

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

In the Matter of a General Investigation to)
Evaluate Allowing Electric and Gas Utilities)
the Authority to Accept Irrevocable Letters of) Docket No. 19-GIMX-256-GIV
Credit in Lieu of Cash Deposits for System)
Expansion Related to Residential Development)

JOINT MOTION FOR APPROVAL OF UNANIMOUS SETTLEMENT AGREEMENT

Atmos Energy Corporation (Atmos), Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills Energy), the Citizens' Utility Ratepayer Board (CURB), Kansas Gas Service, a Division of ONE Gas, Inc. (Kansas Gas Service), Kansas City Power & Light Company (KCP&L) and Westar Energy, Inc. and Kansas Gas and Electric Company (referred to together herein as Westar), the Staff of the State Corporation Commission of the State of Kansas (Staff and Commissioner, respectively), and the Wichita Area Builders Association, Inc. (WABA) (all parties collectively referred to as Joint Movants) hereby move the Commission for an order approving the Unanimous Settlement Agreement, attached hereto as **Attachment A**, and incorporated herein by reference. In support of thereof, Joint Movants state the following:

1. On January 8, 2019, the Commission issued its *Order Opening General Investigation* (Order) “to evaluate allowing electric and gas utilities the authority to accept ILOCs [irrevocable letters of credit] in lieu of cash deposits for system expansion related to residential developments.”¹ The Order was in response to a Staff Report and Recommendation (Report) filed in Docket No. 18-WSEE-163-TAR (18-163 Docket), wherein Staff recommended the Commission initiate this general investigation and direct Kansas electric and gas utilities to respond to a series

¹ Order, ¶ 9.

of twenty-one questions relating to ILOCs. As part of its Order, the Commission made all Kansas gas and electric public utilities a party to the proceeding, set the deadline for entries of appearance as January 30, 2019, and restated the questions posited by Staff to be addressed as part of this investigation.²

2. On February 2019, parties to the proceeding filed a joint motion for procedural schedule setting forth, *inter alia*, the dates for filed comments, settlement discussions, a prehearing conference, and a technical hearing. The Commission approved the proposed procedural schedule on February 28, 2019 (Procedural Order).

3. In accordance with the Procedural Order, the parties filed initial and reply comments setting out their respective positions. Generally, the parties were amenable to the use of ILOC by the utilities, but some parties advocated for certain restrictions, and others requested that the decision to use ILOCs be left up to the individual utilities. Staff summarized the comments in its Report and Recommendation, filed on June 11, 2019 (Staff Report), and recommended utilities be allowed to use ILOCs for residential subdivision development provided certain accounting treatment be recognized.

4. The Procedural Order provided that the parties to the proceeding were to meet on July 12, 2019 to discuss possible resolution of the issues in this docket. On July 11, 2019, a proposed term sheet was circulated among the parties, and based on the filed positions, the parties were able to cancel the scheduled Settlement Conference and instead conduct the settlement negotiations via telephonic and electronic communication. As a result of those discussions, the parties to the proceeding were able to resolve all issues in this docket and reduce the terms to writing.

² Order, ¶¶ 10, 8.

5. Joint Movants believe approval of the Settlement Agreement is in the public interest, as it properly balances the interests of utility customers, utility shareholders, and entities seeking use of ILOCs for residential subdivision development, such as WABA. Due to the collaborative nature of this proceeding, Joint Movants are proposing not filing testimony in support of the Settlement Agreement, unless requested by the Commission. Further, as part of the Settlement Agreement, Joint Movants respectfully request modification of the remainder of the procedural schedule, including waiver of the evidentiary proceeding currently scheduled in this matter for August 20-21, 2019, and instead request to present the matter to the Commission based on the current written paper record.

WHEREFORE, Joint Movants respectfully request the Commission issue an order granting this motion, thereby approving the attached Settlement Agreement, modifying the remainder of the procedural schedule as set forth therein, including cancellation of the evidentiary hearing currently scheduled for August 20-21, 2019, and for any such further relief the Commission deems just and reasonable.

