BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

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

POST-HEARING BRIEF OF THE CITIZENS' UTILITY RATEPAYER BOARD

January 16, 2019

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COMES NOW, The Citizens' Utility Ratepayer Board ("CURB") and respectively submits its *Post-Hearing Brief* pertaining to the Application of Kansas Gas Service, a Division of ONE Gas, Inc. ("KGS"), for approval of changes to its natural gas rates in the State of Kansas ("Application"). As to the issue heard at the December 11, 2018 hearing before the State Corporation Commission of the State of Kansas ("Commission"), CURB recommends that the Commission order KGS to refund the Regulatory Liability (which is defined below) to the ratepayers. In support thereof, CURB states as follows:

I. Introduction

1. The parties presented only one controverted issue at the Commission's December 11, 2018 hearing in this docket: Whether KGS should refund to the ratepayers the full amount accrued in KGS's deferred revenue account ("Regulatory Liability"), which the Commission has defined to be "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."[1]

The Commission Staff and CURB contend that KGS should be so required. KGS disagrees.

2. As shown below in the body of this post-hearing brief, KGS wrongfully argues that the intent of the Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform in Docket No. 18-GIMX-248-GIV ("18-248 Order") is to require KGS to refund the Regulatory Liability to ratepayers only if it has a revenue surplus in this rate case. While ignoring CURB's evidence, KGS spends its entire brief attempting to support its

[1] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), ¶ 7, p. 5.

argument. KGS erroneously interprets the 18-248 Order.

3. Indeed, this post-hearing brief will show that KGS's argument cannot square with the intent of the 18-248 Order "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."[2] In these regards, the 18-248 Order adopted and incorporated the Commission Staff's Report and Recommendation in Docket No. 18-GIMX-248-GIV ("18-248 R&R).[3] Importantly, the Commission Staff used the term profitability (in the 18-248 R&R) to refer to the utility's state of yielding a profit.[4] Thus, the Commission Staff posited that a utility's actual return on January 1, 2019, should be the same as its actual return on December 31, 2018, in spite of reduced tax expense brought about by the Tax Cuts and Jobs Act ("TCJA").[5]

4. Had the Commission intended only to require a refund of the Regulatory Liability if the pertinent utility was over-earning its rate of return, it clearly could have used that conditional language in its 18-248 Order. It did not. In fact, as Mr. Grady notes, that conditional language is entirely contrary to the concept of regulatory liabilities. CURB agrees.

5. Rather, the Commission adopted the plain meaning of the term profitability as it is used in the 18-248 R&R. Commonly defined, profitability is "the degree to which a business or activity yields a profit or financial gain."[6] Consistent with that definition, the Commission determined that a utility's profitability should be neither positively nor negatively impacted by the TCJA.[7]

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[2] Ibid., ¶ 11, p. 7.
[3] Ibid.
[4] See Docket No. 18-KGSG-560-RTS. Direct Testimony of Justin T. Grady. (October 29, 2018), pp. 27-28.
[5] Docket No. 18-KGSG-560-RTS. Testimony of Justin T. Grady, Transcript of Evidentiary Hearing (December 11, 2018). pp. 69-70.
[6] See Oxford Dictionary. https://en.oxforddictionaries.com/definition/profitability
[7] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), ¶ 11, p. 7.

6. This post-hearing brief will show that KGS's argument runs contrary to the plain meaning of profitability as used in the 18-248 Order. In fact, if KGS were able to pocket the Regulatory Liability, the profitability of KGS would improve; that result is contrary to the manifested intent of the 18-248 Order. Therefore, KGS's argument cannot be sustained.

7. Regarding this tax issue, CURB presented the testimony of Ms. Andrea Crane. Ms. Crane provided several reasons why the Commission should order the refund of the entire Regulatory Liability to the ratepayers. Ms. Crane's testimony and CURB's arguments as to why the Commission should order the refund of the entire Regulatory Liability to the ratepayers are set out below.

A. Procedural Background

8. KGS filed its Application for approval by the Commission of a net revenue increase of $45.6 million, resulting from increasing base rates by $42.7 million and reclassifying $2.87 million currently collected through the Gas System Reliability Surcharge ("GSRS") to base rates.[8] In addition to the matters typically addressed by a utility rate application, KGS sought several unique recovery mechanisms. Among these, KGS sought permission to establish a Revenue Normalization Adjustment ("RNA") which was a revenue decoupling mechanism, and a Cyber Security O&M Expense Tracker and a Depreciation Expense Tracker.[9] KGS designed these trackers to allow it to track and defer for future recovery expenses incurred related to cyber security and depreciation between rate cases.[10]

