THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: Dwight D. Keen, Chair
Shari Feist Albrecht
Jay Scott Emler

In the Matter of the Application of Kansas Gas Service, a Division of ONE Gas, Inc., for Adjustment of its Natural Gas Rates in the State of Kansas.	))))	Docket No. 18-KGSG-560-RTS

ORDER ON BIFURCATED ISSUE

This matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission finds and concludes as follows:

Background

1. On June 29, 2018, Kansas Gas Service, a Division of ONE Gas, Inc., (KGS) filed its Application seeking a net revenue increase of $42.7 million, resulting from increasing base rates by $45.6 million and reclassifying $2.9 million currently collected through the Gas System Reliability Surcharge (GSRS) to base rates.[1]

2. The Commission granted intervention in this proceeding to the Citizens' Utility Ratepayer Board (CURB),[2] Kansas Farm Bureau (KFB),[3] Kansas Corn Growers Association[4] and WoodRiver Energy, LLC (WoodRiver).[5]

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[1] Testimony of Janet L. Buchanan in Support of the Settlement Agreement, p. 3 (Dec. 4, 2018) (Buchanan Testimony in Support).
[2] *Order Granting Intervention to the Citizens' Utility Ratepayer Board*, Ordering Clause A (July 24, 2018).
[3] *Order Granting Intervention to the Kansas Farm Bureau and Kansas Corn Growers Association*, Ordering Clause A (Oct. 11, 2018).
[4] *Id.*
[5] *Order Granting Intervention to WoodRiver Energy, LLC*, Ordering Clause A (Oct. 11, 2018).

3. Prior to December 7, 2018, the parties, including Commission Utilities Staff (Staff), variously filed direct, cross-answering and rebuttal testimony, along with exhibits, schedules and errata testimony.[6]

4. On December 3, 2018, the parties filed a Joint Motion to Approve Partial Unanimous Settlement Agreement (Joint Motion), addressing all outstanding disputed issues raised in the pre-filed testimony and exhibits, with the exception of one issue relating to whether KGS should be allowed to offset the tax savings amount accrued as a regulatory liability with KGS's other cost of service components pursuant to the Commission's *Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform* (*Order Opening General Investigation*) issued in Docket No. 18-GIMX-248-GIV (248 Docket) (Bifurcated Issue).[7] The instant Order addresses the Bifurcated Issue.

5. On December 4, 2018, Janet Buchanan on behalf of KGS, and Andrea Crane on behalf of CURB, filed testimony in support of the Partial Unanimous Settlement Agreement (Settlement Agreement). On December 6, 2018, Justin Grady filed testimony in support of the Settlement Agreement on behalf of Staff. On December 7, 2018, Robert H. Glass filed testimony in support of the Settlement Agreement on behalf of Staff.

6. On December 10, 2018, KGS requested that the Commission take notice of certain filings and orders in Commission Docket No. 155,094-U (1987 Order) and Docket No. 18-GIMX-248-GIV (18-248 Docket).[8]

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[6] Hearing Transcript, Docket No. 18-KGSG-560-RTS, p. 32 (Dec. 11, 2018) (Tr.). *See* Public Direct Testimony of Paul H. Raab (Dec. 6, 2018).
[7] Joint Motion, pp. 2-8 (Dec. 3, 2018).
[8] Administrative Notice, pp. 1-2 (Dec. 10, 2018).

7. On December 11, 2018, the Commission held a hearing on the Settlement Agreement and on the Bifurcated Issue. KGS, Staff and CURB appeared by counsel.[9] KGS witness Buchanan and Staff witness Grady testified live in support of the Settlement Agreement.[10] Both witnesses also testified on the Bifurcated Issue.[11] CURB witness Crane's testimony was referred into the record by agreement of the parties.[12] The Commission took administrative notice of the 1987 Order and the 18-248 Docket.[13] The parties did not submit post-hearing briefs on the Settlement Agreement.

