THE STATE CORPORATION COMMISSION OF THE STATE OF KANSAS

Before Commissioners: Shari Feist Albrecht, Chair
Jay Scott Emler
Pat Apple

In the Matter of the Complaint of Kansas Industrial Consumers Group, Inc. Against Kansas Electric and Natural Gas Public Utilities Regarding Federal Income Tax Reform of 2018 and Its Effect on Jurisdictional Retail Utility Rates.	)	Docket No. 18-GIMX-252-COM

ORDER ADOPTING LEGAL MEMORANDUM

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On December 14, 2017, the Kansas Industrial Consumers Group, Inc. (KIC) filed a Complaint against all investor-owned electric and natural gas public utilities in Kansas,[1] alleging the Tax Cut and Jobs Act, which reduces the federal corporate income tax rate from 35% to 21%, effective for tax-year 2018, renders the utilities' retail rates unjust and unreasonable.[2] The Complaint is attached as Attachment A.

2. On December 22, 2017, Commission Staff (Staff) filed Notice of Filing Legal Memorandum, advising the Commission that KIC's Complaint complies with the procedural requirements set forth in K.A.R. 82-1-220 and recommending the Complaint be served upon all

[1] The Empire District Electric Company (Empire); Westar Energy, Inc. and Kansas Gas & Electric Company (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, (KGS).
[2] Complaint, Dec. 14, 2017, ¶¶ 14, 17.

investor-owned electric and natural gas public utilities for an Answer.[3] Staff's Legal Memorandum is attached as Attachment B.

3. Before KIC's Complaint was served, KIC sent a courtesy copy of its Complaint to each of the referenced utilities. On December 26, 2017, KCP&L filed its Response to the Complaint, advising the issue was best addressed in the 18-GIMX-248-GIV Docket (18-248 Docket).[4] On December 27, 2017, KIC filed its Reply to the Response to Complaint of Kansas City Power & Light Company, noting KCP&L does not deny the Complaint's primary allegation that KCP&L's rates will immediately become unreasonable, unfair, and unjust, in violation of Kansas law after January 1, 2018.[5] More importantly, KIC expressed its opposition to handling its Complaint in the 18-248 Docket because: (1) by not alleging unjust, unreasonable, and illegal rates, the general investigation does not provide the utilities with notice of the alleged illegalities of such rates; and (2) does not request immediate action to protect customers.[6]

4. On January 25, 2018, KIC filed a Motion for Commission to Accept Complaint in Accordance with Kansas Statutes and Commission Regulations, reminding the Commission that the Commission has yet to accept the Complaint or serve it on the relevant utilities in accordance with K.A.R. 82-1-220(c).[7]

5. Upon review of Staff's Legal Memorandum, the Commission finds jurisdiction exists to conduct the requested investigation pursuant to K.S.A. 66-101 *et seq*. Specifically, K.S.A. 66-101e and K.S.A. 66-1,205 authorize the Commission to investigate formal complaints regarding rates, rules, regulations, or practices of electric and gas public utilities.

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[3] Notice of Filing Legal Memorandum, Dec. 22, 2017, p. 1.
[4] Kansas City Power & Light Company's Response to Complaint, Dec. 26, 2017, p. 1.
[5] Reply to the Response to Complaint of Kansas City Power & Light Company, Dec. 27, 2017, ¶ 5.
[6] *Id.*, ¶ 14.
[7] Motion for Commission to Accept Complaint in Accordance with Kansas Statutes and Commission Regulations, Jan. 12, 2018, ¶ 4.

6. Staff's Legal Memorandum dated December 22, 2017 is adopted and incorporated by reference. The Commission finds the Complaint complies with the procedural requirements of K.A.R. 82-1-220, and establishes a prima facie case for Commission action. Therefore, the Commission directs its Staff to conduct an investigation into the claims alleged in the Complaint.

7. The Commission designates Brian G. Fedotin, Deputy General Counsel, 1500 SW Arrowhead Road, Topeka, KS 66604-4027, telephone number (785) 271-3105, b.fedotin@kcc.ks.gov, as Prehearing Officer in this proceeding.[8] The prehearing officer may conduct any prehearing conferences necessary to address any matters appropriately considered in a prehearing conference, including all items listed in K.S.A. 77-517(b) of the Kansas Administrative Procedure Act (KAPA). The Commission may designate other staff members to serve in this capacity.

