

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held May 17, 2018

Commissioners Present:

Gladys M. Brown, Chairman, Statement  
Andrew G. Place, Vice Chairman, Statement Concurring in part and Dissenting in part  
Norman J. Kennard  
David W. Sweet, Concurring in part and  
Dissenting in part  
John F. Coleman, Jr.

Tax Cuts and Jobs Act of 2017

M-2018-2641242

**TEMPORARY RATES ORDER**

**BY THE COMMISSION:**

On December 22, 2017, Public Law No. 115-97 was signed into law by the President. The short title of this law is the Tax Cuts and Jobs Act (TCJA). Pursuant to the TCJA, effective January 1, 2018, various provisions of the Tax Reform Act of 1986 (the governing tax law in the United States prior to the effective date of the TCJA) have been repealed or amended. One of the many modifications to the Tax Reform Act of 1986 resulting from the passage of the TCJA is a reduction in the corporate Federal Income Tax rate. Specifically, the TCJA reduces the corporate Federal Income Tax rate from 35% to 21%.

By Secretarial Letter issued February 12, 2018, the Pennsylvania Public Utility Commission (Commission) initiated a proceeding at this docket to determine the effects of the TCJA on the tax liabilities of Commission-regulated public utilities for 2018 and future years and the feasibility of reflecting such impacts in the rates charged to

Pennsylvania utility ratepayers. In order to commence the process of determining any effects of the TCJA on the tax liabilities of Commission-regulated public utilities for 2018 and future years, the Commission's Secretarial Letter requested that certain Commission-regulated public utilities provide responses to specific data requests in order to compute, among other things, the net effect on income tax expense and rate base as a result of implementation of the TCJA. The Commission further requested that these utilities complete a template in order to assist the Commission in its determination of the effects on taxable income and customer rates related to the TCJA for Commission-regulated public utilities.

Additionally, the Commission requested that interested parties submit comments addressing: (1) whether the Commission should adjust current customer rates to reflect the reduced annual state and federal income tax expenses of public utilities due to the tax rate changes in the TCJA, and, if so, (2) the appropriate negative surcharge or other methodologies which would permit such immediate modifications to consumer rates, as well as whether the surcharge or other methodology should be retroactive to January 1, 2018.

Based on its initial assessment regarding the impact of the TCJA tax reductions on the justness and reasonableness of existing rates, as well as the need for additional time for review and analysis of the comments and responses to data requests, the Commission issued an order on March 15, 2018 establishing the current rates and riders of certain public utilities as temporary rates pursuant to Section 1310(d) of the Public Utility Code (Code). 66 Pa. C.S. § 1310(d). In particular, the Commission determined that:

... due to the substantial decrease in the federal corporate tax rate that became effective on January 1, 2018, it appears that existing rates may be excessive and, therefore, no longer just and reasonable.

Under these circumstances, it is reasonable and prudent for the Commission to establish the current rates and riders of the public utilities

listed in Attachment A-1 of this order as temporary rates pursuant to Section 1310(d) of the Public Utility Code. 66 Pa. C.S. § 1310(d). In this fashion, the Commission can maximize its authority to establish any negative surcharge, refund or other rate adjustment deemed to be necessary, just and reasonable to account for the tax rate reduction that became effective on January 1, 2018 pursuant to the TCJA.

*Tax Cuts and Jobs Act*, Docket No. M-2018-2641242 (Order entered March 15, 2018).

The Commission's order also noted that its decision to establish temporary rates pursuant to Section 1310 is the same as that taken by the Commission over 30 years ago in order to address the effect on tax expense, rate base and consumer rates due to the tax rate changes contained in the Tax Reform Act of 1986. *Re Tax Reform Act of 1986*, 1986 WL 215093 (December 19, 1986).

### **Summary of Comments**

In response to the February 12, 2018 Secretarial Letter, the Commission received comments and/or data responses from more than 20 entities. Among those submitting comments to the Commission were public utilities, elected officials, utility customer groups and governmental agencies. Each commenter advocated that the Commission require public utilities to do one or more of the following: (1) flow-through of tax savings to provide immediate relief to ratepayers via negative surcharge, bill credit, or other mechanism, (2) invest the tax savings for the current or future benefit of ratepayers, or (3) address the tax savings within the confines of a general rate proceeding pursuant to Section 1308(d) of the Code.

#### **(1) Flow-through Tax Savings via Negative Surcharge, Bill Credit or Other Mechanism**

The following commenters propose that any tax savings resulting from the TCJA be flowed through to utilities' ratepayers via a negative surcharge, bill credit or other mechanism: the Pennsylvania Office of Consumer Advocate (OCA), the Commission's

Bureau of Investigation and Enforcement (BIE), AARP Pennsylvania (AARP), the Pennsylvania Energy Consumer Alliance et al. (PECA)<sup>1</sup>, the Pennsylvania Office of Small Business Advocate (OSBA), the Industrial Energy Users of Pennsylvania (IECPA), U.S. House of Representatives Lloyd Smucker, Bill Shuster, Mike Kelly and Patrick Meehan, Pennsylvania State Representative Tom Caltagirone, and the Commission's Consumer Advisory Council (CAC). The comments are summarized in more detail below.