9. The effect upon the rates brought about by the TCJA was also addressed in the KGS application.[11] First, KGS proposed in its application that excess deferred income taxes on both

[8]Testimony of Janet L. Buchanan in Support of the Settlement Agreement (December 4, 2018), p. 3.
[9] Direct Testimony of Andrea C. Crane. Docket No. 18-KGSG-560-RTS (October 29, 2018), pp. 66-76.
[10] Ibid.
[11] Direct Testimony of Janet L. Buchanan (June 29, 2018), p. 27.

protected and non-protected plant be amortized under the Average Rate Assumption Method.[12] Second and pertinent to this post-hearing brief, KGS proposed that it not be required to refund the Regulatory Liability to its ratepayers.[13]

10. On July 16, 2018, CURB filed a Petition to Intervene that the Commission granted on July 24, 2018.[14] On October 4, 2018, WoodRiver Energy, LLC filed a Petition to Intervene.[15] Likewise, Kansas Farm Bureau (KFB) and Kansas Corn Growers Association (KCGA) filed an Entry of Appearance and Petition to Intervene on October 4, 2018.[16] The Commission granted the petitions to intervene filed by WoodRiver Energy, LLC, KFB and KCGA on October 11, 2018.[17] There were no other parties intervening in this docket.

11. Pursuant to the Procedural Schedule issued by the Commission on August 2, 2018, the parties engaged in a settlement conference on November 28 and 29, 2018. A Partial Unanimous Settlement Agreement resulted, whereby the parties agreed to all issues arising in connection with the Application, except disposition of the Regulatory Liability. The parties agreed to present evidence and arguments on that reserved issue at the hearing before the Commission. On December 11, 2018, the Commission heard that disputed tax matter. It is the only matter discussed in this post-hearing brief.

12. The parties filed a Joint Motion to Approve Partial Unanimous Settlement Agreement with the Commission on December 3, 2018.[18] The parties sponsored evidence in

[12] Docket No. 18-KGSG-560-RTS. Direct Testimony of Jeffrey J. Husen (June 29, 2018), p. 15.
[13] Docket No. 18-KGSG-560-RTS. Direct Testimony of Janet L. Buchanan (June 29, 2018), pp. 28-29.
[14] Docket No. 18-KGSG-560-RTS. Order Granting Intervention to Citizens' Utility Ratepayer Board (July 24, 2018).
[15] Docket No. 18-KGSG-560-RTS. Petition to Intervene (October 4, 2018).
[16] Docket No. 18-KGSG-560-RTS. Entry of Appearance and Petition to Intervene (October 4, 2018).
[17] Docket No. 18-KGSG-560-RTS. Order Granting Intervention to Kansas Farm Bureau and Kansas Corn Growers Association (October 11, 2018); Order Granting Intervention to WoodRiver Energy, LLC (October 11, 2018).
[18] Docket No. 18-KGSG-560-RTS. Joint Motion to Approve Partial Non-Unanimous Settlement Agreement (December 23, 2018).

support of the same at the December 11, 2018 hearing. Presently, that motion is pending approval by the Commission.

B. Statement of Facts Pertaining to the Regulatory Liability

13. In December 2017, the TCJA was enacted by the United States Congress and became law.[19] Anticipating that the TCJA would be enacted, the Commission Staff issued Staff's Motion to Open General Investigation and Issue Accounting Authority Order Regarding Federal Tax Reform ("Staff's Motion").[20] The 18-248 R&R was attached to and included in Staff's Motion. In the 18-248 R&R, the Commission Staff recommended that the "Commission open a general investigation to analyze the potential impacts of federal tax reform on Kansas public utilities."[21]

14. In the 18-248 R&R, the Commission Staff posited that the purpose of the general investigation was "to quantify the economic impacts of the new lower tax rates on Kansas utilities and pass the cost savings on to Kansas utility consumers and contributors to the KUSF as rapidly as possible."[22] In these regards, the Commission Staff noted:

> "Although the Commission generally examines a utility's revenue requirement from its overall cost of service, **this situation warrants a different approach** as a significant reduction in income tax expense should not become a windfall for utilities but should rather be captured and flowed back to ratepayers."[23] (Our emphasis.)

