

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Complaint of The )  
Citizens' Utility Ratepayer Board Against )  
Kansas Electric, Natural Gas, Water, and ) Docket No. 18-GIMX 273 -COM  
Telecommunications Public Utilities )  
Regarding Federal Income Tax Reform of )  
2018 and Its Effect on Jurisdictional Retail )  
Utility Rates. )

**COMPLAINT**

COMES NOW the Citizens' Utility Ratepayer Board (CURB), and respectfully files this *Complaint* against Kansas electric, natural gas, water, and telecommunications public utilities in Kansas, whose retail rates will become unjust and unreasonable upon the effectiveness of reduced federal income tax rates, and requests the Kansas Corporation Commission (Commission) to act promptly to ensure customers are not charged for these substantial costs related to income taxes, which are currently included in rates, but will not be incurred by the utilities.

**I. Background**

1. CURB is composed of five volunteer board members.<sup>1</sup>
2. CURB has specific statutory authority to “represent residential and small commercial ratepayers before the state corporation commission.”<sup>2</sup> Furthermore, CURB is specifically authorized to “initiate actions before the state corporation commission.”<sup>3</sup> CURB also has specific statutory authority to seek judicial review of Commission orders and decisions on behalf of residential and small commercial ratepayers.<sup>4</sup>

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<sup>1</sup> K.S.A. 66-1222(a).

<sup>2</sup> K.S.A. 66-1223(a).

<sup>3</sup> K.S.A. 66-1223(c).

<sup>4</sup> K.S.A. 66-1223(f).

3. On December 22, 2017, President Trump signed the “Tax Cuts and Jobs Act” into law. The new tax law reduces the federal corporate income tax from 35% to 21% beginning January 1, 2018.

4. CURB files this Complaint against all regulated electric, natural gas, water, and telecommunications public utilities (identified in Staff’s Report and Recommendation) operating in Kansas.<sup>5</sup>

5. CURB files this Complaint in the interests of residential and small commercial ratepayers. CURB requests Commission action with respect to all regulated electric, natural gas, water and telecommunications public utilities retail rates, as described below. However, CURB recognizes that Staff has exempted telephone utilities that are not taxed at the corporate level (Sub S corporations and LLCs whose earnings are flowed through to their owners under the current tax code and regulations). Likewise, CURB does not include telephone utilities (which are not taxed at the corporate level) as respondents in this complaint.

## **II. Complaint against all Kansas Investor-Owned Utilities**

6. The Commission must determine, upon the filing of a Formal Complaint, “whether or not the allegations, if true, would establish a prime facie case for action by the commission. . . .”<sup>6</sup> Formal Complaints filed with the Commission must meet the following conditions:

- (1) Fully and completely advise each respondent and the commission as to the provisions of law or the regulations or orders of the commission that have been or are being violated by the acts or omissions complained of, or that will be violated by a continuance of acts or omissions;

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<sup>5</sup> See Staff’s Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform, Staff’s Report and Recommendation (Staff’s R&R or R&R) (December 14, 2017).

<sup>6</sup> K.A.R. 81-1-220(c).

- (2) set forth concisely and in plain language the facts claimed by the complainant to constitute the violations; and
- (3) state the relief sought by the complainant.<sup>7</sup>

#### **A. Argument**

7. CURB incorporates herein by reference all allegations of fact contained in Staff's R&R. In particular, CURB alleges that, as of January 1, 2018, and time periods subsequent thereto, the retail rates of all Kansas investor-owned utilities will immediately become unlawful, unreasonable, unfair, unjust, and in violation of Kansas law. Currently, Kansas utilities have established rates allowing them to collect from utility consumers and pay federal corporate income tax on their allowed return on equity at a tax rate as high as 35%. However, as of January 1, 2018, the Tax Cuts and Jobs Act will reduce federal corporate income tax rates from the graduated 35% rate to a flat rate of 21%. Unless Kansas utilities are required to establish rates that reflect the actual federal corporate income tax rate of 21% on their services as of January 1, 2018, the current utility rates will be unfair, unjust, and unreasonable, in violation of Kansas law.

8. Similarly, with respect to telephone utilities, the Commission determines KUSF distributions under K.S.A. 66-2008.<sup>8</sup> The decrease in the federal corporate income tax rates brought about by the Tax Cuts and Jobs Act will affect KUSF distributions such that if these reduced tax rates are not accounted for, KUSF distributions will be unjust, unreasonable and unlawful as of January 1, 2018 for telephone utilities that are taxed at the corporate level. Therefore, the Commission should require such action as is necessary to be undertaken by pertinent telephone utilities such that KUSF distributions on and after January 1, 2018 are just and

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<sup>7</sup> K.A.R. 81-1-220(b).