### **Office of Consumer Advocate**

In addition to proposing that the tax savings resulting from the TCJA be flowed through to utilities' ratepayers, the OCA proposes that the savings realized since January 1, 2018 also be returned to customers. OCA Comments at 2. According to the OCA, the surcharge and reconciliation mechanism set forth in Section 1307 of the Code can be used to return the TCJA savings to ratepayers. *Id.* The surcharge would remain in effect until the utility's next general base rate proceeding. OCA Comments at 2. Therefore, the OCA proposes that the Commission direct each utility to submit a reconciliation of its federal income tax expense at the end of 2018 or in its next base rate case, whichever is sooner. *Id.* at 13. A true-up would calculate the difference between the utility's tax expense prior to TCJA implementation and its actual tax expense after implementation of the TCJA. OCA Comments at 13. The negative surcharge would reflect the difference between the two. *Id.* Such reconciliation filings would continue each year until the company's next base rate proceeding. OCA Comments at 13.

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<sup>1</sup> Also including PP&L Industrial Customer Alliance, the Met-Ed Industrial Users Group, the Philadelphia Area Industrial Energy Users Group, the Penelec Industrial Customer Alliance, the West Penn Power Industrial Intervenors, the Philadelphia Industrial and Commercial Gas Users Group, and the Columbia Industrial Intervenors.

## **Bureau of Investigation and Enforcement**

In addition to proposing that the tax savings resulting from the TCJA be flowed through to utilities' ratepayers, BIE further asserts that these savings cannot be used for other purposes such as funding capital projects. BIE Comments at 4. Like the OCA, BIE also states that savings realized since January 1, 2018 should be returned to customers. BIE Comments at 4-5. BIE further states that tax savings from Federal Energy Regulatory Commission (FERC) rate reductions as a result of the TCJA should also be passed through to customers. *Id.* at 5. BIE's preferred methodology for recovery is a negative surcharge and BIE also proposes that utilities establish regulatory liabilities for excess deferred income taxes. BIE Comments at 7-8.

## **Office of Small Business Advocate**

The OSBA similarly proposes that the effects of the TCJA as of January 1, 2018 be reflected in utility rates immediately. OSBA Comments at 2. As for recovery of the TCJA savings, the OSBA proposes that each utility estimate the revenue requirement impact of the TCJA relative to the tax rules in place when the Company's most recent base rates took effect. Then, each utility should submit a filing as soon as possible to refund the difference to customers as an interim credit to rates (based on forecasted billing determinants). *Id.* at 3. Further, a one-time bill credit (reflecting the reduced revenue requirement from January 1, 2018 to the implementation date of the interim credit) should be separately returned to ratepayers. *Id.* After implementation of the credits, the OSBA proposes that the Commission convene a generic proceeding to establish a formal methodology to reflect TCJA savings. OSBA Comments at 4. Upon determination of a formal methodology, the difference between the final savings associated with the TCJA and the interim credit would be flowed to customers on an annual basis until a utility's next rate case. *Id.*

### **Pennsylvania Energy Consumer Alliance, et al.**

PECA is also in favor of an immediate rate reduction for each customer class of a utility that is retroactive to January 1, 2018. PECA Comments at 5-6. PECA also asserts that excess deferred income taxes should be returned to utility customers and, like BIE, proposes that for those electric distribution companies which charge formula transmission rates, appropriate rate reductions before the FERC should be required.

### **Industrial Energy Users of Pennsylvania**

IECPA argues that utilities should record the TCJA tax savings as regulatory liabilities to be returned to customers (via customer refunds and reduced rates) over a short period of time. IECPA Comments at 4, 6. IECPA also proposes that excess deferred taxes be refunded to customers accordingly. *Id.* at 5. As for utilities with a pending rate case, IECPA proposes that the filings reflect the lower tax rate. For all other companies, IECPA proposes that the Commission initiate show-cause proceedings to address the tax savings associated with the TCJA. *Id.* at 8.

### **Other Commenters**

U.S. House of Representatives Lloyd Smucker, Bill Shuster, Mike Kelly and Patrick Meehan, Pennsylvania State Representative Tom Caltagirone, AARP Pennsylvania, and the Consumer Advisory Council of the Pennsylvania Public Utility Commission all state that utility rates should reflect TCJA reductions. Joint Delegation Comments at 1, Representative Caltagirone Comments at 1, AARP Comments at 2,<sup>2</sup> and Consumer Advisory Council Comments at 2.

