

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Application of Kansas Gas)	
Service, a Division of ONE Gas, Inc. for)	
Adjustment of its Natural Gas Rates in the)	Docket No. 18-KGSG-560-RTS
State of Kansas.)	

POST HEARING BRIEF OF KANSAS GAS SERVICE

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Kansas Gas Service, a division of ONE Gas, Inc., ("Kansas Gas Service") submits the following post hearing brief pursuant to the Order Establishing Procedural Schedule issued by the Kansas Corporation Commission ("Commission") in the above-captioned docket on August 2, 2018.¹

I. STATEMENT OF RELEVANT AND UNCONTROVERTED FACTS

1. On December 14, 2017, the Commission Staff ("Staff") filed a motion requesting that the Commission open a general investigation and issue an accounting authority order regarding the expected reduction in the federal income tax rate for corporations under the Tax Cut and Jobs Act ("TCJA").²

2. In the Staff report and recommendation attached to its motion, Staff included the following recommendation:

...in the event that a utility believes that other costs of service have more than offset the decrease in its income tax expenses, it will have

¹Order Establishing Procedural Schedule, Docket No. 18-KGSG-560-RTS ("560 Docket"), issued August 2, 2018, p. 2, ¶4; Joint Motion for Partial Unanimous Settlement, 560 Docket, filed December 6, 2018, p. 8, ¶21, Exhibit A, pp. 8-9, ¶25 (The Parties agreed to bifurcate the issue of whether Kansas Gas Service should be allowed to offset tax savings accrued as a regulatory liability with Kansas Gas Service's other cost of service components from the other issues presented in the 560 Docket rate case.).

²Kansas Gas Service's Motion for the Commission to take Administrative Notice of filings and orders in Docket No. 155,094-U, *In the Matter of the Effect of the Federal Tax Reform Act of 1986 on the Revenue Requirements of Kansas Public Utilities*, and Docket No. 18-GIMX-248-GIV, *In the Matter of a General Investigation Regarding the Effect of Federal Income Tax Reform on the Revenue Requirements of Kansas Public Utilities and Request to Issue an Accounting Authority Order Requiring Certain Regulated Public Utilities to Defer Effects of Tax Reform to a Deferred Revenue Account*, ("248 Docket"), filed December 10, 2018, in the 560 Docket, and motion granted at Vol. I., Tr. 5, line 15 through Tr. 6, line 7. Staff Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform, 248 Docket, filed December 14, 2018, p. 1.

the ability to file such information and supporting data with the Commission to be reviewed and evaluated on a case-by-case basis.³

3. Attached to Staff's report and recommendation, and referred to therein, was a copy of the Commission's Order dated March 18, 1987, addressing the reduction in the federal income tax rate for corporations under the Federal Tax Reform Act of 1986 ("1987 Order").⁴ The 1987 Order included the following language, which was similar to the language included in Staff's report and recommendation:

...the utility that believes that other costs of service have more than offset the decrease in their income tax expenses has the discretion to file such information and supporting data with the Commission. Thereupon, the Commission will review such information and data on a case by case basis.⁵

4. On January 18, 2018, the Commission issued an Order opening up a general investigation and issuing accounting authority order regarding the TCJA ("Tax Reform Order").⁶ In referencing the recommendation made by Staff in its motion, the Commission included the following language in its Tax Reform Order:

Any affected utility that believes other components of their cost of service have more than offset the decrease in its income tax expenses, will have the ability to file such information and supporting data with the Commission, to be considered on a case by case basis. The Commission's intention here is not to materially impact regulated utilities' profitability, but rather, ensure that the affected utilities are neither positively nor negatively impacted by the passage of federal

³Staff Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform, 248 Docket, filed December 14, 2017, Report and Recommendation, p. 5.

⁴See, Footnote 2, Order, Docket No. 155,094-U dated March 18, 1987 ("1987 Order"); Buchanan, Vol. I, Tr. 48, lines 3-14.

⁵*Id.* at p. 2, ¶3; Grady, Vol. I, Tr. 62, line 23 through Tr. 63, line 3.