15. The Commission Staff reasoned that "because income taxes are simply a pass-through in the cost of service for regulated utilities, a sudden and dramatic reduction in the level

[19] Docket No. 18-KGSG-560-RTS. Direct Testimony of Justin T. Grady (October 29, 2018), p. 8.
[20] Docket No. 18-GIMX-248-GIV. Staff's Motion to Open a General Investigation and Issue Accounting Order Regarding Federal Tax Reform (December 14, 2017).
[21] Docket No. 18-GIMX-248-GIV. Staff's Report and Recommendation attached to Staff's Motion to Open a General Investigation and Issue Accounting Order Regarding Federal Tax Reform.
[22] Ibid.
[23] Ibid.

of this expense should not inure to the benefit of shareholders."[24] The Commission Staff explained its reasoning, using the term "profitability" for the only time in the 18-248 R&R, as follows:

> "Because the revenue that would be deferred as a result of Staff's recommendation will also be accompanied by an offsetting reduction to income tax expense, the utility's profitability levels should not be materially impacted as a result of the deferral accounting Staff recommends."[25]

16. On January 18, 2018, the Commission issued its 18-248 Order.[26] The Commission adopted and incorporated the 18-248 R&R into the 18-248 Order.[27] Accordingly, the Commission required that Kansas regulated public utilities that are taxed at the corporate level to track and accumulate in a deferred revenue account the Regulatory Liability, as defined therein.[28]

17. KGS was made a party to that proceeding. CURB filed a Petition to Intervene that was granted by the Commission on March 13, 2018.[29]

18. On March 30, 2018, KGS, the Commission Staff, and CURB filed in Docket No. 18-GIMX-248-GIV ("18-248 Docket") a Joint Motion for Approval of a Settlement Agreement pertaining to KGS TCJA-related issues.[30] The Commission approved the same by Order issued on May 15, 2018.[31] In the Settlement Agreement, KGS agreed to create a deferred account for the Regulatory Liability. The parties agreed that the Regulatory Liability should be disposed of according to the order of the Commission in KGS's next rate case, with all parties reserving the right to present evidence and argument concerning how those liabilities should be disposed.[32]

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[24] Ibid.
[25] Ibid.
[26] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018).
[27] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), p. 7.
[28] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), p. 5.
[29] Docket No. 18-GIMX-248-GIV, Order Granting Intervention to Citizens' Utility Ratepayer Board (March 13, 2018).
[30] Docket No. 18-GIMX-248-GIV, Joint Motion for Approval of Settlement Agreement (March 30, 2018).
[31] Docket No. 18-GIMX-248-GIV, Order (May 15, 2018).
[32] Docket No. 18-GIMX-248-GIV, Joint Motion for Approval of Settlement Agreement (March 30, 2018).

19. Accordingly, in the instant application, KGS posited that it should be able to pocket the Regulatory Liability. KGS presented the testimony of Janet Buchanan that KGS's keeping of the regulatory liability was justified based upon its belief that the revenue deficiency in the rate case shows that KGS was not earning its authorized rate of return.

20. Ms. Buchanan testified that the refund of the Regulatory Liability, if any, is to be determined upon whether KGS has a revenue deficiency in this rate case.[33] She argued:

> "If the revenue deficiency is *greater* than zero, then KGS has experienced cost increases that offset the decrease created by the change in the corporate tax rate. On the other hand, if the revenue deficiency is *less* than zero, then that amount (not to exceed the amount of the regulatory liability) will be returned to KGS customers through a one-time refund."[34]

Ms. Buchanan testified that, in this rate case, KGS has a revenue deficiency of $45.6 million.[35] As a result of the Partial Unanimous Settlement Agreement, the parties agreed to a revenue deficiency of $21.5 million.[36]

21. Justin Grady presented testimony on behalf of the KCC staff in opposition to KGS's position.[37] Mr. Grady testified that, in Commission's Staff's view, "the Regulatory Liability should be treated like other extraordinary cost changes that are afforded deferred accounting treatment, that is, they should be evaluated in isolation of all other cost of service items and passed through to rates."[38] He testified that this view is integral to Commission Staff's recommendation in the 18-248 R&R, as stated below:

> "Although the Commission generally examines a utility's revenue requirement from its overall cost of service, this situation warrants a different approach as a significant reduction in income tax expense should not become a windfall for utilities but should rather be captured and flowed

[33] Docket No. 18-KGSG-560-RTS. Direct Testimony of Janet L. Buchanan (June 29, 2018), pp. 28-29.
[34] Ibid., pp. 29.
[35] Ibid., pp. 28.
[36] Docket No. 18-KGSG-560-RTS. Joint Motion to Approve Partial Non-Unanimous Settlement Agreement (December 23, 2018).
[37] Docket No. 18-KGSG-560-RTS. Direct Testimony of Justin T. Grady (October 29, 2018)
[38] Ibid., p. 26.

back to ratepayers."[39]

22. Mr. Grady testified that the 18-248 R&R noted a number of other deferral accounting mechanisms which benefit KGS.[40] The Commission utilizes these mechanisms to capture the financial effect of an event and transfer that financial effect to ratepayers in future rate cases, thereby insulating KGS from the risks associated with extraordinary or material changes to expenses or revenues that are outside of KGS's control.[41] He noted that the TCJA has a similar effect to these deferral accounting mechanisms.

