#15, 9/19/18, ML# 219012

ORDER NO. 88860

IN THE MATTER OF THE IMPACT OF THE FEDERAL TAX CUTS AND JOBS ACT OF 2017 ON MARYLAND UTILITIES	*	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND
	*	CASE NO. 9473

Issued: October 5, 2018

On January 12, 2018, the Maryland Public Service Commission ("Commission") issued Order No. 88530 initiating a proceeding to examine the impacts of the Tax Cut and Jobs Act of 2017 ("TCJA" or "the Act") on the rates and charges of Maryland Utilities, and directed the utilities whose rates are explicitly grossed up for taxes to track the impacts resulting from the TCJA beginning January 1, 2018.[1] The utilities were further directed to apply appropriate regulatory treatment (including the use of regulatory assets and liabilities) with respect to TCJA impacts.[2]

1. Potomac Edison's Order No. 88530 Report

The Potomac Edison Company ("Potomac Edison" or "the Company") filed a report on February 15, 2018, stating that "it appears the TCJA should produce benefits in the range of $7 to $8 million per year" on the Company's Maryland operations, based on

[1] The Congress of the United States passed, and President Donald Trump signed, the Tax Cuts and Jobs Act of 2017 into law. (Pub. Law 115-97). One of the key provisions of the TCJA is a reduction of the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018.

[2] The utilities were directed to file reports with the Commission on or before February 15, 2018, explaining the "expected" impacts of the TCJA on their expenses and revenues, and how they expect to pass through those effects to their customers. (Order No. 88530 at 3).

the reduction of the overall corporate tax rate, combined with an estimate of Company's annual amortization of excess accumulated deferred income taxes ("ADIT").[3] Potomac Edison agreed that "customers will realize benefits from the TCJA through rates"; however, the Company proposed that these benefits should be realized by customers only in the context of a base rate case.

The Company contends that in lieu of a one-time credit, "customers will receive a longer-term benefit in the form of a lower future rate increase than would otherwise have been necessary, once the new rate case [that the Company proposed to file in the third quarter of 2018] is resolved."[4] It bears mention that the Company's rates have not been reviewed by this Commission since 1994.[5] During that time, the Company states that its earnings have been "substantially deteriorating," resulting in a reduction of the Company's return on equity ("ROE").[6] Potomac Edison insists that its ROE, which it submits is 6.51% for the twelve months ending September 2017, is substantially below the ROEs that the Commission has approved for other Maryland utilities (such as, Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), and Delmarva Power & Light Company ("DPL")).[7]

The Company argues that in order to raise its ROE to the level of other Maryland electric utilities, "without taking into account any additional adjustments needed to

---

[3] Potomac Edison's February 15, 2018 filing, ML# 219012 at 2.

[4] *Id.* PE submits that "[u]ntil the Company is able to prepare an up-to-date cost-of-service stud and revenue requirements in a new base rate case, any estimate of the impacts of the TCJA on Potomac Edison are preliminary." *Id.* at 2.

[5] *Re Potomac Edison Company*, Case No. 8552, 85 Md. P.S.C. 181 (1994).

[6] *Id.* at 3. The rate case settlement approved by the Commission in Case No. 8652 approved a rate increase of $19,585,420. The Company's overall rate of return was allowed to remain at 9.68% (which was PE's overall rate of return at that time), but was silent as to the ROE. (85 Md. P.S.C. at 182).

