

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

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 an ) Docket No. 18-GIMX-248-GIV  
Accounting Authority Order Requiring Certain )  
Regulated Public Utilities to Defer Effects of )  
Tax Reform to Deferred Revenue Account. )

TESTIMONY IN SUPPORT OF SETTLEMENT AGREEMENT

STACEY HARDEN

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

JUNE 7, 2018

1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. Please state your name and business address.**

3 A. My name is Stacey Harden. My business address is 1500 SW Arrowhead Road, Topeka,  
4 KS 66604.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by the Citizens' Utility Ratepayer Board ("CURB") as a Senior Regulatory  
8 Analyst.

9

10 **Q. Please describe your education background.**

11 A. I earned a Bachelor of Business Administration degree from Baker University in 2001. I  
12 earned a Master of Business Administration from Baker University in 2004.

13

14 **Q. Please summarize your professional experience in the utility industry.**

15 A. I served as a Regulatory Analyst for CURB from February 2008 until March 2016. I  
16 rejoined the CURB Staff in September 2017 as a Senior Regulatory Analyst.

17

18 **Q. Have you previously testified before the Commission?**

19 A. Yes. I have provided both written and live testimony in several proceedings before the  
20 Kansas Corporation Commission ("Commission"). Additionally, I have authored Report  
21 and Recommendations to the Commission in several dockets.

22

23

1 **Q. What is the purpose of your testimony?**

2 A. The purpose of my testimony is to provide support to a Settlement Agreement  
3 ("Agreement") between Kansas City Power & Light Company ("KCPL"), the Staff of the  
4 Kansas Corporation Commission ("Staff"), and CURB. My testimony will be divided into  
5 four sections:

6 1. First, I will briefly summarize the Tax Cuts and Jobs Act and the Commission's  
7 Order in this general investigation docket.

8 2. Second, I will provide a review of the Agreement, including KCPL's  
9 calculations and support for the monthly amount to be accrued as a regulatory  
10 liability.

11 3. Third, I will provide testimony that the Agreement reached by the parties in this  
12 proceeding addresses the concerns of CURB in Docket No. 18-GIMX-273-  
13 COM.

14 4. Finally, I will address the Commission's standard of review for Settlement  
15 Agreements that was established in Docket No. 08-ATMG-280-RTS.

16

17 **II. GENERAL INVESTIGATION REGARDING THE TAX CUTS AND JOBS ACT**

18 **Q. Please provide a brief background of the Commission's General Investigation in this**  
19 **proceeding as it relates to the Tax Cuts and Jobs Act "(TCJA)".**

20 A. On December 14, 2017, Staff filed a Motion to Open a General Investigation and Issue  
21 Accounting Authority Order Regarding Federal Tax Reform ("Staff Motion"). Staff  
22 attached a Report and Recommendation ("Staff's R&R") to the Staff Motion, which  
23 recommended the Commission issue an Order addressing the following:

1 a. Opening a general investigation for the purpose of examining the financial  
2 impact of anticipated federal income tax reform on regulated public utilities  
3 operating in Kansas;

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

15 c. Confirming that the Commission's intention regarding the AAO is to  
16 preserve any potential tax benefits so that they may be evaluated in the context of  
17 a comprehensive evaluation of the reasonableness of the utilities' rates as well as  
18 notifying utilities that this portion of their rates should be considered interim subject  
19 to refund until the Commission has the opportunity to review the reasonableness of  
20 the utilities' rates on a comprehensive and case-by-case basis and confirming that  
21 the Commission intends to capture the reduction in Accumulated Deferred Income  
22 Tax ("ADIT") balances that will occur in the event that a lower corporate federal

1 income tax rate takes effect, over time, in a manner that comports with Internal  
2 Revenue Services ("IRS") Tax Normalization Rules.

3  
4 **Q. Did CURB express support for Staff's motion to open a general investigation?**

5 A. Yes. On December 22, 2017 – the same day the Tax Cut and Jobs Act was signed into law  
6 – CURB filed a response in support of Staff's motion to open a general investigation  
7 regarding tax reform, determining that Staff's motion was both reasonable and in the best  
8 interest of Kansas residential and small commercial ratepayers.

