

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

IN THE MATTER OF THE INVESTIGATION ]  
INTO EMPIRE DISTRICT COMPANY d/b/a ]  
LIBERTY REGARDING THE FEBRUARY ]  
2021 WINTER WEATHER EVENTS, AS ] KCC DOCKET NO. 21-EPDE-330-GIE  
CONTEMPLATED BY DOCKET ]  
NO. 21-GIMX-303-MIS ]

TESTIMONY IN SUPPORT OF UNANIMOUS SETTLEMENT AGREEMENT

PATRICK ORR

ON BEHALF OF

THE CITIZENS' UTILITY RATEPAYER BOARD

APRIL 6, 2023

1 **I. STATEMENT OF QUALIFICATIONS**

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

3 A. My name is Patrick N. Orr, and my business address is 1500 SW Arrowhead Road, Topeka,  
4 Kansas 66604.

5  
6 **Q. By whom are you employed and in what capacity?**

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

9  
10 **Q. Please summarize your professional experience in the utility industry.**

11 A. I have been employed as a rate analysis with CURB since 2019. Since beginning my  
12 employment with CURB, I have researched and analyzed numerous utility dockets filed  
13 with the Kansas Corporation Commission ("KCC" or "Commission").

14  
15 **Q. Have you previously testified in regulatory proceedings?**

16 A. Yes, I provided written testimony in KCC Docket Nos. 19-SPEE-240-MIS, 21-EKCE-020-  
17 TAR, 21-EKCE-329-GIE, 22-KGSG-466-TAR and oral testimony in 21-SPEE-331-GIE.

18  
19 **Q. What is your educational and employment background?**

20 A. I have a Bachelor of Business Administration degree in Finance and Personnel  
21 Management from Washburn University (1980). Prior to my employment with CURB, I

1 worked for the Kansas Department of Administration for thirty years. In that position, I  
2 was responsible for preparing rates for information technology (IT) services in accordance  
3 with *Circular A-87 Cost Principles for State, Local and Indian Tribal governments*.

4  
5 **II. PURPOSE OF TESTIMONY**

6 **Q. What is the purpose of your testimony in this proceeding?**

7 A. My testimony supports the *Joint Motion to Approve Unanimous Settlement Agreement*  
8 filed in Docket No. 21-EPDE-330-GIE (“Docket 21-330”) on March 31, 2023, regarding  
9 the Empire District Electric Company, d/b/a Liberty (“Empire” or “Company”)  
10 *Compliance Report Regarding Costs Incurred During Winter Weather Event*.

11  
12 **Q. Please provide a brief overview of this docket.**

13 A. In mid-February 2021, Winter Storm Uri (“Winter Weather Event”) imposed extreme and  
14 unprecedented freezing weather conditions across the United States, resulting in record  
15 demand for natural gas and electricity.<sup>1</sup> During the Winter Weather Event, many parts of  
16 Kansas suffered thirteen continuous days of freezing temperatures, with temperatures in  
17 the single digits or below zero.<sup>2</sup> Natural gas prices in the Central United States reached  
18 all-time highs, causing record wholesale electricity costs in the Southwest Power Pool (to  
19 which Empire is a member), at times exceeding \$4,000 per MWh.<sup>3</sup>

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1 CURB Response to Staff’s Report and Recommendation, dated January 31, 2022, p 1.

2 Id., p 1.

3 Id., p.1.

1           On February 14, 2021, Governor Kelly issued a State of Disaster Emergency due  
2           to wind chill warnings and stress on utility and natural gas providers, noting that the current  
3           subzero temperatures were causing increased energy demand and natural gas supply  
4           constraints throughout Kansas, and utilities were experiencing wholesale natural gas price  
5           increase from 10 to 100 times higher than normal. Regulators expected that those costs  
6           would eventually flow through to consumers through increases in monthly natural gas and  
7           electric bills.<sup>4</sup>

8           Therefore, under those circumstances, the Commission, pursuant to K.S.A. 77-  
9           536(a), exercised its powers to protect the public from immediate danger to health, safety,  
10          and welfare.<sup>5</sup> Accordingly, the Commission issued an *Emergency Order* in Docket 21-  
11          GIMX-303-MIS (“21-303 Docket”) on February 15, 2021 (“Emergency Order”). In the  
12          Emergency Order, the Commission further directed all jurisdictional gas and electric  
13          utilities to coordinate efforts and take all reasonably feasible, lawful, and appropriate  
14          actions to ensure adequate delivery of natural gas and electricity to interconnected, non-  
15          jurisdictional utilities in Kansas (utilities in Kansas that are non-jurisdictional utilities to  
16          the Commission).<sup>6</sup> Jurisdictional natural gas and electric utilities were also ordered to do  
17          all things possible and necessary to ensure natural gas and electricity utility services  
18          continued to be provided to their customers in the State.<sup>7</sup>

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4 Id., p 2.