THEREFORE, THE COMMISSION ORDERS:

A. KIC's Complaint shall be served upon all of the parties identified in footnote 1.

B. Staff is directed to investigate this matter and submit a Report and Recommendation to the Commission.

C. Electronic service will be used in this proceeding, including this Order.

D. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.[9]

E. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

[8] K.S.A. 77-514; K.S.A. 77-516; K.S.A. 77-551(c).
[9] K.S.A. 66-118b; K.S.A. 77-529(a)(1).

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: MAR 0 6 2018

Lynn M. Retz

Lynn M. Retz
Secretary to the Commission

BGF

EMAILED

MAR 0 6 2018

20171214161938
Filed Date: 12/14/2017
State Corporation Commission
of Kansas

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 Utilities regarding Federal Income Tax Reform of 2018 and Its Effect on Jurisdictional Retail Utility Rates.	))))))	Docket No. 18-_____-_____-COM

COMPLAINT

COMES NOW the Kansas Industrial Consumers Group, Inc. (KIC), and respectfully files this *Complaint* against all investor-owned electric and natural gas public utilities in Kansas, whose retail rates will become unjust and unreasonable upon the effectiveness of reduced federal income tax rates, and requests the Kansas Corporation Commission (Commission) act promptly to ensure customers are not charged for these substantial costs related to income taxes, which are currently included in rates, but will not be incurred by the utilities. KIC also requests an immediate investigation of the impact of federal income tax reform on all retail utility rates subject to the jurisdiction of the Commission. In support of its Complaint, KIC states as follows:

I. Background

1. KIC is a corporation organized and existing under the laws of the state of Kansas. KIC was incorporated in Kansas on April 13, 2005. The Secretary of State of Kansas has assigned to KIC, the business Identity I.D. No. 3771185. KIC is a Kansas Corporation in good standing under the laws of the state of Kansas.

2. KIC is organized for the purpose of "Representation, advancement, and protection of the interests of commercial, industrial, and other large volume users of energy (oil, natural gas, electric energy, renewable energy resources) in matters before state and federal administrative agencies, state and federal courts, and before other private and governmental entities, and in the

public generally." In particular, this representation includes advancement of such interests in proceedings at this Commission regarding the rates and services of electric and natural gas public utilities. The Commission has granted KIC's Intervention/Participation in numerous Commission Dockets.

3. The resident agent of KIC is James P. Zakoura, and the address of the registered office of KIC in Kansas is: 7400 W. 110th Street, Suite 750, Overland Park, Kansas 66210.

4. Relevant to this Complaint, the primary retail rate-regulated investor-owned electric and natural gas utilities in Kansas are as follows: 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).[1]

5. The afore-mentioned utilities are the subject of this Complaint,[2] and KIC requests Commission action with respect to these investor-owned utilities' retail rates, as described below. However, KIC does not oppose the joining of additional utilities to the extent those entities' rates are implicated by the allegations herein.

II. Ratemaking Treatment of Utility Income Taxes

6. Commercial, industrial, and other large users of retail electric energy and retail natural gas pay rates for such products that are established by orders of the Commission.[3] These

[1] KIC understands Southern Pioneer Electric Company (Southern Pioneer) is a corporate entity, and its retail rates are subject to Commission jurisdiction. However, it is also KIC's understanding that Southern Pioneer maintains formula-based retail rates using ratemaking principles typically applied to cooperative entities. Therefore, KIC does not believe Southern Pioneer to be a proper subject of this Complaint.
[2] Although KCC regulations provide for the Commission to serve a Formal Complaint once it is accepted, KIC is serving courtesy copies of this Complaint on multiple representatives of each above-listed entities.
[3] K.S.A. 66-101c, 66-1,203, 66-109, & 66-117.

Commission-ordered rates are "cost-based," i.e. the Commission permits a public utility to include within its retail rates all costs, including operating expenses, which are reasonably and necessarily incurred by the utility for the provision of jurisdictional services.[4] This paradigm is often referred to as "cost-of-service" ratemaking.

7. Federal corporate income taxes are a component of all cost-based retail rates approved by the Commission for jurisdictional investor-owned utilities. Therefore, these utilities recover the cost of federal corporate income taxes from their retail customers as a component of Commission-approved, cost-based rates.

