

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.)

**MOTION FOR COMMISSION TO ACCEPT COMPLAINT IN ACCORDANCE
WITH KANSAS STATUTES AND COMMISSION REGULATIONS**

COMES NOW the Kansas Industrial Consumers Group, Inc. (KIC), and respectfully files this *Motion for Commission to Accept Complaint in Accordance with Kansas Statutes and Commission Regulations*. In support of its Motion, 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 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 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 relevant utilities in accordance with K.A.R. 82-1-220(c). KIC's Complaint has now been on file with the Commission for six weeks. Because it has not yet accepted KIC's Complaint, it appears the Commission has not considered the immediate relief requested by KIC.

II. Motion for Commission to Accept Complaint

5. K.S.A. 66-101e and 66-1,205 give the Commission broad statutory authority to investigate written complaints against the electric and natural gas public utilities. Pursuant to this authority, the Commission has enacted detailed regulations governing formal complaints. Such regulations are found at K.A.R. 82-1-220.

6. Pursuant to K.A.R. 82-1-220(a),

Any person may initiate a complaint proceeding by filing a formal complaint with the commission in which the rates, joint rates, fares, tolls, charges, regulations, classifications, or schedules of any public utility, motor carrier, or common carrier

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

are alleged to be unreasonable, unfair, unjust, unjustly discriminatory, or unduly preferential, or that allege that any service performed or to be performed is illegal, unreasonably inadequate, inefficient, or unduly insufficient, or cannot be obtained.

7. K.A.R. 82-1-220(b) describes the conditions a complaint must meet to comply with Commission regulations. Specifically,

Formal complaints shall be submitted in writing and shall comply with the requirements of these regulations. Formal complaints shall 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;
- (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.

KIC's Complaint met each of these requirements, as noted by Staff on December 22, 2017..

8. K.A.R. 82-1-220(c) begins, "Commission action **required** upon the filing of a formal complaint." The regulation continues,

A formal complaint shall, as soon as practicable, be examined by the commission to ascertain whether or not the allegations, if true, would establish a prime facie case for action by the commission and whether or not the formal complaint conforms to these regulations. If the commission determines that the formal complaint does not establish a prima facie case for commission action or does not conform to these regulations, the complainant or the complainant's attorney shall be notified of the defects, and opportunity shall be given to amend the formal complaint within a specified time. If the formal complaint is not amended to correct the defects within the time specified by the commission, it shall be dismissed. If the commission determines that the formal complaint, either as originally filed or as amended, establishes a prima facie case for commission action and conforms to these regulations, each public utility, motor carrier, or common carrier complained of **shall** be served by the commission a true copy of the formal complaint, and the respondent or respondents shall either satisfy the matter complained of or file a written answer within 10 days. [Emphasis added.]

As noted above, Commission Staff filed a memorandum on December 22, 2017, recommending 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)."

9. To date, KIC has received no communication from the Commission that its Complaint is in any way defective. Absent such a finding, the Commission was, and is still, required to accept and serve KIC's Complaint upon the affected utilities, pursuant to K.A.R. 82-1-220(c).

10. The legislature has granted entities such as KIC the right to bring complaints to the Commission and to request specific relief. The Commission has enacted specific regulations for the processing of these complaints. It is not within the Commission's discretion or authority to disregard or refuse to acknowledge valid customer complaints that fully comply with these regulations.

11. A recent Opinion of the Kansas Court of Appeals confirms the Commission may not summarily dismiss a complaint that complies with its regulations. In *SWKI-Seward W. Cent., Inc. v. Kansas Corp. Comm'n*, No. 116,795, 2018 WL 385692 at *8-9, 14 (Kan. Ct. App. Jan. 12, 2018), the Court states,

The Commission is given authority to investigate complaints filed by third parties when a public utility's rates or regulations are "in any respect unreasonable, unfair, unjust, unjustly discriminatory or unduly preferential, or both."

...

Moreover, while it is true that an agency's regulations cannot exceed its statutory authority,...the Commission's own regulations appear to be contrary to the Commission's position before us as they presume a broad reading of its statutory authority under K.S.A. 66-1,205.

