

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.         )

**NOTICE OF WITHDRAWAL OF COMPLAINT**

COMES NOW the Kansas Industrial Consumers Group, Inc. (KIC), and respectfully files this *Notice of Withdrawal of Complaint*. In support of this Withdrawal of its Complaint, 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.<sup>1</sup> In its Complaint, KIC alleged 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 requested immediate relief to ensure customers do not pay these unjust and unreasonable rates. KIC's Complaint also noted the existence of substantial excess deferred income tax balances (EDIT), also a result of a reduced corporate tax rate, that must eventually be refunded to customers. Finally, KIC requested an investigation of other rate and service-related impacts of the federal tax reform legislation.

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<sup>1</sup> The following retail rate-regulated investor-owned electric and natural gas utilities were 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%, effective January 1, 2018.

3. On December 22, 2017, Staff of the Commission (Staff) filed its Legal Memorandum analyzing KIC's Complaint for compliance with the Commission's rules and regulations. In its Legal Memorandum, Staff generally described the substance of KIC's Complaint and recommended 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)."<sup>2</sup>

4. On January 25, 2018, KIC filed a Motion requesting the Commission accept the Complaint in accordance with Kansas statutes and Commission regulations.

5. On March 6, 2018, the Commission issued its Order Adopting Legal Memorandum, wherein it accepted KIC's Complaint and ordered the Complaint to be served upon the affected investor-owned utilities.<sup>3</sup> The Commission also directed Staff to investigate the matter and submit a Report and Recommendation to the Commission.

6. Subsequent to the filing of KIC's Complaint, the Commission opened a separate investigative proceeding, Docket No. 18-GIMX-248-GIX (248 Docket), which adopted objectives substantially similar to the objectives set forth in KIC's Complaint.

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<sup>2</sup> Notice of Filing of Legal Memorandum, December 22, 2017, Legal Memorandum, p. 3.

<sup>3</sup> Despite the Commission's directive, to KIC's knowledge, the instant Complaint has not yet been served on the affected investor-own utilities. However, this appears to simply be the result of an unintentional administrative mistake.

## II. Withdrawal of KIC Complaint

7. In the 248 Docket, the Commission approved individual settlement agreements between Staff, CURB, and each of the utilities implicated by KIC's Complaint. KIC has carefully reviewed each settlement and finds the agreements all include provisions generally satisfying the following primary objectives of KIC's Complaint: 1) preserving the full benefits of reduced federal corporate income tax expense for customers, beginning January 1, 2018, and 2) ensuring utilities will not retain EDIT resulting from the reduced federal corporate income tax rate and will instead pass such savings to customers.

8. One material portion of the relief requested in KIC's Complaint is not fully addressed in several of the settlements. Specifically, certain of the settlements do not conclusively ensure customers will receive the full financial benefits of reduced federal income tax expense beginning January 1, 2018. Several utilities specifically "reserve the right" to argue they should refund *less* than the full tax savings to customers if other components of their cost of service offset the decrease in income tax expense. Such an argument is entirely inappropriate as it 1) is a request to apply the unexpected tax windfall to retroactively guarantee returns in prior periods, and 2) is not consistent with the Commission's stated objective of not materially impacting regulated utilities' profitability and ensuring "affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform."<sup>4</sup> Utilities should not receive a higher return than they otherwise would have earned, simply as a result of income tax reform.

9. The above notwithstanding, the settlements reasonably preserve customers' ability to address this issue and claim the full benefits of income tax reform in future ratemaking proceedings of the individual utilities. Furthermore, the State's two largest investor-owned

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<sup>4</sup> Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform, January 18, 2018, ¶ 11.

utilities, Westar and KCP&L, *have* agreed to pass the full financial benefit of income tax reform to customers and will not attempt to guarantee past returns with these funds.

10. In consideration of the above, KIC finds the primary objectives of its Complaint are substantially satisfied. Therefore, KIC withdraws its Complaint and requests the Commission terminate this proceeding.

WHEREFORE, KIC withdraws its Complaint and respectfully requests the Commission terminate this proceeding.

Respectfully submitted,

/s/ **Andrew J. French**

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**VERIFICATION**

STATE OF KANSAS        )  
                                  )   ss:  
COUNTY OF JOHNSON    )

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 *Notice of Withdrawal of Complaint*, 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 13<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
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 13<sup>th</sup> day of August, 2018 to the parties below:

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