8. If the federal corporate income tax rate decreases, so does a utility's cost of service.

9. More specifically, a declining corporate income tax rate should reduce a utility's cost of service – and, in turn, cost-based utility rates – in two ways:

(a) Reduction of income tax expense; and

(b) Recognition and reduction of "excess" accumulated deferred income tax (ADIT) balances for the benefit of customers.[5]

10. The following is a simple example of how a reduction in the federal income tax rate will directly lower a utility's cost of service by reducing the utility's income tax expense:

- Income tax expense is calculated in the ratemaking process by "grossing-up" for income taxes the equity component of the utility's rate of return. The current federal corporate income tax rate is 35%.

- This ensures that the utility has the opportunity to earn its after-tax authorized return-on-equity. For example, for a utility to earn an authorized 10% after-tax ROE, the utility will charge consumers the pre-tax cost of

[4] K.S.A. 66-101b, 66-1,202, Traditionally, utility rates are set by determining (1) a rate base, (2) a fair rate of return, and (3) reasonable operating expenses. *Farmland Indus., Inc. v. State Corp. Comm'n of Kansas*, 24 Kan. App. 2d 172, 188, 943 P.2d 470, 485 (1997). *Sw. Bell Tel. Co. v. State Corp. Comm'n*, 192 Kan. 39, 46-47, 386 P.2d 515, 524 (1963); Also see, *Sw. Bell Tel. Co. v. State Corp. Comm'n of Kansas*, 4 Kan. App. 2d 44, 49, 602 P.2d 131, 136-37 (1979), "The reasonableness of the expense to the utility, for ratemaking purposes, will depend, among other factors, on whether the services provided themselves are necessary or beneficial to Kansas ratepayers."

[5] See "Implications of a Federal Corporate Income Tax Reduction on Kentucky Utility Rates," Michael L. Kurtz, Boehm, Kurtz, & Lowry, dated March 23, 2017, p. 2, http://kiucenergy.com/wp-content/uploads/2016/03/Mike-Kurtz-Presentation-Reflecting-Tax-Reductions-in-Utility-Rates.pdf. (KIUC Presentation, p. 2).

15.4% (10%/0.65) (this example does not include the gross-up for state corporate income taxes).

- If the income tax rate is reduced, then the income tax expense will be reduced through a reduction in the "gross-up."[6]

11. As noted above, utilities' ADIT balances are also implicated by a reduction in corporate income tax rates. ADIT is the difference between the level of tax recovered in rates and the amount of tax actually paid by the utility. The following is a straightforward description of the nature of ADIT:

> The Internal Revenue Code (IRC) and [State] law allow businesses certain tax incentives, which cannot be passed through immediately to ratepayers. The most notable example is the timing difference associated with accelerated depreciation on plant investment. For tax filings, utilities calculate income tax liability using accelerated depreciation as a deduction. For book (i.e., regulatory and financial reporting) purposes, businesses must use "straight-line" depreciation to determine depreciation expense and to calculate income taxes. The difference in income taxes calculated using the two methods is the utility's "deferred tax," which represents the utility's tax liability in future periods.
>
> IRC regulations require utilities to use normalization accounting for calculating income taxes in setting rates. Regulators are prohibited from immediately flowing through to customers, through rates, the higher tax deduction (the amount greater than provided by spreading the tax benefits of depreciation evenly over the life of the asset) from accelerated depreciation. The result is that, for most depreciable assets, actual taxes paid are lower in the earlier years of an asset's life than is calculated for financial statement and ratemaking purposes. This timing difference turns around in the later years of an asset's life so that book depreciation is greater than accelerated depreciation, and actual tax liability is higher than taxes calculated for ratemaking purposes. The total tax deduction over the life of the asset is generally the same as for the financial statement and the ratemaking calculation.[7]

12. As described above, there is a timing difference between when a utility pays its taxes and when it recovers those amounts from ratepayers. However, assuming the utility's income

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[6] KIUC Presentation, p. 3.