...

A complaint which reports that a public utility's rates or regulations are unlawful is consistent with asserting that such rates are unreasonable, unfair, or unjust. This broad reading of K.S.A. 66-1,205 is also consistent with K.S.A. 66-1,207 which, like many similar statutes governing the Commission's authority, requires that statutory provisions granting the Commission power "shall be liberally construed, and all incidental powers necessary to carry into effect the provision of this act are expressly granted to and conferred upon the commission." K.S.A. 66-1,207 (powers relating to natural gas utilities); see also K.S.A. 66-101g (liberal construction of statutes regulating electric public utilities); K.S.A. 66-1,194 (liberal construction of statutes regulating telecommunications carriers). Accordingly, we hold the Commission erred in concluding that the [complainant], by alleging that [the utility's] contracts were illegal for having failed to file them with the Commission, had failed to state a claim upon which relief could be granted.

...

[T]he Commission abused its discretion by summarily rejecting the [complainant's] requested remedy out of hand. See *Harrison v. Tauheed*, 292 Kan. 663, 672, 256 P.3d 851 (2011) (abuse of discretion occurs if discretion is guided by erroneous legal conclusion or goes outside framework of or fails to consider proper statutory limitations or legal standards).

The Commission cannot simply disregard its own rules and regulations governing formal complaints, as it has done thus far in this proceeding. When a complaint meets the Commission's procedural requirements, that Complaint must be served upon the affected utilities and the Commission must, ultimately, consider the requested relief.

12. Several other facts are worth noting. First, KIC's Complaint was filed on the same date Staff filed a Motion to investigate income tax matters.³ KIC's Complaint has not yet even been accepted, while Staff's motion was substantively acted upon one week ago.⁴

13. Second, KIC's Complaint requests different relief from that requested by Staff. Most notably, KIC requests a finding that over-collected income tax expense "must be accumulated as a regulatory liability, with carrying charges **equivalent to the utility's current**

³ 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.

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

allowed return, to be refunded to customers in the utility's next general or abbreviated rate case."⁵ Staff requested the Commission apply a much lower carrying charge to customers' funds, the interest rate on customer deposits. Staff also did not request the Commission order such amounts to be **refunded** to customers in future proceedings. These are substantial differences, which will negatively impact Kansas ratepayers, as compared to the relief requested by KIC.

14. Third, the Citizens' Utility Ratepayer Board (CURB) has also filed a Complaint with the Commission,⁶ which Staff also recommended the Commission accept.⁷ CURB's Complaint requests yet different relief from Staff and KIC. In particular, CURB requested the utilities be required to immediately refile base rate tariffs to ensure consumers receive the benefits of income tax reform in a timely fashion – without relying solely on future rate case outcomes.⁸ Such an action is within the Commission's lawful authority, yet it appears CURB's Complaint has also not been accepted and its relief has not been considered.

15. Ultimately, KIC is concerned the Commission may not be considering all options within its broad range of authority. More specifically, to this point in time, six weeks after the filing of KIC's Complaint, the Commission is refusing to consider relief requested by advocates for a broad range of consumer interests, opting to instead rely solely on options presented by its Staff.

16. KIC believes the Commission is better served when considering a broad range of options, including consumer perspectives. To that end, the Commission has a legal obligation to accept the KIC Complaint and consider the relief requested therein.

⁵ Complaint, ¶ 23(a).

⁶ Docket No. 18-GIMX-273-COM, Complaint, December 29, 2017.

⁷ Docket No. 18-GIMX-273-COM, Notice of Filing of Legal Memorandum, January 2, 2018.

⁸ Docket No. 18-GIMX-273-COM, Complaint, ¶ 18(b).

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

Respectfully submitted,

/s/ **James P. Zakoura**

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**Attorneys for Kansas Industrial
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

James P. Zakoura, 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 *Motion for Commission to Accept Complaint in Accordance with Kansas Statutes and Commission Regulations*, and the statements therein are true to the best of his knowledge, information and belief.


James P. Zakoura

SUBSCRIBED AND SWORN to before me this 25th day of January, 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 25th day of January, 2018 to the parties below:

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