23. Mr. Grady disagreed with the premise of Ms. Buchanan's argument. He 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 [18-KGSG-560-RTS]. 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."[42]

He testified that the retention of the Regulatory Liability as suggested by Ms. Buchanan would negate the Commission's stated purpose behind issuing the 18-248 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."[43]

Thus, he testified that KGS should not be entitled to keep the Regulatory Liability.[44]

24. Mr. Grady recalled that the Commission stated in the 18-248 Order that a reduction in the level of income tax expense should not inure to the benefit of shareholders since income taxes are simply a pass-through in the cost of service for regulated utilities.[45]In that respect, Mr.

[39] Ibid., p. 26.
[40] Ibid., p. 28.
[41] Ibid.
[42] Ibid., p. 26.
[43] Ibid., pp. 27-28.
[44] Ibid., p. 29.
[45] Ibid., p. 27.

Grady testified:

> "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."[46]

Mr. Grady testified that only by crediting all of the tax benefits to KGS customers would the Commission ensure that the deferred tax savings do not inure to the benefit of KGS's shareholders.[47] He testified that the Regulatory Liability would not negatively impact KGS's profitability levels, on the other hand, because an offsetting reduction to income tax expense would accompany the deferred revenue.[48]

25. Ms. Andrea Crane testified on behalf of CURB in opposition to the position of KGS on the Regulatory Liability. In her testimony, Ms. Crane provided three reasons why the Regulatory Liability should be refunded to the ratepayers.[49]

26. First, she disputed KGS's main contention on the issue. She testified, "The prospective revenue requirement authorized by the KCC in this case should not be used to determine whether or not a refund of the regulatory liability is appropriate."[50] Ms. Crane reasoned:

> "The rates established in this case do not necessarily reflect the average cost of service during the period that the regulatory liability was accrued. For example, any changes to current depreciation rates that are approved by the KCC in this case will not have impacted the Company's earnings during 2018."[51]

Ms. Crane provided additional examples where any revenue deficiency in this case would not necessarily reflect a revenue deficiency during the period when the Regulatory Liability was accrued. She testified:

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[46] Ibid., p. 27.
[47] Ibid.
[48] Ibid.
[49] Docket No. 18-KGSG-560-RTS. Direct Testimony of Andrea C. Crane (October 29, 2018), pp. 54-57.
[50] Ibid., p. 56.
[51] Ibid., p. 57.

> The Company's cost of service also includes 2018 plant additions which were not completed or in-service on January 1, 2018. It also includes other prospective adjustments that were not necessarily being incurred at January 1, 2018.[52]

27. Secondly, Ms. Crane noted that the 18-248 Order clearly states that "the purpose of considering refunds '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.'"[53] Upon that basis, she testified that the regulatory liability should be refunded to customers.[54]

28. Third, Ms. Crane testified that, given KGS's financial condition, it would be unjustifiable to provide a windfall to KGS shareholders by allowing the company to keep the Regulatory Liability.[55] She testified, "ONE Gas's earnings for the first six months of 2018 were $113 million, or 14.6% more than during the first half of 2017.[56] Moreover, ONE Gas' stock price is up over 12% in 2018 to date."[57] Thus, Ms. Crane recommended that the Commission order KGS to refund the Regulatory Liability to KGS's ratepayers.[58]

29. In her rebuttal testimony, Ms. Buchanan argued that Staff's (and CURB's) interpretation of the 18-248 Order was wrong. She contended:

> "Staff's interpretation would render meaningless that portion of the Tax Reform Order which clearly provides a utility an opportunity to submit information and supporting data to the Commission to show that increases in other components of its cost of service have more than offset the decrease in its income tax expenses. Under Staff's interpretation, there would be no reason for the Commission to provide a utility such an opportunity."[59]

[52] Ibid.
[53] Ibid.
[54] Ibid., pp. 57-58.
[55] Ibid.
[56] Ibid., p. 58.
[57] Ibid.
[58] Ibid.
[59] Docket No. 18-KGSG-560-RTS. Direct Rebuttal Testimony of Janet L. Buchanan (November 19, 2018). P. 12.

Ms. Buchanan testified that "it seems logical that the intended definition of the term "profitability" is one which does not result in making the other provisions in the Tax Reform Order meaningless."[60]

II. Issue: Should the Commission Order KGS to Refund to the Ratepayers the Full Amount Accrued of the "Regulatory Liability?"