/s/ James G. Flaherty

James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory ~ P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com
Counsel for Atmos Energy Corporation

/s/ Dari R. Dornan

Dari R. Dornan
Black Hills Corporation
1102 East 1st Street
Papillion, NE 68046
(402) 221-2288
dari.dornan@blackhillscorp.com
Counsel for Black Hills Corporation

Todd E. Love

David W. Nickel, Consumer Counsel #11170
Todd E. Love, Attorney #13445
Joseph R. Astrab, Attorney #26414
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
d.nickel@curb.kansas.gov
t.love@curb.kansas.gov
j.astrab@curb.kansas.gov
Counsel for CURB

/s/ Judy Jenkins Hitchye

Judy Jenkins Hitchye
7421 West 129th Street
Overland Park, Kansas 66213
Phone: 913-319-8615
judy.jenkins hitchye@onegas.com
**Counsel for Kansas Gas Service, A Division of
ONE Kansas Gas Service, A Division of ONE
Gas, Inc.**

/s/ Cathryn J. Dinges

Cathryn J. Dinges (#20848)
Telephone: (785) 575-1986
818 S. Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601
Facsimile: (785) 575-8136
Email: cathy.dinges@westarenergy.com

Robert J. Hack (KS #12826)
Telephone: (816) 556-2791
Roger W. Steiner (KS #26159)
Telephone: (816) 556-2314
Kansas City Power & Light Company
One Kansas City Place
1200 Main Street – 16th Floor
Kansas City, Missouri 64105
Facsimile: (816) 556-2780
E-mail: rob.hack@kcpl.com
E-mail: roger.steiner@kcpl.com

**Counsel for Kansas City Power & Light Company
and Westar Energy, Inc. and Kansas Gas and
Electric Company**

/s/ Michael Neeley

Michael Neeley (#25027)
(785) 271-3173
Cole Bailey (#27586)
(785) 271-3186
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
m.neeley@kcc.ks.gov
c.bailey@kcc.ks.gov
Counsel for Commission Staff

/s/ Terri Pemberton

Glenda Cafer (#13342)
Telephone: (785) 271-9991
Terri Pemberton (#23297)
Telephone: (785) 232-2123
CAFER PEMBERTON LLC
3321 SW 6th Avenue
Topeka, Kansas 66606
E-mail: glenda@caferlaw.com
E-mail: terri@caferlaw.com
Counsel for Wichita Area Builders Association, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above pleading was electronically served this 18th day of July, 2019 to:

Brian G. Fedotin, Deputy General Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
b.fedotin@kcc.ks.gov

Roger W. Steiner, Corporate Counsel
Kansas City Power & Light Company
One Kansas City Place,
1200 Main Street – 19th Floor (64105)
PO Box 418679
Kansas City, Missouri 64141-9679
roger.steiner@kcpl.com

Cathryn J. Dinges, Corporate Counsel
Kansas Gas & Electric Co. d/b/a Westar Energy
818 S. Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601-0889
cathy.dinges@westarenergy.com

Thomas D. Stevens, Director of Regulatory
Black Hills/Kansas Gas Utility Company LLC
D/B/A Black Hills Energy
655 Millsap Rd Suite 104
Fayetteville, AR 72703
tom.stevens@blackhillscorp.com

Dari R. Dornan, Associate General Counsel
Black Hills/Kansas Gas Utility Company LLC
D/B/A Black Hills Energy
1102 East 1st Street
Papillion, NE 68046
dari.dornan@blackhillscorp.com

Ann Stichler, SR. Regulatory Analyst-
Regulatory Services
Black Hills/Kansas Gas Utility Company LLC
D/B/A Black Hills Energy
1102 East 1st Street
Papillion, NE 68046
ann.stichler@blackhillscorp.com

Robert J. Hack, Lead Regulatory Counsel
Kansas City Power & Light Company
One Kansas City Place,
1200 Main Street – 19th Floor (64105)
PO Box 418679
Kansas City, Missouri 64141-9679
rob.hack@kcpl.com

