

Before the Senate Utilities Committee
February 14, 2018

Neutral Testimony
On Senate Bill 396

Submitted by Justin Grady, Chief of Accounting and Financial Analysis, Utilities Division
On Behalf of
The Staff of the Kansas Corporation Commission

Chair Olson, Vice Chair Petersen, Ranking Minority Member Hawk, and members of the committee, thank you for the opportunity to provide testimony to your committee today on behalf of the staff of the Kansas Corporation Commission (Commission).

The Commission Staff is taking a neutral position on SB 396. However, I would like to use this opportunity to discuss the Commission's recent activity regarding the topic of the Tax Cuts and Jobs Act (TCJA) and its effect on utility rates in the State. Additionally, I will offer an amendment that will clarify the intent of the bill to ensure that it applies to all utility rates and charges that are covered under K.S.A. 66-117.

In early December 2017, Staff began to prepare for the likelihood of implementation of the TCJA. We reviewed the approach taken by the Commission in response to the Tax Reform Act of 1986, we researched what other state public utility commissions were doing in anticipation of federal tax reform and we began to meet with the major public utilities in the State to discuss our intention to capture the economic effects of the TCJA for ratepayers. On December 14, 2017, Staff filed a motion requesting the Commission open a general investigation and issue an Accounting Authority Order (AAO) pertaining to the issue of federal tax reform.

The goal of the general investigation was to quantify the impact of the TCJA on regulated utilities operating in the State and pass the cost savings on to Kansas utility consumers and contributors to the Kansas Universal Service Fund (KUSF) as rapidly as possible. While the review took place, Staff recommended that the Commission order all jurisdictional public utilities taxed at the corporate level to accumulate in a special regulatory liability account all revenues received from rates or KUSF subsidy payments that were tied to a 35% Federal income tax rate versus the new lowered rate of 21%. This account would accumulate interest at the rate paid by utility companies for customer deposits. Staff recommended that the Commission clarify for all regulated utilities that the Commission intended to capture any excess deferred income taxes created by the TCJA in a method that comported with IRS tax normalization rules in order to preserve the ratepayer benefits associated with the use of accelerated depreciation for tax purposes.

On January 18, 2018, the Commission accepted Staff's motion to open the general investigation

and issued an AAO. The AAO ordered all public utilities in the State that are taxed at the corporate level to begin recording all revenue being received in rates or KUSF subsidy payments for federal income taxes in excess of 21%. This deferred revenue account would accumulate interest at the rate being paid by the utility for customer deposits and would continue until each utility reflected the effects of the lower tax rate in its utility rates.

Since the issuance of the Commission's Order, Staff has been in active communication with many of the State's utilities discussing the mechanics of the calculations to the deferred revenue account and the anticipated timeline of temporary or permanent rate adjustments to account for the savings associated with the TCJA.

Similar to the 1986 tax reform, Staff expects the regulatory solutions used and the time necessary to reflect TCJA savings in utility rates will differ by utility to account for the individual circumstances of each. For example, some utilities are currently involved in a rate case or are going to file one soon. The typical time to review, analyze, and adjudicate a comprehensive rate case is 240 days. Other utilities have just had rates changed or are under a rate moratorium preventing them from filing a rate case. In those instances, a temporary solution such as a temporary tariff or a line-item credit might be more appropriate until a comprehensive rate review can be performed. It's difficult to find one-size-fits-all solutions in utility regulation as utilities often exhibit very different circumstances than other utilities, even in the same State.

Resource limitations and practical considerations prevent the Commission from performing a comprehensive review of the rates of every utility in the State at the same time. While this review will take time, customer benefits are not lost during this period of review because savings are being accumulated in a regulatory liability account, with interest.

In the event that the Committee acts on SB 396, Staff recommends the following amendment to the bill to clarify that it applies to all rates and charges set by the Commission as defined in K.S.A. 66-117(a):

(g) Unless the state corporation commission otherwise orders, no common carrier or public utility over which the commission has control shall include in its rates, joint-rate, toll, charge or classification of schedules and charges an amount for federal or state corporate income taxes that exceeds the then-applicable federal and state income tax rate for corporations. In the event a common carrier or public utility, through its rates joint-rate, toll, charge or classification of schedules and charges, collects an amount for federal or state income taxes in excess of the amount of income taxes that were expected to be owed based on federal or state income tax rates applicable at the time such rates were approved by the commission, the common carrier or public utility shall refund the difference with 5% interest to customers of such common carrier or public utility within 150 days of the tax change. Any refunds should be dispersed to customers through a separate line item on a bill or through direct mail or electronically deposited payment to such customers outside of a monthly bill for service.

Thank you for the opportunity to appear before the Committee today to provide some information regarding the Commission's current activities regarding the issue of tax reform and its effect on public utility rates in the State.