8. On February 5, 2019, the Commission issued its *Order Approving Partial Unanimous Settlement Agreement*, approving the Settlement Agreement in its entirety and incorporating the terms of the Settlement Agreement into the Order.[14] The Commission approved a base revenue requirement increase for KGS of $21.5 million.[15] The Commission also stated it would issue a separate order on the Bifurcated Issue on or before February 25, 2019.[16]

9. Regarding the Bifurcated Issue, KGS filed a post-hearing brief[17] and reply brief.[18] Staff and CURB also filed post-hearing briefs.[19]

Discussion

10. In its post-hearing brief, KGS argued that the language from paragraph 11 of the *Order Opening General Investigation* in the 18-248 Docket clearly and unambiguously "allows

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[9] Tr., p. 4.
[10] Tr., pp. 32, 58.
[11] *See* Tr., pp. 41-58 (Buchanan), 62-74 (Grady).
[12] *Order Approving Partial Unanimous Settlement Agreement*, ¶ 10 (Feb. 5, 2019).
[13] Tr., pp. 5-6.
[14] *Order Approving Partial Unanimous Settlement Agreement*, Ordering Clause A (Feb. 5, 2019) (Order).
[15] Order, Ordering Clause B.
[16] Order, Ordering Clause D.
[17] Post Hearing Brief of Kansas Gas Service (Jan. 3, 2019) (KGS Brief).
[18] Reply Brief of Kansas Gas Service (Jan. 25, 2019) (KGS Reply Brief).
[19] Commission Staff's Closing Brief on KGS's Deferred Revenue (Tax Regulatory Liability) (Jan. 16, 2019) (Staff Brief); Post-Hearing Brief of the Citizens' Utility Ratepayer Board (Jan. 16, 2019) (CURB Brief).

Kansas Gas Service to eliminate the tax savings amount accrued as a regulatory liability," i.e., write off the regulatory liability.[20] KGS's argument rests on the claim that in the 18-248 Docket, the Commission established a general rule, and an exception to that rule, regarding each utility's handling of the federal income tax reduction stemming from the Tax Cuts and Jobs Act (TCJA).[21] According to KGS, the general rule required utilities subject to federal corporate income tax to track the tax savings they accrued due to the TCJA in a regulatory liability and pass those savings on to customers.[22] The exception to this rule, posits KGS, holds that "if any utility could provide information and supporting data to the Commission that identified increases in other components of its cost of service have more than offset the decrease in its income tax expense, then the Commission would consider that information on a case by case basis, with its intention being 'not to materially impact the utility's 'profitability,' but rather to ensure the utility neither positively nor negatively was impacted by the passage of federal income tax reform."[23]

11. KGS argued that it provided information and data demonstrating that increases in other components of its cost of service had more than offset the decrease in its income tax expense, and KGS was not earning its authorized rate of return.[24] Thus, KGS claimed that under the exception to the general rule, the Commission should allow KGS "to eliminate the regulatory liability pursuant to the Commission's Tax Reform Order."[25]

12. Staff, on the other hand, argued that the so-called "exception" does "not nullify the overall intent behind the" Accounting Authority Order, namely, "the 'preservation of due process'

[20] KGS Brief, p. 6.
[21] *See* KGS Brief, p. 6.
[22] KGS Brief, p. 6.
[23] KGS Brief, pp. 6-7.
[24] KGS Brief, p. 7.
[25] KGS Brief, p. 7.

and the ability of a utility [to] show 'direct offsetting impacts associated with tax reform.'"[26] Staff witness Grady testified: "The fact that KGS has experienced offsetting cost increases in its cost of service should be a factor that contributes to the setting of KGS's base rates, as the Commission will do in this Docket. But it should not influence whether KGS is required to pass the deferred benefits of tax reform that have accrued between January 1, 2018, and February 28, 2019, onto Kansas customers."[27] Grady continued:

