

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

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

In the Matter of a General Investigation)
Regarding the Effect of Federal Income)
Tax Reform on the Revenue) Docket No. 18-GIMX-248-GIV
Requirements of Kansas Public Utilities)
and Request to Issue an Accounting)
Authority Order Requiring Certain)
Regulated Public Utilities to Defer)
Effects of Tax Reform to a Deferred)
Revenue Account.)

**ORDER OPENING GENERAL INVESTIGATION AND ISSUING
ACCOUNTING AUTHORITY ORDER REGARDING FEDERAL TAX REFORM**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the files and records, and being duly advised in the premises, the Commission finds the following:

1. On December 14, 2017, Commission Utilities Staff (Staff) filed a Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform (Motion).¹ Staff attached its Report and Recommendation (R&R) to its Motion. In its R&R, Staff recommended the Commission issue an Order:

a. Opening a general investigation for the purposes of examining the financial impact of anticipated federal income tax reform on regulated electric, natural gas, water, and telecommunications public utilities operating in Kansas;²

¹ Staff's Motion to Open a General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform (Dec. 14, 2017) (Staff's Motion).

² Staff's R&R p. 5.

b. Requiring, through the use of an Accounting Authority Order (AAO), certain regulated public utilities that are taxed at the corporate level to track and accumulate in a deferred revenue account, with interest compounded monthly at the most current Commission-approved customer deposit interest rate, the reduction in their regulated cost of service that would occur in the event that a new lower federal income tax rate is signed into law. These deferrals should take effect at the same time as the new federal corporate tax rate change and the calculations should be performed using the cost of service data that was used to set the utilities' last Commission-approved revenue requirement (including any line-item surcharges that contain a provision for regulated income tax expense) or Kansas Universal Service Fund (KUSF) determination; and³

c. Confirming that the Commission's intention regarding the AAO is to preserve any potential tax benefits so that they may be evaluated in the context of a comprehensive evaluation of the reasonableness of the utilities' rates or KUSF distributions as well as notifying affected public utilities that this portion of their rates or KUSF distributions should be considered interim subject to refund until the Commission has an opportunity to review the reasonableness of the utilities' rates or KUSF distributions on a comprehensive and case-by-case basis. Lastly, the Commission should confirm that it intends to capture the reduction in Accumulated Deferred Income Tax (ADIT) balances that will occur in the event that a lower corporate federal income tax rate takes effect, over time, in a manner that comports with Internal Revenue Services (IRS) Tax Normalization Rules.⁴

³ *Id.* at pp. 5-6.

⁴ *Id.* at p. 6.

2. On December 22, 2017, the Citizens Utility Ratepayer Board (CURB) filed a Petition to Intervene and a Response in Support of Staff's Motion to Open a General Investigation and Issue Authority Order Regarding Federal Tax Reform and Report Recommendation.

3. On January 2, 2018, a group⁵ of rural telephone companies (RLECs) filed a response to the motions of Staff and CURB.⁶ The RLECs requested the Commission not issue a substantive order which would impose preemptive restrictions on prospective cost savings, nor issue an initial order predetermining any aspect of regulatory treatment of such savings.⁷ The RLECs recommended the Commission establish a procedural schedule permitting affected utilities to be heard on the probable extent of any savings to individual carriers, on the recoverable costs and public benefits to which such savings could be applied as they are realized, on affected utilities' opportunities to recover the new administrative costs resulting from the proposed proceedings, and on a reasonable and lawful administrative process to determine how any presumed tax cost savings should benefit ratepayers and the public generally.⁸

4. On January 9, 2018, Staff filed a response to the RLECs.⁹ Staff argued the Commission should deny the RLECs' request for hearing and instead issue an AAO as soon as practicable so that potential tax benefits may be captured for ratepayers.¹⁰ Staff argued the course of action taken by the Commission in 1986 under similar circumstances is not appropriate today because, unlike in 1986, the RLECs receive KUSF support which is based upon previously

⁵ Independent Telecommunications Group, State Independent Alliance, Southern Kansas Telephone Co., Inc. Mutual Telephone Company, Rural Telephone Service Co. Inc. d/b/a Nex-Tech, Wheat State Telephone Company, Inc.

