

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Kansas)
Industrial Consumers' Group, Inc., against)
Kansas Electric and Natural Gas Public) Docket No. 18-GIMX-252-COM
Utilities regarding Federal Income Tax)
Reform of 2018 and Its Effect on)
Jurisdictional Retail Utility Rates.)

REPLY TO RESPONSE OF KANSAS CITY
POWER & LIGHT COMPANY

COMES NOW the Kansas Industrial Consumers Group, Inc. (KIC), and respectfully files this *Reply* to the *Response to Complaint* of Kansas City Power & Light Company (KCP&L), dated December 26, 2017. In support of its Reply, KIC states as follows:

I. Background

1. On December 14, 2017, KIC filed with the Kansas Corporation Commission (Commission) a Complaint against Kansas electric and natural gas public utilities.¹ In its Complaint, KIC alleges each utility's "cost-based" rates will immediately become unjust and unreasonable as a result of recently-enacted federal income tax reform, which will substantially reduce the utilities' costs of serving their customers. KIC requests immediate relief to ensure customers do not pay these unjust and unreasonable rates. KIC's Complaint also notes the existence of substantial excess ADIT balances, also a result of a reduced corporate tax rate, that must eventually be refunded to customers. Finally, KIC requests an investigation of other rate and service-related impacts of the federal tax reform legislation.

¹ The following retail rate-regulated investor-owned electric and natural gas utilities are the subject of KIC's Complaint: The Empire District Electric Company (Empire), Westar Energy, Inc. (Westar Energy), Kansas Gas and Electric Company (KG&E) (Westar Energy and KG&E are collectively referred to as "Westar"), Kansas City Power and Light Company (KCP&L), Atmos Energy (Atmos), Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills), and Kansas Gas Service, a division of ONE Gas, Inc. (KGS).

2. Following the filing of KIC's Complaint, a reconciled version of the Tax Cuts and Jobs Act was passed by the U.S. Congress and was signed into law by President Trump on December 22, 2017. The enacted version reduces the corporate income tax rate from 35% to 21% and is effective January 1, 2018.

3. On December 22, 2017, Staff filed its Legal Memorandum analyzing KIC's Complaint for compliance with the Commission's rules and regulations. In its Legal Memorandum, Staff generally describes the substance of KIC's Complaint and recommends the Commission find: "1) The Formal Complaint fully complies with the requirements of K.A.R. 82-1-220(b); 2) The Formal Complaint establishes a prima facie case for Commission action; 3) The Formal Complaint should be served upon the Respondents for [Answers] in accordance with K.A.R. 82-1-220(c)."²

4. KIC's Complaint has not yet been accepted by the Commission and served on the utilities in accordance with K.A.R. 82-1-220(c). However, contemporaneous with its filing at the Commission, KIC served a "courtesy copy" of its Complaint on each of the utilities complained of therein.

II. KCP&L's Response

5. On December 26, 2017, even though the Commission has not yet served KIC's Pleading, KCP&L filed its Response to KIC's Complaint. In its Response, KCP&L sets out two main assertions. First, KCP&L identifies certain Internal Revenue Service (IRS) normalization rules preventing prompt refunds of excess accumulated deferred income taxes (ADIT). Second, KCP&L contends all issues implicated in KIC's Complaint are better addressed in a generic investigative docket. Notably, KCP&L does not deny KIC's primary allegation that KCP&L's

² Notice of Filing of Legal Memorandum, December 22, 2017, Legal Memorandum, p. 3.

rates will immediately become unreasonable, unfair, and unjust, in violation of Kansas law, on and after January 1, 2018.

III. KIC Reply to KCP&L's Response

a. IRS Normalization Rules

6. KIC is aware of the normalization rules cited by KCP&L. In fact, these provisions are included in the 2017 Tax Cuts and Jobs Act at Section 1561(d) and are similar to provisions included in the 1986 tax reform legislation. As they were in 1986,³ KIC expects these provisions to be extremely controversial – perhaps prompting legislation or legal action to reverse their effects.