9  
10 **Q. Please describe the Commission's Order opening this general investigation.**

11 A. On January 18, 2018, the Commission issued its *Order Opening General Investigation and*  
12 *Issuing Accounting Authority Order Regarding Federal Tax Reform* ("Order"). In said  
13 Order the Commission made the following findings and conclusions:

14 a. The TCJA has the potential to significantly reduce the cost of service for  
15 many utilities operating in Kansas since tax expenses are recovered in rates.

16 b. A significant reduction to the corporate tax rate may also impact the ADIT  
17 Liabilities and Assets on the regulated books of utilities.

18 c. An investigation into the impact of the TCJA on utility rates is warranted.

19 d. The 1987 Order issued by the Commission relating to the effects of the  
20 Federal Tax Reform Act of 1986, is informative but not precedential.

21 e. The purpose of the investigation is to quantify the economic impacts of the  
22 new lower tax rates on Kansas utilities, and where appropriate, direct that any cost  
23 savings be passed on to Kansas utility customers.

1 f. All regulated public utilities that are taxable at the corporate level are  
2 directed to accrue monthly, in a deferred revenue account, the portion of its  
3 revenues representing the difference between (1) the cost of service approved by  
4 the Commission in its most recent rate case; and (2) the cost of service that would  
5 have resulted had the provision for federal income taxes been based upon the  
6 corporate income tax rate approved in the TCJA.

7 g. Taxable utilities operating in Kansas are notified that the portion of their  
8 regulated revenue stream that reflects higher corporate tax rates should be  
9 considered interim and subject to refund, with interest calculated at the rate being  
10 used for interest paid on customer deposits, until the Commission can more fully  
11 evaluate on a case-by-case basis the impact of the TCJA.

12 h. Upon the Commission completing its case-by-case evaluation, if it is  
13 determined that a rate decrease is proper and would have been proper as of the  
14 January 1, 2018, being the effective date of the TCJA, any excessive collections in  
15 the deferred revenue subaccount, or other appropriate tracking mechanism  
16 approved by the Commission, with appropriate adjustments, shall be refundable to  
17 customers with interest. Any balance remaining in the account shall be credited to  
18 the utility's operating revenue.

19 i. The Commission intends to capture excess ADIT for the benefit of  
20 customers using a methodology that is consistent with the tax normalization  
21 requirements specified in the tax legislation or IRS Tax Normalization Rules, as  
22 applicable.

1           j.       Any affected utility that believes other components of their cost of service  
2           have more than offset the decrease in its income tax expenses will have the ability  
3           to file such information and supporting data with the Commission, to be considered  
4           on a case-by-case basis. The Commission's intention here is not to materially  
5           impact any regulated utilities' profitability, but rather, ensure that the affected  
6           utilities are neither positively nor negatively impacted by the passage of federal  
7           income tax reform.

8           k.       The Commission adopted the Staff's December 14, 2017 report and  
9           recommendation and incorporates it into the Order.

10  
11 **III. DESCRIPTION OF THE SETTLEMENT AGREEMENT**

12 **Q. Please describe the provisions of the Agreement.**

13 A. The Agreement, in agreement with the Commission's order, provides the following:

- 14       • For the period of time between January 1, 2018, and through the date on which the  
15       Commission issues a final order in KCPL's 2018 general rate case, Docket No. 18-  
16       KCPE-480-RTS, KCPL will accrue monthly in a regulatory liability, the difference  
17       between: (1) the cost of service as approved by the Commission in its most recent rate  
18       case, Docket No. 17-KCPE-201-RTS ("201 Docket"), and (2) the cost of service that  
19       would have resulted had the provision for federal taxes been based upon the corporate  
20       income tax rate approved in the TCJA, plus interest. The Company will accrue in a  
21       regulatory liability \$31,766,554, which is exclusive of interest. The interest rate applied  
22       to the amount shall be calculated at the rate being used for interest paid on customer  
23       deposits, which is currently 1.62%.