⁶ Response to Motions by Staff and CURB (Jan. 2, 2018).

⁷ *Id.* at p. 6.

⁸ *Id.*

⁹ Staff's Response to Rural Telephone Companies' Response (Jan. 8, 2017).

¹⁰ *Id.* at p. 7.

applicable tax expenses and the Commission is statutorily authorized to periodically review the costs of providing telecommunications service to determine if modifications to the KUSF are necessary.¹¹ Furthermore, Staff contended that the AAO is not an imposition of new rates but rather, an accounting order that requires a company to perform its regulatory accounting in a specific way so that the financial effects of a discrete issue can be examined in a future period.¹²

Jurisdiction

5. The Commission has full power, authority and jurisdiction to supervise and control the public utilities doing business in Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction.¹³ Specifically, the Commission is tasked with ensuring regulated utilities provide sufficient and efficient service at just and reasonable rates.¹⁴ Upon its own initiative, the Commission may investigate all schedules of rates, rules, and regulations for electric public utilities,¹⁵ natural gas public utilities,¹⁶ local exchange carriers,¹⁷ and miscellaneous public utilities.¹⁸ Furthermore, each regulated public utility shall furnish to the Commission in such form and at such times as the Commission requires, such accounts, reports and information shown in itemized detail as the Commission may prescribe.¹⁹ Likewise, the Commission has the authority to examine and audit all accounts, and all items shall be allocated to the accounts prescribed by the Commission.²⁰

¹¹ *Id.* at p. 6.

¹² *Id.* at pp. 4-5.

¹³ K.S.A. 66-101; K.S.A. 66-1,201; K.S.A. 66-1,188; K.S.A. 66-1,231.

¹⁴ K.S.A. 66-101b; K.S.A. 66-1,202; K.S.A. 66-1,189; K.S.A. 66-1,232.

¹⁵ K.S.A. 66-101d.

¹⁶ K.S.A. 66-1,204.

¹⁷ K.S.A. 66-1,192.

¹⁸ K.S.A. 66-1,234.

¹⁹ K.S.A. 66-122.

²⁰ K.S.A. 66-129.

Findings and Conclusions

6. The Commission finds the passage of the federal Tax Cuts and Jobs Act has the potential to significantly reduce the cost of service for many utilities operating in Kansas because the Commission in determining rates generally authorizes recovery of all federal taxes from ratepayers.²¹ The Commission also finds a significant reduction to the corporate tax rate may impact the ADIT Liabilities and Assets on the regulated books of utilities.²² The Commission, therefore, finds further investigation is warranted. The Commission finds its order in the 1986 docket to be informative but not precedential.

7. The Commission finds it should open a general investigation to quantify the economic impacts of the new lower tax rates on Kansas utilities and where appropriate, direct that any cost savings be passed on to Kansas utility consumers and contributors to the KUSF. Therefore, beginning in January 2018, the Commission directs all regulated electric natural gas, water,²³ and telecommunication public utilities²⁴ that are taxable at the corporate level, to accrue monthly, in a deferred revenue account, the portion of its revenue representing the difference between: (1) the cost of service as approved by the Commission in its most recent rate case or KUSF determination proceeding; and (2) the cost of service that would have resulted had the provision for federal income taxes been based upon the corporate income tax rate approved in the Tax Cuts and Jobs Act.²⁵

²¹ Staff's R&R pp. 2-4.

²² *Id.* at p. 5.

²³ For the purpose of this Order electric, natural gas, and water utilities excludes any public utility not rate regulated by the Commission pursuant to K.S.A. 66-104 *et. seq.*

²⁴ For the purpose of this Order telecommunications public utilities only includes local exchange carriers as defined by K.S.A. 66-1,187(h) that currently receive KUSF support.