⁶See, Footnote 2, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform, 248 Docket, filed January 18, 2018 ("Tax Reform Order").

income tax reform.⁷

5. On March 30, 2018, Kansas Gas Service, Staff and the Citizens' Utility Ratepayer Board ("CURB"), filed a Joint Motion for Approval of the Settlement Agreement Regarding Kansas Gas Service in the 248 Docket.⁸ The key provisions of that settlement agreement were:

(a) The TCJA's lowering of the federal income tax rate from 35% to 21% resulted in an annual reduction in federal income tax expense for Kansas Gas Service in the amount of \$14,126,503.⁹

(b) Kansas Gas Service agreed to establish a regulatory liability to account for the reduction in federal income tax expense on a monthly basis for the period of time between January 1, 2018, and through the date on which the Commission issues a final order in Kansas Gas Service's next general rate case.¹⁰

(c) Kansas Gas Service's agreement to accrue as a regulatory liability the amount calculated in the settlement agreement shall not be considered as any type of concession on the part of Kansas Gas Service and its position that other components of its cost of service, including the return on and of its capital investments, should be considered in reducing or offsetting the decrease in its income tax expenses.¹¹

(d) Kansas Gas Service intended to utilize the provision in the Tax Reform Order that allows the utility the ability to file such information and supporting data with the

⁷*Id.* at p. 7, ¶11.

⁸*See*, Footnote 2, Joint Motion for Approval of Settlement Agreement Regarding Kansas Gas Service, 248 Docket, filed March 30, 2018.

⁹*Id.* Exhibit A, pp. 5-6, ¶8, Appendix 1, p. 1; Buchanan, Vol. I, Tr. 41, lines 9-21.

¹⁰*Id.* Exhibit A, pp. 5-6, ¶8.

¹¹*Id.*

Commission in its upcoming rate case to prove the tax savings amount accrued as a regulatory liability should be reduced or offset by other components of its cost of service before determining whether any amount should be credited to customers.¹²

(e) Kansas Gas Service reserved its right to provide information and supporting data to the Commission in its upcoming general rate case to show other components of its cost of service offset the decrease in its income tax expense, and therefore, the amount being accrued as a regulatory liability should be reduced or offset by the other components of its cost of service that have increased.¹³

(f) Staff and CURB reserved their rights to challenge Kansas Gas Service's position that other components of its cost of service should be used to offset the decrease in Kansas Gas Service's income tax expenses.¹⁴

(g) Kansas Gas Service agreed to file a general rate case no later than 150 days from the date of a Commission order approving the settlement agreement.¹⁵

6. On May 15, 2018, the Commission issued an Order in the 248 Docket approving the settlement agreement between Kansas Gas Service, Staff and CURB.¹⁶

7. On June 29, 2018, Kansas Gas Service filed a general rate case.¹⁷ As part of its general

¹²*Id.*, pp. 6-7, ¶8; Buchanan, Vol. I, Tr. 43, lines 1-18.

¹³*Id.*; Buchanan, Vol. I, Tr. 44, lines 1-10.

¹⁴*Id.*

¹⁵*Id.*, p. 7, ¶11; Buchanan, Vol. I, Tr. 43, lines 19-25; Grady, Vol. I, Tr. 65, lines 8-11.

¹⁶*See*, Footnote 2, Order Granting Joint Motion for Approval of Settlement Agreement Regarding Kansas Gas Service, 248 Docket, filed May 15, 2018.

¹⁷Application, Schedules, Testimonies, Exhibits of Kansas Gas Service, 560 Docket, filed June 29, 2018; Application, p. 2, ¶3 (revenue deficiency after accounting for reduction in federal income tax expenses relating to TCJA is \$45.6 million).

rate case, Kansas Gas Service provided information and supporting data showing other components of its cost of service had more than offset the \$14.1 million decrease in its income tax expenses calculated and agreed to by Kansas Gas Service, Staff and CURB in the settlement agreement approved in the 248 Docket.¹⁸

8. On October 29, 2018, Staff filed its testimony, schedules and exhibits in the rate case.¹⁹ Staff's audited revenue deficiency amount was \$19,828,852.²⁰ This revenue deficiency took into account and included the \$14.1 million decrease in annual income tax expense calculated and agreed to by Kansas Gas Service, Staff and CURB in the settlement agreement approved in the 248 Docket.²¹

9. On December 3, 2018, Kansas Gas Service, Staff and CURB filed a settlement agreement in the rate case.²² They agreed that after taking into account the total impact of the TCJA, Kansas Gas Service had a revenue deficiency of \$21.5 million.²³