> [T]he only way to ensure that the deferred tax savings ***do not inure to the benefit of KGS's shareholders*** is to credit all of the tax benefits to KGS customers. Otherwise, when KGS's tax liability dramatically declined on January 1, 2018, the benefit of that reduction in income tax expense would flow directly to KGS's shareholders. Whether the result was that KGS would be earning more or less than its authorized return, it is irrefutable that the result of allowing KGS to keep the deferred tax savings would be an increase in KGS's profitability starting on January 1, 2018. ***That would be directly contrary to the Commission's stated purpose behind issuing the AAO*** . . . The Commission stated in that referenced passage in the Order: "The Commission's intention here is not to materially impact regulated utilities' profitability, but rather, ensure that the affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform." Because KGS's income tax expense went down on January 1, 2018, if 100% of the deferred tax savings are given to customers in the form of a bill credit, the result is that KGS will not be positively or negatively impacted by the passage of federal income tax reform, just as the Commission intended.[28]

13. KGS contended that Staff's interpretation of the relevant language from the 18-248 Docket "would render meaningless that portion of the Commission's Tax Reform Order that established the exception to the general rule, which provided a utility the opportunity to submit information and supporting data to the Commission to identify that the increases in its other

[26] Staff Brief, pp. 3-4.
[27] Grady Direct, p. 26.
[28] Grady Direct, pp. 27-28 (emphasis added); Staff Brief, p. 7.

components of cost of service have more than offset the decrease in its income tax expenses."[29] KGS argued that under Staff's interpretation, whereby the utility must return the tax savings to customers, there would be no need for a utility to bring forth information and data showing its other cost of service components have more than offset the utility's decrease in income tax expenses.[30] According to KGS, Staff's interpretation would reduce the issue to the fact that "the utility's income tax expenses were reduced as a result of the TCJA and as a result of that reduction, the utility would 'profit' unless it was ordered to credit that reduced expense to its customers."[31]

14. KGS concluded that the Commission's language in the 18-248 Order (and identical language elsewhere):

> " . . . means that it was the Commission's intent that if a utility would earn more than its authorized return as a result of the reduction in federal income tax expenses, and the utility either elected to or could not come forward to show increases in other components of its cost of service have more than offset the decrease in its income tax expenses, then the utility would be required to credit its customers for the reduction in income tax expenses so it would not "profit" (i.e., earn above its authorized return), as a result of the tax reduction. However, if a utility would <u>not</u> earn more than its authorized return as a result of the reduction in federal income tax expenses because it was able to come forward and provide information and data supporting that it had increases in its other components of its cost of service that had more than offset the decreases in its income tax expenses and that the Company was not earning at or above its authorized rate of return - even though its tax expenses had decreased, then the utility would be found to not be profiting as a result of the tax reduction because it was not earning its authorized return and therefore, could eliminate the regulatory liability as established in the 248 Docket."[32]

[29] KGS Brief, p. 7.
[30] KGS Brief, pp. 8-9.
[31] KGS Brief, p. 8.
[32] KGS Brief, pp. 9-10.

Findings and Conclusions

15. At the outset, the Commission finds that KGS's specific request for relief stemming from the relevant language in the 18-248 Docket is a matter of first impression. KGS, which has the burden of proof, has not shown from either the Commission's 1987 155,094-U Docket or the 18-248 Docket that another utility has received the specific relief that KGS is requesting. In addition, KGS has not produced any statute or regulation that entitles it to eliminate/write off a regulatory liability upon a showing that its other cost of service components more than offset its reduction in tax expenses. KGS simply asserted that "it would be unreasonable or unlawful for the Commission" to disallow KGS's elimination of the regulatory liability only "***if*** the Commission agrees with Kansas Gas Services's interpretation of paragraph 11 of the [18-248 Docket] Tax Reform Order."[33] Thus, KGS hopes to retain the regulatory liability solely by virtue of its interpretation of a previous Commission Order or policy. The resolution of this issue, therefore, turns on the interpretation and application of previous Commission orders. The Commission is unpersuaded by KGS's interpretation and application of those orders.

