

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 of Jurisdictional)
Retail Utility Rates.)

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
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STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

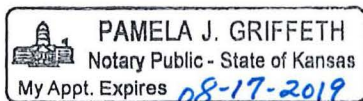
VERIFICATION

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.



Notary Public

My Appointment Expires: August 17, 2019

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 Complaint¹ 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

¹In 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).

²Formal Complaint at 5.

³Id.

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;

⁴See Id. at 6.

⁵Id.

⁶Id. at 6-7.

⁷K.A.R. 82-1-220(c).

⁸Id.

(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).

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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