30. Although the parties were able to settle all other issues arising out of the rate case, the parties agreed to set this issue for hearing before the Commission. In its post-hearing brief, KGS posits five arguments in support of its position that it should not be required to refund the Regulatory Liability. All of KGS's arguments are premised upon its contention that the Commission intended to allow utilities to retain the Regulatory Liability upon a showing that their cost of providing general utility service to their customers outweighs the tax expense savings arising from the TCJA. CURB will discuss all of KGS's five arguments in the two subparts set out below.

III. Arguments and Authorities

A. The 18-248 Order Unambiguously Requires Utilities to Refund to the Ratepayers the Full Amount of the "Regulatory Liability."

31. The 18-248 Order unambiguously requires utilities to refund to the ratepayers the full amount of the Regulatory Liability as defined in the order. Before the 18-248 Order was issued, the Commission analyzed the 18-248 R&R. Rather than restate every intent and purpose of the 18-248 R&R, the 18-248 Order simply adopts and incorporates it.

32. Therefore, the Commission by reference incorporated into the 18-248 Order, the following passage from the 18-248 R&R:

[60] Ibid., p. 13.

> "The intent behind the use of this deferred accounting mechanism is to ensure that a utility is neither positively nor negatively affected by the passage of federal income tax reform. 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."[61]

Moreover, the Commission by reference incorporated into the 18-248 Order, the Commission Staff's recommendation:

> "Just as the Commission has allowed ratemaking for single issues without the examination of other components of cost of service in certain extraordinary circumstances…, Staff contends 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."[62]

While the Commission Staff then references "other costs of service," in the 18-248 R&R, it is clear that the Commission Staff was not referencing the broad costs of service associated with a general rate case. Otherwise, the Commission Staff would not have stated in the 18-248 R&R:

> "Although the Commission generally examines a utility's revenue requirement from its overall cost of service, this situation warrants a different approach…."[63]

33. A summarization of these various recommendations adopted and incorporated into the 18-248 Order leads to the following unescapable conclusions: First, the Commission unambiguously determined that the 18-248 Docket should be a single-issue docket. Second, the Commission clearly intended the docket to accomplish the refund of the Regulatory Liability to the ratepayers without any windfall to the shareholder. Therefore, the "other costs of service" referenced in the 18-248 R&R as adopted by the Commission unambiguously should be only those costs associated with the administration of the 18-248 Order. To read the 18-248 Order as intending anything other than these intents and purposes is to attempt to read an ambiguity into the order that

[61] Docket No. 18-GIMX-248-GIV. Staff's Report and Recommendation attached to Staff's Motion to Open a General Investigation and Issue Accounting Order Regarding Federal Tax Reform.
[62] Ibid.
[63] Ibid.

simply does not exist.

34. Yet, in the first, third and fifth arguments posited in its post-hearing brief, KGS argues that the 18-248 Order created an exception to the general rule that required utilities to refund the Regulatory Liability. That exception is that if a utility is able to show that its cost of providing general utility service to its customers outweighs the tax expense savings arising from the TCJA, then the utility may retain the Regulatory Liability so far as is necessary for the utility to earn its authorized rate of return. These arguments fail because KGS misinterprets the intended scope of the "information and supporting data…to show that increases in other components of its cost of service have more than offset the decrease in its income tax expenses," as expressed in the 18-248 Order.[64]

35. KGS stipulates that the 18-248 Order is unambiguous.[65] CURB agrees. Ambiguity does not appear until the application of the rules of construction to the face of the instrument leaves it genuinely uncertain which one of two or more meanings is the proper meaning.[66]

36. KGS then argues that the Commission unambiguously intended to allow it to tender evidence concerning whether it had a revenue deficiency because the 18-248 Order states:

> "…in the event that a utility believes that other costs of service have more than offset the decrease in its income tax expenses, it will have the ability to file such information and supporting data with the Commission to be reviewed and evaluated on a case-by-case basis."[67]

Importantly, KGS takes this language out of context. It argues that "other costs of service" means that if a utility has a revenue deficiency in this rate case, then it has "proven that other costs of

[64] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), ¶ 11, p. 7.
[65] Docket No. 18-KGSG-560-RTS., Post-Hearing Brief of Kansas Gas Service (January 3, 2019), p. 17.
[66] *Simonich, Executrix v. Wilt*, 197 Kan. 417, 423, 417 P. 2d 139 (1966).
[67] Docket No. 18-KGSG-560-RTS, Post-Hearing Brief of Kansas Gas Service (January 3, 2019), p. 2; See also Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), ¶ 11, p. 7.

service have more than offset the decrease in its income tax expenses," entitling the utility to keep the Regulatory Liability in order to improve its actual rate of return.