16. KGS's arguments fail for several reasons. First, KGS assumes that the Commission's "case-by-case" consideration of a utility's filed "information and supporting data" is for the purpose of determining that where the utility's cost of service components have more than offset the tax expense decrease, and the utility is under-earning its authorized rate of return, then the utility gets to keep and write off the regulatory liability; but if there is no such offset and no under-earning, the utility must return the regulatory liability to consumers.[34] This assumption is mistaken because no such purpose is stated in any of the places where the so-called "exception"

[33] KGS Reply Brief, p. 11. (Emphasis added).
[34] KGS Brief, pp. 9-10.

language appears.[35] Staff or the Commission, had they meant to, could have provided something like the following: *Where a utility shows that other components of its cost of service have more than offset the decrease in its income tax expenses, and the utility is under-earning its authorized rate of return, the utility will have the ability to file such information and supporting data with the Commission, so that on a case-by-case basis, where the under-earning is shown, the utility will be able to retain any regulatory liability to put toward its bottom line.* However, no such "under-earning" language appears in the 1987 Order, the 18-248 Docket, or the instant docket. Nor is any reference to under-earning implied by the language that does appear.

17. By stating that "[t]he Company . . . clearly met its burden under the exception to the general rule to provide information and data that undisputedly showed increases in other components of its cost of service had more than offset the decrease in the income tax expense and that ***the Company was not earning at or above its authorized rate of return*** even though its tax expenses had decreased,"[36] KGS groundlessly assumes that the notion of "the Company . . . not earning at or above its authorized rate of return" is part of the so-called "exception." Nothing in the language of the paragraphs at issue points to under- or over-earning one's authorized rate of return as any kind of determining standard. Under the rules of interpretation, something not readily found in a statute, or in this instance, in a Commission order, may not be read into it.[37] Further, words cannot be read into a plainly written statute that would alter its meaning.[38] The Commission finds that KGS has improperly read its preferred outcome into the language in paragraph 11 of the

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[35] *See* 1987 Order, p. 2; 18-248 Docket, Staff's Report and Recommendation (Dec. 13, 2017) (Staff's R&R, attached to Staff's Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform); 18-248 Docket, *Order Opening General Investigation*, ¶ 11 (Jan. 18, 2018).
[36] KGS Brief, p. 7. (Emphasis added).
[37] *Berry v. Nat'l Med. Servs., Inc.*, 41 Kan. App. 2d 612, 621, 205 P.3d 745, 752 (2009), aff'd, 292 Kan. 917, 257 P.3d 287 (2011).
[38] *In re Lemons*, 40 Kan. App. 2d 389, 390, 192 P.3d 647, 647 (2008), aff'd, 289 Kan. 761, 217 P.3d 41 (2009).

18-248 Docket's *Order Opening General Investigation*, thereby changing its meaning. Thus, the Commission rejects KGS's interpretation.

18. Second, KGS has assumed that the question of what the Commission meant by "profitability" can be settled by a dictionary definition or a supposedly typical understanding of "profit."[39] The dictionary cannot determine the meaning because all parties to this docket can marshal some support for their interpretation of "profitability" with the dictionary.[40] Further, KGS's claim of a typical understanding fails because Buchanan provided no basis for her assertion that the Commission has generally defined "profit" as "an opportunity to earn a rate of return."[41] Moreover, as explained above, there is no language in paragraph 11 of the 18-248 Docket's *Order Opening General Investigation* or anywhere else that defines "profitability" by whether a utility under- or over-earns its authorized rate of return.

19. "Profitability" must be defined by the entire context of the Commission's *Order Opening General Investigation*. That is, "profit" has to do with "ensur[ing] that the affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform"[42] and ensuring that this "sudden and dramatic reduction in the level of this expense should not inure to the benefit of shareholders."[43] Rather than understanding "profit" to mean "over-earning one's authorized rate of return," as KGS suggests,[44] the Commission finds that "profit" exists where the federal income tax reform has a material positive impact on KGS or inures to the

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[39] KGS Reply Brief, pp. 9-10.
[40] *See e.g.* Staff Brief, pp. 5-6; CURB Brief, p. 15.
[41] Tr., p. 44.
[42] *See* 18-248 Docket, *Order Opening General Investigation*, ¶ 11.
[43] Staff's R&R, p. 5; *Order Opening General Investigation*, ¶ 11 (incorporating Staff's R&R into the Order).
[44] KGS Brief, pp. 9-10; KGS Reply Brief, pp. 9-10.