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<sup>2</sup> Refunds from January 1, 2018 are also supported by AARP.

## **(2) Invest Tax Savings for Infrastructure or Other Public Benefits**

The following commenters propose that utilities be given the option to use any tax savings resulting from the TCJA for utility infrastructure or other consumer benefits:

Duquesne Light Company (Duquesne), PPL Electric Utilities Corporation (PPL), UGI Distribution Companies (UGI)<sup>3</sup>, and Pennsylvania American Water Company (PAWC). The comments are summarized in more detail below.

### **Duquesne**

Duquesne did not file comments with the Commission. However, the company provided detailed responses to the Commission's data requests. As for any tax benefits resulting from the TCJA, Duquesne asserts that it is projecting higher current federal tax expense and will, therefore, not have an immediate cash tax benefit to provide its customers.<sup>4</sup> Duquesne Response at 2. For those Commission-regulated public utilities which will have such cash benefits to provide to their customers, Duquesne recommends that such savings be used to "offset the effects of increased expenses, reduced revenues, and required return as well as depreciation on investments in infrastructure improvements since the Company's last rate case." *Id.* at 3.

### **PPL**

PPL proposes that TCJA savings should be used by utilities to invest in programs and infrastructure in support of security, safety, reliability, and grid resiliency measures. PPL Comments at 4. In particular, PPL proposes that it would invest more in tree removal and vegetation management, and various investments in distribution grid resiliency. PPL Response to Data Request No. 3.

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<sup>3</sup> Comprised of UGI Utilities, Inc. (Gas Division and Electric Division), UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.

<sup>4</sup> The Company will have \$190 million in excess deferred income taxes which it will flow back to customers over the average remaining book life of the regulated property. Duquesne Comments at 3.

## UGI

If the Commission does not offer utilities the option of committing to file a rate case within a certain time frame, UGI proposes that utilities be permitted to invest in infrastructure improvement, gas safety and low-income service security and assistance instead of immediate rate reductions. UGI Comments at 2. As UGI Utilities, Inc. (Electric Division) has a pending base rate proceeding which will address TCJA impacts, the company proposes to implement the following package of customer benefits from April 1, 2018 through the effective date of the new rates: (1) enhanced low-income assistance in the form of contributions to its Operation Share Program, (2) enhanced gas safety programs in the form of increased expenditures for programs designed to enhance gas safety public awareness communications, stakeholder outreach and emergency responder training, and (3) voluntary rate reduction in the form of a reduction to currently effective variable distribution charges for jurisdictional firm, non-negotiated distribution customers.<sup>5</sup> *Id.* at 3.

## PAWC

PAWC proposes that any tax savings be deferred as a regulatory liability and used to offset various expected future expenses of the company such as: future customer rate increases associated with the company's DSIC program, certain tax liabilities, and costs of its lead service line replacement program. PAWC, then, proposes that the remainder of these funds be flowed back to consumers in the company's next base rate case. PAWC Responses at 4.

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<sup>5</sup> 50% of the measured revenue requirement related to the annual federal tax savings resulting from the TCJA.



**(3) Address Tax Savings Within Context of a General Rate Case  
(Pending or Expected) Pursuant to Section 1308(d)**

The following commenters propose that any tax impacts resulting from the TCJA be considered within the context of a general rate case pursuant to Section 1308(d) of the Code: Duquesne, First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company), PPL, Columbia Gas of Pennsylvania, Inc. (Columbia), Peoples Gas Company LLC (Peoples), Peoples Natural Gas Company LLC--Equitable Division, Peoples Natural Gas Company LLC, UGI, Appalachian Utilities (Appalachian), Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (Aqua), PAWC, and York Water Company (York). The comments are summarized in more detail below.

**Duquesne**

Duquesne's central position is that "the totality of the impacts of the TCJA should be addressed as a part of a distribution base rate case for those utilities that file a distribution base rate case in 2018".<sup>6</sup> Duquesne Comments at 1-2. The company is also not in favor of the Commission requiring an immediate reduction in rates for 2018 for such companies as this decrease would be followed by an increase in 2019 as a result of the distribution rate case. *Id.*

**First Energy Companies (Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company)**

The First Energy Companies (FE) assert that the Commission should not alter the companies' base rates outside of the context of a base rate proceeding. Further, as the Company's existing rates are Commission-made rates, the companies argue that they cannot be altered absent reasonable notice and an opportunity for the companies to be heard. FE Comments at 7. At such hearing, the companies assert that the totality of their

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<sup>6</sup> Resulting rates would be prospective in nature only, i.e., the Company would consider any retroactive rate adjustment effective January 1, 2018 to be unlawful and unreasonable.

revenue requirement should be analyzed, i.e., not solely any tax impacts of the TCJA. *Id.* The companies similarly assert that any such rate changes should only be prospective in nature, i.e., recovery from January 1, 2018 is impermissible.<sup>7</sup> FE Comments at 3.