10. Kansas Gas Service provided information and supporting data to the Commission in its rate case to show its other components of its cost of service have more than offset the decrease in Kansas Gas Service's income tax expenses and that Kansas Gas Service was not earning at or above its authorized rate of return even though its tax expenses had decreased.²⁴ This was confirmed by the rate case audit performed by Staff and the rate case settlement agreement entered into by Kansas Gas

¹⁸*Id.*

¹⁹Testimonies, Exhibits and Schedules of Staff, 560 Docket filed October 29, 2018; Direct Testimony of Kristina Luke-Fry, p. 8, lines 6-18.

²⁰*Id.*

²¹Grady, Vol. I, Tr. 69, lines 15-22; Grady, Vol. I, Tr. 72, lines 9-25.

²²Joint Motion for Partial Unanimous Settlement, 560 Docket, filed December 3, 2018 (re-filed to revise Appendix B and to designate portions of Appendix B as confidential on December 6, 2018).

²³*Id.*, Exhibit A, p. 4, ¶10.

²⁴Rebuttal Testimony of Janet L. Buchanan, 560 Docket, filed November 19, 2018, p. 11, lines 6-20; Buchanan, Vol. I, Tr. 51, line 19 through Tr. 52, line 1; Tr. 52, lines 11-17.

Service, Staff and CURB.²⁵

II. ISSUE

11. Whether Kansas Gas Service is allowed to eliminate the regulatory liability (as directed by the 248 Docket) as a result of Staff's confirmation that the increases in the utility's other components of its cost of service have more than offset the decrease in the income tax expenses and where Kansas Gas Service has not earned its authorized rate of return even though its tax expenses had decreased?

III. ARGUMENT

A. THE RELEVANT LANGUAGE IN THE COMMISSION'S TAX REFORM ORDER THAT ALLOWS KANSAS GAS SERVICE TO ELIMINATE THE REGULATORY LIABILITY IS UNAMBIGUOUS

12. The relevant language in the Commission's Tax Reform Order (set forth in paragraph 4 above) that allows Kansas Gas Service to eliminate the tax savings amount accrued as a regulatory liability in the 248 Docket is clear and unambiguous. That language established a general rule. The general rule required each utility to establish a regulatory liability to capture the federal income tax expense reduction relating to the TCJA and to pass those tax expense savings on to customers. However, that language also clearly established an exception to the general rule. The exception to the general rule stated that if any utility could provide information and supporting data to the Commission that identified increases in other components of its cost of service have more than offset the decrease in its income tax expense, then the Commission would consider that information on a case by case basis, with its intention being "not to materially impact the utility's "profitability," but rather to ensure the utility neither positively nor negatively was impacted by the passage of federal

²⁵Direct Testimony of Kristina Luke-Fry, 560 Docket, filed October 29, 2018, p. 8, lines 6-18; Grady, Vol. I, Tr. 69, lines 15-22 ("They (Kansas Gas Service) have an ongoing revenue deficiency. So, so I think they need to be able to be allowed to increase rates \$21.5 million going forward. And but for the tax reform it would have been 40 something").

income tax reform."²⁶ In the present case, Kansas Gas Service specifically reserved its right to apply for the exception to the general rule in the settlement agreement that it entered into with Staff and CURB, and which was approved by the Commission in the 248 Docket.²⁷ The Company also clearly met its burden under the exception to the general rule to provide information and data that undisputedly showed increases in other components of its cost of service had more than offset the decrease in the income tax expense and that the Company was not earning at or above its authorized rate of return even though its tax expenses had decreased.²⁸ Therefore, the exception to the general rule was met and Kansas Gas Service should be allowed to eliminate the regulatory liability pursuant to the Commission's Tax Reform Order.

B. STAFF'S INTERPRETATION OF THE RELEVANT LANGUAGE IN THE COMMISSION'S TAX REFORM ORDER IS INCORRECT

13. Staff interprets the relevant language in the Commission's Tax Reform Order differently than Kansas Gas Service.²⁹ However, Staff's interpretation would render meaningless that portion of the Commission's Tax Reform Order that established the exception to the general rule, which provided a utility the opportunity to submit information and supporting data to the Commission to identify that the increases in its other components of cost of service have more than offset the decrease in its income tax expenses.³⁰

²⁶Tax Reform Order, p. 7, ¶11; *see also*, Buchanan, Vol. I, Tr. 53, line 11 through Tr. 54, line 11.

