

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

**STAFF TESTIMONY IN SUPPORT OF
EMPIRE SETTLEMENT AGREEMENT**

PREPARED BY

ANDRIA N. JACKSON

UTILITIES DIVISION

KANSAS CORPORATION COMMISSION

June 26, 2018

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

2 A. My name is Andria N. Jackson and my business address is 1500 Southwest
3 Arrowhead Road, Topeka, Kansas, 66604.

4

5 **Q. Are you the same Andria Jackson that contributed to the Report and**
6 **Recommendation in this Docket on December 14, 2017?**

7 A. Yes.

8

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

10 A. I am testifying on behalf of the Staff of the Kansas Corporation Commission
11 (Staff and Commission, respectively) in support of the settlement of the issues
12 outlined in the Settlement Agreement (Agreement) between The Empire District
13 Electric Company (Empire), Staff, and the Citizens' Utility Ratepayer Board
14 (CURB) (collectively, the Parties).¹

15 My testimony will explain why the Commission should approve the
16 Agreement because it is in the public interest. Specifically, I will:

- 17 • Provide background information about this docket;
- 18 • Provide an overview and discussion of the Agreement;
- 19 • Discuss the standard of review used to guide the Commission in its
20 consideration of whether to accept the Agreement²; and
- 21 • Discuss the evidence in the record that supports the Agreement.

¹ *Joint Motion for Approval of Settlement Agreement Regarding The Empire District Electric Company*, Docket No. 18-GIMX-248-GIV (June 21, 2018).

² *Order Approving Contest Settlement Agreement*, Docket No. 08-ATMG-280-RTS, pp. 4-6 (May 12, 2008).

1

2

Background Information

3

Q. Please provide a brief background of this docket.

4

A. The Tax Cuts and Jobs Act (TCJA) is a Congressional bill that amends the

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Internal Revenue Code to reduce tax rates and modify policies, credits, and

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deductions for individuals and businesses. The bill was initially passed in the

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House of Representatives on November 16, 2017, and on December 2, 2017, the

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Senate passed its version of the bill. While the House and Senate bills were in

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reconciliation conference meetings, it became widely anticipated that tax reform

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would be signed by the President before the first of the upcoming year.

11

Therefore, in anticipation of the TCJA being signed into law, on December

12

14, 2017, Staff filed a Motion to Open a General Investigation and Issue

13

Accounting Authority Order Regarding Federal Tax Reform (Staff's Motion).

14

Attached to Staff's Motion was a Report and Recommendation recommending the

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Commission issue an Order addressing the following:

16

1) Opening a general investigation for the purposes of examining the

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financial impact of anticipated federal income tax reform on regulated

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public utilities operating in Kansas;

19

2) Requiring, through the use of an Accounting Authority Order (AAO),

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certain regulated public utilities that are taxed at the corporate level to

21

track and accumulate in a deferred revenue account, with interest

22

compounded monthly at the most current Commission-approved customer

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deposit interest rate, the reduction in their regulated cost of service that

1 would occur in the event that a new lower federal income tax rate is signed
2 into law. These deferrals should take effect at the same time as the new
3 federal corporate tax rate change and the calculations should be performed
4 using the cost of service data that were used to set the utilities' last
5 Commission-approved revenue requirement; and

- 6 3) Confirming that the Commission's intention regarding the AAO is to
7 preserve any potential tax benefits so that they may be evaluated in the
8 context of a comprehensive evaluation of the reasonableness of the
9 utilities' rates as well as notifying utilities that this portion of their rates
10 should be considered interim subject to refund until the Commission has
11 the opportunity to review the reasonableness of the utilities' rates on a
12 comprehensive and case-by-case basis and confirming that the
13 Commission intends to capture the reduction in Accumulated Deferred
14 Income Tax (ADIT) balances that will occur in the event that a lower
15 corporate federal income tax rate takes effect, over time, in a manner that
16 comports with Internal Revenue Services (IRS) Tax Normalization Rules.

17 On December 22, 2017, the TCJA was signed into law, which, amongst other
18 changes, reduced the federal corporate income tax rate from 35% to 21%
19 beginning on January 1, 2018.³ Also, on December 22, 2017, CURB filed a
20 Petition to Intervene and a Response in Support of Staff's Motion.

³ *Tax Cuts and Jobs Act*, Public Law No. 115-97; Statute 131 Stat. 2054 (Dec. 22, 2017).

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

On January 31, 2018, Empire filed its entry of appearance in this docket. On February 7, 2018, and again on May 14, 2018, the Parties met in Topeka to discuss and attempt to reach an agreement to establish a procedure to be used in Empire's upcoming general rate case filing to quantify the financial impacts of the new lower tax rate on Empire's operations based upon the instructions provided by the Commission in its Order and how the cost savings related to the lower tax rates should be passed on to its customers. As a result of the meeting and follow-up discussions, the Parties were able to reach an agreement.