The companies support this view by claiming that immediate action would not be lawful due to the prohibitions against single-issue and retroactive ratemaking. Any reduction in rates resulting from the base rate proceeding, however, would be flowed back to customers via rate credit expressed as a percentage reduction to the companies' base rates. *Id.* at 4.

## **PPL**

PPL asserts that the Company's base rates should not be changed in between rate cases and that any changes should reflect all cost categories, rather than simply one, i.e., taxes. PPL Comments at 2. To do otherwise would constitute impermissible single-issue ratemaking. *Id.* PPL also raises the concern that TCJA impacts could affect utilities' cash flows which may increase credit risks. PPL Comments at 3. Therefore, credit downgrades are a possibility. PPL also raises the concern of implementation costs associated with establishing a rate mechanism to implement TCJA savings. PPL Comments at 4.

PPL asserts that the only mechanism which permits modification to customer rates as a result of the TCJA with a utility filing a base rate case is for the Commission to declare a utility's existing rates as temporary rates. *Id.* at 5. New prospective rates would, then, be established to reflect the impact of the TCJA and all other elements of the

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<sup>7</sup> The Companies do state that after an appropriate hearing, they would be willing to track the tax benefits derived from the TCJA from its effective date (January 1, 2018) to the date the companies' rider adjustments become effective and to, subsequently, file modifications to their respective Long-Term Infrastructure Improvement Plans to increase their expenditures for reliability-related infrastructure improvements in amounts equal to the tax benefits calculated from January 1, 2018. FE Comments at 11.

ratemaking formula and a reconcilable base rate credit mechanism would be implemented. PPL Comments at 5.

### **Columbia**

As it will be filing a base rate case this year, Columbia proposed tax rates will reflect the 21% rate and its accumulated deferred income tax balances will be re-measured at the reduced rate as well. Columbia Comments at 1. The company also established a regulatory liability on January 1, 2018 to reflect the reduced taxes and will use this balance as a credit to rate base for customers. *Id.* at 2. Consequently, Columbia proposes to hold the annual revenue associated with the reduced tax obligations in reserve (\$20.8 million). The credit will be held from January 1, 2019, but will not exceed three years.

### **Peoples<sup>8</sup>**

Rate adjustments should be made in general rate proceedings according to Peoples. Peoples Responses at 1. Absent a company filing for a rate increase in the very near future, Peoples asserts that establishment of temporary rates is the most appropriate method for addressing a base rate reduction. *Id.* at 2. Peoples does not support retroactive treatment of any savings, however. Peoples Responses at 3.

### **UGI Distribution Companies**

UGI states that single issue rate adjustments between rate cases is inappropriate and rate adjustments should be made within the context of a base rate proceeding. UGI Comments at 1. Therefore, UGI suggests that the Commission offer utilities the option of committing to file a rate case within a certain time frame rather than implementing a rate

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<sup>8</sup> Peoples Natural Gas Company LLC—Equitable Division and Peoples Natural Gas Company LLC adopted identical positions.

reduction as a result of the TCJA impacts.<sup>9</sup> *Id.* at 2. If the Commission does not offer such an option to those utilities, UGI proposes that utilities be permitted to invest in infrastructure improvement, gas safety and low-income service security and assistance instead of immediate rate reductions. UGI Comments at 2.

As UGI Utilities, Inc. (Electric Division) has a pending base rate proceeding which will address TCJA impacts, the company proposes to implement the following package of customer benefits from April 1, 2018 through the effective date of the new rates: (1) enhanced low-income assistance, (2) enhanced gas safety programs, and (3) voluntary rate reduction.<sup>10</sup> *Id.* at 3. UGI also raises cash flow concerns and negative credit outlooks if a utility receives reduced funds. UGI Comments at 6.

### **Appalachian Utilities**

Appalachian asserts that numerous ratemaking claims have increased since the company's rates were established by the Commission. Therefore, single-issue ratemaking would result if the Commission were to adjust rates absent consideration of these increased items. Appalachian Response at 2. Consequently, Appalachian proposes to reflect any reduced tax savings if it files a rate increase in the future. *Id.*

### **Aqua**

In its comments, Aqua states that the effects of the TCJA will be dealt with in its general rate filing to be made this year. Aqua Responses at 3. The reduction in Aqua's deferred tax liabilities as a result of the TCJA was recorded as a regulatory liability and will be used as a credit to tax expense. *Id.* at 6.

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<sup>9</sup> For those companies with a pending rate case, UGI suggests that TCJA effects be considered within the context of such proceeding. UGI Comments at 2.

<sup>10</sup> 50% of the measured revenue requirement related to the annual federal tax savings resulting from the TCJA.