<sup>8</sup> K.S.A. 66-2008.

reasonable given the reduction in federal corporate income tax rates brought about by the Tax Cuts and Jobs Act.

9. The Tax Cuts and Jobs Act requires that the Commission address two areas of over-collection by the affected public utilities. As noted above, the first area is the time period from January 1, 2018, and periods thereafter, when rates will become unjust, unreasonable, and unlawful due to the fact such rates have embedded therein a 35% corporate tax rate rather than the actual corporate income tax rate of 21%.

10. The second area which must be addressed are those amounts of corporate taxes collected in past periods at a 35% tax rate, but which are not yet due and owing and reside in accounts typically referred to as accumulated deferred income tax (ADIT). These amounts were collected at a 35% rate, but, when paid in periods subsequent to January 1, 2018, will be paid at an actual rate of 21%.

11. The Tax Cuts and Jobs Act contemplates that pertinent utilities will refund excess ADIT under a time line established by the Act – a normalization period. It would be an unjust and unreasonable practice of Kansas utilities to ignore this aspect of the Tax Cuts and Jobs Act and would operate to the detriment of Kansas ratepayers, including CURB’s constituents. However, CURB believes that, if a jurisdictional body establishes that a lawful and faster refund frequency can be achieved than the Tax Cuts and Jobs Act, the Commission should require refunds at such lawful and quicker frequency.

12. The Commission has jurisdiction to resolve this complaint in favor of Kansas ratepayers, including residential and small commercial ratepayers. In fact, upon the filing of a complaint by an interested party alleging that a utility or utilities are maintaining unjust, unfair or

unreasonable rates, the Commission may investigate the same.<sup>9</sup> Upon such investigation, the Commission may take such action as is necessary to abate the unjust, unfair or unreasonable rates.<sup>10</sup> In these regards, the Commission has very broad authority to act in the public interest.<sup>11</sup> In short, the Commission has legal authority to provide the relief to Kansas ratepayers sought herein.

13. Among the relief set forth below, CURB prays for the Commission to require all Kansas jurisdictional utilities to amend their tariffs to reflect that the rates set forth therein shall be subject to that relief set forth in this complaint and that relief prayed for in Docket No. 18-GIMX-248-GIV as determined in the public interest by the Commission. In addition, the tariffs should be amended to reflect that effective January 1, 2018, the Commission shall capture and preserve for Kansas ratepayers the reduction in Accumulated Deferred Income Tax (ADIT) balances that occur due to the Tax Cuts and Jobs Act. Tariffs should also include a notice provision stating that base rates are subject to recalculation to reflect the actual 21% corporate tax rate for periods subsequent to January 1, 2018, and to reflect ADIT amounts collected in excess of actual tax obligations, as may be lawfully or otherwise required by law.

14. Importantly, in addition to the supplemental and/or alternative relief sought in this complaint, CURB believes the paramount issue brought about by the Tax Cuts and Jobs Act is the lawfulness, reasonableness and the timing of relief to be granted to Kansas ratepayers (i.e., effective January 1, 2018). In these regards, CURB believes that the relief sought in the R&R is reasonable and well supported by authorities outside of Kansas. Based upon that persuasive authority, CURB believes that a Court should logically determine that the procedure outlined by Commission staff lawfully permits the Commission to capture the reduction in the regulated public

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<sup>9</sup> K.S.A. 66-101e; K.S.A. 66-1,205; K.S.A. 66-1,234; K.S.A. 66-1,192.

<sup>10</sup> K.S.A. 66-101f; K.S.A. 66-1,206; K.S.A. 66-1,235; K.S.A. 66-1,193.

<sup>11</sup> K.S.A. 66-101g; K.S.A. 66-1,207; K.S.A. 66-1,236; K.S.A. 66-1,194.

utilities cost of service, as well as, the Accumulated Deferred Income Tax (ADIT) balances that occur due to the Tax Cuts and Jobs Act.