5 Emergency Order, Docket No. 21-GIMX-303-MIS, dated February 15, 2021, p 2.

6 Id., p 2.

7 Id., p 2.

1           In addition, the Emergency Order authorized every jurisdictional electric and  
2           natural gas distribution utility to defer to a regulatory asset account all extraordinary costs  
3           that they incurred in association with ensuring that their customers or the customers of  
4           interconnected, non-jurisdictional utilities continued to receive utility service during the  
5           Winter Weather Event. Such costs were to include, but were not limited to, the cost of  
6           procuring and transporting natural gas supplies for jurisdictional utility customers, costs  
7           associated with jurisdictional utilities coordinating and assisting non-jurisdictional utilities  
8           with the transportation of gas supplies, and any other reasonable costs necessary to ensure  
9           stability and reliability of natural gas and electricity service.<sup>8</sup> These deferred costs could  
10          also include carrying costs at the utility’s weighted average cost of capital. All deferred  
11          costs were to be segregated by detailed cost category and contain enough detail for the  
12          Commission to perform a subsequent review for prudence and reasonableness.<sup>9</sup>

13           On March 1, 2021, KCC Staff (“Staff”) filed its Report and Recommendation to  
14          open a series of company-specific dockets to allow: (1) the utilities to file financial impact  
15          plans and (2) Staff to tailor its investigation to match each utility's unique circumstances.  
16          Staff believed that creating distinct, company-specific dockets would result in efficiencies  
17          because: (1) potential intervenors could participate in only those dockets affecting them  
18          and (2) confidential information pertaining to market pricing, purchasing practices, power-  
19          marketing strategies and other company-specific information would be protected. Staff  
20          envisioned the 21-303 Docket as serving as the repository for the industry-wide reports or

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8 Id., p 2.

9 Id., p 2.

1 findings resulting from investigations by entities such as the Federal Energy Regulatory  
2 Commission, North American Electric Reliability Council, and Southwest Power Pool.<sup>10</sup>  
3 Accordingly, the Commission opened the present docket on February 15, 2021, and granted  
4 CURB intervention on March 9, 2021.

5  
6 **Q. Please outline the terms of Empire’s Application to Mitigate Financial Effects of Cold**  
7 **Weather Event and associated testimony.**

8 A. Empire filed its *Plan to Mitigate Financial Effects of Cold Weather Event and Application*  
9 *for Additional Tariff Provisions* (“Application”) on November 23, 2022.<sup>11</sup> In the  
10 Application, Empire stated that, as a result of the weather emergency, the cost of Empire’s  
11 fuel and power purchases, which were made to provide service to customers, were  
12 extraordinarily higher than its typical costs in past years. In its testimony associated with  
13 its application, Empire stated that it had incurred approximately \$238 million in  
14 extraordinary fuel costs, with \$10,773,444 allocated to the Kansas jurisdiction.<sup>12</sup>

15 Empire calculated these extraordinary costs associated with the Winter Weather  
16 Event, by comparing its budgeted costs for February 2021 to actual costs incurred for that  
17 period and determined that anything above the budgeted energy cost was deemed  
18 extraordinary.<sup>13</sup> Normally, Empire would recover their Fuel and Purchased Power (“FPP”)  
19 through its Energy Cost Adjustment Rider (“ECA”), a ratemaking mechanism that recovers

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10 Order Adopting Staff’s R&R to Open Company-Specific Investigations, dated March 9, 2021, p 3.

11 Plan to Mitigate Financial Effects of Cold Weather Event and Application for Additional Tariff Provisions, November 23, 2022.