²⁷Joint Motion for Approval of Settlement Agreement Regarding Kansas Gas Service, 248 Docket, filed March 30, 2018, Exhibit A, pp. 5-7, ¶8.

²⁸Rebuttal Testimony of Janet L. Buchanan, 560 Docket, filed November 19, 2018, p. 11, lines 6-20; Buchanan, Vol. I, Tr. 48, lines 15-21; Grady, Vol. I, Tr. 69, lines 15-22; Grady, Vol. I, Tr. 72, lines 19-25.

²⁹Direct Testimony of Justin T. Grady, 560 Docket, filed October 29, 2018, p. 26, line 6, through p. 28, line 6; Grady, Vol. I, Tr. 65, line 12 through Tr. 67, line 19.

³⁰Rebuttal Testimony of Janet L. Buchanan, 560 Docket, filed November 19, 2018, p. 12, line 7 through p. 13, line 23.

14. Staff's interpretation is summarized as follows:

(a) Kansas Gas Service "profits" from having to pay less income taxes as a result of the passage of the TCJA than what were included in its cost of service approved in its 2016 rate case.³¹

(b) It was the Commission's intention to prohibit a utility from "profiting" from the TCJA.³²

(c) Therefore, Kansas Gas Service should not be allowed to retain any of the federal income tax savings because if it is allowed to do so, then it would "profit" from the passage of federal income tax reform.³³

The problem with Staff's interpretation is that it improperly nullifies the exception to the general rule. Under Staff's interpretation, it would not matter if the utility could identify the increase in other components of its cost of service have more than offset the decrease in its income tax expenses. Instead, all that would matter is the utility's income tax expenses were reduced as a result of the TCJA and as a result of that reduction, the utility would "profit" unless it was ordered to credit that reduced expense to its customers. Yet, the exception to the general rule is clearly included by the Commission in its Tax Reform Order and can't be ignored. While Staff's interpretation correctly captures the general rule, its interpretation renders the exception to the rule completely meaningless.

15. If the Commission intended to define the term "profitability" in the manner suggested by Staff, (i.e., the utility's income tax expenses were reduced as a result of the TCJA below that which was included in its cost of service and therefore the utility "profited" from that reduction in expenses

³¹Direct Testimony of Justin T. Grady, 560 Docket, filed October 29, 2018, p. 27, line 24 through p. 28, line 6.

³²*Id.*

³³*Id.*

unless it was ordered to credit those reduced expenses to its customers), it would be illogical and inconsistent with that intended definition for the Commission to also include a provision in the same paragraph that allowed the utility the opportunity to show that increases in other components of its cost of service have more than offset the decrease in its income tax expenses. There would simply be no need for the Commission to provide that opportunity to the utility because under Staff's interpretation "profitability" had nothing to do with any other cost of service components, but instead, only the income tax expense component. In contrast, it seems logical and consistent that the intended definition of the term "profitability," and therefore, the intent of the Commission in using such language in that paragraph, is one that does not result in making one provision in the paragraph inconsistent with the other provisions contained in that same paragraph.³⁴

16. As indicated by Ms. Buchanan in her rebuttal testimony, in order to provide meaning to all of the provisions contained in the relevant paragraph of the Commission's Tax Reform Order, the term "profitability" must refer to whether the utility is or is not earning its Commission approved authorized return based upon a review of all of the cost of service components and not just the tax expense component as suggested by Staff.³⁵ In other words, it means that it was the Commission's intent that if a utility would earn more than its authorized return as a result of the reduction in federal income tax expenses, and the utility either elected to or could not come forward to show increases in other components of its cost of service have more than offset the decrease in its income tax expenses, then the utility would be required to credit its customers for the reduction in income tax expenses so

³⁴Rebuttal Testimony of Janet L. Buchanan, 560 Docket, filed November 19, 2018, p. 13, lines 7-19; Buchanan, Vol. I, Tr. 44, line 11 through Tr. 45, line 6; Buchanan, Vol. I, Tr. 57, line 15 through Tr. 58, line 1; Grady, Vol. I, Tr. 67, lines 16-19 (Even Mr. Grady testified that "In the event the utility could, could bring a direct, you know, direct offsetting impact associated with tax reform, then we should consider that.").

