

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Abenaki Water Company; Aquarion Water Company of New Hampshire; Energy North Natural Gas Corp. d/b/a Liberty Utilities; Fryeburg Water Company; Granite State Electric Corporation d/b/a Liberty Utilities; Hampstead Area Water Company; Lakes Region Water Company; Northern Utilities, Inc. d/b/a Unital; Pennichuck East Utility, Inc.; Pennichuck Water Works, Inc.; Pittsfield Aqueduct Company; Public Service Company of New Hampshire d/b/a Eversource Energy; Unital Energy Systems, Inc.; West Swanzey Water Company

Complaint of the Office of the Consumer Advocate Pursuant to RSA 365
Regarding Unjust and Unreasonable Rates

Docket No. IR 17-____

Complaint

NOW COMES the Office of the Consumer Advocate (“OCA”) and petitions the New Hampshire Public Utilities Commission (Commission or PUC) as follows:

1. RSA 365:1 provides that any person “may make complaint to the commission by setting forth in writing any thing or act claimed to have been done or to have been omitted by any public utility in violation of any provision of law, or of the terms and conditions of its franchises or charter, or of any order of the commission.” *See also* N.H. Code Admin. Rules Puc 204.01 (providing for the submission of RSA 365 complaints via writing addressed to the Executive Director).
2. RSA 363:28, II explicitly vests in the OCA the right and the duty to “petition for . . . any proceeding concerning rates, charges, tariffs, and consumer services” before “any regulatory body in which the interests of residential utility consumers are involved.”

3. RSA 378:7 requires the Commission to exercise its rate-setting authority whenever it is demonstrated, via complaint or upon the Commission's own motion, that the rates being charged by a utility subject to the Commission's jurisdiction, are "unjust and unreasonable." *See also* RSA 365:5 (authorizing Commission investigations "as to any rate charged or proposed").
4. Abenaki Water Company; Aquarion Water Company of New Hampshire; Energy North Natural Gas Corp. d/b/a Liberty Utilities; Fryeburg Water Company; Granite State Electric Corporation d/b/a Liberty Utilities; Hampstead Area Water Company; Lakes Region Water Company; Northern Utilities, Inc. d/b/a Unitil; Pennichuck East Utility, Inc.; Pennichuck Water Works, Inc.; Pittsfield Aqueduct Company; Public Service Company of New Hampshire d/b/a Eversource Energy; Unitil Energy Systems, Inc.; and West Swanzey Water Company are all investor-owned utilities in New Hampshire, serving residential customers *inter alia*, pursuant to rates previously approved by the Commission. In each instance, the utility's revenue requirement has been adjusted upwards – "grossed up," in regulatory parlance -- so as to allow the utility to recover from customers the corporate income tax the utility must remit to the U.S. Treasury pursuant to the Internal Revenue Code.
5. On December 22, 2017, the President signed into law H.R. 1, a bill entitled "To Provide for the Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018," commonly referred to as the "Tax Cuts and Jobs Act."¹

¹ The text of H.R. 1 is available at <https://www.congress.gov/bill/115th-congress/house-bill/1/text>.

6. According to the official summary of the Tax Cuts and Jobs Act issued by the Congressional Research Service, among the ways in which the legislation amends the Internal Revenue Code is to reduce the corporate tax rate from a maximum of 35 percent to a flat 21 percent rate.² According to the Edison Electric Institute – the national trade association for regulated electric utilities – this aspect of the Tax Cuts and Jobs Act is “a huge win for customers” in light of “the regulated nature of the electric power industry.” Dino Grandoni, “The Energy 202: The GOP tax plan is a windfall for oil and gas industry,” *Washington Post* (December 21, 2019) (noting that, nationally, the potential ratepayer savings amount to “billions of dollars”).³
7. Therefore, the Office of the Consumer Advocate respectfully contends that unless the Commission immediately directs that each utility pass through any benefits from this change to the Internal Revenue Code to ratepayers, the rates of these utilities are unjust and unreasonable within the meaning of New Hampshire law.
8. Additionally, most if not all of the utilities named in this complaint accumulate deferred federal income taxes on their books, to account for differences in timing between deductions (or credits) for tax purposes and the recognition of such deductions (or credits) for ratemaking purposes. Utilities have excess deferred income taxes on their books as the result of the Tax Cuts and Jobs Act because the utilities accumulated this deferral at the former rate of 35 percent but will pay it back at the new and much lower rate. *See, e.g.*, Gavin Bade, “Congress sends tax overhaul to [President] for signature,”

² The bill summary is available at <https://www.congress.gov/bill/115th-congress/house-bill/1/text>.

