2017 Tax Act provisions specific to residential customers, PULP has estimated that the residential customers of eight major electric, gas and water utilities that do not have filed rate cases for consideration during 2018 could realize annual refunds of at least $76 once the effects of the 2017 Tax Act changes are fully effective. PULP has demonstrated that residential ratepayers in New York have consistently paid some of the highest electric and gas rates in the United States and that distribution charges, from which utility revenue is derived, have marched ever-upward for decades. PULP has also demonstrated that high utility rates have exacerbated an unprecedented increase in housing cost burdens since 1990, resulting in the persistent arrears of at least 800,000 residential customers since 2005 whose dollar amount of arrears exceeds $700 million and whose average arrears per customer is now more than $700.

Federal income taxes make up a sizeable share of utility rate allowances and account for most of utility deferred tax balances. PULP argues that a sur-credit for all excess allowances and deferred balances as of January 1, 2018 for residential customers of all utilities not active in 2018

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[21] See: PSC Dramatically Lowers Central Hudson's Rate Request, Cases 17-E-0459, 17-G-0460 available at: http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={E913EAAA-1093-4B70-83C1-6B1C79FBAAC9} at 2.

[22] The telecommunications industry contains both small and large utilities, but as noted above has requested different treatment in this proceeding due to the lack of regular rate cases, and alternative rates enjoyed by some market participants.

rate cases (with the exceptions noted) is the only fair and equitable method for returning the benefits of the 2017 Tax Act to these customers. Any order or policy directive resulting from this proceeding that authorized the use of those benefits to simply offset other approved utility costs would neither be fair and equitable nor just and reasonable because such determinations did not occur within the context of a fully transparent and comprehensive rate case.

The following are specific recommendations PULP makes in response to Staff Proposal in this proceeding:

1. The Commission should clarify in any Order and/or policy guidance resulting from this proceeding that, although the effective date of the sur-credit implementation Staff proposes is October 1, 2018, the amount of the sur-credit to be issued to customers on October 1 will include all net benefits resulting from the Tax Act since January 1, 2018.
2. The Commission should not approve any proposal to use net benefits from the 2017 Tax Act to offset approved utility costs, but if such a proposal be approved, that it only be determined in the context of fully transparent rate case proceedings. PULP would also be willing to consider, on an individual basis, expenditures in limited areas addressing obvious public safety, health and welfare concerns; such as program to:
    a) Detect, fix and prevent stray electric voltage;
    b) Remediate and replace leak-prone gas pipes, and;
    c) Improve water systems and/or filtration to lower lead, saline, PFOS, and PFOA levels.
3. Regardless of the mechanism the Commission ultimately decides to use to return the net benefits of the 2017 Tax Act to ratepayers, the process for determining that mechanism should be transparent and should include a series of public statement hearings for this proceeding in each of the fourteen economic opportunity zones of New York State, thus ensuring a meaningful opportunity for public input as to the mechanism to be used to return the ratepayers' money.