benefit of KGS shareholders.[45] This "profit" is just the thing the Commission sought to avoid.[46] Further, if KGS is not being positively impacted by writing off the regulatory liability, it must necessarily assert that it needs to keep the regulatory liability in order to counterbalance some negative impact of the federal tax reform. Otherwise, KGS has no reason for keeping it. However, KGS made no showing that is has suffered a negative impact by the passage of federal income tax reform to be counterbalanced by writing off the regulatory liability.[47]

20. As noted in the previous paragraph, KGS's argument amounts to the claim that under-recovery of KGS's authorized return is synonymous with KGS suffering a materially negative impact to its profitability or being negatively impacted by federal tax reform.[48] KGS's argument also means that over-recovery of KGS's authorized return would be precisely equal to KGS experiencing a materially positive impact to its profitability or being positively impacted by federal tax reform.[49] These implicit arguments have no basis in the Commission's language because nowhere did the Commission make under-recovery or over-recovery synonymous with anything, nor did it make under-recovery or over-recovery the standard for "profitability." Nonetheless, KGS has undergirded its entire claim that it is not profiting from tax reform, and therefore is entitled to keep the regulatory liability, by equating the terms "material impact to profitability" and "positive or negative impact" with under- or over-recovering one's authorized rate of return.[50] The Commission rejects KGS's argument.

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[45] *See* 18-248 Docket, *Order Opening General Investigation*, ¶ 11; Staff's R&R, p. 5.
[46] *See id.*
[47] *See* Buchanan Direct, p. 26. Buchanan does not argue that KGS's elimination of the regulatory liability should be used to remedy Moody's lowering of its rating outlook for ONE Gas.
[48] *See* KGS Brief, p. 10; KGS Reply Brief, pp. 10-11.
[49] *See* KGS Brief, pp. 9-10.
[50] *See* KGS Brief, pp. 6-7, 9-10.

21. Third, KGS argued that Staff's recommendation "nullifies the exception to the general rule."[51] However, the Commission has not adopted Staff's recommendation wholesale. More importantly, KGS's reading misinterprets or disregards the following phrases from the 18-248 Docket: "not to materially impact regulated utilities' profitability,"[52] "ensure that the affected utilities are neither positively nor negatively impacted,"[53] and "should not inure to the benefit of shareholders."[54] Where the Commission's language is clear, the various provisions must be considered "in pari materia with a view of reconciling and bringing those provisions into workable harmony if possible."[55] KGS's focus on what it considers the "general rule" and "the exception" is reductionistic and fails to bring all the provisions of the Commission's orders into workable harmony. Most particularly, KGS's interpretation fails to account for the Commission's intention to ensure that KGS shareholders are not benefited.[56]

22. KGS would not be seeking to put the tax savings in the regulatory liability toward its "bottom line"[57] if doing so would not positively impact KGS, thereby "inur[ing] to the benefit of [its] shareholders," contrary to the purposes of the deferral mechanism.[58] If it were a matter of indifference, and KGS nowhere suggested it is, KGS would not be contesting this matter. Further, KGS did not submit it would be writing off the regulatory liability solely to benefit its customers. Buchanan's assertion that customers will be benefited "through our rates," and thus, "will receive

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[51] KGS Brief, p. 8.
[52] 18-248 Docket, *Order Opening General Investigation*, ¶ 11.
[53] 18-248 Docket, *Order Opening General Investigation*, ¶ 11.
[54] R&R, p. 5.
[55] *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 918, 296 P.3d 1106, 1115 (2013).
[56] *See* Staff's R&R, p. 5; 18-248 Docket, *Order Opening General Investigation*, ¶ 11.
[57] Tr., p. 47.
[58] R&R, p. 5. *See* Grady Direct, p. 27.

the benefit of that tax reduction,"[59] does not stand for the proposition that ratepayers will benefit from KGS eliminating the regulatory liability. Thus, the Commission rejects this argument as well.

