

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

MARCH 9, 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 three 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 Black Hills/Kansas Gas Utility Company, LLC, d/b/a Black Hills
4 Energy (“Black Hills”), the Staff of the Kansas Corporation Commission (“Staff”), and
5 CURB. My testimony will be divided into 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 Black Hills’
9 calculations and support for the amount of the credit being provided to Black
10 Hills’ customers.

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 included
6 Black Hills, 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 adopts 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 • Black Hills will refund customers \$1,718,203, plus interest, in order to reflect the
15 annual cost of service savings to customers as a result of the TCJA's lowering of the
16 federal income tax rate from 35% to 21%. Each of Black Hills' residential customers
17 will receive an annual one-time bill credit of \$7.34 in April 2018, if the Agreement is
18 approved by the Commission by March 27, 2018. In addition to the annual one-time
19 bill credit, residential customers will receive \$4.23, on average, annually as a result of
20 the volumetric credit to the PGA. Under the Agreement, the one-time bill credit and
21 volumetric credit to the PGA will be provided to Black Hills' customers in January of
22 each year after 2018 until Black Hills' base rates are changed in its next rate case.

- 1 • Black Hills will refund customers an additional \$154,331 in tax savings associated with
2 Black Hills’ Gas System Reliability Surcharge (“GSRS”). As a result of this reduction,
3 Black Hills’ residential customers will receive a one-time credit of \$0.24 per meter in
4 the GSRS rate in April 2018, and the monthly GSRS surcharge will be reduced from
5 the current \$0.69 to \$0.61.
- 6 • Black Hills will establish a regulatory liability to account for and capture the savings
7 relating to excess ADIT for the benefit of customers using a methodology that is
8 consistent with the tax normalization requirements specified in the tax legislation or
9 IRS normalization rules. As part of this Agreement, parties have agreed to defer any
10 issues regarding the amount of tax savings relating to excess ADIT and how those
11 savings should be passed on to customers to Black Hills’ next general rate case filing,
12 with the understanding that Black Hills’ customers are entitled to the benefits of the tax
13 savings relating to the utility’s 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 Black Hills’ tax refund plan and
22 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
16 **Q. Does this Agreement resolve CURB's concerns as stated in its Complaint?**

17 A. For Black Hills, yes. CURB's filed Complaint was delivered to all regulated public utilities
18 in Kansas. This Agreement is the first resolution to be presented to the Commission in
19 response to its Order in this proceeding. CURB's support for Black Hill's Agreement does
20 not provide the relief requested as to the other utilities named in CURB's Complaint and
21 CURB reserves its right to dispute all issues raised as to the other named parties in its
22 Complaint.

23

1 **V. EVALUATION OF SETTLEMENT AGREEMENTS**

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

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

11
12 **Q. Has each party had an opportunity to be heard on its reasons for opposing the**
13 **Settlement Agreement?**

14 A. Yes. Settlement discussions were conducted with Black Hills, Staff, and CURB on
15 February 21, 2018. There were no other parties present during this discussion. Because all
16 issues were resolved as a part of the February 21, 2018 settlement discussion, this factor
17 has been met as all parties with an interest in Black Hill's TCJA tax savings plan were
18 present, were heard, and were able to participate.

19
20 **Q. Is the Settlement supported by substantial evidence in the record as a whole?**

21 A. Yes. There is substantial evidence in the record to support the Agreement. The bill credit
22 calculations were performed using Black Hills' most recent base rate case (Docket No. 14-
23 BHCG-502-RTS), as adjusted for the change in the corporate tax rate change. Additionally,

1 the GSRS refund amounts were calculated using Black Hills' most recent Commission-
2 approved GSRS application.

3
4 **Q. Does the agreement conform to applicable law?**

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

9
10 **Q. Will the Settlement Agreement result in just and reasonable rates?**

11 A. Yes. As part of this Agreement, Black Hills is not changing its Commission-approved rate
12 schedule from the 502 Docket; rather Black Hills is passing on the savings immediately
13 that are a result of the passage of the TCJA. The tax savings refund plan included in this
14 Agreement is based upon the Commission-approved rates in Black Hills' most recent
15 general rate proceeding, which at the time of approval were deemed just and reasonable.
16 Therefore, Black Hills' rates will continue to be just and reasonable.

17
18 **Q. Should the deferral of the excess ADIT until the next general rate case cause Black
19 Hills' current rates to be deemed unreasonable?**

20 A. In my opinion, no. As part of the Agreement, Black Hills, Staff and CURB have agreed to
21 defer the excess ADIT issues until Black Hills next general rate case. However, Black Hills
22 will immediately establish a regulatory liability to account for and capture the tax savings
23 that are related to its excess deferred taxes. Further, Black Hills has agreed that the tax

1 savings captured as a result of excess ADIT will not be amortized until the next base rate
2 case and that these savings will be applied for the benefit of its customers.

3

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

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

7

8 **VI. RECOMMENDATION**

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

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

15

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

17 A. Yes.

VERIFICATION

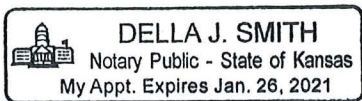
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) ss:
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I, Stacey Harden, of lawful age and being first duly sworn upon my oath, state that I am a Senior Regulatory Analyst for the Citizens' Utility Ratepayer Board; that I have read and am familiar 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 9th day of March, 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 9th day of March, 2018, to the following:

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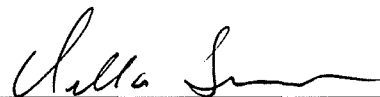
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