[7] The currently approved ROEs for these companies are in the range of 9.50% to 9.75%.

properly reflect [PE's] cost of service, it would need to increase revenues by more than the projected TCJA effects."[8] Potomac Edison stated, however, that it would "track the TCJA effects during the period between January 1, 2018, and when the base rated case is resolved."[9] The Company argues that it has been under-earning "by more than the savings resulting from the TCJA" and it does not expect that it should be required to make a one-time credit to reflect a reduction in its corporate tax rate.[10]

Prior to filing its report, Potomac Edison requested clarification with regard to the Commission's directive to track impacts relating to the Act, i.e., whether this was for purposes of "recordkeeping" or "dispositive of the final rate impact … without regard to all the facts and circumstances relating to any particular company … ."[11] The Company argued that directing a specific rate outcome "based on a single event — enactment of the TCJA — without giving the company in question the right to present other appropriate facts … would violate the Commission's strictures against single-issue ratemaking."[12] As noted above, the Company subsequently filed its report in compliance with Order No. 88530 stating that it would track the TCJA effects between January 1, 2018, and the end of its "third quarter 2018" base rate case.[13]

2. Staff Reply

On August 17, 2018, the Commission's Technical Staff ("Staff") filed reply comments in response to Potomac Edison's proposal to defer TCJA-related savings until

---

[8] Potomac Edison February 15, 2018 filing, ML# 219012 at 3.

[9] *Id*. at 5.

[10] *Id.*

[11] Potomac Edison Request for Clarification or Reconsideration, ML# 218948 at 2.

[12] *Id.* at 2-3.

[13] *Supra*, n7.

after the conclusion of the Company's "third quarter of 2018" base rate case. Staff dismisses the Company's argument that an immediate return of over-collected tax reserves constitutes an improper use of single-issue ratemaking. Staff also notes that several other Maryland utilities (i.e., BGE, DPL, Washington Gas Light Company, Columbia Gas of Maryland, and Pivotal Utility Holdings, Inc. d/b/a Elkton Gas), have submitted filings to return over-collected federal tax reserves outside of a base rate case.[14] Staff further notes that implementing TCJA-related revised rates "now, as opposed to when the Company files for revised rates, has the beneficial effect of terminating the period over which the Company would be responsible for a regulatory liability."[15] Staff suggests that any "sizable increase" in regulatory liability should be promptly returned to customers.[16] Staff recommended that PE's rates should be revised to reflect TCJA-savings as follows:

Operating Income	$	3,627,000
Excess ADIT	$	3,283,140
Revenue Requirement	$	6,485,186
Regulatory Liability	$	3,255,684

(Staff Reply, Table 3)[17]

Staff recommended that the revenue requirement adjustments should be allocated to all rate schedules and to contract customers, based on the Company's 2017 distribution

[14] Staff Reply, ML# 221728 at 3.

[15] *Id.* at 3-4.

[16] *Id.* at 5.

[17] Staff Reply, ML# 221728 at 9, Table 3.

revenues for each rate class.[18] Under Staff's proposal, all components of each rate schedule would be reduced on an equal percentage basis, resulting in a uniform 6% decrease in all customers' distribution bills.[19]

With regard to Potomac Edison's TCJA-related regulatory liability (for the period from January 1, 2018 to September 1, 2018), Staff also recommended allocation to all rate schedules, including contract, based on the Company's 2017 distribution revenues for each rate schedule,[20] and that the regulatory liability of approximately $3.3 million be refunded to PE's customers in the form of a one-time refund.[21] Staff recommends a uniform bill credit for all customers in the Residential, General and Commercial, General, and Light and Power Service rate schedules.[22]

3. Potomac Edison Response

Potomac Edison made its "third quarter of 2018" base rate case filing on August 27, 2018.[23] As indicated in the Company's February 15, 2018 report, the rate case filing proposes to address TCJA-related savings among numerous other adjustments. Also, on September 11, 2018, the Company responded to Staff's proposal and recommendations with regard to treatment of TCJA-related saving (including PE's accrued regulatory

---

[18] *Id.* Staff estimated that this allocation approach would result in a 5.99 percent reduction in distribution revenue (relative to 2017 distribution revenue) for each rate class. *Id.*

[19] *Id.* at 10.

[20] *Id.* at 12.

[21] *Id.* (The regulatory liability amount of $3,255,684 is also reflected in Staff's Response to Potomac Edison, dated September 17, 2018; ML# 222123 at 5 n.7, and is an estimate of the Company's TCJA-related regulatory liability through September 30, 2018.)