23. Fourth, KGS claims it would be illogical for the Commission to allow a utility to present the information and data showing a cost of service offset to the tax reduction if KGS cannot have the regulatory liability back in its requested manner.[60] In other words, says KGS, if the utility *must* pass the entire regulatory liability on to the consumer, any motivation to file information and supporting data on other cost of service components dries up.[61] However, the Commission has not found that the entire regulatory liability must be passed on to the consumer in all instances. This is where KGS errs in its argument that the so-called "exception" is nullified or rendered meaningless.[62]

24. The Commission could analyze a utility's filing of additional information and supporting data and find the evidence shows that passing the entire regulatory liability on to consumers may negatively impact the utility (e.g., where a utility may be facing extreme financial hardship). To put it another way, the Commission may determine in certain cases that the utility needs to retain some or all of a regulatory liability so that the utility remains a viable business entity, able to provide sufficient and efficient service at just and reasonable rates.[63] Allowing the utility to retain a regulatory liability under such circumstances would benefit the utility's ratepayers, would be consistent with the Commission's intention to keep from materially

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[59] Tr., pp. 52-53.
[60] KGS Brief, pp. 8-9.
[61] *See* KGS Brief, p. 8; Buchanan Rebuttal, p. 12.
[62] *See* KGS Brief, pp. 7-8, 12.
[63] *See* K.S.A. 66-1,202.

impacting regulated utilities' profitability, and would not simply benefit the utilities' shareholders. Case-by-case circumstances and the public interest will dictate.

25. Other than a possible downgrade in its Moody's rating,[64] KGS has made no showing that it is negatively impacted by the federal tax reform itself. KGS did not show that its under-recovery puts it in dire circumstances, such as financial distress, so that denying KGS the regulatory liability to put toward its bottom line will threaten the Company's viability, i.e., its ability to provide sufficient and efficient service at just and reasonable rates. Indeed, Grady explained the historical circumstances under which the Commission has agreed to allow a company to retain and write-off a regulatory liability, stating: "[T]he Commission has approved settlement agreements with rural local exchange carriers where Staff and the Company agreed that the utility should be able to write off its regulatory liability. But it wasn't because all other areas of their cost of service were increasing, normal, status quo type stuff."[65]

26. KGS's argument necessarily implies that it will be negatively impacted if it does not get to keep the regulatory liability because, in that scenario, it will be losing a chance to get closer to obtaining its authorized return.[66] However, the inability to keep the regulatory liability does not position KGS any further from earning its authorized return than it was before the federal tax reform.[67] That is, KGS's failure to earn its authorized return in 2017 is based on other factors than federal tax reform, which had not yet become effective.[68] Thus, the Commission finds the only way KGS could be negatively impacted by being denied the regulatory liability is if it were

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[64] *See* Tr., pp. 54-55.
[65] Tr., p. 67.
[66] *See* KGS Brief, p. 10; KGS Reply Brief, pp. 10-11.
[67] *See* Tr., p. 68; Grady Direct, p. 28.
[68] *See* KGS Application, Form 10-K (2017 Annual Report), p. 27 (June 29, 2018).

in some extremely negative financial position where its viability hung in the balance. Otherwise, KGS's retention of the regulatory liability to put toward its bottom line only inures to the benefit of KGS, i.e., its shareholders. Again, the Commission wanted to avoid such an outcome.

27. The Commission finds that the overarching purpose and goal of examining the impact of federal tax reduction on utilities was to ensure that *ratepayers* benefit from a utility's income tax savings. In its 1987 Order, the Commission found that "significant reductions in income tax expense should not become a windfall for utilities but should rather be flowed through to ratepayers."[69] In its R&R in the 18-248 Docket, Staff stated: "The AAO should also state that it is the intention of this Commission to capture, ***for the benefit of ratepayers***, over the time period that is consistent with Tax Normalization Rules, the excess deferred taxes that will result if a lower federal corporate tax rate is established."[70] Staff further stated that "[t]he AAO will ensure that these tax benefits ***that should accrue to ratepayers*** . . . are not lost to regulatory lag while this review takes place . . . Ultimately, the goal of the general investigation will be to quantify the economic impacts of the new lower tax rates on Kansas utilities ***and pass the cost savings on to Kansas utility consumers . . . as rapidly as possible.***"[71] Staff stated that "this circumstance calls for a mechanism to isolate the financial impact of the lower corporate tax rates ***in order to preserve these lower cost of service benefits for ratepayers.***"[72] Staff further stated: "As income taxes are simply a pass-through in the cost of service for regulated utilities, a sudden and dramatic reduction in the level of this expense ***should not inure to the benefit of shareholders.***"[73] In its *Order*

[69] 1987 Order, ¶ 3.
[70] R&R, p. 2 (emphasis added).
[71] R&R, p. 2 (emphasis added).
[72] R&R, pp. 4-5 (emphasis added).
[73] R&R, p. 5 (emphasis added).

