News

from Corporation Commissioner Bob Anthony

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GIVE OR TAKE

Commissioner Anthony urges quick action to return ratepayer money

Oklahoma public utility ratepayers could see a $100 million benefit under the new Tax Cuts and Jobs Act just passed by the U.S. Congress. But unless regulators act, that benefit could go to the utility rather than customers. The new law goes into effect January 1.

The National Association of Regulatory Utility Commissioners (NARUC) latest monthly bulletin addresses this issue in a column reproduced below.

"Immediate Action Required to Protect Ratepayers"

By Oklahoma Corporation Commissioner Bob Anthony

It's déjà vu for those of us from all 50 states who remember the Tax Reform Act of 1986 that lowered the federal corporate income tax rate from 46 percent to 34 percent. This time however, regulators must act immediately to avoid retroactive ratemaking and deal with a January 1, 2018, effective date for the currently proposed federal corporate income tax legislation dropping rates from 35 percent to 21 percent.

Regulators know public utility rates include a component for federal income taxes. If new legislation significantly decreases income tax expense paid by regulated utilities to the federal government, shouldn't ratepayers therefore get lower rates? Can single-issue ratemaking be used? How should State utility commissions address the ratemaking implications of the new legislation? Potentially, all public utility ratepayers could benefit, including low-income utility customers.

The Tax Reform Act of 1986 lowered federal corporate income tax rates, modified depreciation provisions and otherwise changed the ways corporate taxes were calculated, resulting in substantial income tax savings for utilities. Many state regulators took timely action to ensure the savings were immediately passed on to utility ratepayers. In Oklahoma, the Commission staff entered into separate settlement agreements with many utilities to change the status of rates from permanent to temporary rates, and the Commission entered orders adopting those settlements. This allowed the Commission time to determine tax savings while ensuring those savings would not be retained by the utilities through regulatory lag.

Making rates temporary enabled the Commission staff to undertake the complex task of evaluating all impacts to current and deferred income tax expense resulting from changes in the law. Furthermore, as regulators know, significant timing differences exist between when a utility recognizes certain revenues and expenses for payment of income taxes and when the related deferred tax expense is collected from ratepayers. As a result, utilities have recorded deferred tax assets and liabilities on their books over time at greater federal income tax rates than those of the current congressional legislation. Regulators should consider flowing these savings to ratepayers also.

Oklahoma Corporation Commissioner Bob Anthony is currently the longest serving utility commissioner in the United States and has served six times as chairman of the Oklahoma Corporation Commission.