[22] *Id.* Differentiated bill credits are recommended tor schedule PP and Lighting Service schedule customers.

[23] *In the Matter of the Application of The Potomac Edison Company for Adjustments to its Retail Rates for Distribution of Electric Energy*, Case No. 9490.

liability) outside of the Company's base rate case.[24] Potomac Edison again requested that the Commission only consider its TCJA-related savings in the context of its recently-filed rate case, and indicated that it would continue to track the effects of the TCJA from January 1, 2018. The Company reiterated that addressing the TCJA in its rate case would avoid "issues associated with single-issue ratemaking."[25] Potomac Edison also reiterates that "incorporating the TCJA adjustment into the Company's base rate case will simply lessen what would otherwise be a larger rate increase,"[26] emphasizing the Company's previous assertion that it is "significantly" under-earning (based on its last authorized ROE), and is earning below the ROEs recently approved by the Commission for other Maryland utilities.[27]

4. Maryland Office of People's Counsel Comments

The Maryland Office of People's Counsel ("OPC") filed comments recommending that the Commission reject Staff's proposal for treatment of Potomac Edison's TCJA-impacts outside the Company's base rate case.[28] OPC acknowledges that implementation of Staff's proposal would flow money back more quickly to customers, but argues that doing so would have significant drawbacks.[29] OPC is

[24] As all other Maryland utilities' TCJA-related filings, and recommended adjustments had been considered by the Commission through the Administrative Meeting process, this matter was scheduled for consideration on the Commission's September 19, 2018 Administrative Meeting. In its September 11, 2018 filing, ML# 222052, PE requested that the matter be removed from the Commission's Administrative Meeting agenda and that the matter instead be reviewed through the course of the Company's recently-filed base rate case, Case No. 9490.

[25] Potomac Edison Response to Staff Comments, ML# 222052 at 3.

[26] *Id.* at 4.

[27] *Id.* at 5.

[28] OPC Comments, ML# 222140 at 2.

[29] *Id.*

concerned that developments with Case No. 9490, i.e., the Company's revised cost-of-service study, could lead to changes in the allocation of any TCJA-related savings.[30] OPC also recommended, however, that the Commission direct PE to continue track the TCJA-related impacts; OPC recommended that the Company be required to identify any additional tax savings as a result of the TCJA — not previously addressed — in the Company's Case No. 9490 rate case filings.

5. Commission Decision

In addition to the filings by Potomac Edison, Staff and OPC, the Commission heard from the parties with regard to this matter at its September 19, 2018 Administrative Meeting. Potomac Edison reiterated its position that any TCJA-related adjustments should be considered in the context of its recently filed base rate case. PE asserts that to address TCJA savings outside the Company's rate case would amount to single-issue ratemaking. While the Commission does not typically consider a utility's costs *or* savings in isolation, this general policy does not circumscribe the Commission when addressing either extraordinary expenses or savings.

MD. CODE ANN., Public Utilities Article § 4-201 requires the Commission to ensure that the rates of public service companies are "just and reasonable for the regulated services that it renders." As noted, the TCJA reduced the Company's corporate tax rate from 35% to 21%, producing what Potomac Edison acknowledges as benefits (savings) in the range of $7 to $8 million per year on the Company's Maryland

[30] *Id*. OPC also expressed the concern raised by PE that Staff's proposal could produce a "yo-yo" effect: a rate reduction now, reversed by a rate increase later. *Id.*

operations.[31] While the Company argues that TCJA-savings, in its case, reduces (but does not eliminate) the amount of revenue that PE is seeking in Case No. 9490, the Commission finds that the TCJA-related regulatory liability acknowledged by Potomac Edison and confirmed by Staff are extraordinary savings that warrant immediate recognition in the rates that customers pay.

