

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

In the Matter of the Complaint of the )  
Citizens' Utility Ratepayer Board, Against )  
Kansas Electric, Natural Gas, Water, and ) Docket No. 18-GIMX-273-COM  
Telecommunications Public Utilities )  
Regarding Federal Income Tax Reform of )  
2018 and Its Effect on Jurisdictional Retail )  
Utility Rates. )

**MOTION TO DISMISS COMPLAINT WITHOUT PREJUDICE**  
**AGAINST CERTAIN RESPONDENTS**

Comes now the Citizens' Utility Ratepayer Board (CURB) and hereby requests that the Kansas Corporation Commission dismiss its Complaint herein without prejudice against all Kansas electric, natural gas, water and telecommunications public utilities. In support thereof, CURB alleges:

1. CURB has intervened and is participating in Docket No. 18-GIMX-248-GIV, which is a general investigation for the purposes of examining the financial impact of federal income tax reform on certain regulated electric, natural gas, water, and telecommunications public utilities operating in Kansas.

2. CURB filed this complaint to posit alternative and supplemental relief to that requested by the Commission staff in Docket No. 18-GIMX-248-GIV. In particular, CURB filed this complaint under the legal theory that a complaint is a quasi-judicial proceeding that is effective from the date of the violation alleged in the complaint. CURB alleged in its complaint that certain Kansas electric, natural gas, water and telecommunications public utilities were collecting at unlawful and unreasonable rates due to the reduction in corporate income tax under the Tax Cuts and Jobs Act ("TCJA") effective January 1, 2018. Therefore, CURB requested that the

Commission issue an order requiring that certain Kansas electric, natural gas, water and telecommunications public utilities amend their tariffs to reflect that the collection of rates thereunder would be subject to refund as may be found just and reasonable by the Commission with respect to said reduction in corporate income tax under the TCJA. CURB further requested that the Commission determine through evidentiary proceedings the applicable lawful reductions, if any, in the subject public utilities' respective tariff rates or other regulated intrastate revenues.

3. CURB's complaint differed from Commission's staff's proposed mechanism (shown in Docket No. 18-GIMX-248-GIV) of addressing the effect of the reduction in corporate income tax under the TCJA on utility tariffs. The Commission staff requested that the Commission issue an accounting authority order ("AAO") by which certain Kansas electric, natural gas, water and telecommunications public utilities be required to defer in an account the difference between the amount of revenue that said utilities could collect from ratepayers under current corporate tax rates and the amount of revenue that said utilities could collect from ratepayers under the TCJA.

4. It was the intent of the requested AAO to ensure that affected Kansas utilities are neither positively nor negatively impacted by the passage of TCJA. The Commission staff requested that the Commission determine that the AAO would be effective as of January 1, 2018, the effective date of the TCJA.

5. CURB believes that the AAO is a legally permissive and reasonable manner of addressing any windfall in revenues enjoyed by the affected Kansas utilities by virtue of the TCJA. However, CURB filed its complaint herein, anticipating that some affected Kansas utilities could argue that only through the complaint process could the Commission lawfully issue an order to be effective as of January 1, 2018, with respect to reconciling revenues collected from ratepayers beyond those necessary to pay tax obligations under the TCJA versus those necessary to pay tax

obligations under prior law. Thus, CURB sought, and was granted permission to intervene in Docket No. 18-GIMX-248-GIV, and it also incorporated the facts and arguments contained in Staff's Report and Recommendation (in Docket No. 18-GIMX-248-GIV) in its complaint filed in this docket.

6. Subsequent to the filing of this complaint, the Commission issued an Order Opening General Investigation And Issuing Accounting Authority Order Regarding Federal Tax Reform ("Order") in Docket No. 18-GIMX-248-GIV. On Petition for Limited Reconsideration and Clarification filed by the RLECs, the Commission clarified its AAO to allow the RLECs to "either determine the actual tax savings or estimate savings based on the underlying cost of service data supporting the last KUSF determination."

7. Based upon information and in good faith, CURB believes that all of the utilities that CURB intended to be subject to its complaint have complied with the Order, and have worked with, are now working or intend to work with Commission staff and CURB to resolve the financial impact of federal income tax reform in a manner consistent with the public interest and applicable law. Moreover, CURB has been informed by certain Kansas utilities (including the RLECs) that the effective date of the Order, being January 1, 2018, has not been challenged and is no longer an appealable issue.

8. Therefore, CURB believes that it is not necessary at this time to proceed with its complaint. Moreover, it is in the public interest to dismiss the Complaint with respect to all Kansas electric, natural gas, water and telecommunications public utilities, because it would allow the pertinent parties to concentrate their efforts on negotiations with Staff and CURB solely in Docket No. 18-GIMX-248-GIV, improving administrative efficiency. CURB intends this motion to comply with the Commission's Order Granting Joint Motion for Extension of Time, particularly

that CURB identify which RLECs are subject to its Complaint within 60 days of that order. Accordingly, CURB acknowledges that no RLEC need file an answer or other pleading at this time in response to the complaint filed herein.

9. CURB reserves its right to refile its complaint as appropriate. For example, should it be discovered that any Kansas utility intends to argue that the AAO is not a legally effective mechanism to require that rates be adjusted (as appropriate to reflect just and reasonable rates) as of January 1, 2018, or should any Kansas utility fail to proceed reasonably to resolve the issues set forth in Docket No. 18-GIMX-248-GIV, CURB would feel compelled to refile its complaint. CURB does understand that certain utilities may present arguments that their rates are still lawful and reasonable despite the passage of the TCJA, that other applicable statutory authority must be considered in determining the utility's lawful revenues, or that the revenue adjustment may be too small to justify the costs of investigation. Clearly, parties to any Commission proceeding are free to present justiciable claims and arguments; however, CURB intends to refile its complaint should any utility (in CURB's judgment) use hollow argumentation to merely become obtrusive to Staff's and CURB's reasonable efforts to move the AAO process along.

10. CURB has discussed with counsel for certain RLECS this motion and the basis for dismissal of its complaint without prejudice, and CURB is filing the same in reliance of representations by counsel for said RLECS that the effective date of January 1, 2018 of the AAO, is not being contested. CURB further announces that it has no knowledge that any party has an objection to the granting of this motion upon the basis set forth above.

WHEREFORE, CURB hereby requests that the Kansas Corporation Commission dismiss its complaint against all Kansas electric, natural gas, water and telecommunications public utilities without prejudice.

Respectfully submitted,



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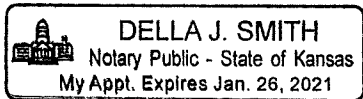
**VERIFICATION**

STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )        ss:

I, Thomas J. Connors, of lawful age and being first duly sworn upon my oath, state that I am an attorney for the Citizens' Utility Ratepayer Board; that I have read and am familiar with the above and foregoing document and attest that the statements therein are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Thomas J. Connors

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of May, 2018.



  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2021.

**CERTIFICATE OF SERVICE**

18-GIMX-273-COM

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 16<sup>th</sup> day of May, 2018, to the following:

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