37. To this point, by placing the above-quoted language in the context of the arguments that the Commission was addressing in the 18-248 Order, KGS's misinterpretation becomes clear. One of the chief arguments which the 18-248 Order addresses was the argument posited by the Rural Local Exchange Carriers ("RLECS") that the costs of administering the tax refund would significantly outweigh any benefit of the refund to the ratepayers. It is only in the context of addressing this argument that the Commission refers to "other costs of service."

38. Specifically, the RLECS argued as follows:

> "The Commission should afford affected utilities the opportunity to be heard as to how much such restrictions and the resulting regulatory process and costs would affect the public generally, for good or ill, including consideration of how the potential extraordinary administrative costs of mandated proceedings might be recovered."[68]

The Commission posited two reasons why it rejected those arguments. The Commission stated:

> "First, even if the Commission accepted the RLEC's arguments, the accounting order recommended by 'Staff does not impose new rates upon affected utility nor does it restrict or control utility resources."[69]

The second reason why the Commission rejected the RLEC's arguments was as follows:

> "Second, Staff's recommendation does not contravene existing laws regarding 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 utility profitability**, but rather, ensure that the affected utilities are neither positively nor negatively impacted by the passage of federal income tax reform."[70] (Our emphasis.)

[68] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), ¶ 9, p. 6.
[69] Ibid., ¶ 10, p. 6
[70] Ibid., ¶ 11, p. 7

It is very clear that the Commission intended these two points in the 18-248 Order to address the arguments of the RLECS that the costs of administering the refund could affect the RLEC's profitability.

39. Thus, by allowing utilities an opportunity to file information and data concerning their costs of service, the Commission clearly anticipated that such information would be those arising from the costs of administering the tax refund. By so limiting the scope of "such information," the Commission maintained the 18-248 Docket as a single-issue matter, consistent with other deferral accounting mechanisms.

40. In fact, by reading the phrase "components of their costs of service" in the context of the RLECs' arguments, the terms "other components of their cost of service" and "profitability" have meaning and context in the 18-248 Order. Utilities may present information and data pertaining to the costs of service associated with administering the Regulatory Liability, and in doing so, the profitability of the utility in complying with the ordered refund would be unaffected. This result is entirely consistent with KGS's argument "that the intended definition of the term "profitability" is one which does not result in making the other provisions in the Tax Reform Order meaningless."[71]

41. This interpretation is consistent with the rules of construction. The Kansas Supreme Court has stated that "in construing a statute words and phrases should be construed according to context and the approved usage of the language, and words in common use are to be given their natural and ordinary meaning."[72] In its ordinary meaning, the term "profitability" refers to the state of yielding a profit.[73] As noted by the Commission Staff in the 18-248 R&R, a utility's actual

[71] Docket No. 18-KGSG-560-RTS. Direct Rebuttal Testimony of Janet L. Buchanan (November 19, 2018), P. 13.
[72] *Coe v. Security National Ins. Co.*, 228 Kan. 624, Syl. ¶ 2, 620 P.2d 1108 (1980).
[73] See Oxford Dictionary. https://en.oxforddictionaries.com/definition/profitability.

return on January 1, 2019, should be the same as its actual return on December 31, 2018, in spite of reduced tax expense brought about by the TCJA.[74]

42. In order to arrive at the interpretation urged by KGS of the 18-248 Order, one would have to define the term "profitability" in a manner foreign to its approved usage. According to KGS, a utility would not be profitable unless it earns its authorized rate of return. The terms "profitable" and "profitability" were not intended to be so defined. KGS is clearly a profitable business, even if it has not earned its authorized rate of return. Rather, KGS's profitability may improve or worsen depending upon whether its actual return improves or worsens upon an event.

43. Taken in context, it is clear that the Commission used "profitability" and "cost of service" in connection with determination of the Regulatory Liability on a single-issue basis. As noted by Commission Staff, the definition of "profitability" urged by KGS would contravene the concept of a Regulatory Liability that was the very point of the 18-248 Order.

44. Therefore, the logical interpretation of the 18-248 Order is to allow utilities to provide information on its cost of service related to "the potential extraordinary administrative cost of mandated proceedings."[75] The Commission's 18-248 Order is unambiguous on that point. KGS simply misinterprets the Commission's unambiguous order.

45. KGS then argues (the third argument in its post-hearing brief) that, even if the 18-248 Order is ambiguous, the Commission must interpret the 18-248 Order as providing that a refund of the Regulatory Liability will be ordered only if KGS has a revenue surplus in its rate case. KGS asserts that, otherwise, the "exception to the general rule contained in the order" would be unlawfully deleted. While it makes this argument, it is significant that KGS stipulates that there

[74] Docket No. 18-KGSG-560-RTS. Testimony of Justin T. Grady, Transcript of Evidentiary Hearing (December 11, 2018). pp. 69-70.
[75] Docket No. 18-GIMX-248-GIV, Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (January 18, 2018), ¶ 9, p. 6.

is no ambiguity in the 18-248 Order.[76] Therefore, KGS's argument fails for lack of proof of its predicate.