13 **Terms of the Settlement Agreement**

14 **Q. Please discuss in detail the provisions of the Agreement.**

15 A. The provisions of the Agreement are as follows:

- 16 • For the period of time between January 1, 2018, through the date the
17 Commission issues a final order in Empire's next general rate case,
18 Empire agrees to accrue monthly, as a regulatory liability, the cost savings
19 resulting from the TCJA, including the impacts to the Asbury and
20 Environmental Cost Recovery Rider (AERR), with interest. The Parties
21 agree that the total annual amount to be accrued as a regulatory liability
22 exclusive of any calculated interest shall be \$1,229,466, which consists of
23 \$1,049,971 related to base rates and \$179,495 related to the AERR. The

1 Parties agree that the interest rate applied to the amount shall be calculated
2 at the rate being used for interest paid on customer deposits, which is
3 currently 1.62%. Additionally, Empire reserves its right in its upcoming
4 rate case to provide the Commission with information and supporting data
5 to show other components of its cost of service may have offset the
6 decrease in its income tax expense during the accrual period. Staff and
7 CURB also reserve their rights to challenge Empire's position that other
8 components of its cost of service should be used to offset the decrease in
9 Empire's income tax expenses in the determination of bill credits or
10 refunds due to the regulatory liability.

- 11 • Empire will establish a regulatory liability to account for and capture tax
12 savings relating to excess ADIT. Any issues regarding the amount of tax
13 savings relating to excess ADIT and how those savings should be passed
14 on to customers will be deferred to Empire's next general rate case filing.
15 Additionally, Empire will file a rate case no later than 150 days from the
16 date of the Commission's order approving this Agreement which will
17 include the following: (1) the impact of the TCJA on its excess ADIT, if
18 any, that should be included in base rates; (2) its calculation of tax savings
19 relating to the reduced tax expense resulting from the lower tax rate that
20 should be included in new bases rates following the general rate case
21 decision; and (3) its proposed plan to account for any portion of the
22 amount being accrued as a regulatory liability, subject to the reservations
23 Empire has expressed above.

- 1 • Empire agrees that it will not begin amortizing the regulatory liability
2 established to capture the excess ADIT until the effective date of rates set
3 during its next base rate case.
- 4 • The terms in the Agreement are only applicable to Empire's tax refund
5 plan and shall not be binding on Staff, CURB or the Commission in
6 reviewing or approving any TCJA tax refund plan submitted by any other
7 public utility.

8

9 **The Commission's Standard of Review for Settlement Agreements**

10 **Q. Has the Commission previously used factors or standards to review a**
11 **settlement agreement?**

12 A. Yes. The Commission's Order in Docket No. 08-ATMG-280-RTS (08-280
13 Docket) discusses five factors, or standards, and multiple agreements have been
14 reviewed by the Commission using the five factors since that Order.⁴ These five
15 standards are as follows:

- 16 1. Whether there was an opportunity for the opposing party to be heard on
17 their reasons for opposition to the Agreement;
- 18 2. Whether the Agreement is supported by substantial competent evidence in
19 the record as a whole;
- 20 3. Whether the Agreement conforms to applicable law;
- 21 4. Whether the Agreement results in just and reasonable rates; and
- 22 5. Whether the results of the Agreement are in the public interest.

⁴ *Order Approving Contested Settlement Agreement*, 08-280 Docket, p. 5 (May 12, 2008).

1 Each of these five factors is discussed individually below.

2

3 **Support for the Settlement Agreement**

4 **Q. Please address whether each party had an opportunity to be heard on its**
5 **reasons for opposing the Agreement.**

6 A. The Agreement presented to the Commission is a unanimous agreement, as the
7 Parties either support or do not oppose approval of the Agreement. All parties
8 having an interest in Empire's tax savings plan participated in settlement
9 discussion on February 7, 2018, and again on May 14, 2018, and were able to
10 reach an agreement that that the regulatory liability balance will begin being
11 recorded on January 1, 2018, and that it will not begin amortizing the excess
12 ADIT regulatory liability until the date that rates go into effect from this next base
13 rate case. Therefore, this factor has been met as each party has been represented,
14 has had an opportunity to be heard, and agree to the terms of the Agreement.

15 It should be noted that the Agreement limits its applicability to only Empire
16 and is not binding or precedential to the tax savings refund plans submitted by
17 other utilities. Furthermore, should any other party wish to be heard, it can file a
18 response to the Joint Motion.