²⁵ Staff's R&R, p.4.

8. The Commission also gives notice to taxable utilities operating in Kansas that the portion of their regulated revenue stream that reflects higher corporate tax rates should be considered interim and subject to refund, with interest, until the Commission can more fully evaluate on a case-by-case basis the impact of the Tax Cuts and Jobs Acts. When the Commission's case-by-case evaluation is complete, if it is determined that a rate decrease is proper and would have been proper as of the effective date of the Tax Cuts and Jobs Act, any excessive collections in the deferred revenue subaccount, or other appropriate tracking mechanism approved the Commission, with appropriate adjustments, shall be refundable to ratepayers or the KUSF with interest.²⁶ Any balance remaining in the account shall be credited to the utility's operating revenue. Moreover, the Commission intends to capture excess ADIT for the benefit of ratepayers using a methodology that is consistent with the tax normalization requirements specified in the tax legislation or IRS Tax Normalization Rules, as applicable.

9. For the following reasons, the Commission rejects the RLECs' argument that prior to issuing an Order imposing restrictions on a utility's use of specific revenues requiring a specific regulatory process the Commission should afford affected utilities the opportunity to be heard as to how such restrictions and the resulting regulatory process and costs would affect the public interest generally, for good or ill, including consideration of how the potential extraordinary administrative costs of mandated proceedings might be recovered.²⁷

10. First, even if the Commission accepted the RLECs' arguments, the accounting order recommended by Staff does not impose new rates upon affected utilities nor does it restrict or control utility resources. The AAO merely directs utilities to begin tracking their costs

²⁶ Interest shall be calculated at the rate being used for interest paid on customer deposits.

²⁷ Response to Motions by Staff and CURB p. 5.

differently and puts the utilities on notice that the Commission intends in a future proceeding to review rates and KUSF distributions to ensure customers are paying rates that are reflective of the utilities' actual costs. Such action is in keeping with the Commission's statutory authority.²⁸

11. Second, Staff's recommendation does not contravene existing law regarding the RLECs reasonable opportunity to recover all their costs. Any affected utility that believes that other components of their cost of service have more than offset the decrease in its income tax expenses will have the ability to file such information and supporting data with the Commission, to be considered on a case-by-case basis. 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. The Commission finds Staff's recommendation is in keeping with the Commission's statutory obligation to ensure just and reasonable rates²⁹ and an appropriate review of KUSF support.³⁰ Likewise, the Commission finds Staff's recommended approach does not deprive any party of due process but rather protects potential ratepayer benefits from being lost during the pendency of the Commission's investigation. Therefore, the Commission adopts Staff's R&R and incorporates it herein.

12. Parties seeking to participate in this general investigation may file a petition for intervention in accordance with K.A.R. 82-1-225.

²⁸ See, K.S.A. 66-101b; K.S.A. 66-1,202; K.S.A. 66-1,189; K.S.A. 66-1,232; K.S.A. 66-K.S.A. 66-129.

²⁹ K.S.A. 66-101b; K.S.A. 66-1,202; K.S.A. 66-1,189; K.S.A. 66-1,232.

³⁰ K.S.A. 66-2008.

THEREFORE, THE COMMISSION ORDERS:

A. A general investigation is opened for the purposes of examining the financial impact of the federal Tax Cuts and Jobs Act on regulated electric, natural gas, water, and telecommunications public utilities that are operating in Kansas and taxable at the corporate level.

B. Staff's request for the issuance of an Accounting Authority Order, as described herein, is granted.

C. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.³¹

D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: JAN 18 2018



Lynn M. Retz
Secretary to the Commission

SF

EMAILED

JAN 18 2018

³¹ K.S.A. 66-118b; K.S.A. 77-529(a)(1).

CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

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