[7] "Treatment of Income Taxes in Utility Ratemaking: A White Paper Prepared for The Oregon Legislative Assembly By Public Utility Commission of Oregon Staff," February 2005, pp. 6-7, www.puc.state.or.us/leg/sb408/white/taxpaper.pdf.

tax rate remains constant, the amount of taxes paid by the utility is generally equal to the amount recovered from customers over the course of a utility asset's life.[8]

13. However, if the federal tax rate is reduced, a portion of the utility's ADIT will never be owed to the federal government, creating "excess" deferred taxes. Because the excess ADIT balance will never be paid to the federal government as taxes, ratepayers – who paid these taxes to the utility – are entitled to a refund or credit of excess amounts.[9]

14. On November 16, 2017, the United States House of Representatives passed the "Tax Cuts and Jobs Act." This legislation reduces the federal corporate income tax rate from 35% to 20%, effective for tax-year 2018. On December 2, 2017, the United States Senate passed its own version of the "Tax Cuts and Jobs Act," which also reduces the federal corporate income tax rate from 35% to 20%. The reduced rate is not effective until tax year 2019 under the Senate's legislation. While the House and Senate are still in the process of reconciling certain provisions, significant tax reform is imminent and will likely become effective in a matter of days.[10]

15. The Tax Cuts and Jobs Act is the most significant tax legislation since the Tax Reform Act of 1986, and it will affect public utilities and their retail ratepayers in many and diverse ways. In response to the 1986 Tax Reform Act, 40 jurisdictions opened proceedings to address the impacts of the legislation on public utility rates and accounting.[11] Considering its momentous and wide-ranging impacts, the Tax Cuts and Jobs Act will undoubtedly stir similar regulatory activity throughout the United States.

[8] KIUC Presentation, p. 4; For additional Kansas-specific discussion of income tax treatment, See KCC Docket No. 09-MKEE-969-RTS, Direct Testimony of Jeffrey D. McClanahan, October 19, 2009, pp. 7-9.
[9] KIUC Presentation, p. 4.
[10] As of the filing of this Complaint, the most recent reporting indicates the corporate income tax rate will be reduced to 21% and will be effective January 1, 2018.
[11] KIUC Presentation, p. 14.

III. Complaint against all Kansas Investor-Owned Utilities

16. As noted above, rates for utility service in Kansas are generally required to be cost-based and reflect the utility's cost of serving its customers. In particular, Kansas law does not authorize a public utility to charge retail rates including income tax expense above the prevailing corporate income tax rate applicable to that entity.

17. On and after January 1, 2018,[12] the retail rates of all Kansas investor-owned utilities will immediately become unreasonable, unfair, and unjust, in violation of Kansas law, because such rates will include, as a component thereof, a 35% federal income tax rate, a cost for federal income tax which is far in excess of each utility's actual federal income tax rate. Such rates will also become unreasonable, unfair, and unjust, in violation of Kansas law, because such rates will allow the utilities to retain excess amounts of customer funds in their ADIT accounts that were collected from Kansas retail customers but will not be paid as federal income tax.[13]

18. Because the investor-owned utilities' retail rates do not contain a mechanism to account for this immediate and substantial reduction to the utilities' costs of service, the Commission must act affirmatively and swiftly to ensure customers do not pay any unjust or unreasonable portion of these rates. Absent Commission action granting the relief requested by KIC, Kansas retail customers ***will pay excessive rates***, including income tax expense far above the utilities' actual federal income tax obligations, and such excessive charges on and after January 1, 2018, will be unreasonable, unfair, unjust, and unlawful - - all in violation of Kansas statutes, regulations, and case law interpretation thereof.

[12] Depending on the outcome of the reconciliation process, KIC recognizes reduced corporate income tax rates could become effective at a later date, such as January 1, 2019. However, due to this uncertainty, the Commission must act immediately to protect customers.
[13] K.S.A. 66-101b, 66-101e, 66-1,202, 66-1,205, & K.A.R. 82-1-220.

19. The magnitude of the above-described excessive retail rates will be immense and extremely material.

20. For example, KCP&L-KS recovers approximately $60 million per year for income tax expense in its Kansas retail electric rates and has an Accumulated Deferred Income Tax balance of approximately $499 million related to its Kansas retail operations.[14] A substantial portion of KCP&L's income tax expense is related to federal income tax obligations, and a comparatively smaller amount is related to Kansas income taxes.