19

20 **Q. Please address whether the Agreement is supported by substantial competent**
21 **evidence in the record as a whole.**

22 A. The Agreement is supported by substantial competent evidence in the record as a
23 whole. The record as a whole includes Empire's Application and direct

1 testimony, Staff and CURB direct testimony, rebuttal testimony and a
2 Commission Order filed in support of the settlement amount resulting from
3 Empire's last rate case, Docket No. 11-EPDE-856-RTS (11-856 Docket), which
4 the Parties agree is the basis of the recalculation of the revenue requirement.⁵
5 Additionally, the Parties intend to submit pre-filed testimony in support of this
6 Agreement. These past and present filed positions constitute the body of evidence
7 that the Commission would rely on to make a determination of the issues
8 presented if this were to go to a fully litigated evidentiary hearing. It is Staff's
9 position that the terms of this Agreement complies with all the instructions set
10 forth in the Order issued by the Commission in this docket, is based on the record
11 as a whole, and are commensurate with what could be expected if the case were to
12 be fully litigated.

13

14 **Q. How was the annual cost of service savings to customers in the amount of**
15 **\$1,229,466 arrived at by the Parties?**

16 A. Empire and Staff quantified the impact of the new lower tax rates by calculating
17 the difference between the cost of service approved by the Commission in the 11-
18 856 and 17-280 Dockets, and the cost of service that would have resulted had the
19 provision for federal income taxes been based upon the 21% corporate income tax
20 rate approved in the TCJA. The result of that calculation, as presented in
21 Appendix 1 attached to the Agreement, resulted in an annual cost of service
22 savings to customers in the amount of \$1,229,466. Both parties performed its

⁵ Additionally, the calculation of income taxes that are a part of the AERR are determinable from a review of the record in the 17-EPDE-280-TAR Docket (17-280 Docket).

1 own analysis using the same methodology of incorporating the change in income
2 tax rate to the settlement amount in its own financial schedules. The difference in
3 the revenue requirement recalculations presented by the parties in settlement
4 discussion was immaterial.

5

6 **Q. Please address whether the Agreement conforms to applicable law.**

7 A. I am not an attorney. However, it is my understanding that the Agreement does
8 follow precedent for similar settlements in the past that have been executed in an
9 effort to conform to applicable laws. All attempts were made to ensure that this
10 Agreement conforms to applicable laws and is presented in a fashion to allow the
11 Commission to properly approve the Agreement.

12

13 **Q. Does the Agreement result in just and reasonable rates?**

14 A. Yes. This Agreement establishes a process that will result in rates that fall within
15 the “zone of reasonableness” described by the Kansas courts in which the result is
16 balanced between the interests of investors versus ratepayers, present versus
17 future ratepayers, and is in the public interest generally. The agreed-upon tax
18 savings regulatory liability is based upon the Commission-approved rates in the
19 11-856 and 17-280 Dockets, which at the time of approval were just and
20 reasonable as they resulted in the proper balance between the Company’s desire to
21 have a reasonable assurance that it would earn sufficient revenues and cash flows
22 to meet its financial obligations and the need to keep rates as low as possible for
23 customers, while providing reliable electric service. However, with the passing of

1 the TCJA, a subsequent revision to the Commission-approved rates must be made
2 to reflect the lower tax rate in order to ensure the rates continue to be just and
3 reasonable as was intended by the Commission Order in these dockets. Empire's
4 agreement to pass the savings resulting from the TCJA on to customers in its
5 upcoming rate case contributes to their rates continuing to be just and reasonable.

6

7 **Q. Why is it reasonable to defer a decision on amortization of the excess**
8 **deferred taxes to the next rate case?**

9 A. As part of the Agreement, the Parties agree to defer many issues regarding the
10 amount of tax savings related to excess ADIT to Empire's upcoming rate case.
11 Until such time, Empire will establish a regulatory liability to account for and
12 capture the tax savings related to the excess deferred taxes. This regulatory
13 liability will not be amortized until the upcoming base rate case. This approach is
14 reasonable because it ensures that customers will continue to realize the benefit
15 associated with the excess deferred taxes as an offset to rate base. If ADIT is
16 reduced, rate base will increase reflecting less of an ADIT rate base offset (lower
17 cost free capital). Therefore, until the excess deferred taxes are reflected in
18 Empire's next rate case, customers will continue to receive the time value of
19 money associated with the excess deferred taxes today because they serve as an
20 offset to rate base.

21 Empire also intends to capture the tax savings relating to excess ADIT for the
22 benefit of customers using a methodology that is consistent with the tax
23 normalization requirements specified by IRS normalization rules. Calculating the

1 amortization of excess deferred taxes in a fashion that does not cause an IRS
2 normalization violation is a complicated and data intensive process. It is
3 reasonable to perform this calculation in the context of a comprehensive rate
4 review so as to not risk calculating the amortization incorrectly and inadvertently
5 causing an IRS normalization violation.