## **PAWC**

PAWC asserts that the Commission should not immediately adjust the company's rates in order to account for tax savings resulting from the TCJA. PAWC Responses at 2.<sup>11</sup> PAWC also raises cash flow concerns and negative credit outlooks if a utility receives reduced funds. PAWC Responses at 1. PAWC additionally raises concerns with the single-issue and retroactive ratemaking prohibitions while also asserting that refunds effective January 1, 2018 are prohibited. *Id.* at 2.

## **York**

York asserts that a base rate proceeding is the most appropriate venue to adjust base rates as a result of the TCJA. York Response at 1. Therefore, York proposes that the Commission defer any action on the TCJA for those utilities which file a general rate proceeding in the near future. *Id.* Absent a company filing for a rate increase in the very near future, York asserts that establishment of temporary rates is the most appropriate method for addressing a base rate reduction. York Responses at 2. However, such adjustments should be on a prospective basis only. *Id.*

## **PECO Energy Company (PECO)**

PECO states that it will propose, in its pending electric base rate case, to refund the full benefits of the 2018 reduction in utility federal income tax expenses arising from the TCJA through a reconcilable surcharge. In particular, PECO states that, as part of its electric general base rate filing, it will propose “a reconcilable surcharge through which 2018 TCJA accrued benefits – estimated to be approximately \$68 million – will be flowed back to electric customers beginning January 1, 2019.” PECO Comments at 2. PECO states its view that, in general, customers should receive the benefit of the reduction in utility federal and state income tax expense arising from the TCJA.

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<sup>11</sup> PAWC also asserts that any impacts resulting from re-measuring its December 2017 deferred taxes balance should be deferred until its next base rate proceeding. PAWC Comments at 5.

## Summary of Financial Effects

In addition to seeking comments related to whether (and the extent to which) the Commission should adjust current customer rates to reflect the tax changes in the TCJA, the Commission sought and obtained verified responses to detailed data requests regarding the financial effects of the TCJA on each public utility listed in Attachment A-1 (Tax Effects). Each public utility that responded provided verified financial data to compute the effect of the TCJA on its current operations, including the effect of the federal income tax rate change from 35% to 21%, the effect on accumulated deferred income taxes and other provisions that affect these companies' tax liability.

These public utilities summarized the TCJA effects on tax computation templates provided by the Commission in order to provide a uniform presentation of the financial data from each company. The Commission has had the opportunity to review the verified responses, assumptions and computations provided, and will accept the companies' verified responses as an accurate assessment of the TCJA's net effect on the tax expense and associated revenue requirement for each public utility.

Attachment A-1 (Tax Effects) summarizes the effects of the TCJA on the tax expense, accumulated deferred income taxes (ADIT) and revenue requirement for each public utility listed. For the electric distribution public utilities, the total net decrease in annual revenue requirement for this category of public utilities is **\$210.8** million per year. For the large natural gas distribution public utilities, the total net decrease in annual revenue requirement for this category of public utilities is **\$66.2** million per year. For the large Class A water and waste water public utilities listed, the total net decrease in annual revenue requirement for these public utilities is **\$48.8** million per year. These totals exclude the revenue requirement effects for the few public utilities for whom the TCJA is projected to result in a net increase in income tax expense. Finally, we note that the

Commission has continued to exclude from Attachment A-1 (Tax Effects), any public utilities that are not earning in excess of 5% on their rate base.

## **Disposition**

Upon review and consideration of the comments and financial data filed in this matter in response to the February 12, 2018 Secretarial Letter, as well as our financial analysis of the TCJA tax effects, the Commission is persuaded that the tax savings and associated reductions in utility revenue requirements should be flowed back to consumers on a current basis. While ratemaking is generally *prospective* in nature, an exception to this rule applies in the case of expenses that are extraordinary, substantial and nonrecurring. *Philadelphia Electric Co. v. Pa. Public Utility Commission*, 502 A.2d 722 (Pa. Cmwlth. 1985) In this regard, we agree with the OCA that the TCJA tax savings represent “an extraordinary and substantial, non-recurring reduction in utility expenses that should be treated outside of a general rate proceeding and flowed back to ratepayers.” OCA Comments at 1 and 7. Therefore, in the Commission’s judgment, there is no legal impediment to our present consideration of the substantial tax savings from the TCJA and we need not await a base rate case filing to address its effect on the justness and reasonableness of consumer rates.

The OCA and the OSBA both propose detailed methods for flowing these savings and reductions back to utility customers on an immediate basis by means of a negative surcharge to address the effect of the tax changes due to the TCJA. Citing to *Popowsky v. Pa. Public Utility Commission*, 13 A.2d 583 (Pa. Cmwlth. 2011), the OCA points out that a Section 1307(a) automatic adjustment clause is appropriate “for easily identifiable expenses that are beyond a utility’s control, such as tax rate changes ...” OCA Comments at 10. In the Commission’s judgment, the TCJA tax rate changes are easily identifiable and beyond the utilities’ control; and because they are substantial, the effect of these tax

rate changes require action by the Commission to ensure that consumer rates remain just and reasonable.