Lois Liechti, Director Regulatory Affairs
Kansas City Power & Light Company
One Kansas City Place,
1200 Main Street – 19th Floor (64105)
PO Box 418679
Kansas City, Missouri 64141-9679
lois.liechti@kcpl.com

Anthony Westenkirchner, Senior Paralegal
Kansas City Power & Light Company
One Kansas City Place,
1200 Main Street – 19th Floor (64105)
PO Box 418679
Kansas City, Missouri 64141-9679
anthony.westenkirchner@kcpl.com

Michael Neeley, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
m.neeley@kcc.ks.gov

Cole Bailey, Litigation Counsel
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
c.bailey@kcc.ks.gov

Janet Buchanan, Director-Regulatory Affairs
Kansas Gas Service, a Division of ONE Gas, Inc.
7421 W 129th Street
Overland Park, Kansas 66213-2713
janet.buchanan@onegas.com

Shelly M. Bass, Senior Attorney
Atmos Energy Corporation
5430 LBJ Freeway
1800 Three Lincoln Centre
Dallas, Texas 75240
shelly.bass@atmosenergy.com

Judy Jenkins Hitchye, Managing Attorney
Kansas Gas Service, a Division of ONE Gas, Inc.
7421 W 129th Street
Overland Park, Kansas 66213-2713
judy.jenkins@onegas.com

Jared Geiger, Sr. Rate Analyst
Atmos Energy Corporation
1555 Blake Street, STE 400
Denver, Colorado 80202
Jared.Geiger@atmosenergy.com

James G. Flaherty, Attorney
ANDERSON & BYRD, L.L.P.
216 S Hickory
P.O. Box 17
Ottawa, Kansas 66067
jflaherty@andersonbyrd.com

/s/ Terri Pemberton

Terri Pemberton

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

In the Matter of a General Investigation to)
Evaluate Allowing Electric and Gas Utilities)
the Authority to Accept Irrevocable Letters of) Docket No. 19-GIMX-256-GIV
Credit in Lieu of Cash Deposits for System)
Expansion Related to Residential Development)

UNANIMOUS SETTLEMENT AGREEMENT

As a result of discussions between the parties to this docket, Atmos Energy Corporation (Atmos), Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills Energy), the Citizens' Utility Ratepayer Board (CURB), Kansas Gas Service, a Division of ONE Gas, Inc. (Kansas Gas Service), Kansas City Power & Light Company (KCP&L) and Westar Energy, Inc. and Kansas Gas and Electric Company (referred to together herein as Westar), the Staff of the State Corporation Commission of the State of Kansas (Staff and Commissioner, respectively), and the Wichita Area Builders Association, Inc. (WABA) (all parties collectively referred to collectively as the “Signatories” or the “Signatory Parties”), Signatories hereby submit to the Commission for its consideration and approval the following Unanimous Settlement Agreement (“Settlement”):

I. PROCEDURAL BACKGROUND

1. On January 8, 2019, the Commission issued its *Order Opening General Investigation* (Order) “to evaluate allowing electric and gas utilities the authority to accept ILOCs [irrevocable letters of credit] in lieu of cash deposits for system expansion related to residential developments.”¹ The Order was in response to a Staff Report and Recommendation filed in

¹ Order, ¶ 9.

Docket No. 18-WSEE-163-TAR (18-163 Docket), wherein Staff recommended the Commission initiate this general investigation and direct Kansas electric and gas utilities to respond to a series of twenty-one questions relating to ILOCs. As part of its Order, the Commission made all Kansas gas and electric public utilities a party to the proceeding, set the deadline for entries of appearance as January 30, 2019, and restated the questions posited by Staff to be addressed as part of this investigation.²

2. On February 20, 2019, parties to the proceeding filed a joint motion for procedural schedule setting forth, *inter alia*, the dates for filed comments, settlement discussions, a prehearing conference, and a technical hearing. The Commission approved the proposed procedural schedule on February 28, 2019 (Procedural Order).