³⁵*Id.*; Buchanan, Vol. I, Tr. 44, lines 11-23.

it would not "profit" (i.e., earn above its authorized return), as a result of the tax reduction.³⁶ However, if a utility would not earn more than its authorized return as a result of the reduction in federal income tax expenses because it was able to come forward and provide information and data supporting that it had increases in its other components of its cost of service that had more than offset the decreases in its income tax expenses and that the Company was not earning at or above its authorized rate of return - even though its tax expenses had decreased, then the utility would be found to not be profiting as a result of the tax reduction because it was not earning its authorized return and therefore, could eliminate the regulatory liability as established in the 248 Docket.³⁷

17. This definition of "profitability" is totally consistent with the ultimate outcomes in the recent Westar Energy Inc. ("Westar") and Kansas City Power & Light Company ("KCPL") rate cases.³⁸ In both of those cases, the audits performed by Staff and the settlement agreements approved by the Commission showed Westar and KCPL were unable to demonstrate that other components of their respective costs of service had more than offset the decrease in their income tax expenses.³⁹ In fact, audited information and supporting data in those cases showed Westar and KCPL would earn more than their authorized returns as a result of the reduction in federal income tax expenses, and therefore, those utilities could not meet the burden under the exception to the general rule as contained

³⁶*Id.*

³⁷*Id.*; Buchanan, Vol. I, Tr. 48, lines 15-22; Vol. I, Tr. 50, line 12 through Tr. 51, line 8.

³⁸Westar 2018 Rate Case, Docket No. 18-WSEE-328-RTS, Order Approving Non-Unanimous Settlement and Agreement, filed September 20, 2018, p. 11, ¶¶29-30 (KCC approved annual revenue requirement decrease of \$66 million, which included decrease in annual federal income taxes of \$50 million, indicating that Westar was unable to show that other components of its cost of service had more than offset the decrease in its income tax earnings); KCPL 2018 Rate Case, Docket No. 18-KCPE-410-RTS, Order Approving Unanimous Settlement, filed December 13, 2018, pp. 3-4, ¶¶11-12 (KCC approved annual revenue requirement decrease of \$10.7 million, which included decrease in annual federal income taxes of \$36.9 million, indicating that KCPL was unable to show that other components of its cost of service had more than offset the decrease in its income tax expenses).

³⁹*Id.*

in the Tax Reform Order.⁴⁰ This definition is also consistent with those situations where other utilities participating in the 248 Docket, for whatever reasons, elected not to come forward with information and supporting data to show whether it had increases in its other cost of service components that offset the decrease in its income tax expenses under the exception to the general rule, but instead, decided to agree to credit the reduction in tax expenses to their respective customers.⁴¹

18. Historically, general agency orders containing statements of policy, like the Commission's Tax Reform Order, have the force and effect of a law or statute. K.S.A. 77-415; *Bruns v. Kansas State Board of Technical Professions*, 255 Kan. 728, 733, 877 P.2d 371 (1974).⁴² Where there is no ambiguity in a statute, or in this case a Commission order, the parties need not resort to canons of construction to construe intent. *Bluestem Telephone Co. v. KCC*, 49 Kan. App. 2d 745, 753, 316 P.3d 162 (2013).⁴³ There is no ambiguity in the relevant language contained in the Commission's Tax Reform Order. The Commission established a general rule that a utility would be required to set up a regulatory liability to track the reduction in federal income tax expenses relating to the TCJA and to issue a credit to customers equal to the amount of reduced tax expenses. The Commission also established an exception to the general rule. If a utility could provide information and supporting data identifying increases in its other cost of service components have offset the decrease in income tax expenses, so it was clear that the utility was not earning its authorized rate of return even with the

⁴⁰*Id.*

⁴¹Order in Joint Motion for Approval of Atmos' Tax Reform Plan, 248 Docket, filed March 27, 2018; Order on Joint Motion for Approval of Black Hills' Tax Reform Plan, 248 Docket, filed March 27, 2018; Grady, Vol. I, Tr. 64, lines 1-25.