Therefore, we agree with these commenters that a negative surcharge is both a lawful and appropriate means to recognize the TCJA tax rate changes and their effect on consumer rates. Moreover, with the Commission's prior establishment of temporary rates, the protection normally accorded to "Commission-made" rates is no longer operative; such temporary rates, lawfully set by the Commission pursuant to Section 1310(d) can be challenged by a utility and are subject to refund or recoupment, as may be the case based upon the subsequent final order in each such proceeding.

The Commission is not persuaded by the arguments of some commenters that utilities be given the option to use any tax savings from the TCJA for utility infrastructure projects or other utility-identified benefits. Utilities already have in place the Distribution System Improvement Charge (DSIC) to fund, on a near current basis, the capital costs of replacing aging infrastructure. Also, using these tax savings for the purposes of offsetting the effects of reduced revenues, investing in low-income service security or any of the various other proposals advanced by Duquesne, PPL, UGI and PAWC would not be appropriate at this time. Rather, any rate recovery for such measures often involves multiple stakeholders and is better addressed in a general rate proceeding

Similarly, the Commission does not deem it appropriate to permit utilities to retain TCJA savings due to a perceived risk of possible negative outlooks from credit rating firms. Once again, if a utility's cash flow is of concern, a general rate increase is the appropriate vehicle to address such a concern. But, as pointed out by BI&E, an increased cash flow realized because a utility is permitted to retain revenues resulting from customers paying a "phantom 35%" income tax rate would not be lawful or appropriate. BI&E Comments at 4. Indeed, while utilities are entitled to recover in rates all reasonable



and prudently incurred expenses, there is no warrant for the recovery of taxes or other expenses from consumers that are not incurred. *Barasch v. Pa. PUC*, 493 A.2d 653 (Pa. 1985). Accordingly, the Commission declines to allow rates for non-existent tax expenses for the purpose of artificially augmenting a utility's cash flow.

### **Utilities Without Pending Base Rate Cases**

For those utilities without a currently-pending general rate proceeding, the Commission will issue, in conjunction with this general order, a utility-specific order that directs each such utility to file temporary rates, pursuant to Section 1310(d), in the form of a negative surcharge that reflects the annual reduction in federal tax expense and associated revenue requirement for each utility based on the financial information provided by each utility. This negative surcharge shall be filed as a Section 1307(a) adjustment mechanism, subject to annual reconciliation.

Specifically, each such utility will be directed to file a negative surcharge on customer bills rendered on July 1, 2018 and thereafter. The negative surcharge will be based upon the net tax savings due to the TCJA and will rely upon the projected 2018 data as set forth in the utility's response to the Commission's Data Requests. The negative surcharge for each utility will be specified in a utility-specific order at their temporary rates docket number and will include a schedule that sets forth the computation of the negative surcharge. A reconciliation of this negative surcharge will occur after its first year of operation by comparing the utility's actual 2018 federal income tax expense on a pre- and post-TCJA basis. For each subsequent year, an identical end-of-calendar year reconciliation will occur until the utility files (and the Commission approves) new base rates for the utility pursuant to Section 1308(d) that include the effects of the TCJA tax rate changes. At such time, the negative surcharge will terminate.

Given that the negative surcharge will be effective July 1, 2018 on a prospective basis, the Commission recognizes that the tax savings from TCJA commenced on January 1, 2018. Therefore, in lieu of addressing this portion of the tax savings in this general temporary rate order, the Commission will direct each utility in this group (utilities without a pending base rate case) to establish a “deferred regulatory liability” account, if it has not already done so, to record on its books the tax savings associated with the TCJA for the January 1, 2018 through June 30, 2018 time period. The account shall also accrue interest at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41. P.S. §§ 101, et seq.). The rate treatment of this amount plus accrued interest shall be addressed in the utility’s next base rate case. In that future proceeding, the utility and parties can address the appropriate negative surcharge, amortization or other disposition of this deferred regulatory liability, including any legal issues. If, however, the utility has not filed, within three (3) years of the adoption date of this order, a Section 1308(d) general base rate case, to avoid an unreasonable delay in dealing with such funds, the utility shall be required to file a petition to propose a just and reasonable disposition of the accumulated funds in the deferred regulatory liability account.