Opening General Investigation in the 18-248 Docket, the Commission found that, "where appropriate, . . . any cost savings [should] be ***passed on to Kansas utility consumers***."[74] The Commission finds that consumer benefit, which is in the public interest, is the controlling principle.

28. The purpose of benefiting consumers, that is, ensuring that affected utilities do not incur a material positive or negative impact by the passage of federal income tax reform, means the Commission has discretion to determine how to effect that particular outcome. Nothing in the ordering language and nothing in any statute or regulation necessitates that the Commission allow KGS to keep the regulatory liability in order to put it towards its bottom line. As found above, the Commission *could* allow that outcome, but it need not do so based on any language in the 18-248 Docket.

29. The Commission's basic duty in the matters before it is to protect the public interest.[75] The public interest is served when ratepayers' interests are carefully considered and protected and balanced against the interests of management and the shareholders of the utility.[76] The public interest is also advanced when a utility remains a healthy, viable business, able to provide reliable and efficient service.[77] The Commission has considerable discretion in determining what advances the public interest.[78] The Commission's discretionary authority in this case stems from the language allowing it to *consider* filed information and supporting data on cost of service components "on a case-by-case basis." Nevertheless, the Commission's discretion is not

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[74] 18-248 Docket, *Order Opening General Investigation*, ¶ 7 (emphasis added).
[75] Docket No. 13-GIMT-473-MIS, *Order Approving Stipulated Settlement Agreement*, ¶ 11 (July 9, 2013). *See Jones v. Kansas Gas and Electric Co.*, 222 Kan. 390, 399 (1977); *Farmland Industries, Inc. v. State Corp. Comm'n*, 24 Kan. App. 2d 172, 181 (1997).
[76] *See* K.S.A. 66-1,202. *See also* Direct Testimony of Kristina Luke-Fry, p. 10 (Oct. 29, 2018); Docket No. 12-MKEE-410-RTS, *Order Approving Nonunanimous Settlement Agreement*, p. 25 (Apr. 3, 2013).
[77] Glass Testimony in Support, p. 7.
[78] *Central Kansas Power Co. v. State Corp. Comm'n*, 206 Kan. 670, 675 (1971).

unlimited.[79] Kansas courts have ruled that Commission determinations must be supported by substantial competent evidence,[80] or in the case where the Commission finds the utility failed to carry its evidentiary burden, i.e., makes a negative finding, the Commission may not arbitrarily disregard undisputed evidence nor render its decision based on some extrinsic consideration such as bias, passion, or prejudice.[81]

30. In this case, KGS has the burden to demonstrate that allowing it to retain the regulatory liability and write it off is in the public interest. KGS has not produced any evidence that writing off the regulatory liability serves the interests of its consumers. The only evidence brought forth by KGS that its ratepayers will benefit is Buchanan's assertion that KGS's rates themselves provide ratepayers the benefit of the tax reduction.[82] The Commission reiterates that this in no way demonstrates that the ratepayers will benefit from KGS putting the regulatory liability toward its bottom line. KGS has not shown that its elimination of the regulatory liability will have any beneficial effect for consumers.