21. Westar collects approximately $154 million per year for income tax expense from its Kansas retail ratepayers and has an Accumulated Deferred Income Tax balance of approximately $1.3 billion related to its Kanas retail operations.[15] A substantial portion of Westar's income tax expense is related to federal income tax obligations, and a comparatively smaller amount is related to Kansas income taxes. In addition, these amounts are significantly higher when accounting for Westar's significant federally-jurisdictional transmission operations. In fact, Westar's 2016 Form 10-K, filed with the U.S. Securities and Exchange Commission, reports a net deferred income tax liability of $1.75 billion.

22. KIC recognizes current rates may not reflect unjust, unreasonable, and excessive charges related to federal income taxes as of the date of this filing.[16] However, the near certainty of tax reform, potentially effective at January 1, 2018, necessitates immediate Commission action to protect Kansas retail ratepayers. Absent immediate action, customers may have no legal

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[14] Docket No. 17-KCPE-201-RTS, Staff Schedules, April 6, 2017; See also, Application, Schedule 3(i), November 9, 2016.

[15] Docket No. 17-WSEE-147-RTS, Staff Schedules, April 11, 2017; See also, Docket No. 15-WSEE-115-RTS, Application, Schedule 11-H, March 2, 2015.

[16] K.A.R. 82-1-220(b)(1) does not require identification of an existing violation. Instead, Commission regulations allow a Complainant to identify violations that *will* occur "by a continuance of acts or omissions." Assuming the investor-owned utilities continue charging their current rates for service, they will collect unjust and unreasonable rates upon the effectiveness of the anticipated income tax reform legislation.

recourse to recover significant amounts of unjustified and excessive rates paid to the utilities. To protect customers, KIC requests the Commission immediately notify all investor-owned electric and natural gas utilities and those utilities' customers regarding its remedy for this issue.

23. Pursuant to K.A.R. 82-1-220(b)(3), KIC requests the following relief:

(a) An Order from the Commission requiring every public utility listed in paragraph 4 above, as of the effective date of any reduction in the federal income tax rate, to account for and accumulate the portion of collected revenues associated with the difference between the previous and current corporate income tax rates. Such amounts must be accumulated as a regulatory liability, with carrying charges equivalent to the utility's current allowed return, to be refunded to customers in the utility's next general or abbreviated rate case. KIC respectfully requests the Commission issue this order on or before December 31, 2017;

(b) an Order from the Commission that public utilities are not entitled to retain excess levels of ADIT resulting from a reduced corporate tax rate and, as of the effective date of any reduction in the federal income tax rate, every investor-owned utility in the state of Kansas is required to account for excess amounts of ADIT resulting from the reduced corporate tax rate. In addition, KIC requests the Commission order immediate refunds of excess ADIT or adopt other appropriate mechanisms to return excess amounts to retail ratepayers within a reasonable timeframe;[17] and

[17] KIC recognizes ADIT is currently a source of cost-free capital to the utilities. Therefore, it may be that the refund to retail ratepayers must be phased in over a (reasonably short) period of time. However, KIC is also concerned with intergenerational inequities that may occur if refunds are provided over an extended timeline. Past ratepayers contributed the excess amounts, and future ratepayers will receive the refunds. To minimize intergenerational inequities, the refunds should be provided as quickly as practicable.

(c) an Order from the Commission opening a general investigation to examine the impact of all aspects of the "Tax Cuts and Jobs Act" on the rates and terms and conditions of service of all retail rate-regulated Kansas electric and natural gas public utilities.[18]

WHEREFORE, KIC respectfully requests the Commission grant the relief set forth above.

Respectfully submitted,

/s/ *James P. Zakoura*

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Andrew J. French, #24680
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Attorneys for Kansas Industrial Consumers Group, Inc.

[18] These items may include, but will not be limited to, identification of changes to rules on net operating loss deductions and changes to rules on the expensing of capital investment.

ATTACHMENT A

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 *Complaint*, 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 14th day of December, 2017.