46. Nonetheless, KGS's interpretation of the 18-248 Order as having a general rule and an exception thereto is unfounded. The unambiguous purpose for the 18-248 Order is to require the refund of the Regulatory Liability to the ratepayers. What KGS interprets as an exception is simply the Commission's intent to allow utilities an opportunity to show that the public interest may be affected by the extraordinary administrative costs of the proceeding in the 18-248 Docket. Clearly, the Commission intended to allow a utility to recover those extraordinary administrative costs of service (as determined on a case-by-case basis) in order to ensure that a utility's "profitability" is not affected by the pertinent proceedings. Thus, there is no exception to a general rule in the 18-248 Order. Rather, KGS's argument that the 18-248 Order contains a general rule and an exception is based upon a misinterpretation of the Order.

47. In its fifth argument, KGS argues that the Commission Staff posits a faulty premise that a utility is only able to offset its decrease in tax costs against other increases in the costs of service in a rate case. KGS argues that this premise is faulty because the 18-248 Order allows any utility to present evidence of other costs of service ordinarily presented in a rate case as an offset to its obligation to refund the Regulatory Liability. Yet, as shown above, the Commission did not intend to allow utilities to present evidence of other costs of service ordinarily presented in a rate case as an offset to their obligation to refund the Regulatory Liability. KGS rather misses the point that Commission Staff was making: If a utility believes that its costs of service related to providing general utility service are too high, the utility can file a rate case – which, by the way, is how general rate increases come about.

[76] Docket No. 18-KGSG-560-RTS., Post-Hearing Brief of Kansas Gas Service (January 3, 2019), p. 17.

48. Frankly, KGS's argument ignores the true intent of the Commission's 18-248 Order: To require the refund of a Regulatory Liability as defined in the order notwithstanding whether or not a utility was earning its authorized rate of return. Had the Commission intended to allow utilities to offset the Regulatory Liability by other costs of service (as ordinarily shown in a rate case), the Commission would have used clear language to that effect. In such a case, the Commission simply would have ordered that each Kansas utility file a rate case to determine each utility's costs of providing general utility service. That would have included an analysis of a rate of return. It also would have required a cost of service study to determine how to spread the refund among ratepayers.

49. It clearly did not intend or incorporate any such proceedings in the order. Rather, the Commission intended the proceedings in this case to relate to the single issue of the decrease in tax expense brought about by the TCJA, to order that the decrease in tax expense be captured as a Regulatory Liability, and to order the refund of the Regulatory Liability to the ratepayers. In short, whether or not a utility had a revenue deficiency or revenue surplus on January 1, 2018, is simply not relevant to the proceeding in the 18-248 Docket. That issue appropriately belongs in a general rate case.

50. Indeed, the 18-248 Order intended that a reduction in the level of income tax expense should not inure to the benefit of shareholders since income taxes are simply a pass-through in the cost of service for regulated utilities. In other words, the TCJA has a similar effect to other deferral mechanisms used by the Commission to capture the financial effect of an extraordinary event and transfer that financial effect to ratepayers. That effect of the TCJA was appropriately considered by the Commission Staff:

> "Although the Commission generally examines a utility's revenue requirement from its overall cost of service, this situation warrants a different approach as a

> significant reduction in income tax expense should not become a windfall for utilities but should rather be captured and flowed back to ratepayers."[77]

51. Contrary to KGS's argument, the Commission clearly intended the 18-248 Docket to accomplish the refund of the Regulatory Liability to the ratepayers without any windfall to the shareholder. Further, the "other costs of service" referenced in the 18-248 Order are only those extraordinary costs associated with a utility's administration of the 18-248 Order. KGS's arguments fail and should be disregarded.

B. Staff and CURB have correctly interpreted the Relevant Language in the 18-248 Order as Requiring KGS to Refund to the Ratepayers the entire "Regulatory Liability."

52. Both the Commission Staff and CURB concur that KGS should be required to refund the Regulatory Liability regardless of its revenue deficiency in this case. On behalf of CURB, Ms. Crane testified that in its 18-248 Order, the Commission stated that "the purpose of considering refunds '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." Upon that basis, she testified that the regulatory liability should be refunded to customers. Commission Staff's position is essentially the same as CURB's position.