7. The normalization provisions do not, on their face, bar a state commission from ordering prompt refunds of excess ADIT amounts collected from ratepayers in prior periods. However, they do include steep penalties to effectively prevent refunds from occurring more rapidly than such amounts would be refunded under "the average rate assumption method." Using the average rate assumption method would require excess ADIT to be refunded over the remaining lives of the property which gave rise to the reserve for deferred taxes. Under this treatment, refunds would likely occur over decades instead of a more prompt timeframe.

8. KIC has a number of legal concerns regarding the IRS normalization rules. Chiefly, the U.S. Congress may not have authority to require customer funds to be retained by a private utility company. These funds no longer bear any relation to federal income taxes. These are funds collected from past ratepayers, which will never be paid to the IRS. Quite simply, these excess amounts are now *customer funds held by the utilities*. The U.S. Congress has no authority to

³ See The United States General Accounting Office Report to the Honorable Robert T. Matsui, House of Representatives, Public Utilities: Disposition of Excess Deferred Taxes, September 1991, <https://www.gao.gov/assets/220/215102.pdf>.

mandate the retail ratemaking treatment for these customer funds. Such a provision very likely invades the jurisdiction of state commissions.

9. Also, as noted in KIC's Complaint, refunds occurring over decades ensure intergenerational inequity. The customers who receive refunds will not be the same customers who contributed the excess amounts. If the Commission wishes to pursue a more rapid refund period than that prescribed by the U.S. Congress, it can request briefing of these legal issues by the parties.

10. The above concerns notwithstanding, the Commission may choose for utilities to follow IRS normalization requirements and issue refunds over the life of utility assets. However, even if the Commission allows the utilities to provide refunds over an extended period, it must still decide what terms and ratemaking treatments will apply to the utilities' usage of customer funds during that period. The method of refunding excess ADIT is only one of several issues raised in KIC's Complaint.

b. KCP&L's Request to Resolve all Issues in Generic Investigation

11. As noted above, KCP&L also expresses a preference for the Commission to dismiss KIC's Complaint and resolve all issues related to income tax reform in a generic investigative docket. KCP&L's request should be denied.

12. KIC wishes to be mindful of Commission resources. However, a general investigation may not provide the same relief as that available to KIC through its Complaint and will almost certainly not provide the same procedural rights.

13. KIC recognizes Commission Staff has requested the Commission open a generic investigation regarding the effect of federal income tax reform.⁴ Staff's Motion was filed on

⁴ See Docket No. 18-GIMX-248-GIV, Staff's Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform, December 14, 2017.

December 14, 2017, in Docket No. 18-GIMX-248-GIV, shortly after KIC filed its Complaint. The Commission has not yet granted Staff's motion, but strongly supports Staff's Motion, the contents of which supplement and support the allegations contained in KIC's Complaint.

14. While KIC supports Staff's position, the mere possibility of a related investigation does not resolve, or obviate the need for, KIC's Complaint. KIC has presented a valid Complaint alleging certain utility rates will immediately become unreasonable, unfair, and unjust, in violation of Kansas law, on and after January 1, 2018. KIC's Complaint puts the utilities and their customers on notice that retail electric and natural gas rates may be subject to adjustment from that point forward. Staff's Motion *does not contain similar allegations of unjust, unreasonable, and illegal rates*. Therefore, it does not provide similar notice regarding the illegality of such rates. In addition, Staff's recommendation, unlike the relief requested in KIC's Complaint, does not request immediate action to protect customers.

15. As noted above, Staff's Motion and KIC's Complaint are supplementary and supportive of one another. In fact, the Citizens' Utility Ratepayer Board (CURB) noted such a distinction in its response to Staff's Motion, stating, "[KIC's Complaint] seeks relief that is alternative and supplemental to the relief sought in Staff's Motion."⁵

16. In fact, consistent with KIC's approach, CURB also announced it will file a Complaint with the Commission on or before January 1, 2018, to address unjust and unreasonable rates which do not reflect reduced costs associated with income tax reform.⁶ CURB further commits to "work with the Commission Staff and other parties to...allow the Staff's Motion and

⁵ Docket No. 18-GIMX-248-GIV, CURB's Response in Support of Staff's Motion to Open General Investigation and Issue Accounting Authority Order regarding Federal Tax Reform and Report and Recommendation, December 22, 2017, ¶ 6. (CURB Response to Staff Motion, ¶ 6.)