1           • In the Settlement Agreement filed in Docket No. 18-KCPE-095-MER (“Merger  
2           Docket”), KCPL agreed to forego the ability to demonstrate under-earnings at the time  
3           of the federal tax law change as an offset to the amounts recorded to this regulatory  
4           liability. The Merger Docket was approved by the Commission on May 24, 2018, and  
5           the transaction closed on June 4, 2018.

6           • KCPL will establish a regulatory liability to account for and capture the savings relating  
7           to excess ADIT for the benefit of customers using a methodology that is consistent with  
8           the tax normalization requirements specified in the tax legislation or IRS normalization  
9           rules. As part of this Agreement, parties have agreed to defer any issues regarding the  
10          amount of tax savings relating to excess ADIT and how those savings should be passed  
11          on to customers to KCPL’s 2018 general rate case filing, with the understanding that  
12          KCPL’s customers are entitled to the benefits of the tax savings relating to the utility’s  
13          excess ADIT.

14

15 **Q. Do the terms of this agreement conform to the Commission’s findings and conclusions**  
16 **in this general investigation?**

17 A. Yes. The Agreement contains several provisions that are consistent with the Commission’s  
18 Order.

19

20 **Q. Are the terms of this Agreement binding upon Staff, CURB or the Commission?**

21 A. No. The terms in the Agreement are only applicable to KCPL tax refund plan  
22 and shall not be binding on Staff, CURB or the Commission in reviewing or approving any  
23 TCJA tax refund plan submitted by any other public utility.



1 **IV. CURB'S COMPLAINT IN DOCKET NO. 18-GIMX-273-COM**

2 **Q. Can you describe the complaint filed by CURB in Docket No. 18-GIMX-273-COM**  
3 **("Complaint")?**

4 A. Yes. On December 29, 2017, CURB filed a complaint against all regulated electric, natural  
5 gas, water and telecommunications public utilities operating in Kansas (identified in Staff's  
6 December 14, 2017 report and recommendation in this proceeding). CURB's complaint  
7 was filed prior to the Commission's Order in this proceeding. It expressed a concern that,  
8 absent a Commission directive requiring utilities to amend tariffs prospectively to reflect  
9 the cost of service reduction caused by the TCJA, some could argue that it is unlawful to  
10 require the utilities to refund to customers the cost of service reductions caused by the  
11 TCJA. On March 6, 2018, the Commission issued an order adopting CURB's complaint  
12 and ordered that the complaint be served upon all public utilities operating in Kansas. The  
13 same order also directed Staff to investigate the matter and submit a report and  
14 recommendation to the Commission.

15 On March 16, 2018, CURB filed a motion to dismiss the complaint without  
16 prejudice against certain respondents. CURB's motion to dismiss its complaint against six  
17 investor-owned utilities, including KCPL, was a reflection that five of the six investor-  
18 owned utilities have entered into settlement agreements, or are in the process of negotiating  
19 a settlement agreements, concerning the treatment of tax reductions arising out of the  
20 TCJA. The Commission approved CURB's motion to dismiss on March 29, 2018.

21

22 **Q. Does this Agreement resolve CURB's concerns as stated in its original Complaint?**

23 A. For KCPL, yes. CURB's filed Complaint was delivered to all regulated public

1 utilities in Kansas. CURB's support for KCPL's Agreement does not provide the relief  
2 requested as to the other utilities remaining in CURB's Complaint, and CURB reserves its  
3 right to dispute all issues raised as to the other named parties in its Complaint.  
4

5 **V. EVALUATION OF SETTLEMENT AGREEMENTS**

6 **Q. Are you familiar with the standards used by the Commission to evaluate a settlement**  
7 **that is proposed to the Commission?**

8 A. Yes, I am. The Commission has adopted five guidelines for use in evaluating settlement  
9 agreements. These include: (1) has each party had an opportunity to be heard on its  
10 reasons for opposing the settlement? (2) is the agreement supported by substantial  
11 evidence in the record as a whole? (3) does the agreement conform to applicable law? (4)  
12 will the agreement result in just and reasonable rates? (5) are the results of the agreement  
13 in the public interest, including the interests of customers represented by any party not  
14 consenting to the agreement?  
15