12 Direct Testimony of Geoffrey M. Rush, November 23, 2022, p 4.

13 Id., p 8.

1           these costs through a volumetric charge on customer’s bills. In accordance with the  
2           Commission’s orders in the 21-303 docket, Empire carried these extraordinary costs as a  
3           regulatory asset instead of recovering the entirety of the extraordinary costs through the  
4           ECA in order to avoid creating “rate shock” for many of their customers.<sup>14</sup>

5           In its filing dated November 23, 2022, Empire proposed to recover approximately  
6           \$12,636,744 in costs associated with the Winter Weather Event. These costs included FPP  
7           charges of \$10,773,444, legal and consulting expenses of \$33,340, and carrying charges of  
8           \$1,829,960, calculated at Empire’s Weighted Average Cost of Capital (“WACC”) of  
9           8.8107% for the period March 1, 2021 through May 31, 2023.<sup>15</sup> Under their initial  
10          proposal, Empire proposed to recover the above-described costs over thirteen years,  
11          resulting in an average bill increase of \$7.32 for an average residential customer using  
12          1,000 kWh per month. Empire believed a thirteen year recovery period would lessen the  
13          bill impact to its Kansas jurisdictional customers.<sup>16</sup>

14  
15   **Q. Has Empire, Staff and CURB reached a settlement agreement?**

16   A. Yes, on March 27, 2023, Empire, Staff and CURB (“Parties”) entered into negotiations  
17          with the goal of reaching a unanimous settlement agreement (“Settlement Agreement”).  
18          As a result of the Parties’ negotiations, they reached a unanimous agreement. Under the  
19          agreement, Empire will recover FPP of \$10,773,444, legal and consulting fees of \$33,513  
20          and carrying costs over a thirteen year period. The Parties agreed to carrying costs

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14 Id., pp 6-7.

15 Unanimous Settlement Agreement, Docket No. 21-EPDE-330-GIE, dated March 31, 2023 p. 3.

16 Id., p. 3.

1 accumulating interest at 3.76% for the pre-implementation period from when the costs were  
2 incurred through May 31, 2023 (for a total amount of \$920,698), and then at 5.71% for the  
3 post-implementation recovery period. The projected bill increase for an average residential  
4 customer under this agreement is \$5.73 per month over the thirteen-year period. As a result  
5 of the negotiated settlement, customers will save approximately \$4.6 million of interest  
6 expense over the life of the regulatory asset.<sup>17</sup>

7 The Winter Weather Event costs and associated carrying costs shall be charged on  
8 a volumetric basis and calculated by the total number of annual kilowatt hours approved in  
9 Empire’s most recent rate case, Docket No. 21-EPDE-444-RTS, appearing on customer  
10 bills as a separate line item beginning June 1, 2023. Empire will true-up actual recovered  
11 amounts compared to expected recoveries for periods ending May 31 of each year. The  
12 difference will be included as a charge or credit for the next twelve months through the  
13 rider. Should Empire receive monetary relief as a result of actions from the federal or state  
14 government, it shall pass such relief on to its customers through the ECA, even if those  
15 payments are received or recovered after the thirteen year plan.<sup>18</sup>

16 Empire agrees to enter into good-faith discussions with Staff and CURB to discuss  
17 implementation of a gas hedging plan to help protect its Kansas jurisdiction in the  
18 mitigation of natural gas price volatility. The Parties also agree to discuss how placing  
19 Empire’s Wind Projects in rates could mitigate fuel prices. By agreeing to participate in  
20 said discussions, none of the Joint Movants are committing to any plan and are specifically

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17 Id., p. 5.  
18 Id., pp 5-6.



1 reserving their respective rights to address any plan when filed by Empire.<sup>19</sup>

2  
3 **Q. What criteria does the Commission generally consider when reviewing settlement**  
4 **agreements?**

5 A. The Commission has accepted settlement agreements if the following five criteria are met:

6 1) The agreement conforms with applicable law; 2) there was an opportunity for opposing  
7 parties to be heard on their reasons for opposition to the agreement; 3) the agreement is  
8 supported by substantial competent evidence; 4) the agreement results in just and  
9 reasonable rates or charges; and 5) the results of the agreement are in the public interest.<sup>20</sup>

10 However, in dockets with proposed unanimous settlement agreements, such as this  
11 agreement, the Commission has approved settlement agreements on the basis of just the  
12 last three criteria.

13  
14 **Q. Does the Settlement Agreement satisfy the three factors required by the Commission?**

15 A. Yes, CURB believes the Settlement Agreement meets the pertinent criteria for Commission  
16 approval of a unanimous settlement agreement. CURB supports Empire's revised  
17 recommendations.

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19 Id., p 6.