53. The mutual interpretation of CURB and the Commission Staff is undoubtedly correct. As noted earlier, the Commission did not intend to make each proceeding in the 18-248 Docket a rate case. In allowing utilities to offer information and data on their cost of service, that particular inquiry was to determine the existence, if any, of extraordinary costs of service associated with administering the refund. The Commission clearly intended the 18-248 Order to resolve the Regulatory Liability on a single-issue basis, consistent with other deferral mechanisms

[77] Docket No. 18-GIMX-248-GIV. Staff's Report and Recommendation attached to Staff's Motion to Open a General Investigation and Issue Accounting Order Regarding Federal Tax Reform.

used by the Commission to capture the financial effect of extraordinary events and transfer those financial effects to ratepayers. In short, both Commission Staff's and CURB's interpretation are supported by the clear intents and purposes of the 18-248 Order.

54. Nonetheless, KGS posits two arguments (the second and fourth arguments in its post-hearing brief) that the Commission Staff's interpretation (and clearly CURB's interpretation also) of the 18-248 Order is erroneous. These arguments are again based upon the premise that the Commission intended to create an exception to the refunding requirement if a utility's costs of general utility service shows that the utility has not fully earned its authorized rate of return.

55. As shown above, KGS's reading of the 18-248 Order as containing an exception to the refunding requirement in that order is unfounded. KGS's assertion that the Commission Staff and CURB have misinterpreted the 18-248 Order is wrong. In fact, it is KGS that has misinterpreted the 18-248 Order.

56. Indeed, Ms. Crane testified, "The prospective revenue requirement authorized by the KCC in this case should not be used to determine whether or not a refund of the regulatory liability is appropriate."[78] Ms. Crane reasoned:

> "The rates established in this case do not necessarily reflect the average cost of service during the period that the regulatory liability was accrued. For example, any changes to current depreciation rates that are approved by the KCC in this case will not have impacted the Company's earnings during 2018."[79]

In short, neither Commission Staff nor CURB interpret the 18-248 Order as containing an exception to the requirement that utilities refund the Regulatory Liability.

57. In fact, the interpretation of KGS of the 18-248 Order would lead to an unwarranted result. As pointed out by Ms. Crane, "ONE Gas's earnings for the first six months of 2018 were

[78] Docket No. 18-KGSG-560-RTS. Direct Testimony of Andrea C. Crane (October 29, 2018), pp. 56-57.
[79] Ibid., p. 57.

$113 million or 14.6% more than during the first half of 2017. Moreover, ONE Gas' stock price is up over 12% in 2018 to date." As Ms. Crane testified, providing a windfall to KGS shareholders by allowing the company to keep the Regulatory Liability would simply be unjustifiable.[80]

58. KGS's argument also runs counter to good regulatory policy. In KGS's view, if a utility has a revenue deficiency as of January 1, 2018, it should be able to pocket the Regulatory Liability to offset its cost of service. Conversely, if a utility has a revenue surplus as of January 1, 2018, it is required to refund the Regulatory Liability. If this dichotomy were what the Commission intended, it would have the effect of rewarding utilities that were less efficient in controlling expenses from their last rate case than other utilities.

59. It is important to note that Westar, KCP&L and Black Hills have all agreed to refund the Regulatory Liability. Particularly with Westar and KCP&L, these utilities have found ways to reduce costs to the ratepayers to the point that a refund in their rate cases was ordered by the Commission. CURB has trouble seeing how good regulatory policy is advanced by allowing KGS to pocket as a windfall tax expense savings when Westar and KCP&L refunded those amounts to ratepayers.

IV. Conclusion

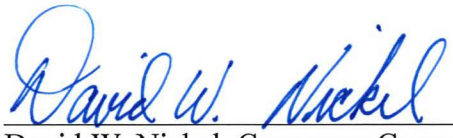
CURB believes that by reading the pertinent phrase, "other costs of service" in the 18-248 Order in the context of the proceedings and the arguments made by the RLECs, it is clear that the Commission intended this phrase to mean other costs of service arising out of the administration of the Regulatory Liability. In so construing that phrase, all clauses in the 18-248 Order have meaning and context. Such an interpretation of the 18-248 Order preserves the 18-248 Docket as

[80] Ibid.

a single-issue proceeding. As set out above, KGS has incorrectly interpreted the 18-248 Order.

WHEREFORE CURB respectively submits its *Post-Hearing Brief* and recommends the Commission order KGS to refund the Regulatory Liability (as it is defined in the 18-248 Order) to the ratepayers.

Respectfully submitted,



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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

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

David W. Nickel

SUBSCRIBED AND SWORN to before me this 16th day of January, 2019.

DELLA J. SMITH
Notary Public - State of Kansas
My Appt. Expires Jan. 26, 2021

Notary Public

My Commission expires: 01-26-2021.

CERTIFICATE OF SERVICE

18-KGSG-560-RTS

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 16th day of January 2019, to the following:

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