In sum, the Commission deems the actions outlined above as necessary because, for these public utilities, our analysis has confirmed that, as a result of the substantial tax rate decrease resulting from the TCJA, the existing rates of these public utilities are excessive and, therefore, no longer just and reasonable. As noted earlier, a separate order will be issued for each utility in this category; the public utilities in this category are:

**Electric**

Citizens’ Electric Company of Lewisburg  
Metropolitan Edison Company  
Pennsylvania Electric Company  
Pennsylvania Power Company  
Pike County Light & Power Company  
PPL Electric Utilities Corporation

Wellsboro Electric Company  
West Penn Power Company

**Natural Gas**

PECO Energy Company (Gas Division)  
National Fuel Gas Distribution Corporation  
Peoples Gas Company LLC  
Peoples Natural Gas Company LLC—Equitable Division  
UGI Central Penn Gas Inc.  
UGI Penn Natural Gas Inc.  
UGI Utilities, Inc.--Gas Division

**Water and Wastewater**

Pennsylvania-American Water Company  
Pennsylvania-American Water Company--Wastewater

Alternatively, these utilities may file for a *voluntary* rate change pursuant to Section 1307(a) which incorporates a negative surcharge reflecting the rate reductions resulting from the TCJA. Such a filing pursuant to 1307(a) will terminate the utility's temporary rates as established in the Commission's March 15, 2018 order and the corresponding docket will be marked closed.

For those utilities which object to implementing new rates via a negative surcharge, such utilities must still file a tariff supplement that establishes new temporary rates via a negative surcharge. However, pursuant to the provisions of Section 1310(d), these utilities may file a complaint against the new temporary rates and negative surcharge which will be referred to the Commission's Office of Administrative Law Judge (OALJ) for hearing and decision. But, if the utility's objection is limited to accuracy of the computation, the utility should file a petition for reconsideration so that any computational errors can be reviewed by Commission staff and addressed promptly, in lieu of a referral to OALJ and the attendant time and expense of formal hearings.

Pending a final determination by the Commission, the temporary rates shall remain in effect.

### **Utilities With Pending Base Rate Cases**

For those utilities with a presently pending rate case, such utilities need not file a negative surcharge as set forth above. Instead, we expect the public utility and the parties in each such proceeding to address the effect of the federal tax rate reduction on the justness and reasonableness of the consumer rates charged during the term of the suspension period. PECO, for example, has already proposed a reconcilable surcharge to refund to its electric consumers the 2018 TCJA tax saving as part of its recently filed Section 1308(d) electric base rate case. Accordingly, for those utilities in a pending base rate case, in lieu of any immediate action, we shall consolidate their temporary rates tariff filing with the pending Section 1308(d) proceeding for hearing and disposition. In this fashion, the parties will be able to address the issues identified by the Commission regarding the TCJA in the context of an overall review of the utilities' rates and rate structure.

Moreover, as noted in our earlier order, Section 1308(d), regarding general rates increases, provides, in relevant part, as follows:

The commission shall consider the effect of [the 7-month suspension period] in finally determining and prescribing the rates to be thereafter charged and collected by such public utility, except that the commission shall have no authority to prescribe, determine or fix, at any time during the pendency of a general rate increase proceeding or prior to a final determination of a general rate increase request, temporary rates as provided in section 1310, which rates may provide retroactive increases through recoupment.

66 Pa. C.S. § 1308(d). Accordingly, the Commission expects the public utility and the parties in each such proceeding to address the effect of the federal tax rate reduction on the justness and reasonableness of the consumer rates charged during the term of the

suspension period, and, in particular, whether a retroactive surcharge or other measure is necessary to account for the tax rate changes that became effective on January 1, 2018.

We shall adopt this approach for each public utility which currently has a pending 1308(d) proceeding or currently plans to file such a case on or before August 1, 2018.

The public utilities in the category are as follows:

UGI Utilities, Inc. (Electric), Docket No. R-2017-2640058  
Columbia Gas of Pennsylvania, Inc., Docket No. R-2018-2647577  
Duquesne Light Company, Docket No. R-2018-3000124  
PECO Energy Company (Electric), Docket No. R-2018-3000164  
York Water Company, Docket No. R-2018-3000019  
Suez Water Pennsylvania, Inc., Docket No. R-2018-3000834  
Aqua Pennsylvania, Inc., Docket No. R-2018- TBD<sup>12</sup>

### **Utilities With No Federal Tax Liabilities**

While most large utilities will realize net tax savings, the Commission recognizes that some utilities have either no federal tax liability or have an increased federal tax liability due to the TCJA. Accordingly, for those companies upon which the TCJA has had no financial impact, e.g., public utilities that are not subject to income tax or do not recover income taxes from ratepayers, the Commission requires that such utilities file a tariff or tariff supplement within 10 days of the entry date of this order terminating the currently-effective temporary rates. Columbia Water Company is the only utility in this category because it has made no claim for federal taxes in its rates. Further, as to those utilities for which the TCJA has a small positive impact, temporary rates established by the Commission's March 15, 2018 Order shall remain in effect. As with those utilities implementing a negative surcharge, these temporary rates shall also be subject to annual reconciliation. The utilities in this category are:

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<sup>12</sup> Aqua PA will submit a consolidated (water and wastewater) base rate filing within the next few months. Superior Water Company was acquired by Aqua, effective January 1, 2016, therefore, this consolidated filing will cover Superior as well.