20 See *Order Approving Contested Settlement Agreement*, ¶11, Docket No. 08-ATMG-280-RTS, dated May 12, 2012.

1 **Q. Is the Settlement Agreement supported by substantial competent evidence?**

2 A. Yes, the Settlement Agreement is supported by substantial competent evidence. Both Staff  
3 and CURB support the Settlement Agreement. Empire provided the testimony and  
4 accompanying exhibits of two witnesses who discussed Empire's efforts to comply with  
5 the Governor's and Commission's directives to maintain service during the Winter  
6 Weather Event. There were approximately 100 data requests submitted in this docket which  
7 provided information concerning Empire's operations during the Winter Weather Event,  
8 communications between all parties, and a full report from Utilicast, an independent, third  
9 party consultant, which reviewed the prudence of Empire's actions and overall conditions  
10 during the Winter Weather Event. Both Staff and CURB reviewed the financial documents  
11 provided by Empire, and concluded that the costs incurred by Empire were necessary and  
12 prudent to provide utility service during the Winter Weather Event.

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

15 A. Yes, the Settlement Agreement results in just and reasonable rates, in consideration of the  
16 fact that Empire incurred the extraordinary costs described earlier and, under the  
17 Commission's order, is entitled to recover those costs. If approved, the average monthly  
18 bill impact of \$5.73 would result in an annual charge to residential customers of \$68.76.  
19 The total cost to the ratepayer is projected to be \$893.88 over thirteen years. The reduced  
20 carrying charges resulting from the negotiated Settlement Agreement will result in savings  
21 to Empire's Kansas ratepayers of approximately \$4.6 million. CURB has consistently  
22 advocated in other Winter Weather Event dockets for a reduction in carrying costs. CURB

1 believes that doing the same in this docket is appropriate to mitigate the impact on  
2 ratepayers in light of the prudently incurred costs.

3

4 **Q. Is the Settlement Agreement in the public interest?**

5 A. Yes, the Settlement Agreement is in the public interest. There is a wide range of  
6 representation among the parties: the Company, representing its shareholders and  
7 customers; CURB, representing residential and small commercial ratepayers, and KCC  
8 Staff, representing all interests, including the public generally. From a practical standpoint,  
9 the Settlement Agreement provides a fair compromise among the competing positions and  
10 interests represented by the parties without the need for extended litigation and resource  
11 use. The Settlement Agreement avoids the potential litigation costs that could significantly  
12 impact the ratepayer savings brought about by the Settlement Agreement.

13

14 **Q. Have CURB's concerns concerning Empire's Winter Weather Event costs in Kansas**  
15 **been addressed?**

16 A. Yes, CURB's mission is to zealously protect the interests of residential and small  
17 commercial ratepayers by promoting the delivery of optimal utility services provided to all  
18 Kansas utility customers at just prices. The initial offering submitted by Empire requested  
19 recovery of extraordinary costs at their approved WACC of 8.8107% resulting in an  
20 average monthly residential rate of \$7.32 for a period of thirteen years. CURB viewed this  
21 scenario as especially harmful to customers living in the most economically disadvantaged  
22 portion of the state. By reducing the carrying charge rate, the monthly bill impact is

1 reduced, thereby easing the burden upon ratepayers. CURB wishes to commend Empire  
2 for its compromise to reduce carrying costs resulting from the negotiated Settlement  
3 Agreement.

4

5 **Q. What is your final recommendation?**

6 A. I support the Settlement Agreement and believe it satisfies the Commission's established  
7 criteria for approval of a unanimous settlement agreement. Therefore, I recommend the  
8 Commission approve the unanimous settlement agreement as proposed by the Parties.

9

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

11 A. Yes, thank you.

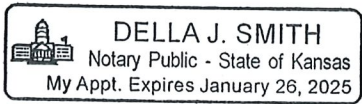
**VERIFICATION**

STATE OF KANSAS                    )  
  )  
COUNTY OF SHAWNEE            )        ss:

I, Patrick Orr, of lawful age and being first duly sworn upon my oath, state that I am a 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.

  
\_\_\_\_\_  
Patrick Orr

SUBSCRIBED AND SWORN to before me this 6<sup>th</sup> day of April, 2023.



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

My Commission expires: 01-26-2025.

**CERTIFICATE OF SERVICE**

21-EPDE-330-GIE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was served by electronic service on this 6<sup>th</sup> day of April, 2023, to the following:

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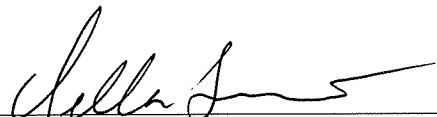
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