Notary Public

My Appointment Expires:

NOTARY PUBLIC STATE OF KANSAS | DIANE M. WALSH My Appt. Exp. 08-31-2018

ATTACHMENT A

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 15th day of December, 2017 to the parties below:

GLENDA CAFER CAFER PEMBERTON LLC 3321 SW 6TH ST TOPEKA, KS 66606 glenda@caferlaw.com	TERRI PEMBERTON CAFER PEMBERTON LLC 3321 SW 6TH ST TOPEKA, KS 66606 terri@caferlaw.com
DAVID W. NICKEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.nickel@curb.kansas.gov	THOMAS J. CONNORS CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 tj.connors@curb.kansas.gov
DELLA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 d.smith@curb.kansas.gov	SHONDA SMITH CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD RD TOPEKA, KS 66604 sd.smith@curb.kansas.gov
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AMBER SMITH KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 a.smith@kcc.ks.gov	MICHAEL NEELEY KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 m.neeley@kcc.ks.gov
CATHRYN J. DINGES WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 cathy.dinges@westarenergy.com	DUSTIN KIRK KANSAS COPRORATION COMMISSION 1500 SW ARROWHEAD RD TOPEKA, KS 66604-4027 d.kirk@kcc.ks.gov
MICHAEL DUENES KANSAS COPRORATION COMMISSION 1500 SW ARROWHEAD RD	SAMUEL FEATHER KANSAS COPRORATION COMMISSION 1500 SW ARROWHEAD RD

TOPEKA, KS 66604-4027 m.duenes@kcc.ks.gov	TOPEKA, KS 66604-4027 s.feather@kcc.ks.gov
JAMES G. FLAHERTY, ATTORNEY ANDERSON & BYRD, L.L.P. 216 S HICKORY PO BOX 17 OTTAWA, KS 66067 jflaherty@andersonbyrd.com	ROBERT J. AMDOR, MANAGER, REGULATORY SERVICES BLACK HILLS/KANSAS GAS UTILITY COMPANY, LLC D/B/A BLACK HILLS ENERGY 1102 E FIRST ST PAPILLION, NE 68046 robert.amdor@blackhillscorp.com
JUDY JENKINS, MANAGING ATTORNEY KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2713 judy.jenkins@onegas.com	CHRISTOPHER D. KRYGIER, DIRECTOR, REGULATORY & GOVERNMENT AFFAIRS LIBERTY UTILITIES CO. PO BOX 127 JOPLIN, MO 64802-0127 chris.krygier@libertyutilities.com
ROBERT J. HACK KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 rob.hack@kcpl.com	DARRIN R. IVES KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 darrin.ives@kcpl.com
ROGER W. STEINER KANSAS CITY POWER & LIGHT COMPANY ONE KANSAS CITY PL 1200 MAIN ST 31ST FLOOR PO BOX 418679 KANSAS CITY, MO 64141-9679 roger.steiner@kcpl.com	JEFFREY L. MARTIN WESTAR ENERGY, INC. 818 S KANSAS AVE PO BOX 889 TOPEKA, KS 66601-0889 jeff.martin@westarenergy.com
JANET BUCHANAN, DIRECTOR-REGULATORY AFFAIRS KANSAS GAS SERVICE, A DIVISION OF ONE GAS, INC. 7421 W 129TH ST OVERLAND PARK, KS 66213-2713 janet.buchanan@onegas.com	JENNIFER G. RIES, VICE PRESIDENT, RATES AND REGULATORY AFFAIRS-COLORADO/KANSAS ATMOS ENERGY CORPORATION 1555 BLAKE ST STE 400 DENVER, CO 80202 jennifer.ries@atmosenergy.com

ATTACHMENT A

/s/ Andrew J. French

James P. Zakoura
Andrew J. French
SMITHYMAN & ZAKOURA, CHARTERED

20171222102927
Filed Date: 12/22/2017
State Corporation Commission
of Kansas

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 Utilities Regarding Federal Income Tax Reform of 2018 and its Effect of Jurisdictional Retail Utility Rates.	)	Docket No. 18-GIMX-252-COM

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 Kansas Industrial Consumers' Group, Inc. (KIC) on December 14, 2017, against all investor-owned electric and natural gas public utilities in Kansas whose rates, according to KIC, will become unjust and unreasonable upon the effectiveness of reduced federal income tax rates. As a result of this evaluation, Staff recommends the Commission find KIC's Complaint complies with the procedural requirements set forth in K.A.R. 82-1-220 and should be served upon all investor-owned electric and natural gas 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.

Respectfully Submitted,

Michael Neeley, S. Ct. #25027
Litigation Counsel
Kansas Corporation Commission
1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: 785-271-3173

ATTACHMENT B

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 22nd day of December, 2017.