³ The cited article from the Washington Post is available at <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2017/12/21/the-energy-202-the-gop-tax-plan-is-a-windfall-for-oil-and-gas-industry/>.

Utility Dive (December 20, 2017) (quoting Travis Kavulla, vice chair of the Montana Public Service Commission and former chair of the National Association of Regulatory Utility Commissioners as saying that “[b]asically, Uncle Sam and customers have been fronting [utilities] extra cash for infrastructure in the early years . . . That bill eventually becomes due, but because you’re changing the tax rate midstream, what’s due to customers has actually increased”).⁴ The Commission should investigate and make ratepayers, including residential ratepayers, whole with respect to accumulated deferred income taxes.

9. The Tax Cuts and Jobs Act is a prolix and highly technical enactment that is many hundreds of pages in length. There may be other aspects of this legislation that would have the effect of providing a windfall to investor-owned utilities at the expense of customers, including residential customers, unless the Commission acts to assure that rates remain just and reasonable as required by New Hampshire law. For example, it is the understanding of the OCA that the Tax Cuts and Jobs Act also allows full and immediate expensing of short-lived capital investments for five years and increases the expensing cap from \$500,000 to \$1 million.
10. Accordingly, the Commission should conduct a thorough investigation of the effects on New Hampshire of the Tax Cuts and Jobs Act rather than simply limiting any investigation to the specific grounds cited in this petition.
11. An alternative the Commission may wish to consider is the one adopted by the Montana Public Service Commission. On December 27, 2017, in Docket No. N2017.12.94, the

⁴ The cited article from Utility Dive is available at <https://www.utilitydive.com/news/congress-sends-tax-overhaul-to-trump-for-signature/513542/>.

Montana Public Service Commission (PSC) directed all of the regulated utilities in its jurisdiction to make a filing that includes a calculation of the change in tax liability the utility will experience as a result of the Tax Cuts and Jobs Act and come forward with a proposal for passing the relevant savings on to customers. The Montana PSC directed utilities to create an appropriate regulatory liability on their books pending a decision on how to make customers whole. Other state utility regulators taking similar actions in recent days include those of South Dakota,⁵ Kentucky,⁶ Michigan⁷ and Ohio.⁸

12. The PUC conducted a generic investigative proceeding in connection with the 1986 changes to the Internal Revenue Code although, given that the pending question then was tax changes that potentially *increased* rates, the final order did not issue until April of 1988. *See* Order No. 19,055 in Docket No. DF 87-113, 73 NH PUC 137 (1988). A similar approach is clearly warranted when the unquestionable effect of tax reform is a significant reduction in utility revenue requirements.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Forward a copy of this complaint to the utilities named above pursuant to RSA 365:2, directing them either to answer the complaint in writing,
- B. Conduct thereafter the investigation required by RSA 365:4 via an adjudicative proceeding at which the respondent utilities have the burden of demonstrating by

⁵ *See* <https://puc.sd.gov/News/2017/122117.aspx>.

⁶ *See* https://psc.ky.gov/Order_Vault/Orders_2017/201700477_12272017.pdf.

⁷ *See* http://www.michigan.gov/documents/mpsc/U-18494_12-27-2017_609572_7.pdf.

⁸ *See* <https://www.puco.ohio.gov/media-room/media-releases/puco-chairman-asim-haque-statement-on-tax-bill-passage/>.

a preponderance of the evidence that their rates are just and reasonable in light of the Tax Cuts and Jobs Act, and

C. Grant any other such relief as it deems appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Maurice Kreis", written over a horizontal line.

D. Maurice Kreis
Consumer Advocate
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1172
donald.kreis@oca.nh.gov