⁴²*Bruns v. Kansas State Board of Technical Professions*, 255 Kan. 728, 733, 877 P.2d 371 (1974) (K.S.A. 77-415(b)(2) now provides that an agency may bind parties and establish policies by order, replacing what used to be K.S.A. 77-415(4)).

⁴³*Bluestem Telephone Co. v. KCC*, 49 Kan.App.2d 745, 753, 316 P.3d 152 (2013) (When a statute is plain and unambiguous, there is no need to speculate as to its intent and parties should not read into the statute something not readily found in it. Where there is no ambiguity, there is no need to resort to statutory construction.).

decrease in income expenses, then that utility could eliminate the regulatory liability.

C. IF THE COMMISSION DETERMINES THE RELEVANT LANGUAGE IN ITS TAX REFORM ORDER IS AMBIGUOUS, THEN STAFF'S INTERPRETATION FAILS BECAUSE THE EXISTENCE OF AMBIGUITY WOULD REQUIRE THE DELETION OF THE EXCEPTION TO THE GENERAL RULE CONTAINED IN THE ORDER

19. Should the Commission determine the relevant language in the Commission's Tax Reform Order is ambiguous because of the different interpretations provided by Kansas Gas Service and Staff during the hearing, then when interpreting an ambiguous statute, or in this case a Commission order, under the canons of construction to construe intent, the parties can't delete vital provisions. *Colorado Interstate Gas Co. v. Board of County Com'rs of Morton County, Kansas*, 247 Kan. 654, 662, 802 P. 2d 584 (1990); *Northern Natural Gas Co. v. ONEOK Field Services*, 296 Kan. 906, Syl. 5, 296 P.3d 1106 (2013).⁴⁴ As mentioned above, acceptance of Staff's interpretation of the relevant language in the Tax Reform Order (i.e., the utility's income tax expenses were reduced as a result of the TCJA below that which was included in its cost of service and therefore the utility "profited" from that reduction in expenses unless it was ordered to credit those reduced expenses to its customers), would require the Commission to completely ignore or consider meaningless the provision in the same paragraph that provided an opportunity to a utility to provide the Commission with information and data to show increases in its other cost of service components have offset the decrease in tax expenses. Under Staff's interpretation, there would have been no need for the Commission to include the exception to its rule because under Staff's interpretation it would not matter if the utility could show increases in other components of its cost of service had offset decreases in income tax expenses because all that would matter is whether the tax expense was less

⁴⁴*Northern Natural Gas Co. v. ONEOK Field Services*, 296 Kan. 906, Syl. 5, 296 P.3d 1106 (2013) (Even if the language of the statute is clear, parties must still consider various provisions of the statute in *pari materia* with a view of reconciling and bringing those provisions into workable harmony if possible. Additionally, parties must construe statutes to avoid unreasonable or absurd results and must presume the legislature does not enact useless or meaningless legislation.).

than what was currently included in the utility's cost of service. Yet, the Commission did include the exception to the rule in its Tax Reform Order and as provided by case law, Staff's interpretation would require deletion of that exception which would be a clear violation of the above-mentioned canon of construction.

20. On the other hand, Kansas Gas Service's interpretation accounts for and gives meaning to all the provisions in the relevant language in the Commission's Tax Reform Order. The Commission established a general rule that a utility would be required to set up a regulatory liability to track the reduction in federal income tax expenses relating to the TCJA and to issue a credit to customers equal to the amount of reduced tax expenses. The Commission also established an exception to the general rule. If a utility could provide information and supporting data showing increases in its other cost of service components have offset the decrease in income tax expenses, so it was clear that the utility was not earning its authorized rate of return even with the decrease in income expenses, then that utility could eliminate the regulatory liability. Kansas Gas Service's interpretation of the Commission's Tax Reform Order is consistent with the canon's rules of construction as it relates to construing intent, and therefore, should be accepted by the Commission. Staff's interpretation should be rejected based upon the canon of construction which prohibits parties from interpreting the Commission's order in a manner that deletes vital provisions contained in that order.