3. Consistent with the Procedural Order, the parties to the proceeding filed initial and responsive comments on April 12, 2019 and May 7, 2019, respectively. On June 11, 2019, Staff filed its Report and Recommendation (Staff Report) wherein it summarized the position of the parties and recommended the Commission allow the use of the ILOCs for residential subdivision developments, under certain conditions. Westar filed a response to Staff's Report raising concerns with certain of Staff's accounting conditions.

4. On July 11, 2019, the parties began discussions to resolve the issues in this docket. As a result of those discussions, Signatories were able to resolve all issues in the proceeding and committed the terms to writing, as set forth below.

² Order, ¶¶ 10, 8.

II. TERMS OF SETTLEMENT AGREEMENT

A. Use of ILOCs

5. The Signatory Parties have agreed that utilities should be given the option to revise their Tariffs to accept ILOCs in lieu of cash deposits for system expansions related to residential development.

6. Any utility wishing to accept ILOCs in lieu of cash deposits for residential developments shall agree to the following conditions:

- a. The utility accepting the ILOC must commit to hold its shareholders liable for 50% of the infrastructure costs incurred that were covered by the ILOC in the event the issuing bank defaults on the ILOC.
- b. The utility accepting the ILOCs must commit to make an adjustment in each rate case to decrease its rate base by the amount of outstanding investment made by the utility attributable to acceptance of an ILOC for facilities that remain without a permanent meter at the end of the test year.
 - i. The utility will put a process in place requiring developers to cooperate by providing updated data regarding when customers in the development begin receiving utility service as a condition of the utility's acceptance of ILOCs and any developer who refuses to cooperate by providing updated data will not be eligible for use of ILOCs in the future.
- c. The utility accepting the ILOC is free to adopt additional restrictions on the use of ILOCs so long as they do not conflict with the requirements of 6.a. and 6.b., above. This could include restrictions on the banking institutions the utility will accept

ILOCs from, minimum ILOC amounts, annual requirements, and/or other conditions.

7. Any utility wishing to move forward with acceptance of ILOCs in lieu of cash deposits for residential development as contemplated by the Settlement shall file a compliance tariff in this docket that contains the details regarding its acceptance of ILOCs.

8. The parties agree that the Settlement is supported by the various comments filed by the parties in the docket and by Staff's report and recommendation and that no additional testimony supporting the Settlement is necessary. The Signatories also agree to support the following modifications to the procedural schedule:

B. Modification to the Procedural Schedule

9. Due to the presentation of this Settlement that resolves all contested issues, the Signatories recommend to the Commission the following:

(a) The prehearing conference scheduled for July 31, 2019, the evidentiary hearings scheduled for August 20-21, 2019, and post-hearing briefing of this matter be cancelled.

(b) The prefiled comments submitted in this case, including Staff's Report and Recommendation, be entered into the record of this docket.

(c) The Commission issue its decision based upon the written record.

(d) If the Commission prefers to hold a hearing on this Settlement Agreement, the Commission convert the August 20-21, 2019 evidentiary hearing date to a hearing on the Settlement Agreement.

III. MISCELLANEOUS PROVISIONS

A. The Commission's Rights

10. Nothing in this Settlement is intended to impinge or restrict, in any manner, the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation, including the obligation to ensure that the public utility participants are providing efficient and sufficient service at just and reasonable rates.

B. Waiver of Cross-Examination

11. In the event the Commission conducts a hearing, the Signatory Parties waive cross-examination on all testimony filed prior to the filing of this Settlement Agreement.

C. Negotiated Settlement

12. This Settlement represents a negotiated settlement that fully resolves the issues raised in this proceeding. The Signatory Parties represent that the terms of this Settlement constitute a fair and reasonable resolution of the issues addressed herein. Except as specified herein, the Signatory Parties shall not be prejudiced, bound by, or in any way affected by the terms of this Settlement (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; and/or (c) in this proceeding should the Commission decide to not approve this Settlement in the instant proceeding. If the Commission accepts this Settlement Agreement in its entirety and incorporates the same into a formal order without material modification, the Signatory Parties shall be bound by its terms and the Commission's order incorporating its terms as to all issues addressed herein and in accordance with the terms hereof, and will not appeal the Commission's order on these issues.