16 **Q. Has each party had an opportunity to be heard on its reasons for opposing the**  
17 **Settlement Agreement?**

18 A. Yes. Initial settlement discussions were conducted with KCPL, Staff, and CURB during  
19 settlement negotiations in the Merger Docket. Because many of the issues were resolved  
20 as a part of the settlement discussion in the Merger Docket, this factor has been met as all  
21 parties with an interest in KCPL's TCJA tax savings plan were present, were heard, and  
22 were able to participate.  
23

1 **Q. Is the Settlement supported by substantial evidence in the record as a whole?**

2 A. Yes. There is substantial evidence in the record to support the Agreement. The calculation  
3 of the monthly accrual was performed using KCPL's most recent base rate case (Docket  
4 No. 17-KCPE-201-RTS ), as adjusted for the change in the corporate tax rate change.

5

6 **Q. Does the agreement conform to applicable law?**

7 A. I am not an attorney, however, it is my understanding that the Agreement has been drafted  
8 to ensure it conforms to applicable law. At the request of the Commission, a CURB  
9 attorney will provide a response to the question of whether the Agreement does indeed  
10 conform to applicable law.

11

12 **Q. Will the Settlement Agreement result in just and reasonable rates?**

13 A. The Settlement Agreement does not impact KCPL's current rates. However, the calculation  
14 of KCPL's monthly amount to be accrued as a regulatory liability is based upon the  
15 Commission-approved rates in KCPL's most recent general rate proceeding, which at the  
16 time of approval were deemed just and reasonable. Therefore, it is my opinion that KCPL's  
17 rates will continue to be just and reasonable.

18

19 **Q. Should the deferral of the excess ADIT until the next general rate case cause KCPL's  
20 current rates to be deemed unreasonable?**

21 A. In my opinion, no. As part of the Agreement, KCPL, Staff and CURB agree KCPL would  
22 not start amortizing the excess ADIT as of December 31, 2017, until the excess ADIT is  
23 reflected in base rates as approved by the Commission in KCPL's 2018 general rate case

1 filing, which was filed with the Commission on May 1, 2018.<sup>1</sup> However, KCPL will  
2 immediately establish a regulatory liability to account for and capture the tax savings that  
3 are related to its excess deferred taxes. Further, KCPL has agreed that the tax savings  
4 captured as a result of excess ADIT will be applied for the benefit of its customers.

5

6 **Q. Are the results of the Settlement Agreement in the public interest, including the**  
7 **interests of customers represented by any party not consenting to the agreement?**

8 A. Yes. I believe the Agreement is in the public interest.

9

10 **VI. RECOMMENDATION**

11 **Q. What do you recommend?**

12 A. I recommend that the Commission find that all parties had the opportunity to participate  
13 in the settlement process, that the Settlement Agreement is supported by substantial  
14 evidence in the record, that the Settlement Agreement will result in just and reasonable  
15 rates, and that the Settlement Agreement is in the public interest. Therefore, I recommend  
16 that the Commission approve the Settlement as filed.

17

18 **Q. Does this conclude your testimony?**

19 A. Yes.

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<sup>1</sup> Docket No. 18-KCPE-480-RTS

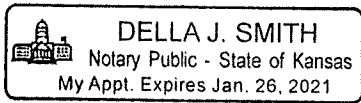
**VERIFICATION**

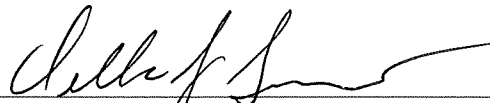
STATE OF KANSAS                    )  
                                                  )     ss:  
COUNTY OF SHAWNEE            )

I, Stacey Harden, of lawful age and being first duly sworn upon my oath, state that I am a Senior Regulatory Analyst 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.

  
\_\_\_\_\_  
Stacey Harden

SUBSCRIBED AND SWORN to before me this 7<sup>th</sup> day of June, 2018.



  
\_\_\_\_\_  
Notary Public

My Commission expires: 01-26-2021.

## CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 7<sup>th</sup> day of June, 2018, to the following:

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