PAMELA J. GRIFFETH
Notary Public - State of Kansas
My Appt. Expires 08-17-2019

Pamela J. Griffeth
Notary Public

My Appointment Expires: August 17, 2019

ATTACHMENT B

1500 SW Arrowhead Road
Topeka, KS 66604-4027

Kansas
Corporation Commission

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Jay Scott Emler, Chairman
Shari Feist Albrecht, Commissioner
Pat Apple, Commissioner

Sam Brownback, Governor

LEGAL MEMORANDUM

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

From: Michael Neeley, Litigation Counsel

Date: December 22, 2017

Re: 18-GIMX-252-COM
In the Matter of the Complaint of Kansas Industrial Consumers' Group, Inc., against Kansas Electric and Natural Gas Public Utilities regarding Federal Income Tax Reform of 2018 and Its Effect on Jurisdictional Retail Utility Rates

EXECUTIVE SUMMARY

The Kansas Industrial Consumers Group, Inc. (KIC or Complainant) filed a Formal Complaint[1] against all investor-owned electric and natural gas utilities in Kansas (the Respondents), alleging that the Respondents' retail rates will become unjust and unreasonable upon effectiveness of reduced federal income tax rates. 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 14, 2017, Complainant filed a Formal Complaint against the Respondents. In the Formal Complaint, Complainant explained that the proposed "Tax Cuts and Jobs Act" will reduce the federal corporate income tax rate from 35% to 20%, effective for tax-year 2018.[2] Complainant indicates that although the final bill has not yet passed, significant tax reform is imminent and will likely become effective in a matter of days.[3] Complainant explains that income tax expense is a component of retail rates, and rates reflecting a 35% income tax expense will immediately become unreasonable, unfair, unjust, and in violation of Kansas law, upon adoption of a lower federal corporate tax

[1]In the Matter of the Complaint of Kansas Industrial Consumers' Group, Inc., against Kansas Electric and Natural Gas Public Utilities regarding Federal Income Tax Reform of 2018 and Its Effect on Jurisdictional Retail Utility Rates (December 14, 2017) (Formal Complaint).
[2]Formal Complaint at 5.
[3]Id.

rate.[4] Additionally, a reduction in the federal corporate tax rate will lead to retail rates that are unjust, unreasonable, unfair, and in violation of Kansas law, because such retail rates will allow the Respondents to retain excess amounts of customer funds in their Accumulated Deferred Income Tax (ADIT) accounts that were collected from Kansas retail customers but will not be paid as federal income tax.[5] Complainant seeks the following relief:

(1) An Order from the Commission requiring the Respondents, as of the effective date of any reduction in the federal tax rate, to account for and accumulate the portion of collected revenues associated with the difference between the previous and current corporate income tax rates. Such amounts must be accumulated as a regulatory liability, with carrying charges equivalent to the utility's current allowed return, to be refunded to customers in the utility's next general or abbreviated rate case. KIC respectfully requests the Commission issue this order on or before December 31, 2018;

(2) An Order from the Commission that public utilities are not entitled to retain excess levels of ADIT resulting from a reduced corporate tax rate and, as of the effective date of any reduction in the federal income tax rate, every investor owned utility in the state of Kansas is required to account for excess amounts of ADIT resulting from the reduced corporate tax rate. In addition, KIC requests the Commission order immediate refunds of excess ADIT or adopt other appropriate mechanisms to return excess amounts to retail ratepayers within a reasonable timeframe; and

(3) An Order from the Commission opening a general investigation to examine the impact of all aspects of the "Tax Cuts and Jobs Act" on the rates and terms and conditions of service of all retail rate-regulated Kansas electric and natural gas public utilities.[6]

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."[7] If the Commission determines these conditions are satisfied, the Formal Complaint is served on each respondent for an Answer.[8]

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;

[4]*See* Id. at 6.
[5]Id.
[6]Id. at 6-7.
[7]K.A.R. 82-1-220(c).
[8]Id.

(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 will become unjust, unreasonable, unfair, and in violation of Kansas law should the Respondents continue to include the 35% federal corporate income tax expense in rates if the federal corporate tax rate becomes reduced, and should the Respondents retain excess amounts of customer funds in their ADIT accounts that were collected from Kansas retail customers but will not be paid as federal income tax.

Complainant has set forth in plain language, the facts that it believes will constitute the violation.

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).

ATTACHMENT B

CERTIFICATE OF SERVICE

18-GIMX-252-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 on this 22nd day of December, 2017, to the following:

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