Potomac Edison has elected not to come before the Commission in more than 24 years to adjust its base rates. While the Company's assertion that it has been "under-earning" its authorized ROE[32] will be reviewed in the context its pending rate case, this does not justify its continuing to withhold the significant "extraordinary," known and certain TCJA-related regulatory liability resulting from reduction in the Company's corporate tax rate, due to the January 1, 2018 enactment of the TCJA.

One of the Commission's goals in addressing TCJA-related savings is to provide the benefits of this federal tax relief initiative to Maryland utility customers as quickly as possible. Delaying the return of TCJA-savings to Potomac Edison's customers until after the Company's rate case sometime next year (more than 15 months after the effective date of the Act) is inconsistent with the goal of this federal law and inconsistent with the manner in which the Commission has treated nearly all of the other Maryland Utilities.[33]

---

[31] Potomac Edison's February 15, 2018 Filing, ML# 219012 at 2, *supra* at 2.

[32] The Company maintains that this under-earning continues despite the TCJA-savings and that an immediate credit to customers would only exacerbate PE's losses. (Potomac Edison's September 19, 2019 Administrative Meeting Comments at 2:10).

[33] As Staff notes, the Maryland-American Water Company case is distinguishable. (Staff's September 17, 2018 Response to Potomac Edison, ML# 222123). The Potomac Electric Power Company ("Pepco") case is also distinguishable, in that the Pepco rate case (Case No.9472) was filed on January 3, 2018 (only two days after the TCJA was enacted), and the impact of the TCJA was implemented within a rate order issued by the Commission early in second quarter of 2018. (*In the Matter of the Application of Potomac Electric Power Company for an Adjustment to its Retail Rates for the Distribution of Electric Energy*, Case No. 9472, Order No. 88719).

Therefore, the Commission denies Potomac Edison's request to withhold the entirety of TCJA-related savings from customers until the end of the Company's current rate case. Staff's recommendation that Potomac Edison be directed to issue a one-time fixed bill credit to discharge the regulatory liability through September 30, 2018 created in response to the TCJA is adopted.[34] The remainder of the Company's TCJA-related savings (relating to operating income, excess ADIT and overall revenue requirement) will be addressed in Case No. 9490.

IT IS, THEREFORE, this 5th day of October, in the year Two Thousand and Eighteen, by the Public Service Commission of Maryland,

ORDERED: (1) That The Potomac Edison Company's request to defer the entirety of TCJA-related savings to its customers, is hereby denied;

(2) That the Company is directed to issue a one-time bill credit to customers to discharge the TCJA-related regulatory liability accrued through September 30, 2018 (with interest) in accordance with Staff's recommendations (per Staff Tables 4, 5, 6 and 7 in ML# 221728). Such credits shall be rendered to customers no later than the second billing cycle after the issuance of this Order;

(3) That within 30 days of this Order, the Company shall file with the Commission, for review by the Commission's Staff, the credits that are to be rendered to each customer class in accordance with Staff Tables 4, 5, 6 and 7 in ML# 221728. The Company's filing shall identify the schedule for distribution of credits in the first and second billing cycle after the issuance of this Order. Additionally, following the

[34] The bill credit shall be uniform for all customers in Potomac Edison's Residential, General and Commercial, General, and Light and Power service schedules. Differentiated bill credits shall be implemented for Schedule PP customers based on usage since January 2018. For lighting schedule customers, the bill credit shall be allocated based on the fixed kWh per lighting per customer.

distribution of one-time refunds, the Company shall submit an informational filing to the Commission that discloses the actual refunds distributed to customers not more than 30 days after completion of the distribution of refunds;

(4) The Company shall continue to track the TCJA-related regulatory liability from September 30, 2018 through the end of Case 9490 and shall be addressed therein; and

(5) That any additional TCJA-related savings (relating to operating income, excess ADIT, and other revenue requirement adjustments) shall be addressed in the Company's pending rate case (Case No. 9490).

By Direction of the Commission,

/s/ Terry J. Romine

Terry J. Romine
Executive Secretary