D. Interdependent Provisions

13. The provisions of this Settlement have resulted from negotiations among the Signatory Parties and are interdependent. In the event that the Commission does not approve and adopt the terms of this Settlement in total or materially changes the Settlement terms, the Settlement shall be voidable and no Signatory Party hereto shall be bound, prejudiced, or in any way affected by any of the agreements or provisions hereof. Further, in the event the Commission does not approve and adopt the terms of this Settlement in total, this Settlement shall be considered privileged and not admissible in evidence or made a part of the record in any proceeding. In the event of a termination pursuant to this Section, the Settlement shall be null and void and of no further effect, with all rights, duties, and obligations of the Signatory Parties thereafter restored as if this Settlement had never been executed; provided, that the Signatory Parties may, in the sole discretion of each Party, agree to attempt to modify the Settlement in a manner that would resolve the adverse effect of the material change of condition.

IN WITNESS THEREOF, the Signatory Parties have executed and approved this Settlement Agreement, effective as of the 18th day of July 2019, by subscribing their signatures below.

By: */s/ James G. Flaherty*
James G. Flaherty, #11177
ANDERSON & BYRD, LLP
216 S. Hickory ~ P. O. Box 17
Ottawa, Kansas 66067
(785) 242-1234, telephone
(785) 242-1279, facsimile
jflaherty@andersonbyrd.com
Counsel for Atmos Energy Corporation

By: */s/ Dari R. Dornan*
Dari R. Dornan
Black Hills Corporation
1102 East 1st Street
Papillion, NE 68046
(402) 221-2288
dari.dornan@blackhillscorp.com
Counsel for Black Hills Corporation

By: */s/ Todd E. Love*
David W. Nickel, Consumer Counsel #11170
Todd E. Love, Attorney #13445
Joseph R. Astrab, Attorney #26414
Citizens' Utility Ratepayer Board
1500 SW Arrowhead Road
Topeka, KS 66604
(785) 271-3200
d.nickel@curb.kansas.gov
t.love@curb.kansas.gov
j.astrab@curb.kansas.gov
Counsel for CURB

By: */s/ Judy Jenkins Hitchye*
Judy Jenkins Hitchye
7421 West 129th Street
Overland Park, Kansas 66213
Phone: 913-319-8615
judy.jenkins hitchye@onegas.com
**Counsel for Kansas Gas Service, A Division of
ONE Kansas Gas Service, A Division of ONE
Gas, Inc.**

By: /s/ Cathryn J. Dinges

Cathryn J. Dinges (#20848)
Telephone: (785) 575-1986
818 S. Kansas Avenue
P.O. Box 889
Topeka, Kansas 66601
Facsimile: (785) 575-8136
Email: cathy.dinges@westarenergy.com

Robert J. Hack (KS #12826)
Telephone: (816) 556-2791
Roger W. Steiner (KS #26159)
Telephone: (816) 556-2314
Kansas City Power & Light Company
One Kansas City Place
1200 Main Street – 16th Floor
Kansas City, Missouri 64105
Facsimile: (816) 556-2780
E-mail: rob.hack@kcpl.com
E-mail: roger.steiner@kcpl.com

**Counsel for Kansas City Power & Light Company
and Westar Energy, Inc. and Kansas Gas and
Electric Company**

By: /s/ Michael Neeley

Michael Neeley (#25027)
(785) 271-3173
Cole Bailey (#27586)
(785) 271-3186
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604
m.neeley@kcc.ks.gov
c.bailey@kcc.ks.gov
Counsel for Commission Staff

By: */s/ Terri Pemberton*
Glenda Cafer (#13342)
Telephone: (785) 271-9991
Terri Pemberton (#23297)
Telephone: (785) 232-2123
CAFER PEMBERTON LLC
3321 SW 6th Avenue
Topeka, Kansas 66606
E-mail: glenda@caferlaw.com
E-mail: terri@caferlaw.com
Counsel for Wichita Area Builders Association, Inc.