⁶ CURB Response to Staff Motion, ¶ 6.

CURB' s complaint to be heard in an administratively efficient manner."⁷ KIC echoes CURB's commitment to allowing each action – Staff's requested investigation and both Complaints – to be heard in an administratively efficient manner, while also preserving the rights of each entity.

WHEREFORE, KIC respectfully requests the Commission accept its Complaint and serve it upon each affected utility for an answer.

Respectfully submitted,

/s/ **Andrew J. French**
James P. Zakoura, #07644
Andrew J. French, #24680
Smithyman & Zakoura, Chartered
750 Commerce Plaza II
7400 West 110th St.
Overland Park, KS 66210
Phone: (913) 661-9800, Ext. 119
Fax: (913) 661-9863
Email: jim@smizak-law.com
andrew@smizak-law.com

**Attorneys for Kansas Industrial
Consumers Group, Inc.**

⁷ CURB Response to Staff Motion, ¶ 6.

VERIFICATION

STATE OF KANSAS)
)
COUNTY OF JOHNSON) ss:

Andrew J. French, being duly sworn upon his oath, deposes and states that he is the Attorney for the Kansas Industrial Consumers Group, Inc., that he has read and is familiar with the foregoing *Reply to Response of Kansas City Power & Light Company*, and the statements therein are true to the best of his knowledge, information, and belief.



Andrew J. French

SUBSCRIBED AND SWORN to before me this 27th day of December, 2017.



Notary Public

My Appointment Expires:



CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing was served by electronic mail (when available) or regular U.S. mail (unless otherwise noted), the 27th day of December, 2017 to the parties below:

GLEND A CAFER CAFER PEMBERTON LLC 3321 SW 6TH ST TOPEKA, KS 66606 glenda@caferlaw.com	TERRI PEMBERTON CAFER PEMBERTON LLC 3321 SW 6TH ST TOPEKA, KS 66606 terri@caferlaw.com
DAVID W. NICKEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.nickel@curb.kansas.gov	THOMAS J. CONNORS CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 tj.connors@curb.kansas.gov
DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.smith@curb.kansas.gov	SHONDA RABB CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 s.rabb@curb.kansas.gov
TODD E. LOVE CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 t.love@curb.kansas.gov	BRIAN G. FEDOTIN KANSAS COPRORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 b.fedotin@kcc.ks.gov
JENNIFER G. RIES, VICE PRESIDENT, RATES AND REGULATORY AFFAIRS- COLORADO/KANSAS ATMOS ENERGY CORPORATION 1555 BLAKE ST STE 400 DENVER, CO 80202 jennifer.ries@atmosenergy.com	MICHAEL NEELEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 m.neeley@kcc.ks.gov
CATHRYN J. DINGES WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 cathy.dinges@westarenergy.com	JEFFREY L. MARTIN WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 jeff.martin@westarenergy.com

JAMES G. FLAHERTY, ATTORNEY ANDERSON & BYRD, L.L.P. 216 S HICKORY PO BOX 17 OTTAWA, KS 66067 jflaherty@andersonbyrd.com	ROBERT J. AMDOR, MANAGER, REGULATORY SERVICES BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY 1102 E FIRST ST PAPILLION, NE 68046 robert.amdor@blackhillscorp.com
JUDY JENKINS, MANAGING ATTORNEY KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2713 judy.jenkins@onegas.com	CHRISTOPHER D. KRYGIER, DIRECTOR, REGULATORY & GOVERNMENT AFFAIRS LIBERTY UTILITIES CO. PO BOX 127 JOPLIN, MO 64802-0127 chris.krygier@libertyutilities.com
ROBERT J. HACK KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 rob.hack@kcpl.com	DARRIN R. IVES KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 darrin.ives@kcpl.com
ROGER W. STEINER KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 roger.steiner@kcpl.com	JANET BUCHANAN, DIRECTOR- REGULATORY AFFAIRS KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2713 janet.buchanan@onegas.com

/s/ **Andrew J. French**

James P. Zakoura

Andrew J. French

SMITHYMAN & ZAKOURA, CHARTERED