31. On the other hand, Grady testified that "[a]s a result of this case, we will change KGS's permanent rates going forward to affect the result of Federal income tax reform and the fact that their income tax expenses on a going-forward basis is less."[83] That is, "they need to be . . . allowed to increase rates $21.5 million going forward. And but for tax reform it would have been 40 something."[84] However, he also stated that "KGS's profitability was not impacted by this deferred revenue account in any form or fashion yet. But if the Commission agrees with KGS, they

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[79] *Zinke & Trumbo, Ltd. v. State Corp. Comm'n of State of Kan.*, 242 Kan. 470, 475, 749 P.2d 21, 26 (1988).
[80] *Id.*
[81] *Sunflower Racing, Inc. v. Bd. of Cty. Comm'rs of Wyandotte Cty.*, 256 Kan. 426, 441, 885 P.2d 1233, 1242 (1994).
[82] *See* Tr., pp. 52-53.
[83] Tr., p. 69. Mr. Grady clearly said "fact," not "tact" as the transcript erroneously reflects.
[84] Tr., p. 69.

will write off that regulatory liability in 2019 and . . . [t]here will be a net income, increase to net income of $16.9 million. And I just think that that is contrary to good ratemaking policy."[85]

32. Grady also testified: "Whether the result [of KGS's decrease in income tax liability] was that KGS would be earning more or less than its authorized return, it is irrefutable that the result of allowing KGS to keep the deferred tax savings would be an increase in KGS's profitability starting on January 1, 2018."[86] He stated: "[I]t's a windfall to go from under earning to not under earning or to go from more under earning to less under earning . . . [I]f you suddenly get a $14 million infusion in your net income or your profit" simply because of the tax reform, "I just think that is not fair, just and reasonable."[87] Given Grady's expert opinion, the Commission finds that no logical basis exists for KGS to request the regulatory liability in order to put it toward its bottom line unless such a request positively impacts KGS, thereby inuring to the benefit of KGS shareholders, contrary to the Commission's clear policy set forth in the 18-248 Docket.

33. The Commission has carefully considered the ratepayers' interests and balanced them against KGS's interests. The Commission reiterates that KGS has provided no evidence that its customers will benefit from KGS writing off the regulatory liability. The Commission finds this lack of customer benefit is not in the public interest. The Commission reaches this finding based on substantial evidence, without any arbitrary disregard of undisputed evidence nor any determination made on the basis of bias, passion or prejudice.[88]

34. KGS has also provided no evidence that returning the regulatory liability to its customers will endanger KGS's health and viability in providing reliable, sufficient and efficient

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[85] Tr., p. 70.
[86] Grady Direct, p. 27.
[87] Tr., pp. 73-74.
[88] *Sunflower Racing, Inc.*, 256 Kan. at 441.

service. Rather, substantial competent evidence demonstrates that granting KGS's request to keep the regulatory liability as a write-off would inure to the benefit of KGS's shareholders and positively impact KGS contrary to the Commission's intent stated in the 18-248 Docket.[89] Thus, denying KGS's requested retention of the regulatory liability does not harm the public interest where KGS's viability is concerned. Moreover, returning the regulatory liability to customers advances the public interest by considering and protecting ratepayers.

35. The Commission finds that KGS has read the language of its preferred outcome into the so-called "exception" clause in paragraph 11 of the *Order Opening General Investigation* in the 18-248 Docket. No such language exists. Staff correctly stated that "the language does not compel a particular outcome. The language simply states that the information can be filed and considered on a case-by-case basis."[90] Therefore, in the proper exercise of its discretion, the Commission finds it to be against the public interest to allow KGS to keep the regulatory liability, and thus, KGS's request should be denied. The Commission finds the public interest is served by requiring KGS to refund the entire regulatory liability to its customers consistent with the methodology proposed by Staff witness Glass.[91]

THEREFORE, THE COMMISSION ORDERS:

A. KGS is directed to refund to its customers the regulatory tax liability consistent with the methodology proposed by Staff witness Glass.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).[92]

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[89] Grady Direct, p. 27.
[90] Staff Brief, p. 6.
[91] *See* Glass Direct, pp. 22-24.
[92] K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

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

BY THE COMMISSION IT IS SO ORDERED.

Keen, Chair; Albrecht, Commissioner; Emler, Commissioner.

Dated: 02/25/2019

Lynn M. Retz
Secretary to the Commission

MJD

CERTIFICATE OF SERVICE

18-KGSG-560-RTS

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 02/25/2019.

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