

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

In the Matter of the Complaint of Kansas)
Industrial Consumers' Group, Inc., Against)
Telecommunications Public Utilities) Docket No. 18-GIMX-273-COM
Regarding Federal Income Tax Reform of)
2018 and Its Effect on Jurisdictional Retail)
Utility Rates.)

NOTICE OF FILING OF LEGAL MEMORANDUM

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) files the attached Legal Memorandum and states as follows:

1. Staff hereby files the attached Legal Memorandum. The Legal Memorandum evaluates the Formal Complaint filed by the Citizens' Utility Ratepayer Board (CURB) on December 29, 2017, against all regulated electric, natural gas, water, and telecommunications public utilities¹ whose retail rates, KUSF distributions, and ADIT retentions, according to CURB, will become unreasonable, unjust, unfair, and in violation of Kansas law on January 1, 2018, due to the passage of the federal Tax Cuts and Jobs Act. As a result of this evaluation, Staff recommends the Commission find CURB's Complaint complies with the procedural requirements set forth in K.A.R. 82-1-220 and should be served upon all regulated electric, natural gas, water, and telecommunications public utilities for an Answer.

WHEREFORE, Staff submits its Legal Memorandum for Commission review and consideration and for such other relief as the Commission deems just and proper.

¹The Respondents, as explained by CURB in its Formal Complaint, are those specifically identified in Staff's *Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform* filed December 14, 2017, in Docket No. 18-GIMX-248-GIV. Staff's list excludes certain telecommunications companies that are not taxed at the corporate level.

Respectfully Submitted,



Michael Neeley, S. Ct. #25027
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LEGAL MEMORANDUM

To: Chairman Pat Apple
Commissioner Shari Feist Albrecht
Commissioner Jay Scott Emler

From: Michael Neeley, Litigation Counsel

Date: January 2, 2018

Re: 18-GIMX-273-COM
In the Matter of the Complaint of Kansas Industrial Consumers' Group, Inc.,
Against Kansas Electric, Natural Gas, Water, and Telecommunications Public
Utilities Regarding Federal Income Tax Reform of 2018 and Its Effect on
Jurisdictional Retail Utility Rates.

EXECUTIVE SUMMARY

The Citizens' Utility Ratepayer Board (CURB or Complainant) filed a Formal Complaint¹ against all regulated electric, natural gas, water, and telecommunications public utilities identified in Staff's December 14, 2017, *Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform*, in Docket No. 18-GIMX-248-GIV (the Respondents), alleging that the Respondents' retail rates will immediately become unlawful, unreasonable, unfair, unjust, and in violation of Kansas law on January 1, 2018, due to federal corporate income tax reform.² Litigation Staff recommends the Commission find that the Formal Complaint fully complies with K.A.R. 82-1-220(b), and should be served upon the Respondents in accordance with K.A.R. 82-1-220(c).

BACKGROUND

On December 29, 2017, Complainant filed a Formal Complaint against the Respondents. In the Formal Complaint, Complainant explained that the Tax Cuts and Jobs Act (TCJA) signed into law on December 22, 2017, reduces the federal corporate income tax rate from 35% to 21%, beginning January 1, 2018.³ According to Complainant, this tax rate reduction will cause the retail rates of all Kansas investor-owned utilities to immediately

¹In the Matter of the Complaint of Kansas Industrial Consumers' Group, Inc., Against Kansas Electric, Natural Gas, Water, and Telecommunications Public Utilities Regarding Federal Income Tax Reform of 2018 and Its Effect on Jurisdictional Retail Utility Rates (December 29, 2017) (Formal Complaint).

²See Formal Complaint at 3.

³Formal Complaint at 2.

become unlawful, unreasonable, unfair, unjust, and in violation of Kansas law as of January 1, 2018, and time periods subsequent thereto.⁴ Similarly, Complainant alleges that with respect to telephone utilities, the decrease in corporate income tax rates brought upon by the TCJA that are not accounted for will cause Kansas Universal Service Fund (KUSF) distributions to be unjust, unreasonable, and unlawful as of January 1, 2018, for telephone utilities that are taxed at the corporate level.⁵ Furthermore, Complainant notes that passage of the TCJA requires the Commission to not only address the reduction in the corporate tax rate from 35% to 21%, but also 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).⁶ Complainant explains that the TCJA contemplates that excess ADIT will be refunded under a time line established under the TCJA – a normalization period, and that it would be unjust and unreasonable for Kansas utilities to ignore this aspect of the TCJA and would operate to the detriment of Kansas ratepayers.⁷ However, Complainant believes that, if a jurisdictional body establishes that a lawful and faster refund frequency can be achieved than the TCJA, the Commission should require refunds at such lawful and quicker frequency.⁸ Complainant seeks the following relief:

- (1) 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;
- (2) 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;
- (3) An Order from the Commission requiring all regulated Kansas public utilities taxed at the corporate level to refund revenue in excess of what is required pursuant to the new federal tax rate, starting January 1, 2018, as quickly as allowed for by law; and
- (4) 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 TCJA.

ANALYSIS

Upon the filing of a Formal Complaint, the Commission must determine, “whether or not the allegations, if true, would establish a [prima] facie case for action by the commission and whether or not the formal complaint conforms to the commission’s regulations.”⁹ If the Commission determines these conditions are satisfied, the Formal Complaint is served on each respondent for an Answer.¹⁰

⁴Id. at 3.

⁵Id.

⁶Id. at 4.

⁷See Id.

⁸Id.

⁹K.A.R. 82-1-220(c).

¹⁰Id.

K.A.R. 82-1-220(b) requires formal complaints to satisfy three procedural requirements:

- (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 the continuance of acts or omissions;
- (2) set forth concisely in plain language the facts claimed by the complainant to constitute the violation; and
- (3) state the relief sought by the complainant.

The Complainant has complied with all provisions of K.A.R. 82-1-220(b). Complainant has alleged that retail rates, KUSF distributions, and ADIT retentions based upon outdated federal corporate income tax rates, rather than those under the TCJA, are unreasonable, unjust, unfair, and in violation of Kansas law.

Complainant has set forth in plain language, the facts that it believes constitutes the violations.

Finally, Complainant has stated the relief sought.

RECOMMENDATION

Litigation Counsel recommends the Commission find:

- The Formal Complaint fully complies with the requirements of K.A.R. 82-1-220(b);
- The Formal Complaint establishes a *prima facie* case for Commission action;
- The Formal Complaint should be served upon the Respondents for Answer in accordance with K.A.R. 82-1-220(c).

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

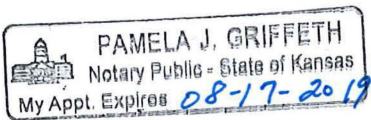
VERIFICATION

Michael Neeley, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Notice of Filing of Legal Memorandum* and that the statements contained therein are true and correct to the best of his knowledge, information and belief.



Michael Neeley # 25027
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 2nd day of January, 2018.



Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

18-GIMX-273-COM

I, the undersigned, certify that a true and correct copy of the above and foregoing Notice of Filing of Legal Memorandum was served by electronic service, except to Barton Water District whose copy will be placed in the U.S. mail, postage prepaid on this 2nd day of January, 2018.

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