D. STAFF'S SUGGESTION THAT THE REDUCTION IN FEDERAL INCOME TAX EXPENSES SHOULD BE EVALUATED AND TREATED IN ISOLATION OF ALL OTHER COST OF SERVICE ITEMS AND PASSED THROUGH TO CUSTOMERS FAILS TO ACCOUNT FOR THE LANGUAGE IN THE COMMISSION'S EXCEPTION TO ITS RULE WHICH ALLOWS A UTILITY TO PROVIDE INFORMATION AND DATA TO SHOW INCREASES IN ITS OTHER COST OF SERVICE ITEMS HAVE OFFSET THE DECREASE IN ITS INCOME TAX EXPENSES AND THEREFORE THAT SUGGESTION SHOULD BE REJECTED

21. Staff also suggested the reduction in federal income tax expenses should be evaluated

and treated in isolation of all other cost of service items and passed through to customers.⁴⁵ Staff referred to other cost of service items such as "gas supply costs" and "weather normalization" that are treated in isolation of all other cost of service items and passed through to customers in its recommendation, and that it would be appropriate to provide the same treatment to the reduction in tax expenses.⁴⁶ Staff included the same suggestion in its report and recommendation in the 248 Docket and referred back to similar language contained in the Commission's 1987 Order.⁴⁷

22. It is true the Commission utilizes deferred mechanisms and single-issue rate-making mechanisms to isolate expenses and their recovery in relation to the utility's other expenses.⁴⁸ It is also true that such process is one that is consistent with the general rule established by the Commission in its 1987 Order and in its Tax Reform Order.⁴⁹ However, the Commission clearly decided not to use that type of process in those cases where a utility uses its discretion to attempt to qualify for the exception to the general rule. By including in its Tax Reform Order the exception to the general rule that allowed a utility the opportunity to provide information and supporting data showing increases in its other cost of service components have offset the decrease in income tax expenses, the Commission specifically decided on a process that was the *polar opposite* to a mechanism that isolates a particular expense and its recovery in relation to the utility's other expenses. Instead, it selected a process that clearly allowed the utility to show increases in its other cost of

⁴⁵Direct Testimony of Justin T. Grady, 560 Docket, filed October 29, 2018, p. 28, line 7 through p. 29, line 4.

⁴⁶*Id.*

⁴⁷Staff's Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform, 248 Docket, filed December 14, 2017, Report and Recommendation, p. 4; 1987 Order, pp. 1-2, ¶3.

⁴⁸1987 Order, pp. 1-2, ¶3.

⁴⁹*Id.*

service components have offset the decrease in income tax expenses.⁵⁰ Staff's suggestion that advocates the isolation and recovery of just the reduction in the tax expense would result in the deletion of the exception to the general rule contained in the Commission's Tax Reform Order, at worst, or making the exception meaningless, at best, and therefore, Staff's suggestion should be rejected by the Commission.

E. STAFF'S OTHER ARGUMENT IS BASED UPON AN INCORRECT PREMISE AND ALSO FAILS TO ACCOUNT FOR THE COMMISSION'S EXCEPTION TO THE GENERAL RULE CONTAINED IN ITS ORDER

23. Finally, Staff argued that *absent* the Commission's Tax Reform Order, Kansas Gas Service would not have been allowed the opportunity to offset the decrease in its income tax expenses with increases in the other components of its cost of service without first having to file and pursue a general rate case filing, which would typically take eight months to complete.⁵¹ A major problem with Staff's argument is its inaccurate premise that the Commission did not issue its Tax Reform Order. The Commission did issue its Tax Reform Order. That Tax Reform Order included both:

(a) a requirement for the utility to set up a deferred regulatory liability with respect to the decreases in federal income tax expenses to preserve the Commission's ability to order a bill credit in the event the utility was "profiting" from the reduction in federal income tax expenses;⁵² and

(b) a provision to allow the utility to file information and supporting data which demonstrated increases in its other components of its cost of service have offset the decrease

⁵⁰Tax Reform Order, p. 7, ¶11.

⁵¹Rebuttal Testimony of Janet L. Buchanan, 560 Docket p. 14, line 13 through p. 15, line 7; Grady, Vol. I, Tr. 67, line 20 through Tr. 69, line 9.

⁵²Tax Reform Order, p. 6, ¶8.

in income tax expenses.⁵³

The Tax Reform Order properly deferred the treatment of the decrease in federal income tax expenses and allowed a utility the opportunity to show increases in its other components of its cost of service have offset the decreases in income tax expenses in order to avoid any retro-active rate-making prohibition.⁵⁴ As with its interpretation of the relevant language in the Commission's Tax Reform Order and other suggestions and arguments, Staff's argument is not only based upon an inaccurate premise (i.e., the Commission did not issue its Tax Reform Order), but also results in either the deletion of the exception to the general rule from the order or the rendering of that exception to the general rule as meaningless.