6

7 **Q. What are the consequences of a violation of the normalization rules?**

8 A. The effect of the normalization requirements is to provide utility customers with
9 the benefit of cost free capital made possible by using accelerated tax
10 depreciation. Violating the normalization requirements can result in the loss of
11 the ability to claim accelerated depreciation on public utility property in the
12 future, which has a real cost to both the utility and its customers. It should be
13 avoided at all costs.

14

15 **Q. Are you aware of the balancing test set forth by the Kansas Supreme Court**
16 **for determining whether rates are “just and reasonable”?**

17 A. Yes, the Kansas Supreme Court has stated:

18 The leading cases in this area clearly indicate that the goal should be a rate
19 fixed within the “zone of reasonableness” after the application of a balancing
20 test in which the interests of all concerned parties are considered. In rate-
21 making cases, the parties whose interests must be considered and balanced are
22 these: (1) the utility’s investors vs. the ratepayers; (2) the present ratepayers
23 vs. the future ratepayers; and (3) the public interest.⁶
24

⁶ *Kan. Gas and Electric Co. v. State Corp Comm’n*, 239 Kan. 483, 488 (1986).

1 **Q. What evidence in this case should be considered when performing the**
2 **balancing test set forth by the Kansas Supreme Court?**

3 A. Staff's contention is the Agreement before the Commission comfortably passes
4 the balancing test set forth by the Kansas Supreme Court. The following supports
5 this assertion: (1) the agreed-upon tax savings balances the interests of the
6 utility's investors and the ratepayers because it appropriately takes into account
7 the reduction in federal income tax expense included in Empire's current cost of
8 service as a result of the TCJA and will pass those cost saving to Empire's
9 customers in its upcoming rate case; (2) Staff believes the Agreement
10 appropriately balances the interests of present and future ratepayers because
11 excess deferred taxes are currently being treated as a rate base offset until
12 amortized back to rates, which means that customers are being fairly compensated
13 for the excess deferred taxes that are going to be amortized over time as a result of
14 this Agreement; and (3) the fact that both of the two factors above have been met
15 is itself an indication that the Agreement is in the public interest generally. I will
16 discuss this in greater detail below.

17
18 **Q. Does Staff believe the results of the Agreement are in the public interest?**

19 A. Yes. There were multiple interests represented by the Parties involved in the
20 Agreement, with CURB representing the interests of residential and small general
21 service ratepayers, Empire representing the interest of its management and
22 shareholders, and Staff attempting to balance each of those interests while
23 representing the interests of the public generally. The fact that these varied

1 interests were able to collaborate and present a unanimous resolution of the issues
2 discussed in this case strongly indicates the public interest standard has been met.

3 Generally speaking, the public interest is served when ratepayers are protected
4 from unnecessarily high prices, discriminatory prices and/or unreliable service.
5 More specifically, it is Staff's opinion that the Agreement meets the public
6 interest because:

- 7 • It is in the public interest to pass back savings to customers as soon as
8 possible and this Agreement establishes a process and procedures to
9 accomplish that;
- 10 • Each of the Parties represented their respective interests by putting time,
11 thought, and analysis into deriving a tax savings process it found
12 reasonable; and
- 13 • If this Agreement is approved, the Parties would avoid the costly and
14 time-consuming process of a fully-litigated hearing. It is in the public
15 interest to avoid these costs if possible and this Agreement accomplishes
16 this result.

17

18 **Q. Should the Commission accept the Agreement as a reasonable resolution of**
19 **the issues in this docket?**

20 A. Yes, the Agreement represents a reasonable resolution of the issues in this docket,
21 will result in just and reasonable rates, is in the public interest, is supported by
22 substantial competent evidence in the record, and falls within the realm of
23 reasonable debate and the zone of reasonableness.

1

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

3 A. Yes, thank you.

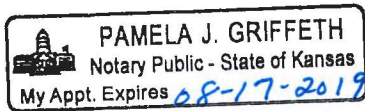
STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

VERIFICATION

Andria N. Jackson, being duly sworn upon her oath deposes and states that she is Managing Auditor in the Utilities Division for the State Corporation Commission of the State of Kansas, that she has read and is familiar with the foregoing *Staff Testimony in Support of Empire Settlement Agreement* and that the statements contained therein are true and correct to the best of her knowledge, information and belief.

Andria N. Jackson
Andria N. Jackson, Managing Auditor
Utilities Division
Kansas Corporation Commission of the
State of Kansas

Subscribed and sworn to before me this 27th day of June, 2018.



Pamela J. Griffeth
Notary Public

My Appointment Expires: August 17, 2019

CERTIFICATE OF SERVICE

18-GIMX-248-GIV

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff Testimony in Support of Empire Settlement Agreement was served by electronic service on this 27th day of June, 2018, to the following:

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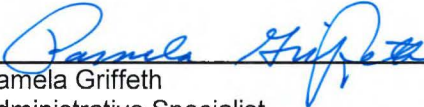
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