15. Significantly, CURB files this complaint to provide alternatives to the Commission that will fully accord with the Filed Rate Doctrine and the statutory and any applicable constitutional prohibition against retroactive rate-making as these legal doctrines have been recognized in Kansas. In these regards and in addition to the relief set forth above and in the R&R, CURB prays for an Order that specifically finds and concludes that current rates charged by Kansas utilities are not lawful, just and reasonable as of January 1, 2018. CURB further prays for an Order that requires each Kansas utility to promptly file with the Commission such tariffs and procedures by which it will lawfully refund reductions to the regulated public utilities cost of service and ADIT balances which occur due to the Tax Cuts and Jobs Act. Moreover, CURB requests that the Commission use its plenary authority set forth in Kansas statutes to order such additional remedies as are necessary to fully protect the interests of residential and small commercial ratepayers relative to ADIT balances which occur due to the Tax Cuts and Jobs Act.<sup>12</sup>

16. Absent an Order on a Complaint, or a Rate Case Order that amends the utilities tariffs prospectively, CURB is concerned that some could argue that it is unlawful to require the utilities to refund any dollar amount that has been lawfully approved, by the Commission, under their current tariffs.<sup>13</sup> Absent the relief CURB is requesting, customers may have no legal recourse to recover excessive rates paid to the utilities in between the utilities rate cases. CURB requests that the Commission issue an Order determining that current rates will become unlawful, unreasonable, unfair, unjust, and in violation of Kansas law, as of January 1, 2018, in order to

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<sup>12</sup> K.S.A. 66-101g; K.S.A. 66-1,205; K.S.A. 66-2001, *et. seq.*

<sup>13</sup> “K.S.A.1989 Supp. 66–101d gives the KCC authority to investigate rates either on complaint or on its own initiative. *Kansas Gas & Elec. Co. v. State Corp. Comm'n of State of Kan.*, 14 Kan. App. 2d 527, 532, 794 P.2d 1165, 1170 (1990); K.S.A. 66-101c; K.S.A. 66-101d; K.S.A. 66-101e; 66-101f.

alleviate concerns regarding retroactive ratemaking. To protect residential and small commercial customers, CURB requests the Commission immediately notify all Kansas regulated utilities and those utilities' customers regarding CURB's remedy for this issue.

17. In the interest of administrative efficiency, CURB is willing to agree to a reasonable motion to consolidate this Complaint with Docket No. 18-GIMX-248-GIV, provided that CURB is allowed to independently seek the relief sought herein. CURB anticipates that there may be some common issues between this docket and Docket No. 18-GIMX-248-GIV, but due to the supplemental and alternative relief sought herein, the evidence sought in this Complaint will differ from that sought in Docket No. 18-GIMX-248-GIV. Moreover, although there is some commonality in the issues, the issues in this Complaint differ from those raised in Docket No. 18-GIMX-248-GIV.

18. Pursuant to K.A.R. 82-1-220(b)(3), CURB requests the following relief:

(a) An Order from the Commission determining that retail rates of all regulated public utilities in Kansas will become unlawful, unreasonable, and unjust, as of January 1, 2018, as a result of the new Federal tax law;

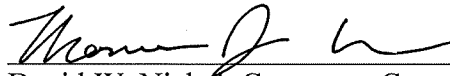
(b) an Order from the Commission requiring all regulated public utilities to amend their tariffs to account for the new federal corporate income tax rate that will go into effect January 1, 2018;

(c) an Order from the Commission requiring all regulated Kansas public utilities taxed at the corporate level to the refund revenue in excess of what is required pursuant the new federal tax rate, starting January 1, 2018, as quickly as allowed for by law; and

(d) an order from the Commission requiring such additional remedies as are necessary to fully protect the interests of residential and small commercial ratepayers relative to ADIT balances which occur due to the Tax Cuts and Jobs Act.

WHEREFORE, CURB respectfully requests the Commission grant the relief set forth above and provide such other relief as the Commission deems just and proper.

Respectfully submitted,



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**VERIFICATION**

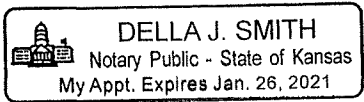
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COUNTY OF SHAWNEE            )

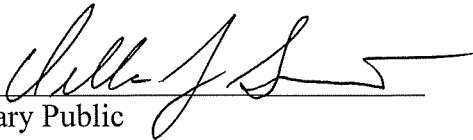
ss:

I, Thomas J. Connors, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

  
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Thomas J. Connors

SUBSCRIBED AND SWORN to before me this 29<sup>th</sup> day of December, 2017.



  
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Notary Public

My Commission expires: 01-26-2021.