

**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 Requirements of)
Kansas Public Utilities and Request to Issue) Docket No. 18-GIMX-248-GIV
an Accounting Authority Order Requiring)
Certain Regulated Public Utilities to Defer)
Effects of Tax Reform to a Deferred)
Revenue Account.)

**ORDER GRANTING JOINT MOTION FOR APPROVAL OF BLACK HILLS'
TAX REFORM PLAN**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the file and records, and being properly advised, the Commission finds:

I. Background

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

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 and Recommendation.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 CURB's Petition to Intervene was granted by the Commission on March 13, 2018.

3. On January 18, 2018, the Commission issued an Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform.³

4. On March 7, 2018, Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (“ Black Hills), the Staff of the Kansas Corporation Commission (“Staff”), and CURB (collectively the Movants) filed a Joint Motion for Approval of Black Hills’ Tax Reform Plan (Motion). The Motion included a Settlement Agreement, the key provision of which included the following:

- a. Reduction in federal income tax expense included in Black Hills’ cost of service as a result of the Tax Cut and Jobs Act’s lowering of the federal income tax rate from 35% to 21 %;
- b. Refund of \$1,718,203 in tax savings to Black Hills’ Customers;
- c. Refund of an additional \$154,331 in tax savings to customers relating to Black Hills’ Gas Safety and Reliability and Surcharge (GSRs);
- d. Tax savings relating to Excess Accumulated Deferred Income Tax (ADIT);
- e. Effective order date of March 27, 2018;
- f. Waiver of a Settlement Hearing.

5. On March 9, 2018, Black Hills filed Testimony in Support of the Settlement Agreement.⁴

6. On March 9, 2018, Staff filed Testimony in Support of Black Hills’ Settlement Agreement.⁵

³ Order Opening General Investigation and Issuing Accounting Authority Order Regarding Federal Tax Reform (Jan. 18, 2018) (Order).

⁴ Testimony of Robert J. Amdor in Support of the Settlement Agreement on Behalf of Black Hills/Kansas Gas Utility Company, d/b/a Black Hills Energy (Mar. 9, 2018) (Amdor Direct).

⁵ Staff Testimony in Support of Black Hills’ Settlement Agreement (Mar. 9, 2018) (Jackson Direct).

7. On March 9, 2018, CURB filed Testimony in Support of Black Hills’ Settlement Agreement.⁶

II. Legal Standard

8. Every public utility in Kansas is required to provide reasonably efficient and sufficient service and establish just and reasonable rates.⁷ Just and reasonable rates are those that fall within a “zone of reasonableness,” which balances the interests of present and future ratepayers, and the public interest.⁸ The Kansas Supreme Court has recognized that “the touchstone of public utility law is the rule that one class of consumers shall not be burdened with costs created by another class.”⁹ The Commission may in addition to cost-causation, consider matters of public policy, such as gradualism to minimize rate shock, revenue stability for the company, economic development, and energy efficiency.¹⁰ Both federal and state courts have been clear that rates must be based on costs and supported by substantial competent evidence.¹¹ Substantial competent evidence is that which possesses something of substance and relevant consequence, and which furnishes a substantial basis of fact from which the issues can reasonably be resolved.¹² A decision of the Commission is unsupported by substantial competent evidence “only when the evidence shows the [Commission’s] determination ‘is so wide of the mark as to be outside the realm of fair debate.’”¹³ The Kansas Supreme Court has also stated that the

⁶ Stacy Harden’s Testimony in Support of Black Hills’ Settlement Agreement on behalf of CURB, (Mar. 9, 2018) (Harden Direct).

⁷ K.S.A. 66-101b.

⁸ *Kansas Gas and Elec. Co. v. Kansas Corp. Comm’n.*, 239 Kan. 483, 488 (1986).

⁹ *Jones v. Kansas Gas & Electric Co.*, 222 Kan. 390, 401 (1977).

¹⁰ Docket No. 12-KCPE-764-RTS (Aug. 22, 2012); Docket No. 16-KCPE-446-TAR (Jun. 22, 2017); *See also, Midwest Gas Users Ass’n v. Kansas Corp. Comm’n.*, 3 Kan. App.2d 376, 380 (1979).

¹¹ *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Kansas Gas and Electric Co.*, 239 Kan. At 501; *Zinke & Trumbo, Ltd. v. State Corp. Comm’n.*, 242 Kan. 470, 475 (1988).

¹² *Farmland Indus., Inc. v. Kansas Corp. Comm’n.*, 25 Kan.App.2d 849, 852 (1999).