## CONCLUSION

In summary, the Commission has determined that due to the substantial decrease in federal corporate income tax rates and its effect on utility revenue requirements, the existing rates of the public utilities listed in ordering paragraph number 4 of this order are no longer just and reasonable and, indeed, excessive. For those utilities, the Commission will establish temporary rates pursuant to Section 1310(d) of the Public Utility Code, in the form of a negative surcharge effective July 1, 2018, that will be reconciled at the end of each calendar year.<sup>13</sup> For utilities with a pending general rate case, the proceedings in regard to their temporary rates will be consolidated with their pending base rate case for hearing and decision. And, finally, for those utilities with no federal income tax expense or a net increase in expense, temporary rates proceedings for the former will be terminated while temporary rates for the latter will remain in effect; **THEREFORE**,

### IT IS ORDERED:

1. That, in regard to the public utilities that have a pending Section 1308(d) rate cases filed on or before August 1, 2018, we shall consolidate their temporary rates tariff filing with the pending Section 1308(d) proceeding for hearing and disposition. The public utilities in this category are as follows:

UGI Utilities, Inc. (Electric), Docket No. R-2017-2640058  
Columbia Gas of Pennsylvania, Inc., Docket No. R-2018-2647577  
Duquesne Light Company, Docket No. R-2018-3000124  
PECO Energy Company (Electric), Docket No. R-2018-3000164  
York Water Company, Docket No. R-2018-3000019  
Suez Water Pennsylvania Inc., Docket No. R-2018-3000834  
Aqua Pennsylvania, Inc., Docket No. R-2018- TBD

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<sup>13</sup> Alternatively, such public utilities may voluntarily reduce their rates via a negative surcharge.

2. That, in regard to public utilities which have no federal tax, these public utilities shall file a tariff or tariff supplement within 10 days of the entry date of this order terminating the currently-effective temporary rates. Columbia Water Company is the only utility in this category.

3. That, in regard to those utilities for which the TCJA has a small positive impact, temporary rates established by the Commission's March 15, 2018 Order shall remain in effect. As with those utilities implementing a negative surcharge, these temporary rates shall also be subject to annual reconciliation. The utilities in this category are:

Newtown Artesian Water Company  
Peoples Natural Gas Company LLC

4. That, in regard to public utilities which have not filed a 1308(d) rate increase case prior to August 1, 2018, yet recover income tax expenses from ratepayers, the Commission directs that each such utility shall file temporary rates, pursuant to Section 1310(d), in the form a negative surcharge, effective July 1, 2018, that reflects the annual reduction in federal tax expense and associated revenue requirement for each utility. Each utility shall also establish a "deferred regulatory liability" account to record on its books the tax savings associated with the TCJA for the January 1, 2018 through June 30, 2018 time period. The account shall also accrue interest at the residential mortgage lending rate specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41. P.S. §§ 101, et seq.). A separate order and surcharge computation will be issued for each utility in this category; the public utilities in this category are:

**Electric**

Citizens Electric Company of Lewisburg  
Metropolitan Edison Company  
Pennsylvania Electric Company

Pennsylvania Power Company  
Pike County Light & Power Company  
PPL Electric Utilities Corporation  
Wellsboro Electric Company  
West Penn Power Company

**Natural Gas**

PECO Energy Company (Gas Division)  
National Fuel Gas Distribution Corporation  
Peoples Gas Company LLC  
Peoples Natural Gas Company LLC—Equitable Division  
UGI Central Penn Gas Inc.  
UGI Penn Natural Gas Inc.  
UGI Utilities, Inc.--Gas Division

**Water and Wastewater**


Pennsylvania American Water Company  
Pennsylvania American Water Company-Wastewater

5. If a utility that is required to establish a deferred regulatory liability pursuant to ordering paragraph 3 above has not filed, within three (3) years of the adoption date of this order, a Section 1308(d) general base rate case, such utility shall file a petition to propose a just and reasonable disposition of the accumulated funds in the deferred regulatory liability account.



6. That a copy of this order be served on each of the public utilities listed in Attachment A-1, the Pennsylvania Office of Consumer Advocate, the Pennsylvania Office of Small Business Advocate, the Energy Association of Pennsylvania, the Northeast Gas Association, the National Association of Water Companies and all parties of record to this proceeding.

**BY THE COMMISSION,**



Rosemary Chiavetta,  
Secretary

(SEAL)

ORDER ENTERED: May 17, 2018

ORDER ADOPTED: May 17, 2018