



November 29, 2017

The Honorable Paul D. Ryan
U.S. House of Representatives
Office of the Speaker
H-232 The Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
U.S. Senate
Office of the Majority Leader
S-221 The Capitol
Washington, D.C. 20510

RE: Treatment of deferred income taxes in tax reform legislation

Dear Messrs. Speaker Ryan and Leader McConnell,

I write to you today on behalf of the National Association of State Utility Consumer Advocates (NASUCA) to urge you to refrain from inserting any language into the tax reform legislation currently under consideration that will in any way restrict the jurisdiction of, or in any other way dictate how, a State Public Utility Commission implements a reduction in the corporate tax rate, or any other changes to the tax code, when setting retail utility rates.

NASUCA is a voluntary association of 44 consumer advocate offices in 41 states and the District of Columbia. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA's members operate independently from State Utility Commissions and serve as advocates for utility ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the State Attorney General).

I have attached for your review and consideration, a resolution adopted by the NASUCA membership on November 12, 2017, during our Annual Association Meeting. I also note for your consideration a similar resolution, expressing the same concerns, adopted by the National Association of Regulatory Utility Commissioners (NARUC) and presented to you in a November 21, 2017 letter.

The authority to set retail utility rates for a regulated public utility, and with it, the authority to determine how reductions in the corporate income tax rate, refunds of accumulated

deferred income tax balances and any other changes in the tax code are addressed in consumer rates, rests squarely and unequivocally with the State Public Utility Commissions. NASUCA members represent utility customers in rate proceedings before the State Public Utility Commissions, and therefore have an interest in ensuring that no law, rule or other action by Congress in any way restricts a NASUCA member's ability to make the full range of appropriate arguments in a proceeding to determine how to appropriately implement a reduction in the corporate income tax rate or any other change in the tax reform legislation.

A reduction in the corporate income tax rate could result in a significant reduction in the level of income tax expense included in a utility's rates, and would reduce the level of accumulated deferred income taxes required to be carried on a utility's books. Any current accumulated deferred income tax balances above that necessary to meet the utility's tax obligation at the newly reduced tax level is extra money that has been paid by consumers and that is being held by the utility. That money must be refunded to consumers.

NASUCA urges Congress to eliminate any text in the final tax bill that requires States to normalize the excess deferred accumulated tax balances. Further NASUCA urges Congress to eliminate any other language that preempts or otherwise restricts a State Public Utility Commission's jurisdiction and authority to elect alternative rate treatments to refund the excess accumulated deferred tax balances.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Springe", with a long horizontal line extending to the right.

David Springe
Executive Director, NASUCA

cc: The Honorable Orrin Hatch, Chairman Senate Committee on Finance
The Honorable Ron Wyden, Ranking Member Senate Committee on Finance
The Honorable Kevin Brady, Chairman House Committee on Ways and Means
The Honorable Richard Neal, Ranking Member House Committee on Ways and Means

**NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
RESOLUTION 2017-08**

**URGING CONGRESS TO NOT RESTRICT THE RIGHT OF STATE REGULATORS TO DETERMINE
HOW REDUCTIONS IN THE CORPORATE INCOME TAX RATE OR OTHER TAX CHANGES ARE
ADDRESSED IN UTILITY RATES**

Whereas, on September 27, 2017, the Trump administration announced several proposed changes to the tax code that it will ask Congress to approve. One of the administration's proposals is to reduce the corporate income tax rate from 35% to 20%; and

Whereas, Congress has also stated its intention to make changes to the tax code and has also proposed reductions in the corporate income tax rate; and

Whereas, for a regulated investor owned utility, a reduction in the corporate income tax rate could result in a significant reduction in the level of income tax expense included in rates. Depending on the actual tax code changes implemented, this reduction in corporate income tax rates should result in a direct benefit to customers; and

Whereas, for a regulated investor owned utility, a reduction in the corporate income tax rate will reduce the level of accumulated deferred income taxes required to be carried on a utility's books; and

Whereas, the accumulated deferred income tax liability, a reduction to rate base, is a significant balance on the financial statements of utilities; and

Whereas, accumulated deferred income tax balances represent capital provided by customers through the inclusion of tax expense in rates that is greater than actual taxes paid by the utility and thus should not be reduced without a mechanism to make customers whole; and

Whereas, any current accumulated deferred income tax balance above that necessary to meet the utility's obligation at the newly reduced tax level represents funds provided by customers and therefore, must be refunded to those customers; and

Whereas, other proposed changes in the tax code may also impact a regulated investor owned utility; and

Whereas, the authority to set retail rates for a regulated public utility, and with it, the authority to determine how reductions in the corporate income tax rate, refunds of accumulated deferred income tax balances and any other changes in the tax code are addressed in customer rates, rests squarely and unequivocally with the state public utility commissions; and

Whereas, NASUCA members represent utility customers in rate proceedings before the state public utility commissions, and therefore have an interest in ensuring that no law, rule or other action by congress in any way restricts a NASUCA member's ability to make the full range of appropriate arguments in a proceeding to determine how to implement a reduction in the corporate income tax rate or any other change in the tax code; and

Whereas, NASUCA members also have an interest in ensuring that no law, rule or other action by congress in any way impinges on the jurisdiction of state public utility commissions or in any way restricts or otherwise dictates how a state public utility commission must rule in any proceeding to determine how to implement a reduction in the corporate income tax rate or any other change in the tax code;

THEREFORE, BE IT RESOLVED, that if Congress passes a law that reduces the level of corporate income taxes or makes other changes in the tax code, NASUCA urges Congress to refrain from inserting any language into that law that will in any way restrict the jurisdiction of state public utility commissions over retail utility rates or in any other way restrict or otherwise dictate how a state public utility commission implements a reduction in the corporate tax rate or any other changes to the tax code in the retail rate setting process; and

BE IT FURTHER RESOLVED, that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to acting if possible. In any event the Executive Committee shall notify the membership of any action pursuant to this resolution

**Approved by NASUCA:
November 12, 2017
Baltimore, Maryland**