¹³ *Zinke & Trumbo, Ltd. v. Kansas Corp. Comm’n.*, 242 Kan. 470, 474 (1988) (quoting *Kansas-Nebraska Natural Gas Co. v. Kansas Corp. Comm’n.*, 217 Kan. 604, 617).

Commission “is not obligated to render its finding of fact in minute detail ... [h]owever, we require its findings to be specific enough to allow judicial review of the reasonableness of the order.”¹⁴

9. The law generally favors the compromise and settlement of disputes.¹⁵ However, the Commission must make an independent finding that the settlement is supported by substantial competent evidence in the record as a whole, that the settlement will establish just and reasonable rates, and the settlement is in the public interest.¹⁶

10. The Commission has established a five-part test to determine the reasonableness of proposed settlement agreements. The five parts are rooted in the Commission’s organic statutes,¹⁷ the Kansas Administrative Procedure Act,¹⁸ and the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions.¹⁹ The five parts are:

- a. Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement;
- b. whether the stipulation and agreement is supported by substantial competent evidence;
- c. whether the stipulation and agreement conforms with applicable law;
- d. whether the stipulation and agreement results in just and reasonable rates;
- e. whether the results of the stipulation and agreement are in the public interest, including the interest of the customers represented by the party not consenting to the agreement.²⁰

¹⁴ *Id.* at 475.

¹⁵ *Krantz v. Univ. of Kansas*, 271 Kan. 234, 241-42 (2001).

¹⁶ *Citizens’ Utility Ratepayer Board v. Kansas Corp. Comm’n.*, 28 Kan.App.2d 313, 316, (2000) *rev. denied* March 20, 2001.

¹⁷ See K.S.A. 66-101b (providing the Commission with the power to “require all electric public utilities governed by this act to establish and maintain just and reasonable rates”).

¹⁸ See, K.S.A. 77-501 *et seq.*

¹⁹ See, K.S.A. 77-601 *et seq.*

²⁰ Order Approving Contested Settlement Agreement, Docket No. 08-ATMG-280-RTS, p. 5 (May 12, 2008).

III. Findings and Conclusions

11. The Commission reviewed the Settlement Agreement utilizing the Commission's five-part analysis of settlement agreements and finds as follows:

Whether there was an opportunity for the opposing party to be heard on their reasons for opposition to the stipulation and agreement?

12. The Settlement Agreement is a unanimous agreement which addresses all the issues between the moving the parties.²¹ Because there are no other interested parties in the docket who are not also signatories to the Settlement Agreement,²² the Commission finds there was opportunity for any party to be heard on their reasons for opposition to the agreement and no party elected to oppose the Settlement Agreement.

Whether the stipulation and agreement is supported by substantial competent evidence?

13. The Settlement Agreement is supported by the Direct Testimony of Robert J. Amdor, the Direct Testimony of Andria Jackson and the Direct Testimony of Stacy Harden, addressing the following substantive issues:

- a. Reduction in Federal Income Tax Expense Included in Black Hills' Cost of Service Resulting from the Tax Cut and Jobs Act's Lowering of the Federal Income Tax Rate from 35% to 21%.

14. In its Order Opening General Investigation the Commission directed all regulated public utilities 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

²¹ Amdor Direct, p. 16.

²² See, Amdor Direct, p. 16.

(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.²³

15. The Commission finds that Black Hills complied with that direction and has included the calculation in Appendix 1 to the Settlement Agreement.²⁴ Black Hills' calculation, which has been confirmed by Staff,²⁵ results in an annual cost of service savings to customers of \$1,718,203 exclusive of interest.²⁶

b. Refund of \$1,718,203 in Tax Savings to Black Hills' Customers.

16. The Settlement Agreement also includes a refund amount of \$1,719,619, which includes interest on the amount of monthly excessive collections in the deferred revenue accounts for the months of January, February and March 2018, by providing Black Hills' customers an annual one-time separate line bill credit in April 2018, for 53% of the tax savings and a volumetric credit returned to the customers through Black Hills' purchased gas adjustment for the remaining 47% of the tax savings.²⁷ The Settlement Agreement further allocates the refund between customer classes based upon the allocation to customer classes approved by the Commission in Black Hills' last rate case.²⁸

17. The Commission finds the refund amount is reasonable because it is derived from Black Hills' rates, which were approved by the Commission in Docket No. 14-BHCG-502-RTS.²⁹ Furthermore, the Commission finds the proposed allocations are reasonable because they are roughly commensurate to the percentage allocations in Black Hills' last rate case for the amount of total non-gas or non-PGA costs recovered through the monthly customer charge and the amount

²³ Order, p. 5.

²⁴ Amdor Direct, p. 9.

²⁵ Jackson Direct, p. 8.