24. Another problem with Staff's argument is that if the Commission, in fact, had not issued its Tax Reform Order, then while it is true that Kansas Gas Service would have been required to file and pursue a general rate case that typically takes eight months to complete before being allowed to recover any revenue deficiency in rates due to an increase in the other components of its cost of service, the same outcome would be true in order to reflect the impact of the decrease in federal tax expenses in the utility's rates.⁵⁵

IV. CONCLUSION

25. Kansas Gas Service should be allowed to eliminate the accrued tax reduction regulatory liability. Neither Staff nor CURB dispute that the Company provided information and supporting data, which was confirmed as a result of the rate case audit, to show increases in the other components of the Company's cost of service had more than offset the decrease in its income tax

⁵³Tax Reform Order, p. 7, ¶11.

⁵⁴*Id.*

⁵⁵*See*, Footnote 51.

expenses.⁵⁶ Kansas Gas Service demonstrated, beyond dispute, it was earning below its authorized return even after accounting for the tax savings relating to the TCJA.⁵⁷ Kansas Gas Service met its burden under the exception to the rule set forth in the Commission's Tax Reform Act and should be allowed to eliminate the regulatory liability established in the 248 Docket.

26. The relevant language in the Commission's Tax Reform Order is not ambiguous. The Commission established a general rule that a utility would be required to set up a regulatory liability to track the reduction in federal income tax expenses relating to the TCJA and to issue a credit to customers equal to the amount of reduced tax expenses. The Commission also established an exception to the general rule. If a utility could provide information and supporting data showing increases in its other cost of service components have offset the decrease in income tax expenses sufficient to show that the utility was not earning its authorized rate of return even with the decrease in income expenses, then that utility could eliminate the regulatory liability.

27. To the extent the Commission determines the relevant language in the Commission's Tax Reform Order is ambiguous because Kansas Gas Service and Staff had different interpretations of that language, then Staff's interpretation should be rejected because its interpretation violates the canon of construction that prohibits parties from deleting vital provisions of the Commission's order. For the reasons set forth above, Staff's interpretation would only make sense if the Commission's exception to the general rule was deleted from the order or completely ignored and made meaningless. Therefore, that interpretation should be rejected. Kansas Gas Service's interpretation, on the other hand, provides meaning to and accounts for all provisions in the order, is consistent with the way the Commission has interpreted the order with respect to other utilities subject to the Tax Reform Order

⁵⁶Grady, Vol. I, Tr. 69, lines 15-22.

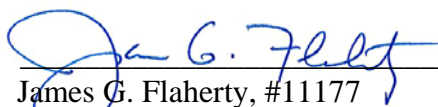
⁵⁷*Id.*

and should therefore be accepted by the Commission.

28. Finally, Staff's other arguments fail for the same reason because they fail to give any meaning to the language in the Commission's Tax Reform Order that established the exception to the general rule contained in that order.

WHEREFORE, for the reasons set forth herein, Kansas Gas Service respectfully requests that the Commission issue an order allowing it to eliminate the regulatory liability established in the 248 Docket.

Respectfully submitted,



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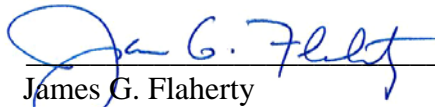
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VERIFICATION

STATE OF KANSAS, COUNTY OF FRANKLIN, ss:

James G. Flaherty, of lawful age, being first duly sworn on oath, deposes and says he is attorney for Kansas Gas Service, a Division of ONE Gas, Inc. above named; that he has read the above and foregoing Post Hearing Brief; and the statements contained therein are true.


James G. Flaherty

SUBSCRIBED AND SWORN to before me this 3rd day of January, 2019.





Notary Public

Appointment/Commission Expires:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was sent via U.S. Mail, postage prepaid, hand-delivery, or electronically, this 3rd day of January, 2019, addressed to:

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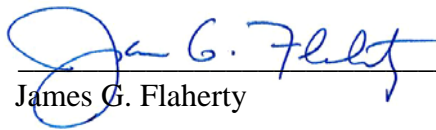
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