²⁶ Amdor Direct, pp. 9-10; Jackson Direct, p. 8; Harden Direct, p. 7.

²⁷ Amdor, Direct pp. 10; Jackson Direct, p. 5; Harden Direct, p. 7.

²⁸ Amdor Direct, pp. 10-11; Jackson Direct, p. 5.

²⁹ Jackson Direct, pp. 8-9.

of total costs recovered through the commodity charge and between the different customer classes.³⁰

- c. Refund of an Additional \$154,331 in Tax Savings to Customers Related to Black Hills' GSRS Surcharge.

18. The Settlement Agreement also provides the refund of an additional \$154,331 in tax savings to customers relating to Black Hills' GSRS surcharge and a permanent \$0.08 reduction in the monthly GSRS surcharge to reflect the tax savings.³¹

- d. Tax Savings Relating to Excess ADIT.

19. Regarding the issue of ADIT, the Movants agreed that Black Hills shall establish a regulatory liability account for the purpose of accounting for and capturing tax savings related to excess ADIT.³² Black Hills will utilize a methodology that is consistent with the tax normalization requirements specified by IRS normalization rules.³³ However, the Movants also agreed Black Hills' ADIT, as of December 31, 2017, will not be amortized for ratemaking purposes until the excess ADIT is reflected in base rates approved by the Commission in Black Hills' next general rate case filing and any issues regarding the amount of tax savings related to excess ADIT, and how those savings should be passed on to customers will be deferred to Black Hills' next general rate case.³⁴ The Commission finds this approach is reasonable as it ensures that customers will continue to realize the benefits associated with the excess deferred taxes as an offset to rate base and will continue to receive the time value of money associated with the excess deferred taxes until the excess deferred taxes are reflected in Black Hills' next rate case.³⁵

³⁰ See Amdor Direct, pp. 10-11.

³¹ Amdor Direct, pp. 11-12; Jackson Direct, p. 5; Harden Direct p. 8.

³² Amdor Direct, p. 12; Harden Direct, p. 7.

³³ Amdor Direct, p. 12; Jackson Direct, pp. 10-11; Harden Direct p. 7.

³⁴ Amdor Direct pp. 12-13; Jackson Direct, pp.5-6; Harden Direct, p. 7.

³⁵ Amdor Direct p. 12; Jackson Direct, p. 10; Harden Direct pp. 11-12.

e. Effective Date of Order.

20. The Movants also requested the Settlement Agreement be approved by March 27, 2018 in order to allow Black Hills time to prepare April bills to show credits relating to the tax savings.³⁶ The Commission finds that providing relief to affected customers in an expedited fashion is in the public interest.³⁷

Whether the stipulation and agreement results in just and reasonable rates?

21. The Commission finds the Settlement Agreement appropriately accounts for the reduction in federal income tax expense included in Black Hills' current cost of service and passes those cost savings to Black Hills' customers.³⁸ Furthermore, the Commission finds the Settlement Agreement appropriately balances the interests between the utility's investors and ratepayers and present and future ratepayers.³⁹ The Commission therefore finds that the total effect of the Settlement Agreement results in just and reasonable rates.

Whether the results of the stipulation and agreement are in the public interest, including the interests of the customers represented by the party not consenting to the agreement?

22. Because the Settlement Agreement expedites the reduction in over-collection of federal income tax⁴⁰ whilst balancing the interests of the company, the customers and the public generally,⁴¹ the Commission finds the Settlement Agreement is in the public interest.

³⁶ Amdor Direct, pp. 14-15; Jackson Direct, p. 5.

³⁷ Amdor Direct, p. 15.

³⁸ *Id.*

³⁹ Jackson Direct, p. 12.

⁴⁰ Jackson Direct, p. 13.

⁴¹ *Id.*

Whether the stipulation and agreement conforms with applicable law?

23. In light of the Commission's above findings that the Settlement Agreement results in just and reasonable rates and is supported by substantial competent evidence, the Commission finds the Settlement Agreement conforms with applicable Kansas law.

24. The Commission finds that the Settlement Agreement satisfies the five-part analysis the Commission has used when reviewing proposed settlements. Therefore, the Commission finds the Joint Motion for Approval of Black Hills' Tax Reform Plan should be granted.

THEREFORE, THE COMMISSION ORDERS:

A. The Joint Motion for Approval of Black Hills' Tax Reform Plan is granted.


B. The parties have 15 days from the date this Order was electronically served to petition for reconsideration.⁴²

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.

Albrecht, Chair; Emler, Commissioner; Apple, Commissioner

Dated: 03/27/2018



Lynn M. Retz
Secretary to the Commission

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⁴² 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 electronic service on 03 27 2018.

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